

Class I Development Permit for Outdoor Patios Policy			
Authority	Council		
Amending By-law No.	2022-116	Effective Date	November 1, 2022
Establishing By-law No.	2020-088	Effective Date	July 21, 2020

1. PURPOSE

- 1.1. The purpose of this Policy is to establish general provisions for the approval process and operational guidelines for the use of sidewalks, boulevards and municipal lands for outdoor patios within Gananoque. Outdoor patios are intended to enhance the downtown core, waterfront and commercial areas of the Town.
- 1.2. The locations shall maintain the required public right of ways for pedestrian and vehicular movement.
- 1.3. The patio detail and construction should be compatible with the streetscape, streetscape elements/furniture, colour schemes, and qualities of built form.
- 1.4. This Policy is to establish general provisions which are to be considered to ensure safety, aesthetics, and compatibility with adjacent land uses. This Policy does not replace any requirements of any other agency, including, but not limited to the Alcohol & Gaming Commission of Ontario (AGCO), Development Permit By-law, Ontario Building Code and/or Fire Code.
- 1.5. Each application will be reviewed on its individual merit, particular conditions and considerations based on accessibility, utilities, public health and safety, location and municipal requirements.
- 1.6. The placement of the outdoor patio on municipal land will abut the property where the related commercial use is located. The area may be located at the front or exterior side of the commercial use but may not extend past the width of the existing building.

2. POLICY STATEMENT

- 2.1. It is the general policy of the Town that encroachments not be allowed on Municipal Land. If an encroachment has been identified it must be removed and the lands returned to their original state to the satisfaction of the Town. All related costs shall be at the expense of the encroaching party.
- 2.2. Council may however, approve permits under special circumstances. Permission to allow a Class I Development Permit shall be by written agreement between the property owner and the Town. Failure on the part of the property owner to agree to this process will result in the refusal of the Outdoor Patio Permit request.

3. DEFINITIONS

- 3.1. **“Applicant”** shall mean and include a registered owner of land abutting a Municipal Road Allowance who makes an Application for a Permit, or a tenant who has been authorized by such owner to make an Application for a Permit.
- 3.2. **“Clear Pathway”** shall mean an unobstructed path with a minimum 1.5m or wider.
- 3.3. **“Main Pathway”** shall mean an unobstructed path for pedestrian, wheelchairs / scooters to pass by each other without obstructions.
- 3.4. **“Minor Pathway”** shall mean an alternate to the main pathway where parking “bump outs” provide the opportunity for accents areas such as restaurant patios.

- 3.5. **“Municipal Land”** shall mean real property owned or under the control of the Town, and includes parking lots and municipal road allowances, as required by the context.
- 3.6. **“Patio”** means a semi-enclosed or outdoor area used on a seasonal basis 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.
- 3.7. **“Permit”** shall mean the “Outdoor Patio on Municipal Land Permit” approved by the Manager of Planning and Development.
- 3.8. **“Private Outdoor Patio”** means an outdoor patio that is wholly on private property providing services in the nature of a café, restaurant or tavern or like business.
- 3.9. **“Public Outdoor Patio”** means an area wholly or partially on public lands or on the road allowance and may include a sidewalk and/or parking space outside of or immediately adjacent to a building or other structure providing services in the nature of a café, restaurant, tavern or like business.
- 3.10. **“Town”** shall mean The Corporation of the Town of Gananoque.

4. GENERAL

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

There may be times that these areas may wish to be used to serve alcoholic beverages. The Alcohol and Gaming Commission of Ontario (AGCO) is the governing body and sets the requirements to establish this type of operation.

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.

5. REGULATIONS – ALL PATIOS

- 5.1. No person shall place, erect, or construct, or, permit to be placed, erected, or constructed, a patio and appurtenances thereto on municipal land without obtaining a Class I Development Permit.
- 5.2. Any construction work that is proposed shall be in accordance with the Ontario Building Code, Alcohol Gaming Commission of Ontario (AGCO), *Accessibility for Ontarians with Disabilities Act* (AODA), Development Permit By-law and any applicable municipal by-laws and provincial regulations.
- 5.3. Lands intended for patios shall conform to the Development Permit By-law.
- 5.4. A patio shall only occupy the area in front of or on the exterior side of an associated restaurant or café.
- 5.5. Premises offering hot or cold beverages as an accessory or complimentary service may apply for an outdoor patio on the condition that the property provides washroom facilities. Such premises shall occupy no more than one (1) parking space.
- 5.6. A patio adjacent a residential designation shall provide a minimum separation of one (1) metre from any residential entrance or property line.
- 5.7. The patio outer edge shall be a minimum of 0.3m (1') from the pathway.
- 5.8. The playing of amplified music from an outdoor patio is prohibited.
Note: The Town's Noise By-law shall apply.
- 5.9. No person shall use/affix to any municipal trees, hydrants, garbage cans or any municipal infrastructure to stabilize any patio fencing, furnishings or signage.
- 5.10. All fencing, awnings and umbrellas and patio furnishings must be completely removed and stored off-site before the Permit is issued and immediately following the expiration of the Permit.

- 5.11. Patios may be permitted on municipal lands provided the use of these lands have been approved by Council in addition to the procedure requirements outlined in the Application Process for public notice under a Class I Permit.

6. FENCING

- 6.1. 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 Manager of Planning and Development.
- 6.1.1. All patios must have perimeter fencing.
- 6.1.2. Fencing shall be a minimum of 1.2m (4') from a fire hydrant.
- 6.1.3. Perimeter fencing shall be aesthetically pleasing with decorative metal posts and railings. Wood may be considered.
- 6.1.4. Fencing shall be a minimum height of 1m (3.2') and no more than 1.5m (4.9').
- 6.1.5. Fencing shall not interfere with sight triangles at intersections.
- 6.1.6. Entrances to patios must be open and unobstructed and a minimum of 1m (3.2') to accommodate accessibility.
- 6.1.7. Fencing must be easily removable for emergency or operational needs.
- 6.1.8. Fencing shall be constructed for removal on public outdoor patios on a seasonal basis and shall not penetrate the surface of the sidewalk, although bolt attachments are acceptable.

7. AWNINGS AND UMBRELLAS

- 7.1. A minimum vertical clearance of 2.4m (7.9') above grade must be provided and maintained.
- 7.2. Design, materials and colours should coordinate with the building and surrounding streetscape elements.
- 7.3. Awnings and umbrellas shall not project beyond the perimeter of the fence.
- 7.4. Awnings and umbrellas must be securely fastened and retractable.
- 7.5. A flame-resistant canvas or similar light material should be used over a light metal frame.
- 7.6. Umbrellas must be free-standing or pass through the centre of tables, and when open, cannot extend beyond the patio area.
- 7.7. Awnings and Umbrellas must be closed or removed during inclement weather and high winds.

8. PATIO FURNISHINGS

- 8.1. All tables, chairs and decorative accessories in the patio should be of a visually pleasing, unified outdoor furniture design constructed using weather resistant materials.
- 8.2. Patio furnishings must be easily removable and may not be permanently attached to the wall of the abutting building or a perimeter fence.
- 8.3. All furnishings must be contained within the perimeter of the licensed patio area.
- 8.4. Planters, waste receptacles, or any other furnishings must not obstruct from any entrances and be maintained within the patio area.
- 8.5. Planters may be located on fence railings with the proper apparatus.
- 8.6. Planters shall not project past the perimeter of the fence.
- 8.7. Pennants, flags, banners, and any other type of sign is prohibited from being installed on the barriers.
- 8.8. All furnishings must be removed from public outdoor patios during the off-season and stored in another location to facilitate snow removal and regular sidewalk maintenance.

9. ADDITIONAL REGULATIONS – PUBLIC OUTDOOR PATIOS

- 9.1. Every person who owns or controls a public outdoor patio shall for the duration of the Permit period:
- 9.1.1. Patios are permitted from May 1 to October 31.
- 9.1.2. Operational hours: No new service or tables after 10:00 PM.
Consumption and closing of patio shall be 11:00 PM.
- 9.1.3. Ensure that all patio furniture is neatly stacked and/or safely secured after 11:00 PM each night.

- 9.1.4. 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.
 - 9.1.5. Immediately remove any garbage or litter accumulation in and around the patio.
 - 9.1.6. Regularly monitor the condition and arrange for maintenance and repair of any damaged sections of fence, broken patio furniture, umbrellas or awnings.
 - 9.1.7. Maintain and replace when required any floral displays or plantings within the area of the patio or mounted on the fence.
 - 9.1.8. Should the Applicant be aware of any required structural repairs to the Town's infrastructure such as sidewalk, the Applicant must notify the Town immediately, so the Town can respond.
- 9.2. In the event that a public outdoor patio is not maintained to the satisfaction of the Town for a period greater than ten (10) consecutive days, the Town may require that the Applicant remove the patio at no cost to the Town.
- 9.3. The Town or any public utility may enter the area occupied by a public outdoor patio for the purposes of doing any work within the public outdoor patio area by providing adequate notice to the owner, unless in the case of an emergency.

10. MINOR PATHWAYS – BUMP-OUT

- 10.1. The installation of a patio must provide for a minimum of 1.7m (5'-6") unobstructed pedestrian pathway as illustrated in Schedule "A".
- 10.2. The Applicant is responsible for compliance, installation, stability, maintenance and removal of the minor pathway for the duration of the Permit.
- 10.3. The Applicant is responsible for all costs associated with the installation, maintenance and removal of the minor pathway for the duration of the Permit.
- 10.4. See Schedule "A" for layout
- 10.5. Pathways shall consist of 2' x 6' pressure treated lumber or recycled plastic, wood joist at every 16".
- 10.6. Decking to be a minimum 5/4 thickness, not to exceed 1/4" between boards. Continuous boards shall have no gaps.
- 10.7. Note: Amendments may be required due to street slope.
- 10.8. Pathway sections must be bolted under decking to ensure no movement.
- 10.9. Not less than 1.7m (5'-6") wide walking surface.
- 10.10. Be free of obstructions for the full width of walkway to a minimum height of 2m (7').
- 10.11. Provide a continuous plane not interrupted by steps or abrupt change in elevation greater than 1/2".
- 10.12. Decking must have a permanent, firm and slip-resistant surface.
- 10.13. Walkway is to not exceed 7.5" above road elevation.
- 10.14. Enhanced warning strip wide 1.2m (3.2') and located min 5m (16') from patio fence on sidewalk
- 10.15. If a railing or fencing is not provided on the exterior of a pathway adjacent the road allowance, a tactile indicator shall be required along the outer edge.
- 10.16. A tactile attention indicator shall conform to Sentence (2) and Clauses 4.1.1. and 4.1.2. of ISO 23599, "Assistive Products for Blind and Vision-Impaired Persons – Tactile Walking Surface Indicators"
- 10.17. Safety Reflective material shall be placed along entire pathway structure and side of exterior decking and/or railings for vehicular traffic.
- 10.18. Maximum of two (2) parking spaces may be utilized for a patio.

11. IMPLEMENTATION PROCEDURE

- 11.1. The owner or tenant of a property requesting to establish an Outdoor Patio will be required to complete an Application to the Town following the process as outlined below.

12. APPLICATION PROCESS

- 12.1. The following information must be submitted before the Town will consider any patio:
 - 12.1.1. The Application must be fully completed and signed.
 - 12.1.2. Approvals or necessary approvals from the AGCO must accompany any Application.
 - 12.1.3. Accompanying the Application must be a series of legible sketches, plans and/or drawings showing all relevant information including but not limited to:
 - a) Scaled dimensions of patio to include details of railings, specifications and construction material.
 - b) Location of tables and chairs, signs, awnings, planters / landscaping, enclosure, etc. and the adjacent buildings, with door and window locations identified.
 - c) Existing utilities and municipal infrastructures such as fire hydrants, trees, garbage cans, benches, streetlights.
 - 12.1.4. Additional requirement for Public Outdoor patios:
 - a) Detailed plan identifying the sidewalk, boulevard, and/or parking 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 Town staff.
 - b) The Lessee shall defend, indemnify and save harmless the Corporation of the Town of Gananoque, 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 the Lessee, their officers, employees, guests, invitees, or others who the Lessee is legally responsible. This indemnity shall be in addition to and not in lieu of any insurance to be provided by the Lessee in accordance with this Agreement and shall survive this Agreement.
 - c) The Applicant covenant and agrees 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 outdoor patio, including, but not limited to, the temporary fencing, landscaping, furniture and other patio amenities.
- 12.2. Fees as established by the Town’s General Fees & Rates By-law. The fees will be based on a Class I Application and any applicable costs such as parking spaces utilized and parking meter rates that would normally be collected.
- 12.3. Once a completed Application is received, it will be reviewed for completeness and circulated for comment to applicable agencies.
- 12.4. A Public Notice of the Application for a patio shall be posted at the location of the proposed outdoor patio for a minimum of ten (10) days. This Notice shall be posted in an area that is generally visible to the public on the exterior of the business on the prescribed form provided by the Town, which Notice will advise interested persons how they may submit comments on the proposal. Any comments received will be considered and reviewed when determining whether to grant the Outdoor Patio Permit.

- 12.5. Council through delegated authority, to the Manager of Planning and Development, or designate, to approve outdoor patio permits and enter into outdoor patio agreements on behalf of the Town. This extends to allow the 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 1 to October 31.
- 12.6. The Manager of Planning and Development shall obtain input and approval from the Manager of Public Works, Fire Chief and Police Chief on the use of sidewalks and closure of parking spots for the purposes of a patio. The Manager of Planning and Development, at his/her discretion, may approve or deny a Patio Application, or may deem it incomplete. Denials made by the Manager represent a final decision that is only reviewable upon appeal by the Applicant to Council.
- 12.7. It is within the sole discretion of the Manager of Planning and Development to decline to decide the matter and instead bring a report forward to Planning Advisory Committee (PAC) and/or Council for its review and consideration. In such instances, the decision of Council represents the final decision of the Town of Gananoque.
- 12.8. If approved, the Applicant will be required to enter into an Agreement with the Town, fulfill insurance requirements and pay the required fee in full on an annual basis, due on approval in the first (1st) 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 continued compliance with the terms of the Class I Development Permit and a report on any complaints or conflicts that have arisen.
- 12.9. If the Application is approved, the Applicant will be required to pay all costs associated with the approval and construction of the patio including any and all required Permits.
- 12.10. All approved Applications are subject to the provisions of all By-laws of the Town of Gananoque, and any other Federal, Provincial legislation or municipal By-laws that may be applicable.
- 12.11. Unless otherwise approved by the Manager of Planning and Development, the use of Town sidewalks and boulevards for outdoor patios will be limited to the period of May 1 to October 31.
- 12.12. Once all conditions have been met and a final inspection is completed by the Town, approval will be issued by the Manager of Planning and Development who will consult with Public Works, Fire, Police and the Building Department.
- 12.13. Failure to comply with the provisions of this Policy or any provisions of the encroachment terms will result in the termination of the Class I Development Permit.
- 12.14. In all circumstances it is the intent that no decking or structure will overlay the sidewalk. Those requiring decking or overlay structure will be managed on a case-by-case basis.

13. INSURANCE

- 13.1. In cases of an approved Class I Permit for an Outdoor Patio, it will be required that the landowner maintain and supply to the Town:
 - a) Commercial General Liability Insurance 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 relating to their obligations under this Agreement. Such insurance shall include, but is not limited to bodily injury and property damage including loss of use; liquor liability (if exposure) personal injury; contractual liability; premises, property & operations; non-owned automobile; broad form property damage; owners & contractors protective; occurrence property damage; products; broad form completed operations; employees as Additional Insured(s); contingent employers liability; incidental medical malpractice; extended bodily injury; tenants legal liability; cross liability and severability of interest clause.
 - b) Such insurance shall add the Corporation of the Town of Gananoque 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 Town.

- c) Any and all deductibles applicable to the above noted insurance shall be the sole responsibility of the Lessee and the Town shall bear no cost towards such deductible.
- d) The Lessee is responsible to keep their property / assets insured – failure to do so shall not impose any liability on the Town.
- e) The Lessee is responsible to carry Workplace Safety and Insurance Board (WSIB) on employees or its equivalent.
- f) The Lessee shall provide the Town with a Certificate of Insurance in compliance with the insurance requirements as stipulated in the Agreement. The Policy shown above shall not be cancelled, changed or lapsed unless the Insurer notifies the Town in writing at least thirty (30) days prior to the effective date of the cancellation, lapse or material change in risk. The insurance policy will be in a form and with a company licensed to carry on business in Ontario which are, in all respects, acceptable to the Town.

13.2. The onus is on the landowner to carry the insurance in perpetuity and to provide the Town with a certificate of insurance at renewal.

14. SUSPENSION OR REVOCATION OF PERMIT

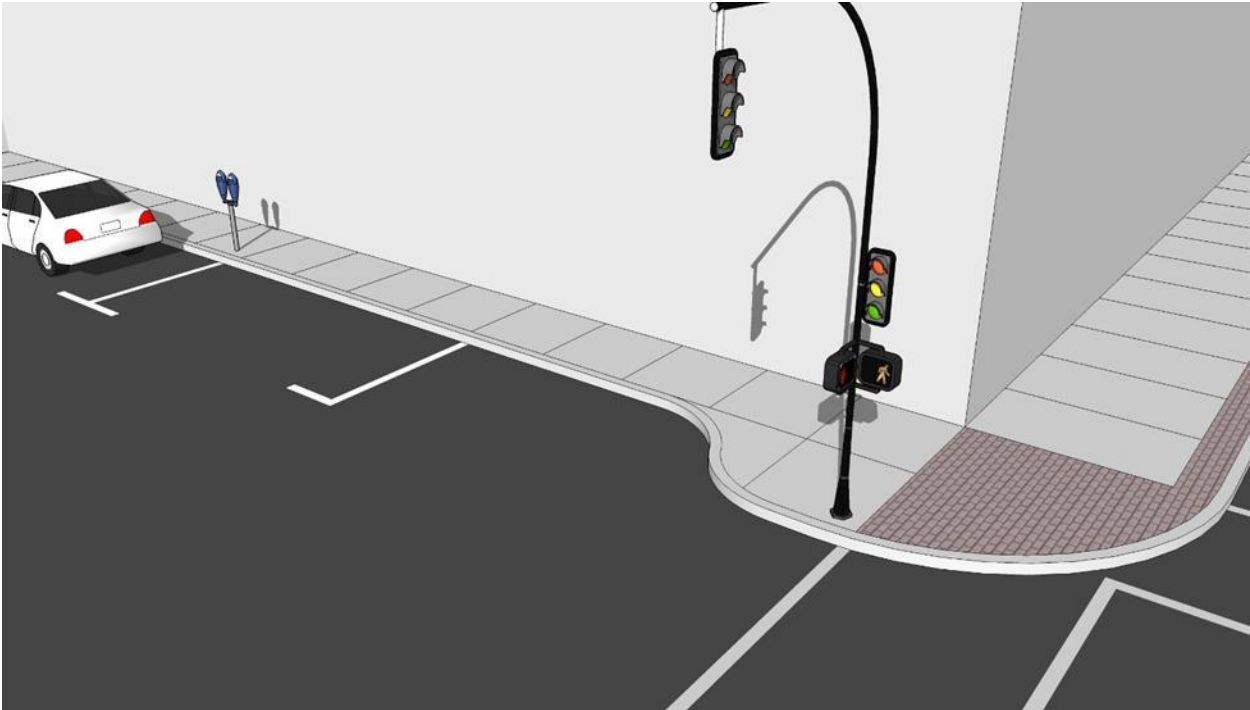
- 14.1. In the event that a patio has been placed, installed or maintained in a manner that is not compliant with this Policy, Permit or By-law, the Town shall provide Notice of such non-compliance to the Applicant and the Applicant shall remove the patio and restore the site within forty-eight (48) hours of receiving the said Notice from the Town.
- 14.2. The Town may, at the sole expense of the Applicant, require the temporary removal of a patio if the Town determines, in his/her sole and absolute discretion, that the temporary removal is necessary for:
 - a) The interests of pedestrian, vehicular or public safety;
 - b) To accommodate a special event, or;
 - c) To accommodate the construction, maintenance or repair of a highway, transit facilities or a public utility or service.
- 14.3. In the event that a patio needs to be removed pursuant to this Section, the Town shall provide Notice to the Applicant seven (7) days prior to the required removal. Said Notice shall include details relating to when the patio can be reinstated.
- 14.4. Notwithstanding any other provision of this Policy or Permit, no prior Notice to the Applicant shall be required in the event that a patio, in the opinion of the Manager of Public Work, Police Chief or Fire Chief, needs to be removed to prevent an immediate risk to public safety. In such an event, the Town shall require the Applicant to remove the patio immediately.
- 14.5. In the event that an Applicant fails to remove a patio as required pursuant to this Policy, the Town or any person authorized by the Town, may seize and remove the patio and restore the site.
- 14.6. The Town shall store any patio components so seized, including fencing, furniture etc., and shall return these items to the Applicant upon the Applicant paying to the Town the costs of removal and storage of the patio and restoration of the site, plus administration and storage costs as set out in the By-law.
- 14.7. The Town may dispose of any patio components so seized at the expiry of ninety (90) days from the date notice of the seizure is given to the Applicant.
- 14.8. The Town shall not be liable to an Applicant or responsible for any claims, losses, expenses or damages incurred by an Applicant in relation to a suspension or revocation of a Permit.

15. FEES

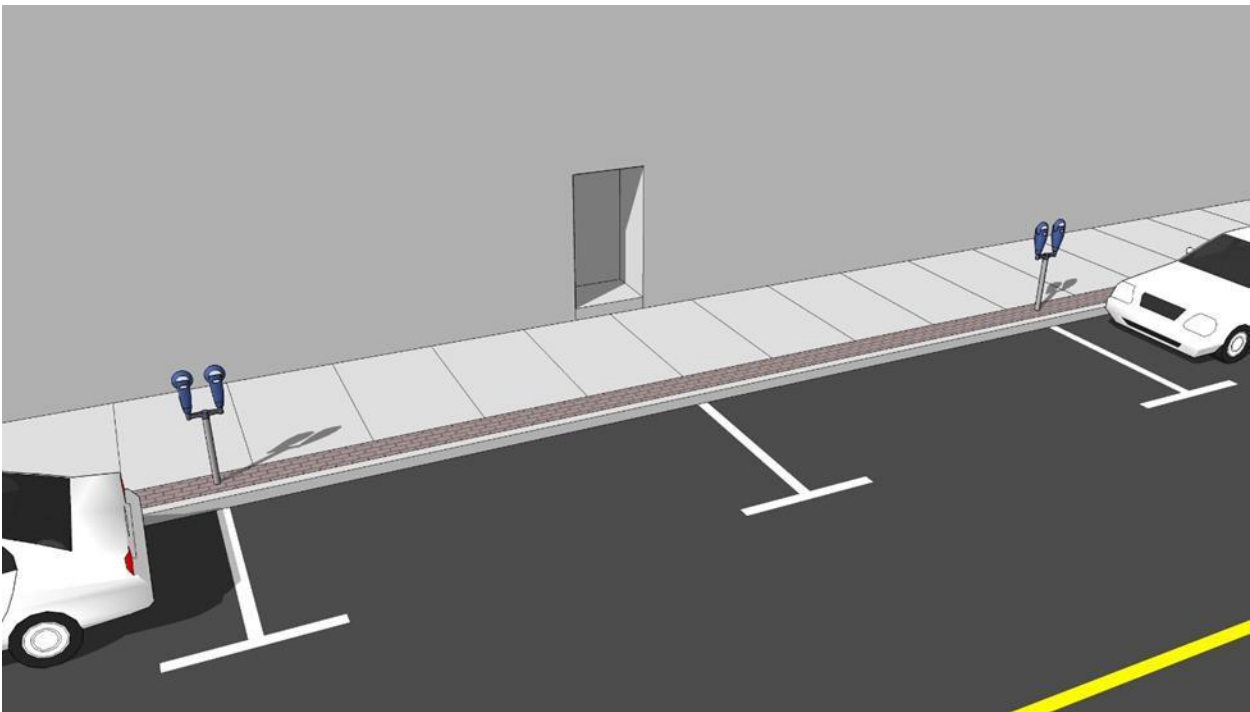
- 15.1. Effective January 1, 2023, the fees to be paid for a Permit to allow the placement of an outdoor patio on a public right of way or public lands and annual renewal of said Permit shall be as per the General Fees and Rates By-law.

**Class I Development Permit for Outdoor Patios Policy
Schedule “A”**

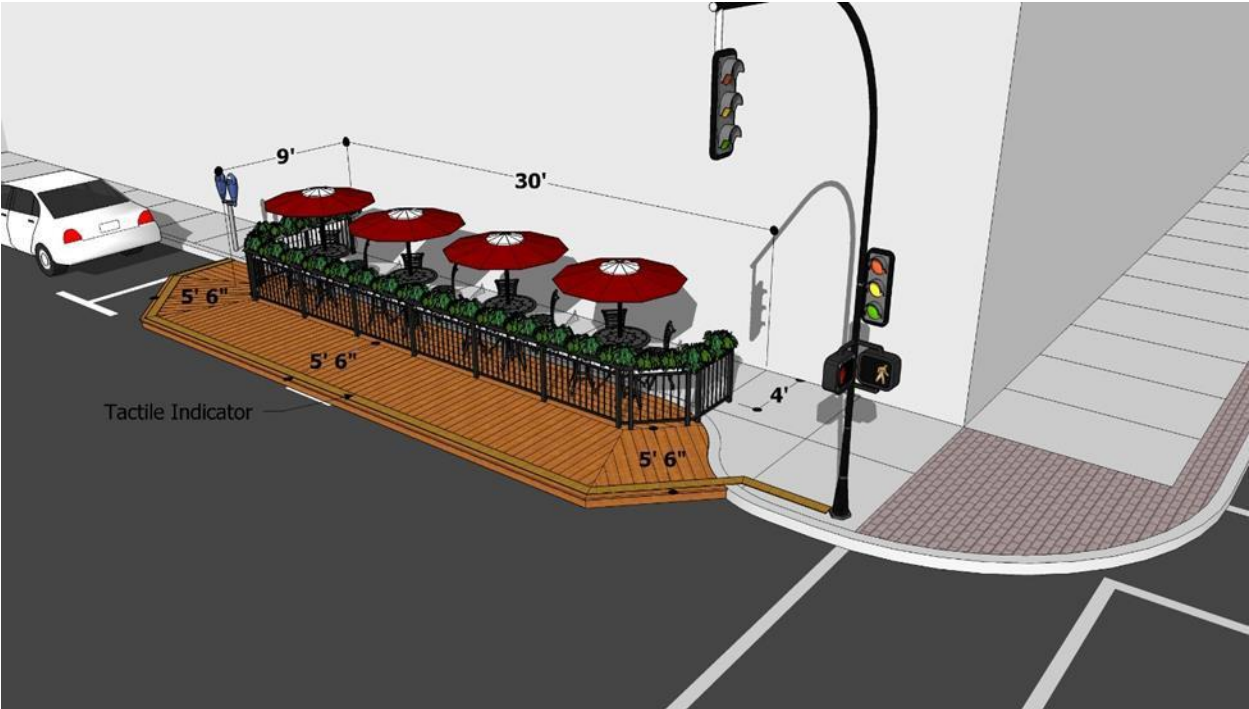
Typical Corner



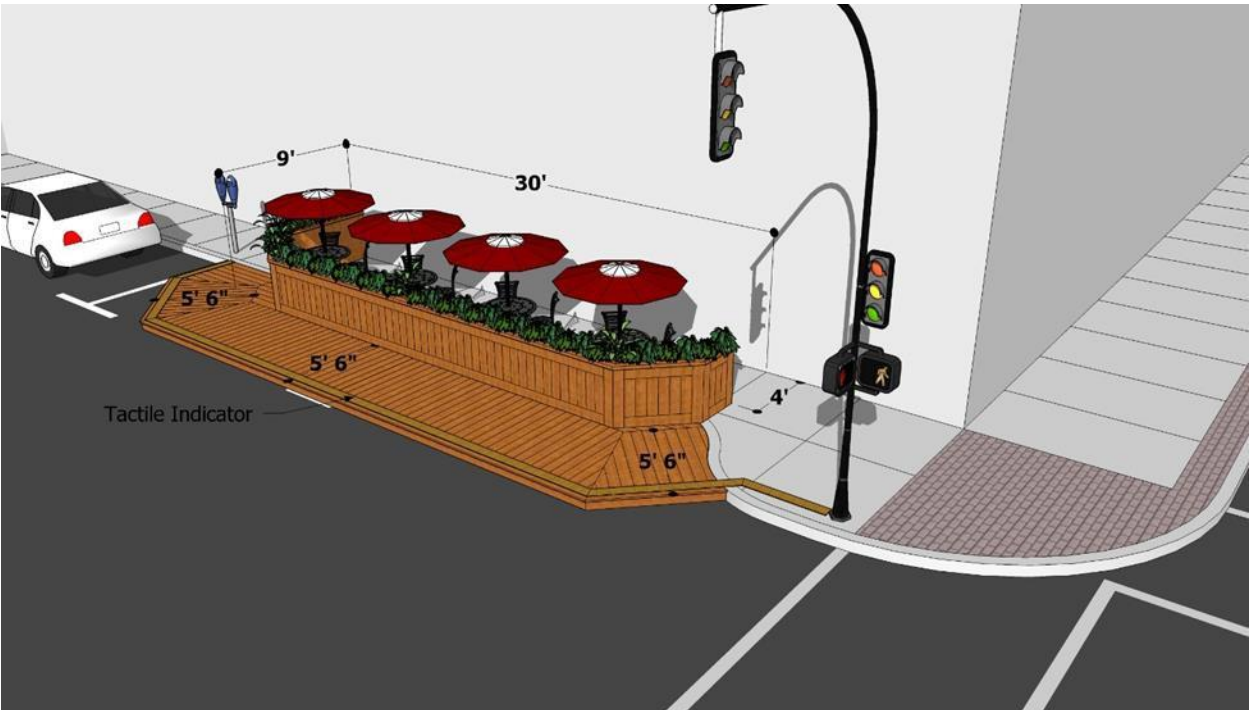
Typical Parking Space



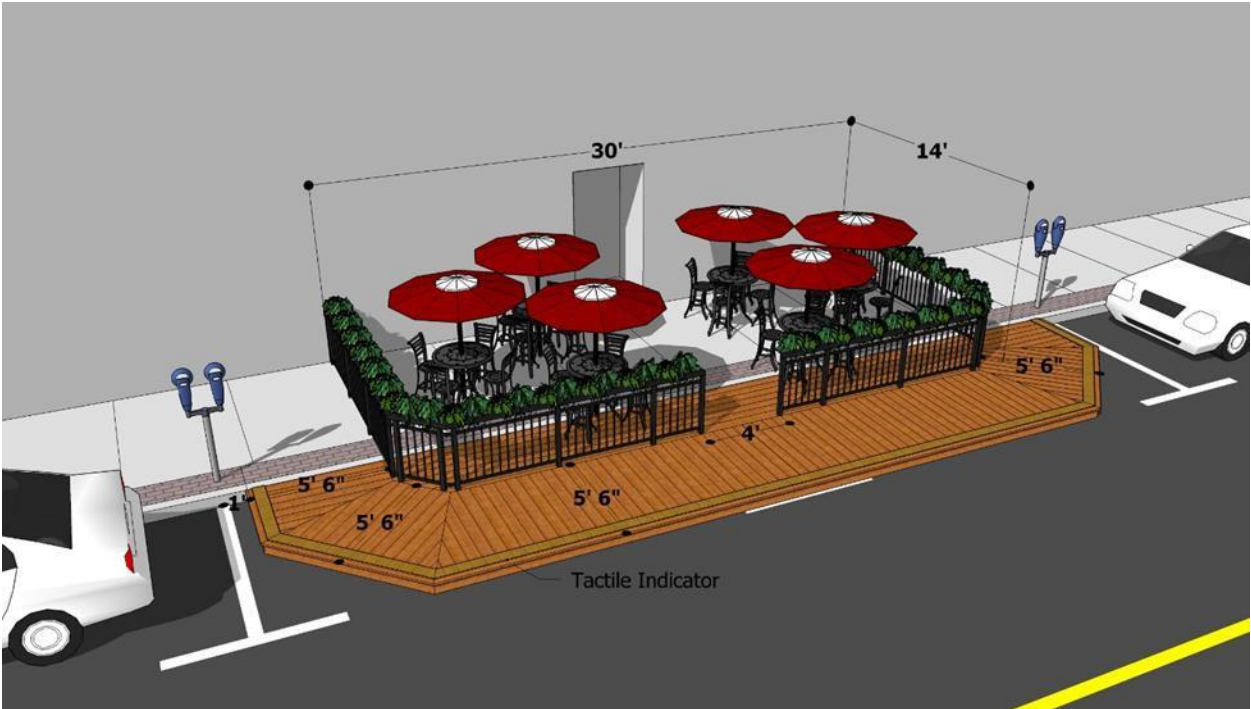
Corner Patio – Metal Railing



Corner Patio – Wood Railing



Parking Space – Metal Railing



Parking Space – Wood Railing

