




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

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| <b>TO:</b>                | Mayor and Members<br>Planning Committee  |
| <b>COMMITTEE DATE:</b>    | February 15, 2022  |
| <b>SUBJECT/REPORT NO:</b> | Permanent Program for Temporary Outdoor Patios<br>(PED22051) (City Wide)           |
| <b>WARD(S) AFFECTED:</b>  | City Wide  |
| <b>PREPARED BY:</b>       | Rob Lalli (905) 546-2424 Ext. 4674<br>Julia Davis (905) 546-2424 Ext. 2632         |
| <b>SUBMITTED BY:</b>      | Jason Thorne<br>General Manager<br>Planning and Economic Development Department    |
| <b>SIGNATURE:</b>         |  |

**RECOMMENDATION**

- (a) That the City's existing "On-Street Patio Pilot Program" and temporary COVID "Outdoor Dining Districts Program" be combined into a permanent program to permit Temporary Outdoor Patios on both public and private property based on the terms and conditions outlined in Report PED22051;
- (b) That the General Manager of Planning and Economic Development, or designate be delegated the authority to make minor amendments to the terms and conditions for the Temporary Outdoor Patio program as required;
- (c) That staff be directed to include an annual application fee and any other relevant fees for the Temporary Outdoor Patio Program, for both public and private property, as part of the annual User Fee By-law;
- (d) That staff be directed to include applicable fees for the occupation of public or metered parking spaces specifically relating to the Temporary Outdoor Patio program use, as part of the annual User Fee By-law; and,
- (e) That the applicable fee for public rights of way be applied for the temporary use of a sidewalk, alleyway, or boulevard for the purpose of a Temporary Outdoor Patio,

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OUR Vision: To be the best place to raise a child and age successfully.

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.

**SUBJECT: Permanent Program for Temporary Outdoor Patios (PED22051) (City Wide) - Page 2 of 14**

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and that the Chief Corporate Real Estate Officer be authorized and directed to prepare or modify any temporary lease or license agreement fee rates accordingly, effective January 1, 2022.

**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 Patio Pilot 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 Program” was approved by Council in May 2020 in response to the COVID-19 pandemic. It expands on the on-street patio program by providing for temporary patios on public property (including streets, sidewalks, boulevards and off-street parking areas) and on private property such as the parking areas of malls and strip malls.

While the “On-Street Patio Pilot Program” is a permanent City program that extends from May 1 to October 31 of each year, the Outdoor Dining Districts Program is a temporary program that expired on December 31, 2021.

On November 10, 2021 Council approved Planning Committee Report 21-017 which directed as follows:

That the appropriate staff be requested to report back to Council with options and the necessary policy or by-law changes to maintain the Outdoor Dining Districts program on a permanent basis, alongside the existing on-street temporary patio program

The purpose of this Report is to respond to the November 10, 2021 Council direction. This report recommends that the already-permanent “On-Street Patio Pilot Program” and the temporary COVID-related “Outdoor Dining Districts Program” be combined into a single, consolidated Temporary Outdoor Patio Program and that it be made a permanent City program.

**Alternatives for Consideration – See Page 13**

**FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

Financial: The recommended Temporary Outdoor Patio Program would be operated on a fee-recovery basis, similar to the existing On-Street Patio Pilot Program.

**Current Fees**

The City's Tax Supported User Fees By-law for 2022 establishes a fee for applications for temporary On-Street Patio Program of \$676.11. There are currently no application fees for the Outdoor Dining Districts program. However based on the specific requests within each application, the following City fees may apply:

- any patio that occupies an on-street or off-street municipal parking space is required to pay the Occupation of Public/Metered Parking Spaces fee;
- where a patio temporarily occupies City property that is not an on-street or off-street public parking space, a Temporary Lane & Sidewalk Occupation Permit is required for the use of the property; and,
- any patio or group of patios that require a full road closure is required to pay a road closure application fee as well as all costs associated with the execution of the closure including the hiring of a third party traffic management company to plan and implement the closure, additional signage, detouring of transit, etc. as required.

**Recommended Fees**

The fees for the Temporary Outdoor Patio Program will be established through the User Fee By-law in 2023 including application fees for both municipal and private property. These fees will be in line with the administration required by staff and will be reviewed annually through the User Fee By-law.

In addition to the application fees to be established, the following City fees may be applied based on the requirements identified on the application:

- any patio that occupies an on-street or off-street municipal parking space is required to pay a "Temporary Patio Occupation of Parking Space" fee of \$875 per space;

- any patio that occupies an on-street or off-street municipal parking space may be required to pay a “Temporary Patio Installation of Safety Devices” fee for the installation and maintenance of required safety devices (knock down bollards, hazard marker signage, planters, etc.) of \$800 per application;
- where a patio temporarily occupies City property that is not an on-street or off-street public parking space, and is a public right of way, such as the public sidewalk, alleyways or road allowances, a fee of \$54.67 per 14 days for a partial closure or \$118.42 per 14 days a full closure is charged for the use of the property (the City may enter into a market rate lease/licence agreement for the use of public property and City-owned private property in certain circumstances); and,
- any patio or group of patios that require a full road closure will be required to pay a road closure application fee of \$721.24 as well as all costs associated with the hiring of a third party traffic management company to plan and execute the closure and as required.

It is important to note that any proposals for permanent patios that would permanently occupy public property, City-owned private property, or other private property would not be part of the Temporary Outdoor Patio Program and would be reviewed on a case-by-case basis in accordance with the City’s normal real estate and leasing/licencing policies.

### **Post-COVID Economic Recovery Fee Exemption**

On January 19, 2022, Council approved GIC Report 22-001 which included a direction to waive all City fees for temporary patios for 2022; therefore, the fees outlined above would not be applicable in 2022.

**Staffing:** There are no staffing implications associated with the administration of this program. The Temporary Outdoor Patio Program would be administered by the Commercial Districts & Small Business Section of the Economic Development Division.

**Legal:** N/A

### **HISTORICAL BACKGROUND**

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.

**SUBJECT: Permanent Program for Temporary Outdoor Patios (PED22051) (City Wide) - Page 5 of 14**

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On June 22, 2016, Council approved Report PED16119 establishing a pilot project for an “On-Street Patio Pilot Program.” The pilot program allowed bars, restaurants and cafes to occupy one or more on-street parking spaces in front of their businesses as a temporary “pop-up patio”. On March 18, 2017 Council approved Report PED16119(a) establishing the “On-Street Patio Pilot Program” as a permanent program.

On May 13, 2020, in response to the COVID-19 pandemic, City Council approved a motion creating the “Outdoor Dining Districts” initiative: 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 “Outdoor Dining Districts” initiative was originally approved up until “Summer/Fall 2020” with all approvals to expire by the end of November 2020. On October 13, 2020, Council approved Report PED20169 which extended the program to October 31, 2021. While the “On-Street Patio Pilot Program” is a permanent City program and will resume again on April 1, 2022, the Outdoor Dining Districts Program is a temporary program that expired at the end of December 2021.

On November 10, 2021 Council approved Planning Committee Report 21-017 which directed as follows:

That the appropriate staff be requested to report back to Council with options and the necessary policy or by-law changes to maintain the Outdoor Dining Districts program on a permanent basis, alongside the existing on-street temporary patio program

In parallel with the reports described above, through 2020 and 2021 Council approved a series of Temporary Use By-laws that allowed for patios to be established in locations that would not otherwise be permitted under the City’s Zoning By-law. These provisions are described later in this report under Policy Implications and Legislated Requirements.

## **POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

### **Zoning By-laws**

Temporary patios must meet all applicable City zoning requirements. In general, the City’s zoning only allows for patios in commercial areas. Furthermore, there are various other restrictions, such as setbacks from residential uses.

As part of the COVID “Outdoor Dining Districts” initiative, Council also approved temporary changes to the City’s zoning by-laws to permit patios in some locations that would not otherwise be permitted under the City’s Zoning By-laws.

**SUBJECT: Permanent Program for Temporary Outdoor Patios (PED22051) (City Wide) - Page 6 of 14**

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On August 21, 2020, City Council approved Report PED20135 which established Temporary Use By-law 20-181 to permit outdoor commercial patios, under certain conditions, in a side or rear yard that abuts a residential lot for certain commercial lands. The Temporary Use By-law also allowed entertainment on outdoor commercial patios within the Downtown area. The By-law was originally in effect until December 31, 2020. On October 6, 2020, Council approved Report PED20135(a) which extended Temporary Use By-law 20-181 until October 31, 2021 and added a new regulation to allow temporary outdoor commercial patios to be located within required parking spaces. Report PED20135(a) also established another Temporary Use By-law 20-214 to allow temporary tents for restaurants, places of worship, hospitals and schools for six consecutive months whereas the current Zoning By-law No. 05-200 restricts the erection of temporary tents to five consecutive days.

Planning staff are currently reviewing Temporary Use By-law 20-181, 20-214 and 21-143 and will be reporting back to Council with recommendations for further extending the timeline for these temporary provisions.

### **Liquor Licensing**

Business owners who wish to serve liquor on their Temporary Outdoor Patio would need to obtain a liquor license through the AGCO.

Normally, to extend a license to a patio, an existing licensed establishment would have to obtain a permanent licence extension through the AGCO and pay an application fee of \$815.00. As part of obtaining a licence extension for a patio, the City is required to provide comments and Public Health and Fire inspections are undertaken once the patio is constructed. The fee for the addition of an outdoor patio to an existing liquor licence, including City comments and inspections is \$561.83 (inclusive of HST), as per the User Fee By-law, reviewed and updated annually.

Alternatively, for a temporary patio, an existing licensee could 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. The City of Hamilton requires a notification form that is circulated to applicable departments, which comes at a cost of \$222.00 (inclusive of HST) as per the User Fee By-law reviewed and updated annually.

In June 2020, the Province introduced Regulation 719 which allows licensees to temporarily extend their license to a patio without needing to notify or submit an application to the AGCO, provided that they meet all the eligibility criteria and applicable requirements. This regulation was replaced in November 2021 with Regulation 746 which requires that operators meet the following criteria, as applicable:

**SUBJECT: Permanent Program for Temporary Outdoor Patios (PED22051) (City Wide) - Page 7 of 14**

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1. The physical extension of the premises is adjacent to:
  - a. the premises to which the licence to sell liquor applies; or
  - b. a dock to which the boat is attached and may include land adjacent to the dock; or
  - c. the licensed premises under the by-the-glass endorsement to a Manufacturer's Licence.
2. The municipality in which the premises is situated has indicated it does not object to an extension;
3. The licensee is able to demonstrate sufficient control over the physical extension of the premises;
4. There is no condition on the licence or endorsement prohibiting a patio;
5. The capacity of any new patio, or extended patio space where the licensee has an existing licensed patio, allows for at least 1.11 square metres per person; and,
6. In the case of a by-the-glass endorsement to a Manufacturer's Licence, the sale and service of the wine, beer and/or spirits manufactured by the manufacturer within the physical extension of the premises is primarily aimed at promoting the manufacturer's product and either providing an enhanced tourist experience or fulfilling an educational purpose.

This updated regulation is in place until January 1, 2023.

### **Noise By-law**

Municipal Law Enforcement Officers would continue to enforce the Noise By-Law 11-285 as it applies to the Temporary Outdoor Patio Program. Unreasonable noise or noise that is likely to disturb the inhabitants of the City is not permitted, this may include: a radio, amplifier, speaker on a patio, live bands on a patio without permit, also a TV on a patio that is heard throughout the neighbourhood.

Section 3 (1) of the Noise By-law 11-285 states:

- 3.(1) No person shall make or permit to be made:
  - (a) an unreasonable noise; or
  - (b) a noise that is likely to disturb the inhabitants of the City.

## **RELEVANT CONSULTATION**

The following City divisions were consulted in preparing this Report:

- Corporate Real Estate Office, Economic Development Division;
- Commercial Districts & Small Business Section, Economic Development Division;
- Parking Operations and Initiatives Section, Transportation Planning and Parking Division;
- Planning Division;
- Licensing and By-law Services Division;
- Chief Road Official, Public Works Department; and,
- Engineering Services Division, Public Works Department.

Hamilton's 13 Business Improvement Areas (BIAs) were also consulted respecting their support for the Temporary Outdoor Patio Program.

Staff in the Economic Development Division undertook a survey in September 2020 of participants in the summer 2020 Outdoor Dining District program. The survey was emailed to all participants in the Outdoor Dining District and On-Street Patio Pilot programs. The results of this survey are summarized in the Analysis and Rationale Section of this report.

On September 24, 2021, staff gave a presentation on the temporary patio program to the Advisory Committee for Persons with Disabilities. The Temporary Outdoor Patio Program will continue to ensure compliancy with the Accessibility for Ontarians with Disabilities Act (AODA) when undertaking review of every application.

## **ANALYSIS AND RATIONALE FOR RECOMMENDATION**

The "On-Street Patio Pilot Program" has operated successfully since 2016. Over the past four years, the program has had the following number of participants:

- 2018: 24 (Locke St BIA – 4; Westdale Village BIA – 4; Downtown Hamilton BIA – 4; International Village BIA -1; CIPA - 8; Ottawa St BIA – 2; Concession St BIA - 1)
- 2019: 14 (Westdale Village BIA – 5; Downtown Hamilton BIA – 2; International Village BIA - 1; CIPA - 4; Ottawa St BIA – 1; Concession St BIA - 1)
- 2020: 11 (Locke St BIA – 1; Downtown Hamilton BIA – 3; International Village BIA - 1; CIPA - 4; Ottawa St BIA – 1; Concession St BIA – 1)
- 2021: 27 (Locke St BIA – 4; Downtown Hamilton BIA – 10; Concession St BIA – 3; Ottawa St BIA – 2; CIPA – 8)



**SUBJECT: Permanent Program for Temporary Outdoor Patios (PED22051) (City Wide) - Page 9 of 14**

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Business uptake for the “Outdoor Dining Districts Program” has also been very high in both 2020 and 2021. Staff saw 177 businesses submit applications through all streams of the program in 2020 and then an increase of 14% to 201 businesses participating in the programs in 2021.

2020 Applications:

| Ward | Private Property | City Property (Streets and Alleyways) | City Property (Parking Areas) | City Property (Sidewalks) | On-Street or Pedestrian By-Pass Structures |
|------|------------------|---------------------------------------|-------------------------------|---------------------------|--|
| 1    | 12               | 1                                     | 6                             | 2                         | 4  |
| 2    | 6                | 3                                     | 1                             | 19                        | 8  |
| 3    | 5                | 2                                     | 0                             | 5                         | 1  |
| 4    | 17               | 0                                     | 0                             | 7                         | 0  |
| 5    | 7                | 0                                     | 0                             | 0                         | 0  |
| 6    | 6                | 0                                     | 0                             | 0                         | 0  |
| 7    | 7                | 0                                     | 0                             | 4                         | 1  |
| 8    | 11               | 0                                     | 0                             | 0                         | 0  |
| 9    | 4                | 0                                     | 0                             | 0                         | 0  |
| 10   | 12               | 0                                     | 0                             | 0                         | 0  |
| 11   | 2                | 0                                     | 0                             | 1                         | 0  |
| 12   | 8                | 0                                     | 0                             | 0                         | 0  |
| 13   | 4                | 0                                     | 0                             | 1                         | 0  |
| 14   | 0                | 0                                     | 0                             | 0                         | 0  |
| 15   | 10               | 0                                     | 0                             | 0                         | 0  |

2021 Applications:

| Ward | Private Property | City Property (Streets or Alleyways) | City Property (Parking Areas) | City Property (Sidewalks) | On-Street or Pedestrian By-Pass Structures |
|------|------------------|--------------------------------------|-------------------------------|---------------------------|--|
| 1    | 10               | 0                                    | 7                             | 2                         | 4  |
| 2    | 10               | 3                                    | 0                             | 14                        | 18   |
| 3    | 8                | 4                                    | 0                             | 7                         | 1  |
| 4    | 11               | 0                                    | 0                             | 6                         | 1  |
| 5    | 10               | 0                                    | 0                             | 1                         | 0  |
| 6    | 4                | 0                                    | 0                             | 0                         | 0  |
| 7    | 4                | 0                                    | 0                             | 3                         | 3  |
| 8    | 16               | 0                                    | 0                             | 0                         | 0  |
| 9    | 8                | 0                                    | 0                             | 0                         | 0  |
| 10   | 11               | 0                                    | 0                             | 0                         | 0  |
| 11   | 4                | 0                                    | 0                             | 1                         | 0  |

**SUBJECT: Permanent Program for Temporary Outdoor Patios (PED22051) (City Wide) - Page 10 of 14**

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|    |    |   |   |   |   |
|----|----|---|---|---|---|
| 12 | 10 | 0 | 0 | 0 | 0 |
| 13 | 6  | 0 | 0 | 2 | 0 |
| 14 | 0  | 0 | 0 | 0 | 0 |
| 15 | 12 | 0 | 0 | 0 | 0 |

Staff in the Economic Development Division undertook a survey in September 2020 of participants in the summer 2020 Outdoor Dining District program. The survey was emailed to all participants in the Outdoor Dining District and On-Street Patio Pilot 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. Overwhelmingly there was positive support when asked if respondents would like to have a temporary outdoor patio in 2021, 96.4% of survey respondents stated yes. The full results of the survey were presented to Council as Appendix “A” to Report PED20169.

Based on the success of the “On-Street Patio Pilot Program” since 2016, and the overwhelming response to the “Outdoor Dining Districts Program” through 2020 and 2021, staff are recommending that the two programs be merged into a single, permanent program for Temporary Outdoor Patios.

**Temporary Outdoor Patios on Public Property**

The following terms and conditions will apply for the permanent program for Temporary Outdoor Patios on public property, both on-street and off-street:

- a) Temporary Outdoor Patios permitted in any commercial area of the City where the applicable zoning allows for patios.
- b) Temporary Outdoor Patios may include patios, as well as temporary sidewalk bypass structures that are intended to create sidewalk space for a Temporary Outdoor Patio.
- c) Applications for Temporary Outdoor Patios be received through the Commercial Districts & Small Business Section of the Economic Development Division and circulated for cross-departmental review through a process based on the SEAT process.
- d) Patios be permitted to operate from April 1 to October 31 of each year, with staff given the delegated authority to extend the permitted period in exceptional circumstances, and where supported by the Transportation Operations and Maintenance Division of the Public Works Department.

**SUBJECT: Permanent Program for Temporary Outdoor Patios (PED22051) (City Wide) - Page 11 of 14**

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- e) All Temporary Outdoor Patios must follow all applicable public health requirements, including any COVID-related public health requirements, as well as all applicable Provincial Orders.
- f) Through the application process, staff ensure no negative impacts with respect to pedestrian safety, accessibility, emergency services, public transit, access to other businesses, delivery and pick-up, and other issues that are normally addressed through the SEAT review process. In cases where staff identify a potential impact on an adjacent property due to the location of the patio, staff may require the applicant to demonstrate that adjacent properties do not object to the temporary patio,
- g) A valid municipal business licence is required, and such licence remain in good standing for the duration of the proposal period for the Temporary Outdoor Patio, which includes submission of payment and renewal form on or before the expiry date as listed, as well as, but not limited to, following municipal, provincial and federal laws and by-laws, as required by Licensing By-law 07-170.
- h) Applicants are responsible for the management and operation of any approved Temporary Outdoor Patios, including ensuring that they are appropriately supervised by staff at all times when open, to ensure proper use, cleaning and physical distancing.
- i) The Ward Councillor will be notified of all applications for Temporary Outdoor Patios in advance of any approval or implementation. In addition, if an application is received for a location within the boundaries of a BIA, the BIA will also be notified.
- j) Patio operators must provide proof of commercial general liability insurance (\$5 million) coverage endorsed to include the City as additional insured.
- k) Temporary Outdoor Patios will not be required to undertake Site Plan review.
- l) Advertising, banners or signage is not permitted.
- m) The patio shall be compliant with the Accessibility for Ontarians with Disabilities Act (AODA).

In addition to the terms and conditions described above, for temporary patios that are **on-street**, the following **existing provisions** would also **continue** to apply:

- a) Require a Temporary On-Street Parking Permit from the Hamilton Municipal Parking System (HMPS) in order to be established.

**SUBJECT: Permanent Program for Temporary Outdoor Patios (PED22051) (City Wide) - Page 12 of 14**

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- b) Permitted in any legal on-street parking space (e.g. unrestricted, metered, or time-limited parking), but shall not be permitted in through traffic lanes, rush hour routes or lanes marked as no parking/no stopping/accessible parking.
- c) Require the written endorsement of the BIA, if located within the boundaries of a BIA.
- d) BIAs may establish a limit to the number of allowable on-street patios in their BIA area
- e) In the event that applications for patio locations exceed the number of legal parking spaces in a block or exceed the number of patios allowed in a BIA where the number of locations has been capped by the BIA, a lottery will be held annually to determine the approved locations
- f) On-street patio locations will generally be limited to occupying one parking space, though a second space may be permitted to facilitate safety.
- g) Electrical power cords or any other devices that cross the travelled portion of the boulevard (sidewalk) are not permitted.
- h) Setup or takedown of any structure or materials on the roadway can only be completed by those trained and qualified in the Ontario Traffic Manual (OTM) Book 7 Signing Requirements for Temporary Conditions.

**Temporary Outdoor Patios on Private Property**

For Temporary Outdoor Patios on private property, such as in the private parking areas of commercial plazas and malls, the following terms and conditions will apply:

- a) Temporary Outdoor Patios permitted in any commercial area of the City where applicable zoning allows for patios.
- b) Applications for Temporary Outdoor Patios be received through the Commercial Districts & Small Business Section of the Economic Development Division and circulated for cross-divisional review and comment.
- c) Patios be permitted to operate year-round with a requirement for application renewal annually.
- d) A valid municipal business licence is required, and such licence remain in good standing for the duration of the proposal period for the Temporary Outdoor Patio,

**SUBJECT: Permanent Program for Temporary Outdoor Patios (PED22051) (City Wide) - Page 13 of 14**

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which includes submission of payment and renewal form on or before the expiry date as listed as well as but not limited to following municipal, provincial and federal laws and by-laws, as required by Licensing By-law 07-170.

- e) The physical extension of the Temporary Outdoor Patio serving alcohol must be adjacent to the premises to which the licence to sell liquor applies.
- f) A new occupant load will not be set for the Temporary Outdoor Patio. The Temporary Outdoor Patio will act as an extension of the existing occupant load of the building.
- g) A Temporary Outdoor Patio will not be deemed to affect the parking supply for the purposes of minimum parking requirements.
- h) Temporary Outdoor Patios must be created as temporary uses with no permanent fixtures and no alterations that would require a Building Permit.
- i) Temporary Outdoor Patios on private property will not be required to undertake Site Plan review.
- j) The patio shall be compliant with the Accessibility for Ontarians with Disabilities Act (AODA) and shall be barrier free accessible where the existing establishment is barrier free accessible.

**ALTERNATIVES FOR CONSIDERATION**

Council could decide not to create the permanent program for Temporary Outdoor Patios. This would result in the on-street patio program continuing, as in previous years, but the Outdoor Dining Districts Program that allows for temporary patios in locations such as sidewalks, alleyways, streets and boulevards would not be available in 2022.

**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.

**Culture and Diversity**

Hamilton is a thriving, vibrant place for arts, culture, and heritage where diversity and inclusivity are embraced and celebrated.

**APPENDICES AND SCHEDULES ATTACHED**

N/A