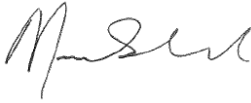




COMMUNICATION UPDATE

TO:	Mayor and Members City Council
DATE:	February 14, 2023
SUBJECT:	Temporary Outdoor Patio Program 2023 (City Wide)
WARD(S) AFFECTED:	City Wide
SUBMITTED BY:	Norm Schleeahn Director, Economic Development Planning and Economic Development Department
SIGNATURE:	

The purpose of this Communications Update is to advise Council of the roll-out of the Temporary Outdoor Patio Program for 2023.

Historical Background

The initial On-Street Patio Pilot Program began in 2016 and was approved as a permanent program in 2017. This Program focused on temporary patios located on-street, primarily in on-street parking spaces.

In May 2020, in response to the COVID-19 pandemic, an expanded Outdoor Dining Districts Program was approved by Council. It expanded the On-Street Patio Program by providing for temporary patios on public property (including sidewalks, boulevards and off-street parking areas), occupying metered parking spaces where allowed in accordance with City By-laws and on private property such as the parking areas of malls and strip malls.

On February 23, 2022, Council approved Report PED22051 to permanently adopt the Temporary Outdoor Patio Program, which combined the On-Street Patio Program and the Outdoor Dining Districts Program, and to establish applicable annual user fees.

It is important to note that the Temporary Outdoor Patio Program applies only to temporary, seasonal patios. Any proposals for permanent patios that would permanently occupy public or private property would be reviewed on a case-by-case basis in accordance with the City's normal Planning, Real Estate and Leasing/Licensing Policies.

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Review Process and Design Requirements

The Temporary Outdoor Patio Program is administered through the Commercial Districts and Small Business Section of the Economic Development Division.

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 Special Events Advisory Team (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.

The Ward Councillor is also 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 Business Improvement Area (BIA), the BIA will also be notified.

Appendix “A” to this Communications Update provides an overview of the general terms and conditions of the Temporary Outdoor Patio Program.

The Design Requirements for the temporary patios have evolved over the years that the Program has been in place.

All patios should be designed for accessibility and be compliant with the Accessibility for Ontarians with Disabilities Act (AODA). The patio applicant should ensure that a barrier-free access and sidewalk clearance is maintained for people using mobility devices, especially when considering the placement of equipment and customer queuing areas. The patio applicant should ensure delineation that is detectable for someone using a white cane. Patio owners should consider people using mobility devices when determining what type of furniture, they will set out in their patio area. For example, picnic tables significantly limit the ability of a person using a mobility device to access a dining surface. When determining seating arrangements in the dining area, install some tables with room underneath to accommodate people using mobility devices, ensure that there are clear routes and manoeuvring spaces for people using mobility devices on the patio and advertise whether there is accessible washrooms on the business website. It is important to note that on-street patios are not permitted within accessible parking spaces.

For on-street patios, in the summer of 2022, additional modifications were made in response to a new Restaurant Patio Guidelines within the Right of Way document that was released by the Provincial Ontario Traffic Council. The modifications included the installation of additional barriers and other improvements for pedestrian and patron safety. Staff utilized the new Provincial Guidelines to inform the type and placement of

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physical barriers. The exact set-up varied by location depending on site and surrounding conditions. For the 2022 patio season, the safety enhancements were implemented by the City at no cost to the business owner, in accordance with Council's direction to offset the costs of the Temporary Patio Program as part of our post- COVID-19 Economic Recovery. For 2023, the requirement for safety devices will now be paid by the patio applicant, which will result in significantly higher costs for restaurant owners.

Appendix "B" to this Communications Update - Safeguard Measures for On-Street Patio or Pedestrian By-pass Walkways, provides more information on the safety measures.

Appendix "C" to this Communication Update - Temporary Outdoor Patio Program Participation Summary 2020, 2021, 2022, provides more information on the past participation numbers of this Temporary Outdoor Patio Program.

Appendix "D" to this Communication Update - Temporary Outdoor Patio Program Business Survey Results, provides more information on a participant survey that was shared with 2022 patio applicants.

Fees

Prior to 2020, the only cost charged to applicants was to offset lost parking revenue for patios occupying parking meters.

From 2020 to 2022, as part of the City's efforts to support the local hospitality sector, and as a result of recommendations arising through the Mayor's Task Force on Economic Recovery, all City fees and Program costs were waived and funded through the Economic Development Initiatives Capital Project (3621708900). The costs to the City for the Patio Program during COVID-19 are summarized in Table 1.

Table 1: Summary of City Costs During COVID-19 for the Temporary Outdoor Patio Program

	2020	2021	2022
On-street Patios – lost Parking Meter Revenue	\$35,121.77	\$59,150.00	\$42,594.93
Safety Devices – Installation and materials	n/a	\$36,069.46 *includes knock down bollards, hazard marker signage, planters	\$125,130.21 *additional metal crash barriers added in 2022
TOTAL	\$35,121.77	\$95,219.46	\$167,725.14

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SUBJECT: Temporary Outdoor Patio Program 2023 (City Wide) - Page 4 of 6

In 2022, Council approved an application fee for the Temporary Outdoor Patio Program, however the fee was waived in 2022 as part of the COVID-19 Economic Recovery funding.

For 2023, applicants will again be required to pay all applicable fees for the Program.

User fees for the Temporary Outdoor Patio Program are established in the Tax Supported User Fees By-law. The City's Tax Supported User Fees By-law for 2023 establishes an application fee for the Program of \$676.11.

In addition to the Application fee, based on the specific requests within each application, the following City user fees may also apply:

- 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 as well as a Temporary Patio Installation of Safety Devices fee (e.g. knock down bollards, hazard marker signage, planters, maintenance of planters) of \$800.
- Any patio or group of patios that require a temporary full road closure will be required to pay a Road Closure Application Fee of \$747.95 (2023 permit fee) as well as all costs associated with the hiring of an Ontario Ministry of Transportation, OTM Book 7 qualified third-party traffic management company to plan and execute the closure and as required.

In addition to City fees, there may be additional fees incurred by applicants that are not City fees.

Business owners who wish to serve liquor on their Temporary Outdoor Patio would need to obtain a liquor license extension through the Alcohol and Gaming Commission of Ontario (AGCO). The AGCO waived the requirement for a liquor license extension to a patio from 2020 to 2022. Normally to extend a patio, an existing licensed establishment would have to obtain a permanent Liquor License Extension through the AGCO and pay for an extension application fee of \$815 to the AGCO. 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). Business owners are also responsible for all costs associated with patio construction/rental and for the installation of crash barriers. The estimated cost for an on-street patio rental is \$3,500 per season, and for crash barriers would be approximately \$4,500.

A summary of fees associated with the Temporary Outdoor Patio Program is provided in Table 2.

Table 2: Summary of Potential Fees for Temporary Outdoor Patios (2023)

City Fee	Temporary Outdoor Patio Application Fee	\$676.11
City Fee	Temporary Patio Occupation of Parking Space fee (if applicable)	\$875/space
City Fee	Temporary Patio Installation of Safety Devices fee (if applicable)	\$800
Provincial Fee	Liquor License Extension	\$815
City Fee	City Liquor Licensing fee	\$561.83
Private	On-street Patio Rental (if applicable)	\$3,500 (est.)
Private	On-street Patio Crash Barriers (if applicable)	\$4,500 (est.)

Application Process

Applications for patios can be submitted starting March 1, 2023 and must be received prior to June 1, 2023.

Applications can be submitted to outdinedist@hamilton.ca.

Information on the application process can be found: <https://www.hamilton.ca/build-invest-grow/starting-small-business/permits-inspections/temporary-outdoor-patio-program>

For patios on public property (e.g. sidewalks, alleyways, parking spaces), patios are 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.

To promote the Program, the City will email former applicants, the BIAs and will be updating the City website.

Questions or Inquiries

If Councillors, applicants or members of the public have questions about the Program, please contact Cristina Geissler, Business Development and BIA Officer, by phone at 905-546-2424 Ext. 4222 or by e-mail at Cristina.Geissler@hamilton.ca.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A" – General Terms and Conditions of the Temporary Outdoor Patio Program

Appendix "B" – Safeguard Measures for On-Street Patio or Pedestrian By-pass Walkways

Appendix "C" – Temporary Outdoor Patio Program Participation Summary 2020, 2021, 2022

Appendix "D" – Temporary Outdoor Patio Program Business Survey Result

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General Terms and Conditions of the Temporary Outdoor Patio Program

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;
- 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 Program, 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; and,
- 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;
- 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; and,

- 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 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; and,
- 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.

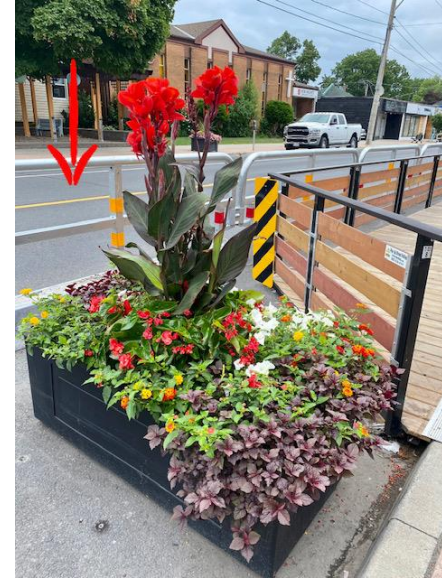
Safeguard Measures for On-Street Patio or Pedestrian By-pass Walkways



Metal frame to protect the patio or pedestrian walkway. Pylons included for added visibility .



Pedestrian signage to direct public across walkway.



Flower boxes that add an extra buffer layer of protection and safety. These planters also beautify patios (planted and maintained throughout the summer).



Street signs to alert vehicles to patio areas.

All costs in 2022 were paid by the City of Hamilton

Temporary Outdoor Patio Program Participation Summary 2020, 2021, 2022

2020 Applications:

Ward	Private Property	City Property (Streets and Alleyways)	City Property (Parking Areas)	City Property (Sidewalks)	On-Street of Pedestrian By-Pass Structure
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
Summary	111	6	7	39	14 TOTAL 177

2021 Applications;

Ward	Private Property	City Property (Streets and Alleyways)	City Property (Parking Areas)	City Property (Sidewalks)	On-Street of Pedestrian By-Pass Structure
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
12	10	0	0	0	0
13	6	0	0	2	0
14	0	0	0	0	0
15	12	0	0	0	0
Summary	124	7	7	36	27 TOTAL 201

2022 Applications

Ward	Private Property	City Property (Streets and Alleyways)	City Property (Parking Areas)	City Property (Sidewalks)	On-Street of Pedestrian By-Pass Structure
1	7	0	22	4	4
2	8	4	0	9	16
3	6	4	0	2	0
4	8	0	0	4	2
5	5	0	0	1	0
6	4	0	0	0	0
7	3	0	0	4	4
8	3	0	0	0	0
9	3	0	0	0	0
10	4	0	0	0	0
11	4	0	0	0	0
12	6	0	0	0	0
13	5	0	0	2	0
14	1	1	0	0	0
15	6	0	0	0	0
Summary	73	9	22	26	26 TOTAL 156

Temporary Outdoor Patio Program Business Survey Results

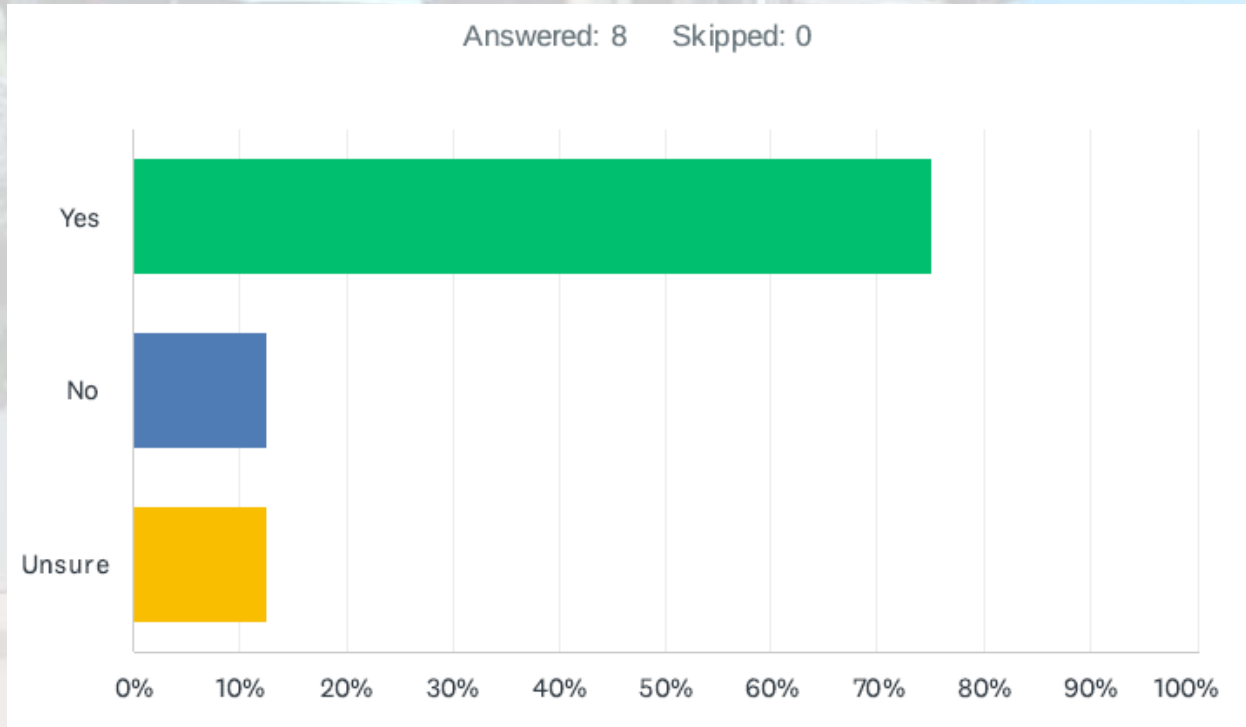


Is your business considering applying to the Temporary Outdoor Patio Program again next season?

Program again next season?

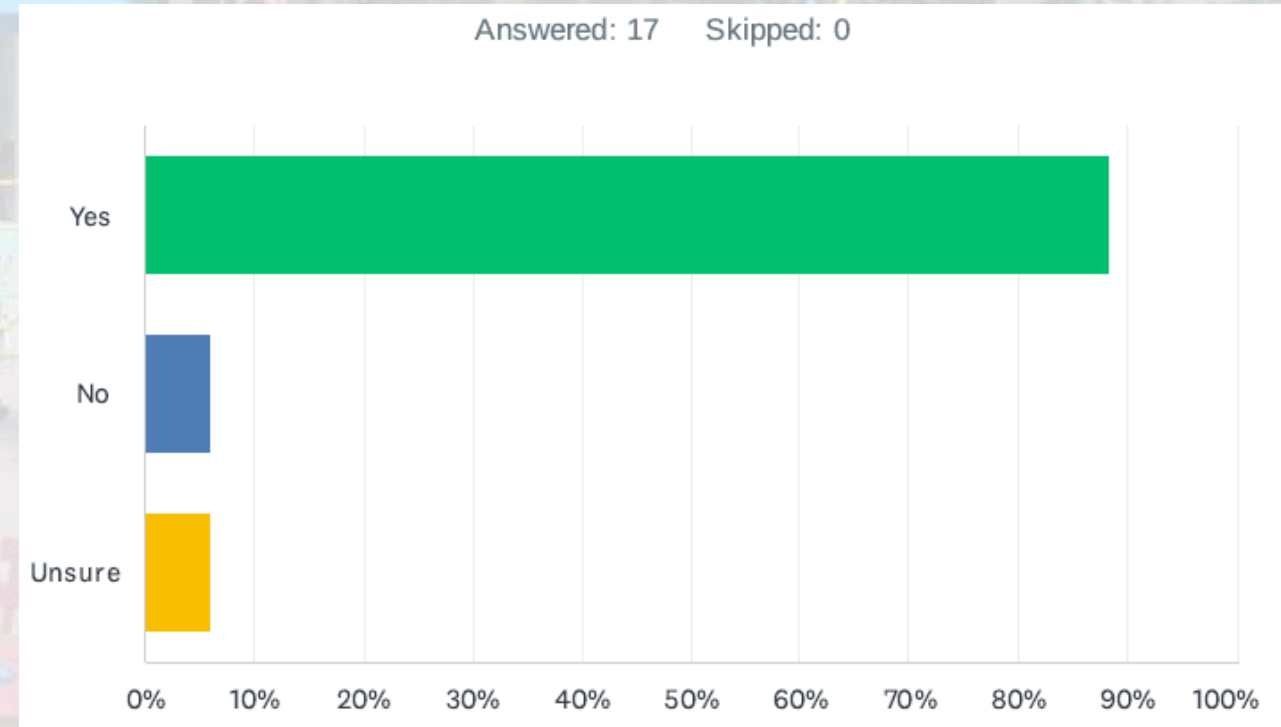
On-Street

Answered: 8 Skipped: 0



City Property

Answered: 17 Skipped: 0

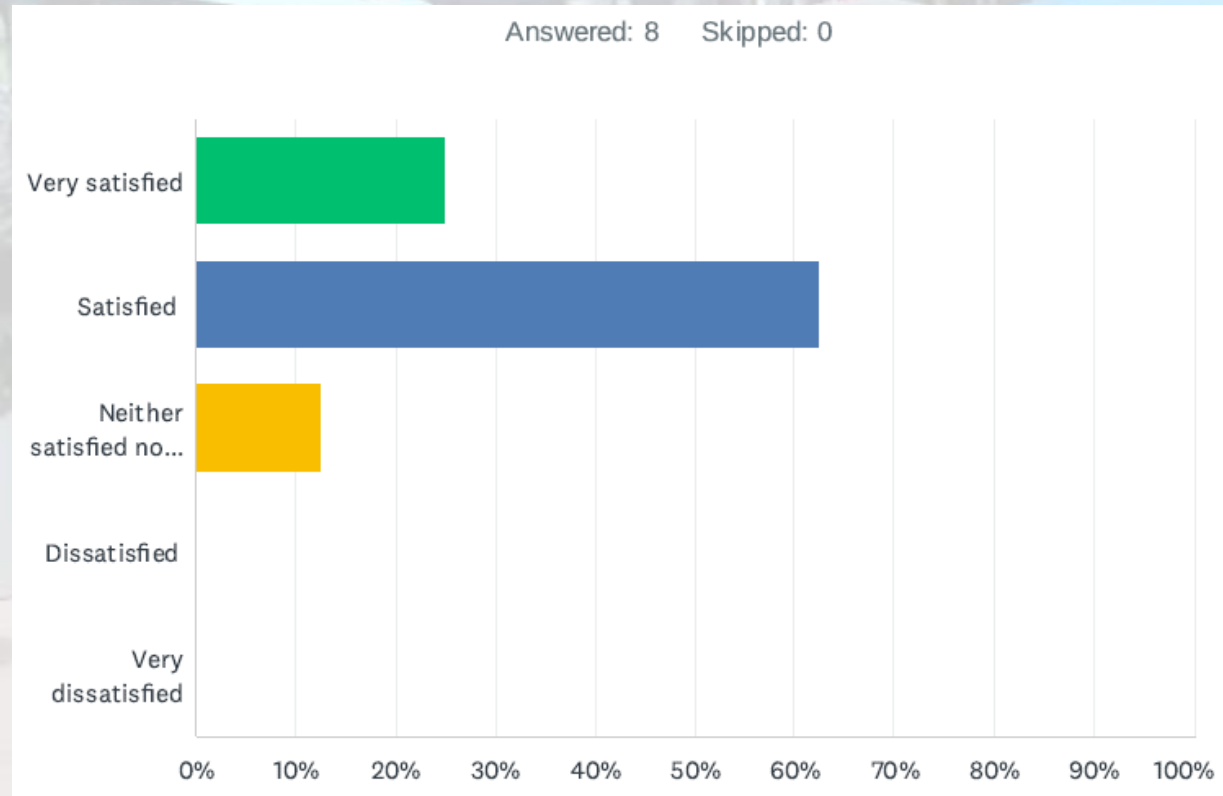


What was your overall level of satisfaction with the Temporary

Outdoor Patio Program application process?

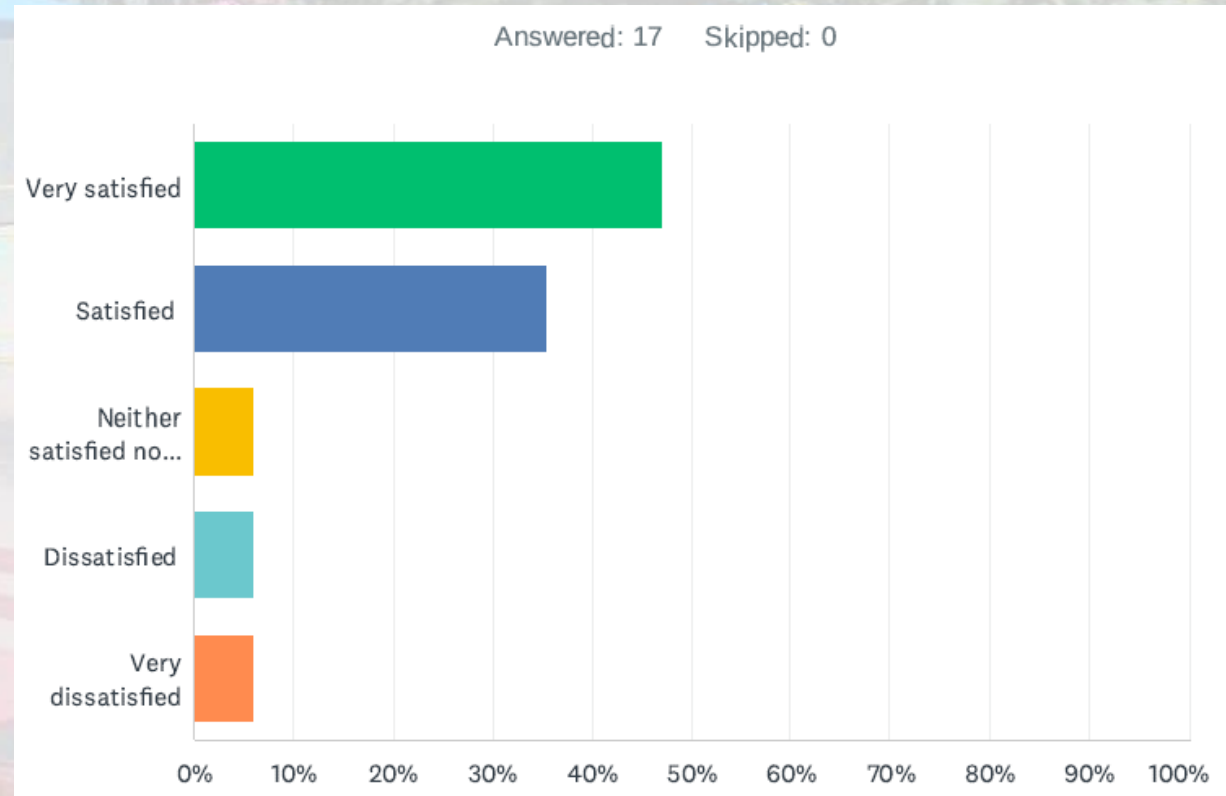
On-Street

Answered: 8 Skipped: 0



City Property

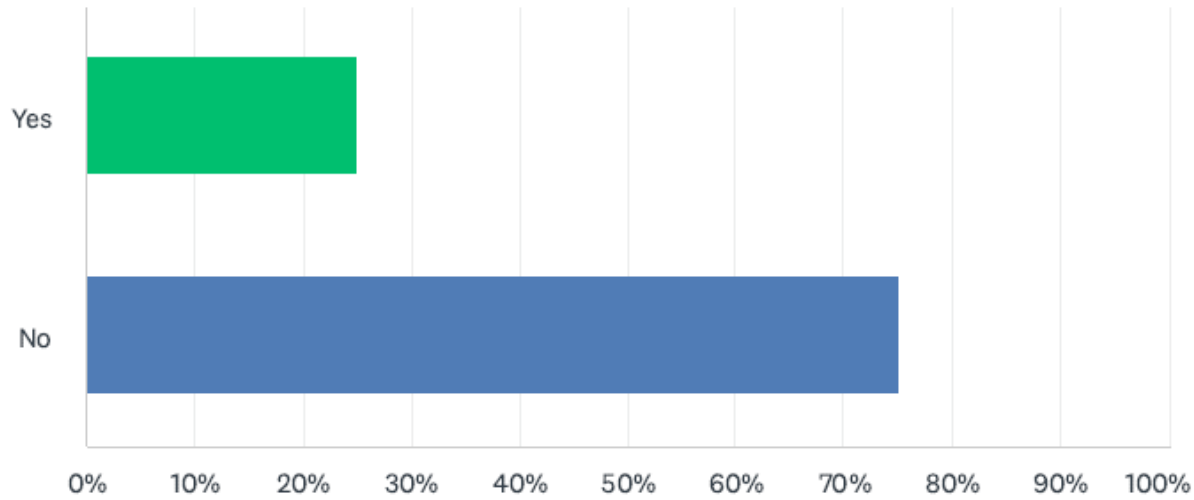
Answered: 17 Skipped: 0



Are there improvements that you would like to see made to the Temporary Outdoor Patio Program application for future seasons?

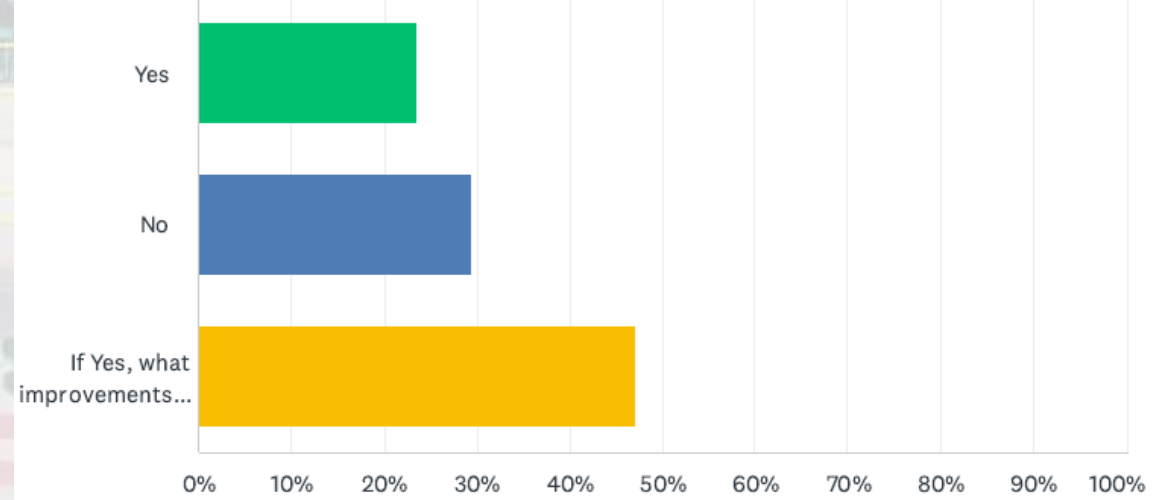
On-Street

Answered: 8 Skipped: 0

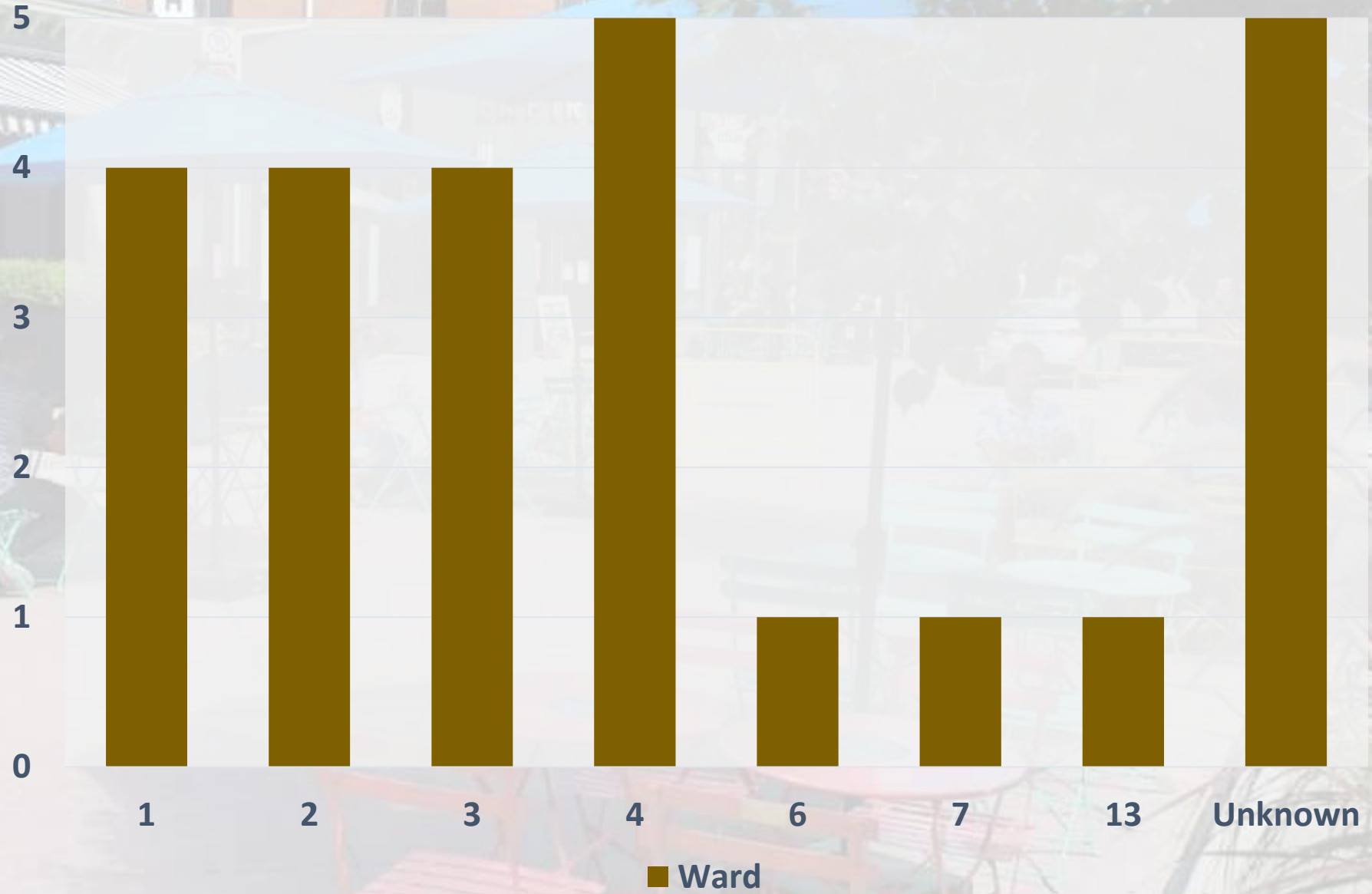


City Property

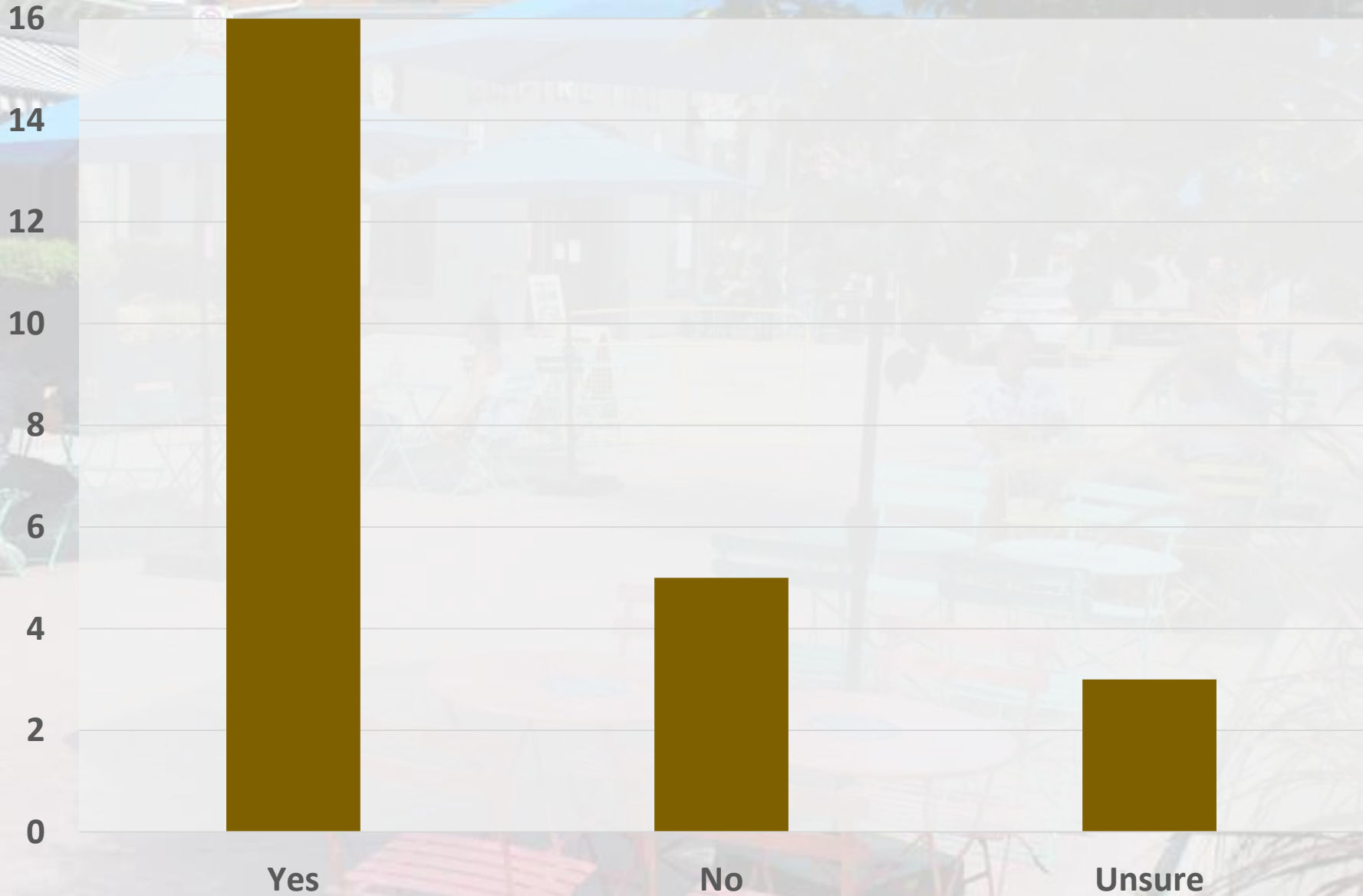
Answered: 17 Skipped: 0



What ward is your business in?



Is your business within a Business Improvement Area (BIA)?



What improvements would you like to see?

The program has been a huge success not only for our business but within the whole westdale retail area. After years of declining traffic in the neighbourhood we have now seen steady growth since the program started. I would love to see us exploring how we might winterize the patios and make a fun winter destination (ie heaters..3 panels..events etc.). I would be happy to work with you/BIA to explore this further (Paisley Coffeehouse)

I think it's ultimately a waste of money... not worth the increase in insurance or patio costs

Better communication on timing of the process, ie build then apply then inspection? The info was unclear and after applying there was an inspector at the door to see it however I was waiting on approval or some kind of communication on it before building.

We would love to add some lighting along the outside of the building. I have noticed some businesses stringing lights across the sidewalk and attaching to some poles on the sidewalk. Not sure if that was allowed but we would like to have this option next year

Previous years were a breeze, but due to staff changes, our approval was delayed. There was a lack of communication. I'm hoping this was just due to the new staff being on-boarded.

Get your acts together. You need to communicate between departments.

Earlier approval

A little quicker with the processing would be nice.

The \$5 million for all incident increased our insurance premiums substantially

Extend into November as the first few weeks were nice enough to warrant a patio

Please provide any additional comments you may have on the Temporary Outdoor Patio Program

This program is meant to help businesses especially this days hardly making any money, but the cost of putting up the safety barriers is just too high. the city should as well be covering if not all most of the cost if its really meant to help otherwise big restaurant benefit more leaving the small guys left on the same position

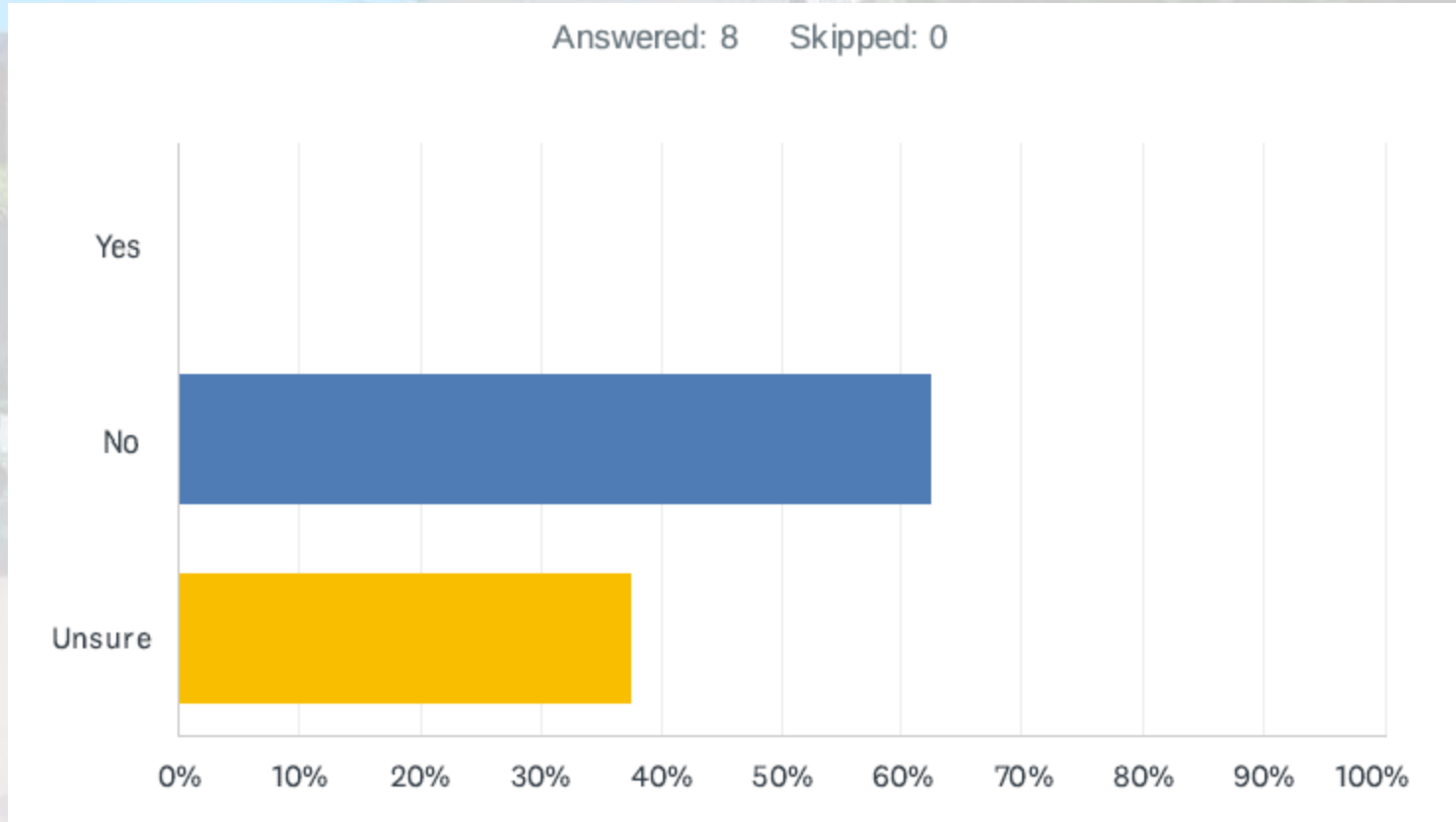
How will the LRT affect my 3 year pop-up patio contract?

The expenses were too high for the return.
It was not worth it to have a patio

Please keep it up! It'd also be great if we could operate them year round

Please keep all prior information on file so that we don't have to re-submit diagrams and such every year. Make it an automatic renewal.

During COVID-19, the City of Hamilton covered the cost for businesses of many parts of the Temporary Outdoor Patio Program such as safety barriers, occupation of parking spaces, and partial closure of public right of ways. Would you continue to participate in the Temporary Outdoor Patio Program if these costs were no longer covered by the City?



On-Street ONLY