



**SUBJECT: Recommendations for the Pop-Up Patio Program in downtown Burlington**

**TO: Community Planning, Regulation & Mobility Cttee.**

**FROM: Community Planning Department**

Report Number: PL-11-20

Wards Affected: 2

File Numbers: 560-08

Date to Committee: March 10, 2020

Date to Council: March 30, 2020

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**Recommendation:**

Approve the continuation of the Pop-Up Patio Program for downtown Burlington; and Authorize the Mayor and City Clerk to execute any documents in connection with this matter, subject to the satisfaction of the Executive Director of Legal Services.

**PURPOSE:**

The purpose of this report is to provide Council with a re-cap of the past five years of the pop-up patio program since its inception in 2015. The report also recommends the permanent establishment of the program as well as some minor modifications to the program for 2020 and beyond.

**Vision to Focus Alignment:**

The pop-up patio program contributes to the achievement of supporting small business.

- Increase economic prosperity and community responsive city growth

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**Background and Discussion:**

Burlington's pop-up patio program allows downtown businesses to establish temporary seasonal patios by using existing on-street parking spaces along Brant, John, and Pine

Streets. In addition, in order to be eligible to establish a pop-up patio, the following location criteria would have to be met:

- a 2 metre wide clear path must be provided between the patio and the establishment for safe passage of pedestrians
- the pop-up installation must be located directly in front of the associated business
- the pop-up patio must be located at least one parking stall away from an intersection
- clearance must be provided to ensure vehicle volumes, sightlines and visibility to the satisfaction of the Director of Transportation Services
- pop-up patios must not obstruct underground utility access, electrical transformer vaults, utility boxes, parking meters, loading zones, transit stops and other infrastructure
- pop-up patios must avoid conflicts with existing pedestrian crossings

The season currently runs between mid-May to mid-September.

### History of Pop-up Patios

In 2015, Council approved a pilot program to permit a single pop-up patio at 455 Brant Street through by-law 51-2015 (DID-07-15). In 2016, the pilot was extended and continued to 2017, permitting a maximum of 10 pop-up patios as well as a modified evaluation criteria and license agreement. By the 2017 season, there were two participating restaurants (370 and 455 Brant St). By-law 18-2017 was introduced through PB-20-17 and was enacted by Council on April 18, 2017 which delegated authority to staff to temporarily restrict the common law right of passage over certain portions of Brant, John and Pine Streets to permit seasonal restaurant patios.

In 2018, Council approved an additional 2-year extension of the pop-up patio program along with modifications to the program (limiting seating and table top heights to ensure sightlines and visibility for traffic and parking), a reduced season, ending in mid-September (from October) as well as the introduction of an alternate design to the traditional on-street pop-up patio which permitted sidewalk patios immediately adjacent to the establishment, and the creation of a “boardwalk” through the on-street parking stall.

In 2019, a third pop up patio was approved on Brant Street at 380 Brant St.

Each of the three participating restaurants provides a slightly different version of a pop-up patio. 370 Brant Street (the Coop) is an example of a traditional on-street pop-up patio constructed within the parking stall, allowing pedestrians to travel between the patio and the restaurant. 455 Brant Street (the Pump) is an example of the alternate design which locates the patio on the sidewalk directly adjacent to the establishment

and creates a pedestrian boardwalk around the patio, through the parking space. Both patios were of wood construction and were constructed on site and stored for subsequent seasons. 380 Brant Street (Wendel Clark's) is an example of a rental patio which is constructed to specific specifications by a third-party company and rented for the duration of the season. The patio was constructed of wood and metal and includes installation and de-construction by the company. All patios are required to have wheel stops to prevent vehicles from hitting the patios or boardwalks, as well as planters to add vibrancy and greenery to reduce the impact of the patios on the streetscape.

Staff is recommending that the program continue to support a variety of patio options going forward.

### **Strategy/process**

Staff is recommending that the pop-up patio program move from a pilot project and continue as a regular and recurring program to promote a vibrant and animated downtown. Staff believe that the establishment of a permanent program would provide more certainty to restaurant owners and operators and could assist in encouraging new restaurant owners and operators to make the investment needed for the design, certification and construction or rental of a pop-up patio. Year over year, the costs are reduced as patios are re-used and reconstructed and the fees become reduced to only those for an engineer's certification on the installation and the parking fees. The cost to participate is substantial for small businesses, especially in the initial years. Given the program's status as a pilot, there was some uncertainty as to the program's permanence. Staff believe that approving the program as a permanent fixture in the Downtown may encourage additional restaurants and business owners to make the investment and participate in the program for years to come. It is the intent of staff to continue to build the program year over year through both new pop-up patio applications and new and creative ways bring additional vibrancy to the Downtown including, for example, pop-up parklettes and short-term pop-up patio installations.

Staff is also recommending the following change to the program going forward:

Additional patios and animation: In conjunction with the Burlington Downtown Business Association (BDBA), staff are working to explore a moveable pop-up patio option that could promote other businesses to participate in the program that would normally not be able to and for a reduced cost and duration. Coffee shops and non-licensed restaurants would be ideal candidates who could use the patio for a reduced period, eliminating the large startup costs and opening up accessibility for those establishments to try out the program. The patio could also be used to generate animation and create a more consistent streetscape of patios.

On a go forward basis, participants in the pop-up patio program will continue to be required to enter into a license agreement to the satisfaction of the Executive Director of Legal Services. The City's form of license agreement will be reviewed and updated periodically to ensure that it continues to meet the City's requirements and current best practices with regards to licensing of pop-up patio installations.

### **Options Considered**

To date there has been consistent participation in the program, by a small number of establishments. Staff have had other inquiries from other prospective businesses that have chosen not to pursue an application for various reasons. Based on conversations with prospective applicants, it seems that the costs associated with the program may be a deterrent (especially the initial year). Given that the program was a pilot, it may have been difficult for some small businesses to justify the expense of the application. Additionally, establishments that are not serving alcohol are less likely to pursue the program due to the high costs and lower revenues.

Staff is of the opinion that there are three options for the pop-up patio program going forward: discontinue the program, approve an extension to the pop-up patio pilot program for a specified term, or to approve the program as a permanent Downtown offering.

Staff is recommending that the program be established permanently. Pop-up patios are growing in popularity, generate visual interest and contribute to the vibrancy of the downtown.

Staff recommends that the maximum of 10 pop-up patios in the Downtown continue to apply so that the on-street parking supply is not significantly reduced. All additional rules and regulations will continue to apply including the noise and nuisance bylaw. It is worth noting that pop-up patios are not permitted to host live music/entertainment uses.

In order to achieve higher uptake on the program, staff is recommending that in consultation with the Executive Director of the BDBA, enhanced promotion of the program be undertaken which may include visits to potential applicants and assistance with the application process.

Staff recommend that annual reporting on the program to Council be conducted through the State of the BIA's report.

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### **Financial Matters:**

Fees for parking are collected based on the daily maximum parking rates for the duration of the program (4 months), including set up and take-down of the patios. There

are no fees charged for the administration of the program. Securities are collected to ensure that the road way and sidewalks are not damaged during the occupation of the parking spaces or sidewalks or the program.

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## **Climate Implications**

Not Applicable

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## **Engagement Matters:**

Staff have consulted with the Burlington Downtown Business Association on the recommendations contained within this report. As is our successful and well-established practice, staff and the BDBA will continue to work closely to promote participation in the program and to assist in animating the Downtown.

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## **Conclusion:**

The pop-up patio program participation has been consistent and growing over the past five years. Staff is recommending that the program be established permanently to provide more certainty to the downtown businesses. The program assists in creating a vibrant, animated and walkable downtown and, supplemented with some increased promotion with local business owners, staff recommends the program continue.

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Respectfully submitted,

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Special Business Area Coordinator

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## **Notifications:**

Brian Dean, Burlington Downtown Business Association  
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**Report Approval:**

All reports are reviewed and/or approved by Department Director, the Chief Financial Officer and the Executive Director of Legal Services & Corporation Council. Final approval is by the City Manager.