



The Town of Niagara-On-The-Lake

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Report:	CS-20-013	Committee Date:	June 18, 2020
		Due in Council:	June 22, 2020

Report To:	Lord Mayor and Council
Subject:	Temporary Patio Extensions

1. RECOMMENDATION

It is respectfully recommended:

- 1.1 As required by amendments to Regulation 719 under the Liquor Licence Act, the Council of The Corporation of the Town of Niagara-on-the-Lake supports the extension of existing liquor licences to temporary patios property throughout the Town the duration of 2020, provided businesses comply with the all requirements of the Town's Temporary Patio Permit Application; and
- 1.2 that the Council of The Corporation of the Town of Niagara-on-the-Lake delegate authority to the Town Clerk or designate, to consider Temporary Patio Permit applications, and when appropriate, to approve applications that, in the opinion of the Town Clerk, are to provide temporary measures to accommodate the expansion of businesses adjacent to their premise once they are permitted to welcome patrons on-site.

2. PURPOSE / PROPOSAL

The purpose of this report is to seek Council direction with respect to ongoing business recovery support efforts specifically as it relates to temporarily permitting the expansion of outdoor restaurant patios on public sidewalks, parking spaces, and private property. The goal of these temporary measures is to provide flexibility for the business community to attract customers and provide additional capacity that allows space for respectful physical distancing in accordance with provincial COVID-19 requirements.

3. BACKGROUND

As part of The Ontario government's recovery plan, restaurants and bars will be allowed to temporarily extend outdoor patio spaces to safely accommodate patrons and staff once licensed establishments are permitted to fully reopen for business. As a result of this change, licensed establishments may create a patio adjacent to their premise or increase the size of their patio once they are permitted to allow patrons on-site. This temporary measure will allow the public to safely enjoy service that meets physical distancing requirements and other public health guidelines.

While the Alcohol and Gaming Commission of Ontario (AGCO) will not require licensees to apply or pay a fee for these temporary extensions, licensed establishments must ensure they have municipal approval and meet all other applicable requirements. Liquor Sales Licensees may temporarily increase the size of their patios or add a new patio once they are again permitted to welcome patrons on-site and until January 1, 2021, provided that the Town does not object and all other applicable requirements are met. Currently, the Town is proposing that these temporary patios be permitted until October 31, 2020.

Flexibility with the use of areas that can support the creation of gathering spaces for people while also providing capacity for physical distancing is crucial for the successful restart of business operations throughout the Town. In particular, the ability for businesses to introduce extended patios over public sidewalks and parking areas as well as on private land will facilitate the ability to expand a retail/service area's footprint to provide the additional area to meet physical distancing requirements while providing sufficient increased capacity to maintain successful businesses.

Establishments that have pre-existing patios do not require any additional approvals from the Municipality, they may open and operate beginning June 19 at 12:00 a.m. (Stage 2), provided they meet physical distancing requirements and other public health guidelines.

4. DISCUSSION / ANALYSIS

This initiative proposes the use of a newly designed application procedure to process requests for temporary expansions to patios. Staff recommend this temporary approach in order to respond adequately to the high volume of requests that are anticipated. The process involves review and approval from all departments before permits are issued.

The applicants will be required to complete an application form which will also include:

- Site plan and an elevation plans, both to scale, of the proposed expansion areas. The plan must indicate the construction materials to be used, structural details, minimum distances to hydrants, boulevard trees, parking meters, intersections, and any other pertinent features.
- A summary of the proposed Patio, its use, whether occupancy will be increased, a description of the furniture, how any safety concerns are being addressed, and expected benefits for the owner and the general public.
- A signed letter of endorsement from the owner, if applicable.
- Certificate of Insurance, for the duration of the temporary expansion, in the amount of \$5 million listing the Town as additional insured for patios proposing to use municipal property.

The application process will not include any fees for processing the application and staff will make their best effort to process applications in a timely manner. In order to provide permits in a timely manner, staff are requesting temporary delegated authority to

approve these requests should they meet all requirements.

The Application Process:

Applicants will be required to review the Town's Temporary Patio Permit Application Form to determine the necessary requirements for additional documentation such as plans, drawings, insurance, and approval letters, etc. Once they have all pertinent information they will prepare plans and drawings of the proposed patio expansion area in accordance with the Town's design minimum standards, safety, and barrier-free design requirements. They will then complete the online Temporary Patio Permit Application Form. Once submitted applicants will receive a confirmation e-mail once the application has been successfully submitted. Upon submission of a completed Temporary Patio Permit Application Form, applicants may immediately commence the installation of a temporary patio in compliance with the minimum standards as outlined on the Town's website. Immediately upon completion the patio, and prior to occupancy of the patio, applicants must arrange for a site visit and inspection by Town Staff who will assess the patio layout for public safety and barrier-free compliance, and, will advise the applicant/owner on any adjustments to the patio design or location. Once all requirements have been met to the satisfaction of Town Staff, a Temporary Patio Permit will be provided to the applicant.

Temporary Patio Installation/ Extension on Private Property

Extending temporary outdoor patio seating space can occur in a variety of ways. Temporary patio installations on privately owned property are relatively easy to action compared to patios on municipally owned property. To extend or add an outdoor patio space, the owner would likely remove some parking spaces to install additional seating, as shown below in figure 1, and would ensure that the patio is constructed in accordance with all prevailing municipal guidelines and regulations. Further, all AGCO licensing requirements must be adhered to.



Figure 1: Private Property - Parking Lot Patio Expansion

Temporary Patio Installation/ Extension on Public Property

Many businesses, especially those located in densely built areas such as Queen Street, may not have the ability to accommodate patio's on their existing property. The Town has included in the application process the ability for businesses to request the use of Town owned lands for the purposes of the expansion or establishment of temporary outdoor patios. These may include patios which are partly on a combination of privately owned and municipally owned lands or municipally owned lands only. These types of applications may include, but are not limited to, the following examples:

Temporary Patios Occupying Parking Stalls

To facilitate a patio extension, businesses may request the use of municipal parking stalls. In so doing, parking spaces would be closed, and the design of the patio may only include the parking stalls provided they meet all the required minimum design standards expressed by the Town. The Town will request additional safety measures to ensure the safety of the patrons, such as:

- Barrier-free access and egress must not be compromised.
- The deck (floor structure) must have a flush transition at the sidewalk and curb to permit easy access and avoid tripping hazards.
- The sub-structure must accommodate the crown of the road and provide a level surface for the deck (floor structure).
- The deck must be constructed of a slip-resistant surface.
- The patio must not interfere with proper drainage of the roadway (curbs/catch basins in the immediate area must be free of obstructions).
- Any gates must swing into the patio space and not obstruct the sidewalk or street.
- The patio should not interfere with the ability of first responders to access any buildings.
- The design is to include fencing to define the space.

- Patios must have vertical elements that make them visible to traffic, such as flexible posts, bollards, or landscape planters, and include reflective elements so as to be visible by traffic at night.
- Railings and vertical elements should be a minimum of 0.91 metres (36") and no higher than 1.07 metres (42") in height.
- The temporary installations must provide a minimum of 0.3 metres (12") from the travelled portion of the roadway.
- Lighting will be subject to review and will be designed and installed in such a way as to not create a visual or physical distraction to travelling public on the sidewalk or roadway.
- Tables shall not exceed a height of 0.865 metres (34") above the finished floor of a patio (deck).
- The patio should maintain that a minimum width of 4.5 m from the edge of the patio / to the street centerline.
- A minimum sidewalk width of 2.4 m should be maintained where possible.
- Additionally, when required, the Town may install temporary barriers/ bollards to ensure the safety of patrons on the patio.



Figure 2: On Street Patio Example



Figure 3: On Street/ Sidewalk Example

This type of patio is not recommended because while pedestrians may not be displaced, diners would be placed in close proximity to the roadway and vehicular traffic. Additionally, servers would be required to regularly cross the public sidewalk to serve guests. Public safety is paramount and so Staff consider sidewalk patios, including a pedestrian by-pass, to be the preferred approach for the installation of temporary patios on municipal property.

As a result of these temporary patios occupying municipal parking stalls, there will be a financial impact to the Town through the loss of parking revenue. Staff are proposing imposing a fee to occupy these spaces at a 50% daily occupancy rate. This fee is explained in more detail under Section 7: Financial Implications.

Temporary Patios Occupying Municipal Sidewalks

To facilitate a patio extension, businesses may request the use of municipal sidewalks. In doing so, the right of way for pedestrians would be altered, requiring their displacement onto a newly erected, temporary pedestrian walkway. The pedestrian walkway would encroach on existing parking spaces and would thus be located adjacent to the road with pedestrians separated from vehicular traffic by a safety barrier. Restaurants and bars would be permitted to expand their patio onto the side-walk. See figure 4 and 5 below for reference. To ensure safe and accessible travel for pedestrians, the Municipality would close parking spaces immediately adjacent to the patio, build accessible ramps that allow pedestrians to by-pass the patio to and from the sidewalk into the closed parking spaces and erect safety barriers to separate the closed parking

spaces from cars travelling on the street.



Figure 4: Pedestrian By-pass Concept Drawing



Figure 5: Pedestrian By-pass Example

As a result of these temporary patios occupying municipal parking stalls, there will be a

financial impact to the Town through the loss of parking revenue. Staff are proposing imposing a fee to occupy these spaces at a 50% daily occupancy rate. This fee is explained in more detail under Section 7: Financial Implications.

Patio Design Minimum Standards

For all temporary patios, the following minimum design standards are required, where applicable:

- Temporary patios shall only be permitted for existing restaurants, bars, and other food and drink establishments (e.g. wineries, breweries, and distilleries).
- Barrier-free access and egress must not be compromised.
- The deck (floor structure) must have a flush transition at the sidewalk and curb to permit easy access and avoid tripping hazards.
- The sub-structure must accommodate the crown of the road and provide a level surface for the deck (floor structure).
- The deck must be constructed of a slip-resistant surface.
- The patio must not interfere with proper drainage of the roadway (curbs/catch basins in the immediate area must be free of obstructions).
- Any gates must swing into the patio space and not obstruct the sidewalk or street.
- The patio should not interfere with the ability of first responders to access any buildings.
- The design is to include fencing to define the space.
- Decorative free-standing flower pots or planting boxes are encouraged to be included in any design.
- Patios must have vertical elements that make them visible to traffic, such as flexible posts, bollards, or landscape planters, and include reflective elements so as to be visible by traffic at night.
- Railings and vertical elements should be a minimum of 0.91 metres (36") and no higher than 1.07 metres (42") in height.
- No umbrellas or other treatments can extend into the sidewalk or travelled portion of the roadway.
- Cooking of food and drink preparation is not permitted on temporary patios.
- A minimum of 1.5m (5ft) clearance from fire department connections and hydrants must be maintained on a temporary patio.
- A fire extinguisher (minimum 2A-10BC) must be available within 15.2 m (50ft) of any part of the temporary patio.
- The temporary installations must provide a minimum of 0.3 metres (12") from the travelled portion of the roadway.
- Lighting will be subject to review and will be designed and installed in such a way as to not create a visual or physical distraction to travelling public on the sidewalk or roadway.
- Tables shall not exceed a height of 0.865 metres (34") above the finished floor of a patio (deck).
- The patio should maintain that a minimum width of 4.5 m from the edge of the patio / to the street centerline.
- A minimum sidewalk width of 2.4 m should be maintained where possible.

- Temporary patios must not extend in front of adjacent tenant spaces, exits, or beyond business frontage without written permission from affected adjacent property owners and tenants; this includes any overhanging elements.
- Required on-site parking may be used for a temporary patio. The required number of designated Accessible Parking Spaces must remain available for parking use and designated fire routes and sight triangles must be avoided. A reasonable number of standard parking spaces should be maintained to serve patrons.
- For non-licensed establishments, the capacity of the temporary patio shall not exceed the posted occupancy of the main building.
- For licenced establishments that do not have an existing licenced patio, the capacity of the temporary patio shall not exceed the posted occupancy of the indoor area indicated on your liquor licence or 1.11 m². (12.0 sqft) per person, whichever is the lessor.
- For licenced establishments that have an existing licenced patio, the capacity of the combined area of the existing and temporary patios shall not exceed the posted occupancy of the indoor area indicated on your liquor licence or 1.11 sq. m. (12.0 sq. ft.) per person, whichever is the lessor.
- If the patio includes the use of a tent or temporary, portable structure consistent with the content of the Ontario Building Code outlined in Subsection 3.14.1, the applicant will require a building permit if the tent meets any of the following requirements:
 - The tent exceeds an area of 60m² (645 sq. ft.).
 - A group of tents in aggregate area and are closer than 3m apart with a combined area of 60m².
 - The tent is within 3m of an existing structure and exceeds an area of 60m²
 - The structure is attached to a building.
- Any tent must meet the flame resistant rating requirements in CAN/ULC S-109-M and NFPA701-1977 -“Standard for Flame Tests of Flame-Resistant Fabrics and Films” and certification of this must be supplied to the Fire Department prior to occupancy.
- The occupancy load for a tent will be determined by the Town’s Fire Department and is subject to change dependent on the service of alcohol.
- A Heritage Permit is required for the installation or construction of any permanent buildings/structures/fixtures/signs/etc on any property designated under the Heritage Act, including all properties located within the Queen Picton Heritage Conservation District.
- Owners shall provide their liquor licence, if requested by any Municipal Officer.
- Any Officer of the Municipality is authorized to inspect all temporary patios and require adjustments to the patio in order to address compliance with these Guidelines.

5. STRATEGIC PLAN

N/A

6. OPTIONS

Private Property Only

Council may choose to direct staff to only approved applications which are able to accommodate the expansion on the property or adjacent private lands. This would help ensure the safety of the patrons and reduce the liability of the Town. However, many businesses especially in the higher density commercial areas, such as the Queen-Picton Historic District, would not be able to accommodate patios on their properties.

Municipally Built Fixtures

In certain municipalities, the municipality has extended requests for proposals for prefabricated installations for pop-up patios and pedestrian by-passes. Council may wish to direct staff to investigate this option further. The benefit of this option is that the structures are built to the standard set out in the request for proposal and are subjected to design by qualified engineers. However, this process could be quite lengthy and costly. There would also need to be direction to determine who would pay for the cost of the installation of the structures. Staff considered this approach but given that every day counts for these businesses, especially during the high volume season, it was determined that this process would not be in place soon enough to respond to the demand of the industry.

Fees

There is currently no fee for the application. Staff is proposing the collection of funds as a cost recovery measure for lost parking revenue for those applications requiring municipal paid parking spots. Council may provide direction to either increase, decrease, or remove the fee.

7. FINANCIAL IMPLICATIONS

There is currently no fee for the application. Staff is proposing the collection of funds as a cost recovery measure for lost parking revenue for those applications requiring municipal paid parking spots. The breakdown for the typical model for cost recovery on paid parking is based on 100% occupancy for the full day. In locations where the parking rate is \$3.75 an hour, for 10 hours the fee would be \$37.50 per day per spot. In locations where \$3.25 an hour, for 10 hours the fee would be \$32.50 per day per spot.

Staff are recommending that Council provide an exception in these circumstances by using a 50% occupancy rate using the \$3.75 rate for all locations. This would result in the following fees (approximate):

- \$18.75 per day
- \$131.25 per week
- \$525.00 per month

8. COMMUNICATIONS

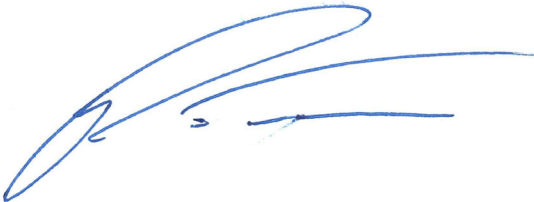
The program has commenced in order to start processing applications as expediently as possible. Communication has been provided to businesses through the Town's website and social media accounts. Town staff have already accepted and processes a number of applications. Permits will be provided to all temporary patios that have been

approved through this process and will be posted to the public.

9. CONCLUSION

Town staff are committed to assisting local businesses with recovery efforts by providing creative solutions to permit the temporary expansion of outdoor restaurant patios on public sidewalks, parking spaces, and private property. It is recommended that these actions be supported by Council to provide flexibility for the business community to attract customers and provide additional capacity that allows space for respectful physical distancing in accordance with provincial COVID-19 requirements.

Respectfully submitted,



Peter Todd
Town Clerk



Kyle Freeborn
Director, Corporate Services (A)



Sheldon Randall
Chief Administrative Officer (I)

ATTACHMENTS

WEB ATTACHMENTS

ATTACHMENTS FOR LINK

First Capital of Upper Canada - 1792