

THE CITY OF VAUGHAN

BY-LAW

BY-LAW NUMBER 096-2020

A By-law to provide eligibility criteria, performance standards and other requirements for the establishment of outdoor patios or the expansion of existing outdoor patios that are ancillary to municipally licensed eating establishments and banquet halls, during the declared COVID-19 Emergency.

WHEREAS the World Health Organization has declared a worldwide pandemic regarding the Novel Coronavirus 19 (“COVID-19 pandemic”);

WHEREAS on March 17, 2020 a Declaration of Emergency was made by the Province of Ontario pursuant to section 7.0.1 of the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9 (“EMCPA”) related to COVID-19;

WHEREAS section 4 of the EMCPA provides that the head of council of a municipality may declare that an emergency exists in the municipality or in any part thereof and may take such action and make such orders as he or she considers necessary and are not contrary to law to implement the emergency plan of the municipality and to protect property and the health, safety and welfare of the inhabitants of the emergency area;

WHEREAS on March 17, 2020 the Corporation of the City of Vaughan declared an emergency pursuant to section 4 of the EMCPA;

WHEREAS the Province of Ontario has issued Orders under the EMCPA to prohibit and regulate certain activities in the interest of public health, safety and wellbeing during the COVID-19 declared emergency;

WHEREAS on March 27, 2020 the Province of Ontario granted power to municipal law enforcement officers to enforce Orders issued by the Province under the EMCPA;

WHEREAS subsection 8(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, (“*Municipal Act*”) provides that the powers of a municipality shall be interpreted broadly so as to confer broad authority on municipalities to enable them to govern their affairs as they consider appropriate, and to enhance their ability to respond to municipal issues;

WHEREAS section 11(2) of the *Municipal Act* provides that a municipality may pass by-laws respecting: Economic, social and environmental well-being of the municipality;

Health, safety and well-being of persons; and Protection of persons and property, including consumer protection;

WHEREAS without limiting sections 9 and 11 of the *Municipal Act*, a local municipality may prohibit and regulate matters such as dangerous places, public nuisances and business hours and closures, as well as regulate and govern real and personal property used for by a business and the person carrying it on or engaged in it;

WHEREAS section 425 of the *Municipal Act* provides that any person who contravenes any by-law of the municipality is guilty of an offence;

WHEREAS section 429 of the *Municipal Act* provides for a municipality to establish a system of fines for offences under a by-law of the municipality passed under the Act;

WHEREAS sections 444 and 445 of the *Municipal Act* provide that a municipality may make an order requiring a person who contravened a by-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to discontinue the contravening activity or to do work to correct the contravention;

WHEREAS The Corporation of the City of Vaughan considers it desirable to enact regulations to support the intent and purpose of the Provincial orders made under the EMCPA in order to protect the health, safety and wellbeing of all persons within the jurisdictional boundaries of the City of Vaughan, by prohibiting or regulating certain activities of individuals and businesses during the COVID-19 Emergency;

WHEREAS the Province continues, through a phased approach, to permit specified businesses to resume operations under certain conditions and requirements;

WHEREAS there the list of such businesses includes eating establishments and banquet halls;

WHEREAS The Corporation of the City of Vaughan considers it desirable to provide specific regulatory relief to eating establishments and banquet halls to respond to the ongoing economic challenges posed by the COVID-19 emergency measures;

NOW THEREFORE the Council of The Corporation of the City of Vaughan ENACTS AS FOLLOWS:

1.0 Short Title

- (1) The By-law shall be known and referenced as the “Temporary Outdoor Patio By-law.”

2.0 Applicability and Scope

- (1) This By-law applies to all *Eating Establishments* and *Banquet Halls* operating within the jurisdictional boundaries of the City of Vaughan.
- (2) This By-law shall be in force and effect for a period not to exceed 14 days beyond the termination of the *Emergency Declaration*, or November 2, 2020, whichever comes first.
- (3) Where this By-law comes into conflict with any other by-law, except COVID-19 Emergency Measures By-law 037-2020, the corresponding provisions of this By-law shall prevail.

3.0 Definitions and Interpretation

- (1) In this By-law:
 - (a) “Banquet Hall” means a building or part thereof used for the purpose of entertaining a large assembly of people, where food and liquor may be provided, and may include an *Eating Establishment* as an accessory use;
 - (b) “Chief Building Official” means the Chief Building Official for the *City*, or his or her designate;
 - (c) “City” means The Corporation of the City of Vaughan;
 - (d) “City Manager” means the City Manager for the *City*;
 - (e) “Council” means the duly elected Council for the City of Vaughan;
 - (f) “Director” means the Director and Chief Licensing Officer, By-law and Compliance, Licensing and Permit Services for the *City*, or his or her designate;
 - (g) “Eating Establishment” means a building or place where food and drink are prepared and offered for sale and served at the same table or counter where the food and drink are ordered and are to be consumed and shall include but not be limited to, cafeteria-style, buffet, self-service, or take out facilities, and includes eating establishment convenience, eating establishment convenience with drive-through and eating establishment

takeout, but shall not include a *Banquet Hall* as an accessory use;

- (h) "EMCPA" means the Emergency Management and Civil Protection Act, R.S.O. 1990, c. E. 9;
- (i) "Emergency Declaration" means a declaration of a state of emergency by the *Head of Council* under section 4 of the *EMCPA* with respect to the COVID-19 pandemic;
- (j) "Enforcement Order" means an order made by an *Officer* pursuant to section 9.0.
- (k) "Fire Chief" means the Chief of Vaughan Fire and Rescue Services or his or her designate;
- (l) "Gathering" means a gathering of people as prohibited under O. Reg. 52/20, as may be amended from time to time or any supplemental or successor regulation;
- (m) "Head of Council" means the Mayor for the City of Vaughan;
- (n) "Household" means *Individuals* living together in and sharing a *Dwelling Unit*;
- (o) "Individual" means a natural person of any age;
- (p) "Landlord" includes:
 - (i) the registered owner of a commercial rental *Property* or other *Person* permitting occupancy of such property or a rental unit therein;
 - (ii) the heirs, assigns, personal representatives and successors in title of a person referred to in 3.0(r)(i); or
 - (iii) a *Person* who attempts to enforce any of the rights of a landlord, including the right to collect rent;
- (q) "Municipal Act" means the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, or any successor legislation;
- (r) "Officer" means a Provincial Offences Officer or Municipal Law Enforcement Officer of the *City*, or any other person appointed by or under the authority of a *City* by-law to enforce this By-law, and shall include a police officer appointed by York Regional Police, the Ontario Provincial

Police, or the Royal Canadian Mounted Police;

- (s) “Order” means a direction by the *Head of Council*, *City Manager* or *Director*, pursuant to COVID-19 Emergency Measures By-law 037-2020, which includes an order under the authority of sections 444 or 445 of the *Municipal Act* requiring a *Person* to cease a contravening activity or correct a contravention, but shall not include an *Emergency Order*;
- (t) “Owner” means any *Person* who owns, whether individually or in conjunction with others, an *Eating Establishment* or *Banquet Hall*.
- (u) “Person” means a natural person who is at least 18 years of age or a corporation duly incorporated as such federally or in the Province of Ontario;
- (v) “Police Chief” means the Chief of Police for York Regional Police, or his or her designate;
- (w) “Property” means a building or structure or part of a building or structure, and includes the lands and premises appurtenant thereto and all mobile homes, mobile buildings, mobile structures, outbuildings, fences and erections thereon whether heretofore or hereafter erected, and includes vacant property;
- (x) “Provincial Offences Act” means the *Provincial Offences Act*, R.S.O. 1990, c.P. 33, as amended, or any successor legislation;
- (y) “Public Health Official” means any of the following: the Medical Officer of Health for the Regional Municipality of York, the Chief Medical Officer of Health for the Province of Ontario, or the Chief Public Health Officer of Canada;
- (z) “Right of Way” means a common and public highway, any part of which is intended for or used by the general public for the passage of vehicles and pedestrians and includes the area between the property lines thereof;
- (aa) “Social Distance” means a distance of no less than 2.0 metres, or as otherwise prescribed by an *Order* made by the *Head of Council* under this By-law;
- (bb) “Temporary Outdoor Patio” means a designated temporary outdoor area

accessory to an *Eating Establishment*, restaurant or *Banquet Hall* where food or drink are offered for sale or served; or where food and drink are brought from within the *Eating Establishment*, restaurant or *Banquet Hall* to the temporary outdoor area for consumption;

- (2) Wherever a word is used in this By-law with its first letter capitalized and the whole word italicized, the term is being used as it is defined in 3.0(1) of this By-law. Where any word appears in ordinary case, the commonly applied English language meaning is intended.

4.0 Eligibility

- (1) A *Person* shall not establish a *Temporary Outdoor Patio* unless such *Person* is an *Owner* who:
- (a) owns a business that is primarily an *Eating Establishment* or *Banquet Hall*; and
 - (b) is duly licensed by the *City* to operate such business; and
 - (c) meets all requirements under this By-law; and
 - (d) is in compliance with all other applicable legislation, by-laws or regulations; and
 - (e) has permission from the *Landlord* to establish a *Temporary Outdoor Patio*.

5.0 Registration

- (1) Every *Owner* who intends to establish a *Temporary Outdoor Patio*, and is eligible to do so under 4.0(1), shall:
- (a) Register with the *City* through the *Director's* office;
 - (b) Provide proof, in a manner satisfactory to the *Director*, that the business has general commercial liability insurance in an amount of at least \$2,000,000; and
 - (c) Provide proof, in a manner satisfactory to the *Director*, that the *Landlord* agrees to the establishment of the *Temporary Outdoor Patio*.
- (2) Despite 5.0(1), an *Owner* who holds a valid special event permit under the provisions of Special Events By-law 045-2018 and Temporary Relief Through Special Events By-law 074-2020 is deemed to be registered under this By-law.
- (3) Despite 5.0(1) and 5.0(2), the *Director* may require an *Owner* to provide any

other information that the *Director* deems appropriate to ensure the health and safety of the public, consumer protection, or nuisance control, and failure to do so shall deem the *Eating Establishment* or *Banquet Hall* ineligible, under 4.0(1)(d), for the operation of a *Temporary Outdoor Patio*.

6.0 Physical Requirements

- (1) The perimeter of a *Temporary Outdoor Patio* that occupies a driving surface, such as a parking lot, or on which alcohol is served, shall be enclosed by a temporary fence:
 - (a) of no less than 1.0 metres in height;
 - (b) that is self-supporting, plumb and in good repair;
 - (c) that is of a construction that will not under normal circumstances allow a person to pass through or underneath it; and
 - (d) that has reflective markings that are spaced no more than 2.0 metres from each other.
- (2) Access to any enclosed area shall:
 - (a) be attended by a dedicated staff member of the *Eating Establishment* or *Banquet Hall*; and
 - (b) meet all of the accessibility requirements under the *Accessibility for Ontarians with Disabilities Act, 2005*, S.O. 2005, c. 11 and its relevant regulations.
- (3) A *Temporary Outdoor Patio* and any of its appurtenances shall:
 - (a) be at least 5.0 metres from a point at the edge on any driving or parking surface that is directly in front of a fire hydrant or fire department connection;
 - (b) provide an unobstructed pathway to such fire hydrant or fire department connection that is at least 5.0 metres wide at any point;
 - (c) not encroach on or occupy any laneway or other area deemed a fire route;
 - (d) not encroach onto or occupy any portion of the *Right of Way*; and
 - (e) not encroach on or occupy any portion of the following, if designated for persons with a disability: a drive isle, driveway, parking space, or area/access point.

- (4) Seating at a table or conglomeration of tables may not exceed the number of *Individuals* that may gather, as prescribed by an *Emergency Order*, unless such *Individuals* are members of a single *Household*.
- (5) Tables and seating must be arranged so as to allow for *Social Distancing* between members of different patron parties, while all seated.
- (6) Notwithstanding any of the requirements in this Part, the *Police Chief, Fire Chief, Chief Building Official, Director, or Public Health Official* may impose further conditions or requirements that they deem appropriate to safeguard public safety or mitigate nuisances.

7.0 Operational Requirements

- (1) Every *Owner* shall ensure that all recommended health measures for *Eating Establishments* and *Banquet Halls*, established by a *Public Health Official*, are implemented and followed while the *Eating Establishment* or *Banquet Hall* is in operation.
- (2) Every *Owner* shall make every reasonable effort to ensure that all patrons of the *Eating Establishment* or *Banquet Hall* adhere to any and all applicable legislation, regulations, orders, by-laws, or directives.
- (3) No *Owner* shall permit the use of musical instruments or other mechanical or electrical music equipment, or dancing, theatrical performances or audiovisual presentations, music concerts and shows.
- (4) No *Person* shall operate or conduct any business activity, other than seating and food services as intended from the *Eating Establishment* or *Banquet Hall*.
- (5) No *Person* shall carry out unsafe actions or create an unsafe condition, or permit or allow unsafe actions or permit or allow an unsafe condition to exist on a *Temporary Outdoor Patio*.

8.0 Enforcement and Inspections

- (1) The provisions of this By-law may be enforced by an *Officer*.
- (2) Every *Officer* shall have the right to enter lands to conduct an inspection to determine whether the provisions of this By-Law and any *Order(s)* or *Enforcement Order(s)* issued hereunder are being complied with in accordance with the provisions of subsections 435 and 436 of the *Municipal Act*.

- (3) For the purposes of conducting an inspection pursuant to this By-law, an *Officer* may:
- (a) require the production for inspection of documents or things relevant to the inspection;
 - (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
 - (c) require information from any person concerning a matter related to the inspection; and
 - (d) alone, or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.
- (4) An *Owner* required to undertake anything or produce anything pursuant to 8.0(3)(c) shall do so at the *Owner's* expense.
- (5) No *Person* shall prevent, hinder or obstruct, or attempt to hinder or obstruct, an *Officer* who is exercising a power or performing a duty under any by-law or the *EMCPA*.

9.0 Enforcement Orders

- (1) An *Officer* may, as a result of a contravention of this By-law or an *Order*, issue an *Enforcement Order* that requires:
- (a) an *Eating Establishment* or *Banquet Hall* to discontinue a contravening activity or to do work to correct a contravention;
 - (b) an *Eating Establishment* or *Banquet Hall* to clear and properly dispose of any refuse or other things deemed by the *Director* to be a potential risk to public health or safety.
- (2) An *Enforcement Order* under this Part may be given verbally or in writing. Where an *Enforcement Order* is given verbally, an order in writing shall follow within two (2) business days, however the *Enforcement Order* shall take effect once it has been given verbally.
- (3) An *Enforcement Order* in writing shall:
- (a) identify the location where the contravention occurred;
 - (b) state the reasonable particulars of the contravention;

- (c) provide the date and time by which there must be compliance with the order; and
 - (d) be served personally to the *Person* to whom it is directed, or served by regular mail to the *Person*, which shall be deemed so served on the fifth day after mailing.
- (4) Every *Person* shall comply with an *Enforcement Order* issued pursuant to Part 9.0 of this By-law.

10.0 Orders by the Director

- (1) Where the *Director* is of the opinion that a condition or an activity on a *Temporary Outdoor Patio* is unsafe or otherwise not in the interest of the public, the *Director* may issue an *Order* to suspend the operation of the *Temporary Outdoor Patio* until the *Director* is satisfied that the condition has been remediated or the activity has been discontinued.

11.0 Remedial Work and Recovery of Costs

- (1) Where an *Owner* fails to comply with an *Enforcement Order*, the *Director* may authorize the contravening condition to be remedied by the *City* to the satisfaction of the *Director*.
- (2) Any action carried out under 11.0(1) shall be done at the expense of the *Owner* and shall be recoverable in the same manner as taxes.

12.0 Offences

- (1) Any *Person* who contravenes or fails to comply with any provision of this By-law, including an *Order* or *Enforcement Order* made under this By-law, is guilty of an offence.
- (2) Where an *Individual* that contravenes or fails to comply with any provisions of this By-law is under the age of 16 years, the *Guardian* or *Guardians* of the *Individual* shall be deemed to have allowed the contravention and be guilty of the offence.
- (3) Where an *Individual* is older than 16 years of age, he or she shall be subject to Parts 7.0, 8.0, 9.0, 13.0 and 14.0 of this By-law as a *Person*.
- (4) An offence under this By-law may constitute a multiple offence as defined in section 429(5) of the *Municipal Act*.

- (5) An offence under this By-law that continues more than one day may constitute a continuous offence and be punishable as such.

13.0 Administrative Monetary Penalties

- (1) Instead of laying a charge under the *Provincial Offences Act* for a breach of any provisions of this By-law or for failure to comply with an *Enforcement Order* or *Order*, an *Officer* may issue an administrative monetary penalty to the *Person* who has contravened this By-law or failed to comply with an *Enforcement Order* or *Order*.
- (2) If a *Person* is required to pay an administrative monetary penalty under section 13.0(1), no charge shall be laid against that same *Person* for the same contravention.
- (3) The amount of the administrative monetary penalty for a breach under this By-law is \$750.00.
- (4) A *Person* who is issued an administrative monetary penalty shall be subject to the procedures provided for in the Administrative Monetary Penalties By-law, as amended or its successor by-law.
- (5) An administrative monetary penalty imposed on a *Person* that becomes a debt to the *City* under the Administrative Monetary Penalties By-law, as amended or its successor by-law, may be added to the municipal tax roll and collected in the same manner as municipal taxes.

14.0 Penalties

- (1) Every *Person* who contravenes any provision of this By-law, including failing to comply with an *Order* made under this By-law, is guilty of an offence and is liable to a fine, and such other penalties, as provided for in the *Provincial Offences Act* and the *Municipal Act*, as set out below:
 - (a) the minimum fine for an offence is \$500 and the maximum fine for an offence is \$100,000;
 - (b) in the case of a continuing offence, for each day or part of a day that the offence continues, the minimum fine shall be \$500 and the maximum fine shall not exceed \$10,000 and the total of all daily fines for the offence is not limited to \$100,000; and

- (c) in the case of a multiple offence, for each offence included in the multiple offence, the minimum fine shall be \$500 and the maximum fine shall not exceed \$10,000 and the total of all fines for each included offence is not limited to \$100,000.
- (2) If a *Person* is convicted of an offence under this By-law, in addition to any other remedy or any penalty imposed, the court in which the conviction has been entered, and any court of competent jurisdiction, may make an order prohibiting the continuation or repetition of the offence by the *Person* convicted.
- (3) Where a *Person* fails to pay any part of a fine for a contravention of this By-law and the fine is due and payable under section 66 of the *Provincial Offences Act*, including any extension of time to pay the fine provided under that section, the *City* may give the *Person* a written notice specifying the amount of the fine payable and the final date on which it is payable, which date shall not be less than 21 days after the date of the notice.
- (4) If any part of a fine for a contravention of this By-law remains unpaid after the final date specified in the notice provided under 14.0(3), the outstanding fine is deemed to be unpaid taxes pursuant to section 351 of the *Municipal Act*.

15.0 Transition

- (1) Notwithstanding the repeal of this Bylaw, any enforcement, legal or collection actions arising from this Bylaw while this Bylaw was in force shall survive its repeal.

16.0 Collection of Unpaid Penalties and Fines

- (1) Where a fine is in default, the *City* may proceed with civil enforcement against the person upon whom the fine has been imposed, pursuant to the *Provincial Offences Act*.
- (2) The *City* may make a request to the treasurer of a local municipality to add any part of a fine that is in default to the tax roll for any property in the local municipality for which all of the owners are responsible for paying the fine, and to collect it in the same manner as municipal taxes.

17.0 Severability

- (1) Where a court of competent jurisdiction declares any section of this By-law to be

invalid, or to be not in force, or without effect, it is the intention of the Council of the *City* in enacting this By-law that the remainder of this By-law shall continue to be in force and applied and enforced in accordance with its terms to the fullest extent possible according to law.

18.0 Designation of By-law

- (1) Schedule 1 of the [Administrative Monetary Penalties By-law](#) is hereby amended by including this By-law as a Designated By-law.

19.0 Force and Effect

- (1) This By-law shall come into force and effect on the day after Temporary Relief Through Special Events By-law 074-2020 expires.
- (2) This By-law shall remain in force and effect as per section 2.0(2) unless extended or terminated earlier by *Council* or the *Head of Council* under his or her delegated authority pursuant to section 4.0(4) of COVID-19 Emergency Measures By-law 037-2020.

Enacted by City of Vaughan Council this 29th day of June, 2020.

Hon. Maurizio Bevilacqua, Mayor

Todd Coles, City Clerk