

Municipality Of Chatham-Kent

Community Development

Planning Services

To: Mayor and Members of Council

From: Ryan Jacques, MCIP, RPP
Director, Planning Services

Date: January 8, 2022

Subject: Outdoor Patios

Recommendations

It is recommended that:

1. A Temporary Use By-law to allow for temporary outdoor patios on private property for the period up to January 1, 2023, be approved, and the implementing by-law be adopted.
2. The Guidelines for temporary patios installed on private property established in 2020 and 2021, be adopted for the period up to January 1, 2023.

Background

On June 8, 2020, through regulation, the Ontario government allowed for restaurants and bars to temporarily extend outdoor patio spaces to safely accommodate patrons and staff in order to help support hospitality sector workers and businesses impacted by the COVID-19 outbreak.

As a result of a regulation change, licensed establishments were allowed to create a patio adjacent to their premise or increase the size of their patio once they were permitted to welcome patrons on-site. This temporary measure allowed the public to safely enjoy service, while meeting social distancing requirements and other public health guidelines.

In response to this, on June 15, 2020, Council adopted regulations and guidelines for temporary patios. Further, on July 2, 2020, the Province approved [Ontario Regulation 345/20](#) the effect of which was to permit quick establishment or extension of restaurant and bar patios from certain legislative provisions that affect the ability of municipalities to make the quick decisions necessary to support restaurants during this transition. In order to allow the quick establishment or extension of restaurant and bar patios, the

Province has approved procedural modifications to the *Planning Act*. Pursuant to O. Reg 345/20, temporary use by-laws that would authorize the temporary use of land for a restaurant or bar patio (under section 39 of the *Planning Act*) are exempt from the requirements of public meetings, availability of information in advance of a meeting and public notices and appeals to the Ontario Land Tribunal. The effect of O. Reg 345/20 is to eliminate certain typical planning processes and requirements to enact temporary use by-laws and to help expedite the creation of extended outdoor patio spaces to safely accommodate patrons where licensed establishments are permitted to reopen.

To account for this, Council formally adopted a Temporary Use By-law to allow for temporary outdoor patios on private property for the period up to January 1, 2022. In addition, Council also approved a zoning by-law amendment that introduced some changes in order to provide some further flexibility for the construction of permanent outdoor patios. These changes were presented in an [Outdoor Patios](#) report to Council in December 2020.

Comments

On January 3, 2022, in response to recent trends that show an alarming increase in COVID-19 hospitalizations, the Ontario government temporarily moved the province into Step Two of its Roadmap to Reopen with modifications. Part of these measures once again is closing indoor dining at restaurants, bars and other food or drink establishments. Outdoor dining with restrictions, takeout, drive through and delivery is permitted. Therefore, it is recommended that temporary outdoor patios be permitted throughout 2022 to provide flexibility for local restaurants and bars through the continuation of temporary zoning regulations to suspend certain provisions of Zoning By-Law 216-2009 in relation to outdoor patios on private property. The proposed by-law is attached as Appendix A.

Guidelines for Temporary Outdoor Patios on private property established in 2020, and amended in 2021, are also recommended in 2022. The guidelines are attached as Appendix B.

Areas of Strategic Focus and Critical Success Factors

The recommendations in this report support the following areas of strategic focus:

☐ Economic Prosperity:

Chatham-Kent is an innovative and thriving community with a diversified economy

☐ A Healthy and Safe Community:

Chatham-Kent is a healthy and safe community with sustainable population growth

☐ People and Culture:

Chatham-Kent is recognized as a culturally vibrant, dynamic, and creative community

☐ Environmental Sustainability:

Chatham-Kent is a community that is environmentally sustainable and promotes stewardship of our natural resources

The recommendations in this report support the following critical success factors:

☐ Financial Sustainability:

The Corporation of the Municipality of Chatham-Kent is financially sustainable

☐ Open, Transparent and Effective Governance:

The Corporation of the Municipality of Chatham-Kent is open, transparent and effectively governed with efficient and bold, visionary leadership

☒ Has the potential to support all areas of strategic focus & critical success factors

☐ Neutral issues (does not support negatively or positively)

Consultation

There was no consultation required for this report.

Financial Implications

There are no financial implications resulting from the recommendations.

Prepared by:


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Director, Planning Services

Reviewed by:


Bruce McAllister, MCIP, RPP
General Manager,
Community Development

Attachments: Appendix A – Temporary Use By-law for Temporary Outdoor Patios
Appendix B – Guidelines for Temporary Outdoor Patios on Private Property

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Temporary Patio By-law Report.docx

By-law Number _____

of The Corporation of the Municipality of Chatham-Kent

A By-law to Amend Zoning By-law 216-2009 of the Municipality of Chatham-Kent

(A By-law for Temporary Outdoor Patios for 2022)

WHEREAS by on June 15, 2020, Council created emergency temporary patio guidelines, utilizing public and private outdoor spaces to temporarily expand outdoor dining capacity to assist local restaurants and bars to serve patrons while complying with Provincial health-related guidelines and protocols;

AND WHEREAS the temporary patio guidelines expired on January 1, 2022;

AND WHEREAS the ongoing COVID-19 pandemic continues to evolve and is causing significant economic effects across the world and locally in Chatham-Kent and it is deemed desirable to formally extend the emergency temporary guidelines for 2022;

AND WHEREAS Chatham-Kent's Comprehensive Zoning By-Law 216-2009 contains certain provisions in relation to outdoor patios, which provisions are inconsistent with Provincial directives in connection with temporary outdoor patios and which unduly restrict the purpose of maximizing the safe expansion of patios during the COVID-19 pandemic;

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 Reopening Ontario (A Flexible Response to COVID-19) Act, 2020, 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 outdoor patios;

And Whereas Council, after due investigation and consideration, concurs in the proposed amendments;

Now therefore be it and it is hereby enacted as By-law Number _____ of the Corporation of the Municipality of Chatham-Kent:

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 employments 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. “Temporary Outdoor Patio Guidelines” means the temporary outdoor patio guidelines approved by Council on January 17, 2022.
- 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 the Medical Officer of Health for Chatham-Kent Public Health.

TEMPORARY EXEMPTIONS

2. For the period from January 1, 2022 until January 1, 2023, a Restaurant or Bar

Patio, which operates in compliance with the Temporary Outdoor Patio Guidelines and COVID-19 Health Measures, notwithstanding Section 4.32 Outdoor Patio of Zoning By-law 216-2009, the following apply:

- a. A Restaurant or Bar Patio may not exceed fifty percent (50%) of the licensed capacity of the establishment, provided, however, that it may not exceed the maximum capacity set out by the Building Code, made under the Building Code Act, 1992, as amended, nor exceed the maximum capacity established through a Covid-19 Health Measure;
- b. The required parking spaces of establishments for which a Restaurant or Bar Patio following the Temporary Outdoor Patio Guidelines are suspended for the duration of this Temporary Use By-law;

LOCATION

3. This Temporary Use By-law applies to all locations within the Municipality of Chatham-Kent in which Outdoor Patios are permitted pursuant to Zoning By-law 216-2009.

EXPIRY

4. This Temporary Use By-law expires on January 1, 2023 unless extended by Council.

This By-law shall come into force and effect upon the final passing thereof, subject to the provisions of the Planning Act, R.S.O. 1990 Chapter. P.13, as amended.

Read a First, Second and Third Time the 17th day of January, 2022.

Mayor - Darrin Canniff

Clerk - Judy Smith

Chatham-Kent Guidelines for Temporary Outdoor Patios

In order to help to continue to facilitate appropriate social distancing for restaurant and bars in Chatham-Kent during 2022, the following is a series of guidelines to follow for the establishment of Temporary Outdoor Patios.

1. Temporary outdoor patios shall only be permitted for existing restaurants and bars.
2. Temporary outdoor patios must adhere to all provincial and local public health guidelines related to COVID-19.
3. Temporary outdoor patios permitted under this guideline shall extend no later than January 1, 2023; however, the Municipality may terminate these permissions upon 24 hours notice.
4. The business owner is responsible for obtaining all relevant permissions, including but not limited to the AGCO, CK Public Health, and their landlord.
5. Outdoor theatrical performances or audiovisual presentations, live music concerts or shows are not permitted. Any other usage must be in compliance with the Chatham-Kent Noise By-law 41-2004, as amended.
6. Required on-site parking may be used for a temporary outdoor patio. The required number of designated Accessible Parking Spaces must remain available for parking use and designated fire routes and sight triangles must be avoided. A reasonable number of standard parking spaces should be maintained to serve patrons.
7. Accessibility must be maintained to, and throughout, the temporary outdoor patio.
8. Temporary patios must not extend in front of adjacent tenant spaces, exits, or beyond business frontage without written permission from affected adjacent property owners and tenants; this includes any overhanging elements.
9. Umbrellas must stand at least 2.1m (7ft) above the walking surface.
10. Platforms, decks, stages and portable toilets are not permitted. Optional temporary patio perimeter fencing, planters, or barriers approximately 1.2m (4ft) high are permitted, provided they are secured without endangering any underground utilities.
11. A physical barrier shall be installed where a patio is adjacent to any vehicle movement areas.
12. Cooking of food and drink preparation is not permitted on temporary patios.

13. A minimum 1.5m (5ft) clearance from fire department (siamese) connections and hydrants must be maintained on a temporary patio.
14. A fire extinguisher (minimum 2A-10BC) must be available within 15.2 m (50ft) of any part of the temporary patio.
15. When the perimeter is enclosed, a temporary outdoor patio with capacity for more than 60 people must have two separate exits.
16. CSA-certified electric or propane patio heaters (with max 20lb tank) are permitted where located at least 3m (10ft) away from tree branches or other structures, operated per the manufacturer's directions and not stored on the road right-of-way when not in use. Solid-, gel- or liquid-fuel fire features are not permitted.
17. The Chief Building Official is authorized to inspect all temporary outdoor patios and require adjustments to the patio in order to address compliance with these Guidelines.

Temporary Tents/Structures

18. A tent or group of tents is not required to obtain a building permit if it is/they are:
 - a) not more than 60 m² in aggregate ground area,
 - b) not attached to a building, and
 - c) constructed more than 3 m from other structures.
19. A building permit is required for a tent or group of tents when the aggregate area is more than 60 m², it is attached to a building, and/or it is less than 3 metres from another structure.
20. If a tent requires a building permit, the structural design for tents require a Professional Engineer registered in Ontario to seal the documents/drawings and ensure compliance with the Ontario Building Code. Specifications apply to the design of the complete building system including all structural members, connections, anchorage and fabric cover.
21. As part of the structural design, mechanical, thermal, manual or other means of snow removal are not permitted by the Ontario Building Code.
22. Tents/structures are generally not permitted in a right of way (sidewalks and curb lanes) where visibility is obscured for drivers, cyclists, pedestrians, and others.
23. Tents/structures are not to be drilled or affixed to the sidewalk or roadway, to maintain public safety and accessibility.
24. A fueled heating appliance may not be operated in any enclosed or partially enclosed area and the placement of heating appliances must comply with the TSSA provisions.

25. Applicants are advised that any approved tents/structures shall at all times be required to comply with any and all applicable Provincial, municipal or other guidelines, regulations, orders, restrictions, any applicable public health regulations, or any other applicable law that may from time to time apply to such tents/structures including in connection with COVID-19. It is the operator's responsibility to ensure such guidelines, regulations, and/or laws are met.
26. Safety of patrons and staff is paramount. It is the responsibility of the owner/operator to ensure all tents, regardless of size, are capable of withstanding wind and snow loads during the fall and winter seasons. Owners/operators are advised to immediately and continuously remove snow from the top, sides and around the tent during snow events.
27. The Ontario Fire Code specifies that temporary tents that exceed 30 m² in size or that are used for commercial or assembly purposes regardless of size must adhere to the following:
- a) Tents should be composed of non-combustible materials or flame proofed to ensure that the materials will pass the match flame test outlined in NFPA 705, "Recommended Practice for Field Flame Test for Textiles and Films,"
 - b) The tent should have at least two exits located remotely from each other,
 - c) The tent shall have at least one listed minimum 2A rated portable fire extinguisher located at or near one of the exits,
 - d) Combustible materials (including decorations) shall not be permitted within the tent,
 - e) A Fire Safety Plan is required for all tents used for assembly purposes and should be submitted for review and approval to Chatham-Kent Fire and Emergency Services. Smoking and open flame devices shall not be permitted in the tent, unless provisions have been made for such activities under the approved Fire Safety Plan in consultation with,
 - f) If the tent is not equipped with a fire alarm system, a person shall be appointed for fire watch duty and shall patrol the area continuously to ensure that the exits are kept clear. If a fire is detected, this person shall notify occupants and staff to exit the tent immediately and call 9-1-1.
28. The Ontario Fire Code and Technical Standards and Safety Authority (TSSA) regulations do not permit heaters to be located:
- a) In or below a tent or canopy,
 - b) Under fire escapes,
 - c) Within a means of egress or adjacent to an exit,

- d) Adjacent to or otherwise obstructing firefighting equipment like fire hydrants or fire department connections, and

- e) Near or attached to trees, utilities or other street elements.

29. Electric heaters must be used in accordance with manufacturer's instructions and power cables/cords must be kept clear from pedestrian walkways and protected from mechanical damage.