



POLICY CAO-22: Temporary Encroachments for Outdoor Patios

Clerks and By-law

Approval Date: March 21, 2023
Approval Authority: Council
Effective Date: March 28, 2023
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.

Norfolk County 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. Temporary Outdoor Extensions for Liquor Licences must be obtained from the municipality and may be requested in conjunction with this permit – additional fees may apply.

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.

“Temporary Outdoor Extension – Liquor Licence” means a licence to offer the temporary sale of liquor on an outdoor patio as an extension to a permanent liquor licence for an established time period as outlined in O. Reg. 746/21.

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 valid certificate of insurance at renewal.

Implementation Procedure

Temporary patios shall only be permitted for existing restaurants, bars and other food and drink establishments.

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 temporary patio 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 County Clerk, or designate, to approve patio encroachments and enter into temporary patio encroachment agreements on behalf of the County. This extends to allow the County Clerk, or designate, 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 County Clerk, or designate, at their sole discretion, may approve or deny a patio application, or may deem it incomplete.

It is within the sole discretion of the County Clerk, or designate, 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. Multi-year applications will be considered on a case by case basis. Any multi-year application that is approved will also require an annual report, due by January 1, regarding continued compliance with the terms of the encroachment agreement and a report on any complaints or conflicts that have arisen.

A Temporary Outdoor Extension – Liquor Licence may be approved with the patio encroachment subject to all requirements related to the process being met.

Guidelines

Patio encroachments upon County land will only be permitted in Business Districts. Businesses/Establishments are required to have a valid Norfolk County Business Licence prior to making an application for a Patio Encroachment.

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 required number of designated Accessible Parking Spaces must remain available for parking use and designated fire routes and sight triangles must be maintained.

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 County Clerk, or designate.

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.

Accessibility must be maintained to, and throughout, the temporary patio, including meeting the *Accessibility for Ontarians with Disabilities Act, 2005* and related regulations.

Signage must be posted at designated exit points to ensure alcohol does not travel outside of designated spaces.

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 County Clerk, or designate, 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 County Clerk, or designate, who will consult with the planning, roads, accessibility 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 of any tobacco, cannabis or vaping product, 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

Form FO 87 – Application for a Temporary Outdoor Patio

Application Fee: \$239

Seasonal Land Rental (per square metre per day): \$0.35

Full-year Land Rental (per square metre per day): \$.0.21

1. Patio encroachments are regulated through Policy CAO-22.
2. Patio encroachments will only be permitted in the Central Business District Zone
3. Generally only for seasonal operation (May 1st – Oct 31st), subject to County Clerk, or designates discretion to permit otherwise.
4. Term is valid on an annual basis unless otherwise specified, subject to termination provisions. An application fee for the annual permit plus the annual fees associated with the use of County property for the patio will be required.
5. Any proposed change in patio configuration or location will require a new application.
6. A maximum of two non-accessible parking spaces may be used, but patio encroachments are prohibited in accessible parking spaces.
7. Blocking access to a fire hydrant is prohibited.
8. 1.5 metre unobstructed pedestrian pathway is required.
9. Lighting, plant material and landscaping are encouraged. Lighting shall not be directed towards residential areas, other properties and streets.
10. Signage is not permitted on County property or the Patio.
11. Patio must be compliant with [Accessibility for Ontarians with Disabilities Act, 2005](#) and the [Integrated Accessibility Standards](#) (Design of Public Spaces Standards).
12. Applicant responsible to construct, install, remove, and store all patio materials.
13. All patios and bump-outs must be compatible with the character of the surrounding street scape.
14. Eligible businesses include:
 - a. Bar or Nightclub
 - b. Restaurant
 - c. Restaurant, Fast Food
 - d. Wineries or Breweries
 - e. The Applicant shall at its expense obtain and keep in force, during the term of this Agreement, Commercial General Liability satisfactory to the County, with a limit of liability of not less than Two Million Dollars (\$2,000,000.00) per occurrence; the Corporation of Norfolk County shall be named as an additional insured; and the policy shall contain a provision for cross liability in respect of the named insured and for each year the encroachment is in effect. Resubmission of certificate of insurance is required upon expiry for valid permits.
15. Where a local BIA is established, a letter of support is requested to accompany the application.
16. 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.

17. Where a temporary outdoor extension liquor licence is required, additional conditions may be established.
18. A complete application includes:
 - a. Fee as set out in the County's User Fee By-law
 - b. Diagram of the proposed location and layout of the patio (including dimensions)
 - c. Completed application form (attached)
 - d. Submission of Certificate of Insurance
 - e. Proof of liquor license (if relevant)
 - f. Proof of Business Licence (if applicable)
 - g. BIA letter of support (if applicable)
19. If the application is deemed complete, and prior to approval of the permit, if a land rental rate is required, payment of the applicable fee in full is required prior to issuance of permit.
20. Applications may 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).
21. The agreement may be terminated subject to:
 - failure to adhere to the terms of the agreement, including non-payment of fees or failure to provide the required valid insurance certificate
 - failure to adhere to the Patio Encroachment Policy CAO-22
 - failure to meet the requirements of [Accessibility for Ontarians with Disabilities Act, 2005](#) or the [Integrated Accessibility Standards](#) (Design of Public Spaces Standards)
 - public safety or nuisance concerns
 - if the County requires the land or access to it for its purposes. Appeal rights may exist to the By-law Appeals Committee for certain suspensions or terminations, in accordance with a By-law passed for that purpose.

Definitions:

“BAR OR NIGHT CLUB” shall mean an establishment which supplies alcoholic drinks, food and/or entertainment and contains a walk-up bar or counter where patrons may order, obtain and pay for food and alcoholic drinks. A bar or night club may contain an outdoor patio or cafe. This definition includes business enterprises commonly known as a tavern, pub or drinking establishment.

“BREWERY” shall mean a licensed establishment that makes and sells beer.

“OUTDOOR PATIO OR CAFE” shall mean an outdoor area enclosed by a fence, ropes, gates or other means of delineating such area wherein food and drinks are offered for sale or sold to the

public for immediate consumption within the enclosed outdoor area;

“RESTAURANT” shall mean a building or part of a building wherein food is offered for sale or sold to the public for immediate consumption either within the building or elsewhere. This definition includes a licensed dining room and a tea room. A restaurant may contain an outdoor patio or cafe.

“RESTAURANT, FAST FOOD” shall mean a building or part of a building wherein food is offered for sale or sold to the public for immediate consumption either within the building or elsewhere and where patrons order, obtain and pay for their food from a counter and/or a drive through window. This definition includes a cafeteria, a lunch counter and a coffee shop.

“WINERY” shall mean a licensed establishment that produces and sells wine.