



WHISTLER

REPORT | ADMINISTRATIVE REPORT TO COUNCIL

PRESENTED: November 3, 2020
REPORT: 20-110
FROM: Resort Experience
FILE: 7108.16
SUBJECT: TEMPORARY OUTDOOR PATIOS FOR FOOD AND BEVERAGE ESTABLISHMENTS

COMMENT/RECOMMENDATION FROM THE CHIEF ADMINISTRATIVE OFFICER

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

RECOMMENDATION

That Council consider giving first, second and third readings to “Liquor Licence Application Processing Fee Amendment Bylaw (Temporary Expanded Service Areas) No. 2302, 2020”; and

That Council consider giving first, second and third readings to “Land Use Procedures and Fees Amendment Bylaw (Temporary Outdoor Patio Renewals) No. 2301, 2020”; and further

That Council direct staff to prepare proposed amendments to “Business Licence and Regulation Bylaw No. 2253, 2019” to specify business regulations that apply to food and beverage businesses related to the operation of a food or beverage business in an outdoor or temporary building service area.

REFERENCES

Appendix “A” – Regular Meeting of Municipal Council Minutes, October 6, 2020

Administrative Report to Council No. 20-096, dated October 6, 2020 (Not attached)

Liquor Licence Application Processing Fee Amendment Bylaw (Temporary Expanded Service Areas) No. 2302, 2020 (Not Attached)

Land Use Procedures and Fees Amendment Bylaw (Temporary Outdoor Patio Renewals) No. 2301, 2020 (Not Attached)

PURPOSE OF REPORT

The purpose of this Report is to present amendments to the municipality’s fees bylaws with respect to temporary outdoor patios for Council’s consideration of first, second and third readings, and to seek Council’s direction for staff to prepare proposed amendments to the municipality’s business licence regulations to specify business regulations that apply to the operation of a food or beverage business in an outdoor or temporary structure service area, including but not limited to duration and removal, aesthetics and safety considerations such as snow removal.

The amendments to the fees bylaws propose that no application fee be charged for:

- an application for a temporary expanded service area in accordance with the Liquor Control and Licensing Regulation;

- one renewal of an outdoor patio licence on the same terms and conditions except terms and conditions relating to fee, term and snow removal; and
- one renewal of an approval of an outdoor patio on a statutory right of way on the same terms and conditions except terms and conditions relating to fee, term and snow removal.

The intent of the amendments are 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 also presents an update on when an engineering review is required for structures and buildings within the 10m² limit that food and beverage operators may be considering to provide weather protection. ,

In addition, initiatives by the municipality to provide additional outdoor seating capacity for public use are outlined.

DISCUSSION

Background

In June 2020, the municipality implemented bylaw amendments to streamline the approval process for temporary outdoor patio extensions to help food and beverage establishments to operate effectively while complying with requirements under the PHO, in particular with respect to physical distancing. At that time, the provincial Liquor and Cannabis Regulation Branch (LCRB) required all temporary expanded service areas (TESAs) to expire on October 31, 2020. The bylaw amendments did not contemplate a fee structure for new applications beyond October 31, 2020 or extension to the term of existing approved applications.

On September 18, 2020, the LCRB announced, through Policy Directive 20-26, the intention to extend TESA authorizations until October 31, 2021, and requested local governments confirm their support or objection of extensions in their jurisdiction prior to extensions being granted.

On October 6, 2020, Administrative Report to Council No. 20-096 contained recommendations that Council direct staff to confirm support for TESA extensions to the LCRB, and further that Council direct staff to prepare proposed amendments to the municipality's fees bylaws to implement a fee structure for new applications beyond October 31, 2020 and extensions to the term of existing approved applications. The respective Council minutes are attached as Appendix "A".

Recommended Bylaw Amendments

"Liquor Licence Application Processing Fee Amendment Bylaw (Temporary Expanded Service Areas) No. 2302, 2020" proposes to waive the fee for a TESA in accordance with the Liquor Control and Licensing Regulation. This is a technical amendment to refer to the provincial regulation, not the provincial policy, and will continue to waive the application fee for a TESA as long as the provincial regulation is in effect.

"Land Use Procedures and Fees Amendment Bylaw (Temporary Outdoor Patio Renewals) No. 2301, 2020" proposes to charge no fee for:

- outdoor patio licence (one renewal on same terms and conditions, except terms and conditions relating to fee, term and snow removal), and
- approval of outdoor patio on statutory right of way (one renewal on same terms and conditions, except terms and conditions relating to fee, term and snow removal)

A \$240 application fee will still be required for new applications, as well as renewals that don't meet the above criteria.

Structures requiring an Engineering Review

Administrative Report to Council No. 20-096, dated October 6, 2020, indicated that buildings less than 10 m² in building area with the exception of a lightweight tent structure would need a professional engineer's review for snow and wind loading.

All structures larger than 10 m² would require a Building Permit which includes a requirement for an engineering review. Staff would like to clarify that for buildings less than 10 m² an engineering review is only required when structures are placed on municipal property, Whistler Village Land Company (WVLC) property, a road vested in the municipality, or on a right of way granted by a registered owner of land to the municipality for public access. The municipality may have potential occupier's liability exposure that it doesn't have when a structure sits on private land and this information is requested to manage risk exposure to the municipality. This is consistent with the municipality's practices for special events.

Business Regulations

Whistler's "Business Licence and Regulation Bylaw No. 2253, 2019" requires that business or marketing cannot occur in a public place without a licence for the business together with any other applicable permit or approval issued by the municipality or a lease from the WVLC authorizing the activity at the time and location indicated. It also provides that a business shall not be conducted in a privately owned or leased outdoor patio area unless the business is also licenced to operate in an adjacent indoor premises.

With the interest from food and beverage operators for temporary winterization of outdoor patios, the municipality has a process on municipal/WVLC property and statutory rights of ways to manage such interests as duration and removal, aesthetics and safety considerations such as snow removal.

To address these interests and considerations for private properties requires implementation through proposed amendments to "Business Licence and Regulation Bylaw No. 2253, 2019". These amendments require further preparation, and this report requests Council's direction to prepare the proposed amendments.

Opportunities for restaurant establishments without space available for use as patios

The municipality is exploring weather protection options in select locations throughout Whistler Village to increase sheltered public seating for take-out opportunities, similar to the successful picnic table program implemented during the summer. Further to this, staff will make available, the product recommendations and design details of the selected weather protection options in case these are helpful in outlining to food and beverage establishments what could be used on their patios. Staff are working towards having solutions in public places in December for the busy Winter season.

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 are consistent with the goals, objectives and policies included within "Official Community Plan Bylaw No. 2199, 2018".

BUDGET CONSIDERATIONS

The application fees proposed in this Report recognize the temporary nature of the patio applications while ensuring the municipality follows a consistent fee approach respecting land use and liquor licensing application fees.

All costs associated with the bylaw amendment preparation are covered under the existing Planning Department budget.

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.

Before adopting an amendment to the Business Licence and Regulation Bylaw, Council must give notice of its intention and provide an opportunity for persons who consider they are affected by the bylaw to make representations to Council.

SUMMARY

This Report presents amendments to the municipality's fees bylaws with respect to temporary outdoor patios for Council's consideration of first, second and third readings.

This Report also presents an update on information requirements for temporary structures that food and beverage operators may be considering as an option for weather protection, additional initiatives by the municipality to support operations, and seeks Council direction to prepare proposed amendments to the Business Licence and Regulation Bylaw to specify business regulations that apply to food and beverage businesses.

Respectfully submitted,

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