

Temporary Patio Program

Policy Number: CORP.3-03

Sub-Topic: Temporary Patio Program

Topic: Business Licensing

Applies to: Temporary Patio Program Participants

1.0 Policy Statement

The Town of Newmarket is committed to promoting economic vitality, enhancing the vibrancy of the community, and ensuring the safety and wellbeing of our residents and visitors. In alignment with these objectives, this policy establishes the framework for a Temporary Patio Program that allows eligible eating establishments to apply for and obtain a temporary patio, on public or private property.

2.0 Purpose

The purpose of the Temporary Patio Program Policy is to provide framework and provisions for the establishment and operation of a Temporary Patio by eating establishments within the Town of Newmarket. This policy aims to:

- 2.1 Support Local Restaurants:** Facilitate the creation of temporary patios to improve the local economy, increasing seating capacity and allow for an enhanced eating experience.
- 2.2 Enhance Public Experience:** Improve the overall experience of residents and visitors by creating safe, attractive, and accessible outdoor spaces for dining and socializing.
- 2.3 Regulate and Promote Safety:** Establish clear rules and standards for businesses to follow in applying for, setting up and operating a temporary patio, ensuring compliance with federal, provincial and municipal regulations.
- 2.5 Contribute to Vibrancy:** Contribute to the vibrancy of the community by encouraging a lively and inviting atmosphere.
- 2.6 Balance and Transparency:** The policy seeks to strike a balance between supporting local businesses by permitting Temporary Patios while respecting the needs of surrounding businesses and residents. Additionally, this policy seeks to establish clear direction on how the Town's Temporary Patio Program will operate, providing clear options for participation and criteria for approval.

3.0 Definitions

- 3.1 Alcohol Gaming Commission of Ontario (AGCO):** is a regulatory agency responsible for overseeing alcohol, gaming, horse racing, and certain aspects of cannabis in the province of Ontario, Canada. It ensures compliance with relevant laws and regulations to maintain integrity and public safety in these sectors.
- 3.2 Administrative Penalty:** means a means a monetary penalty as set out in Administrative Monetary Penalty System By-law 2019-62;
- 3.3 Business Improvement Area (BIA):** a designated geographical area within the Town of Newmarket that aims to enhance and promote the economic and commercial vitality of local businesses.
- 3.4 Eating Establishment:** means a building or place where food and/or drink are prepared and offered for sale.
- 3.5 Lease Fee:** a charge or payment imposed on businesses that operate Temporary Patios on Town Property as outlined in the Town's Fees and Charges By-law
- 3.6 Manager:** means the Town of Newmarket Manager of Regulatory Services or their designate.
- 3.7 Outdoor Serving Area Licence:** is a licence for any area on private or public Property which is licensed to serve alcohol and is used by a business for the serving or consumption of food, beverages or refreshments which is not enclosed within a building structure or is exposed to the outdoors;
- 3.8 Owner:** means any Person who owns, whether individually or in conjunction with others, an eating establishment.
- 3.9 Parking Space Lease Fee:** a charge or payment applicable to Temporary Patios that utilize on-street parking spaces within the Business Improvement Area (BIA) as outlined in the Town's Fees and Charges By-law.
- 3.10 Property:** means a building or structure or part of a building or structure, and includes the lands and premises.
- 3.11 Temporary Patio:** a designated outdoor area adjacent to an eating establishment, where patrons can be seated, dine, or consume refreshments. These patios are established for a period of no longer than 8 months and are subject to specific licence conditions.

4.0 Provisions

4.1 Eligibility

On January 1, 2023, the Government of Ontario amended Regulation 746/21 under the Liquor Licence and Control Act, 2019, establishing a new framework for temporary outdoor physical extensions (**Temporary Patios**). These amendments streamlined the process of obtaining a temporary extension to an already existing liquor licence in an effort to support **Temporary Patio** programs that become increasingly popular throughout the Province during the COVID-19 pandemic. These amendments place the onus on municipalities to grant permissions to business **Owners** to establish **Temporary Patios**, or temporarily extend already existing patios for a period of no longer than 8 months in a calendar year.

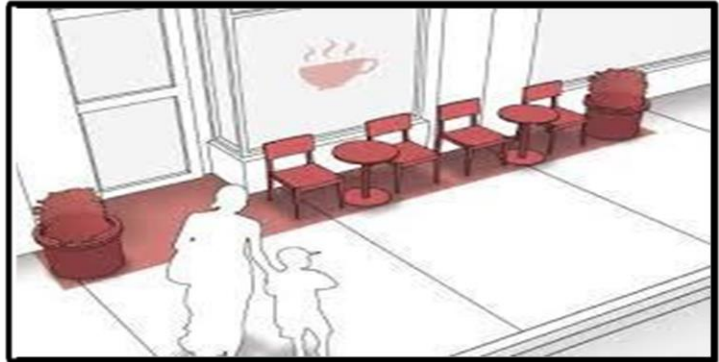
A business **Owner** may qualify to apply for an approved **Temporary Patio** if they meet the following criteria:

- The applicant must be an **Owner** who operates an **Eating Establishment**.
- The **Eating Establishment** must have a legally registered name/business number with the Province of Ontario.
- The applicant must submit a completed application (**Attachment 1**) to the Town's Licensing Department including the following supporting documentation:
 - A proposed site plan
 - A copy of current liability insurance
 - A copy of existing **AGCO** Liquor Licence (for businesses that serve alcohol)
- The applicant must satisfy all of the requirements specified in the policy and the attached application, and ensure that the **Eating Establishment** complies with all relevant federal, provincial and municipal legislation.
- Permission must be obtained from the **Property Owner** in which the proposed **Temporary Patio** would be located on. For **Temporary Patios** proposed to be installed on **Property** owned by the Town, permission for the installation will be obtained through the application process.
- No outstanding administrative monetary penalties are held by the business

4.2 Temporary Patio Types

The Town of Newmarket has established three primary types of **Temporary Patios** that may be applied for by **Eating Establishments**:

Small Frontage Temporary Patios

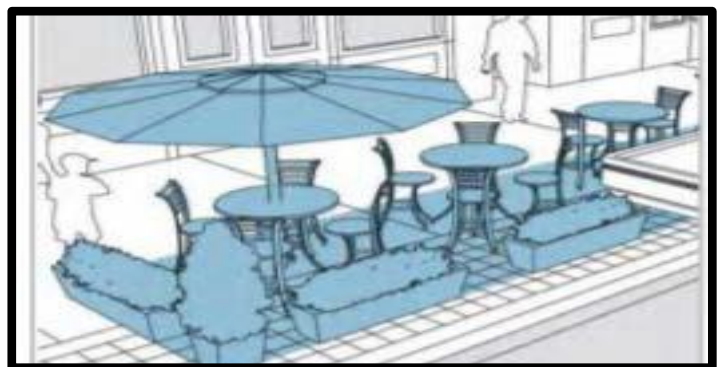


These **Temporary Patios** are required to be located in open space, situated against the wall of a building. These patios cannot include umbrellas, fencing, or enclosures, emphasizing an open and unobstructed atmosphere. Notably, alcohol is not permitted on the patios as there are no physical barriers separating the area of service from the rest of the walkway.

To preserve the public space, all tables, chairs, and displays must be removed after business hours. Proposals for small frontage **Temporary Patios** are required to maintain a minimum of 1.5m of unobstructed sidewalk space.

Small Frontage patios enjoy the added benefit of being exempt from Town **Property** leasing fees. Instead, they are solely subject to the Town's **Outdoor Serving Area Licence** fee.

Curbside/Walkway Patios



Curbside/Walkway Patios are located on a sidewalk/walkway adjacent to an **Eating Establishment**. Patios are required to be adjacent to an establishment and not extending to neighboring properties unless letters of consent are submitted.

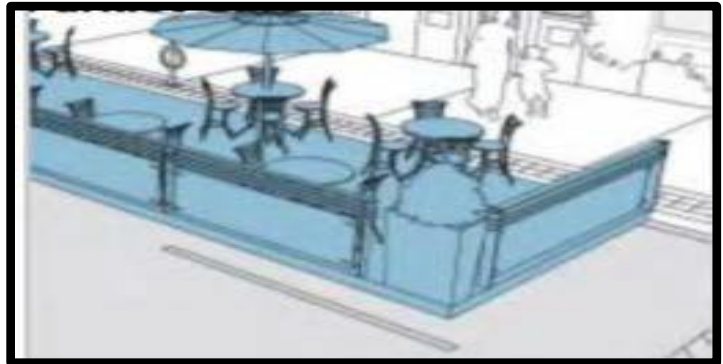
These patios must adhere to stringent guidelines to ensure public safety and

accessibility including:

- An unobstructed emergency route in compliance with the Ontario Building Code and Fire Code must be maintained
- Patios must maintain a minimum setback of 5m from designated pedestrian crossovers, and proper sightlines for pedestrians and drivers
- Shall not impede transit stops or curbside garbage collection
- Sidewalk width of 1.5m must be maintained at 1.5m
- Sturdy barriers of 1m in height are required to separate any part of the **Temporary Patio** that is adjacent to live traffic.

It is expected that proposed site plans indicate all objects, if any, situated between the building and patio to ensure unobstructed and accessible walkways. Curbside/Walkway Patios are subject to a general Town **Property Lease Fee**, as outlined in the Town's Fees and Charges By-law, along with an **Outdoor Serving Area Licence** fee.

Parking Space Patios



Parking Space Patios present a unique opportunity for businesses to enhance their presence in public spaces. Eligible for design, these patios utilize existing parking spaces, contributing to the dynamic streetscape. The designated street must have posted speeds of 40km/hr or less, ensuring a safe environment for patrons. Placement is crucial, requiring the patio to be adjacent to the establishment and not extending to neighboring properties unless letters of consent are submitted.

These **Temporary Patios** must also adhere to stringent guidelines to ensure public safety and accessibility including:

- An unobstructed emergency route in compliance with the Ontario Building Code and Fire Code must be maintained
- Patios must maintain a minimum setback of 5m from designated pedestrian crossovers, and proper sightlines for pedestrians and drivers.
- Patios shall not impede transit stops or curbside garbage collection
- Sidewalk width of 1.5m must be maintained

- Sturdy barriers of 1m in height are required to separate any part of the **Temporary Patio** that is adjacent to live traffic.
- A restaurant owner shall not be approved for a Parking Space Patio if they are also applying for a curbside/walkway patio.

The Town recognizes that temporary Parking Space Patios on public **Property**, especially within the **Business Improvement Area**, utilize a very valuable resource – parking spaces. As a result, applicants considering Parking Space Patios should be aware of the following conditions imposed on these types of Patios:

- 1) Temporary Parking Space Patios are required to be in operation a minimum of 40 hours a week (weather dependant)
- 2) These patios are subject to a higher **Lease Fee** than Curb Side/Walkway Patios as outlined in the Town’s Fees and Charges By-law
- 3) As a result of Council direction, and in an effort to maintain appropriate parking within the **Business Improvement Area**, Town Staff are limited to approving only 4 Patios that require the use of on street parking. Should more than 4 applications be received for Parking Space Patios within the **Business Improvement Area** in any given year, the **Manager** will utilize the following considerations in determining which applications will be successful, in the following order:
 - a. Patios that were previously approved and operated in compliance with Town Policy and By-laws will be given the first right of refusal
 - b. Applicants without any preexisting Outdoor Serving Areas or suitable alternative **Temporary Patio** location will be provided preference
 - c. Failing the above conditions resolving who the successful applicant will be, completed applications received first will be prioritized

Staff will make the best effort to ensure all applicants are able to benefit from the **Temporary Patio** Program while also ensuring parking is maintained to support all businesses within the **Business Improvement Area**.

4.3 Applications

In order to obtain a **Temporary Patio**, business **Owners** must submit a completed application to the Town’s Licensing Division by email at licensing@newmarket.ca or in person at 395 Mulock Drive. Applications are available at www.newmarket.ca/licensing.

Applicants wishing to apply for two year approvals may indicate that on their application. Separate approval letters will be issued for each year so the business may obtain a temporary liquor licence extension through AGCO.

Temporary Patios on Town Property

The application window for applying to the Temporary Patio program will open on January 1st of each year, and must be submitted by no later February 1st to allow for the

Town to properly evaluate all applications as a whole. Application received after February 1st may not be considered for approval.

After the February 1st deadline passes, applications will be evaluated by Town Staff, and permissions/denials will be issued by no later than February 20th.

Temporary Patios on Private Property

Applications for a **Temporary Patios** on private **Property** may be submitted at any time, during the course of the year as long as permission has been obtained by the **Property Owner**. The Town is only permitted to approve **Temporary Patios** as governed by this policy for a period of 8 months or longer.

4.4 Evaluation Criteria

The authority to evaluate **Temporary Patio** applications has been delegated from Council to the **Manager** of Regulatory Services. The decisions to approve, deny, or suspend **Temporary Patio** applications are ultimately delivered by the **Manager** of Regulatory Services, in consultation and in coordination with various Departments within the Town including but not limited to Economic Development, Recreation and Culture, Legislative Services, Building, Planning, Public Works, Central York Fire Services. This collaborative approach ensures a comprehensive assessment that considers economic impact, programming implications, legislative compliance, building safety, public works considerations, road management, and fire safety. The involvement of numerous departments within underlines the thoroughness and multidimensional nature of the evaluation process for **Temporary Patio** applications.

In assessing **Temporary Patio** applications, the **Manager** shall consider:

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

4.5 Patio Installation

Upon receiving approval for a **Temporary Patio**, an applicant will be responsible for the installation, disassembly and storage of their temporary patio.

Installation of patios on private **Property** are permitted as soon as approvals have been received from the Licensing Division.

Installation of patios located Town **Property** are to be coordinated through the Town's Licensing Division. Though business **Owners** are responsible for installing the patios, Town Staff are required to manage patio installation to ensure work is completed safely, responsibly and in a timely manner to ensure minimal disruption to the surrounding area. Installation of **Temporary Patios** will take place at the direction of Licensing Staff, in May.

4.6 Inspection

Upon receiving approval and successfully installing a **Temporary Patio**, Restaurant **Owners** are required to schedule an inspection with the Town's Licensing Division. This inspection is crucial to verify compliance with the **Temporary Patio** Program. Inspections serve as a proactive measure to ensure that established **Temporary Patios** are aligned with the approved plans and adhere to the necessary safety standards. By facilitating these inspections, the Town aims to maintain the integrity of the licensing process.

Pending a successful inspection, the Town's Licensing Officer will finalize the licensing process and issue an **Outdoor Serving Area Licence**.

4.7 Operating Requirements

The Operational Requirements section delineates specific requirements for **Owners** overseeing the operation of their **Temporary Patios**:

- 1) **Temporary Patios** may only be operated once a final inspection has been completed, payments have been made, and final approval by way of an **Outdoor Serving Area Licence** has been issued by the Town's Licensing Division.
- 2) **Temporary Patios** on Town **Property** will be removed by no later than October 30th of the year the patio was approved.
- 3) **Temporary Patios** on private **Property** are to be removed no later than the date of expiration on the Outdoor Serving Area issued to an applicant.
- 4) Permission to install or expand a patio for a period of time does not entitle a business to any right or expectation to be able to install or extend a patio in subsequent years.

- 5) Any required sidewalk extensions must be completed before obstruction of a sidewalk for construction or operation of a patio.
- 6) The applicant assumes all maintenance and liability for the patio structure and sidewalk extension and may be required to undertake alterations or repairs as are required by the Town to maintain safety and accessibility.
- 7) Permission to extend or install a patio becomes null and void if the applicant should fail to meet the requirements set out in this Policy, the application, or other applicable documents, in which case, the Town shall be at liberty to take any action it deems necessary to repair the patio structure or to reinstate the site to its original condition for public protection at the expense of the applicant. In all cases the decision of the Town is final.
- 8) The applicant shall maintain access to all public and private properties for the duration of the work.
- 9) No **Temporary Patios** are permitted to be installed on a highway or vehicular lane way.
- 10) No business shall be eligible to operate a **Temporary Patio** unless the business is in compliance with all Town requirements.
- 11) The Applicant shall be deemed to be the “constructor” and the “**Owner**” for all purposes under the Occupation Health and Safety Act. The Applicant shall further be deemed to be the “occupier” for all purposes under the Occupiers Liability Act.
- 12) The Applicant agrees to indemnify and save the Town harmless from and against all losses, damages, actions or causes of action, suits, claims, demands, penalties, interest and/or legal fees on a substantial indemnity basis arising in connection with any matter that may arise from the issuance of a permit hereunder or the activities that occur on a patio.
- 13) Any costs, expenses or liabilities incurred by the Town as set out above may be collected by the Town from the Applicant in the same manner as municipal taxes.
- 14) The Applicant agrees to clean the area around and under the patio with the use of a pressure washer following the removal of the patio.
- 15) It is the **Owner's** responsibility to install, remove and store the **Temporary Patio**
- 16) All approved patios must be in compliance with the Town's Noise By-law 2017-76 as amended. No live amplified music is permitted on temporary or permanent patios.
- 17) **Temporary Patios** are required to be closed to the public between the hours of 1am and 8am
- 18) Every **Temporary Patio** which is illuminated in an area adjacent to a residential use shall ensure all lighting fixtures and illumination are arranged, designed, and installed to deflect the light down and away from residential buildings, lots, and streets. Lighting must be approved by the Town.
- 19) **Temporary Patio Owners** must ensure compliance with all federal, provincial and municipal regulations.
- 20) A fire extinguisher must be available within 25m of any part of the **Temporary Patio**.
- 21) All **Temporary Patios** must maintain compliance with the Accessibility for Ontarians with Disabilities Act, 2005
- 22) Business activities beyond seating and food/drink service is not permitted

4.8 Business Licensing

An **Outdoor Serving Area Business Licence** is required to be obtained for all business **Owners** operating a **Temporary Patio**. Business must ensure their patio remains in compliance with all Outdoor Serving Area regulations.

The Town's Fees and Charges By-law outlines the required fees required to be paid prior to the approval of the business licence.

4.9 Insurance Requirements

As a requirement to obtain a Temporary Patio with the Town of Newmarket, applicants are required to provide proof of the required insurance.

Temporary Patio program applicants must hold General Liability Insurance from an insurer licensed in the province of Ontario for \$2 million per occurrence with an aggregate limit of no less than \$5 million insuring the Owner and the Corporation of the Town of Newmarket ("the Town") against any liability for property damage or personal injury, negligence including death which may arise from the applicants operations under this agreement. The Town must be included as an "Additional Named Insured". In addition the Commercial General Liability shall contain Cross Liability and Severability Clauses and Products & Completed Operations coverage including a standard contractual liability endorsement.

4.10 Enforcement

The enforcement of the **Temporary Patio** Program Policy operates in tandem with the Town's Business Licence Bylaw 2020-31 and the regulations governing the Outdoor Serving Area classification of businesses.

Failure to obtain an **Outdoor Serving Area Licence** for a **Temporary Patio**, or comply with conditions of the **Temporary Patio** Program will result in an **Administrative Penalty** Fines, with each day of operation constituting a new offence.

Any encroachment on Town **Property** without proper permission will prompt legal action by the Town against those in violation. In such cases, the Town shall be at liberty to take any action it deems necessary to reinstate the site to its original condition for public protection at the expense of the applicant.

Violations of the Town's **Temporary Patio** Policy, or the Town's Business Licence By-law 2020-31 will be considered in the evaluation process and may result in an application being denied.

4.11 Temporary Patio Fees

All **Temporary Patio** Fees are required to be paid prior to the issuance of a licence to operate a **Temporary Patio**. All **Temporary Patios** are required to pay an **Outdoor Serving Area Licence** fee as set by the Town's Fees and Charges By-law.

Temporary Patios situated on Town **Property**, with the exception of small frontage **Temporary Patios**, are subject to a **Lease Fee** as stipulated in the fees and charges bylaw. **Temporary Patios** located within on-street parking spots are subject to a Parking Space **Lease Fee**, as outlined in the fees and charges bylaw, is applicable. Revenue generated from Town **Property Lease Fees** will be directed towards contributions to the BIA, fostering ongoing development within the **Business Improvement Area**.

This fee structure aims to not only supports the administration required to run the program, but also to contributes to the enhancement of the **Business Improvement Area**.

4.12 Indemnity

The owner of a **Temporary Patio** shall promptly defend, protect, indemnify and hold completely free and harmless the Town from and against any and all Claims in connection with any Injury or any loss or damage to property (a) arising from or out of an application or the occupancy or use by the Owner of any lands owned by the Town, or any part thereof, or occasioned wholly or in part by any fault, default, negligence, act or omission of the Owner or by any person permitted to be on the premises under the control of the Owner; and (b) arising from, relating to or occurring in whole or in part by any fault, default, negligence, act or omission by the Owner or any of the directors, officers, servants, employees, contractors, agents, invitees and licensees of the Owner and all other persons over whom the Owner (i) may reasonably be expected to exercise control, and (ii) is in law responsible. If the Town shall be made a party to any litigation commenced by or against the Owner, then the Owner shall promptly indemnify and hold completely free and harmless the Town and shall pay the Town all costs and expenses, including, without limitation, any professional, consultant and legal fees on a complete indemnity basis that may be incurred or paid by or on behalf of the Town in connection with such litigation on demand. The indemnity of the Owner contained in this policy shall not be prejudiced by, and shall survive the expiration of the time period under which the permit applies.

Cross-References

Temporary Patio Program Application

1. Temporary Patio Program Application
2. Temporary Patio Program Streamlined Application for Returning Applicants
3. Business Licence By-law 2020-31
4. Liquor Licence Control Act

Contact

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Details

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