



POLICY PD – 21 : Encroachments for Outdoor Patios

Planning and Development

Approval Date: February 11, 2020
Approval Authority: Council
Effective Date: February 18, 2020
Revision Date/s: June 24, 2008, March 24, 2020

Purpose:

The purpose of this policy is to establish procedures for the approval process and operational guidelines for the use of sidewalks and boulevards for outdoor patios within Norfolk County.

Policy Statement

It is the general policy of the County that encroachments not be allowed on County-owned lands. If an encroachment has been identified it must be removed and the lands returned to their original state to the satisfaction of the County. All related costs shall be at the expense of the encroaching party.

Council may, however, approve encroachments under special circumstances. Permission to allow an encroachment shall be by written agreement between the property owner or Business Improvement Area (BIA) and the County. Failure on the part of the encroaching party to agree to this process will result in the refusal of the encroachment request.

General

Sidewalks and boulevards are being used to provide areas where merchants might establish an ambient atmosphere in the form of seasonal outdoor cafes and/or food concessions.

There may be times that these areas may wish to be used to serve alcoholic beverages. The Liquor Control Board of Ontario is the government body and sets the requirements to establish this type of operation. Any necessary approvals from the LCBO must accompany any application.

Definitions

“Outdoor patio” means an encroachment on a sidewalk or boulevard outside of or immediately adjacent to 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.

Insurance

In cases of an approved encroachment for an Outdoor Patio, it will be required that the landowner or BIA maintain general liability insurance in the amount of \$2,000,000 and the Corporation of Norfolk County must be named as an additional insured. The onus is on the landowner to carry the insurance in perpetuity and to provide the County with a certificate of insurance at renewal.

Implementation Procedure

The BIA, owner or tenant of a property requesting to establish an Outdoor Patio with intent to encroach on the municipality's property will require an application to the County following the process as outlined below.

Application Process

The following information must be submitted before Council will consider any encroachment upon municipal property:

1. The application must be fully completed and submitted to the County Clerk's office.
2. Accompanying the application must be a series of legible sketches, plans and/or drawings showing all relevant information including but not limited to dimensions, construction material, location of signs, railings, trees, awnings, planters, enclosure, etc. The drawings must also take in the sidewalk and/or boulevard where pedestrian traffic would be re-routed. All drawings/plans/sketches are to be "to scale" and measured in metric. Any incomplete or poor quality drawings/plans/sketches will be rejected until such time as they are deemed acceptable by County staff.
3. An application fee as established by Council.

Once a completed application is received it will be circulated for comment to various County departments, the Downtown Business Improvement Area (Downtown BIA, if applicable), the Board of Trade (if applicable), Chamber of Commerce (if applicable), the Norfolk County Accessibility Advisory Committee, the Mayor and Ward Councillor(s)

Where a local BIA is not established, a Public Notice of the application for a patio shall be posted for a thirty day period at any business seeking a patio encroachment. This Notice shall be posted in an area that is generally visible to the public on the exterior of the business in the prescribed form provided by the County, which Notice will advise interested persons how they may submit comments on the proposal. No public notice is required for an application within a BIA area that is submitted with a letter of support from the BIA.

Once the comment period has closed, any comments received will be shared with the Mayor and Ward Councillor(s). These may be provided in summary form if a significant number of comments are received. Comments in support or issues of concern from the

Mayor and Ward Councillor(s) will be considered when determining whether to grant the encroachment.

Council grants authority to the General Manager of Planning and Development, or designate, to approve patio encroachments and enter into encroachment agreements on behalf of the County. This extends to allow the General Manager to consider and approve unique sites such as parking spots or periods of patio structures remaining outside of the normal date range of May 1st to October 31st.

Subject to the Director of Road's delegated authority to deny any closure of parking spots or roads for the purposes of a patio, the General Manager of of Planning and Development, at their sole discretion, may approve or deny a patio application, or may deem it incomplete. Denials made by the General Manager represent a final decision that is only reviewable upon appeal by the applicant to the Norfolk County By-Law Appeals Committee.

It is within the sole discretion of the General Manager of Planning and Development to decline to decide the matter and instead bring a report forward to Council-In-Committee for its review and consideration. In such instances, the decision of Council represents the final decision of Norfolk County and is not appealable to the Norfolk County By-Law Appeals Committee.

If approved, the applicant will be required to enter into an agreement with the County, fulfill insurance requirements and pay the required fee in full on an annual basis, due on approval in the first year and no later than January 1 of each year thereafter, for so long as the agreement is in effect. Any multi-year application that is approved will also require an annual report, due by January 1, regarding continue compliance with the terms of the encroachment agreement and a report on any complaints or conflicts that have arisen.

Guidelines

Patio encroachments upon County land will only be permitted in Business Districts.

If the application is approved, the applicant will be required to pay all costs associated with the approval and construction of the patio.

All approved applications are subject to the provisions of all By-laws of Norfolk County, and any other by-laws that may be applicable.

Consistent with these guidelines, the application form will outline the terms and conditions of the encroachment agreement, including rights of suspension or termination and appeal rights from such decisions. Additional terms and conditions may also be included in an encroachment agreement if appropriate.

The installation of a patio must provide for a minimum 1.5 meter unobstructed pedestrian pathway.

The enclosed area must have a stable, secure barrier system which clearly delineates the patio area from pedestrian traffic. The requirement for a barrier may be waived in

appropriate circumstances, at the discretion of the General Manager of Planning and Development .

The style of the barrier encompassing the enclosure, such as railings, stanchions, partitions, etc., must be in keeping with the character of the area and approved by the Building Department.

Pennants, flags and any other type of sign is prohibited from being installed on the barriers.

The playing of amplified music from an outdoor patio is prohibited.

Any and all lighting associated with the outdoor patio must be directed away from residential areas, other properties and streets.

Every patio shall be kept in good repair and in a safe and secure condition. It shall be the duty and responsibility of the Applicant to maintain the immediate premises occupied by the patio in a neat and tidy condition.

Unless otherwise approved by the General Manager of Planning and Development, the use of County sidewalks and boulevards for outdoor patios will be limited to the period of May 1st to October 31st.

Once all conditions have been met and a final inspection is completed by the County approval will be issued by the General Manager of Planning and Development who will consult with both planning, roads and building department

Failure to comply with the provisions of this policy or any provisions of the encroachment terms will result in the termination of an encroachment.

No patio occupying a Parking Space may:

- be located in through traffic lanes, rush hour routes or lanes marked as no parking/no stopping/accessible parking
- permit smoking, pursuant to the Smoke-Free Act and 'no smoking' signage shall be posted at the entrance/exit
- permit advertising, banners or signage on them, including on patio umbrellas, other than reflective or traffic safety related signage
- permit outdoor food preparation
- permit electrical power cords or any device that cross the travelled portion of the boulevard (sidewalk)
- permit obstruction of stormwater flows or block stormwater drains. The applicant shall be responsible for clearance of any debris and overall maintenance to ensure free flow.

All patios occupying a Parking Space or Road Allowance are required to comply with Book 7 of the Ontario Traffic Manual.

Attachment:

Form FO 87 – Application for an Encroachment for Outdoor Patio