

		Boulevard Patio Policy	
		Policy Category:	
Policy No.: 2013-136-03		Implementing Procedure No.:	
Approving Authority: <i>Executive Leadership Team</i>		Effective Date: <i>April 1, 2014</i>	
Approved or Last Reviewed Date: <i>N/A</i>		Next Review Year: <i>2016</i>	
Area(s) this policy applies to: <i>Operations Department, By-Law Enforcement, Planning & Urban Design</i>		Owner Department: <i>Operations Department</i>	
Related policy: <ul style="list-style-type: none"> <i>Road Occupancy By-law 2013-136, as amended</i> 			

Note: Questions about this policy should be directed to the Owner Department.

1. Purpose Statement

This policy sets out a permitting system to regulate the location, installation and maintenance of boulevard patios on highways under the jurisdiction of the City of Markham. The regulation of the location, installation and maintenance of boulevard patios is intended to enhance the safe and efficient use of City road allowances while improving the public realm and supporting economic success of local business.

The permitting system is subsidiary to the Road Occupancy By-law 2013-136, as amended. The By-law will ensure compliance and enable prosecution in the event of non compliance of parties involved in operating boulevard patios within highways under the jurisdiction of the City of Markham.

2. Applicability and Scope Statement

Applicants wishing to place a boulevard patio that is associated with an abutting business property on any road allowance within the boundaries of the City of Markham shall be required to obtain a Road Occupancy Permit, issued by the Director of Operations under the authority of Road Occupancy By-law 2013-136, as amended. This policy is intended to set out the requirements established by the Director of Operations for the issuance of the permit and an applicant's obligations during the term of the permit. Failure by the applicant to meet and maintain all permit requirements will result in notice to immediately remedy the non-compliance or remove the boulevard patio and all associated fencing and furniture.

3. Background

In the past, businesses serving food or beverages have placed tables and chairs across their frontages that partly encroach onto the municipal right of way resulting in concerns relating to public safety due to conflicts between pedestrians, patio users and parked or moving vehicles and those accessing parking lots at the rear of commercial properties. Maintenance of the City's infrastructure and ensuring unobstructed emergency access are other considerations.

A comprehensive policy is required to respond to the growing popularity of boulevard patios coupled with the need to ensure that patios are safe for customers and maintain a comfortable, safe and accessible path of travel for all users, including people with disabilities.

4. Definitions

Refer to Road Occupancy by-law 2013-136, as amended for additional definitions pertaining to this policy.

The terms defined herein shall have, for all purposes of this policy, the following meanings, whether such terms are capitalised or not:

BOULEVARD – means the portion of the highway between a street line and the edge of the curb, or where there is no curb, that portion of the highway which is travelled or designed to be travelled by vehicles.

BY-LAW - Road Occupancy By-law 2013-136, as amended.

DIRECTOR OF OPERATIONS – The Director of Operations or their designate.

HIGHWAY - includes a common and public highway, highway, avenue, parkway, road, street, driveway, square, place, bridge, viaduct or trestle, including the area between the lateral property lines thereof and includes unopened and unassumed road allowances.

SIDEWALK – That part of a highway located within the boulevard that is improved for the exclusive use of pedestrians.

APPLICANT – A person applying for a permit under the By-law for the installation and operation of a boulevard patio on a highway or a person holding such permit.

BOULEVARD PATIO – a designated area within a boulevard associated with an abutting eating establishment where food and drink are offered for sale and / or consumed, no wider than the width of the establishment's storefront.

PERMIT – A Road Occupancy Permit issued under the By-Law.

POLICY – Means this Boulevard Patio Policy.

5. Policy

A. Application for a Permit

1. Any owner of a property or authorized business operator who wishes to install and operate a boulevard patio along or in a highway under the jurisdiction of the City of Markham shall submit an application for a permit to the Director of Operations on the prescribed form at least eight (8) weeks prior to the proposed date for the placement of the boulevard patio, which form shall include the following:
 - a) name, address and telephone number of the applicant (who shall be the business operator).
 - b) name, address, telephone number and signed authorization of the property owner (if not the applicant).
 - c) proposed location where the boulevard patio is to be placed, which shall be in compliance with the requirements set out in subsection C.
 - d) four (4) site plan drawings (size 11" x 17") of the proposed boulevard patio clearly showing:
 - Key map;
 - Property lines including all dimensions;

- Dimensions of all *existing* buildings and patio areas;
 - The proposed boulevard patio area;
 - Site context to show adjacent property building setbacks and uses ;
 - Site context to show all adjacent trees within 6.0 metres of the existing building and proposed boulevard patio;
 - Label adjacent public open space lands;
 - Location and dimension of all utilities within 6.0 metres of the existing building and proposed boulevard patio, including fire hydrants, Bell/Rogers/Other cabinets, light poles, hydro transformers
 - Curbs, sidewalks and trees in ROW (if any);
 - All dimensions;
- e) four (4) detail drawings/ elevations (size 11" x 17") of the proposed boulevard patio clearly showing:
- Fence details, including all dimensions, materials, colour and method of installation;
 - Style of patio furniture proposed, including material and colour;
 - Awnings / umbrellas, if proposed;
 - Details of servers area, if proposed, including dimensions, materials, colour, garbage receptacle, cash;
 - Temporary lighting installation, if proposed;
 - Any other physical components required as part of the boulevard patio.
2. The application and the permit shall require the applicant to indemnify and save the City, its elected officials, officers, employees and agents, harmless with respect to any actions, third party claims, costs, losses, injuries or damages (including legal costs) whatsoever arising directly or indirectly from the applicant's (or the applicant's employees, contractors, subcontractors, agents, directors or officers) placement of a boulevard patio on or within a highway within the City of Markham or breach by the applicant of this policy, the By-law or the permit.
 3. The applicant covenant and agree to further hold the Town and any other agencies, having utilities or services on or in the boulevard, harmless from any claims, suits, actions or demands whatsoever which may in any manner be affected in any work of constructing, altering, relocating or repairing any public service or utility rendered necessary or desirable by or on account of any maintenance work required to be carried out with respect to the boulevard patio, including, but not limited to, the temporary fencing, landscaping, furniture, and other patio amenities.
 4. Every applicant shall provide and maintain Commercial General Liability Insurance equivalent to or in excess of the minimum insurance requirements as outlined in the City's "General Terms and Conditions", as approved by the City's Purchasing department, naming the City as additional insured.
 5. Any application which does not include all of the information, insurance and the applicable fees as required under this policy at the time that the application is made shall be deemed to be incomplete and shall not be processed until such time as all required information is provided and the fees are paid.
 6. Any information submitted as part of an application for a permit which the applicant identifies as proprietary and confidential, shall be treated as confidential and, except where required by law, shall not be revealed to

any third party without the consent in writing of the applicant, until such time that a permit is issued pursuant to subsection B.

B. Issuance of Permit

1. Where an application meets the requirements of the By-law, this policy, the applicable technical specifications, design guidelines, heritage area guidelines and all applicable fees set out in the By-law have been paid, the Director of Operations shall issue the required permit.
2. Where a property is designated pursuant to the Ontario Heritage Act, either individually or within a Heritage Conservation District, the permit shall be deemed to be consent of permit issued under the Ontario Heritage Act.
3. Subject to compliance with Subsection C, a permit issued under the By-law shall be valid for a limited time period and shall be subject to annual renewal by the applicant provided that the applicant submits a renewal application and pays the renewal fees as required under this policy and is not in violation of the terms and conditions in the permit and this policy.
4. A permit issued for a boulevard patio shall not be transferred or assigned by the applicant in any manner whatsoever without the consent of the Director of Operations, which consent may be withheld at the sole discretion of the Director of Operations.

C. Terms and Conditions

All permits issued by the Director of Operations for the installation and operation of boulevard patios shall be subject to the terms and conditions set out in this Section C, which need to be complied with to the satisfaction of the Director of Operations throughout the term of the said permit:

A boulevard patio on highways under the jurisdiction of the City of Markham shall:

- a. be permitted for the period of time commencing April 1st, ending October 31st;
- b. be restricted to operational hours between 7am to 11pm, subject to other applicable law;
- a. be setback a minimum of 1.2m from a fire hydrant;
- c. be setback a minimum of 0.9m from the face of the nearest highway curb;
- d. be no wider than the frontage (width) of business to which it is related;
- e. be located outside the daylight triangle where adjacent to an intersection;
- f. be setback a minimum of 0.3m from the sidewalk. Where the patio is permitted to encroach across the main sidewalk it shall be setback a minimum of 0.3m from the alternative sidewalk route;
- g. be enclosed by a fence, which shall have a minimum height of 0.9m and maximum height of 1.2m high above grade;
- h. have a fence that shall be secure, but may not be fixed by bolts that penetrate the sidewalk or boulevard surface, unless specifically agreed to by the Director of Operations;
- i. have a fence that is easily and immediately removable for emergency or operational needs;
- j. have an opening in the fence to provide access to the patio and access to the main entrance of the business, which shall be a minimum of 1.2m wide;
- k. be completely removed and stored off-site before the permit is issued and immediately following the expiration of the permit;

- l. not have any heating device(s) where located on the municipal boulevard ;
- m. not permit smoking;
- n. not have any music playing (live or amplified) or other audio visual equipment where located on the municipal boulevard;
- o. be permitted to have temporary lighting subject review and approval of the method of wiring / source of power. Where permitted, lighting shall be installed to avoid glare and light spill to adjacent properties, roads and public areas;
- p. be prohibited from displaying third party advertising signs, hoardings or other advertising material on the fence or on umbrellas. Any signage shall be subject to the City's Signage By-law;
- q. be permitted to include umbrellas or awnings provided a minimum vertical clearance of 2.4m above grade is provided and maintained;
- r. be prohibited from causing removal of or damage to any municipal street tree. No person shall use a municipal street tree for the purpose of securing patio fencing or attaching cables, awnings or other paraphernalia associated with a boulevard patio;
- s. comply with the City's Patio design Guidelines and Heritage Conservation District Plans where applicable to the satisfaction of The Director of Planning & Urban Design; and
- t. comply with all other applicable law.

MAINTENANCE

- 1. Every person who owns or controls a boulevard patio shall for the duration of the permit period:
 - a. ensure that all patio furniture is neatly stacked and / or safely secured after 11pm each night;
 - b. maintain the patio in a safe, tidy and clean condition at all times, including the removal of any graffiti, posters and third party advertising however affixed to the patio furniture or fencing, within twenty-four (24) hours of becoming aware of the condition;
 - c. immediately remove any garbage or litter accumulation in and around the patio;
 - d. regularly monitor the condition and arrange for maintenance and repair of any damaged sections of fence, broken patio furniture, umbrellas or awnings;
 - e. maintain and replace when required any floral displays or plantings within the area of the patio or mounted on the fence.
- 2. In the event that a patio is not maintained to the satisfaction of the Director of Operations for a period greater than ten (10) consecutive days, the Director of Operations may require that the applicant remove the patio at no cost to the City.
- 3. In the event that an applicant abandons a patio, the applicant is responsible for the total removal of all components associated with the patio, including but not limited to the fence, furniture, lighting, waste receptacles, umbrellas or awnings and restoration of the site back to its original condition to the satisfaction of the Director of Operations.
- 4. The City or any public utility may enter the area occupied by a patio for the purpose of doing any work within the highway.

D. Seizure and Disposal

- 1. In the event that a patio has been placed, installed or maintained on a highway in a manner that is not in compliance with this policy, the matter shall be referred to By-law Enforcement. The patio may be removed and disposed of under the provisions of the Road Occupancy By-law.

E. Fees

1. Effective January 1, 2014, the fees to be paid for a permit to allow the placement of a boulevard patio on the public right of way and annual renewal of said permit shall be as per the By-law.

6.0 Roles and Responsibilities**Director of Operations**

- Policy Sponsor

Manager, Business & Technical Services

- Coordination of interdepartmental activities involved in this policy creation and implementation

Technical Coordinator, Operations

- Process and manage applications for permits for boulevard patios, including the collection of fees
- Conduct inspections of patios following installation and following removal at the end of the permit period
- Educate permit applicants regarding policy changes
- Development and maintain database to contain application information
- Develop and maintain GIS mapping tool to facilitate management of permitted patio locations
- Disseminate information to all interested departments.

Director of Planning & Urban Design

- Provide information and guidance relating to the layout and design of proposed patios to applicants in the preparation of plans and supporting documents prior to a permit application being made
- Review the layout and design of patios, including fencing and furniture, in accordance with the Design Guidelines
- Ensure that a permit for a boulevard patio meets the requirements of other applicable land use planning or zoning by-law requirements
- Circulate permit applications to Heritage Markham Committee for review and comment when applicable
- Conduct inspections of patios following installation and following removal at the end of the permit period

Operations Roads Supervisors

- Removal of any non compliant patios after suitable notice given or under hazardous conditions

Provincial By-law officers

- Issue infraction notices as required
- Investigate and identify any patios that are non compliant