
From: Kyle Bentley
Director, City Development & CBO

Subject: Lease Agreement – Big Bite Gourmet Burgers Inc., 1550 Kingston Road, Unit 50
- Temporary Patio Program – Use of City Owned Lands
- File: D-1000-006

Recommendation:

1. That Council approve the Draft Lease Agreement for the Temporary Use of City Property within the boulevard on Valley Farm Road, adjacent to 1550 Kingston Road, Unit 50, between the City of Pickering and Big Bite Gourmet Burgers Inc. for the period June 27, 2022 to November 30, 2022, as set out in Appendix I to Report PLN 33-22;
 2. That the Mayor and City Clerk be authorized to execute the Lease Agreement between the City of Pickering and Big Bite Gourmet Burgers Inc. in the form as appended to this report subject to revisions as may be acceptable to the Chief Administrative Officer, the City Solicitor and the Director, City Development & CBO; and
 3. That the appropriate officials of the City of Pickering be authorized to take the necessary actions as indicated in this report.
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Executive Summary: Big Bite Gourmet Burgers Inc. (aka Big Bite Grill), located at 1550 Kingston Road, Unit 50, has submitted a request to operate a temporary outdoor patio, within a grassed area fronting onto Valley Farm Road, a portion of which would be located on the City owned boulevard adjacent to the restaurant.

The proposed location and design (see Location Map, Attachment #1) of the temporary patio space have met the requirements laid out by the City's 'Temporary Patios – Municipal Review and Approval Process'. Staff therefore recommends that the City enter into a Lease Agreement with Big Bite Gourmet Burgers Inc. for temporary use of the City's boulevard from June 27, 2022 to November 30, 2022 (see Draft Licence Agreement, Appendix I).

The Big Bite Gourmet Burgers Inc. temporary patio would be subject to terms that address the restriction of patio patron movements to within the identified boundary of the temporary patio, and that there is no amplified music permitted after 9:00 pm.

The term of the Licence Agreement proposed is June 27, 2022 to November 30, 2022, as prescribed by the terms of the City's Temporary Patio Program for 2022.

Financial Implications: There are no financial implications associated with this lease agreement.

Discussion: As set out in the City's 'Temporary Patios – Municipal Review and Approval Process', operation of a temporary patio space on City owned property is subject to the execution of a Licence Agreement with the City and is permitted for a limited term of operation that does not conflict with the City's municipal Winter Maintenance operations.

Big Bite Gourmet Burgers Inc. is located at the north/east corner of Valley Farm Road and Kingston Road, within the commercial development at 1550 Kingston Road, in unit #50. Staff in Fire Services and Building Services have reviewed this request, and have no objection to the proposed design or location of the temporary patio space.

The proposed term of the Licence Agreement is June 27, 2022 to November 30, 2022. The patio must be removed at the end of the term to accommodate the City's Winter Maintenance program. Prior to execution of the Licence Agreement, Big Bite Gourmet Burgers Inc. is required to provide the requisite Certificate of Insurance noting the City as an added insured, in an amount as required by the City. Compliance with the Ontario Building Code, Ontario Fire Code, applicable Municipal By-laws and current Provincial and Region of Durham Health & Safety criteria must be maintained at all times, and are subject to inspection without notice.

Staff therefore recommends the City enter into a Licence Agreement (see Draft Licence Agreement, Appendix I) with Big Bite Gourmet Burgers Inc. for the temporary use of the City owned boulevard, as indicated in the attached site drawing (see Location Map, Attachment #1).

Any future use of the City's boulevard for a seasonal patio use will be reviewed on an annual basis, and brought to Council for review.

Appendix:

Appendix I Draft Licence Agreement

Attachment:

1. Location Map

Prepared By:

Approved/Endorsed By:

Original Signed By

Original Signed By

Catherine Hodge
Senior Coordinator, Development Liaison

Kyle Bentley, P. Eng.
Director, City Development & CBO

CH:jc

Recommended for the consideration
of Pickering City Council

Original Signed By

Marisa Carpino, M.A.
Chief Administrative Officer

Draft Licence Agreement

This Licence Agreement is made this 27th day of June, 2022.

Between:

Big Bite Gourmet Burgers Inc.

(the "Restaurant")

- and -

The Corporation of the City of Pickering

(the "City")

Whereas the City owns the lands legally described as Valley Farm Road, between King's Highway No. 2 (aka Kingston Road) & Finch Avenue; being the road allowance between Lots 20 & 21, Concession 1 Pickering; and

Whereas the Restaurant wishes to use a portion of the City-owned lands as shown in red on the location map attached hereto as Schedule "A" (the "Lands") for the purpose of operating a temporary outdoor patio for the serving of food and beverages as shown on the plans and specifications attached hereto as Schedule "B" (the "Temporary Patio"); and

Whereas the City has agreed to grant to the Restaurant a non-exclusive licence permitting the Temporary Patio on the Lands subject to the terms and conditions set out in this Licence.

Now therefore in consideration of the mutual covenants hereinafter set forth and other good and valuable consideration, the City and the Restaurant agree as follows:

Licence

1. Subject to the terms of this Licence, the City grants permission to the Restaurant to use the Lands on a non-exclusive basis for the Temporary Patio.
2. The Restaurant acknowledges that this Licence does not create an interest in the Lands nor does the Restaurant claim any past or present interest, howsoever arising, as a result of or connected in any way with the use and occupation of the Lands.
3. The licence granted herein is only for the duration of this Licence and only for the purposes and uses stated herein. No other purposes shall be permitted without prior approval from the City.
4. The licence granted herein is not exclusive and the City reserves the right to enter onto the Lands and to grant, renew or extend licenses and other interests to other third parties.

Term

5. Unless earlier terminated as provided herein, the term of this Licence shall commence on June 27, 2022, and expire on November 30, 2022 at 9:00 pm (the "Term").
6. Except as otherwise provided for in this Licence, this Licence may be terminated by the City at any time and for any reason during the Term upon sixty (60) days prior written notice to the Restaurant. Notwithstanding the foregoing, if at any time the Restaurant is in default in the performance of any of the obligations under this Licence, the City shall have the right to terminate this Licence forthwith and thereupon all the rights of the Restaurant shall immediately cease. The City shall not be liable for payment to the Restaurant for any damage or loss arising from the termination of this Licence by the City pursuant to this Section.
7. Upon the expiry or earlier termination of this Licence, the Restaurant shall remove the Temporary Patio, at its own expense, and restore the Lands to its original condition.

Fee

8. The Restaurant shall not be required to pay to the City any fee for this Licence, but shall be responsible for payment of all applicable non-City permits, licences, staffing charges and approval fees where applicable.

Applicable Laws

9. The Restaurant shall comply strictly with all applicable law, by-laws, rules and regulations governing its use of the Lands for the Temporary Patio, including, but not limited to, the City's Noise By-law, Traffic and Parking By-laws, the Ontario Building Code, the Ontario Fire Code, the *Accessibility for Disabled Ontarians Act*, and all applicable requirements of the Technical Standards & Safety Authority.
10. The Restaurant, where applicable, shall obtain all necessary permits, licenses and approvals that may be required in connection with its use of the Lands for the Temporary Patio, including, but not limited to:
 - a) The City of Pickering form – 'Request to Review for Temporary Patio';
 - b) Tents, should they be constructed, must comply with applicable building permit requirements under the *Building Code Act*, Ontario Building Code (OBC) and the City's Temporary Tent Standard Operating Procedure (City Development Department);
 - c) Compliance with the Health & Safety Guidelines as issued for outdoor patio operations by the Province of Ontario and the Durham Region Health Department; and
 - d) No smoking signs to be placed, in accordance with the Durham Region smoking ban by-law.

Fire Safety & Ontario Building Code

11. The Restaurant acknowledges that the Temporary Patio is subject without notice, to:
 - a) inspections to be carried out by City of Pickering Fire Services to determine compliance with the Ontario Fire Code; and
 - b) inspections to be carried out by City of Pickering Building Services Section to determine compliance with the Ontario Building Code.
12. The location of the Temporary Patio must maintain a 1.2 metre clearance from all fire hydrants or fire connections (Siamese) and they must be visible and accessible at all times.
13. Portable fire extinguishers,
 - a) shall be present if cooking equipment is used on the Temporary Patio, and any location serving alcoholic beverages. Extinguishers must be properly rated for the hazard present. Portable extinguishers shall be kept operable and fully charged;
 - b) shall be located so that they are easily seen and shall be accessible at all times; and
 - c) in proximity to a fire hazard shall be located so as to be accessible without exposing the operator to undue risk.
14. Restaurant staff must be familiar with the safe operation of portable fire extinguishers in their work area.

Utilities

15. The Restaurant shall assume all costs and expenses in connection with the Temporary Patio, including, but not limited to, all utility costs.
16. The Restaurant and its employees, agents and contractors, including its electrical support group, is prohibited from altering City electrical infrastructure, and is only permitted to use existing outlets.
17. The Restaurant shall ensure all power cords have been covered to avoid tripping hazards.
18. The City assumes no responsibility to the Restaurant for the temporary or unavoidable interruption of the supply of any public utility service due to any cause whatsoever.

Hours of Operation

19. Subject to any other regulatory approval (e.g. liquor licence), the Restaurant will maintain their usual hours of operation for the existing restaurant.

Conditions of Use

20. The Restaurant will ensure that patrons using the temporary patio remain within the defined area of the temporary licence as detailed in Schedules A and B included herein at all times during open hours of operation of the temporary patio.

21. The Restaurant will at all times comply with and ensure compliance with the terms of City of Pickering By-Law 6834/08, and specifically Schedule 2, Section 1 thereof, whereby no amplified noise or music is permitted between the hours of 9:00 pm and 7:00 am.

Maintenance

22. The Restaurant shall ensure that the Lands and the Temporary Patio are maintained in a state of good and safe repair, and in a clean and sanitary condition during the Term, to the satisfaction of the City. The Restaurant shall immediately notify the City of any damage to the Lands.
23. In the event that the Restaurant wishes, during the Term, to replace or materially alter the Temporary Patio, the Restaurant shall not commence replacement or alteration unless:
- a) the City has approved the Restaurant's plans, specifications and appearance of the proposed replacement or alteration;
 - b) otherwise agreed to by the City, the replacement or alteration does not occupy an area that is larger than the Lands and shall be situate in the same location as the Temporary Patio;
 - c) the Restaurant has received all regulatory approvals and/or the replacement or alteration complies with all regulatory requirements; and
 - d) the Restaurant has obtained any necessary permits for the work to be undertaken.
24. The Restaurant shall ensure that any personnel installing, maintaining, replacing, altering or repairing the Temporary Patio shall be properly trained and fully qualified to perform the relevant work. The Restaurant shall ensure that it complies with the *Construction Act* and takes all necessary steps to prevent a lien from being claimed in respect of the Lands.

Waste Management

25. The Restaurant shall remove any and all refuse generated by the use of the Temporary Patio, as it occurs and at the expense of the Restaurant.

Insurance

26. The Restaurant, at its own expense, shall provide,
- a) comprehensive general public liability insurance, identifying the City as an additional insured, including coverage for personal injury, contractual liability, non-owned automobile liability, death and property damage, on an occurrence basis with respect to the Temporary Patio and the use and occupancy of the Lands, with coverage for any one occurrence or claim of not less than \$5,000,000, which insurance shall protect the City in respect of claims by the Restaurant as if the City was separately insured;
 - b) a certificate of insurance coverage in a form satisfactory to the City, which insurance coverage shall be kept in full force and effect throughout the Term;
 - c) Thirty (30) days prior written Notice, by registered mail, will be given by the insurer(s) to the City of Pickering if this Policy is cancelled or if any material change occurs that would,

for any reason, affect this Certificate or the City of Pickering as outlined in the coverage specified herein. Notice will be given to:

The Corporation of the City of Pickering, Attention: City Development Department,
One The Esplanade, Pickering, ON, L1V 6K7.

27. The Restaurant shall not do or omit or permit to be done anything that causes any insurance premium of the City to be increased, and if any insurance premium shall be so increased, the Restaurant shall pay to the City forthwith upon demand the amount of such increase. If notice of cancellation or lapse shall be given respecting any insurance policy of the City or if any insurance policy shall be cancelled or refused to be renewed by an insurer by reason of the use or occupation of the Lands, the Restaurant shall forthwith remedy or rectify such use or occupation upon being requested to do so in writing by the City and if the Restaurant shall fail to do so the City may, at its option, terminate this Licence forthwith by notice to the Restaurant.

Liability and Indemnification

28. The City shall not be liable to the Restaurant for any loss, damage or personal injury (including death) relating to the Temporary Patio or the use and occupancy of the Lands, whether caused by fire, theft, burglary, or otherwise, unless such loss or damage was caused by the negligence or willful misconduct of the City, its servants, agents or employees.
29. Once any equipment is erected on the Lands, the Restaurant shall determine its own terms for overnight security of its equipment, and the Lands and equipment shall be and remain at the risk of the Restaurant.
30. All equipment erected on the Lands, must be removed at the end of the term of this Licence Agreement.
31. Save and except for the gross negligence as it relates any of its to obligations under this Agreement, or willful misconduct of the City, the Restaurant agrees to indemnify and save the City, and all its directors, officers, employees, elected officials, agents, contractors and representatives harmless from any and all losses, actions, damages, claims, liability, costs, expenses and demands, of any kind, including, without limiting the generality of the foregoing, all claims for personal injury, illness or death, including any claims arising from the COVID-19 virus, or from any act or omission of the Restaurant or those for whom the Restaurant is at law responsible arising out of any action whatsoever by the Restaurant, its directors, employees, agents, contractors, invitees or anyone in connection with the Restaurant's use and occupancy of the Lands or the presence of Temporary Patio on the Lands. This provision shall survive the expiration or earlier termination of this Licence.
32. The Restaurant waives any and all claims against, releases from liability and agrees not to sue the City, its directors, officers, employees, elected officials, agents, contractors and representatives for any personal injury, illness, death or any other loss sustained by the Restaurant or for which the Restaurant may be responsible arising out of, or in connection with the Restaurant's use and occupancy of the Lands or the presence of the Temporary Patio on the Lands, including any loss arising from the COVID-19 virus.

Force Majeure

33. The City shall not be liable for any damages caused by any delay or failure to perform the whole or any part of this Licence, where such performance is made impossible or impractical due to any cause direct or indirect, beyond the control of the City, including, but not limited to, labour disruptions, strikes, lockouts, fire, flood, storms, acts of nature, natural disasters, acts of war, insurrection and terrorism, outbreak, pandemic, epidemic, disease or emergency.

Relationship of Parties

34. Nothing contained herein shall be deemed or construed by the parties, nor by any third party, as creating the relationship of principal and agent, landlord and tenant, partnership or of joint venture between the parties, it being understood and agreed that none of the provisions contained herein, nor any of the acts of the parties shall create any relationship between the parties other than that of licensor and licensee as described in this Licence.

Commercial Tenancies Act

35. The parties agree that the provisions of the *Commercial Tenancies Act* DO NOT apply to this Licence between the parties.

Notice

36. Any notice or other communication required or permitted to be given hereunder shall be in writing, and shall be sufficiently given if sent by pre-paid registered mail from a post office in Canada addressed in the case of the City to:

Pickering Civic Complex
One The Esplanade
Pickering, ON L1V 6K7
Email: citydev@pickering.ca
Attention: Director, City Development & CBO
Fax Number: 905.420.7648

and in the case of the Restaurant to:

1550 Kingston Road, Unit 50
Pickering, ON L1V 1C3
Attention: Srikanthan Nadarajah
Email: nada.sri@hotmail.com
Phone Number: 647.261.2068

Such notice may be given by hand delivery or sent electronically by either party to the other. Any such notice mailed shall be deemed to have been given on the third (3rd) business day following such mailing or, if delivered by hand, shall be deemed to have been given on the day of delivery or, if sent electronically, shall be deemed to have been given on the business day following transmission. In the event of a postal strike or pending postal strike, any or all notices must be given by personal delivery or by electronic means.

Title

37. The Restaurant hereby agrees to keep title to the Lands, including every part thereof, free and clear of any lien, encumbrance or security interest or notice thereof. The Restaurant shall not enter into any agreements for the Lands which would run with the Lands and become an obligation of the City upon termination or expiration of this Licence.

Time

38. In all respects, time shall be of the essence of this Licence.

Counterparts

39. This Licence may be executed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall be deemed to constitute one and the same document. The execution of this Licence will not become effective until counterparts hereof have been executed by all the parties hereto. Counterparts may be executed either in original or electronic form and the parties adopt any signatures received in electronic form as original signatures of the parties.

General

40. The City shall have the right to enter the Lands at any time for any reason.
41. The Restaurant agrees to ensure activities are limited to the typical operation of a commercial temporary outdoor patio and will not inhibit in any way the safety and enjoyment of the public or its use of the adjacent public owned lands.
42. The Restaurant shall not alter, add to or vary in any way any part of the Lands without the prior approval of the City.
43. This Licence shall not be assignable by the Restaurant without the consent of the City, which consent may be arbitrarily refused.
44. This Licence shall enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.
45. Schedules "A" and "B" attached to this Licence form part of this Licence. The recitals at the head of this Licence are true and accurate and form a part hereof.
46. No amendment to this Licence shall be effective unless it is in writing and signed by both parties.
47. The failure of any party to exercise any right, power or option or to enforce any remedy or to insist upon the strict compliance with the terms, conditions and covenants under this Licence shall not constitute a waiver of the terms, conditions and covenants herein with respect to that or any other or subsequent breach thereof nor a waiver by that party any time thereafter to require strict compliance with all terms, conditions and covenants hereof, including the terms, conditions and covenants with respect to which the party has failed to exercise such right, power or option. Nothing shall be construed or have the effect of a waiver except an instrument in writing signed by a duly authorized officer of the applicable party which expressly waives a right, power or option under this Licence.

48. The headings in this Licence have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope of meaning of this Licence nor any of the provisions hereof.
49. The Restaurant shall not have the right to register this Licence or notice thereof against title to the Lands or any part thereof.

In Witness Whereof the City and the Restaurant have executed this Licence as of the date first written above.

Big Bite Gourmet Burgers Inc.

Name: Srikanthan Nadarajah
Title: Owner

Name:
Title:

I/We have authority to bind the Corporation.

The Corporation of the City of Pickering

Dave Ryan, Mayor

Susan Cassel, City Clerk

Schedule "A"

Location Map of the Lands

Location of temporary patio on City of Pickering lands, known legally as:

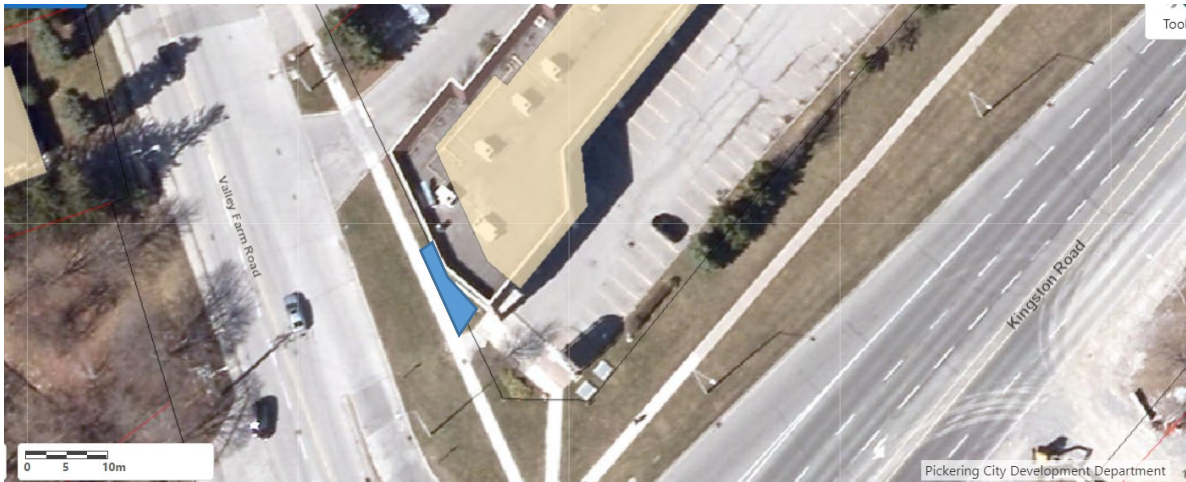
Valley Farm Road, between King's Highway No. 2 (aka Kingston Road) & Finch Avenue; being the road allowance between Lots 20 & 21, Concession 1 Pickering



 Portion of temporary patio on City boulevard adjacent to 1550 Kingston Road, Unit 50

Schedule “B”

Location Map of the Temporary Patio



Temporary Patio Location – Big Bite Grill

Municipal boulevard adjacent to 1550 Kingston Road, Unit 50 Road, Pickering



City of
PICKERING
City Development
Department

Location Map

Report Number: PLN 33-22

Applicant: Big Bite Gourmet Burgers Inc.

Municipal Address: 1550 Kingston Road, Unit 50

Contact The City of Pickering City Development Department for Digital Copies of this Plan.

Date: June 16, 2022