



Town of Newmarket
395 Mulock Drive P.O. Box 328,
Newmarket, Ontario, L3Y 4X7

Email: info@newmarket.ca | Website: newmarket.ca | Phone: 905-895-5193

Temporary Patio Program Policy Staff Report to Council

Report Number: 2023-88

Department(s): Legislative Services

Author(s): John Comeau, Acting Manager of Regulatory Services
Nathan Irvine, Acting Supervisor of Licensing

Meeting Date: December 4, 2023

Recommendations

1. That the report entitled Temporary Patio Program Policy dated December 4, 2023 be received; and,
2. That Council approve Staff's proposed Temporary Patio Program Policy; and,
3. That Council provide direction to Staff on how to proceed with Parking Space Patios, by selecting Option 1 or Option 2 as outlined in this report; and,
3. That Council amend Fees and Charges By-law 2022-62, and Delegated Authority By-law 2016-17 and,
3. That Staff be authorized and directed to do all things necessary to give effect to this.

Executive Summary

This Staff Report presents to Council a newly prepared Corporate Policy that will outline all aspects of the Town's Temporary Patio Program, including eligibility, application requirements, evaluation criteria and operating requirements. In preparation of this Report, Staff conducted a jurisdictional scan of other municipalities and completed consultation with the program participants and businesses within the Business Improvement Area (BIA). This Staff Report seeks Council's endorsement of the proposed policy, and direction on whether or not a limit should be imposed on the amount of Parking Space Patios will be permitted within the BIA.

Purpose

The purpose of this Staff Report is to present a proposed Temporary Patio Program Policy for Council Consideration.

Background

In Q1 of 2015, Staff Report 2015-12 and Staff Report 2015-16 led to Council approving a pilot program allowing for the creation of Temporary Patios in public spaces.

In Q4 of 2015, Staff Report 2015-36 led to Council authorizing the Temporary Patio program to continue on a permanent seasonal basis. Council also authorized up to 4 temporary parking space patios to be permitted within the Business Improvement Area.

In 2017, Staff Report 2017-02 permitted Temporary Patios to mirror Outdoor Serving Area regulations on hours of operation and noise.

In 2019, an [Information Report](#) was circulated to Council to highlight the success of the program.

In 2020, as a result of the COVID-19 Pandemic, the Province made amendments to the Liquor Licence and Control Act to temporarily ease restrictions on the serving of alcohol on temporary patios, making it significantly easier for restaurant owners to participate in the Temporary Patio Program. Town Staff streamlined the Temporary Patio Program application process to better support restaurants affected by Public Health regulations and business closures. Council supported local restaurants by waiving all fees associated with the Temporary Patio Program. This included the Outdoor Serving Area licensing fee, as well as the fee charged to restaurants for using Town Property. The Town also funded the installation costs of many of the patios established on Town property and coordinated the installation and removal of said patios.

Additionally, the program became accessible to restaurant owners who wanted to create temporary patios on private property. With property owner permission, restaurants were able to create temporary patios, or temporarily extend already existing patios, onto private property to allow for additional outdoor seating. A [2020 Information Report](#) highlights the success that the program had in supporting restaurants through COVID-19 closures.

To further support our local restaurants through COVID-19, Council continued to waive fees during the 2021 and 2022 patio seasons. The program saw 43 restaurants participate in 2021, and 29 restaurants participate in 2022. The Patio Program has largely been viewed as a success with positive comments received from both residents and business owners alike.

On January 1st of 2023, the Province of Ontario made amendments to the Liquor

Licence and Control Act to permanently ease restrictions on temporary patios. Moving forward restaurant owners will simply need municipal approval to serve alcohol on a temporary patio, and forward that approval to the Alcohol and Gaming Commission of Ontario. A municipality is permitted to approve a temporary patio for no longer than 8 months in a calendar year, and may put any conditions on the approval that are appropriate.

In 2023, an [Information Report](#) updated Council on processes Staff would follow in implementing the Temporary Patio Program for 2023. In 2023, 17 eating establishments participated in the Temporary Patios program, 7 on private property and 10 on Town property.

Discussion

After years of operating a Temporary Patio Program, Staff have identified the need for a Council approved Corporate Policy. This policy will govern the administration of the Temporary Patio program for both patios located on Town property, and patios found on Private Property. The proposed Policy outlines different aspects of the program including:

- Eligibility
- Types of Temporary Patios
- Applications
- Evaluation Criteria
- Operating Requirements
- Fees and charges

Prior to drafting the proposed Temporary Patio Program Policy, Staff conducted a jurisdictional scan to review best practices of other communities within Ontario.

Jurisdictional Scan

The jurisdictional scan undertaken by Town of Newmarket Licensing Staff reviewed the Temporary Patio programs of 18 municipalities in Ontario, providing a comprehensive overview of diverse approaches. Of the 18 municipalities reviewed, five had recently reviewed their regulations and have established detailed programs. Staff conducted an in-depth review of these recently updated Patio Programs (**Attachment 1**).

Staff focused on program features such as fees and charges, restrictions on parking spaces allocated for temporary patios, multi-year approvals, business licensing of private patios, and use of patios.

Consultation

In preparing the draft Temporary Patio Policy, Staff conducted consultation with various stakeholders. This consultation included:

- Phone conversations with applicants of the Town's Temporary Patio Program from 2023. In total 19 applicants were contacted for comment, including both those approved and denied. Staff successfully received comments from 13 business owners.
- Additionally, an email was sent to all members of the Business Improvement Area seeking feedback from interested parties. From that email, 7 business owners contributed feedback to Licensing Staff.
- Lastly, internal stakeholders from various departments within the Town were consulted in preparation of the draft policy.

The feedback obtained from restaurant owners engaged with the Temporary Patio program during 2023 provided noteworthy insights. In response to whether participating in the program met their expectations, unanimous positivity was expressed, with several owners stating "yes" some affirming "absolutely" and one owner enthusiastically rating it as "yes, 10 out of 10". When asked about the program's impact on their business, all owners acknowledged a positive influence. One owner emphasized the program's contribution to downtown attraction, while another noted increased seating capacity.

Regarding challenges encountered, the majority reported minimal issues. One owner highlighted concern about smoking on the patio and after-hours use, while another patio owner located near a high school noted challenges during lunch hours with students.

Suggestions for program enhancement included a desire for multi year approval to encourage further investment, earlier application periods so restaurants have time to prep for patio installation, and expanded patio footprints with neighbouring property owner permissions. Comments were also received regarding streamlining the renewal process.

On the prospect of participating in the 2024 program, unanimous interest was expressed, with one owner on private property expressing strong disappointment if there was the potential of not being approved to participate as they had negotiated property owner permission into their new lease.

Non-restaurant businesses within the BIA largely endorsed Temporary Patios, even proposing the pedestrianization of the Main Street area to accommodate more temporary patios. They emphasized the positive impact of the program, citing increased business attraction to the Main Street area.

These consultation results highlight a positive reception of the program, while also offering valuable insights for potential improvements as the program evolves.

Types of Approved Patios

Through Staff's proposed Temporary Patio Program Policy, the Town will continue to offer three main types of Temporary Patios for Eating Establishments:

1. Small Frontage Temporary Patios: These patios must be situated in open space against a building wall, without umbrellas, fencing, or enclosures, promoting an open atmosphere. Alcohol is not permitted. After business hours, tables, chairs, and displays must be removed.

2. Curbside/Walkway Patios: Located adjacent to an Eating Establishment, these patios follow strict guidelines for safety and accessibility. Requirements include an unobstructed emergency route, a 5m setback from pedestrian crossovers, no enclosures, maintenance of sidewalk width, and 1m-high barriers adjacent to live traffic.

3. Parking Space Patios: Utilizing existing parking spaces, these patios enhance business presence in public spaces. They must adhere to safety guidelines, including an unobstructed emergency route, a 5m setback from pedestrian crossovers, no enclosures, and 1m-high barriers adjacent to live traffic. No Temporary Patios are permitted to extend onto a highway or driveway.

Applications

The application for a Temporary Patio (**Attachment 2**) needs to be completed and submitted to the Town's Licensing Division. Though the application for patios on both private and public property remain the same, there are nuances between the two.

With significant Town coordination required for Temporary Patios on Town property, the proposed policy outlines specific timelines for Applications to be submitted and approved:

Temporary Patio on Town Property - Timelines	
Date Applications Open	January 1 st
Date Applications Close	February 1 st
Date Town will Provide Approval/Denials	February 20 th
Date of Patio Installation	In coordination with Staff direction, no earlier than May 1 st
Dates of Operation	From date of installation – October 31 st . Patios are required to be removed by November 1 st

The application period, starting January 1st and closing on February 1st allows the Town to assess all submissions comprehensively. Applications received after February 1st may not be considered. Town Staff will evaluate applications post-deadline, issuing

permissions/denials by February 20th. This early timeline addresses concerns raised by restaurant owners during the consultation process of requiring more time to plan for installation.

Temporary Patio applications for private property are accepted throughout the year, however, these applications require property owner permission.

Evaluation Process

The proposed amendments to the Delegated Authority By-law 2016-17 delegates authority to evaluate Temporary Patio Applications to the Manager of Regulatory Services (or their delegate). The decisions to approve, deny, or revoke a Temporary Patio Application will be delivered by the Manager of Regulatory Services, in consultation and in coordination with various Departments within the Town including but not limited to Economic Development, Recreation and Culture, Legislative Services, Building, Planning, Public Works, Central York Fire Services.

In assessing Temporary Patio applications, the Manager shall consider:

Criteria	Explanation
Location	Sites that are located in ways that are complementary to the existing street design and require less extensive change to existing use and management patterns will be preferred.
Design	Material choice – Appropriate heritage materials and design. Streetscape – Attractive design elements for both patrons and pedestrians
Safety	Sites are to cause no safety issues/concerns
Accessibility	Sites are to ensure full accessibility for sidewalk and patios for all patrons.
Positive Impacts	Sites are to create a positive impact to the area. Preference will be given to patios that cause minimal disruption to neighboring businesses, parking, and Town initiatives.

Decisions made by the Manager are final, with no options for appeal.

Parking Space Patios within BIA

In 2015, Council authorized Staff to approve up to 4 temporary patios within the BIA. The cap was implemented to maintain appropriate parking with the BIA. During the COVID-19 pandemic, Staff deviated from the approved cap in support of local restaurants. Staff are presenting two options for Council consideration regarding the use of Parking Space patios within the BIA:

Option 1:

Recognizing the importance of maintaining appropriate parking within the BIA, Option 1 would have Staff maintain the previously implemented cap of no more than 4 Temporary Patios utilizing parking spaces (up to a maximum of 8 parking spaces total).

Should more than 4 applications be received for Parking Space Patios within the Business Improvement Area, the Manager will utilize the following considerations in determining which applications will be successful in the following order:

- a. Patios that were previously approved and operated in compliance with Town Policy and By-laws will be given the first right of refusal
- b. Applicants without any pre-existing Outdoor Serving Areas or suitable alternative **Temporary Patio** location will be provided preference
- c. Failing the above, completed applications received first will be prioritized.

Option 2:

Option 2 would have Council remove the previously implemented cap, and allow for Parking Space Patios to be approved by the Manager of Regulatory Services through delegated authority. This option would allow Staff the discretion to approve additional parking space patios beyond the previously approved limits – allowing for additional opportunities for restaurants.

Staff would still ensure adequate parking within the BIA is maintained, while also allowing flexibility in approving additional proposals that meet the requirements as outlined in the Policy.

It is important to note, that regardless of the option selected by Council, additional requirements are being recommended by Staff through the proposed policy. Parking spaces are a valuable resource, and as such the following conditions will be imposed on parking space patios:

- 1) Temporary Parking Space Patios are required to be in operation a minimum of 40 hours a week (weather dependant)
- 2) These patios are subject to a higher lease fee than Curb Side/Walkway Patios as outlined in the Town's Fees and Charges By-law

Should Council choose Option 2, amendments to the attached proposed Patio Policy will be made prior to enactment.

Fees and Charges

A significant amount of coordination from Staff is required to support the Temporary Patio Program. Currently, the Temporary Patio participants are required to pay the following fees:

- An Outdoor Serving Area Licence Fee \$389.10
- A Lease Fee of \$0.5 per square foot, per month for patios located on Town property.

Moving forward, Staff are proposing the following fee structure for Temporary Patios:

Fees Applicable	Patios on Town Property	Patios on Private Property
Outdoor Serving Area Licence Fee	Required for all businesses (currently \$389.10)	
Small Frontage Patios	No fee	-
Off-Street Patios on Town Property	\$0.5 per square foot, per month	-
Parking Space Patios	\$0.70 per square foot, per month	-

The proposed fees would fall in line with the existing fees applied to temporary patios in Newmarket. The one change proposed increases the lease fee for patios found within Town parking spaces. This change has been proposed recognizing the value that parking spaces hold within the BIA.

Additionally, Staff are proposing that all lease fees generated from Patios within the BIA are re-invested in the downtown core with revenue directed to an already established account dedicated for downtown improvements within the Economic Development budget. Should Council endorse this approach, approximately \$15,000 would be generated annually for reinvestment within the BIA to support future initiatives.

Multi-Year Approval

Feedback from Temporary Patio owners who participated in previous years indicates significant support for multi-year license approvals for Temporary Patios. It is important to note that presently, the Alcohol and Gaming Commission of Ontario (AGCO) mandates annual approvals from municipalities for temporary extensions to existing liquor licenses under the newly adopted streamlined process. Extensive jurisdictional research of temporary patio programs in other municipalities found yearly approvals a common standard.

Town Staff are recommending trialing a 2-year approval process that will allow qualifying applicants to apply for a two-year Temporary Patio permission. It is important to note that the municipality will still need to issue separate approval letters to business owners

in order for them to obtain temporary extensions to their liquor license, however, business owners will not be required to resubmit a completed application for the second year. License fees and lease fees will remain in place and will need to be paid prior to installation of a patio each year.

Commitment to Continuous Improvement

At the forefront of our approach, Town staff are dedicated to enhancing programming, processes, and procedures, adhering to a commitment to continuous improvement. By actively seeking ways to refine and optimize the Temporary Patio Program, we aim to elevate the experience for both business owners and the community.

Staff will provide an Information Report to Council in the first quarter of 2025 that will update Council on the status of the program and the implementation of the newly proposed policy.

Conclusion

After nine successful years of running a Temporary Patio Program, a review of best practices within other municipalities, and consultation with participating restaurants owners, Staff have proposed a Policy to guide the administration of the program moving forward.

Should Council choose to adopt the proposed Policy and amendments, Staff will work diligently to ensure the application period is open beginning January 1st, 2024 – and will communicate new changes to prospective applicants.

Business Plan and Strategic Plan Linkages

The Town's Temporary Patio Program supports Council's strategic priorities of "Community and economic vibrancy", and "Extraordinary places and spaces".

Consultation

Applicants of the Temporary Patio Program in 2023 were contacted by the Licensing Division for phone interviews.

The Town's Licensing Division opened up consultation opportunities to other business owners within the BIA.

The Alcohol Gaming and Commission of Ontario was consulted during the preparation of this report.

Human Resource Considerations

The Temporary Patio Program will be administered using existing resources within the Town's Licensing Division.

Budget Impact

In 2023, the Temporary Patio program generated:

\$15,251.90 in Lease Fees

\$5,836.50 in Outdoor Serving Area Licence fees

Attachments

Attachment 1 – Jurisdictional Scan

Attachment 2 – Temporary Patio Program Application

Attachment 3 – Temporary Patio Program Policy

Attachment 4 – Amendment By-law, Fees and Charges

Attachment 5 – Amendment By-law, Delegation By-law

Approval

Lisa Lyons, Director/Town Clerk, Legislative Services

Esther Armchuk, Commissioner, Corporate Services

Contact

John Comeau, Acting Manager of Regulatory Services

jcomeau@newmarket.ca