

# **The Corporation of the City of Guelph**

## **By-law Number (2021) - 20592**

A By-law of The Corporation of the City of Guelph for temporary seasonal patios for 2021-2023.

WHEREAS the ongoing COVID-19 pandemic continues to evolve and is causing significant, sustained, and unpredictable economic effects across the world and locally in Guelph;

AND WHEREAS Provincial and local health measures continue to limit restaurants, bars and other commercial dining establishments in Guelph in their capacity to serve patrons indoors, which restrictions may be offset in part by an expanded opportunity to accommodate customers on outdoor patio spaces, including temporary seasonal patios established on sidewalks, parking lots, and public rights-of-way;

AND WHEREAS seasonal expanded capacity for patios is a means by which the City can assist in the economic recovery of local businesses;

AND WHEREAS by resolutions passed on March 29, 2021 Council has created a three-year pilot seasonal patio program, utilizing public and private outdoor spaces to seasonally expand outdoor dining capacity to assist local restaurants and bars to serve patrons while complying with Provincial health-related guidelines and protocols;

AND WHEREAS Guelph's Comprehensive Zoning By-Law (1995)-14864 (the "Zoning By-law") contains certain provisions in relation to outdoor patios, which provisions are inconsistent with Provincial directives in connection with seasonal patios and which unduly restrict the purpose of maximizing the safe expansion of patios during the COVID-19 pandemic and for purposes of economic recovery thereafter;

AND WHEREAS under section 39 of the Planning Act, as amended, the council of a local municipality may, in a by-law passed under section 34, authorize the temporary use of land, buildings and structures for any purpose set out therein that is otherwise prohibited by the by-law;

AND WHEREAS by Ontario Regulation 345/20, made under the Reopening Ontario (A Flexible Response to COVID-19) Act, as amended, the Province of Ontario has suspended various procedural requirements under section 39 of the Planning Act, as amended, to permit municipalities to efficiently enact temporary use by-laws in relation to temporary seasonal patios;

NOW THEREFORE the Council of The Corporation of the City of Guelph enacts as follows:

### **DEFINITIONS**

1. In this By-law,

a) "Restaurant or Bar Patio" means an area that is not an enclosed public place or an enclosed workplace and that meets the following criteria:

i) The public is ordinarily invited or permitted access to the area, either expressly or by implication, whether or not a fee is charged for entry,

or the area is worked in or frequented by employees during the course of their employment, whether or not they are acting in the course of their employment at the time.

- ii) Food or drink is served or sold or offered for consumption in the area, or the area is part of, or operated in conjunction with, an area where food or drink is served or sold or offered; and
  - iii) The area is not primarily a private dwelling.
- b) "Seasonal Patio Program" means the outdoor seasonal patio program created by resolutions of Council on March 29, 2021 and the rules and requirements thereof as are published on the City's Web site and/or agreed to by the proprietor of a Restaurant or Bar Patio pursuant to an agreement between the proprietor and the City;
- c) "COVID-19 Health Measure" means any regulation, guideline, order, and/or directive published by the Ontario Ministry of Health and Long-Term Care, the Chief Medical Officer of Health, and/or by the Medical Officer of Health for Wellington-Dufferin-Guelph relating to the control of COVID-19.

#### TEMPORARY EXEMPTIONS

2. For the period from the effective date until October 31, 2023, a Restaurant or Bar Patio which has been approved by the City of Guelph through the Seasonal Patio Program, and which operates in compliance with the requirements of the Seasonal Patio Program and with COVID-19 Health Measures, shall be exempt from the following provisions of the Zoning By-Law:
- a) Notwithstanding section 4.17.1 of the Zoning By-Law, a Restaurant or Bar Patio may exceed fifty percent (50%) of the licensed capacity of the Commercial Establishment, provided, however, that it may not exceed the capacity established by any of:
    - (i) regulations published under the Liquor License Act, R.S.O. 1990, c. L. 19,
    - (ii) the capacity restrictions in the establishment's license issued by the Alcohol and Gaming Commission of Ontario, and/or
    - (iii) the maximum capacity set by the Building Code (being O. Reg. 332/12, made under the Building Code Act, 1992, as amended);
  - b) Notwithstanding section 4.13.4 of the Zoning By-Law, the Required Parking Spaces of establishments for which a Restaurant or Bar Patio has been approved under the Seasonal Patio Program are suspended for the duration of this Temporary Use By-Law;
  - c) Notwithstanding section 4.17.2.8 of the Zoning By-Law, a Restaurant or Bar Patio may have a temporary covering which exceeds fifty percent (50%) of the total area of the Restaurant or Bar Patio, provided, however, that:
    - (i) If the Restaurant or Bar Patio is covered by a roof, canopy, tent, awning or other element, at least two (2) full sides of the outdoor dining area must be open to the outdoors and must not

be substantially blocked by any walls or other impermeable physical barriers; and/or

(ii) If the Restaurant or Bar Patio is equipped with a retractable roof, the roof must be fully retracted and at least one full side of the outdoor dining area must be open to the outdoors and must not be substantially blocked by any walls or other impermeable physical barriers.

d) Notwithstanding section 4.17.2.5 of the Zoning By-Law, a Restaurant or Bar Patio may be located within 3 metres of any loading space, parking space, parking aisle or driveway, provided however that:

(i) A minimum distance of 1m between any loading space, parking space, parking aisle or driveway must be maintained; and

(ii) The owner shall provide certification from a Professional Engineer which states that adequate safety features have been constructed to prevent vehicles from leaving the loading space, parking space, parking aisle or driveway and hitting any person or persons on the Restaurant or Bar Patio.

#### LOCATION

3. This Temporary Use By-Law applies to all locations within the City of Guelph in which Outdoor Patios are permitted pursuant to section 4.17.2 of the Zoning By-Law.

#### EXPIRY

4. This Temporary Use By-Law expires on November 1, 2023 unless extended by further resolution of Council.

**Passed this twenty-ninth day of March, 2021.**

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**Cam Guthrie, Mayor**

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**Dylan McMahon, Deputy City Clerk**