



# WHISTLER

## REPORT | ADMINISTRATIVE REPORT TO COUNCIL

**PRESENTED:** October 6, 2020  
**FROM:** Resort Experience  
**SUBJECT:** RENEWING TEMPORARY PATIO EXTENSIONS AND WINTERIZING PATIOS FOR FOOD AND BEVERAGE ESTABLISHMENTS

**REPORT:** 20-096  
**FILE:** 7108.16

### COMMENT/RECOMMENDATION FROM THE CHIEF ADMINISTRATIVE OFFICER

**That** the recommendation of the General Manager of Resort Experience be endorsed.

### RECOMMENDATION

**That** Council direct staff to confirm support for extension of approved Temporary Expanded Service Area (TESA) authorizations until October 31, 2021 to the Liquor and Cannabis Regulation Branch (LCRB);

**That** Council direct staff to prepare an amendment to the Land Use Procedures and Fees Bylaw to charge a single \$240 fee for temporary outdoor patio approvals involving temporary structures and fixtures for weather protection; and further

**That** Council direct staff to prepare an amendment to the Liquor Licence Application Processing Fee Bylaw to waive the fee for extensions of approved TESA authorizations and new TESA authorizations complying with Policy No. 20-26 of the LCRB.

### REFERENCES

Appendix "A" – Correspondence from the Restaurant Association of Whistler and the BC Restaurant and Foodservices Association

### PURPOSE OF REPORT

The purpose of this Report is to provide Council with an update on the municipality's temporary patio extension program, and the need for extension of this program in addition to winterizing solutions to support food and beverage establishments in continuing to provide seating capacity while complying with the orders of the Provincial Health Officer (PHO) related to the COVID-19 pandemic.

This Report presents an expedited approach to renewing TESAs/temporary patio extensions and seeks the necessary Council resolutions to implement this streamlined process.

This Report further describes the municipal approval requirements for winterizing patios to provide shelter with options such as freestanding roof coverings, tents, or vertical awnings and seeks the necessary Council resolution to implement a \$240 fee to recover staff time to review proposals.

## DISCUSSION

### Background

In the spring of 2020, the municipality implemented bylaw amendments to streamline the review and approval process for temporary outdoor patio extensions to help food and beverage businesses to operate effectively while complying with requirements under the PHO, in particular with respect to physical distancing.

There was a very positive response to the municipality's temporary patio extension program. Twenty-three applications were received, of which 18 were approved. Only businesses with a liquor licence applied for a temporary patio extension, although the program was not limited to such.

Of the 18 applications approved:

- businesses demonstrated they could accommodate, on average, only 42 per cent of their licensed seating capacity as a result of PHO orders for physical distancing; and
- a total of 470 seats were approved, bringing establishments, on average, to 54 per cent of their licensed seating capacity.

Of the five applications that have not been approved:

- one business has not been able to obtain the necessary strata approval;
- three businesses chose not to proceed with their application; and
- one business changed their plan and is now pivoting to add food service prior to proceeding with a patio offering.

The temporary patio extensions have supported Whistler's local economy, helped to provide additional seating capacity for patrons, added to the vibrancy of public spaces, and enabled food and beverage operators to capitalize on the confidence of outdoor spaces.

Even with the additional seats, some food and beverage operators communicated long wait times for their patrons. As we move into winter, the COVID-19 pandemic response remains in full force, and PHO orders for social distancing and a 10 p.m. end to liquor service have no expiry date.

On September 15, 2020, Council received a letter from the BC Restaurant and Foodservices Association, the Alliance of Beverage Licensees, and the BC Craft Brewers Guild (attached as Appendix "A") requesting municipalities to consider:

1. Expediting applications for businesses to winterize patios in public and private spaces to provide operators with the opportunity to capitalize on the confidence of outdoor space;
2. Approving temporary patios for summer 2021 now so operators are able to plan ahead; and
3. Creating a program for designated pick up zones so that businesses can enhance contactless curbside pick-up in the fall and winter months.

Also on September 15, 2020, Council passed a resolution directing staff to bring forward a report with options to expedite the winterizing of food and beverage patios for winter 2020/2021.

Staff have reached out to several operators to better understand what food and beverage establishments may be considering for the winter months ahead. Staff have also fielded inquiries by operators respecting approval processes for winterizing patios to provide shelter with options such as freestanding roof coverings, tents, or vertical awnings. Further, staff also met with representatives of the Restaurant Association of Whistler to share information and work towards collaborative efforts and solutions.

With both provincial Liquor and Cannabis Regulation Branch (LCRB) and municipal approvals of temporary patio extensions set to expire on October 31, 2020, this Report describes an expedited approach to renewing temporary patio extensions. This Report further describes the approval process

for new or modified temporary patio extensions, and the approval process for winterizing patios, including options for expediting. Through the various discussions with local food and beverage operators and representatives, there was no interest expressed in “curb-side” pick-up zones, and therefore, this has not been considered at this time.

### **Extending Existing TESA/Temporary Patio Extension Approvals**

Both provincial LCRB and municipal approvals of existing TESAs/temporary patio extensions are set to expire on October 31, 2020.

To continue to support the hospitality industry in maintaining their operations while complying with PHO orders related to the COVID-19 pandemic, the LCRB has announced, through Policy Directive 20-26, dated September 18, 2020, the intention to extend Temporary Expanded Service Area (TESA) authorizations until October 31, 2021. The LCRB is requesting local governments confirm their support or objection for the extension of approved TESA authorizations in their jurisdiction prior to extensions being granted. To limit the risk of disruptions in service, local governments must confirm their position with the LCRB by October 16, 2020.

If concerns related to public safety and public interest are raised regarding TESA authorizations or the operation of particular TESAs, the LCRB will work with licensees and local governments to ensure TESAs operate in a manner that balances the interests of licensees, municipalities and the general public.

If the local government is supportive, the LCRB will reissue authorization letters to existing TESAs automatically extending the expiry date of their authorizations to October 31, 2021, and will not require an application or fee. Approved and extended TESA authorizations must remain in compliance with local bylaws and requirements.

Staff have identified the following public safety and public interest concerns related to TESAs continuing through the winter months in Whistler: maintaining effective snow clearing, build-up of snow/ice berms at the base of patio fences affecting drainage on walkways/sidewalks, and possible snow shed from adjacent roofs. However, staff feel that they can work with individual businesses to address these concerns. A further concern, relates to the use of outdoor heaters. A number of operators have expressed interest in solutions for weather proofing through the use of shelters and heat. The use of propane heaters is inconsistent with the municipality’s Climate Action Strategy, and targets for GHG emissions reduction. To address this concern, the recommended approach is to mandate no increase in use of non-renewable heat sources for the extended patio areas, and to support safe use of electric heaters, along with communications that encourage patrons to dress warmly.

This Report recommends that Council direct staff to confirm support for extension of approved TESA authorizations until October 31, 2021 to the LCRB so as not to disrupt business operations and ensure businesses have time to prepare for continuing or changing operational requirements for winter.

Businesses will need to contact the municipality to request to extend their term and at that time staff will work with individual businesses to address winter snow management and corresponding conditions will be added to the extension approvals. No application fee is proposed for extensions to the term of existing TESAs unless a temporary structure or fixture for weather protection is proposed. Refer to the Winterizing Patios and the Application Fees/Costs sections of this Report.

### **New TESAs/Temporary Patio Extensions**

Businesses proposing new TESAs/temporary patio extensions should submit the temporary patio application established by the municipality in June 2020 that is available on the municipal website. The \$240 application fee established in the municipality’s Land Use Procedures and Fees Bylaw will apply.

Businesses proposing new temporary patio extensions must also apply for a TESA authorization with the LCRB at their [online licensing application portal](#).

### **Winterizing Patios**

Proposals for winterizing patios with temporary structures and fixtures for weather protection need to be reviewed relative to applicable building and fire regulations and design guidelines and require the municipal approvals described in Table 1.

**Table 1 – Municipal Approvals for Winterizing Patios**

| <b>Municipal Approval Required</b>              | <b>Permanent Structure</b> | <b>Temporary building/tent structure (greater than 10 m<sup>2</sup> in building footprint area)</b> | <b>Temporary building/tent structure (less than 10 m<sup>2</sup> in building footprint area that does not create a hazard)<sup>2</sup></b> | <b>Temporary fixture (retractable horizontal awning/ vertical awning)</b> |
|---|----------------------------|---|--|---|
| Temporary Patio Application <sup>1</sup>        |                            | ✓   | ✓  | ✓   |
| Development Permit                              | ✓                          |   |  |   |
| Blackcomb LUC Development Approval <sup>4</sup> | ✓                          | ✓   |  |   |
| Building Permit <sup>3</sup>                    | ✓                          | ✓   |  |   |

<sup>1</sup> Planning, Fire and other affected departments will review relative to applicable regulations and guidelines.

<sup>2</sup> A wood or metal structure would need a professional engineer's stamp for snow and wind loading. A lightweight tent structure would require ongoing snowclearing by the business owner.

<sup>3</sup> The following would be the minimum code related submittal requirements for a Building Permit to add a temporary or permanent structure for shelter greater than 10 m<sup>2</sup> in building footprint:

- Sealed Architectural drawings complete with Letters of Assurance
- Sealed Structural Engineering complete with drawings and Letters of Assurance
- Sprinkler drawings may be required for sprinklered buildings (for sidewall sprinkler heads) complete with Letters of Assurance
- If the proposed structure is to be constructed out of timber an alternative solution may be required by a code consultant

<sup>4</sup> Applicable only to lands regulated by the Blackcomb Land Use Contract (LUC). If Blackcomb LUC Development Approval is required, then applicants need not submit a Temporary Patio Application.

In addition to municipal approvals, winterizing an existing licensed patio area may require a structural change application to the LCRB. Businesses are advised to contact the local Liquor Inspector.

### **Application Fees/Costs**

The established fees in the municipality's existing fees bylaws are structured to recover the cost of municipal staff time to process applications. The existing and proposed application fees for municipal approvals are below:

Extension to term of existing TESA    No fee unless temporary structure

Temporary Patio Application    \$240 for new TESA/temporary patio extension on municipal land or municipal right of way, \$240 proposed for temporary patio approvals involving temporary structures and fixtures for weather protection

|                      |  |
|----------------------|--|
| Development Permit   | \$300 (delegated)/\$750 (non-delegated); plus staff time for processing        |
| Development Approval | \$300 (delegated)/\$750 (non-delegated); plus staff time for processing        |
| Building Permit      | Approximately 1 per cent of the construction costs (including consultant fees) |

For TESAs/patio extensions on municipal/WVLC lands, the business operator must enter into a patio licence agreement, which contains insurance requirements and standard rental fees.

## **POLICY CONSIDERATIONS**

The recommendations in this Report are provided in the context of the provincial state of emergency and public health emergency related to the COVID-19 pandemic.

### **Official Community Plan**

The recommendations in this Report support the following policies of the Official Community Plan:

- 5.6.3.3. Support a variety of experiences and interesting places within Whistler Village working collaboratively with businesses and property owners and applying successful place-making principles.
- 5.6.3.5. Ensure public spaces are safe and accessible to everyone aesthetically pleasing and comfortable social spaces.
- 5.6.3.8. Pursue strategies to support the success of unique local businesses.
- 5.6.2.5 Support sustainable management and use of materials, energy and water in Whistler's commercial and industrial developments.
- 10.1.1.5 Respect the resort community's adopted GHG reduction target when evaluating changes to development and land use patterns.

## **BUDGET CONSIDERATIONS**

The application fees established in the municipality's existing fees bylaws and the proposed amendments recommended in this Report recognize the temporary nature of the patio applications while ensuring the municipality follows a consistent fee approach respecting land use and development and liquor licensing application fees.

## **COMMUNITY ENGAGEMENT AND CONSULTATION**

Staff have engaged with representatives of the Whistler Restaurant Association as well as individual food and beverage operators and have been working to coordinate information and facilitate collaborative efforts.

## **SUMMARY**

This Report provides Council with an update on the municipality's temporary patio extension program, and the need for extension of this program in addition to winterizing solutions to support food and beverage establishments in continuing to provide seating capacity while complying with the orders of the PHO related to the COVID-19 pandemic.

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Respectfully submitted,

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