



The Corporation of the City of Peterborough

By-Law Number 23-034

Being a By-law to delegate certain authority respecting Highways in relation to the City's Downtown Built Environment Outdoor Patio Program.

Whereas Council considers it to be in the City's interests to delegate certain authority respecting Highways in relation to the City's Downtown Built Environment Outdoor Patio Program.

Now therefore, The Corporation of the City of Peterborough by the Council thereof enacts as follows:

1. This By-law may be referred to as the "Outdoor Patio Program By-law".

Interpretation

2. Unless otherwise stated:
 - a) a reference to a statute or regulation refers to a statute or regulation of the Province of Ontario;
 - b) a reference to a statute, regulation or by-law refers to that enactment as it may be amended or replaced from time to time; and
 - c) a reference to a section, paragraph, clause or schedule is a reference to this By-law's section, paragraph, clause or schedule.
3. The headings in this By-law are for convenience only and do not form part of this By-law.
4. If any part of this By-law is determined to be invalid by a court of competent jurisdiction, the invalid part is severed and the remainder continues to be valid.
5. The delegations of authority by this By-law are in addition to delegations of authority established by other City by-laws and otherwise at law. In the event of any inconsistency between this By-law and any other City by-law, the provision that more effectively delegates authority prevails to the extent of the inconsistency.

Definitions

6. In this By-law:
 - a) "By-law" means this By-law.
 - b) "CAO" means the City's Chief Administrative Officer.
 - c) "City" means The Corporation of the City of Peterborough or the geographic area of the City of Peterborough as the context requires.
 - d) "Commissioner IPS" means the City's Commissioner of Infrastructure and Planning Services.
 - e) "Council" means the City's Council.
 - f) "Director" means the City's Director, Planning, Development and Urban Design.

- g) “Highway” means each highway or part of such highway as defined by the **Municipal Act, 2001**, S.O. 2001, c. 25, as amended, including sidewalks thereon, within the limits of the Central Area Boundary described and depicted in Schedule “C”, Central Area Plan, of the City’s Official Plan, attached as Schedule A to this By-law, subject to the following:
- i) excludes any part that is within a “Downtown Open Space Designation”;
 - ii) where the Central Area Boundary itself traverses any part of a Highway, includes to that extent only the part of the Highway measured from its centre line to its limit within the Central Area Boundary; and
 - iii) in the event of any uncertainty or dispute as to the extent of a Highway to which this By-law applies, the determination of any of the CAO, Commissioner IPS or Director prevails and the determination is final and not subject to review.
- h) “Licence” means a licence issued pursuant to this By-law.
- i) “Officer” means:
- i) each of the Director and the Supervisor;
 - ii) each person from time to time appointed as a municipal law enforcement officer to enforce all or any of the City’s by-laws;
 - iii) each assistant to the Fire Marshal employed by the City; and
 - iv) a police officer employed by Peterborough Police Service, the Ontario Provincial Police or the Royal Canadian Mounted Police.
- j) “Supervisor” means the City’s Urban Design Supervisor.

Delegation

7. Each of the CAO and the Commissioner IPS may do any of the following respecting a Highway where, in the opinion of the CAO or the Commissioner IPS, so doing will implement Council’s direction in response to Report IPSPL23-004 Downtown Built Environment – Outdoor Patio Program:
- a) Temporarily close from time to time all or any part of a Highway for a period ending on the earlier of:
 - i) a day as determined by the CAO or Commissioner IPS; and
 - ii) the day on which this by-law is repealed; and
 - b) Pass by-laws from time to time:
 - i) respecting all or part of any Highway to prescribe a rate of speed that is less than or equal to 50 kilometres per hour;
 - ii) to amend Parking By-law 09-136 and Traffic By-law 91-71; and
 - iii) to amend Schedule A to this By-law so that it remains consistent with Schedule C, Central Area Plan, of the City’s Adopted Official Plan (November 2021).
8. Each of the Director and the Supervisor may grant a Licence to a person for the use of all or any part of such closed Highway where, in the opinion of the Director or the Supervisor, so doing will implement Council’s direction in response to Report IPSPL23-004 Downtown Built Environment – Outdoor Patio Program and, for such purpose, may:
- a) from time to time impose such terms and conditions on the Licence as the CAO or Commissioner IPS may determine;

- b) from time to time suspend the Licence; and may
 - c) revoke the Licence.
9. The CAO, Commissioner IPS, Director and Supervisor are each authorized to execute such documents as each of the CAO or Commissioner IPS determines, in consultation with the City Solicitor, to be necessary to give effect to the authority delegated by this by-law.
10. It is Council's opinion that the powers being delegated by this by-law are of a minor nature, having regard to the number of people, the size of geographic area and the time period affected by an exercise of the powers.

Compliance with Licence and Applicable Law

11. No person may use or permit the use of any part of a Highway that is closed pursuant to this By-law except pursuant to and compliance with:
- a) a Licence including all terms and conditions imposed on the Licence;
 - b) this By-law; and
 - c) all applicable law relating to the use.

Administrative Orders

12. If an Officer is satisfied that a contravention of this By-law has occurred, the Officer may
- a) make an order requiring the person who contravened this By-law to discontinue the contravening activity; and may
 - b) make an order requiring the person who contravened this By-law to do work to correct the contravention.
13. Any order or notice to be given to a person pursuant to section 12 is sufficiently given:
- a) when given verbally to the person;
 - b) when delivered in writing to the person;
 - c) on the third (3rd) day after it is sent by regular lettermail to the person's last known address; or
 - d) when sent to the person by e-mail or other means of electronic transmission.
14. Without limiting section 19, each person to whom an order is given pursuant to section 12 and who fails to comply with the order is guilty of an offence.
15. If an Officer is satisfied that a person to whom an order has been given pursuant to section 12 has failed to comply with the order, the Officer may cause to be done the work set out in the order at the person's expense.

Administrative Penalties

16. AMP System By-law 20-073 applies to each administrative penalty issued pursuant to this By-law.
17. Subject to section 18, each person that contravenes this By-law is, upon issuance of a penalty notice in accordance with AMP System By-law 20-073, liable to pay to the City an administrative penalty of:

- a) \$175 for the remainder of the first day on which the contravention occurs; and
 - b) \$275 for each subsequent day on which the contravention continues.
18. Each person that contravenes this By-law by undertaking an activity without a required Licence is, upon issuance of a penalty notice in accordance with AMP System By-law 20-073, liable to pay to the City an administrative penalty of:
- a) \$500 for the remainder of the first day on which the contravention occurs; and
 - b) \$750 for each subsequent day on which the contravention continues.

Offences

19. Subject to section 20, each Person that contravenes this By-law is guilty of an offence and, upon conviction, is liable to a fine for each day or part of a day on which the offence occurs or continues of:
- a) not less than \$300 and not more than \$10,000 for a first conviction of an offence;
 - b) not less than \$400 and not more than \$25,000 for a second conviction of the same offence; and
 - c) not less than \$500 and not more than \$50,000 for a third or subsequent conviction of the same offence.
20. A Person is not guilty of an offence for which a penalty notice has been issued pursuant to sections 17 or 18.

General

21. No proceeding for damages or otherwise may be commenced against the City, a member of Council or an officer, employee or agent of the City or a person acting under the instructions of the officer, employee or agent for any act done in good faith in the performance or intended performance of a duty or authority under this By-law or for any alleged neglect or default in the performance in good faith of the duty or authority.
22. Paragraph 2(a) of By-law 99-115 is repealed.
23. This by-law is effective when it is passed.

By-law passed this 27th day of February, 2023.

Sgd. Jeff Leal, Mayor

Sgd. Natalie Garnett, Deputy City Clerk