



SUBJECT: Temporary Use By-law to regulate outdoor patios

TO: Community Planning, Regulation & Mobility Cttee.

FROM: Community Planning Department

Report Number: PL-09-21

Wards Affected: All

File Numbers: 520

Date to Committee: February 2, 2021

Date to Council: February 3, 2021

Recommendation:

Approve By-law 2020.427, a temporary use by-law to permit and regulate temporary outdoor patios attached as Appendix A to community planning department report PL-09-21; and

Repeal By-laws 2020.422 and 2020.426, being previously enacted Temporary Use By-laws related to temporary outdoor patios; and

Waive the requirement for site plan and zoning clearance approvals for temporary tents on outdoor patios until October 31, 2021.

PURPOSE:

The purpose of this report is to provide City Council with recommendations to repeal previously enacted temporary use by-laws to permit temporary outdoor patios and to replace those by-laws with a new temporary use by-law that would continue to permit temporary outdoor patios and prescribe revised zoning regulations that would better accommodate temporary tents for outdoor patios as part of the City's response to the COVID-19 pandemic.

This report also responds to the following staff direction SD-03-21, adopted by Council at the January 19, 2021 meeting:

“Direct the Director of Community Planning to bring a temporary use by-law forward that modifies the Zoning By-law to accommodate winter tents for outdoor patios. Report back in February or sooner, as possible.”

This report also responds to staff direction SD-13-20 adopted by Council at the July 28, 2020 Community Planning, Regulation & Mobility meeting:

“Direct the Executive Director of Community Planning, Regulation and Mobility to report back in Q1 of 2021 regarding the amendments to the By-law regulating temporary outdoor patios including a review of the implementation process, feedback from the community and stakeholders and outlining options for the 2021 patio season.”

Vision to Focus Alignment:

Temporary outdoor patios contribute to the achievement of supporting small business.

- Increase economic prosperity and community responsive city growth
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Background and Discussion:

On June 18, 2020, Council passed Temporary Use By-law 2020.421 to permit temporary outdoor patios as a result of the COVID-19 recovery efforts. At this time, Council approved the removal of fees and regular process, including the Site Plan Approval and Zoning Clearance Certificate processes to make it easier for restaurants to install temporary outdoor patios.

On July 28, 2020, Council repealed By-law 2020.421 and passed Temporary Use By-law 2020.422 to permit temporary outdoor patios and update the zoning regulations to allow for limited tent structures. Furthermore, Council adopted the following direction at this meeting of Community Planning, Regulation & Mobility meeting:

“Direct the Executive Director of Community Planning, Regulation and Mobility to report back in Q1 of 2021 regarding the amendments to the By-law regulating temporary outdoor patios including a review of the implementation process, feedback from the community and stakeholders and outlining options for the 2021 patio season.”

On November 2, 2020, staff brought forward a report to address the above council direction and as a result Council passed Temporary Use By-law 2020.426 to permit temporary outdoor patios, update regulations, and extend the temporary use permissions until October 31, 2021. This allowed restaurants and bars to continue operating their temporary or expanded patios throughout the winter season. At this time, Council approved the formation of a Winter Patio Task Force to evaluate the feasibility

of restaurant patio operations and installation of temporary tents to support outdoor dining throughout the winter season.

On January 12, 2021, the Ontario government declared a second provincial emergency under the *Emergency Management and Civil Protection Act*. This included further restrictions on business operations and public gatherings that will be in effect until at least February 11, 2021. Outdoor dining will remain prohibited until these restrictions are lifted by the Provincial government.

Staff are bringing forward changes to address the restrictive nature of existing zoning permissions to expedite the approval of outdoor patios and the installation of tents thereon. To achieve this, subsequent changes to the City's Temporary Use By-law regulations are required to accommodate outdoor dining when the provincial lockdown is lifted, and the pertinent regulations permit. Waiving the requirement for site plan and zoning clearance approvals for temporary tents on outdoor patios until January 1, 2021 was approved in Report PL-44-20. This expedited temporary patio approvals throughout 2020 and therefore staff is recommending it be renewed until October 31, 2021 to align with the temporary use by-law expiration date.

By-laws Governing Temporary Outdoor Patios and Temporary Tents

Updates to the Zoning By-law outlined in Reports PL-44-20 and PL-60-20 included provisions for temporary tents, which introduced temporary zoning regulations to align with Ontario Building Code requirements. These included requiring a temporary tent or group of tents to be:

- less than 60 m² in size;
- installed for a maximum of three occasions in a 12-month period, subject to a maximum of 10 days duration per occasion, for those greater than 60 m² in size;
- set back a minimum of 3 m from a building/structure; and
- set back a minimum of 3 m from a street line.

Strategy/process

Through changes to its regulatory environment, primarily through the Temporary Use By-law, the City of Burlington has permitted the creation and expansion of temporary outdoor patios throughout the 2020-21 winter season. This includes permitting temporary outdoor patios to operate on portions of a property where a patio would not typically be permitted, such as in a parking lot.

At the time of writing this report, three temporary outdoor patio permits have been issued until October 31, 2021 through the City's winter patio program, with many other permanent patios that continued to operate until the December 26th lockdown. City of Burlington staff have engaged with restaurants throughout the Fall and Winter season

and understand that restaurant operators with either type of patios (temporary or permanent) intend to continue outdoor dining service once it is permitted again by Provincial regulations. For restaurants to protect their staff and patrons from seasonal weather, including snow, rain, and wind, restaurants have installed temporary tents on their patios, often without the necessary issued building permits.

In instances where building permits have not been obtained, current zoning regulations regarding tent setback and size make it difficult for temporary tents to be installed on some restaurant patios. These zoning regulations were passed through a Temporary Use By-law in July 2020 (Report PL-44-20) and amended in November 2020 (Report PL-60-20) to align with Ontario Building Code requirements. However, should a restaurant operator seek an alternative solution in conjunction with a building permit, the zoning regulations could now prevent their tent from being approved without the need for either a minor variance or a rezoning. To ensure zoning requirements do not impede an Ontario Building Code approval for a temporary tent on a restaurant patio, staff are proposing repealing the existing temporary use by-law provisions for temporary patios and replacing it with less restrictive zoning regulations.

Typically, a restaurant looking to install a temporary tent on its patio would be required to go through the site plan approval process, obtain a zoning clearance certificate, and a building permit. While the Zoning By-law does not prohibit temporary tents on outdoor patios, it does contain regulations specific to location, size and duration that make it challenging for many restaurants in Burlington—primarily in Downtown, where lot sizes are typically smaller—to install a temporary tent on their existing patio.

Recognizing this challenge and to streamline the approval process of outdoor patios and associated activities, staff are recommending that the previously enacted Temporary Use By-laws be repealed and replaced to continue the existing permissions for temporary outdoor patios and to remove:

- any zoning requirements for maximum tent size;
- tent installation duration; and
- minimum required setback of a tent from a building or property line.

To aid in the economic recovery of restaurants during and after the COVID-19 pandemic, staff are recommending that zoning regulations to use a temporary tent on an outdoor restaurant patio not require setbacks from a building or property line or be limited to a specific size. This is because requirements for tent setbacks will be considered during the Building permitting review.

Financial Matters:

Not applicable.

Climate Implications

Not applicable.

Engagement Matters:

Ontario Regulation 345/20, issued under the *Reopening Ontario Act*, exempted temporary use by-laws from the requirements for providing public notice and holding a statutory public meeting. However, staff will provide updates on the City's website.

Staff have consulted with the Burlington Restaurant Association and both of Burlington's BIAs on the ongoing changes to this program. Staff will advise all restaurants with existing or pending temporary outdoor patio applications of the changes and what, if any, impact they have on the processing of their application.

Conclusion:

Staff are recommending passing the proposed Temporary Use By-law and temporary regulations for temporary outdoor patios to better support restaurant recovery due to COVID-19. Streamlining the approval processes for temporary tents on restaurant patios is critical to ensuring business continuity for small businesses in Burlington and will improve customer experience during the permitting process.

Respectfully submitted,

Robert Catherall

Special Business Area Coordinator

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Appendices:

- A. By-law 2020-427, a By-law to amend By-law 2020, as amended, to permit temporary outdoor patios through a temporary use by-law with a timeframe to expire on October 31, 2021.

Notifications:

Burlington Restaurant Association, c/o Andrea Dodd

Aldershot Village BIA, c/o Judy Worsley

Burlington Downtown Business Association, c/o Brian Dean

Report Approval:

All reports are reviewed and/or approved by Department Director, the Chief Financial Officer and the Executive Director of Legal Services & Corporation Counsel.