

THE CORPORATION OF THE UNITED COUNTIES
OF STORMONT, DUNDAS AND GLENGARRY
BY-LAW NO. 5152

A **BY-LAW** to regulate street-side patios on County Roads.

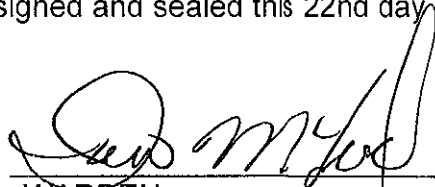
WHEREAS Section 9 (3) and Section 11 (1) of *the Municipal Act, 2001, S.O.2001*, authorize municipalities to enact by-laws with respect to their highways, including by-laws to regulate or prohibit respecting matters; to require persons to do things; to provide for a system of permits; and to impose conditions as a requirement of obtaining; continuing to hold or renewing a permit.

AND WHEREAS the United Counties of Stormont, Dundas and Glengarry deems it necessary to regulate street-side patios on County Roads.


NOW THEREFORE THE COUNCIL OF THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY ENACTS AS FOLLOWS;

1. No person shall allow, permit, construct, erect, use, alter or maintain any street-side patio, upon or over a County Road unless such person has obtained a Street-Side Permit in conformity with the terms, conditions and specifications outlined in Schedule "A" to this by-law.
2. That this By-law is effective upon the final passing thereof.

READ and passed in Open Council, signed and sealed this 22nd day of May, 2018.



WARDEN



CLERK

Schedule 'A' to By-law No. 5152

Street-side Patios

1. DEFINITIONS: In this by-law

"Boulevard" means the area between the roadway and sidewalk and serves primarily as a safety separation and utility corridor;

"Building" means a structure occupying an area greater than ten square metres that consists of a wall, roof and floor;

"County" means The Corporation of the United Counties of Stormont, Dundas and Glengarry;

"County Council" means the Council of the United Counties of Stormont, Dundas and Glengarry;

"Director of Transportation and Planning" means the Director of Transportation and Planning, his or her designate or;

"Highway" means a common and public highway or portion of a common and public highway under the ownership, control or authority of the County and includes any street, lane, road allowance, bridge, trestle, viaduct or structure that forms part of a highway and all lands between the lateral boundaries of a highway and includes the space from the ground to the sky within the lateral boundary of the highway and has the same corresponding meaning as **"Municipal Property"**;

"Local Municipality" means a lower tier municipality of the United Counties of Stormont, Dundas and Glengarry.

"Owner" means the person(s) who is the registered owner of a property, or the duly authorized agent of the owner;

"Pedestrian" means any individual who is on foot or any individual with a disability who is using a wheelchair or other remedial appliance or device;

"Roadway" means the portion of a *highway* that is improved, designed or ordinarily used for vehicular traffic, but does not include the shoulder;

"Right of Way (R.O.W.)" means the corridor of land reserved for highway improvements and under the jurisdiction of the municipality consisting of the road surface and roadside;

"Sidewalk" means the portion of a *highway* between the roadway and the lateral boundary of the *highway* that is set aside for the use of pedestrians;

"Street-side Patio" means a temporary lateral projection from outside of a building or other structure of a restaurant, café, or similar business into the adjoining right of way, boulevard, or parallel parking space that can be used

as additional space for street furniture, landscaping, outdoor cafés and other pedestrian-related amenities.

“Shoulder” means that portion of the roadway between the edge of the travelled surface and the top inside edge of the ditch or fill slope;

2. General Application

This by-law pertains to private business street-side patios which are prohibited encroachments that can only be approved through a permitting process.

3. Street-side Patio Requirements

The following general requirements apply:

1. Prior to submitting an application, owners must pre-consult with the County and Local Municipality and provide:
 - a. Detailed site plan including the area within 5.0 m of the proposed street-side patio showing existing and proposed conditions (dimensions of the proposed patio) as well as the location of all street furniture, landscaping, encroachments, and utilities;
 - b. A description of the proposed street-side patio materials to be used in the construction and operation of the patio, including all appurtenances, including, but not limited to:
 - i. canopies, umbrellas, planters, tables and chairs, and perimeter barriers or railings; and,
 - c. Measured distances between the proposed patio and the location of the street and sidewalk, side property lines, fire hydrants, trees, and other permanent objects on the street must be included.
2. Once the plans have been conceptually approved, owners will be required to complete the permit application and pay the applicable fees. The fees will be waived where the street-side patio is being funded through a Community Improvement Plan (CIP) program.
3. The County will assess the proposed location based on operational, accessibility and safety considerations.
4. Street-side patios shall not:
 - a. Exceed the width of the abutting on-street parking stalls;
 - b. Direct patrons to access or egress the patio into traffic;
 - c. Impede the flow of curbside drainage;
 - d. Be located or constructed in a way that impedes sightlines for intersections or driveways;
 - e. Be constructed above a fire hydrant, shut-off valve, over utility or manhole covers, or interfere with drainage; or,
 - f. Be fastened to the street or sidewalk.
5. Street-side patios shall:
 - a. Meet all local municipal requirements;

- b. Be installed no earlier than May 15th of each year (unless otherwise permitted in writing by the County);
 - c. Be removed by October 15th of each year;
 - d. Be setback from the travelled lane by 0.5 meters;
 - e. Be designed for easy removal;
 - f. Be of sturdy construction;
 - g. Allow access to the street underneath the platform for emergency maintenance by any utility through access panels, or removable pavers;
 - h. Be kept free of debris. The area beneath the street-side patio must be cleaned upon removal in the fall;
 - i. Be located on a street with a speed limit of 50 km/hr or less;
 - j. Be compliant with the Accessibility for Ontarians with Disabilities Act (AODA); and,
6. Street-side patios may require additional traffic barriers (i.e. paving stones, large planters, etc.) to ensure the safety of the street-side patio users – dependent on the design submitted.
 7. Applicants must provide evidence of insurance, satisfactory to the Director of Transportation and Planning, as described in section 4 of this by-law.
 8. An applicant shall apply for a street-side patio permit for each season that the applicant wishes to place a patio on the highway.

4. Insurance

The Permit Holder shall, at all times, maintain Commercial General Liability 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. Such insurance shall include but is not limited to bodily injury and property damage including loss of use; personal injury; contractual liability; liquor liability; premises, property and operations; non-owned automobile; broad form property damage; broad form completed operations; owners and contractors protective; occurrence property damage; products; employees as additional Insured(s); contingent employers liability; cross liability and severability of interest clause.

Such insurance shall add the County and local municipality as Additional Insured subject to a waiver of subrogation. This insurance shall be non-contributing with and apply as primary and not as excess of any insurance available to the County and local municipality.

Any deductible applicable to the above noted insurance shall be the sole responsibility of the Permit Holder and the County / local municipality shall bear no cost toward such deductible.

The Permit Holder shall be responsible for any damage to their assets and the County / local municipality shall bear no responsibility for any damage.

The Permit Holder shall provide the County / local municipality with a certificate of insurance evidencing the above coverage. The certificate shall include a 30-day notice of cancellation to the County / local municipality. The Permit Holder shall provide a certificate to the County / local municipality at each renewal of the policy for the duration of this agreement.

In addition to the General insurance, the Permit Holder shall provide evidence of valid WSIB or its equivalent.

The County reserves the right to assess exposures and add additional insurance requirements where deemed necessary.

5. Indemnification

The Permit Holder shall defend, indemnify and save harmless the County and local municipality, their elected officials, officers, employees and agents from and against any and all claims, actions, losses, expenses, fines, costs (including legal costs), interest or damages of every nature and kind whatsoever, including but not limited to bodily injury or to damage to or destruction of tangible property including loss of revenue arising out of or allegedly attributable to the negligence, acts, errors, omissions, whether willful or otherwise by Permit Holder, their officers, employees, agents, or others who the Permit Holder is legally responsible. This indemnity shall be in addition to and not in lieu of any insurance to be provided by the County / local municipality in accordance with this agreement and shall survive this agreement.

6. Removal

With due notice, the County reserves the right to revoke the street-side patio permit at any time in the following circumstances:

1. The street-side patio is not in compliance with all applicable federal, provincial, County, or local municipal regulations or by-laws.
 - a. The County or a public utility wishes to make use of that part of the highway on which the street-side patio is situated.
 - b. The applicant fails to maintain the street-side patio and keep in proper repair.

2. The applicant shall have no claim against the County for any loss or damage arising from the cancellation of the permit.
3. In all cases where a permit has been revoked, the street-side patio shall be removed within the time stipulated by the Director of Transportation and Planning or their delegate. If not removed, the County shall reserve the right to remove all structures and appurtenances at the applicant's expense.