




CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
General Manager's Office

TO:	Mayor and Members Planning Committee
COMMITTEE DATE:	October 6, 2020
SUBJECT/REPORT NO:	Outdoor Dining Districts Winter Season (PED20169) (City Wide)
WARD(S) AFFECTED:	City Wide
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SUBMITTED BY:	Jason Thorne General Manager Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

(a) That the Outdoor Dining Districts program to allow temporary outdoor patios on public lands be extended to October 31, 2021 as follows:

- i. that all applicable public health requirements, including any COVID-related public health requirements, as well as all applicable Provincial Orders be followed;
- ii. that applications be accepted through the Economic Development Division and that staff ensure, through the SEAT circulation process, that there will be no negative impacts with respect to pedestrian safety, accessibility, emergency services, public transit, private accesses and other issues that are normally addressed through the SEAT review process;
- iii. that patios generally not be permitted between November 1, 2020 and April 30, 2021 on-street, except where done as part of a full street closure that does not allow for vehicular access, or where otherwise approved by the Transportation Operations and Maintenance Division of the Public Works Department;

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OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

- iv. that no application fee be charged and that costs related to any necessary road closure permits or parking charges be waived and/or refunded, utilizing funds from the City's Economic Development Reserve, with all other costs to be borne by the applicants;
 - v. that any temporary outdoor patios that occupy streets or public parking spaces include written support from the BIA or, if not within a BIA, have at least two-thirds buy-in from all businesses on the affected block(s) through petition;
 - vi. that the Ward Councillor be notified of each case of any outdoor patio application in advance of any approval or implementation;
 - vii. that any patio not impede delivery and pick up vehicles or pedestrian access to any business who is not party to the arrangements;
 - viii. that winter maintenance surrounding patios on public property be undertaken by the applicant and the patio not impede sidewalk maintenance equipment; and
 - ix. that the City waive any requirement for site plan review and waive enforcement of any zoning provisions related to parking supply, provided the patios are created as temporary uses with no permanent fixtures and having no alterations that require a Building Permit.
- (b) That the Outdoor Dining Districts program to allow temporary outdoor patios on private property in the private parking areas of commercial plazas and malls, be extended to October 31, 2021 as follows:
- i. that any Outdoor Dining Districts follow all applicable public health requirements, including any COVID-related public health requirements, as well as all applicable Provincial Orders;
 - ii. that the City waive any requirement for site plan review and waive enforcement of any zoning provisions related to parking supply, provided the patios are created as temporary uses with no permanent fixtures and having no alterations that require a Building Permit;
- (c) That the fees for the On-Street Pop-Up Patio Program, which operates from May 1 to October 31 of each year, be waived for the 2021 season, and that any costs be charged to the City's Economic Development Reserve; and

(d) That the Mayor be requested to correspond with the Premier, the Minister of Municipal Affairs and Housing, the Attorney General and the local MPPs to request that:

- i. the Provincial Order respecting municipal authority to pass a Temporary Use By-law with respect to patios be extended; and
- ii. the Province's amendments to Regulation 719 under the Liquor Licence Act to provide flexibility for liquor sales licensees (e.g. licensed bars and restaurants) to temporarily extend their physical premises beyond 14 days be extended to October 31, 2021.

EXECUTIVE SUMMARY

The City of Hamilton has enacted two separate but related programs to create opportunities for bars, restaurants and cafes to provide for outdoor dining on temporary patios.

The "On-Street Pop-Up Patio Program" was initiated in 2016 as a pilot project and became permanent in 2017. It allows bars, restaurants and cafes to occupy one or more on-street parking spaces in front of their businesses as a temporary "pop-up patio".

The "Outdoor Dining Districts" initiative was approved by Council in response to the COVID-19 pandemic in May 2020. It provides for temporary patios on (a) public property including streets, sidewalks, boulevards and off-street parking areas and (b) private property such as the parking areas of malls and strip malls.

The "On-Street Pop-Up Patio Program" requires patios to be removed as of October 31. The "Outdoor Dining Districts" initiative was approved up until "Summer/Fall 2020" and all current approvals will expire by the end of November. Neither program provides for the operation of the temporary patios through the winter season. Businesses could still operate patios through the winter, but would be subject to the standard policies, requirements and fees for commercial patios.

This report recommends the extension of the "Outdoor Dining Districts" program, but not the "On-Street Pop-Up Patio Program", through the 2020-2021 winter season, and the extension of both programs in the summer 2021.

Alternatives for Consideration – See page 12.

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: In 2020, application fees for the “On-Street Pop-Up Patio Program” were waived, resulting in foregone revenues of \$9,750.

Under the Council-approved terms for the “Outdoor Dining Districts” initiative, no application fee was charged and the City covered any costs related to any necessary road closure permits, Book 7 traffic management measures, and parking charges. Approximately \$40,000 in costs were incurred through the summer of 2020 for reimbursement of Book 7 traffic management requirements. Additionally, staff estimates foregone parking revenues of \$35,000; however, it is important to note that these foregone revenues are based on an assumption of pre-COVID parking utilization rates. Actual parking utilization during the summer of 2020 was significantly lower than pre-COVID levels, so it is likely that the actual foregone parking revenues was much lower than this estimate.

For the extension of the “On-Street Pop-Up Patio Program” and “Outdoor Dining Districts Program”, staff are recommending through this report that the City continue to waive through to October 2021 the application fee and fees for foregone parking revenues. However, staff are recommending that all other costs, including Book 7 traffic management costs, be the responsibility of the applicant.

Staffing: There are no staffing implications associated with this report. The programs are being managed by existing staff within the Economic Development Division and supported by staff in other divisions including Building, Licensing and By-law Services and Transportation Planning and Parking, as required.

Legal: Not applicable.

HISTORICAL BACKGROUND

On June 22, 2016, Council approved Report PED16119 establishing a pilot project for an “On-Street Pop-Up Patio Program.” On March 18, 2017 Council approved Report PED16119(a) establishing the “On-Street Pop-Up Patio Program” as a permanent program.

On May 13, 2020, in response to the COVID-19 pandemic, City Council approved the following motion which created the “Outdoor Dining Districts” initiative:

- (a) That the City of Hamilton offer the opportunity for local Business Improvement Areas and/or commercial areas that are predominantly restaurants and cafes to create temporary, shared “Outdoor Dining Districts” on City streets or parking areas for Summer/Fall 2020;
- (b) That staff in the Economic Development Division consult with all of the City’s BIAs and/or interested restaurant owners to identify appropriate locations where City streets or parking areas could be temporarily converted into shared Outdoor Dining Districts, and that applications for shared Outdoor Dining Districts be accepted and reviewed through the SEAT process;
- (c) That any Outdoor Dining District not currently within a BIA have at least two-thirds buy-in from all businesses on the affected block(s) through petition;
- (d) That any Outdoor Dining Districts follow all applicable public health requirements, including any COVID-related public health requirements, as well as all applicable Provincial Orders;
- (e) That through the SEAT application process, staff ensure no negative impacts with respect to pedestrian safety, accessibility, emergency services, public transit, private accesses and other issues that are normally addressed through the SEAT review process;
- (f) That costs for the establishment of Outdoor Dining Districts on City streets or City parking lots/spaces for temporary road closure permits, Book 7 traffic management measures, and parking meter charges, be waived and/or refunded, utilizing funds from the City’s Economic Development Reserve, with all other costs to be borne by the applicants;
- (g) That the applicants be responsible for the management and operation of any approved Outdoor Dining Districts, including ensuring that they are staffed at all times when open, to ensure proper use, cleaning and physical distancing;
- (h) That the City also support the establishment of temporary outdoor patios in the private parking areas of commercial plazas and malls, where permitted by the applicable zoning;
- (i) That the Ward Councillor be notified of each case of any outdoor expansion application in advance of any approval or implementation;
- (j) That the programming not impede delivery and pick up vehicles or pedestrian access to any business who is not party to the arrangements; and

(k) That the City waive any requirement for site plan review for such locations and waive enforcement of any zoning provisions related to parking supply, provided the patios are created as temporary uses with no permanent fixtures and no alterations that require a Building Permit.

The “Outdoor Dining Districts” initiative was further modified by Council’s approval of Report PED20135 which approved Temporary Use By-law 20-181 on August 21, 2020 to allow the temporary patios to abut residential properties and to extend permission for live and amplified music on temporary patios in the downtown area.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Any patios created under the Outdoor Dining Districts or On-Street Pop-Up Patio programs must meet all applicable health and safety requirements, public health requirements, and Ontario Building Code requirements.

RELEVANT CONSULTATION

The following City Divisions were consulted in the preparation of this report:

- Planning Division, Planning and Economic Development Department
- Building Division, Planning and Economic Development Department
- Economic Development Division, Planning and Economic Development Department
- Transportation Planning and Parking Division, Planning and Economic Development Department
- Public Health Division, Healthy and Safe Communities Department
- Transportation Operations and Maintenance Division, Public Works Department

Staff in the Economic Development Division also undertook a survey in September 2020 of participants in the summer 2020 Outdoor Dining District program. The results of this survey are included as Appendix ‘A’.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

The City of Hamilton has enacted two separate but related programs to create opportunities for bars, restaurants and cafes to provide for outdoor dining on temporary patios: the “On-Street Pop-Up Patio Program” which was initiated in 2016 and the “Outdoor Dining Districts” initiative which was approved by Council in response to the COVID-19 pandemic in May 2020.

The “On-Street Pop-Up Patio Program” requires patios to be removed as of October 31. The “Outdoor Dining Districts” initiative was approved up until “Summer/Fall 2020” and all current approvals will expire by the end of November. Neither program provides for the operation of the temporary patios through the winter season.

Current Public Health Restrictions

There are currently no public health capacity limits for restaurants, cafes, pubs, etc., (unless they are hosting an event, in which case gathering limits do apply). However, establishments must be configured such that patrons seated at different tables are separated by a distance of at least two metres or provide plexiglass or some other impermeable barrier between tables. Walking aisles must also allow for physical separation. As a result of these provisions, many businesses, especially smaller businesses, are limited in their ability to accommodate patrons indoors.

Outdoors, there are similarly no limits on capacity (except in the case of an event), but again, establishments must be configured such that patrons seated at different tables are separated by a distance of at least two metres. To be considered an “outdoor” eating area, the patio can have a tent or other covering, but it must have at least two sides open and not be substantially blocked with obstructions (e.g. a half wall) regardless of whether a roof is present or not. This is outlined in Ontario Reg. 345.

Having both indoor and outdoor dining options is one means by which businesses can continue to try to accommodate the number of patrons that they have historically been able to accommodate, while still meeting all public health restrictions.

On-Street Pop-Up Patio Program

The “On-Street Pop-Up Patio Program” which was initiated in 2016 allows bars, restaurants and cafes to occupy one or more on-street parking spaces in front of their businesses as a temporary “pop-up patio.” The program is available in any location in the city that has appropriate commercial zoning, and that has metered on-street parking spaces. Within BIA areas, it is a requirement that the BIA support the patio location. Patios are allowed to operate between May 1 and October 31.

The Council approved fee for the program was \$650 per metered parking space in 2020, but this fee was waived due to the COVID-19 pandemic. The business owner is responsible for all costs associated with constructing the patio itself.

The pop-up patios can take two forms. They can be a patio erected within the on-street parking space itself. Alternatively, they can be a “pedestrian bypass” in the on-street parking space, which then allows the business to use the sidewalk for its patio.

The “On-Street Pop-Up Patio Program” has had the following number of participants over the past three years:

- 2018: 24 (Locke St BIA – 4; Westdale Village BIA – 4; Downtown BIA – 4; International Village BIA -1; CIPA - 8; Ottawa St BIA – 2; Concession St BIA - 1)
- 2019: 14 (Westdale Village BIA – 5; Downtown BIA – 2; International Village BIA -1; CIPA - 4; Ottawa St BIA – 1; Concession St BIA - 1)
- 2020: 11 (Locke St BIA – 1; Downtown BIA – 3; International Village BIA -1; CIPA - 4; Ottawa St BIA – 1; Concession St BIA - 1)

Staff are not recommending that the “On-Street Pop-Up Patio Program” be extended into the winter season. The location of these patios can create a number of challenges with respect to winter operation and would present a maintenance challenge for snow clearing and snow storage both for street and sidewalk plowing.

The “On-Street Pop-Up Patio Program” will proceed again starting May 1, 2021. Staff are recommending that, as a COVID-19 relief measure, the annual fee for these patios of \$650 be waived once again in 2021, with the costs being covered through the Economic Development Reserve.

Outdoor Dining Districts

On May 13, 2020, in response to the COVID-19 pandemic, City Council approved the creation of the “Outdoor Dining Districts” initiative. The program applies to both public and private property.

On public property, business owners can apply to the City for permission to establish a patio on a sidewalk, boulevard, street, or off-street parking lot. Applications are made through the City’s Economic Development Division and are circulated for review using the SEAT process. The location must have appropriate commercial zoning. The City does not charge a fee for the use of the space or for the application and waives or reimburses costs associated with temporary road closure permits, Book 7 traffic management measures, or parking meter charges. The business owner is responsible for all other costs, including costs associated with construction of the patio itself. Similar to the “On-Street Pop-Up Patio Program”, business in BIAs are required to demonstrate BIA support for the patio location. Outside of BIAs, the business is required to demonstrate at least two-thirds buy-in from all businesses on the affected block(s) through petition.

On private property, business owners are permitted to establish temporary patios in the private parking areas of commercial plazas and malls, where permitted by the applicable zoning, without requiring site plan review, and notwithstanding any zoning provisions related to parking supply.

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On August 21, 2020, Council modified the Outdoor Dining Districts initiative with the approval of Report PED20135 which approved Temporary Use By-law 20-181. This by-law temporarily amends the City's zoning by-law to (a) permit commercial outdoor patios in locations that abut residential properties provided a minimum setback of 5 metres is achieved and (b) extends permissions for live/amplified music on the temporary patios in the downtown area. The temporary use by-law will expire on December 31, 2020.

As of September 1, 2020, participation in the Outdoor Dining Districts program was as follows:

Ward	Applications on Private Property		Applications on City Property (Streets)		Applications on City Property (Parking Areas)		Applications on City Property (Sidewalks)	
	Approved	Denied	Approved	Denied	Approved	Denied	Approved	Denied
1	12	1	1	0	6	0	2	0
2	6	0	3	0	1	0	19	0
3	5	0	2 (alleys)	0	0	0	5	0
4	17	0	0	0	0	0	7	0
5	7	0	0	0	0	0	0	0
6	6	0	0	0	0	0	0	0
7	7	0	0	0	0	0	4	0
8	11	0	0	0	0	0	0	0
9	4	0	0	0	0	0	0	0
10	12	0	0	0	0	0	0	0
11	2	0	0	0	0	0	1	0
12	8	0	0	0	0	0	0	0
13	4	0	0	0	0	0	1	0
14	0	0	0	0	0	0	0	0
15	10	0	0	0	0	0	0	0

As can be seen from the data above, a significant majority of the approved patios (111) were on private property. The second largest number (39) were on City sidewalks

Council approved the Outdoor Dining Districts initiative up until "Summer/Fall 2020" and all current approvals will expire by the end of November.

By extending the program to October 31, 2021, temporary patios would continue to be allowed on public and private property under the same terms and conditions as currently exist. On public property, staff are recommending that patios generally not be permitted between November 1, 2020 and April 30, 2021 on-street, except where done as part of a full street closure that does not allow for vehicular access, or where otherwise supported by the Transportation Operations and Maintenance Division of the Public Works Department.

September 2020 Business Participant Survey

Staff in the Economic Development Division undertook a survey in September 2020 of participants in the summer 2020 Outdoor Dining District program.

This survey was emailed to all participants in the Outdoor Dining District and On-Street Pop-Up Patio programs to gather information on the effectiveness of these programs and to ask respondents for their opinions on extending temporary patio permissions into 2021.

Eighty-three (83) responses were collected. The results were very positive, with 89% of respondents stating that temporary outdoor patios were extremely important to their business this year. There was also significant support from the program participants, 57.8%, for the Outdoor Dining District program to be extended through the winter of 2021. Overwhelmingly there was positive support when asked if respondents would like to have a temporary outdoor patio in the Spring/Summer of 2021, 96.4% of survey respondents stated yes.

The full results of the survey are included as Appendix 'A'.

"Winterizing" Temporary Patios

There are a number of improvements that businesses can make to their patios to make them more conducive to winter outdoor dining. It is expected that the main improvements that businesses will want to make are to erect tents for snow and wind protection and provide outdoor portable heaters.

Temporary portable heaters do not require any city approvals provided they are not affixed to a building or structure. Use is in accordance with the manufacturer's instructions and may also be subject to limitations in accordance with the Ontario Fire Code. Costs for portable heaters range from a few hundred dollars up to \$4,000 per unit. Open fires or fire pits are not permitted in the urban area.

Tents do require city approvals in certain circumstances. Under the Ontario Building Code, a tent or group of tents is exempt from the requirement to obtain a Building Permit provided that the tent or group of tents are:

- not more than 60 m² in aggregate ground area,
- not attached to a building, and
- constructed more than 3 metres from other structures.

For tents over 60 m² in size a Building Permit is required. The tent would be required to be designed to handle area snow loads as per the Ontario Building Code, and it is

important to note that “snow removal by mechanical, thermal, manual or other means shall not be used as a rationale to reduce design snow loads”.

For tents that require Building Permits, all applicable zoning would have to be met. The City’s Zoning By-law generally treats tents the same as any other structure, requiring them, for example, to meet the same setbacks as a permanent structure. One exception is for temporary uses, which are exempt from meeting these provisions, but which are limited to being in place to just five days. Therefore, any tent that will be in place for longer than five days will be required to meet the same setback provisions as a permanent structure.

Snow Clearance

One of the challenges associated with maintaining patios on public property through the winter months is snow clearance. Snow clearance and storage/removal around temporary patios on public property such as sidewalks would be the responsibility of the applicants, and must comply with the City of Hamilton’s Snow and Ice By-law No. 03-296, which requires property owners and/or occupants to clear snow and ice from sidewalks adjacent to their property and from roofs that overhang the City sidewalk within 24 hours after the end of a snowfall. In BIA areas where snow clearance is undertaken by the City, the design and placement of the temporary patios must accommodate and not impede the use of sidewalk clearing equipment.

Staff are recommending that patios generally not be permitted between November 1, 2020 and April 30, 2021 on-street, except where done as part of a full street closure that does not allow for vehicular access, or where otherwise approved by the Transportation Operations and Maintenance Division of the Public Works Department. All applications for patios on streets or sidewalks would be reviewed by the Transportation Operations and Maintenance Division of the Public Works Department to ensure proper snow clearance can be accommodated.

Provincial Orders

This report is recommending that the City of Hamilton support the extension of two provincial initiatives that were introduced during the COVID-19 pandemic.

Firstly, staff are recommending that the Provincial Order respecting municipal authority to pass a Temporary Use By-law with respect to patios be extended. This Order was issued on July 2, 2020 and it allows municipalities to pass a Temporary Use By-law to permit temporary outdoor patios and exempts these By-laws from appeal.

Secondly, staff are recommending that the Province’s amendments to Regulation 719 under the Liquor Licence Act to provide flexibility for liquor sales licensees (e.g. licensed

bars and restaurants) to temporarily extend their physical premises beyond 14 days, provided the municipality does not object, be extended to October 31, 2021. This regulation was passed June 8, 2020 and is set to expire on January 1, 2021.

Normally, licensees who wish to extend a licensed patio are required to apply to the AGCO for a temporary extension of premises, which may be authorized for up to 14 days and for a maximum of four times each year. Under the new temporary measures introduced by the Province in June 2020, licensees do not need to notify or submit an application to the AGCO for a temporary extension of premises, provided that they meet all the eligibility criteria and applicable requirements. These requirements include having a valid liquor sales licence, that the physical extension of the premises is adjacent to the premises to which the licence to sell liquor applies and being able to demonstrate sufficient control over the physical extension of the premises. The maximum capacity for all existing patios continues to apply for the existing patio space. The licensee may accommodate patrons over and above their capacity on the extended patio space as long as the capacity of any extended patio space allows for a minimum of 1.11 square metres per person.

ALTERNATIVES FOR CONSIDERATION

1. Council can decide to not extend the Outdoor Dining Districts initiative through the winter of 2020-2021 or in the summer of 2021. All current approvals would expire by the end of November 2020. The On-Street Pop-Up Patio Program would resume again in May 2021 and the normal fees would apply.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Economic Prosperity and Growth

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

APPENDICES AND SCHEDULES ATTACHED

Appendix 'A' - Results of Survey of 2020 Outdoor Dining Districts Participants