



# The Corporation of the Town of Milton

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Report To: Council

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From: Barbara Koopmans, Commissioner, Development Services

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Date: June 17, 2020

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Report No: DS-017-20

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Subject: Support for the Re-opening of Restaurant Establishments

Recommendation: **THAT Council supports the establishment of new or expanded temporary outdoor restaurant patios where permitted by the Town's Zoning By-laws and within road rights-of-way adjacent to permitted establishments, subject to the terms and conditions set out in Report DS-017-20, applicable legislation, public health requirements and Provincial Orders;**

**THAT staff be directed to implement a streamlined and scoped application process to facilitate the establishment of new or expanded temporary outdoor restaurant patios;**

**THAT, notwithstanding any provisions of the Town's Site Plan Control By-law to the contrary, any requirement to enter into a site plan agreement or post securities as a performance guarantee related to the establishment of new or expanded temporary outdoor restaurant patios be waived;**

**THAT Council authorizes the use of the exemption to the requirement to provide parking (cash-in-lieu of parking) provisions of the Planning Act to address any parking deficiencies resulting from the introduction of temporary outdoor patios which would otherwise be required by the Zoning By-laws;**

**THAT, notwithstanding any provisions in Town Policy 071 (re: Parking - Cash In Lieu Requirements), the temporary utilization of the exemption to the requirement to provide parking (cash-in-lieu of parking) outside of the Central Business District be authorized;**

**THAT any Town user fees and charges associated with the establishment of a temporary outdoor patio be waived, save and except those required to be paid by applicable legislation;**



# The Corporation of the Town of Milton

Report #:  
DS-017-20  
Page 2 of 8

THAT the Commissioner, Development Services be given delegated authority to enter into agreements exempting a property owners from the requirement to provide parking (cash-in-lieu of parking), to negotiate and make changes to these agreements detailing terms and conditions of this endeavor prior to execution, only with respect to the establishment of temporary outdoor patios for the duration of this program;

THAT Council authorize the Commissioner, Development Services to execute these agreements between the Town and the Property Owner;

THAT the Mayor and Clerk be authorized to execute any agreements which may be required to implement temporary outdoor patios and for which authority has not been previously delegated to staff;

THAT the Commissioner, Development Services be authorized to refine this program, including its potential extension to other qualifying retail establishments, without further Council approval, in consultation with the Chamber of Commerce and the Downtown Business Improvement Association, to address changing regulations and emerging issues as well as to improve its accessibility to qualified businesses;

AND THAT the Commissioner, Development Services be authorized to determine when this program should be discontinued and to take the appropriate steps to wind the program down.

## EXECUTIVE SUMMARY

The purpose of this report is two-fold. First, this report seeks to obtain Council support of a proposed program to authorize the establishment of new or expanded outdoor patios on a temporary basis, in response to the easing of restrictions by the Province. Second, this report seeks to ensure that any institutionalized impediments or perceived barriers requiring Council approval or endorsement are addressed or removed, as appropriate, to operationalize a temporary outdoor patio approvals process.

Staff has comprehensively reviewed the Town's processes and approvals normally applicable to the establishment of outdoor patios with a view to scoping requirements to those which are essential to protect public health and safety.

While it is fully acknowledged that the program parameters outlined in this report will continue to evolve and be refined, and potentially be extended to other qualifying retail establishments, staff deemed it important to have a program in place which supports the restaurant industry in the earliest possible timeframe, coinciding with the easing of Provincial restrictions.

## REPORT

### Background

Many of the Town's restaurants have suffered significant revenue losses over the last few months as a result of the COVID-19 pandemic. Recently, the Province has announced a plan to begin the gradual and phased easing of restrictions which would allow restaurants, bars, food trucks and other food and drink establishments to re-open for dining in outdoor areas only, such as patios, curbside, parking lots and adjacent premises.

In order to protect the health and safety of employees and patrons, establishments must adhere to the following Provincial requirements:

- Establishments must take appropriate measures to ensure physical distancing of at least two metres between patrons from different households, including:
  - using reservations
  - limiting number of patrons allowed in the outdoor space at one time
  - ensuring enough space between tables, including to allow for movement
  - access to indoor facilities is limited to patio/outdoor dining area access, food pickup, payment, washrooms or other health and safety purposes
- Liquor sales licensees who wish to temporarily extend the physical size of their existing licensed patio, or temporarily add a new licensed patio within the approved period are authorized to do so, if all the following criteria are met:
  - the physical extension of the premises is adjacent to the premises to which the license to sell liquor applies
  - the municipality in which the premises is situated does not object to an extension
  - the licensee is able to demonstrate sufficient control over the physical extension of the premises
  - there is no condition on the liquor sales license prohibiting a patio

Through consultation with the Chamber of Commerce, the Downtown Business Improvement Association and the business community generally, it is clear that the Town needs to quickly operationalize a program to allow new and/or expanded temporary outdoor patios. While any such program would need to meet certain basic requirements in order to ensure that any such expansions comply with the Provincial direction, staff's objective is to ensure that the process is as streamlined as possible.

## Discussion

As noted above and consistent with the approach taken by other municipalities, the Town must ensure compliance with certain by-laws and standards in order to protect the health and safety of both employees and patrons. In addition to the requirements and directions of the Province, there are a number of standard Town requirements that are required to be satisfied in support of the program.

Staff will modify existing processes and requirements, subject to the following considerations, in the interests of supporting the restaurant industry while maintaining appropriate health and safety standards.

The Town's Zoning By-laws both permit and regulate restaurant patios accessory to a permitted restaurant use on the same property. Generally, it appears that the location of temporary outdoor patios on private parking areas can comply with setback and other requirements of the Zoning By-laws. This is significant in that, in order to implement this program to coincide with the anticipated easing of restrictions, there is not sufficient time to amend the By-laws in accordance with Planning Act requirements regarding notice, public meetings and appeal periods.

The one notable exception to this is the requirement for the provision of required on-site parking. Interest has been expressed in allowing portions of existing parking areas to be used for temporary outdoor patio space, thereby reducing the available parking and bringing the property into non-compliance with the Zoning By-laws. Further, the Zoning By-laws require the provision of additional parking calculated on the basis of the area of the patio. In order to address this, staff recommends that Council expand its use of the cash-in-lieu of parking provisions of the Planning Act as it relates to the accommodation of temporary outdoor patios.

The Planning Act provisions authorize a municipal Council to enter into an agreement with the owner or occupant of a building which exempts them from providing parking which would otherwise be required by a Zoning By-law, subject to making a payment to the municipality for the exemption. Currently, the use of these provisions is only provided for in a specific area of downtown urban Milton (per Town Policy 071). However, there is no such limitation included either in the legislation or in the Town's Official Plan and staff is of the opinion that the provisions can and should be more broadly applied in support of this initiative.

In cases where common parking areas are shared by multiple uses on a property, staff recommends that, in order to allow the location of patios within parking areas, consent from the owner of the property be obtained. This approach is intended to ensure that other tenants and businesses continue to have access to parking for their customers.

Temporary outdoor patios located within road rights-of-way are not regulated by the Zoning By-law however would be subject to an encroachment agreement with the Town. Through these agreements, the Town's liability and risk is addressed. As part of the overall streamlining initiative, staff is adapting the current encroachment agreement process to support the program while continuing to address life-safety requirements and other technical, legal and liability matters. It should be noted, however, that not all restaurant locations may be able to accommodate outdoor patios within adjacent rights-of-way if there are conflicts with pedestrian and traffic movement resulting in unsafe conditions.

From a Building Code perspective, the occupant load and washroom capacity should not be impacted as the additional patio area is offset by the unusable seating within the establishment. Staff will review applications with respect to access to and egress from the patio and the nature and type of any enclosure proposed. The verification of the egress from the patio is normally completed in conjunction with the review of the liquor license application, however, since the Ministry has waived licensing requirements, staff will complete this review as part of the proposed process to ensure public safety. Due to the surface treatment of potential patio locations, some patios may not be accessible to all people. A building permit would only be required if a 60m<sup>2</sup> tent were to be installed over the outdoor patio area.

In light of the temporary nature of the proposed new or expanded patios contemplated by this program, staff is satisfied that these installations do not require a full site plan review. Nonetheless, a review of a concept plan will be required to ensure compliance with zoning and other life safety matters. Staff proposes that a scoped process be implemented only for the purposes of ensuring that essential requirements are met. Staff will further be flexible with respect to the level of detail required to be shown on the concept plan and will develop a schematic drawing illustrating the information required. Any conditions will be standardized and a certificate of approval will be issued outlining conditions of approval and attached to the final concept plan.

In terms of conditions of approval, staff proposes to include the following in addition to compliance with any health and safety requirements, conditions of liquor licensing (if applicable) and Provincial Orders:

- The timeframe during which the approval is granted, including any lapsing date
- Hours of operation
- Restrictions on amplified noise
- Clearance from the Fire Department with respect to occupancy load and capacity
- Posting of signage with respect to physical distancing
- Compliance with applicable zoning provisions
- Cash-in-lieu of parking agreements or encroachment agreements
- Maintain safe vehicle circulation, pedestrian access and access for deliveries and waste management

- Proof of liability insurance

Additional conditions may be required depending upon the specifics and context of a particular application.

This program is proposed to commence upon the easing of restrictions by the Province. It is proposed to be in place until October 31, 2020, with potential to be extended at the discretion of the Commissioner of Development Services, based upon Provincial direction, weather and other relevant considerations. Any such extension will coincide with Provincial timelines.

This initiative will be supported with a communications plan that ensures Milton's local business community is informed of the availability of and streamlined process for applications to this program. A dedicated webpage will be created and accessible through the Town's COVID-19 Business Support page. In addition to the process, it will outline submission requirements as well as the availability of a staff ambassador who will act as a single point of contact and co-ordinate the comprehensive review of applications. A promotional campaign will be developed to support the launch of this initiative and include targeted communications across the Town's various social media channels, e-newsletters, media outlets and co-promotional programs with community partners.

In summary, staff recognizes the urgency to quickly operationalize a scoped process to assist restaurants, bars, food trucks and other food and drink establishments in establishing new or expanded temporary outdoor patios to allow them to re-open for dining as Provincial restrictions continue to be eased. Staff has developed an abbreviated process that can be implemented quickly, and adapted recognizing that further refinements may be necessary to address changing regulations and emerging issues.

Based upon the foregoing, staff recommends that Council supports the establishment of new or expanded temporary outdoor restaurant patios where permitted by the Town's Zoning By-laws and within road rights-of-way adjacent to permitted establishments, based upon the principles and subject to the terms and conditions set out in this report.

In light of the fluid nature of the current situation, it is incumbent upon the Town to be able to respond quickly to changing restrictions and broader Provincial permissions. As such, staff also recommends that Council authorize staff to expand this program to encompass qualifying retail establishments, in accordance with Provincial direction, should there be a demand.

## **Financial Impact**

In accordance with the Town's User Fee By-law, a number of fees and charges would typically apply to the establishment of a seasonal patio. These might include, but are not limited to, the following:



# The Corporation of the Town of Milton

Report #:  
DS-017-20  
Page 7 of 8

- Site Plan Agreement Fee - \$2,191
- Site Plan Inspection Fee - \$781
- Minor Site Plan Approval Application Fee (15%) - \$890
- Encroachment Agreement (Processing Fee) - \$1,293
- Encroachment Agreement (Rental Fee) - \$198

In light of the temporary nature of the patios as contemplated by this program, staff recommends that any applicable fees be waived, save and except where those fees are required to be paid by legislation. Staff also recommends that the requirements for damage deposits also be waived.

As required by the Planning Act, a cash-in-lieu of parking agreement is required to provide for the payment to the municipality of money in consideration for the exemption granted. The Planning Act provisions authorize a municipal Council to enter into an agreement with the owner or occupant of a building which exempts them from providing parking which would otherwise be required by a Zoning By-law, subject to making a payment to the municipality for the exemption.

The current cash-in-lieu amount is \$9,169.83 per exempted parking space and the current agreement fee is \$2,729. Since the parking exemption is proposed for a temporary period of time, staff is of the opinion that a nominal amount can be considered in order to satisfy the requirement of the legislation and a simplified agreement can be utilized, thereby reducing the cost of preparation to the municipality.

The agreement will include language to secure the Town's rights should any agreements be required in the future for these sites in relation to permanent installations. Staff has been advised that the agreement should clearly indicate that the exemption received is temporary in nature, recognizing the exceptional circumstance and specify the time period for which the exemption is granted, and further reference the current applicable rate (noted above) that will be applied should the owner/applicant want to make the arrangement permanent. The agreement will also include a provision that there is no guarantee that the application of the cash-in-lieu of parking provision will be extended to permanent installations, particularly outside of the Central Business District, where public parking areas are not available.

As building permit applications are not anticipated relative to these temporary facilities, the related payment of fees would not be triggered. Further, Town development charges are also not applied to outdoor patio areas.

Respectfully submitted,

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



# The Corporation of the Town of Milton

Report #:  
DS-017-20  
Page 8 of 8

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For questions, please contact: Barbara Koopmans

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Attachments
none

CAO Approval  
Andrew M. Siltala  
Chief Administrative Officer