

Staff Report

Report To: City Council
Report From: Jacklyn Iezzi, Junior Planner
Meeting Date: March 15, 2021
Report Code: CS-21-017
Subject: Permissions for Temporary and Sidewalk Patios – 2021

Recommendations:

THAT in consideration of Staff Report CS-21-017 respecting Permissions for Temporary and Sidewalk Patios in 2021, City Council:

1. Directs staff to bring forward a by-law respecting temporary use provisions for temporary restaurant/bar patios pursuant to the *Reopening Ontario (A Flexible Response to COVID-19) Act* and Ontario Regulation 345/20;
2. Delegates authority to the City Manager, in consultation with the Director of Community Services, Director of Public Works & Engineering, and the Manager of Planning & Heritage to:
 - a. Approve the design, layout and placement of sidewalk patios; and,
 - b. Execute Sidewalk Patio Agreements requiring, among other matters, insurance of \$2 million (\$5 million where alcohol is served);
3. Directs staff to bring forward an amendment to the Delegation of Powers and Duties By-law No. 2014-109 to include the above noted delegation; and
4. Waives all fees associated with issuing a sidewalk patio permit for 2021.

Highlights:

- The Grey Bruce Health Unit returned to the 'Yellow' (Protect) zone in the Province's COVID-19 response framework on February 16, 2021 allowing the majority of businesses and facilities to resume operation.
- Recommendations and restrictions remain in effect that prevent local businesses, notably restaurants, from opening at full capacity. It is anticipated that many restaurant/bar owners will opt to provide an outdoor dining option for their patrons this year.
- This report establishes an approvals process for outdoor dining, namely temporary and sidewalk patios, in 2021 and onwards.
- Staff are recommending that a temporary use by-law be passed and that a temporary patio permit process be established for temporary patios located on private property, and that the City Manager be delegated approval authority for sidewalk patios located on City-owned property and the execution of sidewalk patio agreements.

Strategic Plan Alignment:

1. *Retain and grow existing local businesses and business opportunities.*
2. *Develop a coordinated approach to encourage economic development.*
 - 2.3 *Facilitate a streamlined development approvals process.*
8. *Support community safety and social inclusion.*

Background:

Since the beginning of the COVID-19 pandemic, City Council and Staff have been taking direction from Federal and Provincial authorities and consulting with public health agencies on the rapidly evolving emergency situation. As Council is aware, at the end of the most recent Stay-at-home Order, the Grey Bruce Health Unit returned to the 'Yellow' (Protect) zone in the [Province's COVID-19 response framework](#) on February 16, 2021.

The 'Yellow' (Protect) zone allows the majority of businesses and facilities to resume operations subject to the following public health guidance including, but not limited to, physical distancing of two metres or an impermeable barrier between patrons from different households, patron screening, and the requirement for face coverings except when eating or drinking.

Restrictions and recommendations remain in effect that prevent local businesses, notably restaurants and drinking establishments, from opening at full capacity. It is anticipated that these measures (e.g., physical distancing, indoor capacity limits) will continue to be in place throughout the spring and summer months and that many restaurant/bar owners will opt to provide a temporary outdoor dining/drinking option for their patrons.

The purpose of this report is to assess the measures put in place by City Council last year with respect to outdoor dining, namely temporary and sidewalk patio approvals, and to proactively establish an approvals process for 2021 in time for the earliest opening of patio season in Owen Sound.

Analysis:

This section provides an analysis of the proposed approvals process for temporary and sidewalk patios.

Temporary Patios

Temporary patios are outdoor extensions to existing restaurant/bar establishments located on private property.

Last year, the City established a 'temporary patio permit' process whereby restaurants and bars could request a minor variation to their existing, approved Site Plan Approvals to create new or extended temporary outdoor patios. Such minor variations are permitted under Part A, Sec. 6 of all Site Plan Agreements, subject to the approval of the Director of Community Services or their designate. Due to the necessity of the minor variation, representing temporary site alteration to accommodate social distancing measures, no fee was applied for this review process. Staff processed ten (10) temporary patio permit applications through this process.

The Development Team, Fire and Police Services reviewed each temporary patio permit request with public safety, site function and regulatory compliance in mind. The Engineering Services and Planning Divisions took care to ensure that sufficient parking would remain unencumbered on site and that no necessary appurtenances would be hindered (e.g., stormwater facilities) by the patio siting. Ensuring fire routes and access were maintained was a key consideration of City Fire Prevention Services.

On July 2, 2020, the Province ordered Regulation 2020.0511 under the *Emergency Management and Protection Act* regarding patios. The regulation allowed Planning Authorities, like the City, to pass a Temporary Use By-law

under Sec. 39 of the Planning Act without the requirement to give notice, hold a public meeting, or provide an appeal period.

Structures included as part of a patio design, such as tents, are required to obtain a Tent Permit from the Building Division and comply with zoning setbacks. In nearly all cases, compliance was achieved without issue, however, further to the provincial patio order and in the interest of continuing to permit temporary patios, Council passed a Temporary Use [By-law 2020-087](#) (attached as Schedule 'A'), permitting the erection of temporary restaurant/bar patios required as a result of COVID-19 public health measures on a City-wide basis, notwithstanding that the provisions of the Zoning By-law may not be met.

[By-law 2020-087](#) provided the following relief from the provisions of the Zoning By-law for temporary, off-street patios, generally:

- Reduced setbacks;
- Reduced, more readily calculated parking provisions;
- Non-application of maximum lot coverage requirements;
- Non-application of Sec. 5.10 of the Zoning By-law, which regulates Outdoor Patios.

Staff are proposing that a similar temporary patio permit process be used in 2021 and in the interest of flexibility for temporary restaurant/bar patios, recommend that a new temporary use by-law be passed providing the same relief as By-law 2020-087.

At this time, the provincial patio order that exempts Planning Authorities from the requirement to give notice, hold a public meeting or provide an appeal period remains in force and effect pursuant to the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020* and Ontario Regulation 345/20, attached as Schedule 'B'.

Street Furniture and Sidewalk Patios

Sidewalk patios are outdoor extensions to existing restaurant/bar establishments that are located on City-owned property, such as the sidewalk or municipal on-street parking spaces. Street furniture and sidewalk patios are most often located within the City's Harbour & Downtown area.

The goal of the City's Harbour & Downtown Urban Design/Master Plan Strategy is to create a vibrant shopping and business area with the physical infrastructure of the street supporting this goal. In pursuit of this, sidewalks, particularly in the 2nd Avenue section, were widened with the addition of

benches, planting areas, flowerpots, heritage lighting, and other pieces of furniture.

The vision for the Downtown, as reflected in the City's Official Plan (OP), supports a vibrant, active, and attractive Downtown with a pedestrian environment that is comfortable, accessible, and aesthetically pleasing. The urban design policies of the OP emphasize the provision of street furniture and amenities that encourage public activity and pedestrian traffic.

More recently, the City in partnership with the Downtown Improvement Area Board of Management, retained BC Hughes to complete a River District Action Plan. The draft plan completed in December of 2020 encourages actions that will animate and activate the River District and encourage the appeal of the area.

The continued use of policies that encourage sidewalk cafes and patio dining are identified as a specific action for increasing the approachability and creating a warm ambiance for the River District (Action 2b).

Building on the goal for a vibrant downtown, the City developed [Street Furniture and Sidewalk Patio Design Guidelines](#). Typically, Council approval of the patio is required as well as an agreement addressing matters such as insurance.

Last year, Council passed Resolution No. [R-200615-006](#) delegating authority to the City Manager for the approval of sidewalk patios located on City-owned property and the execution of sidewalk patio agreements.

Similar to the temporary patio permit process, all sidewalk patio requests were subject to review by the Development Team, Fire and Police Services with public safety, site function, and regulatory compliance in mind. The review process ensured that no necessary appurtenances located on City-owned property (e.g., fire hydrants, accessible parking stalls) would be hindered by the sidewalk patio and that the patio was consistent with the City's design guidelines.

In 2020, Staff issued four (4) sidewalk patio applications and agreements through the delegated approvals process. Approvals were issued within two to three business days, which was well-received by small business owners facing challenges due to COVID-19 public health measures.

On November 1, 2020, the City Manager's delegated authority to approve sidewalk patios and execute sidewalk patio agreements expired in

accordance with the amended Delegation of Powers and Duties By-law 2014-109.

For the 2021 patio season and onwards, Staff are recommending that delegated approval authority be reinstated to the City Manager in consultation with the Director of Community Services, Director of Public Works & Engineering, and the Manager of Planning & Heritage, without an expiry date.

In the opinion of Staff, a delegated approvals process ensures the highest and best approval turnover time for the marginally low number of sidewalk patio requests that the City receives on an annual basis. Last year, the City approved four (4) sidewalk patio requests, which has been the highest recorded number of requests in a given season received to date. In comparison, three (3) sidewalk patios were approved in 2017 and one each were approved in 2015 and 2011.

Furthermore, there continues to be some level of uncertainty respecting how long COVID-19 public health measures (e.g., physical distancing, indoor capacity limits) will remain in force and effect. It is anticipated that even following the pandemic, many patrons may continue to opt for outdoor dining and most businesses, notably restaurants and bars, will continue to offer this option for the foreseeable future.

A staff delegated approvals process for sidewalk patios and agreements grants City Staff the flexibility to quickly support businesses as public health recommendations and restrictions rapidly evolve now and into the future.

It merits note that staff delegation has been used for many years on eligible Site Plan Approval applications. Currently, if a business within the Downtown proposes to install a permanent patio located on private property, this type of application would be considered a class of development that may be considered by the City's delegate for Site Plan Approval.

Despite moving through a delegated approvals process, sidewalk patio requests will continue to be subject to review by the Development Team and Fire and Police Services in the interest of public health and safety, site function, regulatory compliance, and consistency with the City's Street Furniture and Sidewalk Patio Guidelines.

Finally, in passing Resolution No. [R-200615-006](#) Council waived all fees associated with issuance of a sidewalk patio approval. Recognizing that small business owners will likely continue to experience financial hardships due to

COVID-19 in 2021, it is recommended that Council waive all fees associated with sidewalk patios for this year.

Financial Implications:

There are minor financial implications associated with waiving all fees for sidewalk patios. Typically, the City requires a Sidewalk Patio Application Fee of \$50 per month of operation. The owner would also be required to obtain a Street Occupation Permit from the City's Engineering Services Department valid for three (3) months for a fee of \$60.

For example, a restaurant/bar that establishes a sidewalk patio for three (3) months of the year (June to August), would be required to pay \$210 in total fees. Assuming four (4) sidewalk patios are established in 2021 for three (3) months each, this would result in a total revenue loss of \$810 for the City.

Communication Strategy:

The Development Team, Fire and Police Services will continue to provide support and assistance to small business owners as needed and consult on all temporary patio permit and sidewalk patio requests. As provided by Ontario Regulation 345/20, notice provisions for temporary use by-laws relating to patios are waived.

Consultation:

The following City Staff were consulted in the writing of this report:

- Engineering Services Division
- Building Division
- City of Owen Sound Fire Prevention Services
- City of Owen Sound Police Services

Attachments:

Schedule 'A': Temporary Use By-law 2020-087

Schedule 'B': Ontario Regulation 345/20: Patios

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