

## Report to Council

<b>Report Title:</b>	Sidewalk Patio Application and Requirements		
<b>Prepared By:</b>	Sonya Watson, Chief Administrative Officer, Gregg Furtney Director of Operations and Cally Mann, Municipal Executive Coordinator		
<b>Department:</b>	Administration		
<b>Date:</b>	June 23, 2020		
<b>Report Number:</b>	CAO2020-12	<b>File Number:</b>	C11AD
<b>Attachments:</b>	Encroachment Applications for Use of Sidewalks Adjacent to County Roads Sidewalk Patio Application and Requirements		

### Recommendation:

That the Council of the Municipality of Brockton hereby approves Report Number CAO2020-12 – Sidewalk Patio Application and Requirements, prepared by Sonya Watson, Chief Administrative Officer, Gregg Furtney Director of Operations and Cally Mann, Municipal Executive Coordinator and in doing so approves bringing a By-Law forward to adopt the Sidewalk Patio Requirements and Application Process as outlined and further approves the inclusion of a \$100 yearly Sidewalk Patio Fee in the Consolidated Fees By-Law; and further that any municipal fees for sidewalk patios in Brockton be waived for 2020 to support business recovery efforts.

### Report:

#### Background:

As small businesses adjust to the “new normal” and re-opening with continued physical distancing and other health protocols due to COVID-19, many restaurant and pub establishments will need additional space for their operations. With the arrival of summer, sidewalk and on-street patios can provide businesses with expanded space to accommodate patrons safely, while also contributing to vibrant and active commercial districts and streets. The intention in reviewing sidewalk patio application and requirements is to ensure that universal accessibility, public safety and streetscape experience is enhanced and not negatively impacted by the introduction of a patio.

The attached Sidewalk Patio Requirements and Application Process document will outline the design requirements for patios within the public right of way. These standards apply to the establishment of patios throughout the entire Municipality, regardless of which road they are on. These guidelines do not apply to patios located on private property. In the event that the Sidewalk Patio Application is located on a Bruce County roadway (Durham Street), the application is sent to Bruce County’s Transportation and Environmental Services Department for the Encroachment Agreement, which does include a municipal review. Attached is

Bruce County's Encroachment Application for reference. It should be noted that Bruce County's application does come at a cost of \$400 for the application (\$300 of which is a refundable deposit).

**Analysis:**

Sidewalk patios can activate the street and create a more vibrant urban environment as well as provide restaurants with additional tables to ensure appropriate social distancing. By providing opportunities for outdoor dining, the Municipality, and the businesses within it, can encourage the use and enjoyment of the public realm

Utilizing the parking spaces directly in front of the restaurants will allow for more patrons to visit the establishment and contribute to the economic sustainability of Brockton's businesses as the restaurant reopens to the public. Staff have reviewed the Sidewalk Patio requirements from other municipalities and have created the attached Sidewalk Patio Requirements and Application Process for Councils approval.

Spruce the Bruce is also providing grants for installation of patios up to \$4,000 per application for:

- installation of a sidewalk, rooftop or back patio
- COVID-19 patio adaptations, including expansions to support physical distancing
- Permanent exterior ramps
- Architectural feature improvements, amendments and additions

Staff have been working with and supporting local restaurants on applying for this funding.

The Municipality currently has a \$250.00 Fee for Encroachment Agreements. This would be applicable for patios encroaching on the Municipal Road allowance. We propose a \$100 yearly fee per application be included in the Consolidated Fees By-Law for renewals. However, we also recommend the fee be waived for 2020 to support local initiatives for business recovery.

**Sustainability Checklist:**

What aspect of the Brockton Sustainable Strategic Plan does the content/recommendations in this report help advance?

- |                                                                           |     |
|---------------------------------------------------------------------------|-----|
| • Do the recommendations help move the Municipality closer to its Vision? | Yes |
| • Do the recommendations contribute to achieving Cultural Vibrancy?       | Yes |
| • Do the recommendations contribute to achieving Economic Prosperity?     | Yes |
| • Do the recommendations contribute to Environmental Integrity?           | N/A |
| • Do the recommendations contribute to the Social Equity?                 | N/A |

**Financial Impacts/Source of Funding:**

- Do the recommendations represent a sound financial investment from a sustainability perspective? Yes

Staff time to review applications, prepare the Encroachment Agreement and work with proprietors are the costs associated with this initiative.

**Reviewed By:**



**Trish Serratore, Chief Financial Officer**

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**Respectfully Submitted by:**



**Sonya Watson, Chief Administrative Officer**



**Gregg Furtney Director of Operations**

**Cally Mann, Municipal Executive Coordinator**

## Encroachment Applications for Use of Sidewalks Adjacent to County Roads

1. Applicant applies with written request including sketch and specifications to County for Encroachment permit and submits completed application form.
2. County to review application, comment.
3. County forwards permit application to municipality.
4. Municipality reviews application to ensure their policies/standards and AODA requirements are met.
5. Municipality returns application to County with their approval or any comments.
6. County reviews application, comments and requests permit fee, insurance and WSIB certificate if people working on row.
7. Upon receipt of required documents, County approves and sends approved application to the applicant and copy the municipality for their information.

### Indemnity & Insurance Requirements – Sidewalk Encroachments

**NOTE:** The following should be applied only to major encroachments into the County of Bruce right-of-way such as sidewalk cafes, seating areas, other large seasonal fixtures.

1. The County of Bruce issue a Permit (countersigned by the applicant) and that the Permit include the following Indemnity clause:

*The Permit Holder shall to the fullest extent permitted by law, hold harmless, defend at its own expense, and indemnify the Corporation of the County of Bruce its officers, employees, agents, and volunteers, (the County) and the [INSERT MUNICIPAL NAME] its officers, employees, agents, and volunteers, (the Municipality) against any and all liability, claims, losses, damages, or expenses, including reasonable attorney's fees, arising from all acts or omissions of the Permit Holder or its officers, agents, or employees by reason of, resulting from, or otherwise related to, either directly or indirectly, the presence or operation of the sidewalk encroachment; excluding, however, such liability, claims, losses, damages, or expenses arising from the County's sole negligence or willful acts.*



2. Insurance requirements:

- a) The Permit Holder must have Commercial General Liability Insurance including but not limited to bodily injury including death, personal injury, property damage, tenants legal liability and cross-liability/severability of interest provisions in the amount of Two Million Dollars (\$2,000,000.00) per occurrence with a property damage deductible not to exceed \$1,000 or as agreed to by Permit Holder and name The Corporation of the County of Bruce and the [INSERT MUNICIPAL NAME] as an Additional Insureds.
- b) Applications proposing the use of outdoor heating device(s) may be required to have a higher amount of Commercial General Liability Insurance. The presence of heating devices/systems may present additional risk factors. The additional coverage amount will be determined on a case-by-case basis that takes into account the nature of the proposed heating devices/systems and its proposed location.

Applications proposing the use of outdoor heating devices must have stated on their COI that outdoor heating devices and any damages arising there from are included under the policy coverage.

- c) The Commercial General Liability Policy shall contain an endorsement to provide the County of Bruce with (30) days prior written notice of cancellation.
- d) Provide to the County of Bruce, prior to the issuance of a Permit, a Certificate of Insurance (COI) prepared by their insurer or broker.
- e) The COI must be in the business's full legal name and must match the name in the Articles of Incorporation, Master Business Licence or similar document and must match the name in the Permit
- f) The Certificate holder portion of the COI must read exactly as follows:

The Corporation of the County of Bruce  
Attention: Corporate Services Department  
30 Park St, Box 1633  
Walkerton, ON N0G 2V0  
and

Corporation of the [INSERT MUNICIPAL NAME]  
Insert Municipal Address



- g) Liquor Liability Insurance. Any Permit Holder involved in the sale or furnishing of alcoholic beverages shall also maintain Liquor Liability Insurance with a minimum per occurrence limit of not less than Two Million Dollars (\$2,000,000.00) per occurrence. The County and the [INSERT MUNICIPAL NAME] shall be named as Additional Insured on the Liquor Liability Insurance policy.
- h) The Liquor Liability Insurance Policy, if required, shall contain an endorsement to provide the County of Bruce with (30) days prior written notice of cancellation.
- i) All insurance policies/coverage shall contain a Cross Liability and Severability of Interest clauses.
- j) The Permit Holder shall maintain the required insurance coverage during the term of the Permit. The County of Bruce may cancel a Permit for failure to maintain or provide the required insurance coverage.
- k) The COI and insurance coverage shall be satisfactory to the County of Bruce Corporate Service Department. The County of Bruce may request the Permit Holder provide certified copies of the applicable insurance policy/policies.

## Definitions

**CERTIFICATE OF INSURANCE (COI):** a COI is issued by an insurance company or broker. The COI verifies the existence of an insurance policy and summarizes the key aspects and conditions of the policy. For example, a standard COI lists the policyholder's name, policy effective date, the type of coverage, policy limits, and other important details of the policy.

**COMMERCIAL GENERAL LIABILITY INSURANCE:** liability coverage for bodily injury and/or property damage claims brought against the insured by a third party or member of the public.

**LIQUOR LIABILITY INSURANCE:** Liability coverage for claims arising out of the sale, manufacture or serving of alcoholic beverages. Under standard Commercial General Liability policies, coverage is excluded if the insured is in the business of serving alcohol. If selling, serving or making alcohol, liquor liability coverage needs to be ADDED to the existing general liability policy or purchased on its own.



# Sidewalk Patio

Requirements and Application Process



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## Purpose

The following document will outline the design requirements for patios within the public right of way. These standards apply to the establishment of patios throughout the entire Municipality.

The intention in reviewing sidewalk patio design is to ensure that universal accessibility, public safety and streetscape experience is enhanced and not negatively impacted by the introduction of a patio.

Sidewalk patios can activate the street and create a more vibrant urban environment. By providing opportunities for outdoor dining, the Municipality, and the businesses within it, can encourage the use and enjoyment of the public realm.

To establish a sidewalk patio, an applicant must first consult with Municipal staff and follow this guide to determine the location and design details of the patio.

## Patio Principles

### Safety First

Patios cannot obstruct foot traffic on sidewalks and must enable pedestrians and those using mobility devices to easily and safely pass through the space. A minimum of 5 feet of clear sidewalk width is required. Where patios are on the street, traffic control measurements are required. Depending on the situation, barriers of varying types and signage may be required to mitigate risk of vehicle traffic.

### Accessible

All patios must provide barrier-free access from the sidewalk.

### Emergency Access

Patios and seating cannot interfere with access to:

- Public utilities and service connections
- Emergency, service or delivery vehicles
- Fire hydrants, fire connections or other services associated with fire protection

### Consider your Neighbours

Patios must not negatively impact neighbouring residents or businesses and consideration should be paid to noise mitigation and patron behaviour.

### Insurance

Due to the use of public property, a copy of your insurance showing a minimum \$2 million Comprehensive General Liability with the Municipality of Brockton and the County of Bruce (as required)

## To Submit your Application

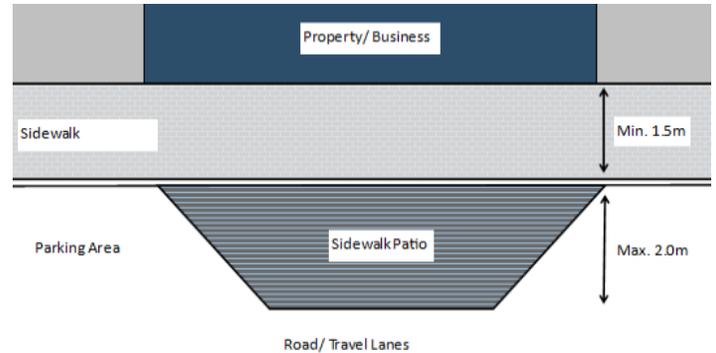
Once the application is filled out, the necessary drawings and insurance is completed, please send the application to the Municipality of Brockton, either by email to [gfurtney@brockton.ca](mailto:gfurtney@brockton.ca) or by mail to 100 Scott Street, Walkerton, ON, N0G 2V0, attn. Greg Furtney, Director of Operations.

## Patio Location

Selecting the right location helps ensure the streetscape is enhanced and the safety of patrons and the public is secured. When choosing the location of the patio, consideration should be given to the existing streetscape, surrounding uses and availability of space.

Patios are to respect adjacent businesses and not impede the flow of pedestrians or pedestrian traffic movements.

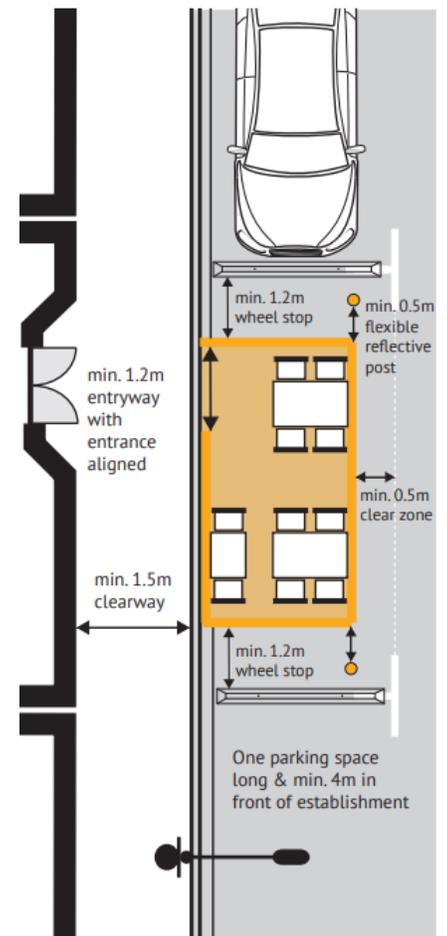
Sidewalk patios that have the patio part in the parking space are allowed, however patios that are attached to the building with a temporary sidewalk built around the patio for the purpose of this application are not permitted.



## On-Street Parking

1. Do to public right of ways not being large enough to support a patio on the sidewalk, patios may be located within an on-street parking space subject to an encroachment agreement with the Municipality and/or the County pending on the location.
2. The clearway shall be located between the curb and the associated building.
3. Patios located within an on-street parking space must be brought to the same height as the sidewalk
4. Patios in on-street parking spaced may only occupy complete spaces and shall have a minimum of 13 feet of the parking space located directly in front of the associated establishment.
5. This location is also preferred for its minimal effect on the flow of pedestrian traffic within the public right of way
6. If at a corner, a minimum clearway of 10 feet is required

Clearway	5 feet (min)
Length	22 feet (min or 1 parking space)
Entrance	4 feet (min)
Distance from Streetscape Objects	5 feet (min)



## On Street Parking Considerations

1. A full parking space length must be used. The parking area that remains available on either side of the patio must provide one or more full parking spaced of 22 feet length.
2. The outside edge of the patio must be at least 1.5 feet from the travel lane, creating a 1.5 foot clear zone.
3. At each end of the parking space, wheel stops must be placed 4 feet from the edge of the patio to provide a buffer from the next parking stall.
4. Patios must have flexible reflective posts, at least 4 feet high, placed 1.5 feet from both corners of the patio which are in the roadway. The reflective elements should be in line with the edge of the patio that is parallel to the travel lane.
5. The applicant is responsible for the additional costs associated with the removal of any Municipal infrastructure such as parking signage, waste receptacles, etc. to accommodate this type of patio. The business owner shall arrange with the Roads and Operations department to reinstall Municipal infrastructure that was removed as part of the patio installation.
6. The applicant is responsible to pay a fee to permit the patio in accordance with the Fees and Charges By-law
7. The patio surface must be designed for easy removal and to prevent damage to the underlying roadbed. The applicant's plan for affixing wheel stops and flexible posts must be included as part of the application package and requires acceptance by the Municipality.
8. The substructure design of a patio will vary and depends on the slope of the street and overall design of the structure. The substructure must accommodate the crown of the road and provide a level surface for the patio. Adjustable deck supports pedestals which can be spaced under the surface and of different heights are a common application. Another method is to provide steel sub-structure and angled beams.
9. The design of the patio structure should not inhibit the adequate drainage of storm water runoff. Small channels between the base and the platform should facilitate drainage.
10. Guardrails must be present on at least the three sides of the patio within the roadway and be constructed to the following specifications:
  - a. Must not be less than 3.5 feet high
11. Open guardrails are encouraged to reduce the risk of high winds using the guardrail to move the patio structure. The openings through the guardrail shall be of a size that will prevent the passage of a spherical object of having a diameter of 100mm.
12. A letter of support is required by the building owner. In the event that the building owner is the applicant, no letter is required.

## Design Details

Sidewalk patios will be comprised of structural, functional and decorative features. To ensure public safety and general aesthetic continuity, the following design details provide the minimum requirements for various features within a sidewalk patio.

These design details include dimensions, locations and materials for features such as furniture, barriers, lights and plant materials. The Municipality encourages creativity and development of unique outdoor dining spaces within the requirements provided.

### Functionality

#### Clearway

An unobstructed pedestrian pathway of at least 5 feet must be maintained at all times. The location of the clearway relative to the patio will depend on the location of the patio. Patios located at a corner will require a clearway of 10 feet from the corner of the intersection.

#### Entryway

An entryway of at least 3 feet must be provided to the patio, and where possible, should be aligned with the entrance to the corresponding establishment. When entrances cannot be aligned, they should be provided in close proximity to each other to ensure ease of movement and service between the establishment and the patio.

#### Streetscape Elements

Streetscape elements shall not be located in the clearway. These include garbage receptacles, tree grates, fire hydrants, street furniture, and any other item that poses an obstruction within the clearway. Fire hydrants require a 5 foot buffer at all times. All other streetscape elements, outside of the clearway do not require a buffer. Street trees may be incorporated into the patio as long as they are not within the clearway.

#### Seasonal Use

Sidewalk patios, in their entirety, may only operate as seasonal features. All elements must be removable and disassembled by October 31<sup>st</sup> in any given year.

#### Consistency

Tables and chairs should be made of matching sets and should be consistent throughout the patio.

#### Materials

All furniture, including fencing, should be made of durable, weather resistant materials that are easily cleaned. Composite, metal, or painted & stained wood is preferred.

#### Signage

It will be up to the business to provide and maintain signage. All signage must include:

- Yield to on coming pedestrian traffic
- Be respectful of restaurant patrons
- COVID restriction guidelines
  - o 6 foot distance
  - o Location of hand sanitizer / hand washing stations

## Furniture

### Host Stands

Host stands are permitted within the patio provided they are consistent with the furniture in the patio and do not enter the clearway.

### Garbage Receptacles

Garbage receptacles are permitted within the patio provided they are located with host stands and cannot be seen as a prominent feature within the space.

### Menu and Sandwich Boards

Menus and sandwich boards are permitted, provided they compliment the furniture within the patio and they do not enter the clearway. Menus and sandwich boards may not obstruct views within or into a sidewalk patio. Therefore, menus and sandwich boards may not extend beyond 3.5 feet from the ground.

## Barriers and Plantings

### Barriers

Barriers are required regardless if the patio is licensed to serve alcohol or not. Patio barriers must be 2.5 -3.5 feet in height and have a low barrier bar 0.5-1 foot high. In the event that translucent plastic shields are added to the barrier – the height of the barrier can exceed 3.5 feet.

### Plant Materials

Plants must be healthy, living and maintained throughout the season.

### Planter Barrier

Planters can be used in lieu of a barrier, but must be adequately sized to define the patio space. The planter, with plants, must be 2.5 -3.5 feet in height and must be a continuous length to delineate the patio space. A 0.5-1 foot low barrier bar is required. Planters must maintain a 1.5 foot buffer from the curb.

### Decorative Planters

Ground planters may be used within the patio for decoration. The planters may not exceed 1.5 feet in width and 3.5 feet in height. Planters with plant material, may not exceed 5 feet in height or interfere with sight lines. Hanging planters may also be used. Plant material may extend a maximum of 1.5 feet from the hanging planter box.

## Additional Features

### Awnings & Umbrellas

Awnings and umbrellas must have a minimum height of 8 feet. When fabric is being used for awnings and umbrellas, flame and fade resistant materials are recommended. Umbrellas and awnings must be maintained within the patio area.

### Heaters

Heaters are permitted within the patio provided they do not exceed 10 feet in height.

## Lights

Lighting for the patio is permitted, provided it is located within the boundaries of the patio and does not infringe upon the clearway. Lights may not exceed 10 feet in height. The brightness of the lights should be sensitive to the uses surrounding the patio and should be directed onto the patio and away from neighbouring properties and the street. Lighting must be restricted to low voltage (12V system), 120VAC is not permitted.

## Paving

Site specific paving or surface treatment is not permitted in the public right-of-way. Where paving surface is required, such as to level an on street parking space to the sidewalk, the material should be strong, durable, complimentary to the existing paving materials, and removable at the end of the season.

## Third Party Advertisements

No third party advertisements shall be permitted on umbrellas, awnings, furniture or any element in the public right-of-way. All other signage is subject to approval by the Municipality of Brockton.

## Maintenance and Enforcement

1. The business owner is expected to maintain the sidewalk patio area and furniture in a clean and hygienic manner, and secure or store the patio furniture when not in use outside the hours of business operation.
2. The business is responsible for disposal of all garbage generated by their business
3. At the termination of the sidewalk patio permit, the application must return the patio area to its pre-approved condition
4. Businesses which default in the performance of any of the obligations of the sidewalk patio permit will be cited and given time to rectify the problem. If the problem persists, the permit may be terminated and enforcement measures initiated by the Municipality to rectify the problem at the owner's expense.
5. The Municipality reserves authority over the road right-of-way and, when required, will exercise the right to request removal of sidewalk patio area due to safety, construction, or community needs.
6. If the Municipality has safety objections, the sidewalk patio will not be installed or will issue notice of removal within 24 hours when conflicts are identified. Emergencies may necessitate faster removal times as required by the Municipality or Emergency Services. Under these situations, care will be taken for removal of infrastructure, but the Municipality will not be held liable for damages to sidewalk patio infrastructure added to the road right-of-way by the proprietor.
7. The permit holder is required to remove (at their own expense) their patio during public works projects such as repaving and sidewalk widening.
8. After receiving a permit, the permit holder has 30 days to install it on site. If the installation is not completed within 30 days, this may result in revocation of the permit.

## Schedule A - Application

Name of Restaurant	Name of Business Owner	
Address of Restaurant	Phone Number	
	Email	
Check if a copy of the businesses insurance with the required indicators is attached		
<b>Patio Information</b>		
Diagram of Patio Location – Ensure all measurements are accurate as it may affect permit approval		
I have the following attached as additional documents:		
<input type="checkbox"/> Side view (Right and Left)	<input type="checkbox"/> Top view	<input type="checkbox"/> Streetscape view
Materials Used		
Signature of Applicant	Date	

\*Application Subject to Change as Required