Encroachments on City Highway By-law No. 2003 - 446

A by-law of the City of Ottawa to regulate encroachments on City highways.

The Council of the City of Ottawa enacts as follows:

DEFINITIONS

1. For the purpose of this by-law,

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

   “boulevard” means all parts of the highway save and except any roadway, shoulder or sidewalk, and “outer boulevard” means that part of the highway lying between any sidewalk and the roadway or the near edge of the shoulder where such exists;

   “canopy” means any canopy, marquee, awning or similar fixed device, used to cover or shelter a walkway, entrance or front of a building;

   “City” means the municipal corporation of the City of Ottawa or the geographic area as the context requires;

   “commercial production filming” means filming equipment, vehicles and other articles used in the production of a commercial film and directly related to the activity;

   “customer service box” means either a publication distribution box or a courier drop box;

   “courier drop box” means an unattended box into which any member of the general public may deposit letters or parcels to be delivered by courier companies;

   “encroachment” means anything man-made that encroaches on a highway whether below, at, or above the highway surface and includes,
   (a) an aerial encroachment;
   (b) a surface encroachment; and
   (c) a sub-surface encroachment;

   “encroachment fee” means the fee that is based on the compensation rate for the occupied area;

   “General Manager” means the General Manager of the City’s Department of Transportation, Utilities and Public Works 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;

   “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;

“permanent aerial encroachment” means an encroachment which is at least two and one-half metres (2.5 m) above the elevation of the centreline of the road immediately facing the encroachment and which meets current standards of the Canadian Safety Association and the Ontario Electrical Safety Code;

“permanent sub-surface encroachment” means an encroachment under the highway surface and includes, but is not limited to, an areaway, tunnel, vault, pipe, storage tank or duct;

“permanent surface encroachment” means an encroachment on the surface of a highway or above a highway, but less than two and one-half metres (2.5 m) above the elevation of the centreline of the roadway immediately facing the encroachment and includes, but is not limited to, a bay window, wall, foundation, entrance shelter, fire escape, chimney, fence, hedge, ornamental rock garden or flower bed, community gate or sign, and which meets current standards of the Canadian Safety Association and the Ontario Electrical Safety Code;

“processing fee” means the fee for technical review and assessment of the permit application;

“publication distribution box” means an unattended box for printed, written, photographic or other published material;

“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;

“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;

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

“temporary aerial encroachment” means an encroachment, the lowest portion of which is at least two and one-half metres (2.5 m) above the elevation of the highway immediately below the encroachment and which,
(a) is withdrawn for at least eight (8) hours in every twenty-four (24) hour period; or
(b) is used only to facilitate the construction, repair, renovation, alteration, maintenance or demolition of a building;

“temporary construction-related encroachment” means a temporary aerial encroachment, a temporary sub-surface encroachment or a temporary surface encroachment;

“temporary miscellaneous encroachment” means a tourist information directory, a tourist information kiosk, a waste receptacle or Christmas decorations;
“temporary sub-surface encroachment” means an encroachment under the highway surface that is used to facilitate the construction, repair, renovation, alteration, maintenance or demolition of a building or is erected in order to comply with this or any other by-law and includes, but is not limited to, a tie back, rock anchor, or other type of support placed under the highway to support an excavation wall;

“temporary surface encroachment” means an encroachment on the surface of a highway, all of which is less than two and one-half metres (2.5 m) above the elevation of the highway immediately below the encroachment, that is used,

(a) to facilitate the construction, repair, renovation, alteration, maintenance or demolition of a building, and includes, but is not limited to, vehicles, materials, equipment, covered sidewalks and hoarding;

(b) for parking a vehicle for the purpose of loading or unloading goods or merchandise at locations where loading and unloading is not permitted by the Traffic and Parking By-law of the City and includes material and equipment;

(c) as a customer service box, tourist information directory, tourist information kiosk or waste receptacle;

(d) as an outdoor patio; or

(e) to facilitate a tourism industry related activity and includes, but is not limited to, vehicles, materials, equipment, commercial filming and tourist information kiosks;

“tourist information directory” means any street furniture consisting of a map of the City, or parts thereof, which provides only directional information and which is cross-referenced for use by the public for ease of locating groups or individual land uses;

“tourist information kiosk” means a portable, attended structure used for selling admission tickets and to provide printed tourist related information to the public, such as, but not limited to, city maps and printed advertisement brochures and which occupies an area of the highway not greater than four square metres (4m²);

“vehicle” includes a motor vehicle, trailer, traction engine, farm tractor, road-building machine, bicycle and any vehicle drawn, propelled or driven by any kind of power, including muscular power, but does not include a motorized snow vehicle or a street car;

“waste receptacle” means a portable and water impermeable container of less than twenty-three kilograms (23 kg) for the sole use of the public to dispose of waste generated from a food premise or from smoking activity.

EXEMPTIONS

2. The provisions of this by-law do not apply to:

(a) lawns and private entrance walkways or private approaches placed or constructed in accordance with the City’s by-laws;

(b) flags and flag-poles located at a height of two and one-half metres (2.5 m) or more above the elevation of the centreline of the roadway immediately facing the flag or flag-pole that are not used for advertising purposes;

(c) existing footings that,

(i) do not encroach on a highway by more than three hundred millimetres (300 mm),

(ii) are at least two and one-half metres (2.5 m) below the highway surface, and

(iii) do not interfere with any public utility;
(d) existing permanent aerial encroachments that encroach by not more than three hundred millimetres (300 mm);
(e) signs authorized by any City by-law;
(f) works, equipment, assets and infrastructure of the City or of an agency of the City or a public utility;
(g) works and equipment of any person performing construction or maintenance operations on a City highway, to the extent that such works are lawfully authorized by any agreement with, or a by-law of, the City; or
(h) individual buildings, structures, sites or related appurtenances designated as properties of cultural heritage value under Part IV or Part V of the Ontario Heritage Act, R.S.O. 1990, Chap. O.18, as amended.

PERMIT REQUIRED

3. (1) No person shall construct, erect or alter an encroachment without first obtaining a permit in accordance with the provisions of this by-law.
(2) Despite subsection (1), no person shall erect a permanent surface encroachment.

4. Despite subsection 3(2), the General Manager may approve the following:
   (a) a permanent surface encroachment that existed prior to the enactment of this by-law; or
   (b) a ramp located in a barrier-free path of travel to and from an entrance to a building.

AUTHORITY OF THE GENERAL MANAGER

5. The General Manager may reject an application for an encroachment on the basis of its potential interference or inconsistency with:
   (a) safety,
   (b) highway maintenance,
   (c) future development, or
   (d) other public uses.

PERMANENT ENCROACHMENTS

PROCEDURE FOR APPLICATION

6. (1) Applications for a permanent encroachment permit shall be made by the owner or a representative of the owner as prescribed by the General Manager and shall be accompanied by,
   (a) a sketch showing the location and dimensions of the encroachment;
   (b) information as to the materials out of which the encroachment has been or will be constructed; and
   (c) the method and extent of its illumination, if any.
(2) If the encroachment is acceptable to the General Manager, the applicant or a representative of the applicant shall then file with the General Manager,
   (a) three copies of a plan certified by an Ontario Land Surveyor showing the location and dimensions of the encroachment and of the adjacent part of the premises to which it is or will be appurtenant, and the location of the lot line, except in the case of a permanent canopy that does not require a building permit and is deemed by the General Manager not to constitute a material alteration to the structure;
   (b) a registerable description of the premises to which the encroachment is or will be appurtenant; and
the non-refundable fee as provided for in Schedule “A” of this by-law.

APPROVAL OF APPLICATIONS

7. In deciding whether to grant approval for a permanent encroachment, the General Manager shall consider the effect of the proposed encroachment on the movement and safety of vehicles and pedestrians, any public service, possible future uses of the highway, and any other factors that, in the opinion of the General Manager, are relevant in the circumstances.

AGREEMENTS

8. When approval is granted pursuant to Section 7, the owner of the premises to which a permanent encroachment is appurtenant shall enter into an agreement with the City, which shall constitute the permit as required in Section 3.

9. The agreement referred to in Section 8 shall be registered by the City against the land to which the encroachment is appurtenant at the applicant’s expense.

GENERAL REGULATIONS

10. A permanent encroachment agreement shall be for a period not exceeding the life of the encroachment, or the life of the appurtenant building or structure.

11. A canopy shall not be constructed or altered with any part of it being closer than one and one-half metres (1.5 m) from the outside limit of the roadway.

12. No permanent encroachment shall be erected in a location that obstructs the view of an official regulatory sign or traffic control signal, or that interferes with the operation of, or the timely maintenance of, any part of the highway or any utility equipment or plant.

13. No person shall construct, alter or continue any permanent aerial encroachment,
   (a) with supports resting on the sidewalk;
   (b) nearer than 2.4 metres to the highway directly below it;
   (c) other than a bridge, any part of which is closer than 0.61 metres from the outside limit of the roadway; or
   (d) which permits rain or water to drop there from directly or indirectly onto the sidewalk or the roadway.

14. The owner of the premises to which a permanent sub-surface encroachment is appurtenant shall at all times maintain and keep the encroachment and the adjacent surface in proper repair at the owner’s expense, in a proper and safe condition for the traffic thereon, and to City standards.

15. If, at any time after the construction of a permanent sub-surface encroachment, the City decides to renew or repair the surface of the highway under which the permanent sub-surface encroachment is located, the owner of the premises to which the permanent sub-surface encroachment is appurtenant shall, upon written notice from the City, renew or repair the surface of the highway at his own expense and to the City’s specifications. If the notice is not complied with within ten (10) days from the date that the notice is sent, the City may renew or repair the highway at the expense of the owner, add the costs to the tax roll, and collect them in the same manner as taxes.

REVOCATION

16. (1) The granting of a permit in respect of a permanent encroachment does not create any vested right in the owner or occupant of the premises to which the encroachment is appurtenant, or in any other person, and the permit may be revoked at any time as hereinafter provided.

(2) The execution of an agreement pursuant to Section 8 in respect of an encroachment does not create any vested right in the owner or occupant of the premises to which the encroachment is appurtenant, or in any other person, and the agreement is always subject to termination by either
party on one month’s notice in writing.

TEMPORARY CONSTRUCTION-RELATED ENCROACHMENTS

PROCEDURE FOR APPLICATION

17. Application for a temporary construction-related encroachment permit shall be made as prescribed by the General Manager and shall be accompanied by,

(a) a sketch or plan showing the location and dimensions of the encroachment, in accordance with the requirements of the General Manager;

(b) the non-refundable fees as outlined in Schedule “B” of this by-law; and

(c) an agreement to indemnify and save harmless the City from any and all claims, demands, causes of action, loss, costs or damages that the City may suffer, incur or be liable for, resulting from the performance of the applicant as set out in the by-law whether with or without negligence on the part of the applicant and the applicant’s employees, contractors and agents.

INSURANCE

18. In addition to the requirements of Section 17, the applicant for a temporary aerial encroachment permit that is an aerial tower crane shall provide a certified copy or other such evidence as is satisfactory to the General Manager and maintain insurance in accordance with the following requirements:

(a) Comprehensive General Liability insurance subject to the limits of not less than $2,000,000 inclusive per occurrence for bodily injury, death and damage to property, including loss of use thereof, in the joint names of the applicant and the City of Ottawa, and containing an endorsement to provide all named insureds with prior notice of changes and cancellations; and

(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; and

(c) a Certificate of Insurance evidencing the above insurance coverage(s) shall be provided to the City prior to the issuance of a permit.

19. The insurance policies referred to in section 18 shall contain an endorsement to provide the City with thirty (30) days prior written notice of cancellation or of a material change that would diminish coverage.

APPROVAL OF APPLICATIONS

20. In deciding whether to grant a temporary construction-related encroachment permit, the General Manager shall consider the effect of the proposed encroachment on the movement and safety of vehicles and pedestrians, any public service, the possible future uses of the highway, and any other factors deemed relevant in the circumstances.

21. A temporary construction-related encroachment permit shall be granted for a period not exceeding three (3) months and may be renewed for further periods not exceeding three (3) months for each renewal.

22. A temporary construction-related encroachment permit may limit the existence of the encroachment to a part of the day only, to specified days, or to times otherwise deemed appropriate in the circumstances by the General Manager.

23. A temporary construction-related encroachment permit is not transferable.

24. Application for renewal of a temporary construction-related encroachment permit shall be made
by presenting the existing permit before its expiry date and accompanied by any fees as per Schedule “B” of this by-law.

REVOCATION

25. The General Manager may revoke a temporary construction-related encroachment permit for non-compliance with this by-law by sending notice of revocation by registered mail to the last known address of the permit holder and the permit shall be considered revoked from the second day after the day of mailing of the notice.

GENERAL REGULATIONS

26. The temporary construction-related encroachment permit holder shall,
   (a) erect and maintain warning devices, barricades and traffic signs where required by the Occupational Health and Safety Act, R.S.O. 1990, chap. O.1, as amended, and the Ministry of Transportation guidelines for highway work operations, as amended;
   (b) post flagmen to direct traffic,
   (c) ensure that the interior of all covered walks at all times have sufficient illumination to ensure safety for pedestrians;
   (d) be responsible for the hooding charges for parking meters not in use and all municipal costs including lost parking meter revenues associated with the encroachment;
   (e) not permit any material to be placed near a catch basin such that the material may enter the sewer; and
   (f) ensure that the encroachment is not constructed, altered or continued so as to obstruct the site of, the free approach to, the installation of, or the use of any City works or the emergency exits from a building.

27. If the permit holder fails to comply with subsection 26 (a) or (b), the General Manager may order the posting of flagmen and the erection and maintenance of any warning devices, barricades and signs at the permit holder’s expense.

TEMPORARY MISCELLANEOUS ENCROACHMENTS

TOURIST INFORMATION DIRECTORIES & TOURIST INFORMATION KIOSKS

PROCEDURE FOR APPLICATION

28. An application for a tourist information directory permit or tourist information kiosk permit shall be made as prescribed by the General Manager together with the following:
   (a) information as to the specified encroachment, the materials to be used, and the method and extent of its illumination, if any;
   (b) a plan showing the location and dimensions of the encroachment, details as to its installation and the location of the street line;
   (c) written confirmation that the proposed tourist information directory or tourist information kiosk conforms to the provisions of an applicable City Signs by-laws;
   (d) an application for a road cut permit, where a road cut permit is required by the City’s Road Activity By-law 2003-445; and
   (e) the fee for a tourist information kiosk as prescribed in Schedule “B” of this by-law.

APPROVAL OF APPLICATIONS

29. If the proposed tourist information directory or tourist information kiosk conforms with the provisions of this by-law, the General Manager shall approve the application and grant the permit provided that,
(a) the applicant has obtained any permits and approvals required by all City by-laws; and
(b) the encroachment will not obstruct or interfere with public travel, any public service, or street maintenance operations.

30. The owner of the tourist information directory shall provide the General Manager with satisfactory proof of a maintenance and servicing agreement or program for the tourist information directory and, if illuminated, a copy of the agreement to pay the electricity rates to the appropriate utility.

GENERAL REGULATIONS

31. A permit for a tourist information directory or tourist information kiosk may be granted for a period of twenty-four (24) months or less and may be renewed for such further twenty-four (24) month period as may be required.

32. The permit holder for a tourist information directory or tourist information kiosk shall ensure that the structure,
(a) is kept at all times in a clean and sanitary condition;
(b) is maintained and kept in repair;
(c) is self-supporting;
(d) is not attached or connected to any equipment or pole erected or maintained by the City or a utility company or both;
(e) is not placed so as to obstruct or interfere with passenger ingress to or egress from or from a bus at an authorized public bus stop;
(f) is placed a minimum distance of 0.61 metres from the outside limit of the highway curb where a concrete curb is provided, or a minimum of 3.05 metres where a concrete curb is not provided;
(g) is placed in a manner that allows a minimum unencumbered sidewalk width as defined in Schedule “C” of this by-law;
(h) does not interfere in any way with highway cleaning or the clearing of snow or ice from the highway; and
(i) does not constitute a source of danger to the public or impede the flow of traffic.

33. The holder of a permit for a tourist information kiosk shall keep the permit posted in a prominent position on the premises for which the permit is issued so as to be visible to the public.

WASTE RECEPTACLES

PROCEDURE FOR APPLICATION

34. An application for a waste receptacle permit shall be made without fee and as prescribed by the General Manager together with the following;
(a) information as to the specified encroachment, the materials to be used and the manufacturer;
(b) a plan showing the location and dimensions of the encroachment and the location of the street line; and
(c) proof of licence that the premises to which the proposed encroachment will be appurtenant is a food premise and requires a waste receptacle.

APPROVAL OF APPLICATIONS

35. If the proposed waste receptacle encroachment permit conforms with the provisions of this by-law, the General Manager shall approve the application and grant the permit provided that,
(a) the applicant has obtained any permits and approvals required by other City by-laws;
(b) the applicant is the current holder of a license issued by the City for the food premise;

(c) to the General Manager’s satisfaction, the encroachment will not obstruct or interfere with public travel, any public service or street maintenance operations; and

(d) the encroachment is located on the roadway within the property lines as extended into the roadway such that there is a minimum width of 2.4 metres for pedestrian travel.

GENERAL REGULATIONS

36. A maximum of one waste receptacle shall be provided for each food premise.

37. The encroachment permit for a waste receptacle is not transferable.

38. The owner of the waste receptacle shall dispose of the contents of the waste receptacle as often as necessary, and keep the area around the waste receptacle clean and free of waste.

39. A permit for a waste receptacle may be granted for a period of twenty-four (24) months or less and may be renewed for such further twenty-four (24) month period as may be required.

CHRISTMAS DECORATIONS

PROCEDURE FOR APPLICATIONS

40. (1) An application for Christmas decorations shall be made by letter to the General Manager requesting permission, without fee, and accompanied by a plan indicating the location and nature of the encroachment.

(2) This encroachment may be granted by the General Manager for the period from the 2nd day of November to the 15th day of the following January.

(3) The approval is subject to the approval of the public utility to which the pole belongs.

REVOCATION – TEMPORARY MISCELLANEOUS ENCROACHMENTS

41. (1) A temporary miscellaneous encroachment permit does not create any vested right in the owner or occupant of the premises to which the encroachment is appurtenant, or in any other person, and the permit may be revoked at any time by the General Manager.

(2) The granting of a permit in respect of a temporary miscellaneous encroachment does not create any vested right in the owner or occupant of the premises to which the encroachment is appurtenant, or in any other person, and the permit is always subject to termination by either party at one month’s notice in writing.

42. (1) In the case of a waste receptacle, tourist information directory and a tourist information kiosk, the General Manager may send a notice by registered mail or by personal service to the permit holder requiring complete removal of the encroachment if the City or any public utility proposes to make use of the area of the highway covered by the permit, or if the encroachment is not maintained in good condition, and the notice shall specify that the encroachment permit is revoked. The permit holder shall restore the street to its former condition at the permit holder’s expense, and the City shall not be responsible for any losses due to the removal.

(2) Where a notice has been sent pursuant to subsection 42(1) hereof, and the requirements have not been complied with, the General Manager may cause the work to be done at the permit holder’s expense; and the City’s expenses for the removal of a waste receptacle, tourist information kiosk or a tourist information directory from the highway shall be as in accordance with Schedule “B” of this by-law.

CUSTOMER SERVICE BOX ENCROACHMENTS

43. No person shall place a customer service box on any highway without first obtaining a permit to do so.

PROCEDURE FOR APPLICATION
44. An application for a customer service box permit shall be made as prescribed by the General Manager and shall be accompanied by the following:
   (a) a statement as to the number of boxes to be covered by the permit;
   (b) the designation of a location where boxes bearing the permit holder’s identification and not conforming to this by-law may be delivered if removed from the highway; and
   (c) a non-refundable permit fee as described in Schedule “B” of this by-law.

APPROVAL OF APPLICATIONS

45. No customer service box permit shall be issued until the fees payable under Section 44 have been paid.

46. A customer service box permit shall be for a period of two (2) years or less with an expiry date of June 30.

47. The General Manager shall issue with the permit a validation sticker for each customer service box covered under the permit.

48. The customer service box permit holder shall ensure that each validation sticker is affixed on the upper right-hand corner of the doorframe in the front of each publication distribution box, and in the case of a courier drop box on the upper right-hand corner in the front of each courier drop box.

INDEMNIFICATION

49. The applicant for a customer service box encroachment permit shall indemnify and save harmless the City from any and all claims, demands, causes of action, loss, costs or damages that the City may suffer, incur or be liable for resulting from the performance of the applicant as set out in this by-law, whether with or without negligence on the part of the applicant, the applicant’s employees, directors and agents.

INSURANCE

50. The applicant for a customer service box encroachment permit shall provide and maintain insurance in accordance with the following requirements:
   (a) Commercial General Liability insurance subject to limits of not less than $2,000,000 inclusive per occurrence for bodily injury, death and damage to property including loss of use thereof, in the name of the applicant and naming the City as an additional insured thereunder, 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; and
   (c) a Certificate of Insurance evidencing the above insurance coverage shall be provided to the City prior to the issuance of a permit.

51. The insurance policies referred to in Section 50 shall contain an endorsement to provide the City with thirty (30) days prior written notice of cancellation or of a material change that would diminish coverage.

PUBLICATION DISTRIBUTION BOXES

52. The public distribution box permit holder shall ensure that each compartment of the publication distribution box is equipped with a self-closing door.

53. No printed or advertising matter on the publication distribution box is permitted other than,
   (a) the name of the publication being offered;
54. A publication distribution box shall be no more than one hundred and thirty-five centimetres (135 cm) high, fifty centimetres (50 cm) wide and fifty-one centimetres (51 cm) deep.

COURIER DROP BOXES

55. The courier drop box permit holder shall not have any printed or advertising matter on the courier drop box other than,
   (a) the name of the courier company;
   (b) instructions for the use of the courier drop box; and
   (c) delivery options.

56. A courier drop box shall not be placed in areas other than,
   (a) those zoned “commercial” or “industrial”; and
   (b) on asphalt, concrete or interlocking brick surfaces.

57. A courier drop box shall be no more than one hundred and fifty-eight centimetres (158 cm) high, sixty-six centimetres (66 cm) wide, and sixty-nine centimetres (69 cm) deep.

GENERAL REGULATIONS

58. (1) Where a customer service box has been placed in violation of this by-law or where in the opinion of the General Manager it creates a safety or transportation conflict, the City will provide forty-eight (48) hours notification to the owner to move the customer service box. If not moved within that period of time, the City may move the customer service box at the owner’s expense.

(2) The expenses for the removal of a customer service box from the highway shall be in accordance with Schedule “B” of this by-law.

59. The customer service box permit holder shall at all times keep the customer service box in a clean and sanitary condition and free of posters, signs, and graffiti.

60. All customer service boxes shall be self-supporting and shall not be,
   (a) attached to any City works including, but not limited to, a traffic control device, traffic signal pole, street name sign pole, or any other post or pole or other equipment erected and maintained by the City or public utility company or both;
   (b) placed so as to create a visibility obstruction for a vehicle or pedestrian;
   (c) placed so as to obstruct or interfere with passenger ingress to or egress from a bus at an authorized public bus stop area;
   (d) placed so as to create a safety hazard or physical obstruction for a vehicle or pedestrian;
   (e) placed so as to interfere in any way with the work of cleaning a highway or clearing or removing snow or ice from a highway or a highway maintenance operation;
   (f) placed within ten metres (10 m) of an intersection as measured from the edge of the curb or curb extension; or
   (g) placed on a traffic narrowing structure.

61. A customer service box on an outer boulevard shall be removed on the 15th day of November until the 15th day of April in the following year.

62. A customer service box on a sidewalk shall be placed so that the front of the box is parallel to the direction of the sidewalk or pedestrian flow, and where there is more than one customer service box in a row, the front surfaces of the boxes must line up with one another, and provide for an
unencumbered sidewalk width as defined in Schedule “C” of this by-law.

OUTDOOR PATIO ENCROACHMENTS

PROCEDURE FOR APPLICATION

63. (1) The applicant shall file an application for an outdoor patio encroachment permit in such form and detail as the General Manager may prescribe from time to time, which application shall include the following:

(a) a description of the proposed encroachment and of all materials to be used in the construction and operation of the encroachment and including all appurtenances such as canopies, umbrellas, tables, chairs, wrought-iron railings and half walls;

(b) a plan showing the location and dimensions of the encroachment, the premises to which the encroachment will be appurtenant and the location of all relevant lot lines and existing surface features; and

(c) fees in accordance with Schedule “B” of this by-law.

(2) A permit for a patio commences on the first day the encroachment is used in the current year and expires on April 14 of the following year, with a fee that is non-refundable, calculated for the number of days from the permit start date to September 30.

APPROVAL OF APPLICATIONS

64. (1) The General Manager shall receive, investigate and consider all requests for outdoor patio encroachment permits, and refuse approval or approve with such changes and conditions as are deemed necessary in the circumstances.

(2) The General Manager shall approve or refuse approval of requests for the appurtenances referred to in paragraph 57(1)(a) with such changes and conditions as are deemed necessary in the circumstances.

(3) Issuance of a permit for an outdoor patio is conditional upon the General Manager’s approval of its proposed location within the highway, and of its dimensions, and such approval shall be based on the following considerations:

(a) engineering judgment;

(b) the required minimum unencumbered sidewalk width required to accommodate pedestrian volumes as determined in Schedule “C” of this by-law and any other circumstance tending to restrict the free movement of pedestrians;

(c) the outdoor patio must not obstruct or interfere with public travel, any public service, or maintenance operations, and shall not create any public safety hazards, including sight obstructions; and

(d) where there is no sidewalk, all portions of an outdoor patio that are above grade shall be installed at least one-half metre (0.5 m) from the edge of the curb.

65. A new outdoor patio shall conform to the land use separation distance of thirty metres (30 m) from any property zoned for residential use.

66. An application for an encroachment permit for an outdoor patio with a proposed separation of thirty (30) to ninety (90) metres from a residential zone will be processed as follows:

(a) residents and residential property owners within the thirty (30) to ninety (90) metres distance will be notified by letter of the proposed encroachment, and provided with a copy of the proposed plans for the outdoor patio, with the following conditions:

(i) comments from residents and residential property owners must be received by the General Manager within fifteen (15) working days of the letter’s receipt; and

(ii) the Ward Councillor shall be informed of the application.
(b) if no objections to the proposed outdoor patio are received, the General Manager may issue an encroachment permit.

(c) if there are objections to the proposed outdoor patio, the General Manager shall advise the applicant of the objection(s) and allow the applicant time to meet with those persons objecting to determine if the objections can be resolved.

(d) on receipt by the General Manager of written confirmation from the objectors that they no longer object, a permit may be issued.

(e) where objections remain, the General Manager shall report to the City’s Transportation and Transit Committee, which shall approve or refuse approval of the encroachment permit.

(f) the Transportation and Transit Committee decision shall be final.

67. (1) The City will review any noise related complaints by property owners or tenants of residentially zoned dwellings located within the ninety metre (90 m) perimeter of an outdoor patio, and will advise the outdoor patio operator of the complaints.

(2) The permit holder shall have ten (10) days within which to improve the situation.

(3) Where there are cases of unresolved noise complaints, the General Manager may revoke the permit.

EFFECT OF APPROVAL

68. Approval of an outdoor patio encroachment permit by the General Manager or by the City’s Transportation and Transit Committee does not constitute approval for the operation of the outdoor patio, and it remains the responsibility of the applicant to satisfy any other licensing and legal requirements for its operation.

RENEWAL

69. An applicant shall apply for a temporary encroachment permit for each year the applicant wishes to operate an outdoor patio.

INDEMNIFICATION

70. The applicant shall indemnify and save harmless the City from any and all claims, demands, causes of action, loss, costs or damages that the City may suffer, incur or be liable for resulting from the performance of the applicant as set out in this by-law whether with or without negligence on the part of the applicant, the applicant’s employees, directors and agents.

INSURANCE

71. The applicant shall provide and maintain insurance in accordance with the following requirements:

(a) Commercial General Liability insurance subject to limits of not less than $2,000,000 inclusive per occurrence for bodily injury, death and damage to property including loss of use thereof. Such insurance shall be in the name of the applicant and shall name the City as an additional insured thereunder; 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; and

(c) a Certificate of Insurance evidencing the above insurance coverage(s) shall be provided to the City prior to the issuance of a permit.

72. The insurance policies referred to in Section 71 shall contain an endorsement to provide the City with thirty (30) days prior written notice of cancellation or of a material change that would diminish
REVOCATION

73. (1) An outdoor patio encroachment permit may be cancelled at any time if the City or a public utility wishes to make use of that part of the highway on which the outdoor patio is situated and the permit holder shall remove the encroachment within the time stipulated by the General Manager.

(2) An outdoor patio encroachment permit may be cancelled at any time if the holder of such a permit fails to maintain and keep in proper repair the outdoor patio to the satisfaction of the General Manager.

(3) The permit holder for an outdoor patio encroachment shall have no claim against the City for any loss or damage arising from the cancellation of the permit.

(4) The permit holder for an outdoor patio encroachment shall comply with the provisions of all City by-laws and any breaches of said by-laws at or in the premises to which this permit applies may result in the revocation of the permit.

GENERAL REGULATIONS

74. Between November 15 and March 31 an outdoor patio shall be removed when not in use, or if in use then at the earlier of the end of the business day or two o’clock in the forenoon (2:00 A.M.) of the next day following