



SUBJECT: City of Burlington Outdoor Patio Program for 2023
TO: Community Planning, Regulation & Mobility Cttee.-PM
FROM: Community Planning Department

Report Number: PL-06-23

Wards Affected: All

File Numbers: 560-01

Date to Committee: March 20, 2023

Date to Council: March 21, 2023

Recommendation:

Enact By-law 2020.455, attached as Appendix A to community planning department report PL-06-23, to permit temporary outdoor patios on private property; and

Waive the fees and requirements for site plan approval and zoning clearance certificate for temporary outdoor patios and temporary tents (structures) on private property until Jan. 1, 2024, and on public property until Oct. 31, 2023; and

Authorize the Executive Director of Community Planning, Regulation and Mobility, working in consultation with the Director of Community Planning, to approve temporary outdoor patios on private property, subject to such criteria and conditions as staff deem appropriate; and

Direct the Director of Community Planning to initiate an application process to implement a plan for the use of public property in Downtown Burlington for temporary outdoor patios; and

Authorize the Executive Director of Community Planning, Regulation and Mobility, working in consultation with the Director of Transportation, to approve temporary outdoor patios for restaurant and/or retail spaces on public property in Downtown Burlington, subject to such criteria and conditions as staff deem appropriate; and

Authorize the Executive Director of Legal Services and Corporation Counsel, working in consultation with the Executive Director of Community Planning, Regulation and

Mobility to approve licence agreements or such other agreements or documents as may be required to permit the temporary use of public property for approved temporary outdoor restaurant and/or retail space patios; and

Enact By-law XX-2023, attached as Appendix B to community planning department report PL-06-23 to authorize the Director of Transportation to temporarily restrict the common law right-of-passage for vehicles over certain portions of streets within Downtown Burlington to facilitate the installation of temporary outdoor patios for restaurant and/or temporary retail space and create safe pedestrian passage ways; and

Authorize the Executive Director of Community Planning, Regulation and Mobility to execute any agreements necessary to implement the recommendations set out in community planning department report PL-06-23 in a form satisfactory to the Executive Director of Legal Services and Corporation Counsel and with content satisfactory to the Executive Director of Community Planning, Regulation and Mobility; and

Authorize the Director of Community Planning to grant or revoke such other approvals, consents, agreements or other authorizations and to take any such other steps as may from time to time be required to implement the recommendations set out in community planning development report PL-06-23.

PURPOSE:

This report speaks to the continuation of the existing Temporary Outdoor Patio Program (2020-22) for the 2023 patio season and recommends approval of a new temporary use by-law and by-law to restrict the common law right of passage by the public over a highway, which will continue to authorize the approval of temporary outdoor patios on both private and public property in a manner that is streamlined and eases zoning restrictions for such uses.

Vision to Focus Alignment:

- Increase economic prosperity and community responsive city growth
 - Improve integrated city mobility
 - Support sustainable infrastructure and a resilient environment
 - Building more citizen engagement, community health and culture
 - Deliver customer centric services with a focus on efficiency and technology transformation
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Background and Discussion:

In December 2022, Council directed staff to continue the existing Temporary Outdoor Patio Program in 2023, without application fees, and the requirement for patio operators to provide liability insurance for public property patio area in the amount of \$2 million, naming the City as an additional insured on the policy.

Council also provided additional directions including:

1. Endorsing, in principle, the draft Patio Design Guidelines, with modifications resulting from additional stakeholder consultation to be included in a future report to Council;
2. Directing the Mayor to work with the Deputy Mayor of Community Engagement and Partnerships and Deputy Mayor of Recreation and Community Services to convene a stakeholder meeting toward a permanent patio program and support to our hospitality industry;
3. Directing the Chief Financial Officer to report back on the use of the Municipal Accommodation Tax for the 2023 season for centrally managed patio walkway system to furnish the public realm and deliver enhanced safety and support active transportation;
4. Directing the Director of Community Planning to report back around options for beautification of traffic barriers, cost options, and funding options, including a scoped option for the 2023 season for areas with contiguous patios through a centrally managed patio walkway system; and
5. Directing the Director of Community Planning to provide an overview of strategic community development options, including but not limited to a CIP and/or upper level government funding options and anticipated timeframe.

Since the Dec. 6, 2022 Community Planning, Regulation and Mobility Committee meeting when these directions were carried, the Special Business Area Coordinator staff position, which oversees the City's Patio Program, has been vacated and is currently unresourced. Given these current staffing resource challenges, this report deals with directions 2. and 3. as listed above to ensure the continuation of the temporary outdoor patio program for the 2023 season. This report does not address directions 1. and 5. listed above. Staff will report back on all outstanding Council directions relating to a permanent city-wide outdoor patio program through a future update, anticipated in Q4 2023, prior to the 2024 patio season.

While there is a strong desire to implement a consistent set of design guidelines for patios, staff and Council heard from the Burlington Downtown Business Association (BDBA), the Burlington Restaurant Association (BRA) and Burlington Economic Development at the December 2022 Community Planning, Regulation and Mobility Committee meeting that there remain challenges for restaurant and bar operators from

a cost perspective, particularly around fees and insurance. This feedback is reflected in Council's decision to continue the prior years' Temporary Outdoor Patio Program for the 2023 season, while continuing to work on a permanent program for the 2024 season and beyond.

This report focuses on two key themes arising from the Dec. 6, 2022 Community Planning, Regulation and Mobility Committee meeting. The first being the implementation of the bylaws and regulations necessary to continue the 2020-22 Temporary Outdoor Patio Program in 2023; and the second being next steps arising from the Council directions of December 2022 towards the implementation of a permanent patio program in 2024.

This report has been prepared in collaboration with City staff from the Finance, Legal, Transportation Services, Recreation, Community and Culture, and Roads, Parks and Forestry departments.

Strategy/process

Temporary Outdoor Patio Program for 2023

As has been the case in previous years, this report recommends approval of a temporary use by-law (see Appendix A of this report) to allow for the operation of temporary outdoor patios on private property and by-law (see Appendix B of this report) to delegate authority to the Director of Transportation to restrict the common law right-of-passage to temporarily prohibit the passage of vehicles to permit on-street (curb lane) patios for restaurant and/or retail uses on public property in the downtown.

Private Property - Temporary Use By-law

Outdoor patios on private property are regulated by zoning. A bylaw is needed to extend temporary permissions to allow for patios on private property. If approved, staff will work with previous approval and permit holders to renew such approvals, permits or other authorizations.

This bylaw will authorize temporary outdoor patio uses including temporary tents (structures), and eases zoning restrictions for such uses on private property. Since 2020, the approach has been to enact, and extend as necessary, temporary use bylaws, which relaxed provisions relating to patios in the prohibited uses section of the Zoning By-law. Those bylaws have since lapsed and are no longer in effect.

The proposed temporary use by-law (see Appendix A of this report), proposes minor changes to better align with Alcohol and Gaming Commission of Ontario requirements and the feedback received from patio operators. One notable change is the addition of other uses that are permitted to have a temporary outdoor patio. In prior years,

temporary outdoor patios were only permitted in association with an existing approved restaurant. Through discussion with key stakeholders, it was suggested that this permission be extended to other types of businesses.

Staff are recommending temporary outdoor patios be permitted in association with the following uses on a trial basis:

- Banquet Hall;
- Community Institution, except those in a residential zone;
- Convenience/Specialty Food Store;
- Convention/Conference Centre;
- Entertainment Establishment;
- Food Processing and Manufacturing;
- Hotel;
- Night Club;
- Recreational Establishment; and
- Supermarket/Grocery Store.

As part of the stakeholder feedback received, it was felt that the option to participate in the program should be extended to other hospitality sectors, as defined by the Zoning By-law. Additionally, by allowing community institutions and food processing and manufacturing uses to participate in the Temporary Outdoor Patio Program, it provides greater flexibility to enhance their operations and in hosting special events on private property.

The proposed bylaw also recommends changes to the date range of seasonal patio operations and capacity limits for patios. The previous temporary use bylaws relied on a lapsing date, whereby the bylaw would cease to apply. However, they did not set out a period within which seasonal patios could operate.

The proposed temporary use bylaw (see Appendix A) mirrors the language outlined in the *Liquor Licence and Control Act*, 2019, which states that:

“...no Seasonal Outdoor Patio or physical extension of a licensed premises shall be permitted for more than a total of eight months in a calendar year”.

With respect to capacity limits on patios, the current definition of Patio, Outdoor in Zoning By-law 2020 states that patio seating shall not exceed 50% of the capacity of the restaurant. This was increased to 100% of the capacity of the restaurant through the previous temporary use by-laws.

Staff recommend that seasonal outdoor patios follow a ratio of 1.11 square metres per person, which is directly in line with the *Liquor Licence and Control Act*, 2019. Staff believe this provides for greater flexibility for those businesses wanting to set up extra

tables and chairs, while implementing a maximum ratio of how many people would be able to expand into a patio permitted area (1.11 square metres per person).

The previous in-effect temporary use bylaw lapsed on Jan 1, 2023. Staff are recommending the new temporary use bylaw expire on March 21, 2026, in line with the maximum permitted period a temporary use bylaw or extension can be in effect pursuant to Section 39 of the *Planning Act*, being a period of not more than three years. As noted above, it is anticipated that a permanent program will be implemented for the 2024 season. Prior to its approval, staff would bring forward a final report and recommended zoning by-law amendment, which at the same time would repeal the temporary use by-law. The recommended three year period therefore alleviates the need to extend the bylaw any further prior to a permanent program coming into effect.

Public Property

This section of the report recommends continuing the approach to patios located in a public right-of-way exercised as part of the 2020-22 Temporary Outdoor Patio Program by delegation of authority to the Director of Transportation to temporarily restrict the common law right-of-passage for vehicles over limited portions of roadways, namely on-street parking spaces, where temporary patios or other retail uses may be considered. This delegation would continue to apply to the downtown only. As staff continue work on implementing a permanent patio program for 2024, curb lane or sidewalk patios may be extended to other areas of the City. Staff recommend that Council approve the draft bylaw to this effect (see Appendix B of this report).

As in years past, any business with an outdoor patio that encroaches onto City owned property or the public right-of-way will be required to enter into a licence or similar agreement with the City before being allowed to occupy and make use of public property. These agreements will include provision for matters such as insurance and indemnification of the City, termination and removal of patio uses, maintenance and safe upkeep of patios throughout the term, and compliance with applicable laws and regulations.

As was the case in 2022, no fees will be collected and the \$2-million liability insurance for public property patios, with the City named as an additional insured on the policy will be carried forward.

Application Process for 2023

The application process for the 2023 season will remain the same as in prior years. Patio operators will apply electronically through the City's [Temporary Outdoor Patios web page](#), which will allow staff from across the City to assess each application on a case-by-case basis to ensure that the City can assess impacts such as pedestrian safety, the need for selective street changes, design, access and accessibility.

AGCO – New Requirements for Temporary Outdoor Physical Extensions (Patios)

In 2022, the provincial government amended Ontario Regulation 746/21 to the Liquor Licence and Control Act to establish new options for approving temporary outdoor physical extensions, which took effect January 1, 2023. The new framework replaces the temporary Alcohol and Gaming Commission of Ontario (AGCO) policy that was in place between 2020 and 2022 and allows municipalities to approve temporary outdoor physical extensions if certain criteria are met.

Options Considered

Beautification Options for the 2023 Patio Season

In December 2022, Council directed staff to report back the Community Planning, Regulation and Mobility Committee to provide options for beautification of traffic barriers, including cost options and funding options, and including a scoped option for the 2023 season for areas with contiguous patios through a centrally managed patio walkway system.

Option 1 – Tactical Approach (Recommended)

In 2023, the City can repurpose its existing traffic barriers using a feasible medium such as paint or a large decal incorporating a variety of colours or graphics as a short-term beautification tactic while long-term design and aesthetic requirements are looked at in 2023 during the season. This approach can be strategically used where traffic barriers must be deployed to reduce costs.

- **Cost:** Minimal
- **Funding source:** May be absorbed by the 2023 Operating Budget as a one-time expense or through another potential source of funding.

Option 2 – Alternative Barriers (Not Recommended)

Staff looked at a scoped option for purchasing or renting new decorative barriers for the 2023 season, specifically for areas with contiguous patios, which would historically include segments of Lakeshore Road, running east and west of Brant Street, Elgin Street, running east of Brant Street, and a segment of Pine Street between Elizabeth Street and Pearl Street.

- **Cost:** It is anticipated that an estimated cost of \$30,000 plus HST to rent or \$42,000 plus HST to purchase, plus an estimated annual installation cost of \$15,500.00, for a total cost of \$57,500.
- **Funding source:** None identified.

This option presents concerns from a *Municipal Act* compliance, budgetary, and procurement perspectives for 2023 and on a go-forward basis. Additionally, the City

continues to develop design guidelines for the permanent program that will help to create a beautiful streetscape that is safe and accessible and will lead to a predictable set of design criteria. It should also be noted that the above estimates would only address the aesthetic quality of the traffic barriers and do not include the provision for a temporary platform level with the sidewalk to ensure accessibility standards are achieved, and which would be in line with the direction of the endorsed draft Patio Design Guidelines. Staff do not recommend this option.

Notwithstanding the above, the City will continue to install traffic safety equipment based on engineered traffic safety plans for individual patio areas, as required under Provincial Regulation, and will continue to review installations to promote design improvements, ensure consistent application of directional markings and wayfinding signage, and improve safety and access for pedestrian and bicyclists alike.

Option for Business Improvement Areas Involvement

Business Improvement Areas (BIAs) are responsible for the improvement, beautification, and promotion of their respective areas. BIAs hold deep knowledge of their unique streetscapes and are well suited to ensure the diverse needs of their member businesses are met through marketing and promotional activities such as special events and beautification programs.

The downtown BIA – the Burlington Downtown Business Association (BDBA) – has been a key partner in the implementation of the existing Temporary Outdoor Patio program. In 2022, all curb lane patios were within the boundaries of the BDBA, and the downtown BIA animated eight sidewalk patios with planters and maintenance for their planters along these areas.

To enable business owner/operators located within the boundaries of a BIA to have a sidewalk patio or expanded sidewalk patio area, it is recommended that a BIA be permitted to apply for customized BIA curb lane patios, which may include a pedestrian by-pass – or a centrally managed patio walkway – system as a pilot program in 2023. In recent engagement, the BDBA indicated their desire to take the initiative to support downtown business owner/operators by providing and installing a temporary pedestrian by-pass system, where permitted, in several locations within the downtown BIA. It would be the obligation of the BDBA to enter into any third party agreements with vendors/service providers for temporary pedestrian by-passes at their own expense.

The local BIA will be responsible to coordinate or mediate among business owners and operators and be subject to the same application process, review, approval and other conditions, as an individual business applying to the program.

City staff will need to review sidewalk patio and expansion requests to ensure that a curb lane patio in these locations do not conflict with a potential neighbouring patio

installation. This may impact timelines for business owner/operators as in some cases they may need to wait for the review of the plans submitted by the BIA to be completed before they receive their permit and begin their design. If supported by Council, staff will report back on the volume, impact and experience of customized curb lane patios in 2023 as part of the final report on a permanent program for the 2024 patio season.

In respect of risk and potentially liability, the BDBA is a local board of the City and is insured under the City's policy of insurance. In the event of any loss incurred in connection with the BDBA's installation of a temporary pedestrian by-pass system, it would fall to the City's insurer to respond to such claims, subject to the City's applicable deductible under its policies of insurance.

Use of the Municipal Accommodation Tax for Patio Infrastructure

Council also directed staff to report on the use of the Municipal Accommodation Tax (MAT) for the 2023 season for centrally managed patio walkway system to furnish the public realm and deliver enhanced safety and support active transportation.

The City's portion of the MAT revenue is intended to support projects and initiatives that:

- Result in measurable improvements to city services that enhance tourist experiences and increase their visitation; and
- Enhance Burlington's national and international profile as the best city to live in Canada through placemaking and place branding initiatives.

Staff do not recommend utilizing MAT funding for an outdoor patio program supporting select commercial establishments as it presents concerns from a *Municipal Act* compliance and equity perspective. As mentions above, it is recommended that a BIA support their members as part of an outdoor patio program to ensure the needs of their members are met.

Grant Programs

Over the last several years small business supports have been part of the City's advocacy program with both the Provincial and Federal government. Throughout the COVID-19 pandemic the City endorsed resolutions and recommendations from the Burlington Economic Recovery Network (BERN) calling on both levels of government to provide financial and legislative supports to small businesses. The City has continued to advocate on behalf of small business through our recent Pre-Budget Submissions to the Province of Ontario and the Government of Canada. During the 2022 Association of Municipalities of Ontario the Mayor together with Councillors Kearns and Bentivegna met with the Parliamentary Assistants to the Minister of Finance, MPPs Rick Byers and

Stephen Crawford requesting all levels of government remain responsive to the needs of the business community as recovery unfolds.

We have requested continued targeted support for the sectors hardest hit by the pandemic including the tourism and hospitality sector, small local retail businesses and recreation. We have also advocated for additional funding for the expansion of successful programs like The CaféTO Property Improvement Program. This program, funded by the Government of Canada through the Federal Economic Development Agency for Southern Ontario (FedDev Ontario), matched 50 per cent of the costs of eligible patio space improvements up to a maximum of \$7,500. This successful program model can be expanded and replicated in other municipalities in Ontario.

Government relations staff continues to look for funding programs that would be appropriate for applications by BIAs and/or their members.

The City of Burlington's commitment to supporting our small business community's recovery has not only been demonstrated through our advocacy efforts we have also provided financial support by way of forgone revenue to temporary removal of parking spaces; and an estimated annual cost of \$15,500 for the installation of traffic barriers and temporary asphalt ramps into the curb lane areas to create pedestrian by-passes around patios on public property.

Financial Matters:

Financial impacts related to the existing Temporary Outdoor Patio Program are described in [Report PL-76-22](#) presented to Council in December 2022.

Climate Implications

Curbsides have long been one of the most important spaces in cities, and for the most part they have been an afterthought with parking as the default use. By activating the curbside in a more valuable way for patio uses, it increases the vibrancy of the public realm, expands the pedestrian realm, and has changed the way people perceive the value of the right-of-way. A comprehensive, updated patio program would encourage walkability, prioritize pedestrian movements, which results in less dependence on the automobile as a mode of transportation.

Engagement Matters:

Since the December 2022 update to Council, staff have been in discussions with the BDBA, Tourism Burlington and members of the restaurant community to gather their

direct feedback in response to the patio program for 2023. Feedback received thus far has been generally positive. Staff will continue to engage with the identified stakeholders; through the Council direction to the Mayor and Deputy Mayors of Community Engagement and Partnerships and Recreation and Community Services to convene a stakeholder meeting toward a permanent patio program and support to our hospitality industry; and, with a further update on stakeholder engagement as part of the final report in Q4 2023.

Staff will continue to work with local BIAs and program participants on streamlining the approval process and program improvements.

The project page launched in early-September on Get Involved Burlington and will provide updates throughout the duration of the project. The City-Wide Patio Program page is available at: <https://www.getinvolvedburlington.ca/city-wide-patio-program>

Notice of the Statutory Public Meeting with respect to the proposed temporary use bylaw was published in the City Update section of the Burlington Post on Feb. 16, 2023. Notice of the meeting was also posted on the City's [Public Notices web page](#).

Conclusion:

This report proposes a continuation of the approval process, criteria and conditions for temporary outdoor patios developed in emergency response to provide the maximum level of economic support to the restaurant and hospitality industry during the COVID-19 pandemic, between 2020 and 2022 in response to Council direction. Staff will be bringing forward a final report and recommendations for a permanent city-wide program for curb lane and sidewalk patios that will set out parameters for a streamlined application and permit process, criteria, fees and patio design guidelines in Q4 2023. Additionally, at the same time in Q4 2023, staff will recommend approval of an amendment to Zoning By-law 2020 based on any new learnings during the 2023 season to permanently implement zoning standards for the outdoor patio program on private property in 2024.

Respectfully submitted,

Todd Evershed

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Appendices:

- A. Proposed By-law 2020.455
- B. Proposed By-law XX-2023

Notifications:

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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 Counsel.