



SUBJECT: Extension to Temporary Use By-law for outdoor patios

TO: Mayor and Members of Council

FROM: Community Planning Department

Report Number: PL-55-21

Wards Affected: all

File Numbers: 520

Date to Committee: October 19, 2021

Date to Council: October 19, 2021

Recommendation:

Approve By-law 2020.434, to extend the period of time for which the Temporary Use By-law 2020.427 is authorized, as Appendix A to community planning department report PL-55-21; and

Waive the fees and requirements for site plan approval and zoning clearance certificate for temporary outdoor patios and temporary tents (structures) on private property until April 14, 2022; and

Authorize the Executive Director of Community Planning, Regulation and Mobility, to approve the extension of temporary outdoor patios on private property to April 14, 2022 subject to such criteria and conditions as staff deem appropriate; and

Authorize the Executive Director of Community Planning, Regulation and Mobility to grant or revoke such approvals, consents, agreements or other authorizations and take such other steps as may be required to give effect to the recommendations herein.

PURPOSE:

The purpose of this report is to provide City Council with a recommendation to extend the existing temporary use by-law authorizing temporary use provisions for outdoor patios and tents (structures) on private property over the winter months. Furthermore, the extension of this program would continue to support local restaurants and bars and their employees as part of the City's response to the COVID-19 pandemic.

Vision to Focus Alignment:

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

Decision History

On June 18, 2020, Council passed Temporary Use By-law 2020.421 to permit temporary outdoor patios in response to the COVID-19 pandemic. Also, Council approved the removal of fees and regular processes, including Site Plan Approval and Zoning Clearance Certificate, to make it easier for restaurants to install temporary outdoor patios.

<https://burlingtonpublishing.escribemeetings.com/Meeting.aspx?Id=2661ff32-0f89-449e-a6e1-307f7a59cd96&Agenda=Agenda&lang=English>

On July 28, 2020, Council repealed By-law 2020.421 and passed Temporary Use By-law 2020.422 to permit temporary outdoor patios and update the zoning permissions to allow for limited tent structures.

<https://burlingtonpublishing.escribemeetings.com/Meeting.aspx?Id=b7a540ee-9b1c-44d2-b253-5c8dcdaca755&Agenda=Agenda&lang=English>

On November 2, 2020, Council passed Temporary Use By-law 2020.426 to permit temporary outdoor patios, update and extend the temporary use permissions until October 31, 2021. This allowed restaurants and bars to continue operating their new temporary or expanded existing outdoor patios throughout the winter months of 2020-2021. Also, 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.

<https://burlingtonpublishing.escribemeetings.com/Meeting.aspx?Id=6005f74e-4447-41e0-a13b-a76e3d3bcc0a&Agenda=Agenda&lang=English>

On February 3, 2021, Council repealed By-laws 2020.422 and 2020.246 and passed Temporary Use By-law 2020.427 to permit temporary outdoor patios while making changes to address the restrictive nature of zoning permissions related to the streamlined approval and installation of temporary tents on outdoor patios.

<https://burlingtonpublishing.escribemeetings.com/Meeting.aspx?Id=607afbfd-87ba-4e4c-b86c-8302ef5b4d74&Agenda=Agenda&lang=English>

Background

At the time of writing this report, the Province of Ontario has paused the exit from the Roadmap to Reopen – a three-step plan to safely and cautiously reopen the province and gradually lift public health measures – and remains in Step Three. In Step Three of the roadmap, restaurant and bars are permitted to have indoor and outdoor dining with capacity limited to permit physical distancing of 2 metres and other restrictions. The Chief Medical Officer of Health and other health experts will continue to monitor the data to determine when it is safe to exit the roadmap and lift the majority of public health and workplace safety measures currently in place.

With the COVID-19 restrictions on limited seating for indoor dining still in place, there is an ongoing need to provide restaurants the ability to maintain increased capacity to safely serve patrons throughout the winter months while continuing to recover from the negative economic impacts of these restrictions. Extending the temporary use provisions in Burlington over the winter months would provide an option for restaurants to continue operating while aligning with Provincial and Halton Region public health and safety measures.

Strategy/process

This report recommends an extension of the existing temporary use by-law (By-law 2020.427), which authorizes temporary outdoor patio uses including temporary tents (structures), and eases zoning restrictions for such uses on private property. The current in-effect temporary use by-law will expire on October 31, 2021. An extension to the by-law will provide certainty to business owners who wish to operate outdoor patios and dining over the winter months. The extension will take effect upon Council approval, by way of passing the extension by-law, which would amend the existing by-law. The contents of the existing by-law will remain the same, with the only change being a new expiration date of April 14, 2022.

Staff is recommending that By-law 2020.427 be extended for a further period of time to expire on April 14, 2022, to coincide with the start of the 2022 Temporary Outdoor Patio Program on public lands. Upon expiry of this new by-law, the zoning restrictions for outdoor patios in Zoning By-law 2020, as amended, would resume.

Private Lands

Outdoor patios on private lands are regulated by zoning. A by-law is needed to extend existing temporary permissions to allow for winter patios on private lands. If approved, staff will work with approval and permit holders to renew such approvals, permits or other authorizations.

Public Lands

The 2021 Temporary Outdoor Patio Program for temporary outdoor patios on public lands closes at the end of October. For public safety reasons related to winter control measures and the maintenance and operations of the City's public right-of-ways (sidewalks and roadways) in the downtown over the winter months, removals of temporary outdoor patios on public lands are required to take place on or before October 31, 2021. This is set out in the existing agreements between the City and participating businesses with temporary outdoor patios on public lands. This approach is based on the learnings and staff experience from last year.

Following this date, City staff will begin to remove the temporary sidewalk detours, which were installed in nine (9) locations throughout the downtown at the opening of the season to support the program's seasonal expansion on public lands.

Approvals & Fees

Typically, a new outdoor patio, expansion of an existing outdoor patio or tent on private property would require site plan approval and the issuance of a zoning clearance certificate. However, these requirements, together with their associated fees, were waived until January 1, 2021 through the Council approval of Report PL-44-20. This decision was subsequently renewed until October 31, 2021 through the approval of Report PL-09-21.

This report recommends the continuation of the program over the winter months with fees and the above requirements being waived for all renewals of existing approvals and new applications for temporary outdoor patios and/or tents on private lands.

If approved, the Winter Tents Grant Program would also be extended to coincide with the extension of the temporary use by-law and the time for which it is in effect. This program would continue to be available to eligible applicants to reimburse the costs of building permit fees for temporary outdoor tents (structures) on an outdoor patio.

Other Approvals

While the City approvals and permits issued for the use of the space, businesses must continue to comply with all other applicable provincial and regional directives and regulations, including for example, the Alcohol and Gaming Commission (AGCO), Ontario Building Code (OBC) and Ontario Fire Code for structures, including tents, and Halton Region Public Health.

Options Considered

Staff is recommending that the temporary use by-law be extended over the winter months to allow for a winter patio program on private lands consistent with last year's program and to coincide with the start of the 2022 Temporary Outdoor Patio Program on public lands.

Currently, staff are not recommending any further changes to the Temporary Outdoor Patio Program over the winter months.

Other options for the extension period considered include:

- i. Until the end of this year, December 31, 2021;
- ii. A further period of one year, October 31, 2022; or
- iii. The maximum permitted extension pursuant to Section 39 of the Planning Act, being a period of not more than three years, February 3, 2024.

Financial Matters:

Council approved \$10,000 in funding from the Tax Rate Stabilization Reserve Fund for the Winter Tents Grant Program. To date, \$6,139 has been spent leaving \$3,861 for the extension of the program to April 14, 2022. Should additional funding be required, staff will advise Council.

Climate Implications

Not applicable

Engagement Matters:

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

Staff have consulted with the Burlington Restaurant Association and Burlington Downtown Business Association about the recommendations contained within this report. If approved, staff will also advise all restaurants with existing approvals of the extension, the change of time in effect of the existing temporary use provisions and what, if any, impact they have on existing approvals and the processing of new applications or renewals. Staff will continue to assist restaurants looking to apply for a new temporary outdoor patio, expansion or tent on private lands.

Conclusion:

Staff recommend the extension of By-law 2020.427, a temporary use by-law authorizing the temporary use of land for new outdoor patios, the expansion of existing outdoor patios and/or the erection of a temporary tent (structure) on either a new, expanded or existing outdoor patio, to continue to support restaurant recovery due to the COVID-19 pandemic. The passage of the subject by-law would extend the period of time for which this authorization shall be in effect from October 31, 2021 to April 14, 2022.

Respectfully submitted,

Todd Evershed, MCIP, RPP

Coordinator of Urban Design and Special Projects

Appendices:

- A. Draft By-law 2020.434, to extend the period of time for which the temporary use under By-law 2020.427 is authorized

Notifications:

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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.