



Town of Newmarket
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Newmarket Patio Program - 2020 Information Report to Council

Report Number: INFO-2020-37

Department(s): Economic Development, Recreation & Culture

Author(s): Dave Lowes

Distribution Date: November 30, 2020

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

The purpose of this report is to provide an overview of the Town of Newmarket's temporary expanded patio program for 2020.

Background

The COVID 19 pandemic caused restaurants to close (except takeout/delivery) from March 24, 2020 until June 19, 2020 when The Province of Ontario announced that York Region was able to move into Stage 2 of their 3 stage reopening plan.

Stage 2 allowed restaurants to offer outdoor in-person dining as long as they followed all public health guidelines (physical distancing, contact tracing, reservations only, etc.)

Many local restaurants expressed interest in gaining additional outdoor space in order to accommodate the new rules and have a better chance at success. These requests came from restaurants in the BIA area seeking permission to use public land in the downtown area, as well as from restaurants on private property throughout town.

Discussion

Here are a few steps the town took to help restaurants respond and adapt to challenges created by COVID-19:

- Patio licensing fees were waived for 2020.
- The Town's patio program guidelines and regulations were updated to include more flexibility around hours of operation, encroachment on town lands and any other considerations necessary to accommodate temporary outdoor patios.
- Infrastructure, set up and tear down of pedestrian zones/expanded patios on Town property adjacent to interested businesses were be funded by the Town for the 2020 season.
- Logistics of expanded dining zones on Town property were coordinated by the Town to ensure ease of implementation. This included:
 - Sourcing and securing all relevant rental equipment, materials, and contractors
 - Liaising with restaurant owners and contractors, multiple Town departments, Central York Fire Services, Public Health, etc. to ensure a timely and efficient process that did not hinder the ability for restaurants to open as early as possible

The Province of Ontario amended the Liquor Licence Act to make it easier for licensed bars and restaurants to temporarily add a patio or expand existing patios to accommodate physical distancing. This included being more generous in their definition of 'adjacent' which created opportunities for restaurants to use public land such as sidewalks, street side parking spaces, and laneways.

In early June 2020, Economic Development conducted a survey to determine which businesses would be interested in participating in an extended patio program. Here are the highlights of that survey:

- 33 businesses responded to the survey
- 25/33 businesses indicated they were in favour of the program
 - 93.3% of those in favour were still in favour even if it meant removing parking spaces
 - 13 of the 25 businesses in favour were interested in participating themselves
- Survey comments included:
 - Ensure 30 minute parking remains
 - Consider additional 30 minute parking on side streets
 - Town should consider closing the street
 - Town should definitely not close the street

The following restaurants in the BIA area took part in the expanded patio program (public land):

Made in Mexico:

- Permitted to use one extra parking space on Main St. (3 total)
- Town constructed wooden railings around the extension and covered costs
- Town agreed to cover costs associated with installing their sidewalk detour
- Patio closed on October 30

Chip and Malt:

- No option for sidewalk or curbside patio
- Laneway (Doug Duncan Drive) closed from Main St. to Cedar St.
- Town constructed a 28' x 13' deck in laneway and covered costs
- Deck was built in sections that could be easily dismantled, moved, and stored for future use
 - o Wood is currently in storage and can be reconstructed for this patio or repurposed for another project

Olde Village Free House:

- Permitted to use of the east side of Market Square parking lot
- Town provided rental fencing and covered costs
- Permit has been extended to November 30 as per their request

Goulash House:

- Permitted to use 3 street parking spaces on Botsford St.
- Town provided rental fencing and covered costs

Neon Flamingo:

- Permitted to use one public parking space plus additional space in front of Old Town Hall
- Town provided rental fencing and covered costs
- Permit has been extended to November 30 as per their request

Hungry Brew Hops:

- Town agreed to cover costs associated with installing sidewalk detour for their Main St. patio
- Permitted to use 5 parking spaces on Cedar St. behind their restaurant for a temporary extension
- Accessible spaces from Cedar St. were relocated to Doug Duncan Drive on the north side of Community Centre
- Cedar St. extension closed on Oct. 5
- Main St. patio permit extended until November 16 as per their request

Aubergine Kitchen and Bar:

- Permitted to use 2 parking spaces on Main St.
- Town constructed wood railings, accessible ramp, and concrete vehicle mitigation barrier and covered associated costs
- Patio closed on October 5

The George Brew House and Eatery:

- Permitted to use sidewalk space in front of their restaurant
- Town covered costs associated with installing wood railings and dividers
- Patio closed on October 30

Cachet Supper Club:

- Permitted to use rear parking lot for patio extension
- Town provided rental fencing and covered costs
- Patio closed October 5

Ground Burger Bar:

- Permitted to use 7 parking spaces in Timothy St. parking lot
- Town covered associated costs for installing wooden barriers
- Patio extension closed October 30
- Regular patio (private property) will remain open until end of 2020

Joia on Main:

- Permitted to use space in Riverwalk Commons adjacent to their permanent patio.
- Town provided rental fencing and covered costs
- Patio extension closed October 5
- Permanent patio will remain open until end of 2020

Café Hessed:

- Permitted to use the sidewalk in front of their store for 2 small tables

Hop Bop Noodle Shop:

- Permitted to use a small section of the sidewalk in front of their store for a licensed patio

The following private restaurants were approved for new patios or temporary extensions on private property:

- Coops Smokin' Wing House
- Metropolis Mercantile Café
- Cora's

- Sunset Grill
- Fionn MacCool's
- Lion Pub and Grill
- Tom and Jerry's
- Sun Star Bar and Grill
- Lobo Iberico
- Crow's Nest
- Market Brewing Company
- Wing House
- Sociable Pub
- Union Chicken
- Ten Gallon Bar and Grill
- Castle John's
- The Works
- Daybreak
- Wimpy's Diner
- Donnelly's
- St. Louis Bar and Grill
- A Taste of the Island
- Arthurs Landing
- Montana's

Conclusion

The 2020 patio program has been a tremendous success. It allowed restaurants, particularly those in the downtown core, to reopen and have a realistic chance at recovery by providing additional outdoor dining space that would normally not be available for use.

Supporting the restaurant industry in the downtown core has a ripple effect for the other businesses on Main Street. Restaurants are a major driver of economic activity downtown. If the restaurants are open and operational they attract customers to the area who will stay for longer periods of time and potentially spend money at other businesses while in the area.

Downtown Newmarket, and Main St. specifically, has seen an impressive revitalization over the last few years with restaurants playing a huge role in that accomplishment. This is why their success is critical for the continued enhancement of our downtown and our local economy.

Business Plan and Strategic Plan Linkages

The Patio Program is aligned with Newmarket's Strategic Vision, Mission and Core Values. This initiative promoted outside the box thinking, creativity, and courage to try

and find solutions to unprecedented challenges facing our community. We learned many valuable lessons along the way which will help us shape the future of downtown Newmarket for years to come and continue to make our community well beyond the ordinary. With continued guidance from Council and resident feedback, Town staff will work on both short term and long term strategic plans to ensure our downtown thrives in every way and reaches its ultimate potential.

Consultation

Several Town of Newmarket departments contributed to the content of this report including Recreation & Culture, Economic Development, Public Works, and Legislative Services.

We will be conducting another survey as we seek feedback from the Main Street BIA, participating restaurants, and the general public. The survey will focus on the patio experiences from the summer 2020 while also looking ahead to 2021 and beyond as we gather data that can be used toward framing the potential future pedestrianization of Main Street which is a Strategic Priority of Council.

Human Resource Considerations

The patio program involved a coordinated effort from the following Town departments along with support from Mayor and Council and Main Street BIA:

- Economic Development
- Recreation and Culture
- Legislative Services
- Building
- Public Works
- CAO
- Communications
- Central York Fire Services

Budget Impact

Services, Rentals, and Materials	
Fencing Rental	\$ 6,390.68
Woodwork	\$ 13,786.00
Signage	\$ 488.16

Cost reimbursement	\$ 5,497.15
Removal of woodwork	\$ 736.76
Total	<u>\$ 26,898.75</u>

Attachments

Newmarket Temporary Patio Program Photos (PDF)

Temporary Outdoor Patio Program – Application

Contact

Dave Lowes – Events & Sponsorship Programmer – Town of Newmarket

dlowes@newmarket.ca

Approval

Dave Lowes – Events & Sponsorship Programmer – Recreation & Culture

Newmarket Patio Program 2020

Main Street BIA area



Made in Mexico



Metropolis Mercantile and Café



Olde Village Free House



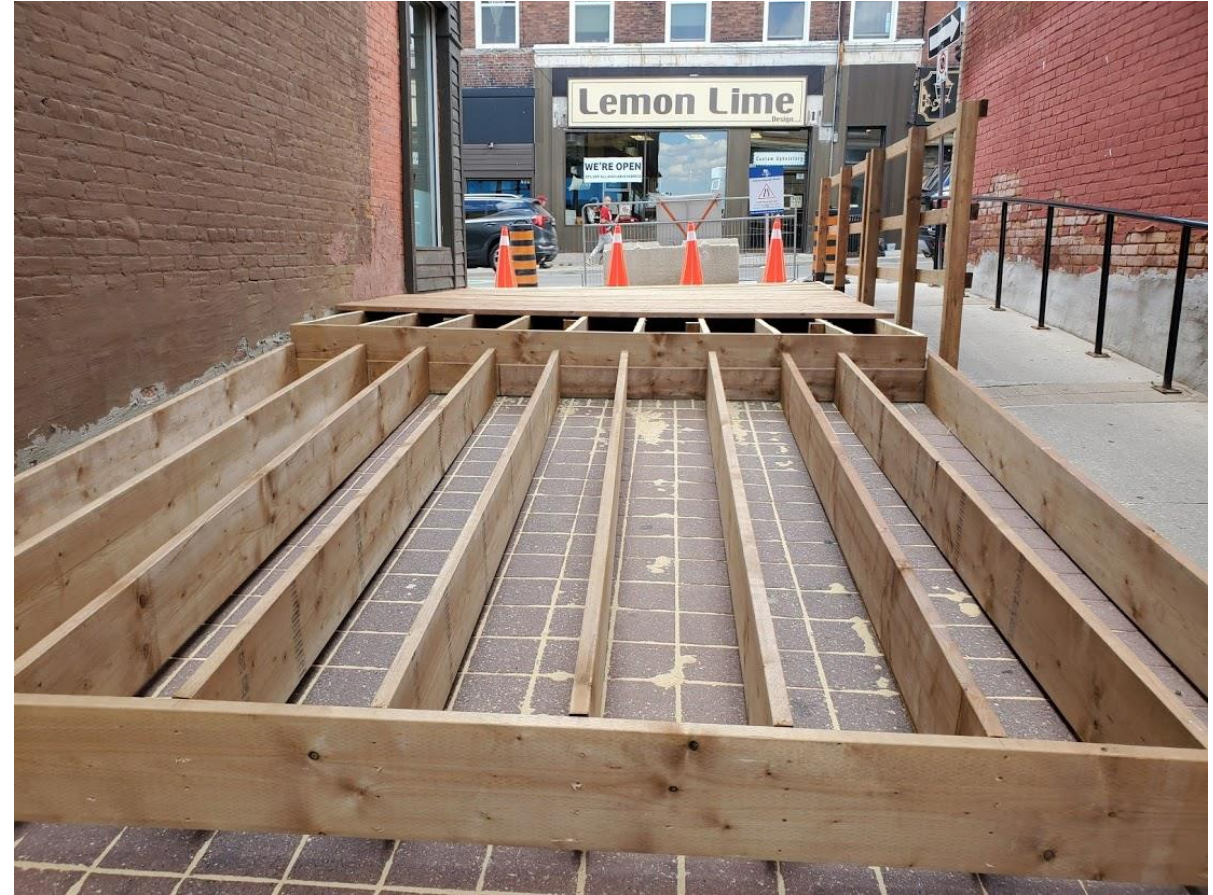
The Goulash House



Neon Flamingo



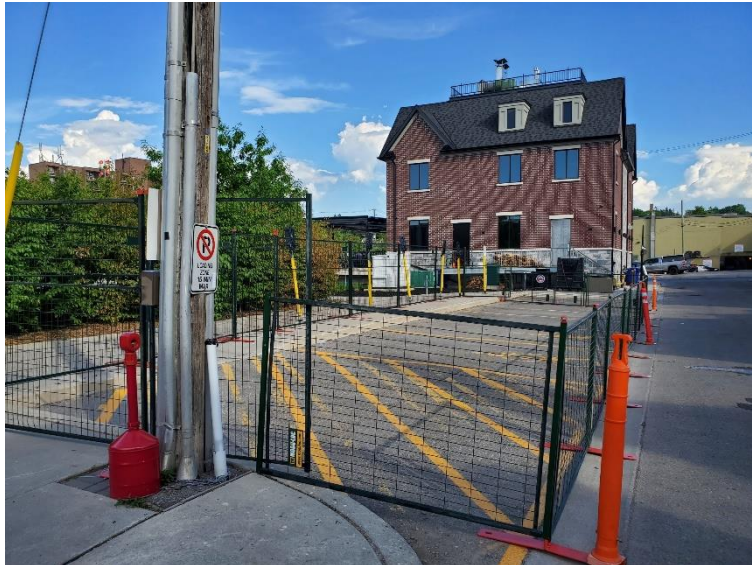
Chip and Malt



Chip and Malt



Hungry Brew Hops



Hop Bop Noodle Shop



Aubergine Kitchen & Bar



Joia on Main



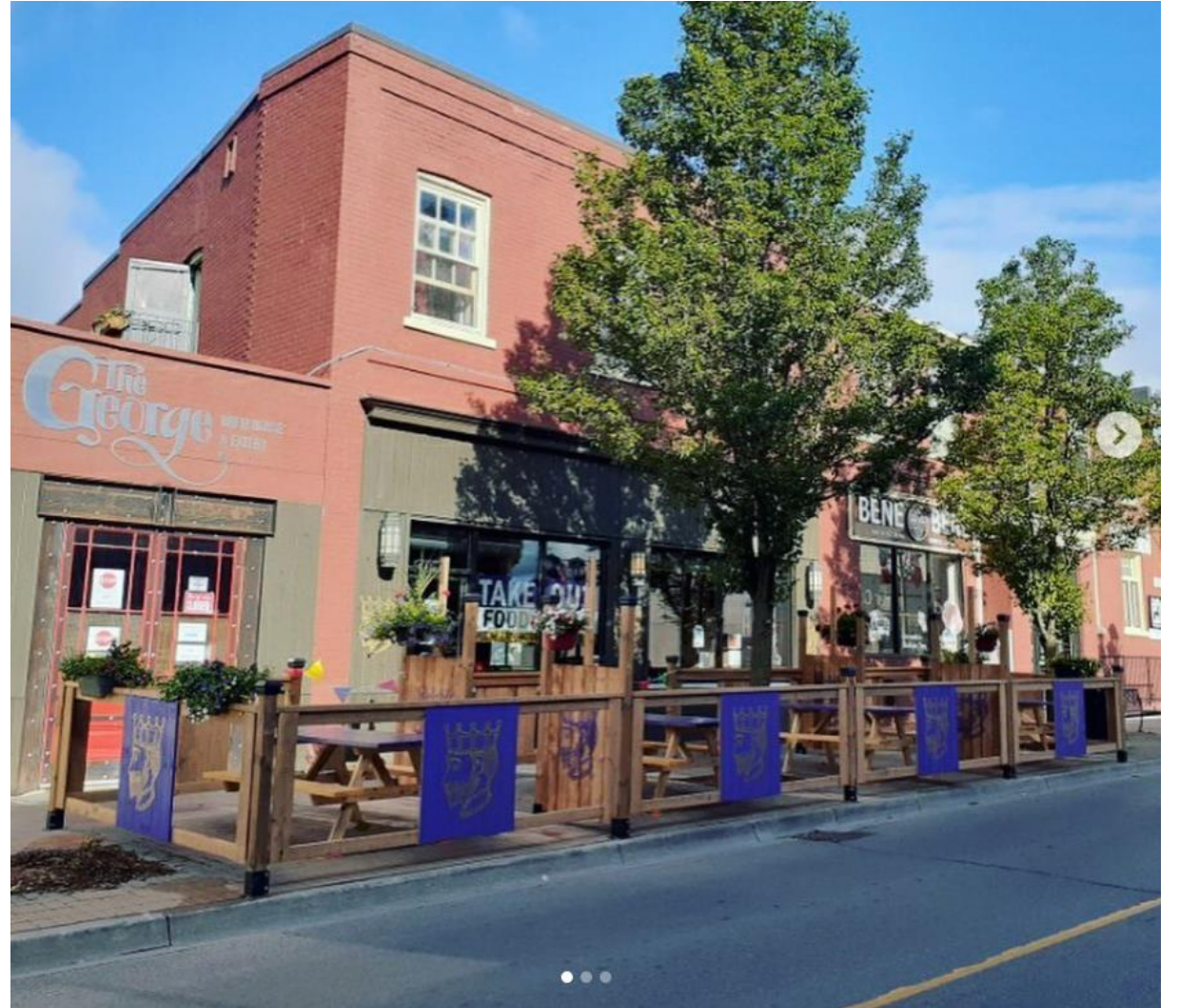
Ground Burger Bar



Cachet Supper Club



The George Brew House and Eatery



Soupa!





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Temporary Outdoor Patio Program 2020 Season – New Application for Town Property

Application Checklist	
Completed copy of this application	
Copy of business name registration	
Proposed site plan (see Appendix B)	
Signed Insurance and Indemnification Declaration (see Appendix C)	
Copy of existing AGCO liquor licence for principal establishment	
Signed copy of the General Conditions and Guidelines (see Appendix D)	

PART I: General Information

Business Information	
Owner Name:	
Phone Number:	
E-mail Address:	
Registered Business Name:	
Operating Business Name:	
Business Address:	
After Hours Contact #1: (name and phone #)	
After Hours Contact #2: (name and phone #)	

Will alcohol be served on the temporary patio?	Yes	No	
Do you currently have an AGCO approved liquor licence for your establishment?	Yes	No	
If yes, is your current AGCO licence for:	Indoor	Outdoor	Both
Are you requesting to temporarily extend an existing patio?	Yes	No	
Are you requesting a new temporary patio?	Yes	No	

To minimize administrative burden for licensees, those who meet the criteria established by the AGCO (see **Appendix A**) will not be required to apply to the AGCO or pay a fee to temporarily extend their patio or add a temporary new licensed patio.

Licensees are also not required to submit any documentation to the AGCO to demonstrate compliance with **Appendix A**. However, licensees are required to produce such documentation upon request of the AGCO.

PART II: Proposal

Which type of temporary patio are you proposing? (Circle one)

Please 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

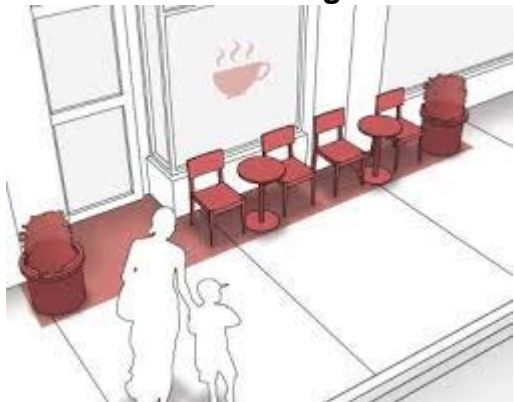


Illustration courtesy of City of Toronto

- 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.

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

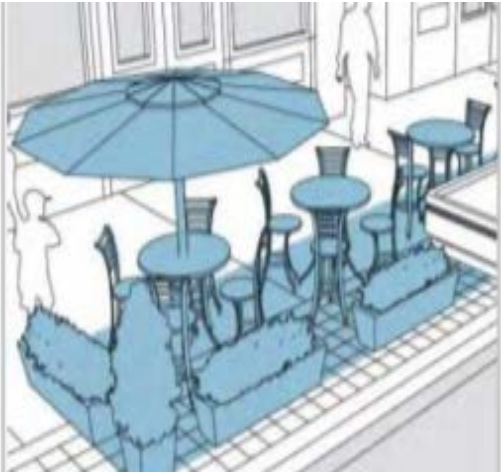


Illustration courtesy of City of Toronto

- 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

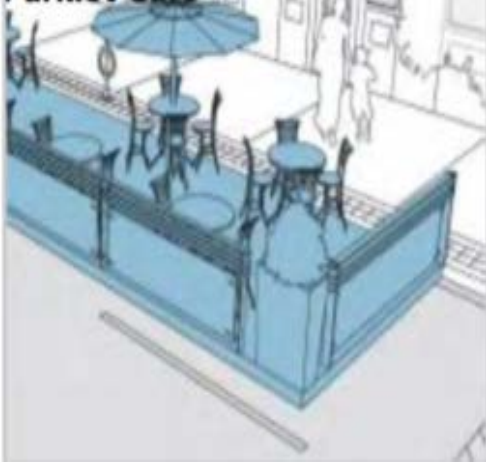


Illustration courtesy of City of Toronto

- 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

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 and Appendixes A, B, C and D. I have signed those Appendixes as required. I verify that I meet all necessary requirements imposed to be eligible to obtain a 2020 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)"

Appendix A

Minimum Criteria under the AGCO

The AGCO has recently amended Regulation 719 under the Liquor Licence Act to provide flexibility for liquor sales licensees (eg. licensed bars and restaurants). Restaurants and bars who wish to temporarily extend the physical size of their existing licensed patio or temporarily add a new licensed patio are authorized to do so, subject to the following criteria:

1. The physical extension of the premises is adjacent to the premises to which the licence to sell liquor applies;
2. The municipality in which the premises is situated has indicated it does not object to an extension;
3. The licensee is able to demonstrate sufficient control over the physical extension of the premises;
4. There is no condition on the liquor sales licence prohibiting a patio; and,
5. The capacity of any new patio, or extended patio space where the licensee has an existing licensed patio, does not exceed **1.11 square metres per person**.

All licensees are expected to first and foremost comply with physical distancing measures and any other public health guidelines or orders issued by the Ontario Government or by any other applicable level of government. The AGCO recognizes that physical distancing requirements as set out in the Government's [Framework for Reopening our Province](#) will likely require licensees to operate at well below maximum capacity.

If your application meets the above criteria, you are **not required** to apply to AGCO for a temporary extension of your existing liquor licence or for a temporary new patio proposal. There are also no fees required to be paid to the AGCO.

If you do not meet the above criteria, you are required to follow the usual application process for a temporary extension of premises and apply through the AGCO website.

This temporary exemption program, specifically offered through AGCO, is only valid until January 1, 2021. However, please note that the Town of Newmarket's Temporary Outdoor Patio Program expires on October 30, 2020.

I have read Appendix A and agree to the terms and conditions as outlined by the AGCO. I verify that I meet all necessary requirements imposed to be eligible to obtain a 2020 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)"

Appendix B

Site Plan and Design Requirements

The Temporary Outdoor Patio Program has relaxed a number of restrictions that are typically imposed on Outdoor Serving Patios within the Town of Newmarket.

Your temporary patio design must conform to the following requirements:

Identification Requirements

- One piece of valid government issued identification is required for any person (or signing authority for corporations) who appears on the Registered Business.
- A copy of your registered business name and additional information outlined must be provided in **PART 1** of this application package.

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.

Insurance

You must hold and provide 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 to the Corporation of the Town of Newmarket against any liability for property damage or personal injury, negligence including death which may arise from the applicants operations under this agreement. The Corporation of the Town of Newmarket 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.

Fees

Council for the Town of Newmarket has waived all applicable fees associated to its current Outdoor Serving Patio Program. Such fees include your 2020 approved licensing fee, patio dimensional fees (where located on Town property), and any other fees imposed in relation to inspections or authorizations to construct a temporary patio.

The AGCO has also waived any fees or application processes relating to the temporary extension of existing licensed patios or existing licensee applications for a new temporary patio. For more information, please visit the AGCO website directly.

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.
- Patios are not permitted to occupy more than 2 on street parking spaces and are subject to Town approval and consultation with adjacent property owners.
- 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.

Appendix C

Signed Insurance and Indemnification Declaration

In this Appendix C,

“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 this Appendix C 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 Appendix C 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 2020 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)”

Appendix D

Temporary Outdoor Patio Guidelines and General Conditions

General Conditions

1. Any person or persons intending to occupy a portion of the municipal right of way for any purpose, including a portion of the sidewalk, boulevard, or on-street parking must first receive permission from the Town.
2. Patios will be removed by no later than October 30, 2020.
3. Permission to install a patio for the 2020 season does not entitle a business to any right or expectation to be able to install a patio in subsequent seasons.
4. Any required sidewalk extensions must be completed before obstruction of a sidewalk for construction or operation of a patio.
5. The applicant assumes all maintenance and liability for the patio structure and sidewalk extension and may be required to undertake or alterations or repairs as are required by the Town to maintain safety and accessibility.
6. The Town retains the right to access the patio and/or sidewalk extension if needed for maintenance or emergency access to Town property.
7. Permission to occupy the municipal right of way 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.
8. The applicant shall maintain access to all public and private properties for the duration of the work.
9. No business shall be eligible to operate an outdoor patio unless the business is in compliance with all Town requirements.
10. 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.
11. 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 or sidewalk extension.
12. The Town retains the right to access any planters, baskets, light posts, or other infrastructure for watering, maintenance, or other matters. The Town may elect not to install planters at the location of the patios.
13. All municipal property, including the sidewalk, roadway, lighting, or other features will be returned to their initial condition or repaired of any damages. Damages not repaired by the applicant will be repaired or replaced by the Town at the applicant’s cost.
14. 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.
15. 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.

16. All approved patios must be in compliance with the Town's noise bylaw 2004-94 as amended.

I have read this Appendix D 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 2020 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)"

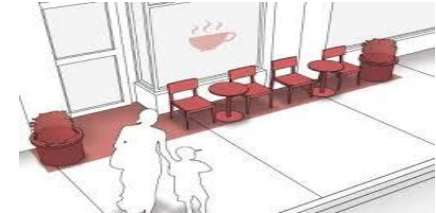
Temporary Outdoor Patio Program

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

