

# Staff Report



To	<b>City Council</b>
Service Area	Infrastructure, Development and Enterprise Services
Date	Wednesday, July 15, 2020
Subject	<b>Temporary Use Bylaw for Temporary Patio Program</b>

## Recommendation

That the Temporary Use Bylaw for Temporary Patios in the 2020 Patio Season, included as attachment-1 to the Temporary Use By-law for Temporary Patio Program report, dated July 15, 2020, be approved.

## Executive Summary

### Purpose of Report

The report provides details on the City's proposed approach for integrating the provincial order and the recommended temporary use bylaw for temporary patios in the 2020 patio season into the recently approved temporary seasonal patio program to enable greater flexibility and more Guelph patios this season in support of local businesses and more broadly, economic recovery.

### Key Findings

A provincial order (O.Reg 511/20) issued on July 2, 2020 under the Emergency Management and Civil Protection Act provides the City with a new tool to allow greater flexibility in accommodating temporary patios on streets and parking spaces in Guelph through a temporary use bylaw. An enforceable temporary use by-law that sets parameters around temporary patios also helps to ensure that those restaurants and bars that choose to expand their patios also do so in a manner that is safe and respects the rights of neighbouring establishments.

### Financial Implications

As staff have been directed by Council to waive fees associated with the temporary patio program this year and report back to Council by April 2021 with recommended program changes for the 2021 patio season, a program budget will be provided at that time based on all the 2020 program's tracked costs.

## Report

Prior to the passage of O.Reg. 511/20, certain provisions in the City's zoning and encroachment bylaws which were reasonable for permanent patios in normal times, conflicted with the goal of maximizing the usable private and public spaces available to help restaurants and bars expand their patios to accommodate Covid-19 health restrictions, such as limiting dining and the consumption of alcohol to

outdoor spaces and requiring greater spacing between patrons. Changes to those requirements required adherence with a provincially legislated process of formal notices and consultations that could take up to three months—essentially the 2020 patio season. While temporarily suspending enforcement of those provisions, staff recommended in this same report that Council request a ministerial zoning order (MZO), which would pave the way for such changes without the lengthy process.

Through Council and the City's combined advocacy efforts for an MZO, the province heard Guelph's concerns and responded with a welcome alternative: a new provincial emergency order under the Emergency Management and Civil Protection Act which exempts a 2020 temporary use bylaw for a restaurant or bar patio from the onerous notification requirements.

### **Temporary Use Bylaw**

The temporary use bylaw proposed by staff will exempt restaurant and bar patios participating in the City's Temporary Patio Program from four provisions of the Zoning By-Law which create undue restrictions on temporary patio expansions:

1. Capacity restrictions which limit the capacity of a restaurant or bar patio to 50% of the licensed capacity indoors. Those Zoning By-Law provisions are now more restrictive than updated licensing requirements approved by the Alcohol and Gaming Commission of Ontario which call for 1.1m<sup>2</sup> per person. The Temporary Use By-Law will expand the capacity of restaurant and bar patios up to the maximums permitted by the ACGO and the Building Code.
2. Parking ratios which would otherwise prevent private parking lots from being utilized as temporary outdoor dining space.
3. Limits on the coverage area of temporary coverings and awnings to 50% of the area of a restaurant or bar patio. These provisions are more restrictive than limits set by the Province in Stage 2 Covid-19 guidelines as updated on July 2, 2020, which permit outdoor eating areas to be covered provided that at least two sides remain open to promote adequate airflow.

The first two of these three provisions were provisions for which Council's previous resolution directed staff to suspend enforcement pending a temporary use by-law, which can now be brought into force. The third is a requirement which staff recommend that Council relax for the 2020 patio season, in line with Provincial directives. This will better meet the need to have weather protection for patrons and servers while outdoor dining is the only option for restaurants and bars to seat dine-in patrons.

### **Process Changes**

If the temporary use bylaw is approved, the following process will be put in place:

- Applications will be accepted electronically on [guelph.ca](http://guelph.ca) through the current temporary seasonal patio application process
- Applicants will be required to adhere to updated guidelines that reflect the changes included in the provincial order and which ensure compliance with the Accessibility for Ontarians with Disabilities Act (AODA) and other relevant bylaws and legislation
- Applicants will not be permitted to establish patios on the street or in public parking spots until the application is reviewed, proof of insurance is provided

and the site is inspected and approved by City staff – this is a deviation from the existing process as a critical risk mitigation measure

- The City will enforce adherence to the guidelines

## **Risks**

Public safety remains a priority when administering the temporary seasonal patio program and evaluating patio applications. Placement of patios on streets and public parking spots can pose a significant risk to patrons, businesses and the City. These risks require substantial safety measures and for that reason this type of temporary patio warrants thorough review before being approved and installed.

## **Financial Implications**

The estimated loss of revenue for waiving the fees for the temporary patio program was \$10,000. Enabling more patios will increase this loss, however the extent depends on the number of applications the City receives. This will be tracked and reported back to Council before April 2021, as was directed on June 17, 2020.

## **Consultations**

Allison Thornton, Associate Solicitor, Legal, Realty and Court Services

Chris DeVriendt, Manager, Development Planning

Christine Chapman, Acting Manager, Business Development and Enterprise

## **Strategic Plan Alignment**

The Temporary Seasonal Patio Program and the associated program enhancements possible through the Temporary Use Bylaw align with Powering our Future's helping businesses succeed and add value to the community through economic recovery and rebuilding efforts.

## **Attachments**

Attachment-1 Temporary Use Bylaw for Temporary Patios in the 2020 Patio Season

Attachment-2 Provincial Order

## **Departmental Approval**

Not applicable

## **Report Author**

Marina Grassi, Strategic Business Advisor, Infrastructure, Development and Enterprise

## **This report was approved and recommended by:**

Kealy Dedman, P.Eng., MPA

Deputy Chief Administrative Officer

Infrastructure, Development and Enterprise Services

519-822-1260 extension 2248

kealy.dedman@guelph.ca