



SUBJECT: City of Burlington Outdoor Patio Program

TO: Committee of the Whole

FROM: Community Planning Department

Report Number: PL-05-24

Wards Affected: All

Date to Committee: February 5, 2024

Date to Council: February 13, 2024

Recommendation:

Approve the establishment of a permanent city-wide seasonal outdoor patio program beginning in 2024 as outlined in Report PL-05-24; and

Approve the fee structure for the permanent city-wide seasonal outdoor patio program as detailed in Option 1 of Report PL-05-24; and

Direct the Director of Community Planning to prepare any necessary by-laws to create a permanent city-wide seasonal outdoor patio program and implement a fee structure, in a form satisfactory to the Executive Director of Legal Services and Corporation Counsel, or designate, for council consideration and approval; and

Enact By-law 2020.463 as contained in Appendix A of Report PL-05-24; and

Deem that the amending Zoning By-law conforms to the Official Plan of the City of Burlington; and

Endorse, in principle, the Seasonal Patio Guidelines for Outdoor Patios on Public Lands as set out in Appendix B to Report PL-05-24; and

Delegate authority to approve the Seasonal Patio Guidelines for Outdoor Patios on Public Lands as set out in Appendix B to Report PL-05-24, and any amendments, to the Executive Director of Community Planning, Regulation & Mobility, or designate.

PURPOSE:

The purpose of this report is to provide a response to the motion from the Community Planning, Regulation and Mobility Committee Meeting of Dec. 5, 2023, to:

Refer community planning department report PL-63-23 regarding the City of Burlington Outdoor Patio Program back to staff for additional information and further analysis and report back to the February 2024 committee cycle.

This supplemental report is intended to add clarity to PL-63-23 and proposes modifications to the proposed zoning by-law amendment and seasonal patio guidelines included as appendices to Report PL-63-23. These modifications have been completed following further research and analysis, and additional consultation with various internal and external stakeholders.

This supplemental report also proposes modifications to the proposed fees presented in Report PL-63-23 and provides council with a few options for consideration. The recommended fee structure has been modified to meet the need for the city to recover the full program's costs.

Vision to Focus Alignment:

The proposed program aligns with the following focus areas of Burlington's Plan From Vision to Focus 2018-2022:

- Increase economic prosperity and community responsive city growth.
- Improve integrated city mobility.
- Building more citizen engagement, community health and culture
- Deliver customer centric services with a focus on efficiency and technology transformation.

Background and Discussion:

Further information on the Decision History regarding the Temporary Patio Program, and the History and Past Participation in the Pop-Up and Temporary Patio Programs can be found in [Report PL-63-23](#) and its appendices.

Strategy/process

1. Proposed Changes to Recommendations for Outdoor Patios on Private Property

1.1. Proposed Changes to Recommended Zoning By-law Amendments for Outdoor Patios on Private Property

Outdoor patios on private property are regulated by the City's Zoning By-law 2020, as amended.

Report PL-63-23 proposed amendments to the city's Zoning By-law that included regulations to maintain the temporary zoning permission for seasonal outdoor patios on private property made in response to the COVID-19 pandemic through a series of temporary use bylaws. The proposed amendments will also permanently expand a range of permissions for temporary (seasonal) outdoor patios on private property and include new permissions to regulate the location and size of all outdoor patios.

Following further analysis and additional consultation with various internal and external stakeholders, changes to the proposed amendments have been identified. For clarity, if approved, these zoning regulations would apply to outdoor patios on private property only. Patios on public property are not subject to these regulations.

1.1.1. Permanent, Year-round Outdoor Patios & Temporary, Seasonal Outdoor Patios on Private Property:

Currently, Zoning By-law 2020, as amended through the existing temporary use by-law, includes a definition for both "Patio, Outdoor", which is defined as an outdoor area used on a seasonal basis, and "Patio, Seasonal Outdoor", which is defined as a temporary outdoor area. The two uses also have separate sets of regulations in the Zoning By-law. The difference between these two uses has been a source of confusion for both staff and restaurant owner/operators alike, given that the term "seasonal" is used for both definitions and that the term "seasonal" can also be interpreted as being "temporary" (e.g., a "Patio, Outdoor" used on a seasonal basis may also be considered temporary). While both types of patios are used on a seasonal basis under the current regulations, staff have interpreted the definition of "Patio, Outdoor" as capturing a dedicated year-round patio area, which may include permanent structures such as fencing or a raised platform, while the definition of "Patio, Seasonal Outdoor" has been interpreted as temporary patios do not include a dedicated year-round patio area and only occupy for example parking spaces (with temporary removable furnishings).

Due to the potential confusion and overlap with these two definitions, staff have modified the proposed amendment to collapse these two into one definition for "Outdoor Patio" and to consolidate the applicable regulations into one section of the Zoning By-law to make the rules easier to understand and interpret by all including city staff,

restaurant and business owner/operators, applicants and their design professionals. Both patios with year-round and seasonal use are subject to the same set of base regulations, with additional permissions/restrictions to use private property seasonally for patios in parking lots between the period of April 15 to October 31 that may include the installation of temporary tents or structures that do not require a building permit.

1.1.2. Seating Capacity & Size of an Outdoor Patio on Private Property:

Zoning By-law 2020 currently includes a regulation that restricts the size of an outdoor patio to 50 per cent of the indoor seating capacity of the associated restaurant. In Report PL-63-23, staff proposed a different regulation for a “Patio, Seasonal Outdoor” that would have required temporary patios to be no larger than 50 per cent of the floor area of their associated establishment. Staff have received comments from businesses and past program participants, including delegates at the Community Planning, Regulation and Mobility Committee Meeting of Dec. 5, 2023, indicating concerns that these limits would result in patios that are too small to meet the needs of their business or would prohibit restaurants with existing outdoor patios from adding a temporary expansion.

In response to these concerns and based on further analysis and consultation with staff from the Community Planning (Zoning), Building and Fire departments, in place of either 50 per cent maximum size requirement (based on either an establishment’s seating capacity or floor area), staff recommend that a minimum requirement for seating capacity of 1.1 square metres per person be included within the proposed zoning amendments. Prescribing a minimum size for an outdoor patio per person will ensure a safe and accessible outdoor dining area without restricting its size based on the indoor premises it is associated with. This requirement is in line with Section 3.1.17.1 of the OBC, which applies to indoor dining areas and is also present in other municipalities’ zoning regulations for outdoor patios.

1.1.3. Restrictions on Proximity to Residential Zones:

Staff note the proposed zoning regulations restricting patios in proximity to residential zones as identified in Report PL-63-23 remain unchanged (i.e., patios must be set back a minimum of 10 metres from a residential zone and are not permitted in the side or rear yards of a property abutting a residential zone. Patio owner/operators expressed concerns that these regulations would prohibit patios in all locations that are near residential units. However, staff note that these regulations reference the proximity to residential zones only, which are those zones that exclusively permit residential uses; these regulations do not apply to all residential units or to zones that permit mixed-use residential/commercial buildings. Further, staff have confirmed that these proposed regulations would not have prohibited and/or reduced the size of any of the patio proposals from 2023 had these proposed regulations been in effect. For example, past patio program participants with patios on Lakeshore Road have their businesses

located in mixed-use buildings with residential units above. In this scenario, if approved, the proposed regulation would not prevent these applicants from having patios again in 2024.

1.2. Time Period for Temporary (Seasonal) Outdoor Patios:

To avoid confusion regarding the time periods applying to patios on public or private property staff are recommending that all temporary seasonal patios be held to the existing patio season of April 15 to October 31. Report PL-63-23 referenced a patio season of a maximum of eight months total for private property in line with the Alcohol and Gaming Commission of Ontario's (AGCO) permissions, however, this is difficult to enforce and is longer than the patio seasons staff have reviewed in other municipalities, which typically run from six to seven months in length. For example, staff note that:

- The City of Guelph's patio season runs from Apr. 1 to Oct. 31;
- The City of Hamilton's patio season runs from May 1 to Oct. 31;
- The Town of Oakville's patio season runs from May 1 to Nov. 1; and
- Toronto's CaféTO program runs from May 15 to Oct. 15. for curb lane cafés.

Furthermore, in consultation with the operators, it was noted that an eight-month long patio season would stretch into December, and that given the cold temperatures, patrons would likely not use a patio during the late fall and early winter months. Moreover, staff have confirmed with the AGCO that municipalities can establish their own patio season for temporary patios on private and public property, provided that the season is eight months or less in length. The existing patio season of April 15 to October 31 provides applicants with a six and half month-long patio season, which is comparable to the other municipalities scanned.

1.3. Program Experience & Implementation for Seasonal Outdoor Patios on Private Property

Report PL-63-23 recommended that all outdoor patios on private property be subject to a minor site plan approval process, however, in consultation with the Legal Department, staff have determined that not all outdoor patios will meet the definition of

“development”¹ as per Section 41(1) of the *Planning Act*, which applies to the use of site plan control.

Staff do not consider the temporary placement of patio materials that do not require a building permit (e.g., a temporary fence or guardrail, and patio furnishings such as tables and chairs) to be “development”, and therefore, a site plan application will not be required for temporary seasonal patios. Permanent buildings or structures associated with permanent (year-round) patios and requiring a building permit will likely be considered “development” as per Section 41 of the *Planning Act* and may be subject to the city’s site plan approval or site plan amendment process. This is an existing requirement that applies to permanent outdoor patios only and no changes are proposed.

If approved, the changes to the proposed zoning amendments will enable local businesses located in certain zones to have a seasonal outdoor patio on private property, including a temporary extension to a permanent patio, as-of-right, and without the need to obtain a permit for their temporary patio. As there will be no formal review process conducted by staff, the responsibility to coordinate or mediate among business owner/operators will fall to property owners to ensure that an expansion in these locations comply with the zoning regulations and do not conflict with a potential neighbouring business.

However, it is important to note that should a business wish to sell and serve liquor on their temporary patio, the AGCO’s new framework for temporary patios requires operators to get approval from the local municipality and then notify the AGCO of this approval before starting to sell and serve liquor on the temporary patio. The AGCO allows municipalities to determine how best to satisfy this requirement. Staff recommend that the city’s existing liquor license application process be utilized to satisfy the AGCO’s notification requirement. This process is administered by By-law Compliance staff and requires the submission of an application form and plans and drawings, which are circulated for review to the city’s Building, Fire, Community Planning, and Engineering departments, allowing the city to consider matters such as zoning compliance and fire safety, and to the Halton Region Health Department, before the city issues a liquor license. The application process is a one-time requirement as

¹ As per Section 41 of the *Planning Act* “development” means “the construction, erection or placing of one or more buildings or structures on land or the making of an addition or alteration to a building or structure that has the effect of substantially increasing the size or usability thereof”.

liquor licenses do not lapse. Utilizing the established liquor license process provides a cost-effective way for the applicant to meet the AGCO's notification requirement to learn of a physical extension of a licensed premises and confirm the city's approval. Staff note that the City of Toronto also utilizes their existing municipal liquor license clearance process to satisfy the AGCO's requirement for municipal approval.

Table 1-1 Proposed requirements for patios on private property

	Temporary Patio	Permanent Patio
Duration	Apr.15 to Oct. 31	Year-round
Zoning By-law Regulations	Yes (see Appendix A)	Yes (see Appendix A)
Site Plan Approval	No	Yes
Liquor Licence	Yes (approval by the city)	Yes (approved by AGCO)
Application Fee	Liquor Licence Base Fee: \$99 plus Variable Fee if additional reviews required	Minor Site Plan Application: \$1,820
Building Permit	Maybe	Maybe
Example Property	441 Elizabeth Street	423 Elizabeth Street

The recommended zoning changes mean that outdoor patio proposals located entirely on private property that comply with the zoning bylaw and do not incorporate any structures that require a building permit can open without the need to obtain city approval prior to their installation. This changes the applicability of the draft guidelines for seasonal outdoor patios on private property. If this new approach to open permissions for temporary patios on private property is supported by council, then staff will conduct a review of the current document and develop a new guide that outlines the new rules and considerations for operators of patios located on private property. Additionally, staff plan to engage with commercial and industrial property owners to share information and promote awareness of the new rules.

2. Proposed Modifications to Recommended Seasonal Patio Program for Outdoor Patios on Public Property

2.1. Proposed Changes to the Seasonal Patio Guidelines for Outdoor Patios on Public Property

Staff have modified the Seasonal Patio Guidelines for outdoor patios on public property in response to feedback received from both internal and external stakeholders.

Staff have included responses to individual comments on the guidelines in Appendix C. The proposed guidelines have been modified as follows:

- Application submission requirements have been clarified (i.e., engineering drawings are only needed for patios/by-passes which are on-street);
- The length of the patio season has been clarified (April 15 – Oct. 31 for all temporary (seasonal) patios);
- Numerous requirements have been removed/modified (e.g., ban on promotional materials has been removed, and a setback requirement from a driveway or intersection has been changed from a standard with no flexibility to a guideline, which will allow for flexibility based on a case-by-case evaluation);
- Operational materials that will be provided by the city have been clarified (e.g., the city is to supply temporary signage and traffic control devices);
- Patio seating capacity requirements have been modified from a maximum to a minimum (of 1.10 square metres per person). Operators will be responsible for ensuring that patio occupants entering the associated building do not cause overcrowding of their indoor space; and
- To clarify that a pedestrian by-pass may be in front of a business that is not participating in the patio program.

Staff have received additional feedback from some local business' owners and past patio operators who have questioned whether the city's proposed guidelines for accessible design requirements could be removed. These participants have pointed out that some accessibility requirements (e.g., making patios wheelchair accessible) should not be included, or that patios associated with restaurants in buildings that are not accessible and/or do not have accessible washrooms should get an exception to these requirements. In consultation with the city's Accessibility Specialist, staff can confirm that an inaccessible building, or a lack of accessible washrooms is not a sufficient rationale to remove accessibility requirements. Staff are of the view that people with disabilities will choose to visit a restaurant or patio despite the lack of an accessible washroom if that choice is provided to them. Furthermore, staff can confirm that existing inaccessible buildings are only required to be made accessible in accordance with the *Accessibility for Ontarians with Disabilities Act* or Ontario Building Code (OBC) when they undergo major renovations or there is a change to existing legislation. Staff do not believe it is reasonable to wait for all buildings to become accessible before making outdoor patios accessible, as there is no clear timeline on when these associated buildings will become accessible. Accordingly, staff have maintained the accessibility requirements included in the guidelines.

2.2. Program Experience & Implementation for Seasonal Outdoor Patios on Public Property

The application process for patios on public lands will be similar to previous patio seasons as described on page 7 of Report PL-63-23. Staff continue to recommend that applications for patios on public lands be reviewed and approved in accordance with the applicable Seasonal Patio Guidelines. Staff note that the proposed guidelines have been modified further as an outcome of additional stakeholder feedback, as outlined above (see Appendix C).

2.3. Proposed Bylaws under the Municipal Act for Seasonal Outdoor Patios on Public Property

Report PL-63-23 contemplated two bylaws for drafting under the *Municipal Act*, a Seasonal Patio Permit By-law, and a by-law for restricting right-of-passage for seasonal outdoor patios on public property (rights-of-way/roadways). The recommendation for these bylaws to be drafted and enacted in time for the 2024 patio season remains unchanged. Staff have consulted with the City's Legal Department and have confirmed that it will be possible to draft the two bylaws in time for the March committee cycle and therefore have the bylaws enacted prior to the start of the 2024 patio season.

Should council decide not to enact a Seasonal Patio Permit By-law, then staff would continue to use license agreements to permit patios on public property.

Should council decide not to enact a bylaw for restricting right-of-passage for seasonal outdoor patios on public rights-of-way, then the City would not be able to legally permit on-street patios or pedestrian by-passes for the 2024 patio season.

2.4. Program Costs, Fees and Financial Assistance for Seasonal Outdoor Patios on Public Property

2.4.1. Fee Background

In March 2020, Council approved the pop-up patio program as a permanent downtown offering to provide more certainty to the local business community. The city approved and collected a fee for patios in on-street parking spaces based on the daily maximum parking rates for the duration of the program, including set-up and take-down of the patios; however, no additional fees were charged for the administration of the program recognizing the high cost to participate in the seasonal program for small businesses, especially in the initial years. Table 2-1 below outlines the fee adopted for the patio program in 2020.

Table 2-1 Pop-up Patio Program Application/User Fee

Location	Patio Type	Fee	Total Fee to Occupy an On-Street Parking Space*
Downtown	Curb Lane Patio / Sidewalk Patio with pedestrian bypass	\$21 per parking space per day	\$2,856 per parking space

*Note: Fee is based on the program time frame of April 15 – Oct. 31, excl. Saturdays, Sundays and Holidays

2.4.2. Previous Program Costs

Table 2-2 provides details on the approximate costs of implementing the previous temporary patio program in 2023. The recommended program fees for 2024 and subsequent years are in part based on the City's previous costs. These previous costs are inclusive of operating and one-time capital costs for safety barrier purchase and deployment. These barriers were needed to separate vehicle traffic from the curb lane pedestrian bypass platforms installed along Elgin and Lakeshore Roads in previous years.

Table 2-2 Approximate 2023 Program Costs

Department	Item	Expense	
		Operating	Capital
Various departments incl. staff from Building, Bylaw Compliance, Community Planning, Corporate Legal Services, Engineering, Fire Road, Parks, and Forestry, and Transportation Services	Staff time – Application review, processing and monitoring*	\$60,000	
Community Planning	Salary and Benefits – Planner (0.3 FTE)	\$30,000	
Roads, Parks, and Forestry	Staff time – Deployment of safety barriers	\$3,185.56	

	Operational materials (safety barrier equipment purchase)		\$50,000
Transportation Services	Staff time – Deployment of safety signage	\$2,584.59	
	Operational materials	\$3,564.06	
Total		\$99,334.21	\$50,000

*Note: Costs are based on an estimate of the staff time and activities for processing a typical temporary outdoor patio application. A more precise account of the city's costs to deliver these services will be assessed/validated as part of the Community Planning Department's upcoming Planning Application Fees Review Study.

2.4.3. 2023 Lost Revenue Potential

To support businesses impacted by COVID-19, City Council authorized the waiver of all fees and requirements for existing planning approvals for temporary outdoor patios and temporary tents, which represents an approximate revenue potential loss of \$28,698 in 2023.

In 2023, Transportation Services reported revenue potential loss of approximately \$48,552 due to the temporary removal of 17 pay parking spaces for patios located in on-street parking lanes throughout the downtown. These funds would typically be collected by Parking Services and contribute to the overall revenue in the Downtown Parking District. Annually, excess revenue goes into the Downtown Parking Reserve Fund, which Parking Services relies on to fund for parking related improvements, programs and capital replacement projects such as new pay stations or resurfacing.

2.4.4. Reintroduction of Program Fees in 2024 for Seasonal Outdoor Patios on Public Property

For the past four seasons, between 2020 and 2023, as part of the temporary patio program's on-going support to the restaurant and hospitality industry, City Council has waived permit and application fees for outdoor dining in the public right-of-way and on private property. These fee waivers represented a significant financial support for the restaurant and hospitality industry.

A return to the collection of application and permit fees is now recommended by staff for all patio types in 2024 and subsequent years to ensure appropriate cost recovery and a user fee in keeping with the standard practice of charging payments (e.g., rent) from commercial entities for the use of public property (rights-of-way/roadways).

The fee established for the pop-up patio program prior to COVID-19 reflected a dated assumption of costs and did not consider market value. COVID-19 and the temporary patio program, which replaced the pop-up patio program in 2020, have challenged these assumptions, and introduced new operational pressures and requirements for additional staffing resources to manage patio permitting, and ensure the safe installation and removal of on-street patios.

In 2021, City Council directed staff to review the fees for a citywide outdoor patio program. The goals of the review have been:

- To scan the financial requirements of other southern Ontario municipalities to ensure the recommended fees are comparable with their outdoor patio programs; and
- To establish an appropriate user fee to recover the costs required to implement the program.

Table 2-3 is a summary of the proposed fees and projected revenue for 2024.

Table 2-3 Proposed 2024 Program Fees

Fee Type	Proposed User Fee	Projected 2024 Volume	Projected 2024 Revenue
Application Fee	\$450	0 New Applications	\$0
Seasonal Patio Permit Fee	\$103.45 per square metre (m ²)	13 Applications	\$90,000
Barrier Rental/Deployment	\$80.12 per linear metre	116.5 linear metres	\$9,334.21
Total Revenue			\$99,334.21

2.4.5. Proposed Application Fee

An application fee is a cost typically borne by the business owner/patio operator at the time of application and is designed to partially offset the costs of reviewing and processing new applications, including administrative intake, site plan review and circulation to commenting departments.

Historically, the city has not charged a fee for the administration and processing of applications under the pop-up patio program. While in 2020, 2021, 2022 and 2023, City Council waived the collection of all fees related to the outdoor patio program.

Staff propose to remove the requirement for an application fee in 2024 for businesses that participated in the program in 2023 to assist businesses during this transition year.

Therefore, operators who applied for a temporary patio in 2023 will benefit from a streamlined process and be able to renew their permit in 2024 and in future years.

All operators applying to join the program in 2024 for the first-time will be required to pay a one-time application fee. The application fee rate of \$450 is proposed to partially recover the costs associated with the level of administrative work involved in processing applications, as well as staff time spent completing inspections of installed patios.

2.4.6. Proposed Seasonal Patio Permit Fee

The proposed seasonal patio permit fee is \$103.45 per square metre. This is a user fee charged to operators for the temporary use of the public space – the public sidewalk and/or curb side portion of the roadway (parking/travel lane). This fee was generated based on a review and estimate of the full cost of operating the program, analysis of city-wide land rates and annual parking revenues, as well as a scan of rates and fees for participation in patio programs charged by neighbouring municipalities. Costs for participation in nearby patio programs are outlined in Table 2-4 below. Staff note that the City of Burlington's proposed annual permit fee falls within the upper range of what neighbouring municipalities are charging. However, as outlined in Table 2-5 below, this fee is significantly lower than the pop-up patio program fee established before the COVID-19 pandemic and recognizes the community benefit and vibrancy created by the new citywide program, while being recommended in accordance with applicable legislative requirements. For the use of public property, staff are proposing that permits be issued for a season, not monthly. And to standardize the user fee for the program, it is proposed that the same permit fee apply to both types of seasonal outdoor patios on public property citywide.

Table 2-4 Comparison of Fees – Proposed in Burlington vs. Other Municipalities

Municipality	Seasonal Patio Permit Fee per Square Metre	Application Fee
City of Toronto (Curb Lane Café)	\$132.42	\$865.00
City of Burlington	\$103.45	\$450.00
City of Guelph	\$50.00 ²	\$431.00 ³
City of Hamilton ⁴	\$47.30 ⁵	\$676.11
City of Toronto (Sidewalk Café)	\$44.14	\$865.00
City of St. Catharines ⁶	\$43.60	\$393.15
City of Niagara Falls	\$35.00	\$525.00
Town of Oakville	\$30.38 ⁷	\$414.00

Table 2-5 Comparison of Fees – 2019 vs. Proposed 2024

2019 Fee for Average Patio*	Proposed 2024 Fee for Average Patio*	% Reduction in Fee
\$154.38 per m ²	\$103.45 per m ²	33%

*Assuming average patio area of one parking space – an area of 18.5 m²

When City Council established the pop-up patio program as a permanent program in early 2020, curb lane patios were intended to have their fee be based on the number of parking spaces occupied. This new citywide program provides an opportunity to standardize patio installations on a per square metre basis to capture other patio types such as sidewalk patios and those located in the travel lane of the roadway (e.g., Lakeshore Road).

² Based on an on-street rental fee of \$10 per square metre per month, charged annually for five months total.

³ Based on a one-time application fee of \$171 Plus a seasonal patio inspection fee of \$260, charged annually.

⁴ Based on 2023 program fees.

⁵ Based on a parking space rental fee of \$875 per parking spot.

⁶ Based on 2023 program fees.

⁷ Based on a parking space rental fee of \$562 per parking spot.

Staff anticipate that the reintroduction of permit fees and required accessible platforms may reduce the overall uptake of patios in 2024.

2.4.7. Proposed Barrier Rental/Deployment Fee

The proposed safety barrier rental and deployment fee is \$80.12 per linear metre. This fee was generated as a full cost recovery measure for the rental and deployment of safety barriers, and associated signage and operational materials. This is a rental and service fee charged to operators to offset the operating costs for the installation and removal of traffic devices and safety barriers where they are required to separate vehicle traffic from the patio installation. This fee will be re-evaluated annually based on actual participation rates and costs.

2.5. Insurance

As outlined in the December 2023 Community Planning Department report (PL-63-23) staff have considered the matter and continue to recommend the \$5 million requirement for liability insurance per occurrence for patios and curb lane installations on public property in Burlington for the 2024 patio season. In response to comments received through delegations at the Dec. 5, 2023, committee meeting, the recommended amount is based on the following reasons:

- The City's legal duty to maintain its public sidewalks and roadways in accordance with application legislation.
- Risks associated with patios and curb lane installations near vehicular traffic, the service and consumption of alcohol adjacent to curbside areas, and hazards related to the presence of temporary curb lane platforms for pedestrians, cyclists, and patrons; and
- The recommended requirement is in-line with other municipalities surveyed.

Full program insurance impacts are described in the confidential Legal Department report (L-02-24).

2.6. Financial Assistance for Program Participants

To address comments received through delegations at the Dec. 5, 2023, committee meeting, staff from Community Planning, Government Relations and Burlington Economic Development revisited available funding programs to support the City's efforts/work related to the patio program.

At the time of writing this report, there were two grant program streams open under the Government of Canada through the Federal Economic Development Agency for Southern Ontario (FedDev Ontario), the Tourism Growth Program and the Economic

Development Initiative; however, FedDev Ontario has advised that neither of these two funds would be available to support the City's patio program.

1. Tourism Growth Program: This funding supports the following categories of initiatives:
 - a. extending the tourism season (e.g., new or expanded tourism offerings outside of the traditional high season);
 - b. supporting economic, environmental and cultural sustainability; and
 - c. increasing tourism benefits for communities by driving visitation from urban areas to rural areas.

Based on discussions with FedDev Ontario staff, and understanding the market dynamics, none of these categories apply to the City of Burlington patio program.

2. Economic Development Initiative: This funding is meant to encourage the continued revitalization of Southern Ontario's economy and diversify our national interests.

Based on discussions with FedDev Ontario staff, this funding focuses on industrial uses and general economic diversification across key regions. Main street businesses are not eligible.

Additionally, Burlington Economic Development have been successful in applying for FedDev Ontario funding in the past. These programs require a significant amount of administrative and managerial investment to undertake. The application process if the proposed project does not completely align with the stream definitions would require significant time to ensure compliance and design of the funding model. The management of the program can also not be administered as a side of desk activity but is at a minimum a 0.5 FTE due to the auditing and accounting requirements throughout the program's tenure. Finally, the auditing of the program very often extends long past the proposed end date as the requirements for federal funds are far more strenuous than provincial funding programs. While the FedDev Ontario funding was used to fund the CaféTO program this was due to a unique funding program that was activated during the COVID-19 pandemic. Current funding through FedDev Ontario would not align with funding needed to support Burlington's patio program.

3. Review of CaféTO Program – Fees & Financial Assistance

Like Burlington's patio program, the CaféTO program provides restaurants and bars in Toronto with the opportunity to access public space and expand their outdoor dining space through three café types: sidewalk cafés, curb lane cafés or patios on private property.

3.1. CaféTO Fees

In 2023, Toronto city council approved a partial cost-recovery fee structure, with a three-year phase-in schedule, for application and permit fees, as shown in the table below with full fees to be charged in 2025.

Even when full fees are charged in 2025, CaféTO will operate on a partial cost-recovery basis, meaning the City of Toronto will provide participating businesses with a subsidy and will not recover all its costs.

Table 3-1 CaféTO Three Year Phased-in Fee Schedule

Year	2023 (33%)	2024 (66%)	2025 (100%)
Application Fee*	\$285	\$570.90	\$865
Seasonal Patio Permit Fees			
Curb Lane Café (per m²)	\$43.70	\$87.40	\$132.42
Sidewalk Café (per m²)	\$14.56	\$29.13	\$44.14

* One-time fee for new applicants participating in the CaféTO program

As shown in Table 3-2 below, the CaféTO seasonal patio permit is significantly higher than the proposed citywide patio program fee for patios on public property in Burlington.

Table 3-2 Full Rate Curb Lane Fee Comparison: Proposed in Burlington vs. CaféTO

Proposed 2024 Fee for Average Patio*	2025 CaféTO Fee for Average Patio*	Cost Difference for Seasonal Patio Permit
\$1,913.83	\$2,449.77	\$535.94

*Assuming average patio area of one parking space – an area of 18.5 m²

3.2. CaféTO Grant Programs

The City of Toronto offers two grant programs related to the CaféTO program, the CaféTO Property Improvement Program and the CaféTO Dining District Grant Program (formerly the CaféTO Business Improvement Area Grant Program).

1. CaféTO Property Improvement Grant Program:

In 2024, the City of Toronto will continue to offer the CaféTO Property Improvement Program to restaurant and bar operators to support costs for their outdoor patio spaces. This program matches 50 per cent of the cost of eligible patio space improvements, including costs associated with renting, leasing, or purchasing accessible temporary platforms, up to a maximum of \$7,500. For the 2023 patio season, a total of \$560,000 was committed to 156

operators. This program is fully funded by the Government of Canada through FedDev Ontario and is part of the Toronto Main Street Recovery and Rebuild Initiative (MRRI) of Economic Development and Culture.

The CaféTO Property Improvement Program is available to owners and tenants of commercial and industrial properties within the city of Toronto for property improvements such as:

- Permanent improvements to patio or café spaces on private property that serve a business use excluding furnishings;
- Café spaces on city property for which a valid permit has been issued;
- Permanent on-site boulevard landscaping features (excluding plant material);
- Fencing; and
- Installation of temporary platform level to the sidewalk for a curb lane café (rented, leased, or purchased), accessible ramps for patios on private property, handrails and other exterior accessibility improvements which meet AODA design standards.

Only one property application from a business chain or a franchise chain is considered under this program.

2. CaféTO BIA/Dining District Grant Program:

In 2023, the City of Toronto provided approximately \$110,000 through a BIA CaféTO grant program to fund 50 per cent of BIA's eligible costs (up to a maximum of \$5,000) for plants, soil, materials, watering services, planter maintenance, furniture, platforms and public parklet elements.

Options Considered

4. Options for Re-introduction of Program Fees

To address concerns related to the cost of participating and ease the transition to a permanent and sustainable patio program for small businesses owners, this report identifies several options, including a full cost-recovery option, an option to phase in the full fee schedule over a three-year period, and an option to defer the implementation of fees. If the option to phase in fees is approved, staff propose that this fee reduction be applied equally to all application and permit fees for new seasonal curb lane and sidewalk patios. Approving Option 2 would mean that the full fees proposed would not be implemented until the 2026 season.

The projected program costs and revenues below assume an uptake of 12 patios located on public property in 2024.

Option 1: Full Cost Recovery Model. (Recommended)

Year	2024
Application Fee	\$450
Seasonal Patio Permit Fee (per m ²)	\$103.45
Barrier Rental/Deployment Fee (per lm)	\$80.12
Projected Program Costs	\$99,334.21
Total Projected Revenue	\$99,334.21
Recovery of Program Costs	100%
Subsidized Program Costs	\$0

Option 2: Recommended fees phased in over three years (CaféTO Approach).

Year	2024 (33%)	2025 (66%)	2026 (100%)
Application Fee	\$148.50	\$297	\$450
Seasonal Patio Permit Fee	\$34.14	\$68.28	\$103.45
Barrier Rental/Deployment Fee	\$26.44	\$52.88	\$80.12
Projected Program Costs	\$99,334.21	\$99,334.21	\$99,334.21
Total Projected Revenue	\$32,782.06	\$65,564.12	\$99,334.21
Recovery of Program Costs	33%	66%	100%
Subsidized Program Costs	\$66,552.15	\$33,770.09	\$0

This option presents concerns from a *Municipal Act* compliance perspective. Staff do not recommend this option.

Option 3: Defer fee implementation for prescribed period.

This option presents concerns from a *Municipal Act* compliance perspective. Staff do not recommend this option.

Financial Matters:

Financial impacts related to the proposed patio program are described above in Section 4. Options for Re-introduction of Program Fees.

Climate Implications:

See [Report PL-63-23](#).

Engagement Matters:

On Dec. 15, 2023 City staff met with the Executive Director of Burlington Downtown Business Associations patio stakeholders in order to receive comments on the changes to the patio program proposed within Report PL-63-23 and the associated appendices.

During this consultation meeting, staff heard feedback on matters such as:

- Patio fees;
- Insurance requirements for patios on public lands;
- The application and renewal process for outdoor patio approvals;
- Questions regarding the proposed zoning amendments and the Guidelines for the season out patio program (e.g., accessibility and patio size requirements); and
- Communication and engagement with patio operators.

Additional efforts were made by staff to reach out to those who delegated at the December 2023 meeting. The delegates clarified some site-specific concerns for staff, which included a request to add additional seats to an existing permanent patio, and a request to modify zoning regulations to ensure that breweries will be permitted to have outdoor patios.

City staff have included more detailed feedback in a response matrix attached as Appendix C.

Conclusion:

Outdoor patios located throughout Burlington contribute to the quality of living of our community, activate the streets, public spaces and publicly accessible private spaces, add interest to our public realm and provide sought after opportunities for outdoor dining.

This report recommends approval of permanent city-wide permissions for seasonal outdoor patios through proposed changes to the Zoning By-law Amendment for outdoor patios on private property, and a seasonal outdoor patio program for curb lane and sidewalk patios through a streamlined application and permit framework, fees and guidelines for patios on public property.

Since the onset of the COVID-19 pandemic, city council has supported outdoor patios citywide through the passing of several temporary use bylaws for temporary patios on private property, the creation of the temporary patio program for temporary patios on public property and waiving of all costs associated with temporary outdoor patios on both private property and public property. After operating at no cost to participants over the past four years, this report recommends that starting in 2024 the costs required to implement the program be recovered in the form of application and user fees.

Respectfully submitted,

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Appendices:

- A. Revised Zoning By-law Amendment 2020.463
- B. Revised Seasonal Patio Guidelines for Outdoor Patios on Public Lands
- C. Summary of Additional Stakeholder Feedback & Responses

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.