

By-Law No. 2017-92

A by-law of the City of Ottawa to regulate Right of Way patios on City highways

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Enacted On: 2017-04-12

OttWatch Bylaw Reference: <http://ottwatch.ca/bylaws/2017-92>

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BY-LAW NO. 2017 - 92

A by-law of the City of Ottawa to regulate Right of Way patios on City highways.

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, Infrastructure 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;

“café seating patio” means a ROW patio with one or two tables, each with a maximum width of 76cm and a maximum length of 101cm, each table having one or two chairs, and each chair with a maximum width of 76cm and a maximum depth of 76cm;

“cane detectable” means having a floor mounted barrier at least 75mm height or a wall mounted barrier at 680 (maximum) from the floor or ground surface;

“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;

“curbside parklet” means a ROW patio for public use located on the sidewalk or boulevard and at the road edge;

“curbside 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;

“front patio” means a ROW patio located at building face:

“General Manager” means the General Manager of the City’s Department of Planning, Infrastructure and Economic Development, or authorized representative;

“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;

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

“parklet’ means a ROW patio 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 tables, chairs, temporary entrance shelters, 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” 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 within or on which may be included objects such as tables, chairs, temporary entrance shelters, canopies, umbrellas, parasols and decorative planters and may also be referred to as a ROW patio for the purposes of this by-law, and includes:

- (a) a front patio;
- (b) a curbside patio;
- (c) a streetside patio;
- (d) a café seating patio;
- (e) a front parklet;
- (f) a curbside parklet; and,
- (g) a streetside 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;

“streetside 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;

“streetside patio” means a ROW patio for private use in a parking space that has been re-purposed in the outer lane of the roadway;

“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;

“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 front patio, a curbside patio, a streetside patio or a café 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.	m ²	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 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) canopies,
 - (ii) umbrellas,
 - (iii) planters,
 - (iv) tables and chairs, and
 - (v) 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 application 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 13, prior to the issuance of the ROW 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 front patio, curbside patio, streetside patio or café 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 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, or
 - (d) 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 2m at all times;
 - (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 operations;
 - (d) not creating any public safety hazard, including sight obstructions; and
 - (e) compliance with the requirements of the Accessibility Design Standards.

6. The General Manager shall 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 shall be completed at the cost of the applicant and to the satisfaction of the General Manager.

7. (1) A first-time application for a new ROW patio that is a front curbside or a streetside patio with a proposed separation of less than 90m from a property zoned as residential or mixed residential/Commercial will be processed as follows:
 - (a) Residents and residential property owners within the 90m 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, with the following conditions:
 - (i) comments from residents and residential property owners must be received by the General Manager

- within fifteen (15) working days of receipt of the letter;
and,
- (ii) the Ward Councillor shall be informed of the application.
- (b) If no objections to the proposed ROW patio are received, the General Manager may issue a permit in accordance with this by-law.
 - (c) An objection to an aspect of the ROW patio that meets this by-law will be considered as resolved.
 - (d) The General Manager shall use conditions of the permit to resolve objections, and an objection to an aspect of the ROW patio that can be enforced as a condition of the permit will be considered as resolved.
 - (e) Where one or more objections remain, the General Manager shall report to the City's Transportation Committee, which shall approve, approve with conditions, or refuse approval of the permit for the ROW patio, and,
 - (i) the applicant and any objector will be notified of the time and date that the report is to be considered at Transportation Committee; and,
 - (ii) the Transportation Committee decision shall be final.
- (2) Any conditions or requirements related to noise or noise attenuation imposed on a pre-existing front, curbside or streetside patio in a permit granted by the City prior to the coming into force of this by-law shall continue and be imposed on any permit issued under this by-law for such a patio.
 - (3) A ROW patio permit issued for a new patio within 30m of any property zoned as residential or mixed residential/Commercial shall include the provision that the ROW patio is required to close each night by 11:00 p.m., and that no patrons are permitted on the ROW patio after this time.
 - (4) A ROW patio permit issued for a new patio within 30m of any property zoned as residential or mixed residential/Commercial shall include the provision that audio speakers on the patio must be turned off by 11:00 p.m. nightly.
8. 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 residential/Commercial concerning a ROW patio, and:
- (i) will advise the ROW permit holder of the complaints;
 - (ii) the permit holder shall have ten (10) days within which to improve the situation; and,
 - (iii) 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:

- a. requiring the ROW patio to close each night 11:00 p.m., and that no patrons are permitted on the ROW patio after this time;
- b. requiring that audio speakers on the ROW patio must be turned off by 11:00 p.m. nightly; or
- c. requiring noise attenuation measures be implemented in respect of the ROW patio.

9. Despite Section 5, the General Manager shall only approve an application for a ROW patio that is a streetside patio or a streetside parklet provided that the proposed streetside patio or streetside 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; and
- (e) has the approval of Fire Chief, where it is located within 3m of a fire hydrant.

EFFECT OF APPROVAL

10. 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 SEASONS

11. 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 front, 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 front 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 will have no claim for loss or compensation.

- (c) a yearly café seating patio permit from April 1st of one year to March 31st 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;
- (d) a yearly front parklet patio permit from April 1st of one year to March 31st 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 curbside and streetside parklet permit from April 1st to October 31st of the same year.

INDEMNIFICATION

12. 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 applicant's employees, directors and agents.

INSURANCE

13. 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 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 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

14. 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.

15. 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.

16. 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.

17. No permit holder shall fail to comply with conditions imposed by the General Manager in a ROW patio permit issued under this by-law.

18. 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.

- 19. (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.

20. 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.
21. 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 and the applicable requirements of the Alcohol and Gaming Commission of Ontario, including those concerning the delineation of the perimeter of the ROW patio.
22. A wall or partition facing the sidewalk and within 1m of the sidewalk shall be no more than 1.06m in height, and no more than 2m in height for areas not facing the street, and shall be of sturdy construction and removable at all times.
23. The ROW patio permit holder shall ensure that the perimeter of the patio is delineated with an item that is cane detectable at the leading edge, trailing edge, and every 3m, except for café seating patios.
24. Visual clearance through a ROW patio shall be maintained at least 70% transparency and no more than 30% opacity for each side during the entire period of the patio's operation.
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 2.2m, 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 fee ROW patio fee set out in Schedule "A" in respect of a ROW patio that abuts a highway that is undergoing reconstruction, for the period during which the highway reconstruction activities are taking place.

FRONT, CURBSIDE, STREETSIDE AND CAFÉ SEATING PATIO REGULATIONS

33. Live entertainment shall not be permitted within a front patio, curbside patio, streetside patio, or café seating patio.

34. A front, curbside, streetside or café 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.

35. No ROW patio permit holder for a front patio, curbside patio, streetside patio or café seating patio shall place umbrellas on a patio such that they overhang the pedestrian clearway at a height of less than 2.2m.

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 2.2m on any side, for any a 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 for a front, curbside or streetside patio.

FRONT PATIO

38. A front patio must be separated by 0.8m from the edge of curb where there is no sidewalk.

CURBSIDE PATIO

39. A curbside patio:
- (a) must at all times maintain a 0.8m 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 2.4m;
 - (c) must be located to maintain a 3m sight triangle at an intersection;
 - (d) may not be located within 30m behind a bus stop, to allow passengers to alight; and,
 - (e) may not have any umbrellas or other items overhanging the roadway.

STREETSIDE PATIO

40. A streetside patio:
- (a) must be constructed with a vertical barrier attached to the platform of a minimum 0.9m in height; and, .
 - (b) may not have an overhead obstruction that extends beyond the boundary of the streetside patio on the travel lane side.

CAFÉ SEATING PATIO

41. No more than two ROW patio permits for café seating patios shall be issued for the same premises.
42. The holder of a ROW patio permit for a café seating, or anyone on their behalf, shall not alter the boulevard surface.
43. Café seating for a café 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 11 p.m. of the same day;
 - (b) shall not use a platform or platforms of any type;
 - (c) shall not place tables and chairs in any location other than against the building wall face;
 - (d) may not be attached to any object; and
 - (e) shall be removable at all times.

FRONT, CURBSIDE AND STREETSIDE PARKLET REGULATIONS

44. A curbside or streetside parklet shall be completely removed from November 1 of one year to March 31 of the following year.
45. A streetside parklet;
- (a) is not permitted in a bus zone as signed or identified in the Traffic and Parking By-law;
 - (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 9m away from an intersection;
 - (d) where located mid-block, must have a parking space of at least 6.7m in length remaining at each end; and,
 - (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.
46. A perimeter barrier of any streetside parklet must be separated by a minimum of 0.5m 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 front, curbside or streetside 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 front, curbside or streetside parklet shall locate items outside the parklet area at any time, including signs, planters and rope and stanchion systems.
- (2) The maximum length of the front, curbside, and streetside parklet is the frontage of the business, and an applicant wishing to expand a parklet into the open space in front of an 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 of a water pipe that contains 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, mistaken or incorrect information;
 - (c) the holder of such a 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 or of a ROW patio permit issued under this by-law, including any conditions of such permit .

51. 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.

52. The General Manger shall immediately notify the permit holder of the revocation of the permit pursuant to Sections 56 and 57.

53. 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

54. (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 owner's or permit holder's 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 costs 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

55. 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.

56. 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

57. (1) A municipal law enforcement officer may, at any reasonable time, enter upon or into any property for the purposes 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 the 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 in 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

58. Any person who contravenes any of the provisions of this by-law is guilty of an offence.

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

60. (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 continuing 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 an 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

- 61. The following provisions of the Encroachment By-law, being By-law No. 2003-446, are repealed:
 - (1) Sections 63 to 91U, inclusive;
 - (2) Type 2 Outdoor Patio and Type 3 Café Seating Permit of Schedule “B”.

IN FORCE DATES

- 62. (1) This by-law shall come into force on April 1, 2017.
- (2) Despite subsection (1), subsection 5(2) and clauses (a), (b) and (e) of subsection 5(4) will only come into force on April 1, 2018 with respect to any pre-existing front, curbside or streetside patio or café seating patio for which approval was granted by the City prior to the coming into force of this by-law.

SHORT TITLE

- 63. This by-law may be cited as the “ROW Patio By-law”.

ENACTED AND PASSED on the 12th day of April 2017.

CITY CLERK

MAYOR

SCHEDULE "A"

Right of Way Patio Fees

TYPE	DESCRIPTION	FEE
1. Patio (Front, curbside and streetside)	First time review without public circulation	\$317.20
	First time review with public circulation	\$530.00
	Permit processing	\$58.00
	Summer Patio permit	\$27.76/m ² /month, (charged by full month)
	Winter Patio permit	\$8.94/m ² /month, (charged by full month)
Café Seating Annual permit		\$162.20
	Annual permit	\$162.00
2. Parklet (Front, Curbside and streetside)	Annual permit processing	\$58.00
	3. Administrative Fees (applicable for all ROW Patios)	To recover administrative cost of enforcement by the City

