

## **Sparks Street Right of Way Patio By-law**

A by-law of the Sparks Street Mall Authority to regulate Right of Way patios along the Sparks Street Pedestrian Promenade.

The Sparks Street Mall Authority enacts as follows:

### **DEFINITIONS**

1. For the purpose of this by-law,

“Accessibility Design Standards” means the City of Ottawa’s Accessibility Design Standards, which may be amended from time to time by the Executive Director, Planning, Infrastructure and Economic Development;

“appurtenances” means anything attached to a structure including but not limited to canopies, umbrellas, tables, chairs and wrought iron railings;

“ashtray” means a receptacle for tobacco ashes and for cigar and cigarette butts;

“café seating patio” means a ROW patio with one or two tables, each with a maximum width of 76cm and a maximum length of 101cm, each table having one or two chairs, and each chair with a maximum width of 76cm and a maximum depth of 76cm;

“cane detectable” means having a floor mounted barrier at least 75mm height or a wall mounted barrier at 680 (maximum) from the floor or ground surface;

“canopy” means any canopy, marquee, awning or similar fixed device, used to cover or shelter a walkway, entrance or front of a building; “charcoal” means a combustible substance whose primary purpose is to burn or heat a smoking product;

“City” means the municipal corporation of the City of Ottawa established by the City of Ottawa Act, 1999, or its geographic area, as the context requires;

“Commercial” means a commercial use as defined in the Zoning By-law of the City of Ottawa, being By-law No. 2008-250, as amended;

“cross slope” means the slope across a sidewalk;

“electronic cigarettes act” means the Electronic Cigarettes Act, 2015, S.O. 2015, c. 7, Sch. 3, as amended, and any regulation passed under it;

“Fire Chief” means the Fire Chief of the Ottawa Fire Services, or authorized representative;

“front patio” means a ROW patio located at building face:

“Executive Director” means the Executive Director of the Sparks Street Mall Authority, or authorized representative;

“highway” means a common and public highway and includes any bridge, trestle, viaduct or other structure forming part of the highway and, except as otherwise provided, includes a portion of a highway and includes the area between the lateral property lines thereof;

“intersection” means the area within the projection or connection of the lateral boundary lines of two or more highways that meet one another at an angle whether or not one highway crosses the other;

“Liquor License Act” means the Liquor License Act, R.S.O. 1990, c.L.19, as amended, and includes any regulation passed under it;

“Municipal Act, 2001” means the Municipal Act, 2001, S.O. 2001, c.25, as amended, and includes any regulation passed under it;

“patio” means a space on the Site, a sidewalk, or roadway outside of 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;

“pedestrian clearway” means a clear and unencumbered area of the highway approved by the Executive Director that is reserved for pedestrian traffic;

“permit holder” means the person to which a ROW patio permit has been issued under this by-law, the permit holder’s successors, or any person to whom the related business has been assigned;

“processing fee” means the fee for technical review and assessment of the permit application as set out in Schedule “A”;

“public utility” means a board, commission or corporation that provides a public work under the authority of any statute, charter, by-law or franchise;

“public works” means works supplying the general public with necessities or conveniences and includes, but is not limited to, works for the production, supply and transmission of gas, oil, sewer, water and electric power or energy, and all telephone, cable television and other telecommunications lines and “public work” has a similar meaning;

“right of way” means the width of the road allowance from the property line on one side to the property line on the opposite side of the roadway;

“right of way patio” means a space along Sparks Street outside of a building or other structure within or on which may be included objects such as tables, chairs, temporary entrance shelters, canopies, umbrellas, parasols, and decorative planters and may also be referred to as a ROW patio for the purposes of this by-law, and includes:

a) front patio;

b) café seating patio

“right of way patio permit” means a permit for a right of way patio issued under this by-law and may be referred to as a ROW patio permit;

“right of way patio fee” means a fee for a right of way patio permit as set out in Schedule “A”;

“roadway” means that part of the highway that is improved, designed or ordinarily used for vehicular traffic, but does not include the shoulder, and where a highway includes two or more separate roadways, the term “roadway” refers to any one roadway separately and not to all of the roadways collectively;

“running slope” means the slope along the roadway;

“sidewalk” means that part of a highway set aside by the City for the use of pedestrians;

“sight triangle” means an area directly adjacent to an intersection where no physical elements may be located, so that visibility is not obstructed;

“sign” means any visual medium used to convey information by way of words, pictures, graphics, emblems or symbols, or any device used for the purpose of providing direction, information, identification, advertisement, business promotion or the promotion of a product, activity, service or idea; including, but not limited to umbrellas, flags, a-frame signs and menu boards;

“Site” means the five pedestrian blocks of Sparks Street managed by the SSMA from Lyon Street at the westerly most point to Elgin Street at the easterly most point and includes the area between the lateral property lines thereof;

“smoke” or “smoking” includes the carrying of a lighted cigar, cigarette, pipe or any other lighted smoking equipment;

“smoking product” means any substance whose primary purpose is to be burned or heated to produce vapour, gases, or smoke, which may be inhaled, and shall include but is not limited to non-tobacco herbal shisha, and other plant material or oils intended for inhalation;

“SSMA” – means the Sparks Street Mall Authority, authorized by the Council of the City of Ottawa to manage Sparks Street;

“Sparks Street” means the five pedestrian blocks of Sparks Street managed by the SSMA from Lyon Street at the westerly most point to Elgin Street at the easterly most point and includes the area between the lateral property lines thereof;

“Traffic and Parking By-law” means the City of Ottawa’s Traffic and Parking By-law, being By-law No. 2003-530, as amended, or any successor bylaw;

“Utilities” means access to municipal water service and or electrical service managed by the SSMA;

“use”, with respect to water pipe, includes the carrying of any lighted or heated water pipe as well as inhaling or exhaling vapour, smoke, or gas associated with or resulting from water pipe use;

“visual clearance” means visibility through and across the ROW patio, with nothing that will obstruct the view of travelers on the street or sidewalk;

“water pipe” means a device, whether called a water pipe, hookah or any other name, that burns or heats a tobacco or non-tobacco substance or a combination thereof, with which the vapour, smoke or gases may pass through liquid prior to being inhaled, and excludes an electronic cigarette as defined under the electronic cigarettes act.

## **INTERPRETATION**

2. (1) Headings are for reference purposes and shall not affect in any way the meaning or interpretation of the provisions of this by-law.
- (2) This by-law includes the Schedules annexed hereto and the Schedules are hereby declared to form part of this by-law.
- (3) It is declared that if any section, subsection or part or parts thereof be declared by any Court of Law to be bad, illegal, or ultra vires, such section, subsection or part or parts shall be deemed to be severable and all parts hereof are declared to be separate and independent and enacted as such.
- (4) In this by-law, a word interpreted in the singular number has a corresponding meaning when used in the plural.
- (5) Notifications required to be provided by the Executive Director under this by-law may be provided in person to the individual receiving the notification, or by electronic mail or other digital system, or by registered mail to the last known address of the recipient, and where notice is sent by registered mail, it is deemed to be received by the recipient on the day following mailing.
- (6) If a permit holder of a ROW patio permit for a front patio, or a café seating patio under this by-law is not the owner of the property to which the ROW patio is related, any notification required to be sent by the Executive Director under this by-law may be sent to the property owner in addition to the permit holder.
- (7) The following abbreviations and symbols stand for the words respectively set forth opposite thereto as follows:
  - i. cm centimetre
  - ii. km kilometre
  - iii. km/h kilometre per hour
  - iv. m metre
  - v. mm millimetre
  - vi. m<sup>2</sup> square metre
  - vii. % per cent
  - viii. ft foot
  - ix. ft<sup>2</sup> square foot

## **PERMIT REQUIRED**

3. No person shall construct, erect or alter a ROW patio, or permit a ROW patio to be constructed, erected or altered, without first obtaining a permit in accordance with the provisions of this by-law.

## **PROCEDURE FOR APPLICATION**

4. (1) An applicant shall file an application for a ROW patio permit in such form and detail as the Executive Director may prescribe from time to time, which application shall include, at the applicant's cost, the following:

(a) site plan and elevation drawings showing the location and dimensions of the proposed ROW patio, the premises to which the ROW patio will be appurtenant, all relevant lot lines and all existing surface features located between the premises and the roadway;

(b) a description with visuals of the proposed ROW patio and of all materials to be used in the construction and operation of the patio, including all appurtenances such as:

(i) canopies,

(ii) umbrellas,

(iii) planters,

(iv) tables and chairs, and

(v) perimeter barriers or railings;

(c) hours of operation of the ROW patio;

(d) any other information required by the Executive Director to approve the application and determine compliance with this by-law; and

(2) The applicant shall provide evidence of insurance, satisfactory to the Executive Director and in accordance with the provisions of Section 13, prior to the issuance of the ROW permit.

(3) First time applicants shall only be permitted to apply for a ROW patio permit for one season.

(4) Existing applicants may apply for up to five (5) seasonal permits on one application. The Executive Director reserves the right to approve all, approve some, or deny all permits based on/but not limited to:

(a) applicant's submission

(b) applicant's history of past compliance

(c) location of ROW patio interfering with planned and ongoing infrastructure improvements of roadways, utilities, and buildings.

(5) Any application for a ROW patio permit for a front patio or café seating patio must be submitted by, or include the written consent of, the property owner to which the patio in question is related or adjacent.

## **APPROVAL OF APPLICATIONS**

5. (1) The Executive Director shall receive, investigate, and consider all requests for ROW patio permits, and refuse approval, approve, or approve a request with such changes and conditions as the Executive

Director deems necessary in the circumstances to ensure compliance with this by-law, the interests of the SSMA, and that are in the public interest, including any proposed appurtenances.

(2) Prior to approving a ROW patio application, the Executive Director shall confirm the pedestrian clearway applicable to the street segment on which the proposed ROW patio is located.

(3) The Executive Director may reject an application for a ROW patio on the basis of its potential interference or inconsistency with:

- (a) safety of the public or of property,
- (b) highway maintenance,
- (c) the requirements for access to or egress from a property in relation to planned or ongoing development, or
- (d) other public uses
- (e) failing to meet design standards of the SSMA

(4) Issuance of a ROW patio permit is conditional upon the Executive Director's approval of its dimensions and proposed location within the site and such approval shall be subject to the following considerations:

- (a) ensuring a minimum pedestrian clearway of 2M/6.5ft at all times;
- (b) ensuring compliance with the location of the pedestrian clearway and consideration of other circumstance tending to restrict the free movement of pedestrians;
- (c) not obstructing or interfering with public travel, any public service including public transit, or maintenance operations;
- (d) not obstructing or interfering with the daily activities of other nearby commercial operations;
- (e) not creating any public safety hazard, including sight obstructions; and
- (e) compliance with the requirements of the Accessibility Design Standards.

(5) Despite clause 5(4)(a) the Executive Director may permit a pedestrian clearway that is less than 2m/6.5ft if the Executive Director determines that the exemption will not obstruct or interfere with pedestrian movement, accessibility standards, maintenance operations or other commercial operations.

6. The Executive Director shall approve any changes or modifications to the infrastructure, assets or other property of the SSMA and or City that may be required to accommodate a ROW patio including, but not limited to, relocating signs, bike racks, planters, lampposts, and such changes or modifications shall be completed at the cost of the applicant and to the satisfaction of the Executive Director. Applicant will be responsible for any costs of the reinstatement of the infrastructure, assets or other property of the SSMA and or City immediately after the removal of the ROW Patio.

7. (1) A first-time application for a new ROW patio that is a frontside patio with a proposed separation of less than 50m from a property zoned as residential or mixed residential/Commercial will be processed as follows:

(a) Residents and residential property owners within the 50m distance, and any local community association registered with the SSMA will be notified of the proposed ROW patio, and provided with details of proposed plan for the ROW patio, with the following conditions:

(i) comments from residents and residential property owners must be received by the Executive Director within fifteen (15) working days of receipt of the letter; and,

(ii) the Ward Councilor shall be informed of the application.

(b) If no objections to the proposed ROW patio are received, the Executive Director may issue a permit in accordance with this bylaw.

(c) An objection to an aspect of the ROW patio that meets this by-law will be considered as resolved.

(d) The Executive Director shall use conditions of the permit to resolve objections, and an objection to an aspect of the ROW patio that can be enforced as a condition of the permit will be considered as resolved.

(e) Where one or more objections remain, the Executive Director shall report to the SSMA Board, which shall approve, approve with conditions, or refuse approval of the permit for the ROW patio, and,

(i) the applicant and any objector will be notified of the time and date that the report is to be considered by the SSMA Board; and,

(ii) the SSMA Board decision shall be final.

(2) A ROW patio permit issued for a new patio within 30m of any property zoned as residential or mixed residential/Commercial shall include the provision that audio speakers on the patio must be turned off by 11:00 p.m. nightly.

8. The Executive Director will review any noise related complaints by a property owner or a tenant of a dwelling on a property zoned as residential or mixed residential/Commercial concerning a ROW patio, and:

(i) will advise the ROW permit holder of the complaints;

(ii) the permit holder shall have three (3) days within which to improve the situation; and,

(iii) if the Executive Director deems it necessary, may impose on the ROW patio permit in question one or more conditions to mitigate the noise complaint including but not limited to:

a. requiring the ROW patio to close each night 11:00 p.m. or earlier, and that no patrons are permitted on the ROW patio after this time;

b. requiring that audio speakers on the ROW patio must be turned off by 11:00 p.m. nightly or earlier; or

c. requiring noise attenuation measures be implemented in respect of the ROW patio.

9. Despite Section 5, the Executive Director shall only approve an application for a ROW patio that has the approval of Fire Chief, where it is located within 3m of a fire hydrant.

#### **EFFECT OF APPROVAL**

10. Approval of a ROW patio permit does not constitute approval for the operation of the patio, and it remains the responsibility of the applicant to satisfy the requirements of all other applicable By-laws, or Provincial or Federal laws and regulations.

#### **ROW PATIO SEASONS**

11. The following ROW patio permit seasons are established:

(a) a ROW Patio Summer Season Permit for use between May 1 to October 31<sup>st</sup> of the same;

(b) a ROW Patio Winter Permit for any month from 1 November of one year to 31 March of the following year for front patios; and:

(i) may be restricted to daily use only, with removal when not in use or, if in use, then at the end of the business day or two o'clock (2:00 a.m.) of the day following; and

(ii) may be required to be completely removed for the purpose of winter maintenance operations when a parking advisory has been declared in accordance with the Traffic and Parking By-law, or within two hours of being notified by the Executive Director that removal is required, and in such cases the permit holder or owner will have no claim for loss or compensation.

(c) a yearly café seating patio permit from April 1st of one year to March 31st of the following year, which may be required to be completely removed for the purpose of winter maintenance operations when a parking advisory has been declared in accordance with the Traffic and Parking By-law, or within two hours of being notified by the Executive Director that removal is required, and in such cases the permit holder or owner will have no claim for loss or compensation;

#### **INDEMNIFICATION**

12. The permit holder shall indemnify and save harmless the SSMA and City from any and all claims, demands, causes of action, loss, costs or damages that the SSMA and or City may suffer, incur or be liable for resulting from the issuance of a ROW patio permit under this by-law or from the performance of the permit holder, or that of his or her employees, directors or agents, under this by-law whether with or without negligence on the part of the permit holder, the permit holder's applicant's employees, directors and agents.



## **INSURANCE**

13. The permit holder applicant shall provide and maintain insurance in accordance with the following requirements in respect of each ROW patio permit issued to the permit holder under this by-law:

- (a) Commercial General Liability insurance subject to limits of not less than \$5,000,000 inclusive per occurrence or not less than \$2,000,000 inclusive per occurrence for Café seating patios only, for bodily injury, death and damage to property including loss of use thereof, and such insurance shall be in the name of the applicant and shall name the SSMA and City as an additional insured thereunder and which shall preclude subrogation claims by the Insurer against anyone insured thereunder;
- (b) Broad Form Property insurance coverage to the replacement value of the fixtures for which the permit applies, or, in the event the fixtures are self-insured by the applicant, a letter signed by an Executive Officer of the applicant, accepting loss or damage to the fixtures;
- (c) a Certificate of Insurance evidencing the above insurance coverage(s) shall be provided to the SSMA prior to the issuance of a permit; and,
- (d) an endorsement to provide the SSMA with thirty (30) days prior written notice of cancellation.

## **GENERAL REGULATIONS**

14. (1) Every ROW patio permit holder shall notify or cause to be notified the Executive Director in writing within seven (7) days of the happening of the following events:

- (a) any change in the permit holder's address or telephone number or other contact information;
- (b) the sale, transfer, or termination of the business, if the permit is in the name of the business;
- (c) any assignment, howsoever caused, of the ROW patio permit.

(2) In the event of the transfer of a ROW permit, the new ROW permit holder is required to re-apply for a new ROW permit before the start of the next season as a first-time applicant.

15. Every ROW patio permit holder shall ensure that the ROW patio is constructed and erected as approved by the Executive Director and as set out in the ROW patio permit, and any proposed changes are subject to the approval of the Executive Director.

16. No person shall construct, erect, or operate a patio of a type not permitted in a ROW patio permit or beyond the time period indicated in a ROW patio permit issued under this by-law.

17. No permit holder shall fail to comply with conditions imposed by the Executive Director in a ROW patio permit issued under this by-law.

18. The Executive Director may approve any alteration of the surface of the Site occupied by a ROW patio, and the permit holder shall restore the Site to its former condition or to a condition acceptable to

the Executive Director where the ROW patio will no longer operate in the same location in the following year.

19. (1) Any damage to the Site caused by a ROW patio will be repaired by the permit holder at the permit holder's expense, to the satisfaction of the Executive Director.

(2) If the work required to repair damage to the Site referred to in subsection (1) is not performed by the permit holder to the Executive Director's satisfaction, the work may be undertaken by the SSMA at the permit holder's expense. The SSMA will seek restitution through all means available.

20. A ROW patio permit holder is not entitled to any special or additional site maintenance and the owner is responsible for cleaning the ROW patio area, including litter, plant debris, snow, and ice removal.

21. The ROW patio permit holder shall ensure that, where liquor is served, the permit holder and the ROW patio comply with the Liquor License Act and the applicable requirements of the Alcohol and Gaming Commission of Ontario, including those concerning the delineation of the perimeter of the ROW patio.

23. The ROW patio permit holder shall ensure that the perimeter of the patio is delineated with an item that is cane detectable at the leading edge, trailing edge, and every 3m, except for café seating patios.

24. Visual clearance through a ROW patio shall be maintained at least 70% transparency and no more than 30% opacity for all sides during the entire period of the patio's operation.

25. No ROW patio permit holder shall sell or offer for sale on the patio any goods, wares or merchandise other than food or drink for consumption on the patio.

26. No ROW patio permit holder shall cook food or permit the cooking of food on the ROW patio. Applicants may apply to the Executive Director for an event specific exemption.

27. No ROW patio permit holder shall use any electrical or water utilities of the SSMA without first seeking approval of the Executive Director. If approved, applicant will incur the cost to provide said utilities prior to the start of the season.

28. No ROW patio permit holder shall locate items outside the permitted ROW patio area at any time, including audio visual equipment, signs, flags, umbrellas, planters, and rope and stanchion systems.

29. No ROW patio permit holder shall use any streetscaping elements for the purpose of attaching any fixtures, equipment, items, lighting or furniture prior to asking Executive Director for approval.

30. No ROW patio permit holder shall place umbrellas such that they overhang the pedestrian clearway at a height of less than 2.2M/7.2ft, and such umbrellas must be closed during rain events and not cause water to drip onto the pedestrian clearway.

31. The ROW patio permit holder shall comply at all times with this by-law, commitments made in ROW patio application, any other applicable federal and provincial legislation or regulations and any applicable City By-laws.

## **WAIVER OF FEES**

32. The Executive Director is authorized to waive the applicable fee ROW patio fee set out in Schedule "A" in respect of a ROW patio that abuts a section of the Site that is undergoing reconstruction, for the period during which the site reconstruction activities are taking place.

## **ROW PATIO AND CAFÉ SEATING PATIO REGULATIONS**

33. Live entertainment is permitted within a ROW Patio (excluding café seating patio). Live entertainment must not interfere with the operation of other patios, other commercial activities, special events, and the pedestrian experience of the Site.

34. Due to the uniqueness of the site, a ROW patio (excluding Café seating) may exceed the existing frontage of the applicant's premises with permission of the Executive Director so long as the ROW Patio does not interfere with the operation of other patios, other commercial activities, and the pedestrian experience of the Site. Applicant must provide written permission of the adjacent or abutting property owner to the satisfaction of the Executive Director.

35. Café seating patio shall not exceed the existing frontage of the applicant's premises without the written permission of the adjacent or abutting property owner, and only to the satisfaction of the Executive Director.

36. No ROW patio permit holder shall place umbrellas on a patio such that they overhang the pedestrian clearway at a height of less than 2.2M/7.2ft.

37. No ROW patio permit holder shall place retractable awnings, canopies, structures, flags, tents, umbrellas, or planters outside the area of the patio.

## **CAFÉ SEATING PATIO**

38. No more than two ROW patio permits for café seating patios shall be issued for the same premises.

39. The holder of a ROW patio permit for a café seating, or anyone on their behalf, shall not alter the Site surface.

40. Café seating for a café seating patio:

(a) shall be removed and stored on private property when not in use or, if in use, then at the earlier of the end of the business day or 11 p.m. of the same day;

(b) shall not use a platform or platforms of any type;

(c) shall not place tables and chairs in any location other than against the building wall face;

(d) may not be attached to any object; and

(e) shall be removable at all times.

## **SMOKING REGULATIONS**

41. (1) The holder of a ROW patio permit shall post a sign indicating that smoking is not permitted in a prominent and visible position within the permitted area.

(2) The holder of a ROW patio permit shall ensure that smoking is not permitted within the area.

(3) The holder of a ROW patio permit shall ensure that no ashtrays are placed or allowed to remain in place within the permitted area.

(4) The holder of a ROW patio permit shall ensure that no one uses a water pipe within the permitted area.

(5) The holder of a ROW patio shall not, within the permitted area, display or permit to be displayed, a water pipe or component of a water pipe that contains or has on it a smoking product, residue of a smoking product, charcoal, or liquid that smoke or gases may pass through prior to being inhaled.

(6) The holder of a ROW patio permit shall ensure that no one uses an electronic cigarette and other like devices within the area.

### **MODIFICATION AND REVOCATION**

42. (1) The Executive Director is authorized to modify or to revoke a ROW patio permit issued under this by-law where:

(a) the permit was issued in error;

(b) the permit was issued on false, misleading, mistaken or incorrect information;

(c) the holder of such a permit fails to maintain and keep all related items in proper repair to the satisfaction of the Executive Director;

(d) the holder of such a permit fails to abide by the conditions as laid out in the Patio Holder Commitment to Quality;

(e) the holder of such a permit fails to abide by the promised conditions as submitted in the Patio Holder's application; or

(f) there are reasonable grounds to believe that the ROW patio for which the permit was issued:

(i) poses a danger to the health and safety of any person;

(ii) poses a danger to property;

(iii) is not in the public interest;

(iv) is not in the interest of the SSMA; or

(v) is in contravention of this by-law or of a ROW patio permit issued under this by-law, including any conditions of such permit.

43. A ROW patio permit may be revoked at any time by the Executive Director if the SSMA, City, or a public utility wishes to make use of that part of the highway on which it is situated, and the permit holder shall remove all items within the timeframe stipulated by the Executive Director.

44. The Executive Director shall immediately notify the permit holder of the revocation of the permit pursuant to Section 54.

45. The permit holder for a ROW patio shall have no claim against the SSMA or City for any loss or damage arising from the revocation of the permit.

#### **REMOVAL OF UNAUTHORIZED ROW PATIOS**

46. (1) Where a ROW patio is unauthorized under this by-law or does not comply with the requirements of the ROW patio permit issued under this by-law, the Executive Director may give notice in writing to the operator or the permit holder of the patio, and the property owner of the property to which the ROW patio relates, as the case may be, to forthwith remove the unauthorized or non-compliant patio and to reinstate the Site to its former condition at the property owner's or permit holder's own expense.

(2) If the notice referred to in subsection (1) is not complied with within five (5) days from the date that notice is sent, the Executive Director may remove the ROW patio, and reinstate the site at the owner's cost, in addition to the fees in Schedule "A" of this by-law.

#### **ENFORCEMENT**

47. The Executive Director is responsible for the administration and enforcement of this by-law.

48. (1) The Executive Director may, at any reasonable time, enter upon or into any property for the purposes of an inspection to determine:

(a) compliance of the ROW patio to this by-law;

(b) whether the ROW patio has been constructed or erected, or is operated or maintained in compliance with:

(i) this by-law;

(ii) a condition of a ROW patio permit issued under this by-law; or

(iii) a notice provided under this by-law; and

(c) if a ROW patio is unsafe.

(2) The Executive Director may, for the purposes of an inspection under subsection (1):

(a) require the production, for inspection, of documents or things relevant to the inspection;

(b) inspect and remove documents or items relevant to the inspection for the purposes of making copies or extracts;

(c) require information from any person concerning a matter related to the inspection; or

(d) alone, or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purpose of the inspection.

(3) No person shall hinder or obstruct or attempt to hinder or obstruct the Executive Director, a municipal law enforcement officer or a police officer in the discharge of his duties under this by-law or any other Municipal, Provincial or Federal rules and regulations.

(4) A ROW patio is unsafe for the purposes of clause (c) of subsection (1) if:

(a) it is in a condition that could be hazardous to the health or safety of any person; or

(b) it is located in a manner so as to cause an obstruction or to be hazardous to the health or safety of any person.

#### **OFFENCES AND PENALTIES**

49. Any ROW patio permit holder who contravenes any of the provisions of this by-law is guilty of an offence.

50. Any ROW patio permit holder who hinders or obstructs a person lawfully carrying out the enforcement of this by-law is guilty of an offence.

51 Any ROW patio permit holder who is found to be in violation of this by-law is subject to a fine of \$250.00 for each day that the offence occurs.

#### **REPEAL**

52. This by-law supersedes any and all rules, regulations, agreements, etc. previously passed and approved by the SSMA Board.

## Schedule "A"

### Outdoor Patio Fees

- Patio Application Review fee \$400.00
- Five Day Event Patio extension fee \$500.00
- Summer Rental (May 1<sup>st</sup> to October 31<sup>st</sup>) \$8.50 per ft<sup>2</sup> (2021 - waived)
- Winter Monthly Rental (November to April) (TBD) per ft<sup>2</sup> (2021 - waived)

**Schedule "B"**



**Patio Holder Commitment to Quality**

The Sparks Street Mall Authority (SSMA) is committed to creating a safe and inviting pedestrian experience for its visitors to enjoy. Public amenities such as fully serviced patios play a significant role in achieving this goal. In partnership with our patio holders, we can become the premiere destination in Ottawa for experiential outdoor dining.

As a patio holder in good standing with the SSMA, I commit to:

- Providing a clean, welcoming, well-maintained, and safe environment for all customers and visitors to Sparks Street
- Providing all customers and visitors to Sparks Street with the highest level of service
- Maintaining the hours of operations as agreed to with the SSMA
- Keeping the Sparks Street office informed of all programming elements taking place on the patio
- When at full capacity, encouraging customers to visit other establishments on Sparks Street
- Abide by all terms and conditions in Sparks Street Patio Rite of Way By-Law

The SSMA reserves the right to issue warnings, fines and/or cancel this lease agreement for reasons that may be detrimental to the SSMA's goodwill, reputation, and /or goals of the organization, including contravention of the principles listed above.

IN WITNESS WHEREOF, the SSMA and the Contractor agreeing to abide by the terms above have signed this Patio Holder Commitment to Quality through duly authorized representatives.

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**Establishment:** \_\_\_\_\_

Name: \_\_\_\_\_ Position: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Sparks Street Mall Authority**

**Kevin McHale**, Executive Director

Signature: \_\_\_\_\_ Date: \_\_\_\_\_



## Schedule "C"

### Enforcement Guidelines

#### **Safety violations**

1. Two warnings (written or verbal)
2. Fine(s)
3. Removal of patio

#### **Noise violations**

1. Two warnings
2. Reduction of hours
3. Fine(s)
4. Removal of patio

#### **Failure to Meet Design Standards as Patio holder agreed to**

- Two warnings (written or verbal)
- Fine(s)
- Removal of patio