



The Corporation of the Town of Milton

Report To:	Council
From:	Barbara Koopmans, Commissioner, Development Services
Date:	September 21, 2020
Report No:	DS-037-20
Subject:	Town-wide Temporary-use By-law Permitting Expanded Outdoor Patios for Private Clubs
Recommendation:	<p>THAT Development Services Report DS-037-20 outlining a Town-initiated, Town-wide Temporary Use By-law to facilitate expanded patios at private clubs be approved;</p> <p>AND THAT Council adopt the Temporary-Use By-law attached as Appendix 1 to Staff Report DS-037-20.</p>

EXECUTIVE SUMMARY

- This report recommends a temporary use by-law pursuant to Section 39 of the Planning Act to facilitate the expansion of outdoor patios on properties lawfully operating as a private club.
- A Provincial regulation under the Emergency Management and Civil Protection Act (EMCPA) amends S. 39 of the Planning Act by removing notice requirements and appeal rights to temporary uses by-laws that authorize outdoor patios.
- The proposed temporary use by-law would support the ability for private clubs to respond to physical distancing requirements associated with the COVID-19 pandemic, by increasing the amount of outdoor space for patrons.
- The proposed by-law is consistent with the Provincial Policy Statement (2020), conforms to A Place to Grow, Growth Plan for the Greater Golden Horseshoe (2019) and to the Town and Region's Official Plans.

REPORT

Background

Section 39 of the Planning Act provides authority to municipalities to pass temporary use by-laws. Such a by-law is a zoning by-law to authorize the temporary use of land, buildings or structures for any purpose that the municipal zoning otherwise prohibits. At times, it is in the

public interest to permit a particular use on lands on a temporary basis, even though the use may not comply with the zoning by-law. A temporary use by-law must define the area to which it applies and specify the time in which it will be in force. Section 5.5.3.6 of the Official Plan addresses temporary use by-laws:

Council, before passing a by-law to permit a temporary use, shall be satisfied that the following requirements, among others, are fulfilled to safeguard the wider interests of the general public:

- That the proposal fulfils reasonable planning standards;
- That the proposed use will be *compatible* with adjacent uses;
- That the size of the parcel of land or building to be used is appropriate for that proposed use; and,
- That services such as water, sewage disposal and roads are sufficient.

A Provincial regulation under the Emergency Management and Civil Protection Act (EMCPA) amends S. 39 of the Planning Act by removing notice requirements and appeal rights to temporary use by-laws that authorize outdoor patios associated with restaurants.

In the order, “restaurant or bar patio” means an area that is not an enclosed public place or an enclosed workplace and that meets the following criteria:

- 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 employment at the time.
- 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.
- The area is not primarily a private dwelling.

The Town’s Zoning By-laws 144-2003 and 016-2014 define a private club as follows:

PRIVATE CLUB

Means a non-profit, non-commercial organization which carries on cultural, social, athletic or recreational activities and includes the *premises* of a fraternal or charitable organization.

It is Planning staff’s opinion that a private club as defined meets the criteria outlined in the province’s emergency order.



Discussion

The emergency order issued by the Province allows municipalities to quickly pass temporary by-laws for the creation and extension of patios and allow covered outdoor dining areas to serve patrons.

The proposed temporary use by-law would only apply to lawfully operating private clubs in the Town, providing these establishments the flexibility to extend their outdoor space for patrons. All other zoning requirements, i.e. parking must comply with the existing in-force zoning. While the proposed by-law does not restrict the size of the outdoor patios; any use allowed to establish through this temporary use by-law would also be required to obtain any other applicable approvals and comply with other Town By-laws, unless specifically exempt. The temporary use by-law would expire on October 31, 2020.

Planning staff recommend that Council enact the attached temporary use by-law. It conforms to the Official Plan and supports an important economic sector on a temporary basis consistent with the Province's emergency order.

Financial Impact

None arising from this Report

Respectfully submitted,

Barbara Koopmans, MPA, MCIP, RPP, CMO
Commissioner, Development Services

For questions, please contact: Jill Hogan

Phone:905-878-7252
x 2304

Attachments

Appendix 1: Proposed Temporary Use By-law

CAO Approval
Troy McHarg
Acting Chief Administrative Officer

THE CORPORATION OF THE TOWN OF MILTON

BY-LAW NO. 0XX-2020

BEING A BY-LAW OF THE TOWN OF MILTON TO AMEND THE TOWN OF MILTON COMPREHENSIVE ZONING BY-LAW 016-2014, AS AMENDED AND ZONING BY-LAW 144-2003, AS AMENDED, PURSUANT TO SECTION 34 AND 39 OF *THE PLANNING ACT*, AS AMENDED, IN RESPECT OF ALL LANDS WITHIN THE TOWN OF MILTON

WHEREAS Section 39 of the Planning Act, as amended, authorizes Municipal Councils to pass by-laws to permit temporary land uses for specific period of time;

AND WHEREAS Ontario Regulation 345/20 under the Emergency Management and Civil Protection Act exempts a by-law authorizing the temporary use of land for a restaurant or bar patio under section 39 of the Planning Act from subsections 34(12) to 34(14.3), 14.5 to (15) and (19) of that Act and paragraphs 4 and 5 of subsections 6 (9) of Ontario Regulation 545/06 under that Act;

AND WHEREAS the Council of the Corporation of the Town of Milton deems it appropriate to amend Comprehensive Zoning By-law 016-2014, as amended, and Zoning By-law 144-2003, as amended, to allow the proposed use for a period ending October 31, 2020;

AND WHEREAS the Town of Milton Official Plan provides for the lands affected by this by-law to be zoned as set forth in this by-law;

NOW THEREFORE the Municipal Council of the Corporation of the Town of Milton hereby enacts as follows:

1. **THAT** the words highlighted in italic type in this By-law have the meaning provided in Zoning By-law 016-2014, as amended and Zoning By-law 144-2003, as amended.
2. **THAT** this By-law expires on October 31, 2020.
3. **THAT** nothing in Zoning By-law 016-2014, as amended and Zoning By-law 144-2003, as amended applies to prevent the use of a patio on lands where a *private club* is a lawfully permitted use, provided that any patio:
 - a) Is combined with a *private club* located on the same property.

Appendix 1: Proposed Temporary Use By-law

PASSED IN OPEN COUNCIL ON SEPTEMBER 21, 2020.

Gordon A. Krantz

Mayor

Meaghen Reid

Deputy Clerk