

BY-LAW NO. 2023 - 230

A by-law of the City of Ottawa to regulate Right of Way patios on City highways and to repeal By-law No. 2023-175.

The Council of the City of Ottawa enacts as follows:

DEFINITIONS

1. For the purpose of this by-law,

"Accessibility Design Standards" means the City of Ottawa's Accessibility Design Standards, which may be amended from time to time by the General Manager, Planning, Real Estate and Economic Development;

"Appurtenances" means anything attached to a structure including but not limited to canopies, umbrellas, tables, chairs and wrought iron railings;

"Ashtray" means a receptacle for tobacco ashes and for cigar and cigarette butts;

"Business Improvement Area" means the board of management of an improvement area established by City Council pursuant to Section 104 of the *Municipal Act, 2001*;

"Boulevard" means all parts of the highway save and except any roadway, shoulder or sidewalk, and "outer boulevard" means that part of the highway lying between any sidewalk and the roadway or the near edge of the shoulder where such exists;

"Cafe-seating patio" means a ROW patio that is located on the sidewalk or boulevard and is one-table deep, each table having one or two chairs, and can maintain a maximum depth of 76 cm as well as a minimum 2 metre pedestrian clearway. "

"Cane detectable" means leading edges that are within cane sweep area;

"Canopy" means any canopy, marquee, awning or similar fixed device, used to cover or shelter a walkway, entrance or front of a building;

"Charcoal" means a combustible substance whose primary purpose is to burn or heat a smoking product;



"City" means the municipal corporation of the City of Ottawa established by the *City of Ottawa Act, 1999*, or its geographic area, as the context requires;

"Commercial" means a commercial use as defined in the Zoning By-law of the City of Ottawa, being By-law No. 2008-250, as amended;

"Cross slope" means the slope across a sidewalk;

"Curb-side parklet" means a ROW patio for public use located on the sidewalk or boulevard and at the road edge;

"Curb-side patio" means a ROW patio located on the sidewalk or boulevard and at the road edge;

"*Electronic Cigarettes Act*" means the *Electronic Cigarettes Act, 2015*, S.O. 2015, c. 7, Sch. 3, as amended, and any regulation passed under it;

"Fire Chief" means the Fire Chief of the Ottawa Fire Services, or authorized representative;

"Front-parklet" means a ROW patio for public use and located at building face;

"General Manager" means the General Manager of the Public Works Department or the General Manager of the Planning, Real Estate and Economic Development Department of the City of Ottawa, or their designate, except as otherwise specified in this by-law.

"Highway" means a common and public highway and includes any bridge, trestle, viaduct or other structure forming part of the highway and, except as otherwise provided, includes a portion of a highway and includes the area between the lateral property lines thereof;

"Intersection" means the area within the projection or connection of the lateral boundary lines of two or more highways that meet one another at an angle whether or not one highway crosses the other;

"*Liquor License Act*" means the *Liquor License Act*, R.S.O. 1990, c.L.19, as amended, and includes any regulation passed under it;

"Live Music and Entertainment" means any one or more of any of the following, performed live by one or more persons, whether or not done for compensation and whether or not admission is charged: (1) musical act (including karaoke); (2) theatrical act (including stand-up comedy); (3) play; (4) revue; (5) dance; (6) magic act; (7) disc jockey; or (8) similar activity

"*Municipal Act, 2001*" means the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, and includes any regulation passed under it:

"New patio" means any location that has not been subject to a right-of-way-patio permit for a period of five (5) consecutive years.

"Parklet" means a defined space in the ROW for public use;

"Patio" means a space on a sidewalk, boulevard or roadway outside of a building or other structure providing services in the nature of a restaurant or tavern or like business, and within or on which may be included objects such as platforms, railings, tables, chairs, canopies, umbrellas, parasols and decorative planters;

"Pedestrian clearway" means a clear and unencumbered area of the highway approved by the General Manager that is reserved for pedestrian traffic;

"Permit holder" means the person to which a ROW patio permit has been issued under this by-law, the permit holder's successors or any person to whom the related business has been assigned;

"Processing fee" means the fee for technical review and assessment of the permit application as set out in Schedule "A";

"Public utility" means a board, commission or corporation that provides a public work under the authority of any statute, charter, by-law or franchise;

"Public works" means works supplying the general public with necessities or conveniences and includes, but is not limited to, works for the production, supply and transmission of gas, oil, sewer, water and electric power or energy, and all telephone, cable television and other telecommunications lines and "public work" has a similar meaning;

"Right-of-way" or "ROW" means the width of the road allowance from the property line on one side to the property line on the opposite side of the roadway;

"Right-of-way patio" means a space on a sidewalk, boulevard or roadway outside of a building or other structure and may also be referred to as a ROW patio for the purposes of this by-law, and includes:

- (a) a wall-side patio;
- (b) a curb-side patio;
- (c) a street-side patio;
- (d) a cafe seating patio;

- (e) a front parklet;
- (f) a curb-side parklet; and,
- (g) a street-side parklet;

"Right-of-way patio permit" means a permit for a right-of-way patio issued under this by-law and may be referred to a ROW patio permit;

"Right-of-way patio fee" means a fee for a right-of-way patio permit as set out in Schedule "A";

"Roadway" means that part of the highway that is improved, designed or ordinarily used for vehicular traffic, but does not include the shoulder, and where a highway includes two or more separate roadways, the term "roadway" refers to any one roadway separately and not to all of the roadways collectively;

"Running slope" means the slope along the roadway;

"Sidewalk" means that part of a highway set aside by the City for the use of pedestrians;

"Sight triangle" means an area directly adjacent to an intersection where no physical elements may be located, so that visibility is not obstructed;

"Sign" means any visual medium used to convey information by way of words, pictures, graphics, emblems or symbols, or any device used for the purpose of providing direction, information, identification, advertisement, business promotion or the promotion of a product, activity, service or idea; including, but not limited to, a-frame signs and menu boards;

"Smoke" or "smoking" includes the carrying of a lighted cigar, cigarette, pipe or any other lighted smoking equipment;

"Smoking product" means any substance whose primary purpose is to be burned or heated to produce vapours, gases, or smoke, which may be inhaled, and shall include but is not limited to non-tobacco herbal shisha, and other plant material or oils intended for inhalation;

"Storage" means the action or method of storing something for future use, including but not limited to furniture.

"Street-side parklet" means a ROW patio for public use in a parking space that has been re-purposed in the outer lane of the roadway, and could contain seating, shading elements, bike parking, or games tables;

"Street-side patio" means a ROW patio for private use in a parking space that has been re-purposed in the outer lane of the roadway;

"Street Spot Standards" means City of Ottawa's standards developed for small outdoor spaces created by temporarily re-purposing street parking, as may be updated from to time.

"Traffic and Parking By-law" means the City of Ottawa's Traffic and Parking By-law, being By-law No. 2003-530, as amended, or any successor by-law;

"Use", with respect to water pipe, includes the carrying of any lighted or heated water pipe as well as inhaling or exhaling vapour, smoke, or gas associated with or resulting from water pipe use;

"Visual clearance" means visibility through and across the ROW patio, with nothing that will obstruct the view of travelers on the street or sidewalk;

"Wall-side" means a ROW patio located at building face;

"Water pipe" means a device, whether called a water pipe, hookah or any other name, that burns or heats a tobacco or non-tobacco substance or a combination thereof, with which the vapour, smoke or gases may pass through liquid prior to being inhaled, and excludes an electronic cigarette as defined under the *Electronic Cigarettes Act*.

INTERPRETATION

2. (1) Headings are for reference purposes and shall not affect in any way the meaning or interpretation of the provisions of this by-law.
- (2) This by-law includes the Schedules annexed hereto and the Schedules are hereby declared to form part of this by-law.
- (3) It is declared that if any section, subsection or part or parts thereof be declared by any Court of Law to be bad, illegal or ultra vires, such section, subsection or part or parts shall be deemed to be severable and all parts hereof are declared to be separate and independent and enacted as such.
- (4) In this by-law, a word interpreted in the singular number has a corresponding meaning when used in the plural.
- (5) Notifications required to be provided by the General Manager under this by-law may be provided in person to the individual receiving the notification or by registered mail to the last known address of the recipient, and where notice is sent by registered mail, it is deemed to be received by the recipient on the day following mailing.

- (6) If a permit holder of a ROW patio permit for a wall-side patio, a curb-side patio, a street-side patio or a cafe-seating patio under this by-law is not the owner of the property to which the ROW patio is related, any notification required to be sent by the General Manager under this by-law shall be sent to the property owner in addition to the permit holder.
- (7) The following abbreviations and symbols stand for the words respectively set forth opposite thereto as follows:
- (i) cm centimetre
 - (ii) km kilometre
 - (iii) km/h kilometres per hour
 - (iv) m metre
 - (v) mm millimetre
 - (vi) m² square metre
 - (vii) % per cent

PERMIT REQUIRED

3. No person shall construct, erect or alter a ROW patio, or permit a ROW patio to be constructed, erected or altered, without first obtaining a permit in accordance with the provisions of this by-law.

PROCEDURE FOR APPLICATION

4. (1) An applicant shall file an application for a ROW patio permit in such form and detail as the General Manager may prescribe from time to time, which application shall include, at the applicant's cost, the following:
- (a) site plan and elevation drawings showing the location and dimensions of the proposed ROW patio, the premises to which the ROW patio will be appurtenant, all relevant lot lines and all existing surface features located between the premises, all trees in proximity, and the roadway;
 - (b) a description of the proposed ROW patio and of all materials to be used in the construction and operation of the patio, including all appurtenances such as:
 - (i) platforms
 - (ii) railings
 - (iii) canopies,
 - (iv) umbrellas,
 - (v) planters,
 - (vi) tables and chairs, and
 - (vii) perimeter barriers or railings;

- (c) any other information required by the General Manager to approve the application and determine compliance with this by-law; and
 - (d) the non-refundable processing fees in accordance with Schedule "A" of this by-law.
- (2) The applicant shall provide evidence of insurance, satisfactory to the General Manager and in accordance with the provisions of Section 14 prior to the issuance of the ROW patio permit.
- (3) An applicant shall apply for a ROW patio permit for each season that the applicant wishes to place ROW patio or parklet on the highway.
- (4) Any application for a ROW patio permit for a wall-side patio, curb-side patio, street-side patio or cafe seating patio must be submitted by, or include the written consent of, the property owner of the property to which the patio in question is related and/or adjacent.

APPROVAL OF APPLICATIONS

- 5. (1) The General Manager shall receive, investigate, and consider all requests for ROW patio permits, and refuse approval, approve, or approve a request with such changes and conditions as the General Manager deems necessary in the circumstances to ensure compliance with this by-law and that are in the public interest, including any proposed appurtenances.
- (2) Prior to approving a ROW patio application, the General Manager shall confirm the pedestrian clearway applicable to the street segment on which the proposed ROW patio is located.
- (3) The General Manager may reject an application for a ROW patio on the basis of its potential interference or inconsistency with:
 - (a) safety of the public or of property;
 - (b) highway maintenance;
 - (c) the requirements for access to or egress from a property in relation to planned or ongoing development
 - (d) the health of existing trees in accordance with the Tree Protection By-law No. 2020-340; and
 - (e) other public uses.
- (4) Issuance of a ROW patio permit is conditional upon the General Manager's approval of its dimensions and proposed location within the highway and such approval shall be subject to the following considerations:
 - (a) ensuring a minimum pedestrian clearway of 2 m or as confirmed by the General Manager on the public ROW according to Section 5(2);

- (b) ensuring compliance with the location of the pedestrian clearway and consideration of other circumstance tending to restrict the free movement of pedestrians;
 - (c) not obstructing or interfering with public travel, any public service including public transit, or maintenance;
 - (d) not creating any public safety hazard, including sight obstructions;
 - (e) ensuring compliance with the Tree Protection By-law 2020-340 and not impacting the health and condition of any protected tree without permission from the General Manager;
 - (f) maintaining the space around the ROW patio free of snow and ice;
 - (g) not using the ROW patio as storage; and
 - (h) compliance with the requirements of the Accessibility Design Standards.
- (5) Despite clause 5(4)(a) the General Manager may permit a pedestrian clearway that is less than 2 m where the sidewalk next to any pre-existing wall-side, curb-side or street-side patio or cafe-seating patio is less than 2 m or is separated from the patio by infrastructure unrelated to the patio itself.
6. The General Manager may, at the General Manager's sole discretion, approve any changes or modifications to the infrastructure, assets or other property of the City that may be required to accommodate a ROW patio including, but not limited to, relocating signs, bus stops, or fire hydrants, and such changes or modifications, if completed by the City, shall be at the sole cost of the applicant.
7. Despite Section 5, the General Manager shall only approve an application for a ROW patio that is a street-side patio or a street-side parklet provided that the proposed street-side patio or street-side parklet:
- (a) is on a street with a speed limit of 50 km/h or less;
 - (b) is at a location where parking is allowed at all times;
 - (c) is on a lane that is not a moving traffic lane at any time of the day;
 - (d) is on a road that has a running slope of 5% or less and a cross slope, from curb to outer limit of the streetside patio or parklet, of 2% or less;
 - (e) has the approval of Fire Chief, when a patio setback is less than 1.5 m from a fire hydrant; and
 - (f) is requested only for a summer permit.
8. (1) A first-time application for a new ROW patio that is a wall-side, curb-side, or street-side patio with a proposed separation of less than 30 m from a property zoned as residential or mixed residential/Commercial will be processed as follows:
- (a) Ward Councillor shall be informed of the application;

- (b) Residents and residential property owners within 30m distance, the local Business Improvement Area and any local community association registered with the City of Ottawa will be notified by letter of the proposed ROW patio and provided with a copy of the proposed plan for the ROW patio;
 - (c) The General Manager may impose conditions on the permit to resolve any issues raised during the application process.

- 9.
 - (1) No music is permitted to be played on a patio after 11 p.m. nightly, including from audio speakers on the patio, or from indoor audio speakers or from live music and entertainment emitting onto the patio.
 - (2) Live music and entertainment shall not be permitted at any time on a ROW patio, unless approved by the General Manager.

- 10. The General Manager will review any noise related complaints by a property owner or a tenant of a dwelling on a property zoned as residential or mixed-use residential/commercial concerning a ROW patio, and:
 - (a) will advise the ROW patio permit holder of the complaints coupled with education on the ROW patio program.
 - (b) the permit holder shall have ten (10) days within which to improve the situation;
 - (c) if the General Manager deems it necessary, may impose on the ROW patio permit in question one or more conditions to mitigate the noise complaint including but not limited to:
 - (i) requiring the patio to close each night at 11:00 p.m., and that no patrons are permitted on the ROW patio after this time;
 - (ii) requiring noise attenuation measures be implemented in respect of the ROW patio.

EFFECT OF APPROVAL

11. Approval of a ROW patio permit does not constitute approval for the operation of the patio, and it remains the responsibility of the applicant to satisfy the requirements of all other applicable By-laws, or Provincial or Federal laws and regulations.

ROW PATIO SEASON

12. The following ROW patio permit seasons are established:
- (a) a ROW Patio Summer Permit for any month from 1 April to October 31 of the same year for wall-side, curbside and streetside patios;
 - (b) a ROW Patio Winter Permit for any month from 1 November of one year to 31 March of the following year for wall-side patios; and:

- (i) may be restricted to daily use only, with removal when not in use or, if in use, then at the end of the business day or two o'clock (2:00 a.m.) of the day following;and
 - (ii) may be required to be completely removed for the purpose of winter maintenance operations when a parking advisory has been declared in accordance with the Traffic and Parking By-law, or within two hours of being notified by the General Manager that removal is required, and in such cases the permit holder or owner shall have no claim for loss or compensation.
- (c) a yearly cafe-seating patio permit from April 1 of one year to March 31 of the following year, which may be required to:
- (i) be completely removed for the purpose of winter maintenance operations when a parking advisory has been declared in accordance with the Traffic and Parking By-law, or within two hours of being notified by the General Manager that removal is required, and in such cases the permit holder or owner shall have no claim for loss or compensation;
- (d) a yearly wall-side parklet patio permit from April 1 of one year to March31 of the following year, which may be required to be completely removed for the purpose of winter maintenance operations when a parking advisory has been declared in accordance with the Traffic and Parking By-law, or within two hours of being notified by the General Manager that removal is required, and in such cases the permit holder or owner will have no claim for loss or compensation; and,
- (e) a curb-side and street-side parklet permit from April 1 to October 31 of the same year.

INDEMNIFICATION

13. The permit holder shall indemnify and save harmless the City from any and all claims, demands, causes of action, loss, costs or damages that the City may suffer, incur or be liable for resulting from the issuance of a ROW patio permit under this by-law or from the performance of the permit holder, or that of his or her employees, directors or agents, under this by-law whether with or without negligence on the part of the permit holder, the permit holder's employees, directors and agents.

INSURANCE

14. The permit holder/applicant shall provide and maintain insurance in accordance with the following requirements in respect of each ROW patio permit issued to the permit holder under this by-law:

- (a) Commercial General Liability insurance subject to limits of not less than \$5,000,000 inclusive per occurrence or not less than \$2,000,000 inclusive per occurrence for Cafe seating patios only, for bodily injury, death and damage to property including loss of use thereof, and such insurance shall be in the name of the applicant and shall name the City of Ottawa as an additional insured thereunder and which shall preclude subrogation claims by the Insurer against anyone insured thereunder ;
- (b) Broad Form Property insurance coverage to the replacement value of the fixtures for which the permit applies, or, in the event the fixtures are self-insured by the applicant, a letter signed by an Executive Officer of the applicant, accepting loss or damage to the fixtures;
- (c) a Certificate of Insurance evidencing the above insurance coverage(s) shall be provided to the City prior to the issuance of a permit; and
- (d) an endorsement to provide the City with thirty (30) days prior written notice of cancellation.

GENERAL REGULATIONS

15. Every ROW patio permit holder shall notify or cause to be notified the General Manager in writing within seven (7) days of the happening of the following events:

- (a) any change in the permit holder's address or telephone number or other contact information;
- (b) the sale, transfer or termination of the business, if the permit is in the name of the business;
- (c) any assignment, howsoever caused, of the ROW patio permit.

16. Every ROW patio permit holder shall close the ROW patio by 2:00 a.m., and shall ensure that no patrons are permitted on the ROW patio after this time.

17. Every ROW patio permit holder shall ensure that the ROW patio is constructed and erected as approved by the General Manager and as set out in the ROW patio permit and any proposed changes are subject to the approval of the General Manager.

18. No person shall construct, erect, or operate a patio of a type not permitted in a ROW patio permit or beyond the time period indicated in a ROW patio permit issued under this by-law.
19. No permit holder shall fail to comply with conditions imposed by the General Manager in a ROW patio permit issued Under this by-law.
20. The General Manager may approve any alteration of the surface of a boulevard occupied by a ROW patio, and the permit holder shall restore the boulevard to its former condition or to a condition acceptable to the General Manager where the ROW patio will no longer operate in the same location in the following year.
21. (1) Any damage to the highway caused by a ROW patio will be repaired by the permit holder at the permit holder's expense, to the satisfaction of the General Manager.
- (2) If the work required to repair damage to the highway referred to in subsection (1) is not performed by the permit holder to the General Manager's satisfaction, the work may be undertaken by the City at the permit holder's expense, and the City may recover its costs from the permit holder by adding them to the tax roll and collecting them in the same manner as property taxes.
22. A ROW patio permit holder is not entitled to any special or additional highway maintenance and the owner is responsible for cleaning the ROW patio area, including litter, snow and ice removal.
23. The ROW patio permit holder shall ensure that, where liquor is served, the permit holder and the ROW patio comply with the *Liquor License Act*, as amended, and the applicable requirements of the Alcohol and Gaming Commission of Ontario, including those concerning the delineation of the perimeter of the ROW patio.
24. The perimeter of a patio must be delineated with:
- (1) A partition or item that is of sturdy construction and removable at all times.
 - (2) If the partition or an item is facing the street, it must be no more than 1.06 min height.
 - (3) If the partition or an item is not facing the street, it must be no more than 2 min height.
 - (4) A partition or an item shall be cane detectable at the leading edge, trailing edge, and every 0.5 m.
25. No ROW patio permit holder shall sell or offer for sale on the patio any goods, wares or merchandise other than food or drink for consumption on the patio.

26. No ROW patio permit holder shall cook food or permit the cooking of food on the ROW patio.
27. No ROW patio permit holder shall locate items outside the permitted ROW patio area at any time, including signs, planters and rope and stanchion systems.
28. No ROW patio permit holder shall use any streetscaping elements for the purpose of attaching any fixtures, equipment, items, lighting or furniture.
29. No ROW patio permit holder shall place umbrellas such that they overhang the pedestrian clearway at a height of less than 2.2 m, and such umbrellas must be closed during rain events and not cause water to drip onto the pedestrian clearway.
30. The ROW patio permit holder shall comply, at all times, with this by-law, any other applicable federal and provincial legislation or regulations and any applicable City By-laws.
31. The ROW patio permit holder shall post the ROW patio permit in a prominent location on the parklet or in the premises to which the patio is appurtenant.

WAIVER OF FEES

32. The General Manager is authorized to waive the applicable ROW patio fee set out in the Schedule "A" in respect of a ROW patio that abuts a highway that is undergoing reconstruction, for the period which the highway construction activities are taking place.

WALL-SIDE, CURB-SIDE, STREET-SIDE AND CAFE-SEATING PATIO REGULATIONS

33. A wall-side, curb-side, street-side or cafe-seating patio shall not exceed the existing frontage of the applicant's premises without the written permission of the adjacent or abutting property owner, and only to the satisfaction of the General Manager.
34. Patio elements permitted within ROW patios may include objects such as platforms, partitions, tables, chairs, canopies, umbrellas, parasols and decorative planters.
35. No ROW patio permit holder for a wall-side patio, curb-side patio, street-side patio or cafe-seating patio shall place umbrellas on a patio such that they overhang the pedestrian clearway at a height of less than 2.2 m.
36. No ROW patio permit holder shall place retractable awnings, canopies, or umbrellas or planters outside the area of the patio on the side of the traffic lane, and at a height of less than 2.2 m on any side, for any front, curbside or streetside patio.

37. No ROW patio permit holder shall locate items outside the patio area at any time, including signs, planters and rope and stanchion systems, for any wall, curb-side or street-side patio.

WALL-SIDE PATIO

38. A wall-side patio:

- (a) Must provide a pedestrian clearway of at least 2 m wide, including between pinch points such as between the patio and street signs, bike racks, light standards and others; and

CURB-SIDE PATIO

39. A curb-side patio:

- (a) must at all times maintain a 0.8 m separation from a roadway with vehicular traffic, so that passengers may alight from vehicles, unless combined with a streetside patio;
- (b) may only operate under a tree canopy where there is a lowest canopy height of 2.4 m;
- (c) must be located to maintain a 3 m sight triangle at an intersection;
- (d) may not be located within 15 m behind a bus stop, to allow passengers to alight; and
- (e) may not have any umbrellas or other items overhanging the roadway.

STREET-SIDE PATIO

40. A street-side patio:

- (a) must be constructed with a vertical barrier attached to the platform of a minimum 0.9 m height;
- (b) may not have an overhead obstruction that extends beyond the boundary of the streetside patio on the travel lane side; and
- (c) must comply with the Streetside Spots Standards, unless exempted by the General Manager.

CAFE-SEATING PATIO

41. (1) Each ROW patio permit for a cafe seating patio allows for a maximum of two tables.

(2) The City may issue more than one ROW patio permit for a cafe seating patio per establishment provided there is adequate space.

- (3) Any tables to be placed in front of the neighboring businesses will require the permission of that property owner.
42. The holder of a ROW patio permit for a cafe seating, or anyone on their behalf, shall not alter the boulevard surface.
43. (1) Patio elements permitted in a Cafe Seating Patio are tables, chairs, and decorative planters.
- (2) The permitted patio element for a cafe seating patio:
- (a) shall be removed and stored on private property when not in use or, if in use, then at the earlier of the end of the business day or 2 a.m. of the next day;
 - (b) shall not be placed on a platform or platforms of any type;
 - (c) shall not be placed in any location other than against the building face, unless a better pedestrian flow can be established with a curb-side location, as determined by and to the satisfaction of the General Manager;
 - (d) may not be attached to any object; and
 - (e) shall be removable at all times.

WALL-SIDE, CURB-SIDE AND STREET-SIDE PARKLET REGULATIONS

44. A curb-side or street parklet shall be completely removed from November 1 of one year to March 31 to the following year.
45. A street-side parklet:
- (a) is not permitted in a bus zone as signed or identified in the Traffic and Parking By-law, as amended.
 - (b) is not permitted above a fire hydrant shut-off valve or over utility or maintenance hole covers;
 - (c) must be constructed a minimum of 9 m away from an intersection;
 - (d) where located mid block, must have a parking space of at least 6.7 min length remaining at each end;
 - (e) must be setback a minimum of 1.5m from a driveway unless the applicant receives written permission of the owner of the driveway and approval from the Fire Chief; and
 - (f) Must comply with the Streetside Spot Standards.
46. A perimeter barrier of any street-side parklet must be separated by a minimum of 0.5 m from a traffic lane, and by 1m from each end of a permitted area adjacent to a parking space.
47. No ROW patio permit holder issued for a wall-side, curb-side or street-side parklet shall place retractable awnings, canopies, umbrellas, planters, or a roof structure

outside the area of the parklet on the side of the traffic lane, and at a height of less than 2.2m on any side.

48. (1) No ROW patio permit holder issued for a wall-side, curb-side or street-side parklet shall locate items outside the parklet area at any time, including signs, planters and rope arid stanchion systems.
- (2) The maximum length of the wall, curb-side, and street parklet is the frontage of the business, and an applicant wishing to expand a parklet into the open space in front of abutting business may do so with the written permission of the business owner along which the parklet fronts, to the satisfaction of the General Manager.

SMOKING REGULATIONS

49. (1) The holder of a ROW patio permit shall post a sign indicating that smoking is not permitted in a prominent and visible position within the permitted area.
- (2) The holder of a ROW patio permit shall ensure that smoking is not permitted within the area.
- (3) The holder of a ROW patio permit shall ensure that no ashtrays are placed or allowed to remain in place within the permitted area.
- (4) The holder of a ROW patio permit shall ensure that no one uses a water pipe within the permitted area.
- (5) The holder of a ROW patio shall not, within the permitted area, display or permit to be displayed, a water pipe or component that contain or has on it a smoking product, residue of a smoking product, charcoal, or liquid that smoke or gases may pass through prior to being inhaled.

MODIFICATION AND REVOCATION

50. (1) The General Manager is authorized to modify or to revoke a ROW patio permit issued under this by-law where:
- (a) the permit was issued in error;
 - (b) the permit was issued on false, misleading or incorrect information;
 - (c) the holder of such permit fails to maintain and keep all related items in proper repair to the satisfaction of the General Manager; or
 - (d) there are reasonable grounds to believe that the ROW patio for which the permit was issued:
 - (i) poses a danger to the health and safety of any person;

- (ii) poses a danger to property;
- (iii) is not in the public interest; or
- (iv) is in contravention of this by-law including any conditions of such permit.

51. AROW patio permit may be revoked at any time by the General Manager if the ROW patio permit holder fails to comply with the requirements contained in section 10 of this by-law.

52. A ROW patio permit may be revoked at any time by the General Manager if the City or a public utility wishes to make use of that part of the highway on which it is situated, and the permit holder shall remove all items within the timeframe stipulated by the General Manager.

53. The General Manager shall immediately notify the permit holder of the revocation of the permit.

54. The permit holder for a ROW patio shall have no claim against the City for any loss or damage arising from the revocation of the permit.

REMOVAL OF UNAUTHORIZED ROW PATIOS

55. (1) Where a ROW patio is unauthorized under this by-law or does not comply with the requirements of the ROW patio permit issued under this by-law, the General Manager may give notice in writing to the operator or the permit holder of the patio, and the property owner of the property to which the ROW patio relates, as the case may be, to forthwith remove the unauthorized or non-compliant patio and to reinstate the highway to its former condition at the property's owner or permit holder own expense.
- (2) If the notice referred to in subsection (1) is not complied with within ten (10) days from the date that notice is sent, the General Manager may remove the ROW patio, and reinstate the highway at the owner's cost, in addition to the fees in Schedule "A" of this by-law.
- (3) The City may add the cost of removal of the ROW patio and reinstatement of the highway, and fees referred to in subsection (2), to the tax roll of the property owner to which the unauthorized or non-compliant ROW patio relates and collect them in the same manner as taxes, where authorized.

ENFORCEMENT

56. The General Manager is responsible for the administration of this by-law and the by-law may be enforced by a Municipal Law Enforcement Officer appointed by the City for that purpose, or by a police officer.

57. No permit holder of a ROW permit shall fail to produce his or her permit for inspection upon the request of a municipal law enforcement officer or police officer.

58. (1) A municipal law enforcement officer, may, at any reasonable time, enter upon or into any property for the purpose of an inspection to determine:
- (a) compliance of the ROW patio to this by-law;
 - (b) whether the ROW patio has been constructed or erected, or is operated or maintained in compliance with:
 - (i) this by-law;
 - (ii) a condition of a ROW patio permit issued under this by-law; or
 - (iii) a notice provided under this by-law; and
 - (c) if a ROW patio is unsafe.
- (2) A municipal law enforcement officer or a police officer may, for the purposes of an inspection under subsection (1):
- (a) require the production, for inspection, of documents or things relevant to the inspection;
 - (b) inspect and remove documents or things relevant to the inspection for the purposes of making copies or extracts;
 - (c) require information from any person concerning a matter related to the inspection; or
 - (d) alone, or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purpose of inspection.
- (3) No person shall hinder or obstruct or attempt to hinder or obstruct a municipal law enforcement officer or a police officer in the discharge of his duties under this by-law.
- (4) A ROW patio is unsafe for the purposes of clause (c) of subsection (1) if:
- (a) it is a condition that could be hazardous to the health or safety of any person; or
 - (b) it is located in a manner so as to cause an obstruction or to be hazardous to the health or safety of any person.

OFFENCES AND PENALTIES

59. Any person who contravenes any of the provisions of this by-law is guilty of an offence and upon conviction is liable to a fine as provided for by the Provincial Offences Act, R.S.O. 1990, Chapter P.33, as amended.

60. Any person who hinders or obstructs a person lawfully carrying out the enforcement of this by-law is guilty of an offence.

61. (1) Every person who is convicted of an offence under this by-law is liable to a minimum fine not exceeding \$500 and to a maximum fine not exceeding \$100,000 for each day that the offence occurs or continues pursuant to subsection 429(1) and (3) of the *Municipal Act, 2001*, and all such offences are designated as continued offences as provided for in subsection 429(2), paragraph (a), of the *Municipal Act, 2001*.
- (2) In addition to subsection (1), the total of all daily fines for the offence is not limited to \$100,000 as provided for in subsection 429(3), paragraph 2, of the *Municipal Act, 2001*.
- (3) When a person has been convicted of an offence under this by-law, the Superior Court of Justice, or any court of competent jurisdiction may, in addition to any penalty imposed on the person convicted, issue and order:
- (a) prohibiting the continuation or repetition of the offence by the person convicted; and
 - (b) requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate.

REPEAL

62. (1) By-law No. 2017-92 of the City of Ottawa entitled "A by-law of the City of Ottawa to regulate Right of Way Patios on City Highways", as amended, is hereby repealed.
- (2) The repeal of said By-law No. 2017-92, as amended, shall not affect any offence committed against the provisions of the said by-law or any penalty incurred in respect thereof or any investigative proceedings or prosecutions thereunder.

EFFECTIVE DATE

63. This by-law shall come into force and take effect upon enactment.

SHORT TITLE

64. This by-law may be cited as the "ROW Patio by-law".

ENACTED AND PASSED this 24th day of May 2023.



DEPUTY CITY CLERK

k

MAYOR

SCHEDULE "A"
Right of Way Patio Fees

TYPE	DESCRIPTION	FEE
1. Right of Way Patios	First time review fee	\$389.00
	First time review fee with public circulation	\$389.00
	Permit processing fee	\$71.00
	Summer Monthly Rental (April to October) per sqm	\$7.54/m ² /month (charged by full month)
	Winter Monthly Rental (November to March) per sqm	\$2.43 m ² /month (charged by full month)
2. Cafe Seating	Per annum fee	\$89.00
	Permit processing fee	\$71.00
3. Parklets (Front, Curb-side and street-side)	Per annum fee	\$178.00
	Permit processing fee	\$71.00
4. Administration and Overhead Charge (applicable to all ROW Patios)	Applied to the overall cost recovery for any works undertaken for third parties not covered under other agreements, such as developers, school boards, universities or general parties.	15% of the actual cost

BY-LAW NO. 2023 - 230

-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-

A by-law of the City of Ottawa to regulate Right of Way patios on City highways and to repeal By-law No. 2023-175.

-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-

Enacted by City Council at its meeting of May 24, 2023.

-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-

LEGAL SERVICES

NN

COUNCIL AUTHORITY:
Delegation of Authority By-law No. 2023-67, Schedule "C" , section 8