



Town of Newmarket
395 Mullock Drive P.O. Box 328,
Newmarket, Ontario, L3Y 4X7

Email: info@newmarket.ca | Website: newmarket.ca | Phone: 905-895-5193

2023 Temporary Patio Program Information Report to Council

Report Number: INFO-2023-05

Department(s): Legislative Services

Author(s): John Comeau, Supervisor of Licensing & Property Standards

Distribution Date: February 17, 2023

In accordance with the Procedure By-law, any member of Council may make a request to the Town Clerk that this Report be placed on an upcoming Committee of the Whole agenda for discussion.

Purpose

This report is intended to update Council on the status of the Town's Temporary Patio Program.

Background

In 2015, Council approved a pilot program allowing for the creation of Temporary Patios in public spaces.

In 2016, Council authorized the Temporary Patio program to continue on a permanent seasonal basis.

In 2019, an [Information Report](#) was circulated to Council to highlight the success of the program.

In 2020, as a result of the COVID-19 Pandemic, the Province made amendments to the Liquor Licence and Control Act to temporarily ease restrictions on the serving of alcohol on temporary patios, making it significantly easier for restaurant owners to participate in the Temporary Patio Program. Town Staff streamlined the Temporary Patio Program application process to better support restaurants who were affected by Public Health regulations and business closures. Council acted to help support local restaurants by waiving all fees associated with the Temporary Patio Program. This included the Outdoor Serving Area licensing fee, as well as the fee charged to restaurants for using

Town Property. The Town also funded the costs for the installation of many of the patios found on Town property, and coordinated for the installation and removal of said patios.

Additionally, the program became accessible to restaurant owners who wanted to create temporary patios on private property. With property owner permission, restaurants were able to create temporary patios or temporarily extend already existing patios onto private property to allow for additional outdoor seating. A [2020 Information Report](#) highlights the success that the program had in supporting restaurants through COVID-19 closures.

In an effort to further support our local restaurants through COVID-19, Council made a motion to continue waiving fees during the 2021 and 2022 patio seasons. The program saw 43 restaurants participate in 2021, and 29 restaurants participate in 2022. The Patio Program has largely been viewed as a success with positive comments being received from both residents and business owners alike.

On January 1st of 2023, the Province of Ontario made amendments to the Liquor Licence and Control Act to permanently ease restrictions on temporary patios. Moving forward restaurant owners will simply need to receive municipal approval to serve alcohol on a temporary patio, and forward that approval to the Alcohol and Gaming Commission of Ontario. A municipality is permitted to approve a temporary patio for no longer than 8 months in a calendar year, and may put any conditions on the approval that are appropriate.

As we prepare to enter the 2023 Patio Season, Staff are presenting this report to update Council on the status of the program.

Discussion

2023 Temporary Patio Program

Following the direction provided to Staff in 2016, the Temporary Patio Program will continue to operate on a permanent seasonal basis. Restaurants will be permitted to submit a proposal to the Town to operate temporary patios on both public and private property. Town Staff will be circulating the 2023 Temporary Patio Program Application (**Appendix A**) to business owners 5 days after this Information Report is circulated to Council. Upon receiving applications, business owners will have until March 24th to submit completed proposals to the Town.

Completed proposals will be reviewed by a Staff Review Panel, which will assess the feasibility of each proposal. As in previous years, consideration for approving each proposal will be based off the following criteria:

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.

Additionally, for the 2023 patio season, Staff intend to take the approach with any temporary patios on Town property that:

- 1) Up to two parking spaces may be utilized on Main Street if the business that is applying for the patio fronts these spots.
- 2) Up to three rear or side parking spaces immediately adjacent to the restaurant can be utilized in the exception where applicants do not have access to parking spaces on Main Street.
- 3) Where it can be accommodated, use of immediately adjacent municipal lands as additional patio space may be permitted on a case by case basis. These patios will be subject to a separate fee structure, and be required to not impede with vehicular traffic flow.

Patios are subject to yearly approval, and any approvals for a 2023 Temporary Patio does not entitle a Business Owner to the same approvals in future years.

It is important to note that this year, there are no COVID-19 regulations in place. Businesses are fully open to the public. Regularly scheduled programs and events have returned. As a result, some patios that have been approved in previous years may not be approved this year. This pinch point was anticipated by Town Staff during the Temporary Patio Season in 2022, and was communicated to restaurant owners throughout the application process. All restaurant owners who participated in the Temporary Patio Program in 2022 signed a Conditions of Approval (**Appendix B**) that

advised owners that permission to install a temporary patio in 2022 does not entitle any restaurant to approval for the 2023 season.

Town Staff will work with business owners in a best effort to support proposals wherever possible. If aspects of a proposal are not satisfactory to the review panel, Staff will work with restaurant owners to find a proposal that best satisfies our requirements.

Temporary Patios will be permitted to be in operation from May 8th to October 31st of 2023. Once applications have been approved, restaurants will be responsible for set up, tear down and storage of all patio equipment.

Temporary Patio Fees

In 2020, 2021, and 2022, Town Council waived all fees related to temporary patios. This included the Outdoor Serving Area licensing fee, as well as the fee charged to restaurants for using Town Property. The Town also funded the costs for the installation of many of the patios found on Town property, and coordinated for the installation and removal of said patios. Expenses that the Town incurred averaged to approximately \$25,000 per patio season. Additionally, there was a loss in revenue on waived Outdoor Serving Area licence fees and lease fees for temporary patios located on Town property.

In 2023, the fee structure previously applied to temporary patios from 2015-2019 will return. Owners of approved temporary patios will be required to pay the licensing fee of \$389.10. Any restaurant owner who already has an Outdoor Serving Area licence and has already paid their licensing fee will not be required to pay an additional fee, rather the approval of their temporary patio will be added to their already existing licence. Patios located on Town property will be subject to a lease fee of \$0.5 per square foot of patio per month.

As the Town is no longer required to supply the restaurant owner with a Municipal Information Form for the AGCO, that previously applied \$178 fee will no longer be charged.

Noise on Temporary Patios

One concern raised regarding temporary patios was the emission of noise. Multiple complaints were received in 2022 regarding the presence of live amplified music on temporary patios. The Town's Noise By-law 2017-76 does not support the presence of amplified live music on temporary patios.

As we move into the 2023 Patio Season, restaurant owners will be advised that amplified live music will not be permitted on temporary or permanent patios. Live music that is not amplified will be permitted, as long as the music is not at a level that is

disruptive the rest and enjoyment of the residents and businesses in the area.

Businesses wishing to have amplified live music for one-off events will be directed to apply for a Noise Exemption under our Noise By-law.

Staff will be further reviewing the Town's Noise By-law to implement specific regulations surrounding the use of amplified music on patios in Town.

Conclusion

Town Staff will be opening the application period for temporary patios five days following the circulation of this Report, and will be circulating the application to the 29 businesses that participated in the program last year. Additionally, the Town's website will be updated with the new application. Staff will require restaurants submit their completed application packages by March 24th, 2023.

Once applications have been submitted, a Staff review panel made up of members of various departments throughout the Town will review applications to ensure they meet the requirements set out in the application package. Staff will work with business owners to ensure successful implementation of the 2023 patio program.

Business Plan and Strategic Plan Linkages

This report supports the Town's vision of a community Well Beyond the Ordinary and mission of Making Newmarket Even Better.

Consultation

Various departments within the Town were consulted in the preparation of this report including Economic Development, Planning, Public Works Services, Parks and Facility Services, and Recreation and Culture.

A copy of this Information Report and the Temporary Patio Program Applications will be circulated to the 29 businesses that participated in the Town wide 2022 patio program 5 business days after this report is circulated to Council.

Human Resource Considerations

Existing Staff will be used to facilitate the Temporary Patio Program.

Budget Impact

Outdoor Serving Area Licence fees will be charged at \$389.10 per patio. Based off of the number of Temporary Patios licenced last year (29), the Town can expect approximately \$11,283.90 in licensing revenue.

Additionally, Temporary Patios located on Town Property will be charged a lease rate of \$0.5 per square foot of patio per month, leaving an additional source of revenue for the Town.

Attachments

2023 Temporary Patio Program Application (**Appendix A**)

2022 Conditions of Approval (**Appendix B**)

Contact

John Comeau, Supervisor of Licensing & Property Standards, Legislative Services

Approval

Lisa Lyons, Director/Town Clerk, Legislative Services

Esther Armchuk, Commissioner, Corporate Services

Temporary Outdoor Patio Program Application Package

Application Checklist	
Completed copy of this application	
Copy of business name registration	
Proposed site plan (see Part II)	
Copy of current liability insurance (see Part III)	
Copy of existing AGCO liquor licence for principal establishment	
Signed copy of General Conditions + Guidelines (see Part IV)	
Signed copy of Property Owner Declaration (for patios on private property) (see Part V)	

Please ensure all information is included in the application. Incomplete applications will not be accepted. All applications are required to be submitted by **4:00 PM on March 24th, 2023**. Please send your completed application package to licensing@newmarket.ca.





Town of Newmarket
 395 Mulock Drive
 P.O. Box 328
 Newmarket, ON L3Y 4X7

licensing@newmarket.ca
 tel.: 905-953-5300
 fax: 905-953-5141

Temporary Outdoor Patio Program Application

PART I: General Information

Business Information	
Owner Name:	
Phone Number:	
E-mail Address:	
Registered Business Name:	
Business Address:	
After Hours Contact:	

Screening Questions

- Is your proposed patio on Town Property or Private Property? Town Property Private Property
- Will alcohol be served on the temporary patio? Yes No
- Do you currently have an AGCO approved liquor license for your establishment? Yes No
- Are you requesting a temporary extension of an existing patio, or a new temporary patio? Extension of Current New Temporary Patio

Fees	
Outdoor Serving Area Licensing Fee	\$389.10
Patio sidewalk lease (for Temporary Patios on Town Property)	\$0.50 per square foot of the patio per month Example: 300 square feet x \$0.5 x six months = \$900.00

Important Information for Applicants

This application may contain personal information as defined under the Municipal Freedom of Information and Protection of Privacy Act. The information collected is required pursuant to the terms of the Municipal Act and will be used by the Town of Newmarket to process the application, and to determine whether to issue a license. Information will also be used for administration of such license, and for law enforcement purposes to ensure compliance with all applicable statutes, regulations and by-laws.

I have read the provisions of this Application. I verify that I meet all necessary requirements imposed to be eligible to obtain a Temporary Outdoor Patio Program permit.

Signed: _____ Date: _____

Name (print): _____

Position (if a corporate applicant):
 "I have the authority to bind the company (if a corporate applicant)"

PART II: Proposal

Site Plan of Proposed Temporary Outdoor Patio

Please submit drawings that show:

- Location and dimensions of the proposed temporary patio;
- Total area of the proposed patio in square metres;
- Seating diagram to meet provincial seating restrictions (1.11 square metres per person);
- Proposed barriers or fencing with a minimum height of 36 inches (91 cm) and their placements to mitigate public safety and traffic-related concerns;
- Location and dimensions of the building, including entrances/exits and washrooms;
- Location of adjacent buildings' entrances/exits;
- Location and dimensions of any enclosures, umbrellas, tents, awnings, etc.
- Location of fire extinguishers;
- Location of York Region Transit stops close to the patio;
- Location of curb cuts close to the patio; and
- The maximum occupant load of your business and patio, pursuant to the Ontario Building Code.

Design Requirements

- All patios must maintain the requirements of the Accessibility for Ontarians with Disabilities Act. These guidelines set out basic requirements of the AODA. It is the responsibility of each business to ensure their own compliance with the Act.
- A minimum passable sidewalk width of 1.5m must be maintained at all times to ensure accessibility for pedestrians. 1.8m minimum width is preferred.
- Patios are not permitted to reduce the width of the traffic lanes of the public street. A minimum street width of 6m must be maintained at all times to ensure adequate width for emergency vehicles.
- The Town will accept a variation of barrier types to be used for safety mitigation.
- Exterior barriers onto on-street parking spaces must be affixed with high visibility reflective markers for nighttime visibility.
- Up to two parking spaces may be utilized on Main Street if the business that is applying for the patio fronts these spots.
- Up to three rear or side parking spaces immediately adjacent to the restaurant can be utilized in the exception where applicants do not have access to parking spaces on Main Street.
- Where it can be accommodated, use of immediately adjacent municipal lands as additional patio space may be permitted on a case by case basis. These patios will be subject to a separate fee structure.

Which type of temporary patio are you proposing?

Refer to the diagrams below for a description on each type of temporary patio

Small Frontage Patio

Curbside/Sidewalk Patio

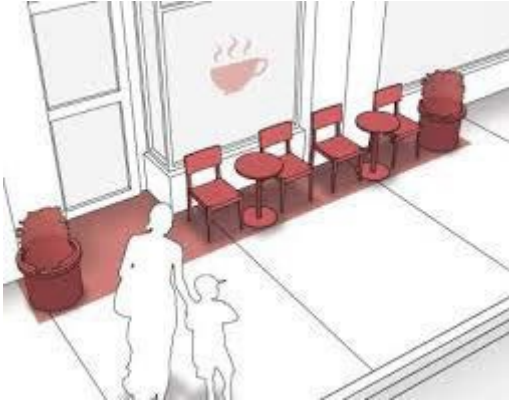
Parklet Patio

Laneway Patio

Other (please specify): _____

Examples of Patio Styles

1. Small Frontage Patio



- Must be located against the building wall
- No umbrellas, fencing or enclosures
- Alcohol is **not permitted**
- Tables, chairs, and displays removed after business hours
- No A-frame sign adjacent on the sidewalk
- Sidewalk width of 1.5m must be maintained and unobstructed for pedestrian access. 1.8m access is recommended.

Illustration courtesy of City of Toronto

2. Laneway Patio

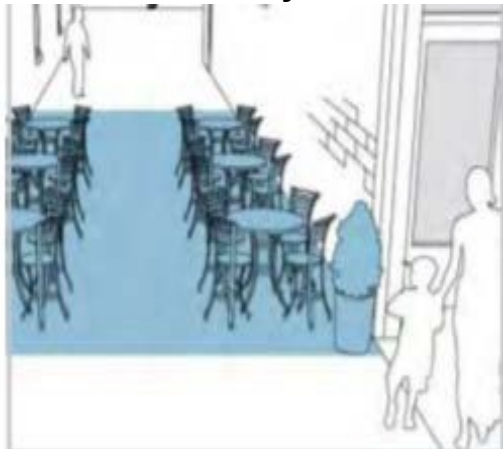


Illustration courtesy of City of Toronto

- Must be located against the building wall
- No umbrellas, fencing or enclosures
- Tables, chairs, and displays removed after business hours
- No enclosures, structures, or visible screens
- Platform must be level with the sidewalk with cross slope no greater than 2% and running slope of no greater than 4%
- Platform must safely bear weight of people and elements on the platform; be stable, safe and slip-resistant; accessible between sidewalk level and the platform; and comply with the standards for decks, platforms and ramps in the Accessibility for Ontarians with Disabilities Act and the Ontario

3. Curbside/Sidewalk Patio



Illustration courtesy of City of Toronto

- Existing parking space(s) are eligible for design
- Unobstructed emergency access route conforming with ON Building and Fire Code
- Must be a minimum of 5m away from designated pedestrian crossover while ensuring proper sightlines
- No enclosures, structures, or visible screens
- Not interfere with transit stops or curbside garbage collection
- Sidewalk width of 1.5m must be maintained and unobstructed for pedestrian access (1.8m recommended)
- Must indicate in your proposed site plan all of the objects (if any) that will be between your building

4. Parklet Patio

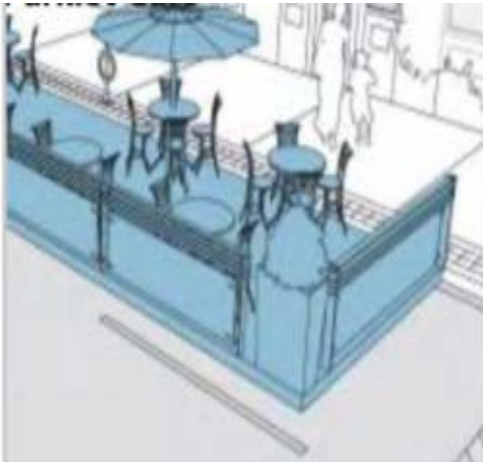


Illustration courtesy of City of Toronto

- Existing parking space(s) are eligible for design
- On a street with posted speeds 40 km/hr or less
- Must be in front of your establishment and not extending to your neighbours' unless you submit letters of consent
- Unobstructed emergency access route conforming with ON Building and Fire Code
- Must be located a minimum of 1m from any driveway or laneway
- Must be a minimum of 5m away from designated pedestrian crossover while ensuring proper sightlines
- No enclosures, structures, or visible screens
- Not interfere with transit stops or curbside garbage collection

Part III: Signed Insurance and Indemnification Declaration

In this Part III,

“Claims” means claims, losses, actions, suits, proceedings, causes of action, demands, damages (incidental, direct, indirect, special, consequential or otherwise), fines, duties, interest, penalties, judgements, executions, liabilities, responsibilities, costs, charges, compensation, payments and expenses including, without limitation, any professional, consultant and legal fees on a complete indemnity basis.

“Owner” means the owner listed in this application.

“Injury” means bodily injury, personal discomfort, mental anguish, shock, sickness, disease, death, false arrest, detention or imprisonment, assault, threatening, malicious prosecution, libel, slander, defamation of character, invasion of privacy and discrimination, or any of them, as the case may be.

Insurance:

The Owner holds 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.

Indemnity:

The Owner 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 this 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 Part III shall not be prejudiced by, and shall survive the expiration of the time period under which the permit for this Application applies.

I have read this Part III and agree to its terms and conditions in consideration of any grant of a Temporary Outdoor Patio Permit provided to me. I verify that I meet all necessary requirements imposed to be eligible to obtain a Temporary Outdoor Patio Program permit.

Signed _____

Date _____

Name (print): _____

Position (if a corporate applicant): _____

“I have the authority to bind the company (if a corporate applicant)”

Part IV: General Conditions & Guidelines

1. Patios will be removed by no later than **October 30, 2023**.
2. Permission to install or expand a patio for the 2023 season does not entitle a business to any right or expectation to be able to install or extend a patio in subsequent seasons.
3. Any required sidewalk extensions must be completed before obstruction of a sidewalk for construction or operation of a patio.
4. 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.
5. Permission to extend or install a patio becomes null and void if the applicant should fail to meet the requirements set out in this application and 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.
6. The applicant shall maintain access to all public and private properties for the duration of the work.
7. No business shall be eligible to operate an outdoor patio unless the business is in compliance with all Town requirements.
8. 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.
9. 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.
10. 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.
11. 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.
12. It is the owner's responsibility to install, remove and store the temporary patio
13. 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.

I have read this Part IV, and agree to its terms and conditions in consideration of any grant of a Temporary Outdoor Patio Permit provided to me. I verify that I meet all necessary requirements imposed to be eligible to obtain a Temporary Outdoor Patio Program permit.

Signed _____

Date _____

Name (print): _____

Position (if a corporate applicant): _____

"I have the authority to bind the company (if a corporate applicant)"

PART V: Property Owner Permission (for Temporary Patios on Private Property only)

In order to be eligible to offer a new or extended temporary outdoor patio on **private property**, you must first obtain a written permission from the property owner directly.

Important Information for Private Property Owners

In an effort to relax the outdoor patio program on a temporary basis, the Town will not require an amendment process for previous site plan approvals. This includes changes to the number of parking spaces required onsite or alterations to existing site plans. The property owner acknowledges and accepts that this is a temporary measure for the Temporary Outdoor Patio season and all changes will be reverted back to their original state by no later than **October 30, 2023**.

Signed _____

Date _____

Name (print): _____

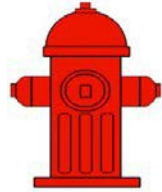
Position (if a corporate applicant):

“I have the authority to bind the company (if a corporate applicant)”

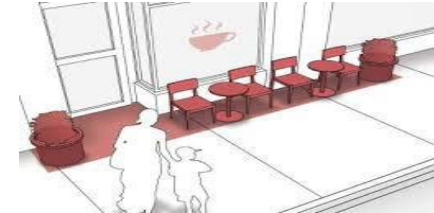
Temporary Outdoor Patio Program

Fire Code, Building Code, and Planning Requirements

A minimum of **3.0m** clearance from fire department connections and hydrants



Temporary patios must not extend in front of other businesses or building exits



A fire extinguisher must be available within **25.0m** of any part of the temporary patio



A clear path of pedestrian travel of **1.5m** minimum should be maintained



Exit openings must remain unobstructed at all times & provided with exit signs where not clearly visible



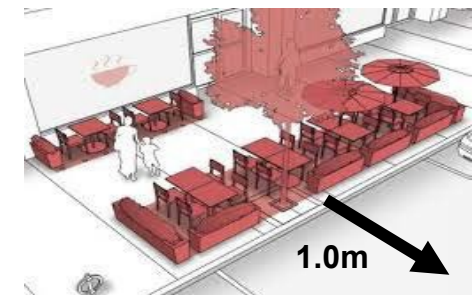
Temporary curb ramps may be required to provide a safe passage for pedestrians to cross between the road and the sidewalk



CSA-certified electric or propane patio heaters (with max. 20lb tank) Must be located at least **3.0m** away from tree branches and not stored on Town property when not in use



The side of the temporary patio adjacent to vehicle traffic shall maintain a minimum distance of **1.0m** from the edge of any adjacent travel lane





Legislative Services/Bylaws
Town of Newmarket
395 Mulock Drive
P.O. Box 328
Newmarket, ON L3Y 4X7

licensing@newmarket.ca
tel.: 905-953-5300, Ext. 2221
fax: 905-953-5141

Corporation of the Town of Newmarket (the “Town”) Temporary Patio Permit Program

General Conditions of Approval:

1. Permission to install a patio for the 2022 season does not entitle a business to any right or expectation to be able to install a patio in subsequent seasons. The Town will be reviewing the Temporary Patio Permit Program at the end of 2022 and it may be subject to change.
2. The owner of the approved Temporary Patio shall ensure capacity limits are complied with at all times. Should a sudden rain event occur, a restaurant is not permitted exceed capacity limits within the restaurant.
3. Exits, as approved by Central York Fire Services, shall remain unobstructed at all times.
4. A minimum of 3.0m clearance from fire department connections and hydrants shall be maintained.
5. A fire extinguisher must be available within 25.0m of any part of a temporary patio.
6. The Applicant agrees to indemnify and save the Town, its members of Council, officers, employees and agents 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 or sidewalk extension.
7. All municipal property, including the sidewalk, roadway, lighting, or other features will be returned to their initial condition or repaired of any damages upon removal by the Applicant of the Temporary Patio at the end of the Permit period. Damages not repaired by the Applicant will be repaired or replaced by the Town at the applicant's cost.
8. 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.
9. All approved patios must remain in compliance with the Town's Noise By-law 2017-76.

I confirm that I have read the above conditions of approval and agree to the terms and conditions. I verify that I meet all necessary requirements imposed to be eligible to hold a Temporary Patio Program Permit.

Signed: _____

Name (print): _____

Date: _____