



**SUBJECT: Pop-up Patio Pilot Project Update**  
**TO: Planning and Development Committee**  
**FROM: Planning and Building Department**

Report Number: PB-20-17

Wards Affected: 2

File Numbers: 560-08

Date to Committee: April 4, 2017

Date to Council: April 18, 2017

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**Recommendation:**

Enact the by-law, attached as Appendix A, to Planning and Building Department report PB-20-17 to authorize the Director of Transportation Services to temporarily remove the common law right of passage over certain portions of streets within the downtown for the installation of seasonal on-street patios as approved under delegated authority by the Director of Planning and Building; and

Approve the continuation of the pop-up patio pilot project for an additional year, with staff reporting back to Council at a future date following a re-evaluation of the project with respect to the review process and matters including but not limited to design, safety, and fees.

**Purpose:**

The purpose of this report is to provide an update on the pop-up patio pilot project and outline staff's recommendation for a formal application and review process for the seasonal on-street patios starting in 2017.

**Core Commitment**

The pilot project aligns with the guiding principles of *Prosperity, Vibrancy, and Balance* rooted in Core Commitment – Burlington's Downtown Vision and Action Plan.

**Strategic Plan**

The pilot project aligns with the following strategic directions and objectives:

### A City that Grows

- Promoting Economic Growth
  - 1.1.e Small businesses contribute to the creation of complete neighbourhoods where residents are close to goods and services.
  - 1.1.g Burlington's downtown is vibrant and thriving with greater intensification attracting both businesses and people to enjoy the quality of life.
- Intensification
  - 1.2.h Burlington has a downtown that supports intensification and contains green space and amenities, has vibrant pedestrian-focused streets, is culturally active and is home to a mix of residents and businesses

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## Background and Discussion:

In 2015, Council approved the pilot project for “pop-up” patios, which authorized a single on-street patio in the downtown during the summer of 2015. The request originated from the owner of a restaurant at 455 Brant Street (formerly Test Kitchen).

In 2016, Council approved the expansion of the pop-up patio pilot project, authorizing the Director of Planning and Building to approve up to ten (10) on-street patios within the downtown based on newly developed location criteria in concert with the design standards developed in the first year (collectively attached hereto as Appendix B – Pop-up Patio Evaluation Criteria).

Additionally, changes were made in year two to the original licensing agreement respecting conditions related to securities, signage and removal protocol.

## Current Status

In 2016, one (1) restaurant participated in the pilot project with the temporary installation of a seasonal “pop-up” patio on two (2) on-street parking stalls in front of the business.

While the patio was in operation, staff frequently observed that the patio was well utilized by patrons from Monday to Friday during the midday and evening periods. In this regard, the pop-up patio was successful in animating the downtown, added more “feet on the street”, and was an improvement to the public realm.

Also, staff is pleased to note that during the past two summers, there were no safety incidents nor formal complaints reported in connection to the pilot project.

In anticipation of the continuation of this pilot, the Burlington Downtown Business Association (BDBA) has recently reached out to downtown restaurant owners/operators with the hopes of gauging the level of interest for the upcoming season.

At this time, staff is aware of two downtown businesses that are interested in participating in constructing pop-up patios for the summer of 2017 (370 Brant Street – The Coop and 455 Brant Street – Papa Giuseppe's). Subject to the evaluation criteria (attached hereto as Appendix B), staff will work with the business owners/operators to establish the proposed pop-up patios.

### **Impacts of Pilot Project**

To understand the impact of this pilot project, staff, in partnership with the BDBA, conducted a survey of the businesses within the immediate vicinity of the one and only pop-up patio last year. The survey was completed by 8 of the 10 businesses, including the sole participating restaurant. The results of the survey are attached hereto as Appendix C.

Overwhelmingly, the survey respondents were of the opinion that the pilot project is a benefit to the downtown. However, of those businesses surveyed, opinions were divided regarding whether the project brought additional people to the downtown and/or to their businesses. Also, half of the respondents felt the timeframe for the project was too long whereas half felt the timeframe was just right. Of those that felt the timeframe was too long, suggestions were made to shorten the season to end after Labour Day weekend.

In last two pilot years, the pilot project ran from May 15<sup>th</sup> to October 15<sup>th</sup> (a total of 5 months/154 days). It is recommended that the same timeframe be utilized this season. This comment will be monitored and re-evaluated at seasons end.

### **Application and Review Process**

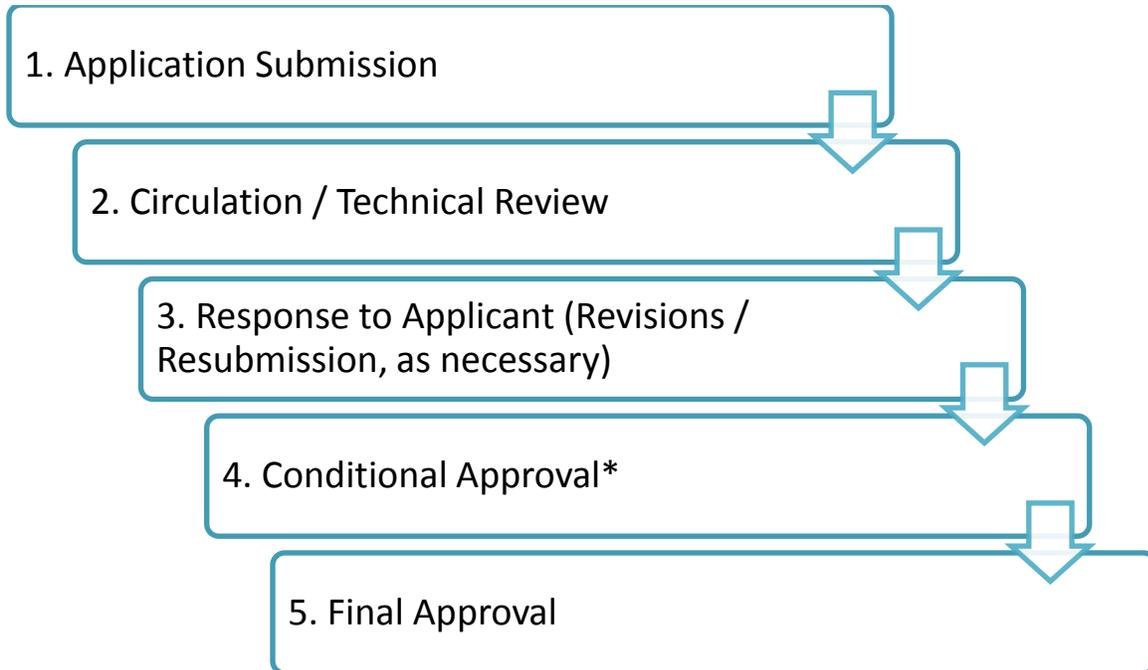
In 2016, staff proposed the creation of a formal application and review process for pop-up patios beginning in 2017. Moving forward with the pilot project this year, this process will include a deadline for applications, internal review and approval by staff, execution of necessary licensing agreements, and inspections once the pop-up patios have been built.

In collaboration with the BDBA, staff will promote the pop-up patio pilot project through communications to local businesses and a dedicated city webpage.

An annual call for applications will be released in advance of the upcoming patio season. A deadline will be established for application submission in order to provide staff adequate time for internal review and approval prior to the prime outdoor patio season. For this year, the deadline for submissions of a complete application is April 15<sup>th</sup> at 4:30pm. However, in future years, staff will establish an earlier deadline (e.g. Feb. 1<sup>st</sup> of each year). Should a restaurant wish to make an application after the deadline, applications will continue to be accepted on a first come first serve basis,

provided that applications do not exceed the maximum of ten (10) locations. Staff will make best efforts to process these applications as expeditiously as possible.

The approval and review process will follow these five steps:



\*Conditional approval can be obtained within 2 weeks of the submission deadline.

### **Additional Changes**

In the development of a more formalized approval and review process, staff has identified one potential regulatory barrier to a speedier and streamlined approval process. Currently, in order to allow for patios to legally locate on a portion of the roadway occupied by a parking stall(s) it is necessary for Council to approve a by-law under s.35 of the *Municipal Act*, to temporarily remove the common law right of passage over those portions of the roadway that will seat the patio. In this respect, each year that the project runs a new by-law must be brought forward for consideration and passing by Council. Additionally, should a new restaurant open following the initial call for applications and submission deadline and wish to install a new patio, subject to the above approval protocol, it would not be permitted until a by-law is enacted by Council – this could potentially consume the majority of prime outdoor patio season.

For these reasons, it is recommended that Council enact the proposed By-law, which would provide delegated approval authority to the Director of Transportation Services respecting temporary removal of the common law right of way.

### **Next Steps**

Staff will continue to monitor the performance of the pilot project, seek feedback from the community, businesses, and various stakeholders, and continue to provide an update to Council through the State of the Downtown Report.

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### **Financial Matters:**

The licensee is responsible for payment of fees to off-set the loss of revenue from on-street municipal parking stalls. The licensee is also required to provide adequate insurance coverage and securities in the amount of \$1,500 to protect against any damage to City property during construction, operation or removal of a pop-up patio.

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### **Public Engagement Matters:**

In January 2017, staff and the BDBA consulted with the owner of Papa Giuseppe's (Burlington) and adjacent business owners to collect feedback regarding the second year of the pilot project (refer to Appendix C).

Staff is working to develop a webpage that will outline the steps for applying for an on-street patio and make available an application form.

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### **Conclusion:**

The pilot project was initiated in 2015. Although only one business has participated, over the past two seasons, the installation has been viewed as a positive contribution to the downtown. Accordingly, staff recommends that the pop-up patio pilot project continue throughout the downtown and that future pop-up patio proposals remain subject to the established evaluation criteria and implemented through the new application and review process. Furthermore, staff recommends that the project be monitored and re-evaluated over the next couple of years in order to determine permanent solutions related to design, safety, parking, fees and charges, and the completion of other related city initiatives. Staff will continue to provide an update on the performance of the project through the State of the Downtown Report.

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Respectfully submitted,

Todd Evershed

Special Business Area Coordinator

335-7600 ext. 7870

**Appendices:**

- a. Amending By-law
- b. Evaluation Criteria
- c. Pop-up Patio Feedback
- d. Application Form

**Notifications:**

Brian Dean

brian@burlingtondowntown.ca

**Report Approval:**

All reports are reviewed and/or approved by Department Director, Director of Finance and Director of Legal. Final approval is by the City Manager.

**APPENDIX A – Amending By-law**

THE CORPORATION OF THE CITY OF BURLINGTON

BY-LAW NUMBER <#>-2017

A by-law to amend By-law 99-2012 as amended to delegate authority to temporarily restrict the common law right of passage over certain portions of Brant, John and Pine Streets to permit seasonal restaurant patios

WHEREAS section 23.1 of the *Municipal Act, 2001* S.O. 2001 c. 25, as amended, provides the Council may delegate some of its powers and duties under this or any other Act to City staff; and

WHEREAS Section 35 of the *Municipal Act, 2001* authorizes a municipality to pass by-laws removing or restricting the common law right of passage by the public over a highway; and

WHEREAS subsection 8(4) of the *Municipal Act, 2001* provides that a by-law passed pursuant to that Act may be general or specific in its application and may differentiate in any way and on any basis a municipality considers appropriate;

WHEREAS the Core Commitment Downtown Vision and Action Plan approved by City Council in November 2013 speaks of creating an active waterfront downtown destination that showcases the cultural heart of Burlington; and

WHEREAS City Council has determined that it is appropriate to allow restaurant patios to locate on a seasonal basis on certain streets within the Downtown Core where on-street parking is permitted;

NOW THEREFORE the Council of The Corporation of the City of Burlington hereby enacts as follows:

1. By-law 99-2012 as amended is hereby further amended as follows:
2. Section 1 Road Closures be amended by replacing the term “Director of Engineering” in the first paragraph with the term “Executive Director of Capital Works”.
3. Section 1 Road Closures be amended by adding the following immediately after the first paragraph:

“The authority to restrict the common law right of passage to temporarily prohibit the passage of vehicles as defined in the *Highway Traffic Act* R.S.O. 1990, c.H.8 between April 1<sup>st</sup> and October 31<sup>st</sup> in any given year over those portions of Brant, John and Pine Streets where on-street parking is permitted, for the purposes of seasonal restaurant patios is delegated to the Director of Transportation Services

and the Executive Director of Capital Works or their designates, subject to the following:

- (a) The Director of Transportation Services or the Executive Director of Capital Works shall determine on a year to year basis the specific times and locations on Brant, John and Pine Streets where the common law right of passage be restricted; and
- (b) Approval for seasonal restaurant patio road closures is conditional upon the applicant for the seasonal restaurant patio having first entered into a licence agreement with the City to the satisfaction of the City Solicitor or designate. The licence agreement shall address payment of fees, appropriate design standards, securities, signage, removal protocol, indemnification of the City, provision of liability insurance, and any such additional matters as the City Solicitor or designate may determine as necessary.”

ENACTED AND PASSED THIS 18<sup>th</sup> day of April, 2017.

\_\_\_\_\_ MAYOR  
Rick Goldring

\_\_\_\_\_ CITY CLERK  
Angela Morgan

## **APPENDIX B – Pop-up Patio Evaluation Criteria**

### **Location Criteria**

Applications for a maximum of ten (10) seasonal on-street patios in the downtown will be considered in the context of the following criteria:

- Permitted only on a street with existing on-street parking
- Permitted only on sites that have inadequate space to construct a conventional sidewalk patio while maintaining a minimum 2 m clear path
- Permitted only where the pop-up patio can be located directly in front of the business
- Must be located at least one (1) parking stall away from an intersection
- Proposals will be assessed in accordance with vehicle volumes, sightlines and visibility to the satisfaction of the Director of Transportation
- Proposals must not obstruct underground utility access, electrical transformer vaults, utility boxes, parking meters, loading zones, transit stops and other infrastructure
- Proposal must avoid conflicts with existing pedestrian crossings

### **Design Standards**

- Patio deck (floor structure) must have a flush transition at the sidewalk and curb to permit easy access and avoid tripping hazards
- The sub-structure must accommodate the crown of the road and provide a level surface for the patio
- Patio deck must have a slip-resistant surface
- Patio deck must be designed for 100 pounds per square foot
- Patio, including entrances, must meet accessible design standards
- Gates must swing in to the patio space and not obstruct the sidewalk
- Fencing to define the space and be capable of withstanding at least 200 feet of horizontal force
- Proposal must have vertical elements that make them visible to traffic, such as flexible posts, bollards or landscape planters
- No umbrellas or other treatments can extend into the sidewalk or travelled portion of the road
- Patios must be buffered using a wheel stop at a desired distance of 1.2 m (4 feet) from the patio to ensure visibility to moving traffic and parking cars
- The patio must provide a 0.3 m (30 cm) buffer between the fenced edge and the limit of the parking stall
- Lighting and signage will be subject to review and will be designed and installed in such a way as to not create a visual or physical distraction to travelling public in the sidewalk or road

### **Other Criteria**

- Proponent must provide proof of consultation with adjacent business neighbours
- Promotional signage/advertising will not be permitted on the patio

**APPENDIX C – Pop-up Patio Feedback**

Feedback from Burlington Downtown Businesses, January 2017

**Are you familiar with the Pop-up Patio that was constructed at Papa Giuseppe’s during the summer and fall of 2016?**

	Response percent	Response total
Yes	<b>100%</b>	<b>8</b>
No	<b>0%</b>	<b>0</b>
	<b>100%</b>	<b>8</b>

**Do you think the Pop-up Patio brought additional people to the downtown?**

	Response percent	Response total
Yes	<b>43%</b>	<b>3</b>
No	<b>57%</b>	<b>4</b>
	<b>100%</b>	<b>7</b>

**Do you think the Pop-up Patio brought additional people to your business?**

	Response percent	Response total
Yes	<b>43%</b>	<b>3</b>
No	<b>57%</b>	<b>4</b>
	<b>100%</b>	<b>7</b>

**Overall, do you think the Pop-up Patio was a benefit / improvement to the downtown?**

	Response percent	Response total
Yes	<b>83.33%</b>	<b>5</b>
No	<b>16.66%</b>	<b>1</b>
	<b>100%</b>	<b>6</b>

**Do you feel the timeframe of the Pop-up Patio in 2016 (mid-May to mid-October) was too long, too short or just right?**

	Response percent	Response total
Too long	<b>50%</b>	<b>4</b>
Too short	<b>0%</b>	<b>0</b>
Just right	<b>50%</b>	<b>4</b>
	<b>100%</b>	<b>8</b>

**I like the Pop-up Patio because:**

Comments:	Response total
Look visually nice but it does take up parking. I think its great but of no benefit to other downtown businesses. Truly benefits the business itself, but we have no problem with the program.	<b>7</b>
July and August only – lots of tourist traffic – not as much parking needed as weather is conducive to walking	
Brings excitement to downtown	
Doesn't really help us. We need a restaurant similar to the Test Kitchen. Restaurants like The Works and Papa Giuseppe's bring families down. They eat and leave.	
Brings people downtown	
It added a wonderful aspect to our newly opened restaurant and was truly a unique feature.	
It gives restaurants that do not have a patio an opportunity to compete in the summer months	

**The Pop-up Patio could be improved by:**

Comments:	Response total
Shorter duration – July and August – makes it more of a 'special event'. We really feel that in order to sustain the retail businesses, parking needs to be improved. The majority of our business attracts customers from outside of Burlington.	<b>6</b>
Going shorter on time, ending after Labour Day weekend.	
As stated above, a restaurant that brings an older demographic to downtown.	
Keep consistency in repeat designs. Require ashtrays outside of restaurants.	
Perhaps having a temporary walkway around the patio instead of between the patio and restaurant either way it was wonderful and we look forward to another summer with it.	
Shorten the time	

Deliver To:

Special Business Area Coordinator  
Planning Division, Burlington City Hall  
426 Brant Street, Second Floor  
Burlington, ON L7R 3Z6

**APPENDIX D – Application Form**

<b>For office use only:</b>	
File #:	_____
Application Fee: \$	_____
Date:	_____

**ON-STREET PATIO PILOT PROJECT  
APPLICATION FORM**

The on-street patio application must be deemed complete before it is accepted for processing.  
A complete application includes:

1. The correct application form properly filled in;
2. Submission of all applicable fees; and
3. Five (5) sets of the required plans and drawings including all items set out in the evaluation criteria.

<b><u>Applicant Information</u></b>		
<b>Name of Establishment:</b>	<b>Contact Name:</b>	
	<b>Phone#:</b>	<b>Ext.:</b>
	<b>Email:</b>	
<b><u>Occupancy Information</u></b>		
<b>Location of Proposed Patio (municipal address of establishment):</b>		

I acknowledge that the Patio must be licensed with the AGCO if selling and serving alcoholic beverages:

Declaration of Applicant:

I, \_\_\_\_\_, certify that: i) the information  
(Print Name)

contained in this application, attached document(s), plans, drawings and specifications is true to the best of my knowledge; and ii) I have authority to bind the corporation or partnership (if applicable).

\_\_\_\_\_  
(Signature of Applicant)

\_\_\_\_\_  
(Date)