

Subject: Sidewalk Patio Encroachment Policy Update and New Approval Framework for Temporary Outdoor Patios

Recommendation:

BE IT RESOLVED THAT Council receive Report #2023-0094 Sidewalk Patio Encroachment Policy Update and New Approval Framework for Temporary Outdoor Patios, for information;

AND THAT Council approve Policy No. S201-04 – Temporary Outdoor Patio on Municipal or Private Property, as revised;

AND THAT Council direct staff to prepare an amendment to the Town's Fees and Charges By-law to include an annual Temporary Outdoor Patio on Municipal Property Permit fee of \$150.00.

Background:

On March 4, 2013, Council for the Town of Pelham approved Sidewalk Patio Encroachment Policy No. S201-04. The Sidewalk Patio Encroachment Policy established a licensing process and regulations for food/beverage establishments wishing to operate a seasonal patio extension on the municipal right-of-way i.e., the sidewalk. Applicants must meet policy requirements related to proof of insurance, pedestrian accessibility requirements, urban design, zoning, sign and building code requirements and any applicable provincial licensing requirements.

Historically, the Alcohol and Gaming Commission of Ontario ("AGCO") was responsible for approving temporary outdoor patios on private property in which liquor was to be served or sold. Beginning January 1, 2023, onus shifted to the municipality to review and approve temporary outdoor patios on private property.

Analysis:

This report and policy consider temporary (seasonal) outdoor patios which must comply with applicable zoning regulations and official plan guidelines to be eligible to receive a municipal permit. The term 'temporary outdoor patio' was used interchangeably during the pandemic to reference temporary 'pop-up' patios which

were temporarily permitted to encroach into the establishment parking lot by six (6) spaces during the pandemic.

Under the *Liquor Licence and Control Act, 2019*, the Registrar for the AGCO will remain the licensing authority for liquor licences. Licensees must first get approval from the municipality for the temporary outdoor patio on municipal or private property, then provide the approval to the AGCO to be granted an extension to the existing liquor licence.

The AGCO has specified that the municipality may approve the operation of a temporary outdoor patio for a maximum eight (8) month period. As well, the municipality has the authority to impose conditions of approval, which the AGCO will honor. Revised Policy No. S201-04 seeks to establish a licensing process for temporary outdoor patios on private property, in addition to the current process for those on municipal property that comply with the Town Zoning By-law requirements.

Staff recommend renaming the policy from "Sidewalk Patio Encroachment Policy" to "Temporary Outdoor Patio on Municipal or Private Property". Additional housekeeping amendments are proposed to modernize and establish headings and numbered paragraphs to help readers and staff navigate and cite requirements.

Staff further recommend Council impose a permit fee of \$150.00 for temporary outdoor patios on municipal property. Currently, the Town requires no fee for the issuance of a municipal sidewalk encroachment permit. The permit process is managed through the Clerk's Office and involves the review of supporting documentation by the Planning and Development department, Fire and By-law services and Public Works department. Where the situation warrants, a site inspection may be conducted. The proposed application fee is in-line with the Planning and Development department's zoning compliance review fee.

To clarify, Staff do not recommend imposing a permit fee for temporary outdoor patios on private property. Part XII of the *Municipal Act, 2001*, governs the Town's ability to impose fees and charges for "services or activities provided or done" by the Town. Section 394 restricts the municipality from imposing a fee for "the use, purchase or consumption by a person of property other than property belonging to or under the control of the municipality".

In the past, Gelato Village, HillFire SMK & BBQ and the Travel Cafe have received approval for restaurant patio use on the municipal sidewalk. Other restaurants such as Volcano Pizza, Butcher and Banker, Mossimos, The Broken Gavel and Grill on Canboro have outdoor restaurant patios on their property but did not utilize municipal property for their outdoor patio use. It is recognized that the above listed

establishments wishing to sell or serve liquor will now seek annual approval from the Town.

Financial Considerations:

The Town will require every applicant to provide a certificate of liability insurance to the Town of Pelham in the amount of \$5 million dollars for both temporary outdoor patios on municipal and private property.

The new approval framework for temporary outdoor patios will result in an influx of patio permit applications. Staff recommend a permit fee to recover staff time dedicated to reviewing the applications.

Alternatives Reviewed:

Council could direct that no permit fee be implemented. Should Council desire this approach, an amendment to strike the final paragraph within the recommendation would be required.

Strategic Plan Relationship: Enhancing Capacity and Future Readiness

As a result of the new approval framework, the Town is seeking to amend its existing patio policy to accommodate the requirements of food/beverage establishments in their pursuit of a liquor licence extension. Additionally, by requiring establishments to acquire an annual permit, the Town can ensure, as best as possible, public safety and accessibility.

Consultation:

AGCO
Town Solicitor
Planning and Development Department
Fire and By-law Services

Other Pertinent Reports/Attachments:

Original Policy S201-04
Proposed Policy S201-04

Prepared and Recommended by:

Sarah Leach, B.A.
Deputy Clerk

Prepared and Submitted by:

David Cribbs, BA, MA, JD, MPA
Chief Administrative Officer