

THE CORPORATION OF THE MUNICIPALITY OF SOUTH DUNDAS

BY-LAW NO. 2020-23

A By-law to regulate and license Right of Way (ROW) Patios & Sidewalk Displays on Municipal property.

WHEREAS the *Municipal Act, 2001*, as amended, provides that the powers of the municipality shall be exercised by By-law;

AND WHEREAS the Municipality of South Dundas deems it necessary to regulate and control Right of Way Patios & Sidewalk Displays on Municipal properties to ensure they are safe, compatible with their surroundings, and do not create a hazard to pedestrians or motorists;

NOW THEREFORE the Council of the Corporation of the Municipality of South Dundas enacts as follows:

1. That the rules and regulations as set out in Schedule "A", and the Permit Application as set out in Schedule "B" attached hereto and forming part of this By-law shall be hereby adopted.
2. That fines shall be set as per Schedule "C" attached hereto and forming part of this By-law shall be hereby adopted.
3. That this By-law shall come into force and effect on the date of passing.

READ and passed in open Council, signed and sealed this 6th day of April 2020.



MAYOR



CLERK

Schedule "A"
To By-law No. 2020-23

1. Definitions

The following definitions apply to this By-law:

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

"Chief Building Official" means the Chief Building Official of the Municipality of South Dundas and/or his/her designate;

"Corporation or Municipality" shall mean the Corporation of the Municipality of South Dundas and its officers or employees appointed to administer the provisions of this By-law;

"Council" means the Council of the Corporation of the Municipality of South Dundas;

"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;

"Municipal Property" means real or personal property owned, occupied or rented by the Municipality;

"Officer" means the Municipal Law Enforcement Officer, Building Inspector or Chief Building Official of the Municipality of South Dundas and/or his/her designate;

"pedestrian clearway" means a clear and unencumbered area of the property approved by the Municipality that is reserved for pedestrian traffic;

"permit" means a permit issued by the Municipality granting permission or written authorization for a ROW patio and issued by the Municipal Building Department;

"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;

"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

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

"sidewalk" means the portion of the boulevard that is set aside for the use of pedestrians;

"sidewalk display" means exposed goods, wares, merchandise or articles of any kind placed on the sidewalk.

2. General Provisions

- 2.1 No person shall construct, erect, or alter a ROW patio or Sidewalk display, or permit a ROW patio or sidewalk display to be constructed, erected or altered, without first having obtained a ROW patio or sidewalk display permit in accordance with the provisions of this by-law.
- 2.2 The Municipality reserves the right to remove any ROW patios or Sidewalk Displays erected without a permit.
- 2.3 Any damage to the Municipality's property caused by the ROW patio or Sidewalk Display will be repaired by the permit holder at the permit holder's expense, to the satisfaction of the Municipality.
- 2.4 If the work required to repair damage to the property referred to in subsection 2.3 is not performed by the permit holder to the Municipality's satisfaction, the work may be undertaken by the Municipality at the permit holder's expense, and the Municipality 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.
- 2.5 A ROW patio or Sidewalk Display permit holder is not entitled to any special or additional maintenance and the permit holder is responsible for cleaning the ROW patio area, Sidewalk Display area including litter, snow and ice removal.
- 2.6 The ROW permit holder shall ensure that, where liquor is served, the permit holder of the ROW patio comply with and obtains a Liquor License through the Alcohol and Gaming Commission of Ontario.
- 2.7 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.
- 2.8 No ROW patio permit holder shall cook food or permit the cooking of food on the ROW patio.
- 2.9 No ROW patio permit holder shall locate items outside the permitted ROW patio area at any time, including signs, planters, and rope and stanchion system.

3. Procedure for Application

- 3.1 An applicant shall file an application for ROW patio or Sidewalk Display permit in such form and detail as the Chief Building Official may prescribe from time to time, and which application shall include, at the applicant's cost, the following:
 - 3.1.a Site plan and elevation drawings showing the location and dimensions of the proposed ROW patio or Sidewalk Display, the premises to which the ROW patio or Sidewalk Display will be appurtenant, and all relevant lot lines and all existing surface features located between the premises and the roadway;

- 3.1.b A description of the proposed ROW patio or Sidewalk Display and of all the materials to be used in construction and operation of the patio, including all appurtenances such as:
 - i. Canopies,
 - ii. Umbrellas,
 - iii. Planters,
 - iv. Clothing and merchandise racks,
 - v. Tables and chairs, and
 - vi. Perimeter barriers or railings.
- 3.1.c Any other information required by the Chief Building Official to approve the application and determine compliance with this by-law; and
- 3.1.d The non-refundable fees in accordance with "Schedule C" of this by-law.

3.2 The applicant shall provide evidence of insurance in accordance with the provisions of Section 8, prior to the issuance of the ROW patio or Sidewalk Display permit.

3.3 The applicant shall apply for ROW patio or Sidewalk Display permit for each season, per Section 6, that the applicant wishes to place the ROW patio or Sidewalk Display on Municipal property.

4. Approval of Applications

4.1 The Chief Building Official shall receive, investigate, and consider all requests for ROW patio or Sidewalk Display permits, and refuse approval, approve, or approve a request with such changes and conditions as the Chief Building Official deems necessary in the circumstances to ensure compliance with this by-law and that are in the public interest, including any proposed appurtenances.

4.2 Prior to approving a ROW patio or Sidewalk Display application, the Chief Building Official shall confirm the pedestrian clearway applicable to the property segment on which the proposed ROW patio or Sidewalk Display is located.

4.3 The Chief Building Official may reject an application for a ROW patio or Sidewalk Display on the basis of its potential interference or inconsistency with:

- i. Safety of the public or of property,
- ii. Property maintenance,
- iii. The requirements for access to egress from a property in relation to planned or ongoing development, or;
- iv. Other public uses.

4.4 Issuance of a ROW patio or Sidewalk Display permit is conditional upon the Chief Building Official's approval of its dimensions and proposed location within the property and such approval shall be subject to such considerations as the Chief Building Official deems relevant based upon the location and proposed use of the ROW

patio, or Sidewalk Display and shall include but not be limited to the following:

- i. Ensuring a minimum pedestrian clearway of 1.2m at all times;
- ii. Ensuring vertical barriers do not exceed 0.9m in height;
- iii. Ensuring compliance with the location of pedestrian clearway and consideration of other circumstances tending to restrict the free movement of pedestrians;
- iv. Not obstructing or interfering with public travel, any public service including maintenance operations;
- v. Not creating any public safety hazards, including sight obstructions; and,
- vi. Compliance with the requirements of the Accessibility for Ontarian with Disabilities Act.
- vii. Sidewalk display shall not be greater than 22.3 m² (240 SF)

4.5 Despite clause 4.4(i) the Chief Building Official may permit a pedestrian clearway that is less than 1.2m at all times where the sidewalk next to any pre-existing patio or Sidewalk Display for which approval was granted by the Municipality prior to the coming into force of this by-law is less than 1.2m or is separated from the patio or Sidewalk Display by infrastructure unrelated to the patio itself.

4.6 The applicant shall submit any changes or modification to the ROW patio or Sidewalk Display for approval by the Chief Building Official prior to completion of those changes or modifications.

5. Effect of Approval

5.1 Approval of a ROW patio or Sidewalk Display permit does not constitute approval for the operations 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.

6. ROW Patio or Sidewalk Display Seasons

6.1 The following ROW patio or Sidewalk Display permit seasons are established:

- 6.1.a Summer permit for any month from May 1st to October 31st of the same year;
- 6.1.b Winter permit for any months from November 1st to April 30th of the following year; and:
 - i. May be restricted to daily use only during business hours; and
 - ii. May be required to be completely removed for the purpose of maintenance operations.

7. Penalty

Every person who contravenes any provision of this By-law is guilty of an offence and upon conviction is liable to a fine as defined in the Provincial Offences Act.

8. Insurance & Indemnification

8.1 Insurance

Every applicant, shall submit, with a ROW Patio or Sidewalk Display Permit application, a certificate of insurance as evidence of coverage as follows:

- 8.1.a. ROW Patios serving Food, and/or Beverages including Alcohol require Commercial General Liability Insurance issued on an occurrence basis for an amount of not less than \$5,000,000 per occurrence / \$5,000,000 annual aggregate for any negligent acts or omissions by the applicant relating to their obligations under this Agreement.
- 8.1.b. All other ROW Patios or Sidewalk Display require Commercial General Liability Insurance issued on an occurrence basis for an amount of not less than \$2,000,000 per occurrence / \$2,000,000 annual aggregate for any negligent acts or omissions by the applicant relating to their obligations under this Agreement.

Such insurance shall include, but is not limited to bodily injury and property damage including loss of use; personal injury; contractual liability; premises, property & operations; non-owned automobile; broad form property damage; products & completed operations; owners & contractors protective; occurrence property damage; employees as Additional Insured(s); contingent employers liability; cross liability, severability of interest clause and pollution liability resulting from hostile fire.

Such insurance shall add the Corporation of the Municipality of South Dundas as an Additional Insured. This insurance shall be non-contributing with and apply as primary and not as excess of any insurance available to the Municipality.

The Policies shown above shall not be cancelled unless the Insurer notifies the Municipality in writing at least thirty (30) days prior to the effective date of the cancellation. The insurance policy will be in a form and with a company which are, in all respects, acceptable to the Municipality.

8.2 Indemnification

The applicant shall indemnify and hold the Municipality harmless from and against any liability, loss, claims, demands, costs and expenses, including reasonable legal fees, occasioned wholly or in part by any negligence acts or omissions whether willful or otherwise by the applicant, their officers, employees or other persons for whom the applicant is legally responsible.

As a condition to the issuance of a ROW Patio or Sidewalk Display Permit, all persons engaged in the business of installing or maintaining patios which involves in whole or in part the erection, relocation,

removal or maintenance of a patio or other work, shall agree to hold harmless and indemnify the Municipality, its officers, agents and employees from any and all claims of negligence resulting from erection, alteration, relation or maintenance of a patio or other work.

9. Administration


9.1 This By-law shall be administered by the Chief Building Official.

9.2 This By-law shall be enforced by the Chief Building Official.

9.3 This By-law shall be known as the "ROW Patio or Sidewalk Display By-Law".

9.4 In the event of conflict between the provisions of this By-law and any other By-law of the Municipality, the most restrictive provisions shall prevail.

Schedule "C"
To By-law No. 2020-23

	The Corporation of the Municipality of South Dundas Part I, Provincial Offences Act ROW Patios on Municipal Property By-law No. 2020-23		
ITEM	Column 1: Short Form Wording	Column 2: Provision creating or defining offence	Column 3: Set Fines
1	ROW Patio or Sidewalk Display install without a permit	Schedule "A" Section 2.1	\$100.00