

**Subject: Right of Way Patio By-law Update and New Urban Design Guidelines
for Commercial Patios**

File Number: ACS2023-PRE-RHU-0012

Report to Transportation Committee on 23 March 2023

and to Planning and Housing Committee on 5 April 2023

and to Agriculture and Rural Affairs Committee on 6 April 2023

and Council on 12 April 2023

**Submitted on February 16, 2022 by Court Curry, Manager, Right of Way, Heritage
and Urban Design Services**

**Contact Person: Laureen DiNardo, Coordinator, Public Realm Agreements and
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Ward: Citywide

**Objet : Mise à jour du Règlement régissant les terrasses sur emprise et
nouvelles Lignes directrices sur l'esthétique urbaine pour les terrasses
commerciales**

Dossier : ACS2023-PRE-RHU-0012

Rapport au Comité des transports le 23 mars 2023

et au Comité de l'urbanisme et du logement le 5 avril 2023

et au Comité de l'agriculture et des affaires rurales le 6 avril 2023

et au Conseil le 12 avril 2023

**Soumis le 16 février 2023 par Court Curry, Gestionnaire, Services des emprises,
du patrimoine et du design urbain**

**Direction générale de la planification, de l'immobilier et du développement
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**Personne ressource : Laureen DiNardo, Coordonnateur, Ententes et permis du
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Quartier : À l'échelle de la ville

REPORT RECOMMENDATIONS

That Transportation Committee recommend Council:

1. Approve the Right of Way Patio By-law as described in the report and in the form in Document 1.
2. Approve the Urban Design Guidelines for Commercial Patios attached to this report as Document 2.
3. Delegate authority to the Manager, Right of Way, Heritage and Urban Design for a period of 3 years, in consultation with the Director of Traffic Services, together with the Director of Roads and Parking Services, to:
 - a. Authorize the closure of segments of any City of Ottawa road as a temporary measure;
 - b. Limit this delegation of authority to only be exercised where there is written request from the Business Improvement Area for the given geographic area, or in the circumstance where a Business Improvement Area does not exist, 2/3 of the business owners on each block segment approve of the road closure as provided in writing to the Manager and the Directors listed above;
 - c. All costs associated with a road closure are responsibility of the requester.

That Planning and Housing Committee and Agricultural and Rural Affairs Committee recommend Council:

1. Approve the Urban Design Guidelines for Commercial Patios in Document 2.

RECOMMANDATIONS DU RAPPORT

Que le Comité des transports recommande au Conseil :

1. d'approuver la modification du *Règlement régissant les terrasses sur emprise* (n° 2017-92) conformément au rapport et au document 1;

2. **d'approuver les Lignes directrices sur l'esthétique urbaine pour les terrasses commerciales jointes au rapport en tant que document 2;**
3. **de déléguer, en consultation avec le directeur des Services de la circulation et le directeur des Services des routes et du stationnement, des pouvoirs au gestionnaire d'Emprises, Patrimoine et Design urbain qui lui permettront pendant trois ans :**
 - a) **d'autoriser la fermeture temporaire de tronçons de rues d'Ottawa;**
 - b) **d'exercer ces pouvoirs sur consentement écrit de la zone d'amélioration commerciale (ZAC) du secteur, ou en l'absence d'une ZAC, si les deux tiers des propriétaires d'entreprises de chaque tronçon d'îlot approuvent par écrit la fermeture de rue en remettant un document à cette fin au gestionnaire et aux directeurs susmentionnés;**
 - c) **d'imputer les frais de fermeture de rue au demandeur.**

Que le Comité de la planification et du logement et le Comité de l'agriculture et des affaires rurales recommandent au Conseil :

1. **d'approuver les Lignes directrices sur l'esthétique urbaine pour les terrasses commerciales.**

EXECUTIVE SUMMARY

As part of the 2022 Patio Innovation Program Report ACS2022-PIE-RHU-0005 staff from Right of Way, Heritage and Urban Design, were directed to review and report back to Committee and Council with recommendations for amendments to relevant by-laws in advance of the 2023 Patio Season. Staff has reviewed the impacts of various temporary by-law amendments and pilots over the course of the three-year patio innovation program and propose the Right-Of-Way Patio By-law in the form attached as Document 1a. The subject of the new updates include the consistent 2 AM closing time for all the Right-of-Way patios; allowing unlimited café seating permits; adding reference to the Tree Protection By-law No. 2020-340 to protect City trees; addition of provisions to address the permit holder responsibilities for maintaining the space around the Right-of-Way patio to be free of snow and ice and to also prohibit the use of winter patios for seasonal storage; and streamlining the notification process for new patio applications. Moreover, there are administrative updates related to organizational changes and to adding or modifying definitions or clauses to provide further clarity.

This report is also recommending the delegation of authority be granted to the Manager, Right of Way, Heritage and Urban Design in consultation with the Director of Traffic Services together with the Director of Roads and Parking Services for seasonal Road closures for an additional period of three years, similar to the approach approved by Council for the past three (3) years.

In addition to proposed by-law amendments, staff are introducing new Urban Design Guidelines for Commercial Patios. The Guidelines are intended to support the Patio By-law and be a resource for the preparation of and review of commercial patio proposals, both on private property and the right-of-way.

Finally, this report provides an update on the Ottawa Market pilot partnership for 2023.

RÉSUMÉ

Dans le rapport sur le Programme d'innovation lié aux terrasses de 2022 (ACS2022-PIE-RHU-0005), il a été demandé au personnel d'Emprises, Patrimoine et Design urbain de revoir la réglementation applicable et de recommander au Conseil municipal et aux comités des modifications avant la saison des terrasses 2023. Le personnel a donc évalué les effets de diverses modifications temporaires apportées aux règlements municipaux et de différents projets pilotes sur trois ans, soit la durée du Programme d'innovation, et propose la version du *Règlement régissant les terrasses sur emprise* figurant dans le document 1a. Cette nouvelle version prévoit la fermeture à 2 h du matin de toutes les terrasses sur emprise; un nombre illimité de permis pour petite terrasse de café; l'ajout d'un renvoi au *Règlement sur la protection des arbres* (n° 2020-340) afin de protéger les arbres municipaux; l'ajout de dispositions sur la responsabilité, pour le titulaire de permis, de dégager la neige et la glace autour de la terrasse sur emprise, et l'interdiction d'utiliser une terrasse en hiver pour de l'entreposage saisonnier; et la simplification du processus d'avis pour les nouvelles demandes de permis de terrasse. On y trouve aussi des modifications administratives liées aux changements organisationnels et l'ajout ou la modification de définitions ou de dispositions pour clarté.

Il est aussi recommandé dans ce rapport de déléguer, en consultation avec le directeur des Services de la circulation et le directeur des Services des routes et du stationnement, des pouvoirs au gestionnaire d'Emprises, Patrimoine et Design urbain pour la fermeture saisonnière de rues pendant trois ans, dans la même veine que ce qu'avait approuvé le Conseil pour les trois dernières années.

En plus du projet de modification du règlement municipal, le personnel présente les nouvelles Lignes directrices sur l'esthétique urbaine pour les terrasses commerciales. Complément au règlement sur les terrasses, ces lignes directrices se veulent une

ressource pour la préparation et l'examen des propositions de terrasses commerciales, tant sur les terrains privés que sur les emprises.

Enfin, le rapport fait le point sur le partenariat pilote des marchés d'Ottawa en 2023.

BACKGROUND

In March 2020, the COVID-19 pandemic and declaration of a State of Emergency in Ontario resulted in the mandatory closure of all non-essential workplaces and businesses. These closures had an immediate and detrimental impact on Ottawa's economy including a sharp decline in business revenues, employment and economic activity. In response, the city undertook several actions to help inform and guide Ottawa's economic response and recovery efforts.

The Patio Innovation program was approved by Council in 2020, 2021 and 2022 and included:

- For the last three years, supported patio operators to allow closure times up to 2 AM.
- Temporarily waiving the monthly rates (summer and winter) for right of way (ROW) patios and café seating permits through the City's annual Budget.
- Eliminating the cap on the quantity of café seating tables permitted per business.
- Streamlining the circulation process for new Right of Way (ROW) patio permit applications.
- Developing a new retail vending program to allow retailers to vend on their business frontages.
- Partnering with Building Code Services to develop a streamlined system to review inquiries and building permit applications for tents and awnings related to patios.
- Partnering with Traffic Services to undertake the closure of several city streets as pilot projects to facilitate patio expansions.
- Funding of a summer student position in By-law and Regulatory Services (BLRS) to support proactive enforcement associated with patios in 2021 and 2022.
- Amending the Zoning By-law for patios on private property to waive the 30-metre setback requirement from residential zones along with other provisions and introduce a registration and property owner notification system.

As part of the 2022 Patio Innovation Program Report ACS2022-PIE-RHU-0005 staff were directed to review and report back to Committee and Council with recommendations for permanent updates to relevant by-laws in advance of the 2023 Patio Season.

In addition to proposed by-law amendments, staff are also introducing new Urban Design Guidelines for Commercial Patios. The Guidelines are intended to support the Patio By-law and be a resource for the preparation of and review of commercial patio proposals on both private property and the public right-of-way. They will assist with the review and design of commercial patio proposals citywide.

Lastly, on February 16, 2023, the Planning and Housing Committee passed a Motion recommending City Council adopt a phased-in approach to reinstating patio fees as it would mitigate the cost to businesses considering rising material and wage costs and continued economic instability particularly in the downtown core. The motion recommended applying a 50 per cent reduction to certain fees for 2023 to allow for an appropriate phase-in to fully reinstated fees in 2024. An updated fee schedule has been included as Document 1b.

DISCUSSION

1. Amendments to the Right-of-Way Patio By-law (2017-12)

Staff have reviewed the existing Right-of Way Patio By-law (2017-12) and propose updates to address the following categories:

- 1) Permanent changes as a result of the review of temporary measures established in the Patio Innovation Program because of the COVID-19 emergency.
- 2) Administrative changes to provide clarity and reflect current practices and organizational structure.

Permanent Changes

The following permanent changes to the Right-of-Way Patio By-law 2017-92 are outlined below. In preparation of the proposed amendments, staff from Public Works Department, Planning, Real Estate and Economic Development Department, By-law and Regulatory Services, and Legal Services, were consulted during 2022 and early 2023 to complete this review.

- 1) To provide consistency, staff are recommending that all Right of Way (ROW) patio permits issued be subject to a closure of 2 AM.

For the last three years, under the Patio Innovation Program, all Right-of-Way Patios were allowed to remain open until 2 AM. The Patio Innovation Program was developed to support patio operators and address existing by-law inconsistencies, which included varying closure times up to 2 AM. The program aided in creating a consistent and equitable approach and opportunity for patio operators to recover from economic hardship faced by the pandemic, by allowing them to align their business hours with their patio operations. Staff continue to note that the consistent closure time has provided clarity for patio operators and enforcement staff and has been successful due to the associated stepped enforcement strategy. Moving forward, to allow this existing situation to continue, City staff are recommending that the Right-of-Way Patio By-law be revised to permanently allow for a continuation of a 2 AM closing time for patios in the Right-of-Way. It is also important to note that all patios, regardless of their location (ROW or private property) remain subject to the City's Noise By-law. In addition to the City's Noise By-law and the continuation of a stepped enforcement strategy, staff is recommending adding the following changes to the By-law to provide additional clarity:

- a) Replacing the term "live music" with "Live Music and Entertainment" and defining the term. This will provide clarity in what is considered live music and entertainment as it was not previously defined.

"Live Music and Entertainment" means one or more of any of the following, performed live by one or more persons, whether 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.

- b) Clearly prohibiting any music being played on a ROW patio after 11 PM, which will include any music being amplified from outdoor audio speakers on the patio as well as indoor audio speakers and/or indoor live music emitting from inside the establishment onto the patio.

- 2) An applicant to the Café Seating Patio Permit may request an unlimited amount of Café seating permits.

This change will allow business operators to have as many tables as space will allow; limited to a depth of one row of tables in addition to providing a minimum 2 metre pedestrian clearway. The permission is limited to the business operator's frontage and may be extended in front of neighbouring properties/businesses provided written consent is provided by the abutting landowners.

This is a permanent continuation of the changes to the Café Seating introduced under the Patio Innovation Program.

3) Adding reference to the Tree Protection By-law No. 2020-340.

The addition of a reference to the Tree Protection By-law will allow City staff to review at the time of an application any interference with a City tree and will also address the responsibility for paying and reinstating any City landscaping that is damaged or removed as a result of a patio installation.

4) Winter maintenance

The addition of provisions under the patio application section to address the owner's responsibility for maintaining the space around the Right-of-Way patio to ensure it remains free of snow and ice. Staff also recommend adding language to ensure the patio is not used as seasonal storage for items such as patio furniture. These changes will allow the City to deliver their operations without interferences and will reduce liability associated with any potential injuries. This will also ensure that the right-of-way is maintained in a visually attractive way during all seasons.

5) Notification for new patio applications

Staff are recommending an amendment to the notification process for new patio applications. The proposed recommendation will reduce the notification radius for new patio applications from 90 m to 30 m to bring it in line with the current noise and zoning by-law notification standards.

The new process will also include notification to the Ward Councillor; a letter to residents and residential property owners within the 30 m radius, the local Business Improvement Area and any local community association registered with the City of Ottawa.

This process currently does not apply on an annual basis and is only required when a new patio is established in the Right-of-Way. This will be the continued approach.

Based on the past three seasons, staff are not recommending the following two initiatives become permanent:

- 1) Permitting pop-up retail with a café seating permit.

With limited indoor capacities during the COVID-19 pandemic, the City gave the opportunity to retailers to expand their sales capacity by issuing café seating style permit to allow them to sell their merchandise on the sidewalk. Even though staff

consulted and distributed the information about this initiative by various means of communications such as Business Associations, website, among others, the City did not receive any request for this type of permit. Therefore, staff concluded that this was not the right mechanism to allow for this activity to occur. Simplified alternative approaches to allow for limited retail display in the right-of-way will be reviewed and evaluated this year to provide a more appropriate solution for business operators going forward.

- 2) PRED funding of a summer student position to provide monitoring associated with the Patio Program.

The main focus of this position was to assist the Patio Innovation Program in the By-Ward Market area. For the past two years there was a need as the program evolved and regulations changed, such as pandemic related restrictions. Staff will continue to work with internal and external stakeholders to provide oversight to ROW patios.

Administrative Changes

- 1) Organizational

In December 2021, a new Infrastructure and Water Services Department (IWSD) was created. This Department includes Asset Management, Infrastructure Services, Water Services and associated support services. As a result of these changes, the Right-of-Way Patio By-law needs to be updated to reflect the roles, responsibilities, and authorities of each General Manager and corresponding department to maintain the day-to-day operations.

- a) Delete the references to the position of the General Manager, Planning, Infrastructure and Economic Development and replace with the General Manager, Planning, Real State and Economic Development.
- b) Modify definition of the General Manager to include the General Manager, Planning, Real State and Economic Development and the General Manager of the Public Works Department.

- 2) New or modified definitions or clauses to improve interpretation of the By-law:

Through the review process, it became apparent that certain definitions in the By-law needed to be updated or revised to provide further clarity and as required new definitions were added.

2. Urban Design Guidelines for Commercial Patios (ROW and private property).

The proposed Urban Design Guidelines for Commercial Patios (Document 2) will provide guidance on how to create vibrant and accessible outdoor commercial patio spaces (ROW and private property patios). The guidelines will be a resource for patio operators who are preparing to apply for temporary patio permits on public property as well as for individuals who are designing or reviewing the design of commercial patios on public or private property.

The guidelines outline various design options for commercial patios on public property, including Café Seating, Wall-side Patio, Curb-side Patio, Street-side Patio, and a Combined Patio. The guidelines also provide direction for the design details for commercial patios on private and public property. Design details include subjects such as: furniture, partitions, and vegetation.

3. Temporary Road Closures

Council provided staff the delegated authority for seasonal road closures in 2020, 2021, and 2022. Staff are recommending that the delegated authority to approve seasonal road closure requests be extended for an additional period of three years, through March 2026. All costs associated with the road closures will be at the cost of the requester, any associated patio permit fees will be in accordance with the 2023 fee schedule, Document 1b.

During this proposed three-year extension, staff will review and report on the need and potential options for temporary road closures. Information collected during the continuation of this pilot will inform the feasibility of integration of seasonal temporary road closures into the City's Special Events on City Streets By-Law 2001-260 and/or other applicable City by-laws.

4. Update on the Ottawa Market pilot partnership for 2023

As the City works toward creating a new District Model in the ByWard Market, the City is proposing a pilot for the 2023 summer patio season. The City in partnership with Ottawa Markets will give full oversight of ROW patios within a defined area to Ottawa Markets (Document 3). City staff are working closely with Ottawa Markets to ensure a seamless transition for the 2023 summer patio season. Ottawa Markets will administer the ROW patio program similar to the City's current program including adherence to the City's ROW Patio By-law with the exception of fees. As per the 2023 budget, no fees were identified for ROW patios within the ByWard Market boundary as it is expected that Ottawa Markets will set their own fees needed to administer the patio program; similar to how the Sparks Street Mall Authority has implemented their own fees specific to Spark Street patios. City staff and Ottawa Markets will reconvene at the end of the season to assess the pilot and determine next steps.

Enforcement Process for ROW patios

The Patio Innovation program has a number of strategies to support a proactive enforcement approach. These strategies include the development of the Good Neighbour guidance document to be shared with all patio operators, updating of the City's website with relevant information for the 2023 season as well as working with operators who received a noise complaint in 2022 in advance of the issuance of their 2023 permit.

In addition, the ROW Patio By-law provides staff the authority to include conditions on ROW patio permits and, if necessary, revoke the permit. These conditions can include such topics as closing times for patios, adherence to all other municipal by-laws and special conditions specific to a location. Throughout the patio season, staff are in regular contact with By-law to ensure complaints regarding ROW patios are addressed in a timely manner. Staff have developed a stepped enforcement strategy where, for the first offence, a warning is issued coupled with education on the ROW patio program. The second offence will result in changes to the ROW patio permit to require the patio to close at 11 PM and the third offence will result in revocation of the ROW patio permit. In 2022 there were fourteen (14) written warnings issued by email with no further enforcement action required. One (1) operating without a patio permit; six (6) noise violations after 11 pm; and seven (7) accessibility deficiencies.

It should be noted that Provincial restrictions supersede any ROW patio conditions such that, if the Province restricts closing times for outdoor dining which are earlier than what is permitted in the ROW Patio By-law (or subsequent permit), the Provincial restrictions apply.

RURAL IMPLICATIONS

This report has city-wide implications. In 2022 there were no ROW patio permits issued in the rural area.

CONSULTATION

Staff circulated a technical summary highlighting the major amendments to the By-law and the Urban Design Guidelines for Commercial patios for feedback. Stakeholders included both City staff, external agencies such as OCOBIA, Business Improvement Areas, Utilities, Ottawa Tourism, the National Capital Commission, the Lowertown Community Association, Ottawa Markets and others. In addition, city staff created an engage Ottawa website open to the public, including an opportunity to provide feedback and ask questions. Staff have worked to address all feedback received as part of this proposal.

The main comments were focused on the pedestrian clearway which is always set out at minimum 2 metres. In addition, comments related to accessibility were received specifically emphasizing that patio operators ensure the pedestrian clearway is free from furniture or any other object that can cause health and safety issues.

COMMENTS BY THE WARD COUNCILLORS

This is a city-wide report. All members of Council were circulated for comment and question. Questions and comments were addressed.

LEGAL IMPLICATIONS

There are no legal impediments to implementing the recommendations of this report.

RISK MANAGEMENT IMPLICATIONS

There is a risk of increased noise after 11 PM as a result of this change. However, as mentioned above, all patios will still be subject to the existing Noise By-law (2017-255) and the proposed Patio By-law. Businesses that receive complaints shall be subject to the enforcement provisions within these two by-laws and may have conditions imposed on their patio permits (ex: patio must close at an earlier time and, if necessary, have their patio permit rescinded).

ASSET MANAGEMENT IMPLICATIONS

There are no asset management implications associated with the recommendations of this report.

FINANCIAL IMPLICATIONS

Transportation Committee recommendations:

- 1 and 2: There are no direct financial implications.
- 3. Costs associated with road closures will be at the cost of the requester.

There are no direct financial implications with approving the Urban Design Guidelines for Commercial Patios in Document 2.

Patio Fees were reinstated through the 2023 budget. Due to the motion to Council, carried on March 1st 2023, to phase in patio fees, patio encroachment revenue was reduced by \$135,000 and temporary encroachment revenue was increased by \$135,000.

ACCESSIBILITY IMPACTS

The ROW Patio By-law states that all patios are conditional upon the General Manager's approval of its dimensions and proposed location within the right of way and such an approval shall be subject to the following considerations:

- Applicants must ensure a minimum pedestrian clearway of 2 metres at all times
- Compliance with the requirements of the City of Ottawa's Accessibility Design Standards, including cane-detectable delineation around the patio's border. To ensure clarity, a definition of cane detectable and further information is provided in the new Urban Design Guidelines for Commercial Patios and proposed ROW patio By-law (document 1b).

As part of the permit application process, operators must demonstrate that their patios are accessible. Accessibility is verified by City staff at the application stage and verified with an inspection once the patio is constructed, and this will continue. Additionally, when new or expanded patios are considered, every effort is made to maintain a straight pedestrian clearway (footpath). Consideration is given for street furniture and other barriers when ensuring a straight pedestrian path of travel.

Many accessibility considerations are incorporated in the new Urban Design Guidelines for Commercial Patios, including patio furniture, to ensure that people with disabilities have equitable access to patios in the Right of Way.

Staff consulted with the Accessibility Advisory Committee on the Patio Innovation Program in the spring of 2022. Accessibility concerns are monitored and responded to by Right of Way staff, with support from the Accessibility Office.

Road closures are also assessed with an accessibility lens. Impacts to on-street parking, maintaining access to sidewalks, curb cuts and Accessible Pedestrian Signals (APS) are considered as part of a street closure application. This will continue as part of the extension of temporary seasonal road closures for the next three years.

ECONOMIC IMPLICATIONS

The proposed amendments to the Right of Way By-law and new patio guidelines, demonstrates the City's leadership in developing and delivering innovative and supportive solutions and will have a positive impact on small business and main streets across the city. The amendments will support increased business revenues, new employment, and main street and neighbourhood vibrancy.

CLIMATE IMPLICATIONS

There are no climate change implications.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications.

INDIGENOUS GENDER AND EQUITY IMPLICATIONS

There are no Indigenous gender and equity implications.

DISPOSITION

Upon the approval of the recommendations of this report, Right of Way Branch, Right of Way, Heritage, Urban Design, Planning, Real Estate and Economic Development Department will, with the assistance of Legal Services, prepare the proposed ROW Patio By-law for enactment by Council.