

## Report PL-05-24 Appendix C

## Responses to Feedback Received Regarding a City-Wide Seasonal Outdoor Patio Program

All feedback received has been reviewed and considered by staff for the Permanent City-wide Seasonal Outdoor Patio Program. This appendix reproduces comments or excerpts of comments where appropriate for the purpose of summarizing and responding to the input received.

Within the table below, under the “Stakeholder Comment” column, comments are reproduced for reference. Where possible, comments have been summarized; in other cases, excerpts of comments have been quoted verbatim.

Date Received	Stakeholder Comment	Staff Response
Dec. 15, 2023, Burlington Downtown Business Association (BDBA) and Downtown business owners/operators Engagement	<u>Fees:</u> Restaurants make 3 to 5% bottom line, if the patio fees are too much then participating in the program is not worth it for operators. Operators are facing other challenges – there are costs associated with construction, removal, maintenance of patios, and last year smoke and rain hurt patio sales.	Staff are aware that fees are a barrier to entry into this program. Staff need to balance this with the fact that this program represents a significant cost to the city.
	The proposed fees seem to be a heavy grab.	
	Charging the BDBA for use of Lakeshore Road seems egregious. City does not charge BDBA for use of other city assets.	Due to concerns from a <i>Municipal Act</i> compliance perspective, a user fee is appropriate for use of all public lands for patio program. Staff have re-assessed fees based on a cost recovery model approach and have presented options for council’s consideration.
	Consider a reduce permit renewal fee for applicants who are re-applying.	Noted.

	<p><u>Insurance:</u> \$5 million is excessive.</p>	<p>Staff note that the patio program brings increased risk. Pedestrians and patrons are going to be closer to motor vehicles, and alcohol is being served on public lands. Staff continue to recommend \$5 million.</p>
	<p><u>Process:</u> The city already has the operators plans; they are not changing. Can the City let us know earlier if there are issues? If there is an issue with a plan, it gets sent back, and the process takes much longer. How much longer will this new process be? Clarify what is required for a resubmission – fees? Forms? What else?</p>	<p>Staff have revised the guidelines to indicate that the city will require applicants to submit application forms to confirm if they are applying for the upcoming season. The city will also need applicants to confirm if their patio plans are changing at the time of application submission. The city cannot work with an applicant until this information has been provided. City staff encourage applicants to apply as soon as March 15<sup>th</sup> as per the Patio Design Guidelines to help ensure that their applications are ready by the start of the patio season.</p>
	<p>If an operator has a patio up for part of the year on private lands, should they have to fully dismantle at the end of the season and set back up again?</p>	<p>Patios that are temporarily installed structures that do not require building permits or site plan approval are expected to be taken down by November 1<sup>st</sup>. For permanent structures which receive approval through the City's site plan approval process and building permits, applicants can leave their patios in place permanently.</p>
	<p>Regarding inspections and resubmissions – there is a concern with “wobble room” and different people reviewing each year. Will different planners and inspectors come to different conclusions regarding patios each season?</p>	<p>Applicants for a temporary patio on private lands will not need to resubmit applications each year beyond the 2024 season if their patio layouts and site plans remain unchanged.</p>

		Applications for a patio on public lands will need to re-apply each year but will be granted an expedited review process if an application is unchanged from previous years.
	Regarding site plan application – is this a one-time requirement and affixed to the property?	Site plan approval is a onetime requirement and is affixed to the property.
	<u>Private Lands Guidelines:</u> There appear to be lots of ways to kill patios in these guidelines, operators are not sure what is coming at us. These guidelines appear to be extreme and need to be further simplified.	Guidelines modified as per below suggestions.
	There is a disconnect with the seating diagram in the Patio Design Guidelines and what is written in Report PL-63-23. Please clarify.	Staff are including a requirement for a minimum of 1.10 square metres per person as per the Ontario Building Code. Staff have removed the requirement for outdoor patios to take up no more than 50% of indoor capacity.
	Maximum occupant load of business and patio pursuant to the Ontario Building Code. Indicate business itself and does patio count towards total occupancy?	Requirement for occupant load on plans removed from guidelines.
	No requirement here for engineered stamped drawings. Looks like you are looking for more of an amateur effort. Please be clear if engineered drawing is required. What types of drawings are required for what type of application? There seems to be 3 types of patios we are dealing with – on street, permanent, and extended. What is required for each? What are the differences?	Added to application submission requirements. Engineered drawings are required only for pedestrian by-passes or on-street patios (curb lane patios).

	If applications are Due February and will be approved by spring, but are allowed for 8 months, does that mean patios are permitted until December? Dates seem to be amiss.	Staff are proposing a patio season of April 15 <sup>th</sup> to October 31 <sup>st</sup> for temporary patios on both private and public lands.
	Requirement for no platforms? Does that mean Downtown Bistro can't have patio?	Requirement removed.
	I know there is permission for entertainment in the downtown core, but guidelines say you can't have entertainment. There is an exception for downtown – clarify in design guidelines.	The guidelines do not include a restriction on entertainment in the downtown. Existing temporary use provisions permit entertainment uses on outdoor patios in Downtown Mixed-Use Centre Zones.
	<u>Public Lands Guidelines:</u> Curb lane patios. Requirement to include occupant load on provided plans. We are still talking about occupancy for patio? Clarify requirements.	Clarity added – guidelines ask for both building and patio occupancy.
	For pedestrian by-passes – Required setbacks from driveways and intersections, we have a dense commercial environment in downtown there are driveways everywhere. Queens Head is 1.5 metres from a driveway. This will prevent it from being possible to have certain patios.  Indicate if engineered drawing is just required for by-pass.	Guidelines have been revised to indicate that setbacks “should” rather than “shall” be 3m for driveways and 15m for intersections. Setbacks may be reduced at the discretion of the Director of Transportation Services or their delegate.  Engineered drawing added to application checklist. This item is only required for temporary platforms located in the roadway. In application process flow chart, applicant can use previous submittals if needed.
	Clarify if just one application is required, or multiple for by-passes.	Clarified in guidelines. One application is required.
	By-passes may capture business such as Barber Shop who do not apply to the program. Is this going to be an issue?	Clarified in Patio Design Guidelines general requirements.

	Requirement for no promotional materials, will this include umbrellas? Or the BDBA's planters? Having to buy all new umbrellas that don't have advertisements will be additional cost/barrier for applicant. Some operators have umbrellas without advertisements, but they are not great quality.	Requirement has been removed from guidelines.
	Signage, and requirements for reflective tape – where is it required? What Streets? Will these be provided by the city?	City staff will provide all temporary signage and traffic control devices except for reflective tape. For on-street (curb lane) patios, applicants should ask their contractor to include reflective tape.
	<u>Accessibility:</u> Accessibility shall be maintained. Read is that we have to make it wheelchair accessible - but not even our building is wheelchair accessible. Most buildings are not wheelchair accessible. Would grandfathering be acceptable for some?	Staff can confirm that grandfathering is not acceptable. In consultation with accessibility staff, staff have confirmed that all outdoor patios must be accessible.
	Problem of those with accessibility needs having no access to washrooms. Accessibility requirements would eliminate 8-10 different patios. You can't put an outdoor washroom anyway - so how would those with accessibility needs access washrooms?  Ensuring 20% of tables are accessible has been existing?	Staff are of the opinion that a lack of an accessible washroom is not reason enough to not include accessible tables. People with disabilities may know which establishments have accessible washrooms and make a choice to visit the establishments anyway.  The quality of past submittals has made it difficult for staff to complete a proper review to ensure accessibility requirements are being met. Moving forward, staff are looking to ensure that accessibility requirements are being met.

	<p><u>Patio Size:</u> Maximum size of patios 50% of the floor area of establishment. Everybody in the industry doesn't have it. 50% capacity limit is going to kill program.</p> <p>Floor space and licensed floor space? Comes down to definition of floor area.</p> <p>I can't service 300 patio seats so I wouldn't even want an overly large patio. Formula should be matching seats from indoor to outdoor. There is operational sense to what we can do.</p> <p>How does city want size to be shown? Will dimensioned floor plans be required? What will cost of this be to the applicant.</p>	<p>After further consultation with internal and external stakeholders, the modified proposed amendments remove the 50% capacity limit from the zoning regulations. For the purpose of life and fire safety, and washroom capacity requirements as per the Ontario Fire and Building Codes, applicants will need to ensure that all outdoor patios include emergency exits, and that the indoor building capacity of their establishments are not overloaded at any time. Those establishments which cannot include emergency exits on the exterior of the outdoor patio and require exiting through the building (i.e., landlocked businesses) will be subject to further review by the Building Department.</p>
	<p><u>Communications:</u> What was done to get the handling of COVID situation was outstanding. Now it's a real simple formula just re-apply. Each restaurant that's existing, everything is already in your hand regarding application materials. You could basically tell him right now what he doesn't have. How far off are we? Please clarify.</p> <p>We should just try to make this a renewal program. You have info now and go through all the applications and let us know what is wrong.</p>	<p>In previous years, the quality of submission material, namely patio plans and drawings that the city has received vary greatly. Staff will need operators to first apply to the program, and then confirm if their patio designs are not changing for the 2024 season. Once staff receive this confirmation, staff can work with applicants on ensuring that their plans are adequate.</p>
	<p>The challenges with communication – really extensive report, requires a lot of diligence to get</p>	<p>Staff emailed out the notice for the December meeting to all applicant from the</p>

	through. There was an expectation that the BDBA was going to spill the word out. This is a city-wide program, and it is in the hands of us five. We are the closest to it. Need to make sure that everybody who needs to hear this hears about it in time.	2023 season. Additionally, staff had a notice for the December meeting posted in the Hamilton Spectator more than 30 days in advance. Furthermore, staff are also updating our temporary patios web page and Get Involved project page to include updated information on the patio program. Staff will continue notify applicants and interested parties updates about the program.
	Last spring, we had a session at the Art Gallery. Great opportunity to have everyone come in and provide feedback to the city.	Staff will work with the BDBA, Burlington Restaurant Association (BRA) and operators to discuss future engagement events.
Phone call with 3330 South Service Road, Burlington on Dec. 21, 2023	Applicant has indicated to staff that they have sufficient space on their existing permanent patio to accommodate an additional 50 seats. As the proposed seating was to be located on a permanent patio, staff had indicated that the proposal did not meet the criteria of the temporary patio program. Staff advised the applicant to either apply to the temporary patio program for a temporary patio extension, or to go to Committee of Adjustment each year in the spring to reduce their indoor patio space by 50 seats indoors, and increase by 50 seats outdoors, and then go back to Committee of Adjustment in the fall to reverse this proposal.	Permanent patio proposals are treated differently than temporary patio expansions as they require a more in-depth planning review. However, in this instance the applicant is not proposing any new permanent structures and is not proposing any site alteration. The applicant's existing patio will meet the proposed capacity requirements (1.10 sq. m. per person) if 50 more seats are included. Staff recommend that the applicant work with staff on a site-specific solution to resolve this matter.
Feedback received from 3426 Mainway, Burlington	Applicant is concerned that new zoning regs will not permit breweries to have a patio.	The proposed zoning regulations have been modified. The proposed zoning will permit outdoor patios in association with breweries, distilleries or wineries, or any uses involved

		in the manufacturing, of beer, wine or spirits as licensed by the Alcohol and Gaming Commission (AGCO).
--	--	---