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Date March 23, 2021 **Report No.** 2021-99
To Mayor and Members of City Council
From Nicole Wilmot, Director of Planning
People, Legislated Services and Planning

1.0 Type of Report

Consent Item
Item For Consideration

2.0 Topic **Amendment to the City of Brantford Zoning By-law 160-90 respecting a “Temporary Use By-law to Ease Parking Restrictions for Outdoor Patios” – PZ-02-2021 – City Wide [Financial Impact – None]**

3.0 Recommendation

- A. THAT Zoning By-law Amendment Application PZ-02-21 initiated by The Corporation of the City of Brantford to amend the City of Brantford Zoning By-law 160-90 to exempt parking restrictions for outdoor patios during the COVID-19 pandemic, BE APPROVED in accordance with the applicable provisions as noted in Section 9.0 of Report 2021-99, which Temporary Use By-law shall, subject to clause B, below, remain in full force and effect for a period of time not to exceed 3 years from the date of adoption; and
- B. THAT Staff BE DIRECTED to place the necessary by-law to rescind the Temporary Use By-law before City to Council for approval at the earliest available Council meeting three (3) months after the expiration or termination of the City of Brantford’s Declaration of Emergency; and,

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- C. THAT Planning Policy – 005 Patio Brantford – Private Patio Emergency Pandemic Recovery Policy, and Planning Policy – 004 Patio Brantford – On-Street Patio Emergency Pandemic Recovery Policy, BE AMENDED to extend the respective expiration dates of each policy to three (3) months after the expiration or termination of the City of Brantford’s Declaration of Emergency and the necessary by-law to effect those amendments BE PRESENTED to Council for approval.

4.0 Executive Summary

This Report recommends the approval of a Temporary Use By-law pursuant to Section 39 of the *Planning Act* to ease parking restrictions for outdoor patios associated with restaurants and other businesses during the COVID-19 pandemic. The temporary use by-law is proposed for the length of the City of Brantford’s Declaration of Emergency or a maximum of three (3) years. The temporary use by-law could be further extended by Council for an additional 3 years, if required. In the event that the Declaration of Emergency expires or is terminated, Staff recommends a 3 month grace period be included before rescinding the by-law. The by-law will assist restaurants and businesses recovering from the economic impacts of COVID-19, provide safer areas for customers where physical distancing can be maintained and contribute to a vibrant streetscape.

5.0 Purpose

The purpose of this Report is to formalize off-street parking exemptions for temporary outdoor patios to assist restaurants and other businesses to continue operations while maintaining Provincial physical distancing standards during the COVID-19 pandemic.

6.0 Background

At a Special City Council meeting held on June 16, 2020, and as amended on November 24, 2020, City Council passed a resolution to allow for the establishment or expansion of private outdoor patios and on-street patios until Council had the opportunity to review a temporary use by-law or until the expiry date of January 1, 2022. City Council further directed Planning Staff to prepare a report regarding the application of a Temporary Use By-law to address Section 6.18 of the Zoning By-law 160-90 respecting the parking requirements associated with the establishment or expansion of outdoor patios. In the interim, Staff were directed to limit their investigations and enforcement of complaints regarding parking requirements respecting temporary commercial private patios

and suspend all other enforcement related to such patios in the City of Brantford.

At the time of writing this Report, there are 28 temporary outdoor private patios that have received approval through the City's Patio Policy. No on-street patios have been established at this time. Review and approval of patios are administered through Planning Policy- 005 Patio Brantford – Private Patio Emergency Pandemic Recovery Policy (**Appendix A**), and Planning Policy 004 Patio Brantford – On-Street Patio Emergency Pandemic Recovery Policy (see **Appendix B**) which will continue to apply going forward. To assist businesses in their economic recovery, no fees are collected for these applications. Staff are recommending that the expiration date of these policies be extended to three (3) months after the expiration or termination of the Declaration of Emergency, as reflected in Section 3 of this Report. To address the direction as set out by Council with respect to a Temporary Use By-law, Planning Staff have prepared temporary Zoning provisions (Temporary Use By-law) to ease parking restrictions in response to the impacts faced by businesses during the COVID-19 pandemic.

7.0 Corporate Policy Context

This Report is in keeping with the City of Brantford Council Priorities approved October 15, 2020, specifically the following outcomes:

- All neighbourhoods in the City are safe, vibrant, attractive, and inclusive.

Outdoor patios contribute to the vibrancy of neighbourhoods when established in an attractive manner that animates the street. The proposed temporary use by-law will contribute to this outcome by easing regulations to establish an outdoor patio. It is Staff's opinion that the applications are consistent with Council's priorities.

7.1 Planning Act, R.S.O. 1990

Pursuant to Section 39 of the *Planning Act*, the Council of a local municipality may pass a Temporary Use By-law to authorize the temporary use of land, buildings or structures for any purpose that is otherwise prohibited in the Zoning By-law. *The Planning Act* allows for the passing of a Temporary Use By-law for a maximum of 3 years from the day of the passing of the By-law. The temporary use could be further extended by Council for an additional 3 years, if required.

The direction set out by Council as outlined in Section 6.0 of this Report is to permit the Temporary Use By-law until the Declaration of Emergency expires or is otherwise terminated, however this is not an option under the *Planning Act*. To address this, Planning Staff recommend that the Temporary Use By-law be effective for the maximum allowable timeframe prescribed under the *Act*, which is 3 years. In the event that the declaration of emergency is still in place once 3 years has passed, the Temporary Use By-law can be extended under the *Act* for an additional 3 years if needed. To provide additional time for businesses to comply with all applicable by-law requirements, Planning Staff recommend that a grace period of 3 months be provided if the Declaration of Emergency expires or is terminated prior to the 3 year Temporary Use By-law expiring and that the by-law is rescinded at that time. This has been included as Recommendation B in Section 3.0 of this Report. Ontario Regulation 345/20, made under the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020, S.O. 2020, c. 17* exempts City Council from *Planning Act* requirements related to the adoption of Temporary Use By-laws respecting a restaurant or bar patio. This is also discussed further in Section 8.2 of this Report.

7.2 Provincial Policy Statement (2020)

Planning Staff have reviewed the proposed Temporary Use By-law in the context of the Provincial Policy Statement. Planning Staff is of the opinion that the proposed Temporary Use By-law is consistent with the Provincial Policy Statement (PPS). The proposed Temporary Use By-law will contribute to economic development goals by assisting businesses impacted by COVID-19 to continue operations while meeting Provincial protocol.

7.3 A Place to Grow – Growth Plan for the Greater Golden Horseshoe (August 2020)

Planning Staff have reviewed the proposed Temporary Use By-law in the context of the Growth Plan for the Greater Golden Horseshoe (Growth Plan). The vision for the Growth Plan is grounded in principles that provide the basis for guiding decisions on how land is developed, resources are managed and public dollars are invested. The proposed Temporary Use By-law will assist businesses impacted by COVID-19 to continue operations while meeting Provincial protocol. Planning Staff is of the

opinion that the proposed Temporary Use By-law is in conformity with the Growth Plan.

8.0 Input From Other Sources

8.1 Technical Liaison Response

In preparation of the Temporary Use By-law as outlined in this Report, Staff consulted with various departments including the Public Works Commission, the Fire Department and the Building Department. No significant comments or concerns were raised with proposed zoning by-law amendment.

8.2 Public Response

Ontario Regulation 345/20, made under the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020, S.O. 2020, c. 17*, exempts City Council from *Planning Act* requirements related to the adoption of temporary use by-laws respecting a restaurant or bar patio. Council may pass such a by-law without holding a statutory public meeting and the by-law is not subject to appeal. The purpose of the regulation is to enable municipalities in Ontario to provide permissions for outdoor patios on a temporary basis as part of the response to the impact of COVID-19 on restaurants, cafes and other businesses. As such, no public notice of this meeting was given. Planning Staff consulted with representatives of the Downtown Brantford Business Improvement Area, who did not object to the proposed Temporary Use By-law.

8.3 Grand River Notification Area Input

Notice was issued to representatives of the Six Nations of the Grand River and the Mississaugas of the Credit First Nation, with no response received to date.

9.0 Analysis

Outdoor patios contribute to the total occupant load that is used to calculate the off-street parking requirements for a restaurant and some businesses. For example, full service restaurants are required to provide 1 parking space per 4 persons of permitted capacity. If a full service restaurant were to establish an outdoor patio, their off-street parking requirements would increase. Further,

satisfying parking regulations may reduce the available space necessary to make an outdoor patio viable for some business locations.

In recognizing that these requirements may keep some restaurants and businesses from establishing an outdoor patio, Planning Staff are recommending that, notwithstanding Table 6.1 of the By-law, a temporary outdoor patio shall not contribute to the required parking calculations for a restaurant or other business, and may occupy space that would otherwise be required for parking subject to the following regulations:

1. Outdoor patios shall not obstruct required works, such as ramps, fire routes, fire hydrants, curb stops and drive aisles or disturb any existing vegetation;
2. The provision of accessible parking and associated walkways shall be maintained at all times; and,
3. Notwithstanding any of the requirements above, the Police Chief, Fire Chief, General Manager of Public Works, or Chief Building Official may impose further conditions or requirements that they deem both reasonable and appropriate to safeguard public safety or mitigate nuisances.

Since the establishment of the Patio Brantford Policies in June 2020, the By-law Enforcement Division of the Building Department has received a total of two complaints relating to outdoor patios. One complaint was related to noise, and the other to confirm if the appropriate permissions had been granted. No complaints related to parking were received, which is the subject of this by-law. The proposed by-law will ensure that all required works will not be obstructed, accessible parking will still be provided and that the Police Chief, Fire Chief, General Manager of Public Works and Chief Building Official have discretion to impose further conditions should they be required. In Planning Staff's opinion, the 2020 patio season demonstrated that exempting outdoor patios from parking regulations did not result in any significant issues. The proposed Temporary Use By-law will formalize these exemptions rather than the current practice of suspending enforcement of the zoning regulations. This will assist restaurants and businesses recovering from the economic impacts of lockdown measures, provide safer areas for customers where physical distancing can be maintained and while contributing to a vibrant street life and public spaces.

10.0 Financial Implications

There are no direct municipal financial implications respecting this application.

11.0 Conclusion

The purpose of this City-initiated Zoning By-law amendment is to ease restrictions for temporary outdoor patios for restaurants and businesses affected by COVID-19. Pursuant to the *Planning Act*, Staff recommends that the proposed by-law be in effect for 3 years from the date of passing or otherwise that the Declaration of Emergency has expired or has been terminated. In the event that the Declaration of Emergency has expired or been terminated prior to the 3 years passing, the Temporary Use By-law shall be rescinded with a 3 month grace period to provide additional time for businesses to comply with all applicable by-law requirements. Planning Staff support exempting parking restrictions for temporary outdoor patios as it is temporary in nature and has been demonstrated to not negatively impact adjacent land uses. Council can choose to extend the temporary use for an additional 3 years in the event that an extension is needed. An additional 3 years is the maximum allowable timeframe under the *Planning Act*.

These temporary zoning provisions recommended by Staff represent good planning, and also ensure that businesses can continue their operations while maintaining physical distancing requirements. The Planning Department supports this temporary use zoning amendment and recommends approval.



Nicole Wilmot, MCIP, RPP
Director of Planning
People, Legislated Services and Planning

Prepared By:

Sean House, Planner
Joe Muto, MCIP, RPP, Manager of Development Planning

In adopting this report, is a by-law or agreement required? If so, it should be referenced in the recommendation section.

By-law required	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no
Agreement(s) or other documents to be signed by Mayor and/or City Clerk	<input type="checkbox"/> yes <input checked="" type="checkbox"/> no
Is the necessary by-law or agreement being sent concurrently to Council?	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no

Appendix A – Patio Brantford - Private Patio Policy



POLICY NUMBER: PLANNING-005

SUBJECT: Patio Brantford - Private Patio Emergency Pandemic Recovery Policy

POLICY STATEMENT:

In response to the economic challenges local businesses are facing related to the COVID-19 pandemic, the City of Brantford is making it easier for businesses to establish temporary outdoor dining or retail areas to achieve Provincial physical distancing requirements. These guidelines provide a step-by-step process for establishing temporary patios (dining or retail) on private commercial properties effective until January 1, 2021.

RELATED POLICY PROCEDURES/GUIDELINES:

CRITERIA

Location

- a) Patios are permitted in commercial areas and can complement food service businesses such as restaurants, bakeries, farmers markets, grocery stores and shopping centres.

Required Applications and Permits

- b) Provided the patio is temporary in nature, is constructed on grade, not enclosed by a building or structure, and does not require the installation of permanent fixtures that would alter the grading of the property, no permits or fees are required.

However, if a wood deck is proposed and supported above grade (columns/beams) a building permit will be required.

- c) If there is an approved site plan agreement registered on the property, the Planning Department will require a redlined site plan for the file; however no formal site plan amendment (including fee) will be required.
- d) For patios that are permanent in nature and contain buildings or structures and alter the grading of the property, a site plan control application/amendment, building permit and site alteration permit may be required.
- e) Applicants shall consult with the Planning Department about their proposals, and shall provide a sketch, patio location, photos, and owner/tenant authorization (where applicable).

Design Standards

Accessibility

- f) The patio, including entrances, must be compliant with the Accessibility for Ontarians with Disabilities Act (AODA).

Structural

- g) Patios can include patio umbrellas, however overhead assemblies of any kind including but not limited to any fabric roof coverings, or trellis-type shade structures may require further approvals from the City.
- h) If an enclosure or structure is proposed on the patio, a site plan amendment or a building permit may be required. Individuals should consult with the Building Department.

Visual

- i) Proposals for patios must contain a perimeter guard or fence so that individuals can utilize these spaces safely.
- j) Fencing can be constructed out of wood, metal, vinyl/plastic, glass or a similar material, and securely installed.
- k) The use of art, planter boxes and landscaping is encouraged to improve the aesthetics of a patio.

Additional Criteria

- l) The applicant shall have a valid business license in good standing with the City of Brantford (where applicable), including consent by the property owner if applicable.
- m) The applicant is responsible for all requirements of the Alcohol and Gaming Commission of Ontario pursuant to the sale and service of alcohol (where applicable).
- n) The patio shall not negatively impact drainage and storm water runoff.
- o) If a gate is proposed to the patio, all gates must swing into the patio space and not obstruct walkways. No entertainment or amusement shall be permitted on the patio.
- p) No obstructions from the patio can extend into abutting walkways and drive aisles to avoid conflicts with pedestrians or vehicles.
- q) At the end of each business day, the commercial establishment is required to clean walkways in and around the outdoor patio area and remove debris to a covered refuse receptacle.
- r) Access to Fire Department connections or exits from adjacent buildings must be maintained, including any occupancy load restrictions.

Approval Process and Requirements

- s) Consult with Planning Staff regarding your proposed patio on private property.
- t) If there is an approved site plan associated with the property, no formal site plan amendment (including fee) will be required, however, a redlined site plan/sketch is to be provided to the Planning Department confirming:
 - Location of the patio on the subject property including dimensions and details about visual appearance and providing photos of the proposed patio location;
 - The patio meets AODA requirements; and,
 - If required, Planning Staff will direct you to the Building Department for a building permit and/or Development Engineering for a site alteration permit.

Date of Enactment:	Related By-law Number/Staff Report Number:
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Review and Amendment Dates:	Department Responsible for Review:
Date of Next Review:	Applicable Legislation/Legislative Authority:

Appendix B – Patio Brantford - Temporary On-Street Patio Policy



POLICY MANUAL

POLICY NUMBER: PLANNING-004

SUBJECT: Patio Brantford – On-Street Patio Emergency Pandemic Recovery Policy

POLICY STATEMENT:

The City of Brantford's On-Street Patio Emergency Economic Recovery Policy allows businesses to establish temporary seasonal patios by using on-street parking until January 1, 2021. The policy will assist in economic recovery for local businesses seeking to re-establish operations while maintaining Provincial physical distancing requirements as a result of the COVID-19 pandemic. The temporary On-Street Patio Policy fits with the City's goals to promote and build on the distinctive character and locational advantages of Brantford while creating a vibrant streetscape. These patios can be used as commercial (dining or retail) or passive parklet-style spaces.

RELATED POLICY PROCEDURES/GUIDELINES:

CRITERIA

Location

- a) On streets with existing on-street parking.
- b) Where the on-street patio can be located directly in front of the associated business:

- a. Consideration will be given to patios that extend up to one parking space past the business's frontage provided neighbouring businesses have given consent.
- c) Proposals must not obstruct underground utility access, electrical transformer vaults, utility boxes, parking meters, loading zones, transit stops, fire hydrants, crosswalks, emergency vehicle routes, as well as snow plow operations and waste collection and other infrastructure.
- d) Accessible parking spaces are not eligible to be used as on-street patios.
- e) Proposals must not obstruct the intersectional sight lines on any roads, and must be reviewed by the Engineering Department.
- f) Patio proposals will be dependent on the road classification (i.e. road speed), and subject to approval by the Engineering Department.

Design Standards

Accessibility

- a) The patio, including entrances, must be compliant with the Accessibility for Ontarians with Disabilities Act (AODA).
- b) The patio base must have an accessible transition at the sidewalk and curb to permit easy access and avoid tripping hazards by means of decking that is flush with the sidewalk.

Structural

- a) The owner/operator shall provide a floor structure that accommodates the crown of the road and provides a level surface for the deck that is flush with the adjacent curb and sidewalk. Sample drawings are attached to this Policy.
- b) Patios may utilize umbrellas, however overhead assemblies including but not limited to any fabric roof coverings, or trellis-type shade fixtures are not permitted.
- c) The owner/operator of the on-street patio is responsible to ensure that any materials that are proposed to be used in the construction of the on-street patio is free of deterioration such as rotting, cracking, splitting, or any other deterioration that may affect the structural integrity and/or performance of the platform or any portion thereof.

Visual

- a) Patio installations must be set back from the travelled portion of the

roadway by a physical barrier at a distance determined by the Engineering Department.

- b) To ensure visibility to moving traffic and parking cars, installations must be buffered using a temporary wheel stop at a desired distance of 1.2 metres (48") from each end. This standard must be included in the notice and plans provided to neighbouring businesses for consent.
- c) Lighting will be subject to review and will be designed and installed in such a way as to not create a visual or physical distraction to travelling public on the sidewalk or roadway. For example, patio lantern-style light fixtures may be permitted, while larger format flood lighting may not.
- d) The use of art is encouraged to improve the aesthetics of the standard patio enclosures.

Additional Criteria

- a) The applicant shall have a valid business license in good standing with the City of Brantford (where applicable), including consent by the property owner if applicable.
- b) The applicant is responsible for all requirements of the Alcohol and Gaming Commission of Ontario pursuant to the sale and service of alcohol (where applicable).
- c) Copy of Insurance Certificate as required pursuant to the Temporary Patio License.
- d) All gates must swing into the patio space and not obstruct the sidewalk or travelled portion of the roadway.
- e) No umbrellas or other treatments can extend into the sidewalk or travelled portion of the roadway.
- f) Applicants must provide notice to adjacent business neighbours of their proposals, if available; provide the Planning Department with acknowledgement.
- g) Promotional signage/advertising will not be permitted on any patio or adjacent sidewalk, along the entire length of the patio, which may include neighbouring businesses.
- h) No entertainment or amusement shall be permitted on the patio.
- i) At the end of each business day, the owner/operator is required to clean the sidewalk in and around the outdoor patio area and remove debris to a covered refuse receptacle. Garbage cannot be placed in City waste

receptacles.

- j) The City of Brantford will have the right to maintain the municipal property in order to carry out repairs or maintenance to the municipal property. Where possible, the City of Brantford will provide written notice five (5) days prior to entering. The City has the right at any time to suspend the permit and undertake removal of the patio at the applicant's expense.
- k) Access to Fire Department connections or exits from adjacent buildings must be maintained.

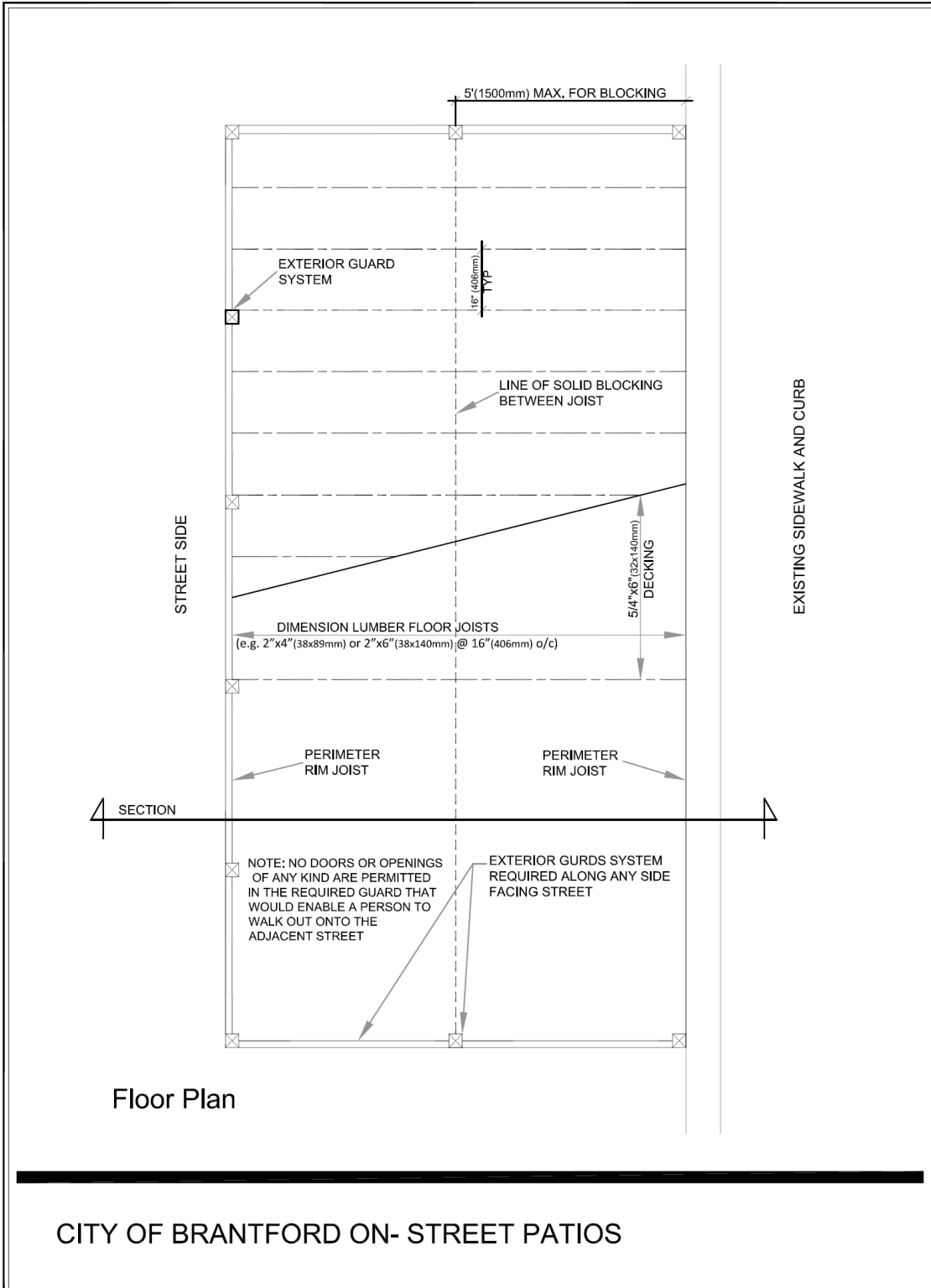
Application Requirements

- a) Prepare plans and drawings of the proposed installation(s) using metric dimensions and standard drafting templates, in conjunction with the plans provided in this Policy.
- b) Complete the On-Street Patio Occupancy Permit Application.
- c) Enter into a Temporary Patio License with the City.

Approval Process

- a) Submit your Permit application, as above, and five (5) copies of the required plans and drawings and photos of the proposed patio location to the Planning Department.
- b) Revise application in response to Staff comments, if necessary.
- c) Clear conditions of approval and receive a Temporary Patio License.
- d) Install on-street patio.
- e) Contact City Staff re: inspection.
- f) Obtain final approval by the Planning Department.

Date of Enactment:	Related By-law Number/Staff Report Number:
Review and Amendment Dates:	Department Responsible for Review:
Date of Next Review:	Applicable Legislation/Legislative Authority:



Schedule B – Concept Patio Plan (Cross Section)

