



Temporary Outdoor Patio and Retail Regulations

Introduction

The Town of Fort Erie (the “Town”) has developed a temporary outdoor patio and retail program in response to the COVID-19 pandemic. The program is intended to support local eating and retail establishments by providing flexibility while at the same time ensuring health and safety standards remain in place.

Since the pandemic has continued and the Provincial government has imposed various lockdowns and restrictions, it is deemed desirable to include temporary outdoor retail establishments in these regulations. Therefore, these regulations have been amended accordingly as of December 1, 2021.

Background and Purpose

On June 8, 2020, the Province of Ontario notified municipalities of regulatory changes that gives the Alcohol and Gaming Commission of Ontario (AGCO) the discretion to allow licenced establishments to temporarily add or increase the size of their patios once they are permitted to open. These opportunities will be available to all licenced establishments whether or not they currently have a patio, and will be subject to any additional requirements set out by the AGCO and municipality (such as by-laws or other restrictions).

The Town of Fort Erie recognizes that not all eating establishments are licenced. This does not prevent those eating establishments from expanding their existing patios or creating a new patio.

The temporary outdoor patio regulations address existing and new outdoor patios associated with eating establishments. The regulations contained herein may be modified as determined necessary.

Definitions

“Eating Establishment” shall mean a building or part of a building where food is offered for sale or sold to the public for immediate consumption and includes such uses as an eat-in restaurant, take-out restaurant, drive-in restaurant, drivethru restaurant, cafe, cafeteria, ice cream parlour, tea or lunch room, dairy bar, coffee shop, snack bar or refreshment room or stand, but does not include a boarding or lodging house.

“Outdoor Patio” shall mean an outdoor area adjacent to or in any way associated with any eating establishment and/or tavern in any zone where such use is permitted in accordance with the Town’s Comprehensive Zoning [By-law No. 129-90](#), as amended, from time to time.

“Outdoor Retail Sales and Display” shall mean the use of land as a site and/or part of a highway as a site for the sale and/or display of goods and merchandise where such use

is permitted in accordance with the Town's Comprehensive Zoning By-law No. 129-90, as amended, from time to time.

"Person" shall mean any human being, association, firm, partnership, corporation, agent or trustee, and the heirs, executors or other legal representatives of a person at law.

"Tent" shall mean a portable shelter open on all sides made of fabric or other material stretched over a supporting framework of poles usually stabilized or secured.

Delegated Authority

Pursuant to the regulations and direction of the Province of Ontario Emergency Management and Civil Protection Act, the delegated authority to the Chief Administrative Officer (the "CAO") of the Town of Fort Erie, and the delegated authority to the Director of Planning and Development Services, the provisions of By-law Nos. 46-2014 and 129-90, as amended from time to time, are temporarily suspended for the purposes set out herein.

All Temporary Patio and Retail Regulations

1. **General:** Temporary patios and outdoor retail sales permitted under this guideline shall be extended to no later than January 1, 2023 unless extended by the Town of Fort Erie. All materials and furniture must be temporary in nature so that they can be removed easily, and the area can be restored to its original condition.

If a patio or retail area is expanded onto or created on Regional property or Niagara Parks Commission property, authorization from these agencies will be required. For further information, please contact Daniel Turner via email at dturner@forterie.ca.

2. **Location:** Permitted either directly in front of the property of the associated eating or retail establishment or adjacent thereto. Extensions in front of adjacent properties may be permitted with the written consent of the adjacent property owner.
3. **Obstructions:** Patios and retail areas may not obstruct a fire hydrant, fire route, fire department connection, exit facility or pose other safety risks.
4. **Demarcation:** Limits of licenced patios and retail areas are to be readily distinguishable. Optional patio perimeter fencing, planters, guards, barriers or similar of no more than 1.2m (4ft) high shall be permitted, provided they are secured without endangering any underground utilities and/or municipal surfaces.

Where a patio or retail area is adjacent to any vehicle movement areas a concrete 'Jersey' barrier shall be installed at the upstream end of the occupancy. The height of the barrier shall be measured from the surface of the patio.

5. **Accessibility:** The patio or retail area shall be compliant with Accessibility for Ontarians with Disabilities Act (AODA) standards and shall not obstruct an accessible path of travel. Accessibility must be maintained to, and throughout, the temporary patio or retail area.
6. **Umbrellas:** Umbrellas shall stand at least 2.1m (7ft) above the walking surface. Umbrellas shall not extend beyond the perimeter of the patio or retail area.
7. **Hay/Straw Bales:** Not permitted in temporary outdoor patios or retail areas.
8. **Open Air:** Patios and retail areas shall be open to the air.
9. **Tents:** A tent or group of tents is exempt from the requirement to obtain a Building Permit under Section 8 of the Building Code Act and is exempt from compliance with the Code provided that the tent is, or, group of tents are:
 - a. Not more than 60 m² in aggregate ground area;
 - b. Not attached to a building, and
 - c. Construction more than 3m from other structures.

As per Town of Fort Erie policy, tents shall not be enclosed with sidewalls. If a permit application for a tent, or, group of tents, for winter use were to be received, documentation demonstrating the tent's ability to support a snow load will need to be provided.

10. **Heaters:** Owners and operators are responsible for the safe installation, operation, and maintenance of their portable patio heating units. Heating units must:
 - a. Be designed for outdoor use only,
 - b. Meet all the requirements laid out in Ontario's building and fire code and TSSA guidelines,
 - c. Abide by all safety instructions outlined in the operating manual for their heating appliances, and
 - d. Ensure that staff understand how to safely operate the heating units and handle propane cylinders.

Portable heating units shall NOT be:

- a. Placed under or inside a tent,
- b. Under fire escapes,
- c. Next to, or in the path of, an exit,
- d. Adjacent to or otherwise obstructing firefighting equipment such as fire hydrants or Siamese connections,

- e. Near utilities, trees, or other street components, and
- f. If any electrical wires are placed on the pedestrian clearway.

Owners and operators are required to follow and consult with the [TSSA's Patio Heater Safety Guidelines](#).

11. **Fire:** Compliance with the Ontario Fire Code is required. A minimum 1.5m (5ft) clearance from fire department connections and hydrants must be maintained on a patio or retail area. A fire extinguisher must be available within 15.2m (50ft) of any part of the patio or retail area.
12. **Physical Distancing:** Maximizing distance between tables is strongly encouraged, but voluntary. Licenced businesses are still required to follow other restrictions in accordance with Provincial COVID-19 Orders, as well as with restrictions from Niagara's Medical Officer of Health and/or Section 22 Orders.
13. **Capacity:** 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 the liquor licence or 1.11 sq.m. (12.0 sq.ft.) per person, whichever is the lesser.

For licenced establishments that have an existing licenced patio, the capacity of the combined area of the existing and temporary patio shall not exceed the posted occupancy of the indoor area indicated on the liquor licence or 1.11 sq.m. (12.0 sq.ft.) per person, whichever is the lesser. Retail areas shall comply with Provincial COVID-19 orders and capacity limits, as well as with restrictions from Niagara's Medical Officer of Health and/or Section 22 Orders.

14. **Business Licence:** A valid business licence from the Town is required prior to approval of a temporary patio or retail expansion.
15. **Other:** Cooking of food and drink preparation is not permitted on temporary patios. Decks, stages and portable toilets shall not be permitted.
16. **Operation:** All Applicants shall operate the patio or retail area only in accordance with Town approval, any AGCO requirements and Provincial Guidelines.
17. **Administrative Penalty:** Any person who expands an existing patio or retail area or creates a new patio or retail area without municipal approval, or is in contravention of these Regulations shall be liable to pay an administrative penalty in the amount of \$300.

- 18. **Special Events:** The Town of Fort Erie regulates special events on municipal and private property, including the temporary use of municipal highways.

In the event a licenced patio wishes to expand their current temporary patio approved under these regulations, or establish a temporary patio for the special event only, such premises shall fall under the Special Events Permit and Regulations, with modifications where necessary.

In the event a retail business wishes to be part of a special event, the provisions of these regulations shall not apply, and such premises shall fall under the Special Events Permit and Regulations, with modifications where necessary.

Temporary Patios or Retail Areas on Private Property

- 1. **Use of Parking Spaces:** Onsite parking spaces may be used for a temporary patio or retail area. The required number of designated accessible spaces shall remain available for parking use. Any designated fire routes and sightlines shall be maintained. Any remaining designated parking spaces shall be sufficiently separated from the patio or retail area to ensure safety.
- 2. **Parking:** If a patio or retail area is located within any private parking area, the need for staff and patrons to cross drive aisles between the business and patio area or retail area should be avoided.
- 3. **Parking Lots for a Multi-Unit Commercial Building:** Where an eating or retail establishment is located in a building occupied by multiple businesses, the temporary patio or retail area shall not occupy more parking spaces than the sum total of the parking spaces allotted to their establishment.

Temporary Patios or Retail Areas on a Municipal Sidewalk

- 1. **Clearance:** An unobstructed pedestrian clearance of 1.8m (5.9ft) shall be maintained between the patio or retail area and any physical obstructions, unless otherwise approved by the Town.
- 2. **Curbside Patio Barriers:** Where a temporary patio or retail area is located adjacent to a traffic lane, a perimeter barrier of 1.06m to 1.2m in height shall be provided, with a minimum setback of 0.5m from the curb. Additional physical barriers may also be required to protect the patio or retail space.
- 3. **Construction:** Patio or retail construction/demarcation shall be portable, to ensure for easy removal. Perimeter fence posts are to be free-standing. Fence posts may be supported on removable plates, which shall not extend beyond the perimeter of the fence and pose no trip hazard to pedestrians. Posts, signs and other features cannot be secured to the municipal sidewalk by use of screws, nails or other

fasteners that pierce or otherwise damage the surface of the concrete.

4. **Signage:** Signage shall be kept to a minimum, shall be temporary and shall be contained within the perimeter of the patio or retail area.

Signs cannot be secured to the municipal sidewalk by use of screws, nails or other fasteners that pierce or otherwise damage the surface of the concrete.

5. **Insurance:** The Applicant shall provide public liability insurance in the amount of \$5 million naming the Town of Fort Erie as additional insured.

Temporary Patios or Retail Areas within Municipal Parking Spaces

1. **Location:** To be located on streets in locations where there is existing on-street parking or surplus pavement width. Patios or retail areas should be located at least one parking space away from an intersection or driveway. Patios or retail areas are not permitted in front of a fire hydrant, or in designated accessible parking spaces, and shall not obstruct surface drainage or access to public utilities.
2. **Dimensions:** Patio or retail area to be inset at least 0.3m from outside edge of parking space.
3. **Platforms:** Platforms shall be constructed for all patios and retail stores on municipal spaces.
4. **Perimeter Barriers:** Platform to be enclosed on the upstream side facing the street or adjacent parking stalls. Road safety measures shall include a Wa-33R 'hazard' marker on the end of the barrier facing traffic.
5. **Platform Construction:** A Building Permit is required for all on-street patio platform structures except for any platform structure of any area that meets the following minimum requirements:
 - a. The floor structure shall be constructed of standard dimension lumber floor joists (ex. 35mm x 190mm (2x8), (35mm x 240mm (2x10) etc.) spaced not more than 406mm on-centre (16" o/c) and bearing directly on suitable ground such that no portion of the floor structure is suspended more than 38mm (1.5") above grade and the finished floor elevation shall not exceed 355.6mm (14") from adjacent ground elevation.
 - b. Solid blocking shall be provided between floor joists at a spacing of not more than 5 feet on-centre with a minimum of 1 row of blocking for any joist spans that exceed 5 feet.
 - c. The floor joists shall be fastened to rim joists around the perimeter of the floor structure with a minimum of four (4) 89mm (3-1/2") inch-long common spiral nails per joist.

- d. The floor structure shall be unenclosed, except that a guard with a height of not less than 914mm (36”) but not greater than 1070mm (42”) shall be installed around the perimeter of the floor structure in accordance with the requirements states elsewhere in this document.
- e. Where there is a difference in height between the platform and the adjacent sidewalk a 1500mm (59”) wide ramp with a maximum slope of 1:8 shall be constructed anywhere along the platform adjacent to the sidewalk as shown in sketch 1 and 2.
- f. Except for patio umbrellas, no overhead structures of any kind are permitted including, but not limited to, any fabric roof coverings, or trellis-type shade structures.

Posts and other features cannot be secured to the municipal sidewalk by use of screws, nails or other fasteners that pierce or otherwise damage the surface of the concrete.

Patios shall not interrupt surface drainage along the gutter. Deck supports and/or ramp supports should be located such that they provide for a minimum separation of 0.3m from the curb face.

Platforms shall form one surface from sidewalk and curb for barrier free access.

Except for patio umbrellas, no overhead structures of any kind are permitted including but not limited to any fabric roof coverings, or trellis-type shade structures.

All submissions must include a sketch of the proposed construction.

- 6. **Signage:** Signage shall be kept to a minimum, shall be temporary and shall be contained within the perimeter of the patio or retail area with the exception of the road warning sign.

Signs cannot be secured to the municipal sidewalk by use of screws, nails or other fasteners that pierce or otherwise damage the surface of the concrete.

- 7. **Insurance:** The applicant shall provide public liability insurance in the amount of \$5 million naming the Town of Fort Erie as additional insured.

Temporary Outdoor Patio or Retail Sales Application Process

- 1. Determine the size, location, layout and capacity of the proposed patio or retail area in accordance with the Town’s Regulations.
- 2. Complete and submit the application/ and the following applicable supporting documentation:
 - Complete the Temporary Outdoor Patio or Retail Sales Application.

- Sketch of Proposal – identifies proposed size and dimensions of patio or retail area and detail of fencing, barriers and materials to be used.
- For leased, private-property premises, provide the landowner’s written authorization.
- For temporary patios or retail areas on public property, provide Certificate of Insurance
- Submit all materials online or via email to Daniel Turner at dturner@forterie.ca

3. Approval:

- Once staff confirm the submission satisfies all requirements, approval will be granted.
- Approvals will be issued via email and considered effective on the date of approval.

DATED at Fort Erie, Ontario, this 1st day of December, 2021.

Tom Kuchyt,
Chief Administrative Officer

Kira Dolch,
Director, Planning & Development
Services

Additional Resources

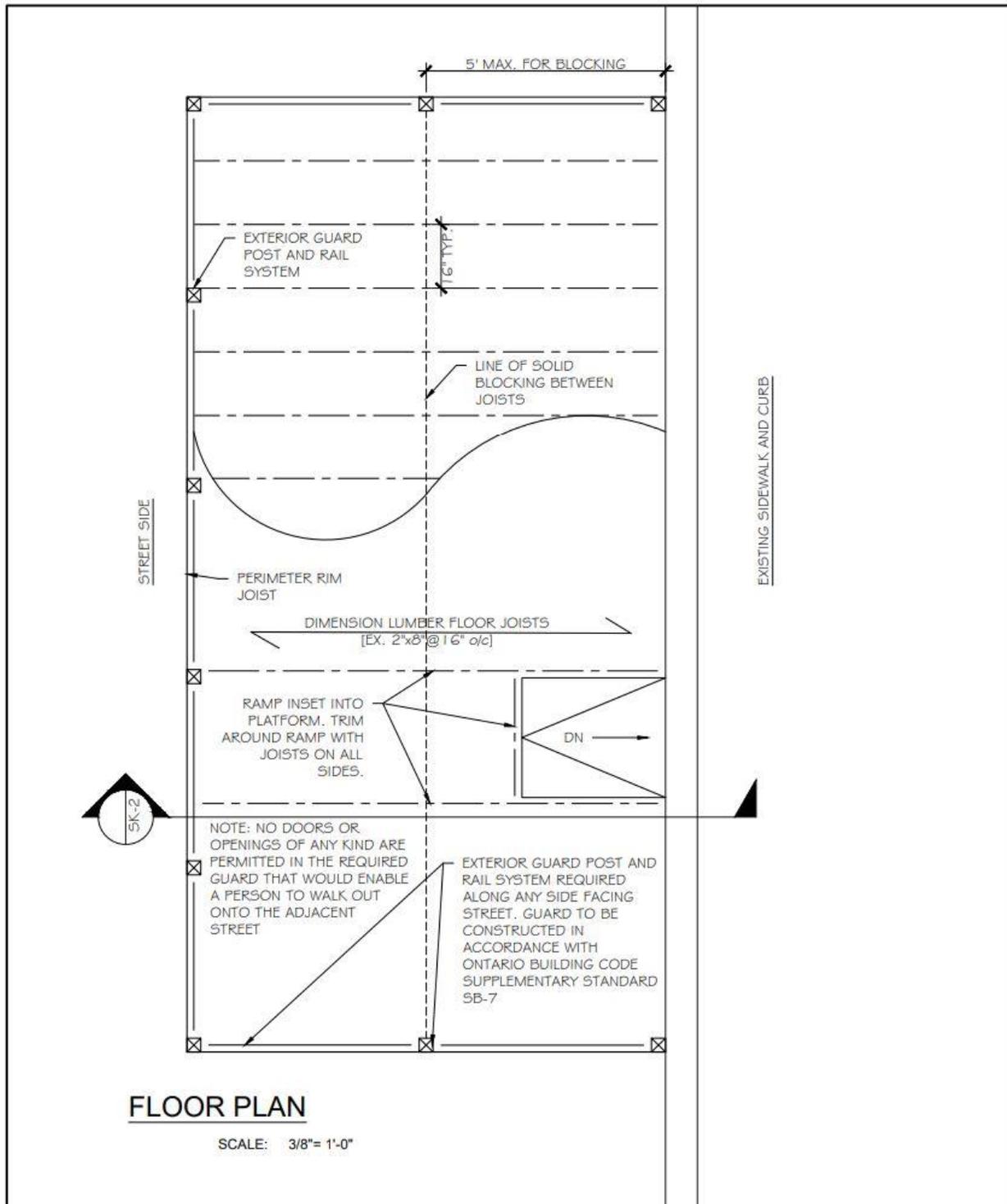
[AGCO Update to Existing Licenced Areas](#)

[Niagara Region Public Health Sector Specific Guidelines](#)

[AGCO Information Bulletin](#)

[TSSA Patio Heater Safety Guidelines](#)

Sketch 1 – Floor Plan Example



Sketch 2 – Platform Construction Example

