

Municipality of Chatham-Kent
Community Development

To: Mayor and Members of Council
From: Audrey Ansell, Manager, Community Attraction and Promotion
Date: June 11, 2020
Subject: COVID-19, CK Economic Recovery Response - Temporary Patios

Recommendations

It is recommended that:

1. Guidelines for temporary patios installed on private property as set out in Attachment 1 "Chatham-Kent COVID-19 Temporary Outdoor Patios on Private Property - Guidelines" be adopted for the period up to January 1, 2021.
2. Administration be authorized to follow an Expression of Interest process to determine the demand from businesses and communities across Chatham-Kent to establish Temporary Outdoor Patios located on municipal property.
3. Public Works staff be authorized to solicit pricing and supply timelines from suppliers of both pre-fabricated and built-to-order walkways, ramps and barriers that meet all required engineering and safety specifications. Once full costing and timeline information is available, it be shared with interested parties to determine their interest in proceeding and entering into an Encroachment Agreement with the Municipality for a Temporary Patio Installation. Provided businesses agree to bear the cost of walkways, ramps and barriers, Council approves the purchase of these items and waives the requirements of the municipal Purchasing Bylaw for this purpose.
4. The Director of Public Works be authorized to enter into patio encroachment agreements with any business that submits an Expression of Interest and meets the criteria for a patio extension onto public property, as outlined in this report or as determined by the Director.
5. For the period up to January 1, 2021 administration be authorized to introduce a COVID 19 Special Event/Road Closure process for applications submitted by Chambers of Commerce and/or Business Improvement Associations requiring road closures to facilitate temporary, time-limited, on-street patios and licensed bars. Administration will work with the respective, approving municipal business units to determine the feasibility of an expedited approval schedule.

6. As required by amendments to Regulation 719 under the Liquor Licence Act, Council for the Municipality of Chatham-Kent supports the extension of existing liquor licences to temporary patios on private property throughout Chatham-Kent for the duration of 2020, provided businesses comply with the Chatham-Kent COVID-19 Temporary Outdoor Patios on Private Property - Guidelines.

Background

At the May 25, 2020 meeting, Council approved the following motion:

Authorized administration to provide recommendations for by-law amendments and other policy modifications to support expanded patio space and outdoor space for restaurants and other businesses where feasible and consult with BIA's and local business to explore street closures, lane reductions, or other uses of the municipal right of ways.

The intent of the motion is to support businesses in the hospitality sector through what may prove to be irrevocable changes to how restaurants and licensed bars and establishments operate and serve clients post COVID-19. Under orders to remain closed to both dine-in and patio service, many restaurants have responded by offering take-out or delivery services. As re-opening dates move closer, the sector is looking at how best to welcome back and safely service in-house diners at restaurants and customers of licensed bars in a post-COVID 19 world. The intent of the Municipality of Chatham-Kent ("the municipality"), therefore is to introduce temporary patio processes that are as streamlined as possible with minimal fees, and that continue to adhere to all prevailing health and safety guidelines and other regulations.

Comments

Guidelines for sector re-opening

The Government of Ontario will permit the opening of outdoor dine-in services on patios commencing June 12, 2020 at 12:01 AM in communities permitted to move into Stage Two. Chatham-Kent is one such approved community.

Based on [guidance issued for Ontario's restaurant and food services sector](#) and by some of Canada's provinces and in other countries, cleaning and spacing/distancing protocols are key areas to plan for. Against this backdrop, COVID-19 screening tests, sanitization stations and extra cleaning as well as PPE for staff will be requirements and additional information is available from the Chatham-Kent Public Health Unit. The new requirements do add cost to business operations. Further, the ability to offer and maintain physical distancing of a least 2 metres between seated customers (both at and between tables) by altering seating configurations and floor plans will be essential. The costs associated with implementing physical distancing measures together with reduced seating capacity will negatively impact revenue generation abilities of businesses.

Seating reconfigurations to allow 2 metres of table separation and altering customer movement flows to keep seated diners away from entering/exiting customers all require planning and ingenuity on the part of a business. A solution to distancing requirements includes extending outdoor patio space to allow for greater table separation and to better manage customer movement within a space, and is a measure that has been successfully adopted around the world and across Canada. Other measures have included temporary road closures that allow restaurants, licensed bars (as well as other retail establishments) to extend their sales space onto the road for a period of time e.g., a weekend or evening.

Chatham-Kent business sector support for extending outdoor patio spaces

A range of restaurants and licensed establishments across the community were consulted by Economic Development & the Small Business Centre regarding their desire for expanded patio and outdoor space in 2020. The response was overwhelmingly positive;

- A total of 43 businesses across 10 communities in CK were consulted
- Of the 42 businesses that responded, 100% expressed support for measures to expand their patio and outdoor spaces.

Further, 11 Chambers of Commerce, BIAs and Business Associations were consulted and of the 8 that responded, 100% were fully supportive of measures to expand outdoor patio space.

Requirements for extending outdoor patio space

There are two options for extending outdoor space;

1. Temporary patio installations - Measures that extend dining/licensed bar space are centered on temporary patio installations/extensions with specific requirements.
2. Temporary street closures/lane reductions - Measures that extend retail and/or dining/licensed bar space are centred on temporary street closures and are governed by separate and specific requirements most often associated with the municipal special event framework

Further information on each option is provided below.

Temporary patio installations/extensions: Extending temporary outdoor patio seating space can occur in a variety of ways. Temporary patio installations on privately owned property are relatively easy to action compared to patios on municipally owned property. Main Street locations present a challenge since the properties usually do not have their own parking lots. Businesses have asked for consideration to be given to allow temporary “pop up patios” on municipal sidewalks. The challenges with allowing restaurants to create patios on sidewalks are that pedestrians still need space for walking and there can be potential conflicts with maintenance of underground infrastructure, and potential hazards to drivers and pedestrians. Sidewalks in most of

Chatham-Kent's downtowns are not sufficiently wide so as to allow for both patio seating on the sidewalk and accessible pedestrian thoroughfares. In some cases, the need will arise to either create a temporary wider sidewalk by deploying a wooden boardwalk or to shut down the street (like for an event or festival) – these options have worked in other communities in Ontario. Temporary accessible boardwalks can be expensive and need to be well-designed and built if they are to co-exist with vehicular traffic. These options may not be acceptable to businesses requiring parking spaces.

The installation of a patio is largely dependent upon who owns the property on which the temporary patio will be located;

1. Patios on private property – the land on which the planned patio extension will be located is privately owned. To extend or add an outdoor patio space, the owner would likely remove some parking spaces to install additional seating and would ensure that the patio is constructed in accordance with all prevailing municipal guidelines and regulations. Further, all AGCO licensing requirements must be adhered to. The municipality wishes to support economic recovery in Chatham-Kent and allow businesses to open as soon as possible. Administration is recommending Chatham-Kent COVID-19 Temporary Outdoor Patios on Private Property - Guidelines and is not recommending that the municipality require any application, submission of drawings or fee payment. This should ensure a streamlined process for businesses to reopen.

Recommendation 1: To facilitate and expedite the creation of temporary patios on private property, Administration has developed “Chatham-Kent COVID-19 Temporary Outdoor Patios on Private Property - Guidelines” (Attachment 1) and recommends that these be adopted for the period up to January 1, 2021.

2. Patios on municipal property – the land on which the planned patio is located is municipally-owned and usage would be allowed via individual encroachment agreements. In this circumstance, Municipally owned property would include;
 - a. Sidewalk

To facilitate a patio extension, the business owner would seek to place patio seating on a municipally-owned side-walk. In so doing, the right of way for pedestrians would be altered, requiring their displacement onto a newly erected, temporary pedestrian walkway. The pedestrian walkway would encroach on existing parking spaces and would thus be located adjacent to the road with pedestrians separated from vehicular traffic by a safety barrier.

Restaurants and bars would be permitted to expand their patio onto the side-walk. To ensure safe and accessible travel for pedestrians, the Municipality would close parking spaces immediately adjacent to the patio, build accessible ramps that allow pedestrians to get to and from the sidewalk into the closed parking spaces and erect safety barriers to separate the closed parking spaces from cars traveling on the street. The

actual cost of the ramps and barriers would be split on a pro-rata basis among the interested businesses. The following steps would be taken;

- Expression of Interest process
- Receipt of responses and determination of interest
- Encroachment agreements entered into with interested businesses, with authority delegated to the Director, Public Works
- Public works would, at the same time, place orders or hire contractors and purchase necessary walkways, ramps, and barriers
- Public Works or contractors would install walkways, ramps, and barriers and issue invoices to businesses
- Installation and business use of the patio
- Business owners retain responsibility for maintenance of the patio and adherence to all laws (e.g. AGCO liquor licensing)
- A patio may need to be moved in the future for access to utilities, if posing a danger, or in the event of an emergency

b. Parking lot/space

To facilitate a patio extension, the business owner would typically seek to place a patio on a municipally-owned roadway. In so doing, parking spaces would be removed, patio users would be seated adjacent to (but separated by a barrier) vehicular traffic, and servers would traverse sidewalks to serve patrons. This type of patio is not recommended because while pedestrians may not be displaced, diners would be placed in close proximity to the roadway and vehicular traffic and servers would regularly cross back and forth on a public sidewalk.

Public safety is paramount and so Administration considers sidewalk patios to be the preferred approach for the installation of temporary patios on municipal property. At this time, the full extent of the demand for this approach from restaurant and licenced establishment owners and the cost of walkway installation or lead times are unknown.

Recommendation 2: It is recommended that an Expression of Interest process be followed to determine the demand from businesses and communities across Chatham-Kent to establish Temporary Outdoor Patios located on municipal property.

Recommendation 3: Public Works staff be authorized to solicit pricing and supply timelines from suppliers of both pre-fabricated and built-to-order walkways, ramps and barriers that meet all required engineering and safety specifications. Once full costing and timeline information is available, it be shared with interested parties to determine their interest in proceeding and entering into an Encroachment Agreement with the Municipality for a Temporary Patio Installation. Provided businesses agree to bear the cost of walkways, ramps and

barriers, Council approves the purchase of these items and waives the requirements of the municipal Purchasing Bylaw for this purpose

Recommendation 4: The Director of Public Works be authorized to enter into patio encroachment agreements with any business that submits an Expression of Interest and meets the criteria for a patio extension onto public property, as outlined in this report or as determined by the Director.

Temporary street closures/lane reductions: Chatham-Kent residents will be familiar with the concept of temporary street closures to accommodate special events. Events such as RetroFest, Cherry Fest and WAMBO all allow for street closures and for stores and businesses to extend the boundaries of their establishments and to sell or serve product outside their stores. The guidelines and process for temporary street closures under these circumstances are established under the Municipality's Special Event Guidelines. These Guidelines are outlined on the Municipal website at [Chatham-Kent - Events on Municipal Property](#). The Guidelines may be used as a framework for managing COVID-19 related street closures that allow restaurants and licensed businesses to set up patios for a time-limited period, such as for a weekend or evening.

The typical turnaround time to issue a special event permit that would allow the temporary closure of a street is up to 8 weeks. Given current exceptional circumstances and the desire to support economic recovery in Chatham-Kent, a COVID-19 streamlined special event/road closure application process that mirrors the existing Special Event process is possible, with the potential to expedite the approval process through all parties (Fire, Police, Engineering/Traffic & Public Works and Legal Services) working together. Of note however, further discussions will be required with approving business units to determine definitive approval schedules. This discussion is necessary due to existing project work plans and diminished staffing and human resource levels in some areas e.g., CK Police Service Auxiliary Officers are off-duty during COVID-19, so supports typically offered to assist special events may not be available. All AGCO licensing requirements must continue to be followed and any delays are outside the control of the municipality.

Recommendation 5: For the period up to January 1, 2021 administration be authorized to introduce a COVID-19 Special Event/Road Closure process for applications submitted by Chambers of Commerce and/or Business Improvement Associations requiring road closures to facilitate temporary, time-limited, on-street patios and licensed bars. Administration will work with the respective, approving municipal business units to determine the feasibility of an expedited approval schedule.

Liquor licence extensions

The Alcohol and Gaming Commission of Ontario (AGCO) has recently released changes to applicable regulations that will allow businesses which serve alcohol to extend the licenced portion of the business to outdoor patios. Ontario has amended Regulation 719 under the Liquor Licence Act by providing flexibility for liquor sales licensees (e.g., licensed bars and restaurants) to temporarily extend their physical

premises beyond 14 days provided there is municipal approval to do so and that certain requirements are met.

Detailed information for businesses can be found on the AGCO website at: [AGCO Information Bulletin - Liquor Sales Licenses](#). The AGCO changes only address the liquor licence component of a patio extension.

In order to be eligible for a temporary patio extension, licensees must have a valid liquor sales licence and be permitted to open and welcome patrons on-site under the province's phased reopening process. In addition, the following requirements must be met:

1. The physical extension of the premises is adjacent to the premises to which the licence to sell liquor applies;
2. The municipality in which the premises is situated has indicated it does not object to an extension;
3. The licensee is able to demonstrate sufficient control over the physical extension of the premises;
4. There is no condition on the liquor sales licence prohibiting a patio; and,
5. The capacity of any new patio, or extended patio space where the licensee has an existing licensed patio, does not exceed 1.11 square metres per person.

To minimize the administrative burden for licensees, those who meet the above criteria are not required to apply to the AGCO or pay a fee to temporarily extend their patio or add a temporary new licensed patio.

Recommendation 6: It is recommended that as required by amendments to Regulation 719 under the Liquor Licence Act, Council for the Municipality of Chatham-Kent supports the extension of existing liquor licences to temporary patios on private property throughout Chatham-Kent for the duration of 2020, provided businesses comply with the Chatham-Kent COVID-19 Temporary Outdoor Patios on Private Property - Guidelines

Patios - beyond 2020

The actions and measures outlined in this report are targeted to supporting economic recovery in the wake of the COVID-19 pandemic and support the implementation of temporary outdoor patios in Chatham-Kent in 2020. Beyond 2020, if there is demand from the business community to make outdoor patio options on public and/or private property a more permanent feature of the Chatham-Kent landscape, zoning regulations and bylaws will require review and amendment. A report would be brought back to Council for review and approval, if needed, at that time.

Areas of Strategic Focus and Critical Success Factors

The recommendations in this report support the following areas of strategic focus:

Economic Prosperity:

Chatham-Kent is an innovative and thriving community with a diversified economy

A Healthy and Safe Community:

Chatham-Kent is a healthy and safe community with sustainable population growth

People and Culture:

Chatham-Kent is recognized as a culturally vibrant, dynamic, and creative community

Environmental Sustainability:

Chatham-Kent is a community that is environmentally sustainable and promotes stewardship of our natural resources

The recommendations in this report support the following critical success factors:

Financial Sustainability:

The Corporation of the Municipality of Chatham-Kent is financially sustainable

Open, Transparent and Effective Governance:

The Corporation of the Municipality of Chatham-Kent is open, transparent and effectively governed with efficient and bold, visionary leadership

Has the potential to support all areas of strategic focus & critical success factors

Neutral issues (does not support negatively or positively)

Consultation

A range of businesses and business groups were consulted to determine interest levels in extending temporary patio spaces. Chambers of Commerce and Business Improvement Associations across Chatham-Kent were also consulted to solicit feedback on the desire to offer patio spaces. A total of 43 business owners across 10 communities were consulted to gauge interest in extending temporary patio spaces.

The Medical Officer of Health and staff from Chatham-Kent Public Health were consulted regarding guidelines for safe opening of business operations. The Municipality's Technical Advisory Committee (TAC) was consulted to determine the best ways to proceed with patio licensing. The Manager of Parks and Open Spaces was consulted on the potential to introduce a COVID-19 Special Event/Road Closure process to support temporary road closures and on-street patios.

The Community Development Advisory Committee was consulted regarding the Guidelines for Temporary Outdoor Patios on Private Property and endorsed the same.

Financial Implications

There are no financial implications resulting from the recommendations. If demand for temporary sidewalk patios on municipal property warrants the purchase and installation of walkways, ramps and barriers, costs (materials, labour, administration and any ongoing maintenance costs) will be recouped from each business requesting a temporary patio.

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Attachments:

Attachment 1: Chatham-Kent COVID-19 Temporary Outdoor Patios on Private Property - Guidelines

Attachment 2: Expression of Interest: Chatham-Kent COVID-19 Temporary Outdoor Patios on Municipal Property

c: Bert Vanderheide, Thamesville Business Association

Charlie Mitton, Ridgetown Chamber of Commerce and BIA

Crystal Wells, Dresden BIA

David McCaron, Wallaceburg BIA

Gail Hundt, Chatham-Kent Chamber of Commerce

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Chatham-Kent COVID-19 Temporary Outdoor Patios on Private Property Guidelines

On June 8, 2020, the Ontario Government announced the gradually reopening of businesses, services and public spaces as progress is made in the fight against COVID-19. Certain Public health unit regions, including the Chatham-Kent Public Health Unit region, are allowed to move into Stage 2 of the reopening. As part of the reopening, restaurants, bars, food trucks and other food and drink establishments (e.g., wineries, breweries and distilleries) can open for dining in outdoor areas only, such as patios, curbside, parking lots and adjacent premises effective June 12, 2020 at 12:01 a.m.

In order to help facilitate this reopening for businesses in Chatham-Kent, the following is a series of guidelines to follow for the establishment of Temporary Outdoor Patios on **Private Property** only to ensure public health and safety is maintained.

1. Temporary patios shall only be permitted for existing restaurants, bars, food trucks and other food and drink establishments.
2. Existing and temporary patios must adhere to all provincial and local public health guidelines related to COVID-19, tables and chairs shall be arranged so that a minimum distance of 2m (6ft) is maintained between groups or patrons.
3. Temporary patios permitted under this guideline shall extend no later than January 1, 2021; however, the Municipality may terminate these permissions upon 24 hours notice.
4. The business owner is responsible for obtaining all relevant permissions, including but not limited to the AGCO and their landlord.
5. Outdoor theatrical performances or audiovisual presentations, live music concerts or shows are not permitted. Any other usage must be in compliance with the Chatham-Kent Noise By-law 41-2004, as amended.
6. Required on-site parking may be used for a temporary patio. The required number of designated Accessible Parking Spaces must remain available for parking use and designated fire routes and sight triangles must be avoided. A reasonable number of standard parking spaces should be maintained to serve patrons.
7. Accessibility must be maintained to, and throughout, the temporary patio.
8. Temporary patios must not extend in front of adjacent tenant spaces, exits, or beyond business frontage without written permission from affected adjacent property owners and tenants; this includes any overhanging elements.
9. Umbrellas must stand at least 2.1m (7ft) above the walking surface.
10. Temporary patios must be open to the air.
11. Platforms, decks, stages and portable toilets are not permitted. Optional temporary patio perimeter fencing, planters, or barriers approximately 1.2m (4ft) high are permitted, provided they are secured without endangering any underground utilities.

12. A solid barrier approximately 1.2m (4ft) high shall be installed where a patio is adjacent to any vehicle movement areas.
13. Cooking of food and drink preparation is not permitted on temporary patios.
14. A minimum 1.5m (5ft) clearance from fire department (siamese) connections and hydrants must be maintained on a temporary patio.
15. A fire extinguisher (minimum 2A-10BC) must be available within 15.2 m (50ft) of any part of the temporary patio.
16. When the perimeter is barricaded, a temporary patio with capacity for more than 60 people must have two separate exits.
17. CSA-certified electric or propane patio heaters (with max 20lb tank) are permitted where located at least 3m (10ft) away from tree branches, operated per the manufacturer's directions and not stored on the road right-of-way when not in use. Solid-, gel- or liquid-fuel fire features are not permitted.
18. For non-licensed establishments, the capacity of the temporary patio shall not exceed the posted occupancy of the main building.
19. For licenced establishments that do not have an existing licenced patio, the capacity of the temporary patio shall not exceed the posted occupancy of the indoor area indicated on your liquor licence or 1.11 sq. m. (12.0 sq. ft.) per person, whichever is the lessor.
20. For licenced establishments that have an existing licenced patio, the capacity of the combined area of the existing and temporary patios shall not exceed the posted occupancy of the indoor area indicated on your liquor licence or 1.11 sq. m. (12.0 sq. ft.) per person, whichever is the lessor.
21. Owners shall provide their liquor licence, if requested by the Chief Building Official.
22. The Chief Building Official is authorized to inspect all temporary patios and require adjustments to the patio in order to address compliance with these Guidelines.



Municipality of Chatham-Kent

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Dear Sir or Madam:

The Province of Ontario’s Phase 2 re-opening permits restaurants and bars to open for service outdoors. The Municipality is exploring ways to support our local businesses and that includes gauging interest of local restaurants and bars expanding patio space into municipal property on sidewalks.

How it would work:

Restaurants and bars would be permitted to expand their patio onto the sidewalk. To ensure safe and accessible travel for pedestrians, the Municipality would close parking spaces immediately adjacent to the patio, build accessible ramps that allow pedestrians to get to and from the sidewalk into the closed parking spaces and erect safety barriers to separate the closed parking spaces from vehicles traveling on the street. The actual cost of the ramps and barriers would be split on a pro-rata basis among the interested businesses.

What we need from you:

To know whether you are interested in expanding your patio into municipal property. This form is a no commitment expression of interest. If you are interested, we ask that you fill out this form and provide it to PWAdmin@chatham-kent.ca by no later than 4:30p.m. on June 19, 2020.

You need to attach a simple sketch that shows how your business fronts onto the sidewalk, what part of the sidewalk immediately adjacent to your business you would like to use for a patio, and the parking spots that are in front of your business. There is no need for exact measurements, but the Municipality does need to know how many parking spaces will need to be closed.

Required Information	
Business Name:	
Operating As:	
Address:	
Contact Name:	
Telephone:	

Sketch Attached:

What Happens Next?

Once the Municipality has assessed interest, it will contact businesses that have submitted this form to advise them of the estimated cost of installation. It is only at that time that the Municipality will require a firm commitment through a more formal agreement. **If you do not submit this form, you will not be contacted by the Municipality for this purpose.**

Information is collected on this form pursuant to the *Municipal Freedom of Information Act* and will only be used, maintained or disclosed in accordance with that Act. The Municipality does not guarantee that any municipal property will ultimately be approved for use by any particular business.