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Item No. 9.1
Halifax Regional Council
October 21, 2014

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original signed by 
Richard Butts, Chief Administrative Officer
Original Signed by 
Mike Labrecque, Deputy Chief Administrative Officer

DATE: September 25, 2014

SUBJECT: Sidewalk Café By-law S-1000 Amendments

SUPPLEMENTARY REPORT

ORIGIN

September 23, 2014; Halifax Regional Council gave First Reading to By-law S-1000 to replace the the Halifax Regional Municipality Sidewalk Café Policy, as adopted by Halifax Regional Council May 27, 1997 and amended from time to time, with the following amendment approved:

1. The By-law require liability insurance of \$3 million.
2. The By-law return to Council for Second Reading.

LEGISLATIVE AUTHORITY

HRM Charter, S.N.S. 2008, c. 39, clause 188 (1) (c) Council may make by-laws, for municipal purposes, respecting persons, activities and things in, on or near a public place or place that is open to the public.

HRM Charter, S.N.S. 2008, c. 39, section 191, Council may, by by-law, regulate vending on the streets of the Municipality.

HRM Charter, S.N.S. 2008, c. 39, section 324 Council may, by by-law, regulate encroachments upon under or over streets, including stipulating the period of time an encroachment may remain including terms and conditions, for particular Encroachments.

Administrative Order 32, the By-law Development Administrative Order.

By-law A-102, subsection 4(1), the Appeals Committee will hear appeals that are directed to the Appeals Committee by the Charter, a by-law or Council policy.

By-law A-102, subsection 4(2), the Appeals Committee will exercise the authority and discretion conferred or delegated to the Appeals Committee by the Charter, a by-law or Council policy.

RECOMMENDATION

It is recommended that Halifax Regional Council

1. Repeal the Halifax Regional Municipality Sidewalk Café Policy, as adopted by Halifax Regional Council May 27, 1997 and amended from time to time;
2. Council give Second Reading to By-law S-1000, the Sidewalk Café By-law.
3. Adopt By-law S-1000, the Sidewalk Café By-law, as amended by Council direction and set out in Attachment 1, as amended by Council direction of September 23, 2014, regulating the use of municipal street right-of-ways for the purposes of establishing sidewalk cafes adjacent to food and beverage establishments;
4. Adopt the amendments to Administrative Order 15, Respecting License, Permits and Processing Fees, as set out in Attachment 2; and
5. Adopt Administrative Order 2014-016-GOV, Respecting Delegation of Council Authority pursuant to By-law S-1000, as set out in Attachment 3.

BACKGROUND

A report was before Council on September 23, 2014 recommending that Council Adopt By-law S-1000, the Sidewalk Café By-law, regulating the use of municipal street right-of-ways for the purposes of establishing sidewalk cafes adjacent to food and beverage establishments.

Council directed that the draft By-law S-1000, the Sidewalk Café By-law, be amended to reduce the minimum commercial general liability insurance requirement from \$5,000,000 CDN to \$3,000,000 CDN, where alcoholic beverages are served or consumed at the sidewalk café.

DISCUSSION

Further to Council direction, Staff amended subsection 19(2) of the draft By-law S-1000, the Sidewalk Café By-law, to read as follows:

19 (2) Where alcoholic beverages are served or consumed at the sidewalk café, the proprietor shall, at their own expense, purchase commercial general liability insurance in the amount of not less than three million dollars (\$3,000,000 CDN), with liquor not excluded.

The amended wording is reflected in Attachment 1 to this report. The public hearing on the amended by-law was advertised as required.

FINANCIAL IMPLICATIONS

The \$3,000,000 commercial general liability insurance limit proposed under by-law S-1000 will protect the municipality from all but a catastrophic loss associated with the operation of a sidewalk café within the municipal right of way.

COMMUNITY ENGAGEMENT

No additional community engagement has taken place.

ENVIRONMENTAL IMPLICATIONS

Implications not identified.

ALTERNATIVES

There are no recommended alternatives.

ATTACHMENTS

Attachment 1: Draft Sidewalk Café By-law, showing changes proposed by Council.

Attachment 2: Amendment to Administrative Order 15, Respecting License, Permit and Processing Fees

Attachment 3: Administrative Order 2014-016-GOV, Respecting Delegation of Council Authority

Attachment 4: Regional Council Recommendation Report; Item 11.1.3; September 23, 2014

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.php> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

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Attachment 1

Sidewalk Café By-Law

**HALIFAX REGIONAL MUNICIPALITY
BY-LAW NUMBER S-1000
RESPECTING THE REGULATION OF SIDEWALK CAFÉS**

BE IT ENACTED by the Council of the Halifax Regional Municipality as follows:

WHEREAS sidewalk cafés can enliven municipal streets and enhance Halifax's economic vitality;

AND WHEREAS Council may pass by-laws promoting the health, well-being, safety and protection of its residents, under the authority vested in it by clause 188 (1) (a) of the *Halifax Regional Municipality Charter*, S.N.S. 2008, c. 39, as amended,

AND WHEREAS notwithstanding the *Motor Vehicle Act*, Council may, by by-law, regulate vending on the streets of HRM under authority vested in it by section 191 of the *Halifax Regional Municipality Charter*, S.N.S. 2008, c. 39;

AND WHEREAS Council may, by by-law, regulate encroachments upon, under or over streets, including stipulating the period of time an encroachment may remain and the entering into of agreements, including terms and conditions, for particular encroachments under authority vested in it by section 324(2) of the *Halifax Regional Municipality Charter*, S.N.S. 2008, c. 39;

AND WHEREAS Council may, by by-law, regulate activities and things in, on or near a public place or place that is open to the public under authority vested in it by section 188 (1) (c) of the *Halifax Regional Municipality Charter*, S.N.S. 2008, c. 39;

Short Title

1. This By-Law may be cited as the *Sidewalk Café By-Law*.

Interpretation

2. In this By-Law,

(a) "accessory use" means a use that is normally incidental, subordinate and exclusively devoted to a principal use and located on municipal property adjacent to the principle use property;

(b) "alcoholic beverages" includes wine, liquor and beer as defined by the *Liquor Control Act*, S.N.S. 1989, c. 260, as amended;

(c) "Appeals Committee" means the Appeals Committee as established by By-law A-100, the *Appeals Committee Bylaw*;

(d) “barrier” means a fence, railing or other obstacle that prevents or restricts the movement or access of pedestrians;

(e) “business day” means Monday through and including Friday, except for federal, provincial or municipal holidays;

(f) “café license” means a license to construct, use or operate a sidewalk café on municipal property, issued pursuant to this By-law;

(g) “café plan” means a scale drawing showing the layout and size of the sidewalk café including the amount and location of furniture and exits;

(h) “construction drawings” means technical drawings and specifications used to specify assembly requirements for elements of the sidewalk café;

(i) “Council” means the Council of the HRM;

(j) “Employee” includes agents, officers, servants, assigns and heirs;

(k) “encroachment” means a structure or facility upon, under or over a street and also includes any portion of the street required by the encroachment as a clearance from other structures by good engineering practice;

(l) “encroachment term” means the period of time during which an encroachment is allowed;

(m) “food establishment” means any premises in which food is:

(i) processed, manufactured, prepared, labeled, or served;

(ii) sold, offered for sale, or distributed free of charge; or

(iii) dispensed, displayed, stored, or distributed,

but excludes a dwelling unit except a dwelling unit used for commercial food preparation;

(n) “*Heritage Property Act*” means the *Heritage Property Act*, R.S.N.S., 1989 c. 199;

(o) “HRM” means the Halifax Regional Municipality;

(p) “License Administrator” means the person or persons designated by the Chief Administrative Officer and includes a person acting under the supervision and direction of the License Administrator;

(q) “licensed establishment” means a lounge, cabaret, beverage room, tavern, eating establishment or club licensed under the *Liquor Control Act*;

(r) “Mayor” means the Council member elected at large to be the chair of the Council;

(s) “municipal heritage property” means municipal heritage property as defined in the *Heritage Property Act*;

(t) “municipal infrastructure” includes infrastructure that supports the provision of municipal services and includes public trees, light standards, street lights, traffic signals, traffic signs, parking meters and other municipal signs;

(u) “municipal street furniture” includes bus shelters, banners, flower pots, benches, waste receptacles and other decorations located in the street;

(v) “owner” includes

(i) a part owner, joint owner, tenant in common or joint tenant of the whole or any part of land or a building, and

(ii) in the absence of proof to the contrary, the person or persons assessed for the property;

(w) “person” includes a corporation;

(x) “Peace Officer” means a police officer or a special constable appointed pursuant to the *Police Act*, S.N.S. 2004, c.31, as amended;

(y) “principal use property” means a licensed establishment or food establishment that has a sidewalk café as an accessory use;

(z) “premises” includes a mobile, stationary, temporary or permanent facility or location and the surroundings under the control of the same person;

(aa) “proprietor” means the person who controls, governs or directs the activity of a food establishment or a licensed establishment and includes the person who is actually in charge thereof at any particular time, an owner, or the occupant of the premises;

(ab) “provincial heritage property” means provincial heritage property as defined in the *Heritage Property Act*;

(ac) “roadway” means that portion of a street between the curb lines or the travelled portion of a street designed for vehicular travel;

(ad) “sidewalk” means that portion of a street between the curb line and adjacent property line or any part of a street especially set aside for pedestrian travel and separated from the roadway;

(ae) “sidewalk café” means a deck, patio, ramp, temporary sidewalk, group of tables and chairs or other accessories situated on a street including a sidewalk for the use and consumption of food and beverages sold to the public from, or in, an adjacent principle use property;

(af) “site plan” means a scale drawing showing:

(i) the location of the sidewalk café relative to the street and the sidewalk,

(ii) the location of any municipal street furniture and municipal infrastructure that is located within the proposed location of the sidewalk café, and

(iii) the principle use of the property which has applied for the café license;

(ag) “street” means a public street, highway, road, lane, sidewalk, thoroughfare, bridge, square and the curbs, gutters, culverts and retaining walls in connection therewith;

(ah) “traffic barrier” means an obstacle that prevents or restricts movement or access of vehicles;

(ai) “utility” means any corporation that provides sewage, storm-water, water, telecommunication or electricity services, including, natural gas or other gas intended for use as a fuel;

(aj) “utility infrastructure” means infrastructure required by a utility to deliver services, including pipes, conduits, valves, manholes, hydrants, vaults, poles, overhead wires, metering devices, and pressure regulators; and

(ak) “vend” means the sale and offering for sale of food or beverages on a street or municipally-owned property.

Types of Café License

3. (1) There shall be two types of café license,

(a) a seasonal café license; and

(b) an annual café license.

(2) A seasonal café license shall permit a sidewalk café for an encroachment term set by the License Administrator, such term

(a) shall commence on a date being no later than April 15th in any calendar year; and

(b) shall end on a date no later than October 31st, in the same calendar year.

(3) An annual café license shall permit a sidewalk café for an encroachment term not exceeding one calendar year and shall only be granted by Council.

(4) Notwithstanding subsection (2) of this section, for the encroachment term ending October 31, 2014, the License Administrator may extend the term of a seasonal café license until 11:59 pm on November 20, 2014 and, for the purposes of the extension only, a permit issued pursuant to By-law S-300, the *Streets By-law*, permitting a sidewalk café in the year 2014 is deemed to be a seasonal sidewalk café license issued pursuant to this By-law.

(5) An application pursuant to subsection 4, shall be received by the HRM no later than 4:30 pm on October 30, 2014.

Heritage Property

4. (1) Notwithstanding section 3, an application for a café license, in relation to a provincial heritage property, shall be subject to review pursuant to the *Heritage Property Act*.

(2) Notwithstanding section 3, an application for a café license, in relation to a municipal heritage property, shall be subject to review pursuant to the *Heritage Property Act*, By-law H-200, the *Heritage Property By-law* and By-law H-500, the *Heritage Conservation District (Barrington Street) By-law*.

Granting of License and Renewals

5. Subject to sections 4 and section 7, the License Administrator is authorized and empowered to:

- (a) grant a seasonal café license or a renewal of an annual café license;
- (b) refuse to grant a seasonal café license or a renewal of an annual café license;
- (c) suspend any café license;
- (d) revoke any café license;
- (e) issue the proprietor a Notice to comply with this By-law;
- (f) issue the proprietor an Order to comply with this By-law; and

enter, at any time and without notice, a sidewalk café or principle use property to determine compliance with this By-law.

6. (1) Subject to section 4, the Council may

(a) deny an appeal and refuse to grant a seasonal café license or a renewal of an annual café licence; or

(b) allow an appeal and grant a seasonal café license or a renewal of an annual café license.

(2) Subject to section 4, Council may grant or refuse to grant an annual café license.

(3) Council may, by policy, delegate any of its authority pursuant to this By-law to the Appeals Committee and, where so delegated by the Council, the Appeals Committee stands in the place and stead of the Council with respect to such delegation.

7. If Council grants an annual café license pursuant to section 6, the License Administrator may renew the café license encroachment term, in perpetuity, providing

(a) the café plan, site plan and construction drawings that were approved by Council, pursuant to subsection 6(2), have not substantively changed;

(b) the café plan, site plan and construction drawings that are subject to review pursuant to section 4 have not substantively changed;

(c) each additional encroachment term remains the same as the encroachment term granted by Council pursuant to section 6; and

(d) if the proprietor of the annual café license is not the owner of the property where such café is located, the owner agrees to the continued operation of the café.

Requirements for Sidewalk Café License

8. No person shall construct, operate or vend at a sidewalk café

(a) unless a café license has been issued by the License Administrator or the Council and the café license has not been suspended or revoked;

(b) except in accordance with:

(i) any terms or conditions of the café license; and

(ii) the café plan, site plan and construction drawings approved by the License Administrator or by the Council;

(c) outside the encroachment term specified in the café license;

- (d) except by the person to whom the café license was granted; or
- (e) in an obstructive manner including:
 - (i) obstructing the ingress or egress of the abutting property owner or tenant;
 - (ii) increasing traffic congestion or delay on the street where the sidewalk café is located;
 - (iii) constituting a hazard to pedestrian or vehicular traffic, life or property; or
 - (iv) obstructing adequate access to fire, police or sanitation vehicles or personnel.

9. In addition to prohibitions in section 8, no person shall operate or vend at a sidewalk café:

- (a) unless the sidewalk café has, subsequent to construction, been inspected and approved for use:
 - (i) by HRM; and
 - (ii) by a professional engineer pursuant to section 27 of this By-law, proof of which must be filed with the License Administrator and must be in a form acceptable to the License Administrator;
- (b) at any time when the principal use property is not open to the public for business; or
- (c) any food or merchandise, other than food or merchandise that the person is permitted to sell from the principal use property.

Requirements for Certain Other Licenses

10. (1) During the encroachment term:

- (a) notwithstanding By-Law S-300, the *Streets By-law*, a Streets and Services permit is not required for the construction and removal of a sidewalk café;
- (b) notwithstanding By-law E-200, the *Encroachment By-law*, an Encroachment License is not required for that portion of a street used by a sidewalk café; and
- (c) notwithstanding By-law C-501, the *Vending By-law*, a Vending License is not required to vend food or beverages for that portion of municipal land used by a sidewalk café.

(2) Subsection 1 of this section only applies to the holder of the café license and for that portion of the street identified in the café plan, site plan and construction drawings approved pursuant to this By-law.

Application for Café License

11. The applicant for a café license shall complete an application in a form prescribed by the License Administrator.

12. A separate application shall be made for each café license.

13. An application for a café license shall include:

(a) the name of the applicant, and:

(i) if the applicant is a natural person, it must be signed by him or her; or

(ii) if the applicant is a corporation, organization, society or other body, it must be signed by a director or officer who has the authority to bind the corporation, organization, society or other body;

(b) a written consent from the owner of the principle use property, if other than the applicant;

(c) proof of insurance coverage pursuant to section 20;

(d) an indemnify agreement which indemnifies and holds harmless HRM, its Mayor, Council, and Employees against all losses, claims, actions, damages, costs (including solicitor costs), liability and expense in connection with loss of life, personal injury, damage to property or any other loss or injury whatsoever arising from the design, construction, maintenance, operation, or removal of a sidewalk café, and from sidewalk or street remediation;

(e) detailed construction drawings, site plan and café plan that:

(i) are in a form prescribed by the License Administrator; and

(ii) comply with the standards set out in Schedule A of this By-law.

(f) any fee prescribed by Administrative Order 15; and

(g) any other information required by the License Administrator.

Refusal to Grant a Café License

14. The License Administrator shall refuse to grant a café license if:

- (a) the application is incomplete or contains false or misleading information;
- (b) the proposed sidewalk café does not comply with the requirements of this By-law, including the Design Standards in Schedule A;
- (c) the proposed sidewalk café would unreasonably interfere with the ability of HRM or any utility to have access to, or maintain, any municipal infrastructure, municipal street furniture, or utility infrastructure;
- (d) the proposed area for the sidewalk café is required for the construction or installation of a municipal work, service, utility or other improvement;
- (e) the proposed sidewalk café would unreasonably interfere with the public's use or enjoyment of the sidewalk or adjoining street;
- (f) the proposed sidewalk café would present a risk of harm to the health or safety of the public;
- (g) the proposed sidewalk café would not comply with the *Heritage Property Act*, By-law H-200 or By-law H-500;
- (h) the proposed sidewalk café would constitute a nuisance; or
- (i) in the opinion of the Engineer the proposed sidewalk café would:
 - (i) increase traffic congestion or delay on the street where the proposed café would be located; or
 - (ii) constitute a hazard to pedestrian or vehicular traffic, life or property

15. The Council may only grant an annual café license if

- (a) the width of the roadway is not reduced;
- (b) the sidewalk café does not create vehicular congestion;
- (c) the sidewalk café does not present a risk of harm to the health or safety of the public;
- (d) the sidewalk café does not constitute a nuisance;

(e) the sidewalk café does not unreasonably interfere with municipal services, including fire service, police service, sanitation services and winter maintenance;

(f) the sidewalk café does not unreasonably interfere with the public's use or enjoyment of the street including the sidewalk;

(g) the sidewalk café does not unreasonably interfere with the construction or installation of a municipal work, service, utility or other improvement;

(h) a minimum sidewalk width of 2.1 m (7 feet) remains unobstructed, including being unobstructed by sidewalk cafés, municipal infrastructure or municipal street furniture; and

(i) HRM or any utility has reasonable access to maintain or install a utility or service.

Requirements of a Granted Café License

16. A café license granted pursuant to this By-law shall specify:

(a) the type of encroachment that is authorized by the café license;

(b) the encroachment term;

(c) the civic address of the principal use property;

(d) the name of the person to whom the café license is granted; and

(e) such other terms and conditions as may be necessary in the opinion of the License Administrator.

Encroachment Term

17. (1) Subject to sections 3 and 4, the License Administrator shall establish an encroachment term for each seasonal café license granted pursuant to this By-law.

(2) Council may grant an annual café license with an encroachment term not exceeding one year.

(3) The License Administrator may grant a renewal of an annual café license with an encroachment term not exceeding one year.

(4) Notwithstanding section 6 of Ordinance 173, the *Granville Mall Ordinance*, the License Administrator or the Council may grant a café license for any encroachment term permitted under this By-law.

18. (1) Every café license shall bear a number and shall be affixed to the principle use property in a conspicuous place.

(2) An affixed café license shall not be removed, for the duration of the encroachment term, except with the consent of the License Administrator.

Conditions on Proprietor of a Granted Café License

19. (1) Where alcoholic beverages are not served or consumed at the sidewalk café, the proprietor shall, at their own expense, purchase commercial general liability insurance in the amount of not less than two million dollars (\$2,000,000 CDN).

(2) Where alcoholic beverages are served or consumed at the sidewalk café, the proprietor shall, at their own expense, purchase commercial general liability insurance in the amount of not less than three million dollars (\$3,000,000 CDN), with liquor not excluded.

(3) Insurance coverage, pursuant to subsections 1 and 2, shall

(a) be maintained during the encroachment term;

(b) name HRM as an additional insured with respect to any loss, claims, actions, damages, costs (including solicitor costs), liability and expense in connection with loss of life, personal injury, damage to property or any other loss or injury whatsoever arising from the design, construction, maintenance, operation, or removal of a sidewalk café or from sidewalk or street remediation related thereto.

20. (1) The proprietor shall provide HRM with a certificate of insurance.

(2) The certificate of insurance provided pursuant to subsection 1 shall

(a) be in a form and with an insurer acceptable to HRM;

(b) evidence compliance with section 19;

(c) be provided to HRM upon insurance renewal; and

(d) be provided to HRM upon a material change in coverage.

Transferability of a Granted Café License

21. A café license granted pursuant to this By-Law is not transferrable.

Suspension or Revocation of a Granted Café License

22. The License Administrator may suspend or revoke a café license if:

(a) the proprietor fails to comply with any term or condition of the cafe license or this By-law;

(b) the proprietor is convicted of an offence under this By-law;

(c) the continued operation of the sidewalk café, would be a risk to the health or safety of the public, or would otherwise constitute a nuisance;

(d) the continued operation of the sidewalk café unreasonably interferes with the ability of HRM, or any utility, to have access to or maintain any municipal infrastructure, municipal street furniture, or utility infrastructure; or

(e) the proprietor fails to comply with sections 19 and 20.

23. In the event a café license is revoked, or suspended for a period of one week or more pursuant to clause 22(d) the Municipality shall refund to the applicant of such license that portion of the license fee paid by the applicant pro-rated in proportion to the amount of time:

(a) that the license is suspended during the encroachment term; or

(b) remaining for the encroachment term if the license is revoked.

24. Notwithstanding sections 44 and 46, a suspension pursuant to clause 22(e) shall continue until:

(a) the proprietor complies with sections 19 and 20;

(b) the café license expires; or

(c) the café license is revoked.

Sidewalk Café Construction

25. Subject to section 26, no person other than the HRM shall remove municipal infrastructure or municipal street furnishings to construct a sidewalk café.

26. (1) Where municipal infrastructure or municipal street furnishings must be removed to permit the construction of a sidewalk café, the proprietor shall notify the License Administrator of intent to construct.

(2) Notification shall be at least five (5) business days prior to the anticipated date of sidewalk café construction.

27. Where the sidewalk café exceeds a height of 0.6 m (2'-0") from any point on the sidewalk grade, the proprietor shall:

(a) engage the services of a professional engineer, licensed to practice in the Province of Nova Scotia;

(b) file with the License Administrator a written undertaking stating that the professional engineer has been engaged by the proprietor to supervise and set out the sidewalk café;

(c) ensure that the sidewalk café shall be constructed and maintained in accordance with the approved café plan, site plan and construction drawings; and

(d) subject the sidewalk café to inspection and approval by the professional engineer or his or her representative.

Sidewalk Café Maintenance and Repair

28. The proprietor shall, to the satisfaction of the License Administrator, and at his or her sole expense, keep and maintain the area surrounding or adjacent to the sidewalk café in a clean, sanitary, attractive condition, free from papers, rubbish and debris of any kind.

29. The proprietor or employees or agents of the proprietor of a sidewalk café shall not damage the street, sidewalk, curb or the landscaping between the sidewalk and the curb by constructing, operating, removing, maintaining, repairing or altering a sidewalk café.

30. The proprietor shall, at his or her sole expense, maintain the sidewalk café in a safe condition, such that it is not dangerous or hazardous to traffic, pedestrians or the public at large.

31. Notwithstanding sections 44 and 46, if the License Administrator determines, in his or her sole discretion, that the sidewalk café is a safety issue, danger or hazard, HRM may, without notice to the proprietor, repair or alter the sidewalk café.

32. (1) The License Administrator may issue an Order to the proprietor that the proprietor shall:

(a) repair or alter the sidewalk café, in any manner that the License Administrator determines, in his or her sole discretion, is necessary to alleviate the safety issue, danger or hazard;

(b) repair the street in any manner that the License Administrator determines, in his or her sole discretion, is necessary to restore the street, sidewalk, landscaping between the sidewalk and the curb, or curb; or

(c) keep and maintain the area surrounding or adjacent to the sidewalk café in a clean, sanitary, attractive condition, free from papers, rubbish and debris of any kind.

(2) Any maintenance, repair, alteration or restoration pursuant to subsection (1) of this section, shall be at the proprietor's sole expense.

33. The License Administrator may cause the work to be done if

(a) the proprietor does not comply with an Order to repair or alter the sidewalk café issued under clause 32(1)(a), within five (5) business days of being served with the Order;

(b) the proprietor does not comply with an Order to repair the street issued under clause 32(1)(b), within five (5) business days of being served with the Order; or

(c) the proprietor does not comply with an Order to maintain the area surrounding, or adjacent to, the sidewalk café, issued under clause 32(1)(c), within five (5) business days of being served with the Order.

Sidewalk Café Access

34. If the License Administrator determines, in his or her sole discretion, that access to any part of the street occupied by a sidewalk café is required to address an immediate safety issue, danger or hazard, HRM or a utility may, without notice to the proprietor, enter the sidewalk café to remedy the safety issue, danger or hazard.

35. Subject to sections 31 and 34, after 48 hours' notice to the proprietor, HRM, or a utility, may enter a sidewalk café to install, maintain or repair municipal infrastructure, municipal street furniture, or utility infrastructure.

36. (1) Emergency vehicles or personnel may enter, without notice, a sidewalk café to render or provide emergency services.

(2) The employee of any utility may enter, without notice, a sidewalk café to read any meter related to the utility service to the principle use property.

Sidewalk Café Removal

36A. The proprietor shall, on or before the expiration of the encroachment term, and at his or her sole expense, remove the sidewalk café from the street.

37. Notwithstanding sections 45 and 47, if the License Administrator determines in his or her sole discretion, that

(a) the sidewalk café is an immediate safety issue, danger or hazard; or

(b) access to any part of the street occupied by a sidewalk café is necessary to remedy an immediate safety issue, danger or hazard,

HRM or a utility may, without notice and without compensating the proprietor remove the sidewalk café and restore the street right of way or remedy the safety issue, danger or hazard.

38. The License Administrator may issue an Order to the proprietor that the proprietor shall, at his or her sole expense, remove the sidewalk café from the street if

(a) a proprietor's café license is suspended or revoked; or

(b) access to a sidewalk café is required by HRM or by a utility to install, maintain or repair pipes, cables, wires, poles, hydrants or other improvements to the street.

39. The License Administrator may cause the sidewalk café to be removed from the street if:

(a) the proprietor does not remove the sidewalk café from the street on or before the expiration of the encroachment term;

(b) the proprietor does not comply with an Order to remove the sidewalk café from the street issued pursuant to clause 38(a), within five (5) business days of being served with the Order; or

(c) the proprietor does not comply with an Order to remove the sidewalk café from the street issued pursuant to clause 38(b), within two (2) business days of being served with the Order.

40. (1) If municipal infrastructure or municipal street furnishings have been removed to allow the construction of a sidewalk café, the proprietor shall notify the License Administrator of the intent to remove the sidewalk café.

(2) If the sidewalk café removal is further to an Order issued pursuant to this By-law, notification pursuant to subsection 1, shall be soon as practicable.

(3) If the sidewalk café removal is further to section 36A, notification pursuant to subsection 1, shall be at least five (5) business days prior to the anticipated date of sidewalk café removal.

Cost of Work

41. If the Council, a committee, the Engineer, the License Administrator or another employee of the HRM causes work to be done pursuant to sections 31, 33, 37 or 39, the proprietor shall be fully responsible for the cost of the work, with interest at the rate determined by the Council, by policy, from the date of the completion of the work until the date of payment.

42. In addition to any other remedies at law, if the Council, a committee, the Engineer, the License Administrator or another employee of the HRM causes work to be done pursuant to this By-law, the cost of the work, with interest at the rate determined by the Council, by policy, from the date of the completion of the work until the date of payment, is a first lien on the principle use property upon which, or for the benefit of which, the work was done.

Service

43. (1) Any Notice or Order under this By-law may be served personally, by mailing it to the person at the latest address shown on either the assessment roll or on the application for the café license, by electronic mail or by facsimile.

(2) A Notice or Order is deemed to have been served on the day after it is personally served or on the third calendar day after it was served by any other means.

Appeals

44. (1) The refusal by the License Administrator to grant a seasonal café license or a renewal of an annual café license may be appealed by the Applicant for such café license to the Council within four (4) business days of being served with a notice of the refusal.

(2) A notice of suspension or revocation issued by the License Administrator pursuant to section 22 may be appealed by the proprietor to the Council within four (4) business days of being served with the Notice.

(3) An Order that has been issued by the License Administrator pursuant to this By-law, may be appealed by the proprietor to the Council within four (4) business days of being served with the Order.

(4) The refusal by the Council to grant an annual café license is not subject to appeal.

45. An appeal pursuant to section 44 shall be commenced by filing a written notice with the Municipal Clerk which clearly states the grounds for the appeal.

46. If the proprietor files an appeal, but the Council is not scheduled to meet before the date on which the license is to be suspended or revoked, or the repairs, alterations or restoration are to be completed, the suspension or revocation or repairs, alterations or restoration shall be held in abeyance until the Council has rendered its decision on the appeal.

47. (1) After hearing an appeal, the Council shall:

(a) deny the appeal; or

(b) allow the appeal and reverse the decision of the License Administrator.

(2) If the appeal is allowed, the Council may make any decision the License Administrator could have made pursuant to this By-law including ordering the removal of the sidewalk café.

Delivering of Impounded Items

48. (1) Items removed from the street, pursuant to sections 37 and 39 shall be deemed seized.

(2) All items seized by a Peace Officer shall be delivered to a location specified by the License Administrator.

(3) The License Administrator shall detain all items seized and delivered by a Peace Officer pursuant to this By-law for a period of fourteen (14) calendar days.

(4) All items that are seized and delivered under this section are impounded items.

49. During the fourteen (14) calendar day period designated by subsection (3) of section 48 of this By-law, the License Administrator shall make reasonable efforts to notify the owner of the items that such items has been impounded.

50. Any items that has not had its owner identified within the fourteen (14) calendar days, shall become the property of the HRM and may be:

(a) sold; or

(b) destroyed.

51. An owner that has been notified that the License Administrator has impounded his or her item shall have the fourteen (14) calendar days, from the notification to redeem the item.

Compliance with Order

52. The proprietor shall comply with any Order issued under this By-law.

Penalty

53. A person who:

(a) violates or contravenes a provision of this By-law or an Order issued in accordance with this By-law;

(b) fails to do anything required by this By-law;

(c) fails to comply with an Order issued pursuant to this By-law;

(d) permits anything to be done in violation of this By-law or an Order issued in accordance with this By-law; or

(e) obstructs or hinders any person in the performance of their duties under this By-law or an Order issued pursuant to this By-law,

is guilty of an offence.

54. A person who commits an offence is liable upon summary conviction to a penalty of not less than two hundred and fifty dollars and not more than five thousand dollars and in default of payment, to imprisonment for a term of not more than two months.

55. Every day during which an offence pursuant to section 53 continues is a

separate offence.

Schedules

56. Any Schedules attached this By-law shall form part of this By-law.

Schedule ``A`` Design Standards

The following design standards shall be met to safeguard public health and safety:

Part I: General

1. Sidewalk cafés shall be adjacent to a principle use property.
2. Sidewalk cafés shall not extend onto the frontage of a property without abutter permission.
3. Sidewalk café signage shall comply with any By-law respecting the licensing of temporary signs.
4. Sidewalk cafés shall comply with any applicable Land Use By-law.
5. Sidewalk cafés shall comply with the Canadian Standards Association (CSA) Accessible Design for the Built Environment, CSA Standard B651, as amended from time to time.
6. The design of the café or the arrangement of the furniture shall not restrict access to emergency exits.
7. The design of the café or the arrangement of the furniture shall not restrict access to any above ground utility meters or shut-off valves

Part II: Barrier

8. All sidewalk cafés licensed for alcohol must be enclosed by a barrier.
9. A barrier shall be setback at least 0.45 m (1'-6") from any municipal street furnishings.
10. The barrier shall be installed in such a way that it does not reduce the unobstructed sidewalk width to less than 2.1m (7 feet), failing which, a temporary sidewalk shall be installed by the proprietor adjacent to the sidewalk café.
11. The minimum barrier setback from fire hydrants shall be 1.2 m (4'-0").
12. Barriers shall be at least 0.9 m (3'-0") in height, and no more than 1.2 m (4'-0") high.
13. Barriers higher than 0.9 m shall be at least 30 m (98'-0") away from the nearest intersection.
14. Barrier footings shall not penetrate the sidewalk.

Part III: Temporary Sidewalk

15. Placement of temporary sidewalks shall not impede vehicular and pedestrian traffic movement or safety.
16. Temporary sidewalks shall be guarded by a traffic barrier at ends exposed to vehicular travel.
17. Traffic barriers shall be no less than .81 m (2'-8") in height and no more than 1.05 m (3'-6") in height (in total of all elements).
18. Traffic barriers shall incorporate reflectors.
19. Temporary sidewalk surfaces shall be slip resistant.
20. Temporary sidewalk surfaces shall not impede pedestrian movement.
21. Temporary sidewalk construction shall maintain existing drainage patterns and storm water runoff volumes.

Part IV: Decks

22. The construction of a deck exceeding a height of 0.6 m (2'-0") shall comply with section 27 of this By-law.
23. Decks shall be as close to the elevation of the existing sidewalk grade as possible (accommodating a level surface area and deck framing).
24. Decks shall not be constructed over underground services (hydro vaults, chambers, maintenance holes, manholes, valves, etc.), without prior written approval from the relevant public utility, and must provide access to the infrastructure to the satisfaction of the affected utility.
25. Where alternate barrier-free access to the principle use property is not available, a ramp shall be provided within the deck area to facilitate barrier-free access.

Part V: Furnishings

26. Plant material shall be contained within the sidewalk café.
27. Umbrellas shall:
 - (a) be made of non-combustible material; and
 - (b) when open, not extend beyond the sidewalk café's barrier.

Part VI: Lighting

28. Sidewalk café lighting shall not project onto adjacent properties.

29. No sidewalk café shall place or permit lighting that, in the opinion of the Engineer, may:

- (a) be confused with any traffic signal light, control sign or device;
- (b) obstruct or interfere with the movement of motorists or pedestrians at any street intersection, any driveway street connection, any railway crossing or bridge;
- (c) produce or cause glare to motorists, pedestrians or neighbouring premises;
or
- (d) moves or appears to move.

Diagrams

30. The diagrams in this By-law are for illustrative purposes only and shall not form part of this By-law.

ATTACHMENT 2

HALIFAX REGIONAL MUNICIPALITY ADMINISTRATIVE ORDER NUMBER 15 RESPECTING LICENSE, PERMIT AND PROCESSING FEES

BE IT RESOLVED that Administrative Order 15, the *License, Permits and Processing Fees Administrative Order* is further amended as follows:

1. The Charter in section 21 is amended by repealing the word “Sidewalk Café” and the fee for Sidewalk Café of “\$200”.
2. Section 21 is added after section 20 as follows:

By-law #	Short Title	Details	Fee
By-law S-1000	<i>Sidewalk Café By-law</i>		
		Seasonal Sidewalk Cafe License Fee for unenclosed sidewalk café.	\$250 per Seasonal Sidewalk Café
		Seasonal Sidewalk Café License fee for unenclosed sidewalk café where the tables and chairs are removed from the sidewalk each day by the closing time of the principle use property.	No fee
		All other Seasonal Sidewalk Café License Fee.	\$800 per Seasonal Sidewalk Café
		Annual Sidewalk Café License Fee for: a) an initial Annual Sidewalk Café License or; b) a Substantive Change to a previous Annual Sidewalk Café License; or c) a change to the encroachment term.	\$1,400 per Annual Sidewalk Café
		Renewal of Annual Sidewalk Café License Fee.	\$1,000 per Annual Sidewalk Café
		Parking Meter Removal and Reinstatement Fee.	\$150 per meter per sidewalk café season
		Street Post Removal and Reinstatement Fee.	\$150 per street post per sidewalk café season

ATTACHMENT 3

HALIFAX REGIONAL MUNICIPALITY ADMINISTRATIVE ORDER NUMBER 2014-016-GOV RESPECTING DELEGATION OF COUNIL AUTHORITY TO THE APPEALS COMMITTEE

BE IT RESOLVED AS AN ADMINISTRATIVE ORDER by the Council of the Halifax Regional Municipality as follows:

Short Title

1. This Administrative Order may be cited as Administrative Order Number 2014-016-GOV, the *Delegation to the Appeals Committee Administrative Order*.

Interpretation

2. In this Administrative Order,

(a) “Appeals Committee” means the Committee established pursuant to Bylaw Number A-100, the *Appeals Committee Bylaw*.

Delegation of Authority Respecting Sidewalk Cafés

3. Pursuant to subsection 6(3) of By-law S-1000, the *Sidewalk Café By-law*, the Council delegates to the Appeals Committee the authority pursuant to sections 44 and 47 of that By-law to hear and determine appeals respecting

(a) a refusal by the License Administrator to grant a seasonal café license or to grant a renewal of an annual café licence;

(b) a notice of suspension or a notice of revocation issued by the License Administrator;
or

(c) an Order issued by the License Administrator.

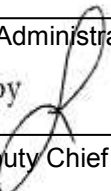
Item No. 11.1.3
Halifax Regional Council
September 23, 2014

TO: Mayor Savage and Members of Halifax Regional Council

Original signed by 

SUBMITTED BY:

Richard Butts, Chief Administrative Officer

Original Signed by 

Mike Labrecque, Deputy Chief Administrative Officer

DATE: September 8, 2014

SUBJECT: Sidewalk Café By-Law

ORIGIN

This report originates from Staff in relation to the By-law Review Project, which involves the review, updating, and consolidation of HRM by-laws.

LEGISLATIVE AUTHORITY

HRM Charter, S.N.S. 2008, c. 39, clause 188 (1) (c) Council may make by-laws, for municipal purposes, respecting persons, activities and things in, on or near a public place or place that is open to the public.

HRM Charter, S.N.S. 2008, c. 39, section 191, Council may, by by-law, regulate vending on the streets of the Municipality.

HRM Charter, S.N.S. 2008, c. 39, section 324 Council may, by by-law, regulate encroachments upon under or over streets, including stipulating the period of time an encroachment may remain including terms and conditions, for particular Encroachments.

Administrative Order 32, the By-law Development Administrative Order.

By-law A-102, subsection 4(1), the Appeals Committee will hear appeals that are directed to the Appeals Committee by the Charter, a by-law or Council policy.

By-law A-102, subsection 4(2), the Appeals Committee will exercise the authority and discretion conferred or delegated to the Appeals Committee by the Charter, a by-law or Council policy.

RECOMMENDATION ON NEXT PAGE

RECOMMENDATION

It is recommended that Halifax Regional Council

1. Repeal the Halifax Regional Municipality Sidewalk Café Policy, as adopted by Halifax Regional Council May 27, 1997 and amended from time to time;
2. Adopt By-law S-1000, the Sidewalk Café By-Law¹, as set out in Attachment A, regulating the use of municipal street right-of-ways for the purposes of establishing sidewalk cafes adjacent to food and beverage establishments;
3. Adopt the amendments to Administrative Order 15, Respecting License, Permits and Processing Fees, as set out in Attachment F; and
4. Adopt Administrative Order 2014-016-GOV, Respecting Delegation of Council Authority pursuant to By-Law S-1000, as set out in Attachment H.

BACKGROUND

HRM has permitted, through Council-approved policy, the operation of sidewalk cafés since 1997.² The Sidewalk Café Policy (Policy)³ defines sidewalk cafés as

“a group of tables and chairs and other accessories situated and maintained upon a public sidewalk or pedestrian mall for the use and consumption of food and beverages sold to the public from, or in, an adjoining indoor food and beverage establishment.”

The Policy includes guidelines for approvals, permitting, construction and the operation of sidewalk cafés that are intended to safeguard public safety and facilitate accessibility. With the exception of multiple changes to the café season, the original policy has remained virtually unchanged over seventeen years.

The situation has changed since the Policy was adopted seventeen years ago. The number of cafés operating in the municipality has grown significantly. In 1997, ten sidewalk cafés were in operation. In 2013, over fifty sidewalk cafés were in operation. Since the Policy was originally adopted, the nature of the sidewalk café construction has also changed, with a few sidewalk cafés being constructed at heights above street grade, thereby creating a risk of collapse.

In 2001 HRM conducted a review of the Policy. This review resulted in a consultant's study, completed in 2001, entitled “Downtown Halifax Sidewalk Café Design Standards”, which was developed through public and stakeholder consultation.⁴ The study proposed new design criteria for sidewalk cafés and made recommendations on how to improve the permit and application process. While operational changes were made in response to this report, no amendments were made to the Policy itself.

In 2008, the feasibility of permanent sidewalk cafés was raised at Council and was the subject of a staff report. At that time, staff advised that the issue of year round cafés required further review and should be deferred pending adoption of HRM by Design's framework for enhancing streetscapes in the urban core. No amendment of the Policy was undertaken following the adoption of HRM by Design.

¹ See Attachment A.

² Because sidewalk cafés are situated on municipal property, they are subject to HRM oversight. See legislative authority discussion below.

³ See Attachment B.

⁴ See Attachment C.

DISCUSSION

Staff Research on Sidewalk Cafés Regulation in Other Municipalities

Due to the popularity of on-street dining, many Canadian cities allow sidewalk cafés on municipal property. Based on a Canada-wide jurisdictional review⁵, it is clear that where, when and how these sidewalk cafés are permitted to operate is not uniform. Variation exists in virtually all aspects of the regulatory approach taken in other parts of the country (application process, location, barriers/deck design, encroachment period, setbacks, fees, hours of operation, advertising, insurance, indemnification etc.). Insights drawn from the pan-Canadian jurisdictional review helped staff formulate a revised approach to regulating sidewalk cafés in Halifax. The proposed draft sidewalk café by-law reflects best practices followed in municipalities across the nation.

Purpose of Draft Sidewalk Café By-Law

The purposes of the draft sidewalk café by-law are to:

- encourage the operation of sidewalk cafes in keeping with municipal policies generally aimed at promoting vitality, pedestrian activity and human scale in downtown areas;
- promote traffic movement and safety standards in relation to the operation of sidewalk cafés;
- standardize the application process for operation of sidewalk cafés throughout HRM;
- rationalize various municipal by-laws under which sidewalk cafés are permitted uses within HRM;
- promote a set of design criteria which address accessibility and public safety;
- encourage a high standard of cleanliness in and around sidewalk cafés;
- provide a balanced schedule of charges for sidewalk cafés; and
- mitigate HRM's risk exposure.

Legislative Authority – Policy vs. By-Law

When the original Sidewalk Café Policy was drafted, HRM was governed by the Halifax Regional Municipality Act. In their 1997 report to Council, staff advised Council that HRM did not have legislative authority to pass a by-law to regulate sidewalk café encroachments. Staff positioned the Policy as an interim measure and stated explicitly that it would be “preferable to establish a municipal by-law specifically designed to regulate sidewalk cafes.” Staff noted that a pending change to the legislation was anticipated that would allow HRM to regulate sidewalk cafés by way of a by-law.

In 2009, the Halifax Charter, S.N.S. 2008, c. 39 came into force, replacing the then Municipal Government Act as the governing legislation for the municipality. The authority to regulate sidewalk cafés can now be found in several sections of the HRM Charter – specifically in s.188, s.317, s.319, and s.324. If Council wants sidewalk cafés to be licensed, s.58 requires that Council exercise its by-law powers through the adoption of a by-law.

Sidewalk Café Operations and Existing HRM By-Laws

Sidewalk cafés are currently governed by three HRM by-laws:

- By-Law S-300, the Streets By-law;
- By-law E-200, the Encroachment By-law; and
- By-law C-500, the Vending By-law

⁵ Staff reviewed café-related policies, guidelines and legislation from 10 municipalities (Calgary, Edmonton, Fredericton, Hamilton, Kingston, Ottawa, Toronto, Vancouver, Windsor, Wolfville). See Attachment D for a table compiling sidewalk café regulatory data from seven of these municipalities.

These three by-laws each impact on aspects of sidewalk café operation, but none of the three comprehensively address either sidewalk café construction/design standards or the operation of sidewalk cafés.

Sidewalk cafés are not specifically referenced in the By-law E-200. Under By-law E-200, however, Council may enter into encroachment agreements (including agreements pertaining to sidewalk cafés) upon such terms and conditions as Council deems appropriate, provided that the agreement applies encroachment fees consistent with fees charged in relation to other encroachments under By-law E-200.

Similarly, By-law S-300 does not specifically reference sidewalk cafés. Under By-law S-300, however, anyone wanting to “make use of the street, or any portion thereof, for any activity other than as a right of way” must obtain a Street and Services Permit from the Engineer. This is the current mechanism by which sidewalk cafés are allowed to operate (i.e. sidewalk café operators are issued a Streets and Services Permit on a seasonal basis). Staff has historically applied the Policy to café-related Streets and Services Permits. However, the Policy is not incorporated, by reference, into By-law S-300.

By-law C-500 stipulates that licenses issued pursuant to By-Law C-500 include a Street & Services Permit issued for sidewalk cafés (section 2(i)). The by-law defines sidewalk café (section 2(v)) and exempts sidewalk cafés from the by-law’s provisions regarding vending by an abutting business (section 30(6)) – including the requirement to remove the vendor’s “stand” from the sidewalk not later than 30 minutes after the time when the abutting business closes. By-law C-500 is otherwise silent on sidewalk cafés.

Risk Management & Sidewalk Café-Related Litigation

HRM Risk staff has dealt with multiple incidents involving sidewalk cafés since the sidewalk café Policy was approved in 1997. HRM has received notice of incidents for the following:

- trip and fall over low sidewalk planter;
- chair tipped off deck;
- person walked off deck as there were no visual clues/chain/barricade;
- slip and fall on slippery wood (multiple);
- trip over raised or uneven planking;
- trip over unmarked wheelchair ramp;
- trip over metal sign or parking meter base (multiple);
- fall over broken curb after deck removed;
- fall resulting from stepping onto damaged grate/pothole after deck removed.

Incidents, of the nature described above, can be reduced in frequency by proper site mitigation and by inspection processes. The proposed sidewalk café by-law is intended to support HRM staff in their inspection role to facilitate proper site mitigation, better protect the public and reduce the number of café-related injuries.

By-Law Based Administrative Flexibility

Under the current policy framework HRM may “order that a sidewalk café be removed from the public sidewalk” if an operator “fails to conform with the terms and conditions of approval”. If the café operator fails to comply with the order to remove the café, HRM may “take such action needed to have the sidewalk café removed”.⁶ Apart from this ability to remove a café, no other form of compliance-related administrative authority is conferred by the Policy. Outside of removing a café, the Policy administrator is without recourse if a café operator fails to operate in accordance with the conditions of their sidewalk café approval.

⁶ See Revocation of Approval under the existing Sidewalk Café Policy.

Regulating sidewalk cafés by means of a by-law would allow staff greater enforcement flexibility. Non-compliance under the proposed by-law can be dealt with through a range of administrative options from issuing a notice to comply, to issuing a summary offence ticket, to suspending a café license, to revoking the café license, to ordering the removal of a café from the right-of-way. This range of administrative options balances the need to preserve public safety against the interests of the café license holder. With a range of enforcement options, the municipality will be in a better position to ensure that the public interests are protected.

Business Unit Capacity and Transfer of Authority

Currently, all administrative functions associated with sidewalk cafés sit with Transportation and Public Works – including reviewing applications, issuing permits, and monitoring compliance. Under the proposed by-law, these administrative functions would be transferred to Municipal Compliance, although Transportation and Public Works will remain involved in aspects of the application review process. Municipal Compliance staff members are well versed in interpreting and enforcing the building code and CSA Standards – aspects of which are applicable to sidewalk café structures. Moreover, Municipal Compliance is well positioned to issue permits and licenses and to enforce municipal by-laws. This approach is consistent with the enforcement recommendations made in the 2001 sidewalk café consultant's report. Ekistics recommended that a by-law enforcement officer be tasked with inspecting sidewalk cafés during the café construction period and tasked with periodic inspection of sidewalk cafés throughout the rest of the café season.⁷

Inspection Prior to Use

Under the current Policy, staff put into place a design review process to evaluate whether the sidewalk café designs submitted by applicants meet Policy requirements. There is, however, currently no policy-based mechanism to ensure that café construction is done in accordance with the site plans submitted by applicants. While the Policy states that a sidewalk café can be removed if it is not in compliance (see above), the Policy itself does not mandate inspection at any point during the café season.

The proposed by-law would require café inspection post-construction and prior to use by the public. This approach is consistent with the approach taken in regards to other publicly accessible, private-sector-constructed structures. In the absence of a start of season inspection, HRM's assessment of the safety of the sidewalk café is based solely on a café design. Failure on the part of the license holder to construct consistent with the design provided to HRM may create a situation dangerous to pedestrians and/or vehicles, and may expose HRM to liability.

Insurance

The proposed sidewalk café by-law would increase the insurance coverage required for sidewalk café proprietors serving alcohol. Under the proposed by-law, proprietors would be required to carry a minimum of \$5,000,000 in coverage if alcohol is being served on municipal property (i.e. in a sidewalk café constructed in the municipal right-of-way). This change in minimum insurance requirements reflects current insurance practice. Seventeen years have passed since the Policy was initially approved by Council. What HRM's Risk Management staff viewed as sufficient insurance coverage in 1997 (\$2,000,000) is no longer viewed as sufficient coverage in 2014.

The recommended \$5,000,000 in insurance coverage is consistent with coverage required for other alcohol-related activities on municipal property. Entities booking municipal parks for event-hosting purposes are, for example, required to carry a minimum of \$5,000,000 in liability insurance if they will be serving alcohol to the public at the event. A minimum of \$5,000,000 in insurance is likewise required of those entities operating municipal facilities on behalf of HRM that are serving alcohol to the public on those municipal facility premises. Raising the required minimum insurance to \$5,000,000 for sidewalk

⁷ See Recommendation #52 in the Ekistics Planning and Design consultant's report in [Attachment C](#).

cafés serving alcohol to the public would bring the sidewalk café insurance requirements into line with other spheres of municipal operations.

Capacity to Recover Costs

The proposed by-law allows for the recovery of costs incurred by the municipality in administering the café by-law.⁸ If Council, a committee, the Engineer, the License Administrator or another employee of the HRM orders work to be done under the sidewalk café by-law, then those costs can be recovered.⁹ As drafted, the by-law allows for cost recovery from the sidewalk café proprietor. If the proprietor fails to pay costs incurred by the municipality, the municipal costs may be recovered through a first lien on the principle use property.

Sidewalk Café Season – Current

The Sidewalk Café Policy, when initially established, allowed the seasonal operation of sidewalk cafés from June 1 to October 30, unless otherwise approved. Council has subsequently amended the sidewalk café season on four separate occasions – April 28, 1998 / February 23, 2006 / April 8, 2008 / March 27, 2012. These successive café –season-changes were made in response to requests from the business community to allow for early sidewalk café start-ups. The middle two policy amendments were made in conjunction with major downtown events (the 2006 Junos and the 2008 World Hockey Championship). The earliest start date was March 27 – approved in 2006. As of March 2012, however, the Policy stipulates that the sidewalk café season runs from as early as April 1 to October 31.

Sidewalk Café Season – Proposed

A mid-April start date is being recommended by staff to mitigate risk of damage to public and private property. Allowing café construction too early in the Spring results in café structures being either fully or partially erected when HRM winter works crews may have to clear snow from the streets and sidewalks.¹⁰ A later start date reduces the likelihood of a snow event occurring after café construction has begun in any given year. Staff is, therefore, recommending a start date of no later than April 15th (earlier weather permitting) and an end date of no later October 31 in any calendar year.

Heritage Property and Sidewalk Cafés

If the proposed sidewalk café impacts a municipal or provincial heritage property, it is subject to review under the Heritage Property Act.¹¹ This stipulation applies whether the proposal relates to a seasonal or an annual café license. Where required pursuant to the Heritage Property Act, and pursuant to HRM by-law H-200, the Heritage Advisory Committee will advise Council. Consistent with the Heritage Property Act, Council will exercise its discretion to allow or deny (café-related) “substantial alterations” to a municipal heritage property.¹²

⁸ Specifically, costs incurred in relation to the removal of a sidewalk café or repair to the right-of-way necessitated by the actions of persons operating a sidewalk café.

⁹ This approach is consistent with cost-recovery provisions in By-law E-200, Respecting Encroachments Upon, Under or Over a Street (see Section 9).

¹⁰ Transportation and Public Works staff members have monitored weather conditions at the start of the café season for a number of years and have noted snow events in late March and early April (see Attachment F for images from Fiscal 2012-2013)

¹¹ Per the Heritage Property Act, municipal and provincial heritage properties include buildings, public-building interiors, streetscapes, cultural landscapes and areas registered in a municipal, or provincial, registry of heritage property.

¹² Per the Heritage Property Act, “substantial alteration” means any action that affects or alters the character-defining elements of a property.

Café Configuration and Accessibility

In their 2001 consultant's report¹³ Ekistics Planning and Design recommended that HRM authorize "satellite" sidewalk cafés that would convert the parking lane to sidewalk café seating.¹⁴ As Ekistics pointed out in their report,

"One major challenge of the current boardwalk sidewalk café design is that it poses accessibility issues. An alternate sidewalk café design, such as the satellite café design, offers pedestrians direct linear paths of movement rather than the zigzags that boardwalks create."

From an accessibility standpoint, situating the sidewalk café in the parking lane (satellite café design) is optimal as it allows for unimpeded pedestrian traffic on the sidewalk and does not force persons with disabilities to navigate around sidewalk cafés.

Alcohol and Gaming, however, does not permit servers to cross through pedestrian traffic on a sidewalk to serve patrons at a satellite sidewalk café. As a result, the proposed sidewalk café by-law, like the current Policy, would not permit café configurations that involve situating the sidewalk café in the parking lane. Instead, pedestrian traffic must be rerouted around sidewalk cafés on temporary sidewalks in the adjacent parking lane at the curb (as is the current practice in HRM).

Recognizing that sidewalk café structures present navigation challenges to persons with disabilities, the proposed by-law would include a requirement to comply with Canadian Standards Association (CSA) Standard B651 – Accessible Design of the Built Environment. CSA Standard B651 specifies technical requirements intended to make buildings and other facilities accessible and safely usable by persons with physical, sensory, or cognitive disabilities. CSA Standard B651 was developed to fulfill an expressed need for a national technical standard that covers many different types of buildings and environmental facilities. CSA Standard B651 covers a range of accessible design requirements, including, but not limited to, the following:

- general requirements (area allowances, floor or ground surfaces, changes in level, gratings, tactile walking surface indicators, protrusion hazards, protruding hazards, width maintenance etc.);
- interior circulation (width, slope, accessible routes, opening width, thresholds, treads and riser, ramps, surfaces, edge protection, etc.)
- exterior circulation, spaces and amenities (accessible routes, width, slope, edge protection, exterior ramps, etc.)

CSA Standard B651 has been endorsed by The Standards Council of Canada (SCC), a federal Crown corporation with a mandate to promote efficient and effective standardization in Canada.

CSA Standard B651 is also used by the Treasury Board of Canada. In meeting accessibility requirements for real property, federal departments are required to apply the technical standard found in CSA Standard B651.

Sidewalk Café Fee Schedule – Policy

Under the existing Policy, the fee schedule applied to the use of municipal sidewalks is divided into four areas of HRM: (1) Downtown Halifax; (2) the peninsula outside the downtown area; (3) Downtown Dartmouth; and (4) main street areas across HRM where properties abut sidewalks. For each area, the rental fees were originally derived from those that would be charged for lease of municipal land. The fees are charged on the basis of the square foot of space occupied and prorated to the five month season that sidewalk cafés are permitted to operate under the Policy. Fees charged under the Policy during the 2012-2013 sidewalk café season ranged from a low of \$210 to a high of \$4,375.

¹³ See Attachment C.

¹⁴ See Attachment D.

Sidewalk Café Fee Schedule – By-Law and Accompanying Administrative Order

Under the proposed sidewalk café by-law, fees would be detailed in Administrative Order 15 – Respecting License, Permit and Processing Fees. This approach will enhance fee consistency and permit Council to adjust sidewalk café fees (as required) without needing to amend the sidewalk café by-law itself. A draft amendment to Administrative Order 15 has been created for Council's consideration (see Attachment F).

The proposed sidewalk café license fees align with anticipated service and resourcing requirements. Café license fees are intended to recoup staff costs incurred in ensuring compliance with the sidewalk café by-law (application review, license issuance, periodic inspection etc.)

Staff proposes that the (Policy-based) square-footage-based encroachment fee and license fee be replaced by an (Admin Order-based) blended license fee. Staff recommends an \$800/season license fee for seasonal cafés. If this fee is approved by Council, 30 café operators would pay more in 2014 than they did in 2013. Café licenses will be \$322 more expensive, on average for those experiencing an increase. Conversely, 21 café operators would pay less in 2014 than they did in 2013. Café licenses will be \$522.00 cheaper, on average, for those experiencing a decrease. One café operator would pay the same in 2014 as was paid in 2013.

Additional fees will be charged on a case-by-case basis where municipal infrastructure (parking meters, signage, etc.) is removed to allow for sidewalk café construction. Removal and reinstatement fees reflect staff costs incurred. Staff recommends a fee of \$150 per post (sign post or meter post). Proposed café license fee structure changes will be revenue neutral (vis-à-vis existing sidewalk cafés operating under permit).

Year Round Sidewalk Cafés

For several years, staff has discussed year round sidewalk cafés with merchants. Year round sidewalk cafés can extend the entertainment season and enhance street vibrancy, particularly in districts where a critical mass of cafés can help revitalize urban business districts.

The draft sidewalk café by-law would allow for Council consideration of year round sidewalk cafés on a case-by-case basis. Where Council approves year round operation, the applicant will be issued a license to operate the sidewalk café year round. The year round encroachment may continue on a year-to-year basis through annual applications for license renewal. Council is advised that damage to sidewalk cafés caused by winter works operations may result in an unrecoverable liability.

Restriction on Year Round Sidewalk Cafés

The establishment of year round cafés needs to be carefully balanced against other uses within the right of way. Under the draft by-law, the License Administrator, or Council may only grant a year round sidewalk café license if

- the width of the roadway is not be reduced;
- the sidewalk café does not create vehicular congestion;
- the sidewalk café does not present a risk of harm to public health or safety;
- the sidewalk café does not constitute a nuisance;
- the sidewalk café does not unreasonably interfere with municipal services, including fire service, police service, sanitation services and winter maintenance;
- the sidewalk café does not unreasonably interfere with the public's use or enjoyment of the street including the sidewalk;
- the sidewalk café does not unreasonably interfere with the construction or installation of a municipal work, service, utility or other improvement;
- a minimum sidewalk width of 2.1 m (7 feet) remains unobstructed, including being unobstructed by sidewalk cafés, municipal infrastructure or municipal street furniture; and

- HRM or any utility has reasonable access to maintain or install a utility or service

Under the draft by-law, Council would be responsible for deciding whether to grant or decline an annual café license.

Applicability of Sidewalk Café By-Law to Year Round Cafés

All aspects of the sidewalk café by-law, save for the April to October encroachment period, would apply to the year round sidewalk cafés, including fee structures and compliance with construction standards set out in the proposed sidewalk café by-law's draft Design Standards. Future amendments to the by-law can be applied to sidewalk cafés that remain in place year round. Yearly license renewals will enable the License Administrator to reflect any changes in the regulatory approach that may be implemented over time. Addressing year round cafes in the by-law ensures consistency in how HRM approaches all sidewalk cafés – regardless of the duration of the encroachment term.

Encroachment Agreements for Sidewalk Cafés

Individual encroachment agreements for sidewalk cafés have the potential to result in diverging standards that undermine the regulatory intent of the sidewalk café by-law and make monitoring compliance problematic. For this reason, staff recommends that year round sidewalk cafés be permitted through annual licenses issued pursuant to the sidewalk café by-law rather than by way of long-term encroachment agreements under By-Law E-200.

Proposed Transition Strategy

Staff recommends that adoption of the draft sidewalk café by-law be effective as of November 1st 2014. This effective date will allow sidewalk cafés to operate under the existing Policy for all of the upcoming six-month-long sidewalk café season (April – October 2014). This approach will give sidewalk café operators ample opportunity to come into compliance with the by-law for the following six-month-long café season (April – October 2015).

Sidewalk café operators that intend to apply for a year round café license could apply prior to November 1st 2014. Assuming that they are in compliance with the by-law and are granted a year round license, such operators would be allowed to commence year round operation of their sidewalk café on November 1st 2014.

FINANCIAL IMPLICATIONS

Finance has calculated that the loss of municipal revenue associated with removed parking meters is currently approximately (\$62,790) per café season:

- \$10/day average daily income per meter $5 \times 30 \times 10 \times 39 = (\$58,500)$
- 18 parking violations per meter removed – minimum parking ticket revenue of \$20/violation i.e. $20 \times 18 \times 39 = (\$14,040)$
- Parking meter removal fee $39 \times 250 = \$9,750$

$$\$58,500 + \$14,040 - \$9,750 = \$62,790$$

The lost revenue calculations assume the following:

- a six month café license period (5 days per week – 30 weeks);
- the removal of 39 meters (total removed in 2013-2014);

Staff recommends that no parking meter revenue be recouped under the proposed by-law. This would amount to a municipal net loss in revenue of \$9,750 per sidewalk café season. This will be absorbed in

the Fiscal Services budget –cost centre M550. The budget for this line in 2014/15 is (\$2,750,000). Note that lost revenue will increase if additional sidewalk cafés are approved, or if the café season is extended.

Damage to year round cafés caused by Winter Works operations may result in an unrecoverable liability. Degree of risk will be addressed, in an accompanying staff report, when an application for an annual café license is put forward for Council's consideration.

COMMUNITY ENGAGEMENT

A draft sidewalk café by-law was developed for presentation to Regional Council in consultation with multiple internal stakeholders including Transportation and Public Works, Community and Recreation Services, Legal Services and Risk Management, Fire Services and Police Services.

Advisory Committee for Persons with Disabilities: In March of 2014, HRM staff presented to the Accessibility Advisory Committee (AAC). The Committee received the staff information, raised questions for clarification and provided feedback on the proposed approach. The AAC endorsed Canadian Standards Association (CSA) Standard B651 – Accessible Design of the Built Environment as the design standard for HRM's sidewalk cafés and further endorsed its inclusion in the draft sidewalk café by-law. The Committee consensus was that the proposed sidewalk café by-law should improve conditions for sidewalk users and sidewalk café patrons by providing an accessible, predictable and hazard-free environment for all users.

Stakeholder Meetings: In August of 2014, staff held stakeholder meetings with the Executive Directors of Halifax's Business Improvement Districts and with owner/operators of existing sidewalk cafés. During those meetings the following key issues/concerns were raised:

- requiring \$5 million insurance coverage could impose undue hardship on restaurateurs;
- mandating inspection prior to use could cause café start-up delays;
- accessibility requirements could jeopardize the profitability/viability of sidewalk cafés.

Insurance – Staff maintain that \$5 million insurance coverage is appropriate (see body of this report for context/rationale).

Inspection – Appropriate staff resources will be committed to inspection at the start of the sidewalk café season to ensure minimal delays.

Accessibility – Accessibility requirements in the sidewalk café by-law should not appreciably impact profitability/viability. Café owner/operators will be able to be in compliance so long as the sidewalk café seating area accommodates service of persons with disabilities.

A comprehensive list of engagement session issues (together with staff responses) is reproduced as Attachment G to this staff report.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications for this report.

ALTERNATIVES

1. Council could direct staff to amend aspects of the draft sidewalk café by-law.
2. Council could decline to adopt the draft sidewalk café by-law.

ATTACHMENTS

Attachment A: Draft Sidewalk Café By-Law

Attachment B: Sidewalk Café Policy

Attachment C: Ekistics Planning and Design – Consultant’s Report on Sidewalk Cafés

Attachment D: Cross-jurisdictional Sidewalk Café Regulatory Research (Table)

Attachment E: Image of Sidewalk Café – Snow Event | April 7, 2012

Attachment F: Amendment to Administrative Order 15, Respecting License, Permit and Processing Fees

Attachment G: Community Engagement Feedback | Questions and Staff Responses (Table)

Attachment H: Administrative Order 2014-016-GOV, Respecting Delegation of Council Authority

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.php> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

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Attachment A

Sidewalk Café By-Law

**HALIFAX REGIONAL MUNICIPALITY
BY-LAW NUMBER S-1000
RESPECTING THE REGULATION OF SIDEWALK CAFÉS**

BE IT ENACTED by the Council of the Halifax Regional Municipality as follows:

WHEREAS sidewalk cafés can enliven municipal streets and enhance Halifax's economic vitality;

AND WHEREAS Council may pass by-laws promoting the health, well-being, safety and protection of its residents, under the authority vested in it by clause 188 (1) (a) of the *Halifax Regional Municipality Charter*, S.N.S. 2008, c. 39, as amended,

AND WHEREAS notwithstanding the *Motor Vehicle Act*, Council may, by by-law, regulate vending on the streets of HRM under authority vested in it by section 191 of the *Halifax Regional Municipality Charter*, S.N.S. 2008, c. 39;

AND WHEREAS Council may, by by-law, regulate encroachments upon, under or over streets, including stipulating the period of time an encroachment may remain and the entering into of agreements, including terms and conditions, for particular encroachments under authority vested in it by section 324(2) of the *Halifax Regional Municipality Charter*, S.N.S. 2008, c. 39;

AND WHEREAS Council may, by by-law, regulate activities and things in, on or near a public place or place that is open to the public under authority vested in it by section 188 (1) (c) of the *Halifax Regional Municipality Charter*, S.N.S. 2008, c. 39;

Short Title

1. This By-Law may be cited as the *Sidewalk Café By-Law*.

Interpretation

2. In this By-Law,

(a) "accessory use" means a use that is normally incidental, subordinate and exclusively devoted to a principal use and located on municipal property adjacent to the principle use property;

(b) "alcoholic beverages" includes wine, liquor and beer as defined by the *Liquor Control Act*, S.N.S. 1989, c. 260, as amended;

(c) "Appeals Committee" means the Appeals Committee as established by By-law A-100, the *Appeals Committee Bylaw*;

(d) “barrier” means a fence, railing or other obstacle that prevents or restricts the movement or access of pedestrians;

(e) “business day” means Monday through and including Friday, except for federal, provincial or municipal holidays;

(f) “café license” means a license to construct, use or operate a sidewalk café on municipal property, issued pursuant to this By-law;

(g) “café plan” means a scale drawing showing the layout and size of the sidewalk café including the amount and location of furniture and exits;

(h) “construction drawings” means technical drawings and specifications used to specify assembly requirements for elements of the sidewalk café;

(i) “Council” means the Council of the HRM;

(j) “Employee” includes agents, officers, servants, assigns and heirs;

(k) “encroachment” means a structure or facility upon, under or over a street and also includes any portion of the street required by the encroachment as a clearance from other structures by good engineering practice;

(l) “encroachment term” means the period of time during which an encroachment is allowed;

(m) “food establishment” means any premises in which food is:

(i) processed, manufactured, prepared, labeled, or served;

(ii) sold, offered for sale, or distributed free of charge; or

(iii) dispensed, displayed, stored, or distributed,

but excludes a dwelling unit except a dwelling unit used for commercial food preparation;

(n) “*Heritage Property Act*” means the *Heritage Property Act*, R.S.N.S., 1989 c. 199;

(o) “HRM” means the Halifax Regional Municipality;

(p) “License Administrator” means the person or persons designated by the Chief Administrative Officer and includes a person acting under the supervision and direction of the License Administrator;

(q) “licensed establishment” means a lounge, cabaret, beverage room, tavern, eating establishment or club licensed under the *Liquor Control Act*;

(r) “Mayor” means the Council member elected at large to be the chair of the Council;

(s) “municipal heritage property” means municipal heritage property as defined in the *Heritage Property Act*;

(t) “municipal infrastructure” includes infrastructure that supports the provision of municipal services and includes public trees, light standards, street lights, traffic signals, traffic signs, parking meters and other municipal signs;

(u) “municipal street furniture” includes bus shelters, banners, flower pots, benches, waste receptacles and other decorations located in the street;

(v) “owner” includes

(i) a part owner, joint owner, tenant in common or joint tenant of the whole or any part of land or a building, and

(ii) in the absence of proof to the contrary, the person or persons assessed for the property;

(w) “person” includes a corporation;

(x) “Peace Officer” means a police officer or a special constable appointed pursuant to the *Police Act*, S.N.S. 2004, c.31, as amended;

(y) “principal use property” means a licensed establishment or food establishment that has a sidewalk café as an accessory use;

(z) “premises” includes a mobile, stationary, temporary or permanent facility or location and the surroundings under the control of the same person;

(aa) “proprietor” means the person who controls, governs or directs the activity of a food establishment or a licensed establishment and includes the person who is actually in charge thereof at any particular time, an owner, or the occupant of the premises;

(ab) “provincial heritage property” means provincial heritage property as defined in the *Heritage Property Act*;

(ac) “roadway” means that portion of a street between the curb lines or the travelled portion of a street designed for vehicular travel;

(ad) “sidewalk” means that portion of a street between the curb line and adjacent property line or any part of a street especially set aside for pedestrian travel and separated from the roadway;

(ae) “sidewalk café” means a deck, patio, ramp, temporary sidewalk, group of tables and chairs or other accessories situated on a street including a sidewalk for the use and consumption of food and beverages sold to the public from, or in, an adjacent principle use property;

(af) “site plan” means a scale drawing showing:

(i) the location of the sidewalk café relative to the street and the sidewalk,

(ii) the location of any municipal street furniture and municipal infrastructure that is located within the proposed location of the sidewalk café, and

(iii) the principle use of the property which has applied for the café license;

(ag) “street” means a public street, highway, road, lane, sidewalk, thoroughfare, bridge, square and the curbs, gutters, culverts and retaining walls in connection therewith;

(ah) “traffic barrier” means an obstacle that prevents or restricts movement or access of vehicles;

(ai) “utility” means any corporation that provides sewage, storm-water, water, telecommunication or electricity services, including, natural gas or other gas intended for use as a fuel;

(aj) “utility infrastructure” means infrastructure required by a utility to deliver services, including pipes, conduits, valves, manholes, hydrants, vaults, poles, overhead wires, metering devices, and pressure regulators; and

(ak) “vend” means the sale and offering for sale of food or beverages on a street or municipally-owned property.

Types of Café License

3. (1) There shall be two types of café license,

(a) a seasonal café license; and

(b) an annual café license.

(2) A seasonal café license shall permit a sidewalk café for an encroachment term set by the License Administrator, such term

(a) shall commence on a date being no later than April 15th in any calendar year; and

(b) shall end on a date no later than October 31st, in the same calendar year.

(3) An annual café license shall permit a sidewalk café for an encroachment term not exceeding one calendar year and shall only be granted by Council.

(4) Notwithstanding subsection (2) of this section, for the encroachment term ending October 31, 2014, the License Administrator may extend the term of a seasonal café license until 11:59 pm on November 20, 2014 and, for the purposes of the extension only, a permit issued pursuant to By-law S-300, the *Streets By-law*, permitting a sidewalk café in the year 2014 is deemed to be a seasonal sidewalk café license issued pursuant to this By-law.

(5) An application pursuant to subsection 4, shall be received by the HRM no later than 4:30 pm on October 30, 2014.

Heritage Property

4. (1) Notwithstanding section 3, an application for a café license, in relation to a provincial heritage property, shall be subject to review pursuant to the *Heritage Property Act*.

(2) Notwithstanding section 3, an application for a café license, in relation to a municipal heritage property, shall be subject to review pursuant to the *Heritage Property Act*, By-law H-200, the *Heritage Property By-law* and By-law H-500, the *Heritage Conservation District (Barrington Street) By-law*.

Granting of License and Renewals

5. Subject to sections 4 and section 7, the License Administrator is authorized and empowered to:

- (a) grant a seasonal café license or a renewal of an annual café license;
- (b) refuse to grant a seasonal café license or a renewal of an annual café license;
- (c) suspend any café license;
- (d) revoke any café license;
- (e) issue the proprietor a Notice to comply with this By-law;
- (f) issue the proprietor an Order to comply with this By-law; and

enter, at any time and without notice, a sidewalk café or principle use property to determine compliance with this By-law.

6. (1) Subject to section 4, the Council may

(a) deny an appeal and refuse to grant a seasonal café license or a renewal of an annual café licence; or

(b) allow an appeal and grant a seasonal café license or a renewal of an annual café license.

(2) Subject to section 4, Council may grant or refuse to grant an annual café license.

(3) Council may, by policy, delegate any of its authority pursuant to this By-law to the Appeals Committee and, where so delegated by the Council, the Appeals Committee stands in the place and stead of the Council with respect to such delegation.

7. If Council grants an annual café license pursuant to section 6, the License Administrator may renew the café license encroachment term, in perpetuity, providing

(a) the café plan, site plan and construction drawings that were approved by Council, pursuant to subsection 6(2), have not substantively changed;

(b) the café plan, site plan and construction drawings that are subject to review pursuant to section 4 have not substantively changed;

(c) each additional encroachment term remains the same as the encroachment term granted by Council pursuant to section 6; and

(d) if the proprietor of the annual café license is not the owner of the property where such café is located, the owner agrees to the continued operation of the café.

Requirements for Sidewalk Café License

8. No person shall construct, operate or vend at a sidewalk café

(a) unless a café license has been issued by the License Administrator or the Council and the café license has not been suspended or revoked;

(b) except in accordance with:

(i) any terms or conditions of the café license; and

(ii) the café plan, site plan and construction drawings approved by the License Administrator or by the Council;

(c) outside the encroachment term specified in the café license;

- (d) except by the person to whom the café license was granted; or
- (e) in an obstructive manner including:
 - (i) obstructing the ingress or egress of the abutting property owner or tenant;
 - (ii) increasing traffic congestion or delay on the street where the sidewalk café is located;
 - (iii) constituting a hazard to pedestrian or vehicular traffic, life or property; or
 - (iv) obstructing adequate access to fire, police or sanitation vehicles or personnel.

9. In addition to prohibitions in section 8, no person shall operate or vend at a sidewalk café:

- (a) unless the sidewalk café has, subsequent to construction, been inspected and approved for use:
 - (i) by HRM; and
 - (ii) by a professional engineer pursuant to section 27 of this By-law, proof of which must be filed with the License Administrator and must be in a form acceptable to the License Administrator;
- (b) at any time when the principal use property is not open to the public for business; or
- (c) any food or merchandise, other than food or merchandise that the person is permitted to sell from the principal use property.

Requirements for Certain Other Licenses

10. (1) During the encroachment term:

- (a) notwithstanding By-Law S-300, the *Streets By-law*, a Streets and Services permit is not required for the construction and removal of a sidewalk café;
- (b) notwithstanding By-law E-200, the *Encroachment By-law*, an Encroachment License is not required for that portion of a street used by a sidewalk café; and
- (c) notwithstanding By-law C-501, the *Vending By-law*, a Vending License is not required to vend food or beverages for that portion of municipal land used by a sidewalk café.

(2) Subsection 1 of this section only applies to the holder of the café license and for that portion of the street identified in the café plan, site plan and construction drawings approved pursuant to this By-law.

Application for Café License

11. The applicant for a café license shall complete an application in a form prescribed by the License Administrator.

12. A separate application shall be made for each café license.

13. An application for a café license shall include:

(a) the name of the applicant, and:

(i) if the applicant is a natural person, it must be signed by him or her; or

(ii) if the applicant is a corporation, organization, society or other body, it must be signed by a director or officer who has the authority to bind the corporation, organization, society or other body;

(b) a written consent from the owner of the principle use property, if other than the applicant;

(c) proof of insurance coverage pursuant to section 20;

(d) an indemnify agreement which indemnifies and holds harmless HRM, its Mayor, Council, and Employees against all losses, claims, actions, damages, costs (including solicitor costs), liability and expense in connection with loss of life, personal injury, damage to property or any other loss or injury whatsoever arising from the design, construction, maintenance, operation, or removal of a sidewalk café, and from sidewalk or street remediation;

(e) detailed construction drawings, site plan and café plan that:

(i) are in a form prescribed by the License Administrator; and

(ii) comply with the standards set out in Schedule A of this By-law.

(f) any fee prescribed by Administrative Order 15; and

(g) any other information required by the License Administrator.

Refusal to Grant a Café License

14. The License Administrator shall refuse to grant a café license if:

- (a) the application is incomplete or contains false or misleading information;
- (b) the proposed sidewalk café does not comply with the requirements of this By-law, including the Design Standards in Schedule A;
- (c) the proposed sidewalk café would unreasonably interfere with the ability of HRM or any utility to have access to, or maintain, any municipal infrastructure, municipal street furniture, or utility infrastructure;
- (d) the proposed area for the sidewalk café is required for the construction or installation of a municipal work, service, utility or other improvement;
- (e) the proposed sidewalk café would unreasonably interfere with the public's use or enjoyment of the sidewalk or adjoining street;
- (f) the proposed sidewalk café would present a risk of harm to the health or safety of the public;
- (g) the proposed sidewalk café would not comply with the *Heritage Property Act*, By-law H-200 or By-law H-500;
- (h) the proposed sidewalk café would constitute a nuisance; or
- (i) in the opinion of the Engineer the proposed sidewalk café would:
 - (i) increase traffic congestion or delay on the street where the proposed café would be located; or
 - (ii) constitute a hazard to pedestrian or vehicular traffic, life or property

15. The Council may only grant an annual café license if

- (a) the width of the roadway is not reduced;
- (b) the sidewalk café does not create vehicular congestion;
- (c) the sidewalk café does not present a risk of harm to the health or safety of the public;
- (d) the sidewalk café does not constitute a nuisance;

(e) the sidewalk café does not unreasonably interfere with municipal services, including fire service, police service, sanitation services and winter maintenance;

(f) the sidewalk café does not unreasonably interfere with the public's use or enjoyment of the street including the sidewalk;

(g) the sidewalk café does not unreasonably interfere with the construction or installation of a municipal work, service, utility or other improvement;

(h) a minimum sidewalk width of 2.1 m (7 feet) remains unobstructed, including being unobstructed by sidewalk cafés, municipal infrastructure or municipal street furniture; and

(i) HRM or any utility has reasonable access to maintain or install a utility or service.

Requirements of a Granted Café License

16. A café license granted pursuant to this By-law shall specify:

(a) the type of encroachment that is authorized by the café license;

(b) the encroachment term;

(c) the civic address of the principal use property;

(d) the name of the person to whom the café license is granted; and

(e) such other terms and conditions as may be necessary in the opinion of the License Administrator.

Encroachment Term

17. (1) Subject to sections 3 and 4, the License Administrator shall establish an encroachment term for each seasonal café license granted pursuant to this By-law.

(2) Council may grant an annual café license with an encroachment term not exceeding one year.

(3) The License Administrator may grant a renewal of an annual café license with an encroachment term not exceeding one year.

(4) Notwithstanding section 6 of Ordinance 173, the *Granville Mall Ordinance*, the License Administrator or the Council may grant a café license for any encroachment term permitted under this By-law.

18. (1) Every café license shall bear a number and shall be affixed to the principle use property in a conspicuous place.

(2) An affixed café license shall not be removed, for the duration of the encroachment term, except with the consent of the License Administrator.

Conditions on Proprietor of a Granted Café License

19. (1) Where alcoholic beverages are not served or consumed at the sidewalk café, the proprietor shall, at their own expense, purchase commercial general liability insurance in the amount of not less than two million dollars (\$2,000,000 CDN).

(2) Where alcoholic beverages are served or consumed at the sidewalk café, the proprietor shall, at their own expense, purchase commercial general liability insurance in the amount of not less than five million dollars (\$5,000,000 CDN), with liquor not excluded.

(3) Insurance coverage, pursuant to subsections 1 and 2, shall

(a) be maintained during the encroachment term;

(b) name HRM as an additional insured with respect to any loss, claims, actions, damages, costs (including solicitor costs), liability and expense in connection with loss of life, personal injury, damage to property or any other loss or injury whatsoever arising from the design, construction, maintenance, operation, or removal of a sidewalk café or from sidewalk or street remediation related thereto.

20. (1) The proprietor shall provide HRM with a certificate of insurance.

(2) The certificate of insurance provided pursuant to subsection 1 shall

(a) be in a form and with an insurer acceptable to HRM;

(b) evidence compliance with section 19;

(c) be provided to HRM upon insurance renewal; and

(d) be provided to HRM upon a material change in coverage.

Transferability of a Granted Café License

21. A café license granted pursuant to this By-Law is not transferrable.

Suspension or Revocation of a Granted Café License

22. The License Administrator may suspend or revoke a café license if:

(a) the proprietor fails to comply with any term or condition of the cafe license or this By-law;

(b) the proprietor is convicted of an offence under this By-law;

(c) the continued operation of the sidewalk café, would be a risk to the health or safety of the public, or would otherwise constitute a nuisance;

(d) the continued operation of the sidewalk café unreasonably interferes with the ability of HRM, or any utility, to have access to or maintain any municipal infrastructure, municipal street furniture, or utility infrastructure; or

(e) the proprietor fails to comply with sections 19 and 20.

23. In the event a café license is revoked, or suspended for a period of one week or more pursuant to clause 22(d) the Municipality shall refund to the applicant of such license that portion of the license fee paid by the applicant pro-rated in proportion to the amount of time:

(a) that the license is suspended during the encroachment term; or

(b) remaining for the encroachment term if the license is revoked.

24. Notwithstanding sections 44 and 46, a suspension pursuant to clause 22(e) shall continue until:

(a) the proprietor complies with sections 19 and 20;

(b) the café license expires; or

(c) the café license is revoked.

Sidewalk Café Construction

25. Subject to section 26, no person other than the HRM shall remove municipal infrastructure or municipal street furnishings to construct a sidewalk café.

26. (1) Where municipal infrastructure or municipal street furnishings must be removed to permit the construction of a sidewalk café, the proprietor shall notify the License Administrator of intent to construct.

(2) Notification shall be at least five (5) business days prior to the anticipated date of sidewalk café construction.

27. Where the sidewalk café exceeds a height of 0.6 m (2'-0") from any point on the sidewalk grade, the proprietor shall:

(a) engage the services of a professional engineer, licensed to practice in the Province of Nova Scotia;

(b) file with the License Administrator a written undertaking stating that the professional engineer has been engaged by the proprietor to supervise and set out the sidewalk café;

(c) ensure that the sidewalk café shall be constructed and maintained in accordance with the approved café plan, site plan and construction drawings; and

(d) subject the sidewalk café to inspection and approval by the professional engineer or his or her representative.

Sidewalk Café Maintenance and Repair

28. The proprietor shall, to the satisfaction of the License Administrator, and at his or her sole expense, keep and maintain the area surrounding or adjacent to the sidewalk café in a clean, sanitary, attractive condition, free from papers, rubbish and debris of any kind.

29. The proprietor or employees or agents of the proprietor of a sidewalk café shall not damage the street, sidewalk, curb or the landscaping between the sidewalk and the curb by constructing, operating, removing, maintaining, repairing or altering a sidewalk café.

30. The proprietor shall, at his or her sole expense, maintain the sidewalk café in a safe condition, such that it is not dangerous or hazardous to traffic, pedestrians or the public at large.

31. Notwithstanding sections 44 and 46, if the License Administrator determines, in his or her sole discretion, that the sidewalk café is a safety issue, danger or hazard, HRM may, without notice to the proprietor, repair or alter the sidewalk café.

32. (1) The License Administrator may issue an Order to the proprietor that the proprietor shall:

(a) repair or alter the sidewalk café, in any manner that the License Administrator determines, in his or her sole discretion, is necessary to alleviate the safety issue, danger or hazard;

(b) repair the street in any manner that the License Administrator determines, in his or her sole discretion, is necessary to restore the street, sidewalk, landscaping between the sidewalk and the curb, or curb; or

(c) keep and maintain the area surrounding or adjacent to the sidewalk café in a clean, sanitary, attractive condition, free from papers, rubbish and debris of any kind.

(2) Any maintenance, repair, alteration or restoration pursuant to subsection (1) of this section, shall be at the proprietor's sole expense.

33. The License Administrator may cause the work to be done if

(a) the proprietor does not comply with an Order to repair or alter the sidewalk café issued under clause 32(1)(a), within five (5) business days of being served with the Order;

(b) the proprietor does not comply with an Order to repair the street issued under clause 32(1)(b), within five (5) business days of being served with the Order; or

(c) the proprietor does not comply with an Order to maintain the area surrounding, or adjacent to, the sidewalk café, issued under clause 32(1)(c), within five (5) business days of being served with the Order.

Sidewalk Café Access

34. If the License Administrator determines, in his or her sole discretion, that access to any part of the street occupied by a sidewalk café is required to address an immediate safety issue, danger or hazard, HRM or a utility may, without notice to the proprietor, enter the sidewalk café to remedy the safety issue, danger or hazard.

35. Subject to sections 31 and 34, after 48 hours' notice to the proprietor, HRM, or a utility, may enter a sidewalk café to install, maintain or repair municipal infrastructure, municipal street furniture, or utility infrastructure.

36. (1) Emergency vehicles or personnel may enter, without notice, a sidewalk café to render or provide emergency services.

(2) The employee of any utility may enter, without notice, a sidewalk café to read any meter related to the utility service to the principle use property.

Sidewalk Café Removal

36A. The proprietor shall, on or before the expiration of the encroachment term, and at his or her sole expense, remove the sidewalk café from the street.

37. Notwithstanding sections 45 and 47, if the License Administrator determines in his or her sole discretion, that

(a) the sidewalk café is an immediate safety issue, danger or hazard; or

(b) access to any part of the street occupied by a sidewalk café is necessary to remedy an immediate safety issue, danger or hazard,

HRM or a utility may, without notice and without compensating the proprietor remove the sidewalk café and restore the street right of way or remedy the safety issue, danger or hazard.

38. The License Administrator may issue an Order to the proprietor that the proprietor shall, at his or her sole expense, remove the sidewalk café from the street if

(a) a proprietor's café license is suspended or revoked; or

(b) access to a sidewalk café is required by HRM or by a utility to install, maintain or repair pipes, cables, wires, poles, hydrants or other improvements to the street.

39. The License Administrator may cause the sidewalk café to be removed from the street if:

(a) the proprietor does not remove the sidewalk café from the street on or before the expiration of the encroachment term;

(b) the proprietor does not comply with an Order to remove the sidewalk café from the street issued pursuant to clause 38(a), within five (5) business days of being served with the Order; or

(c) the proprietor does not comply with an Order to remove the sidewalk café from the street issued pursuant to clause 38(b), within two (2) business days of being served with the Order.

40. (1) If municipal infrastructure or municipal street furnishings have been removed to allow the construction of a sidewalk café, the proprietor shall notify the License Administrator of the intent to remove the sidewalk café.

(2) If the sidewalk café removal is further to an Order issued pursuant to this By-law, notification pursuant to subsection 1, shall be soon as practicable.

(3) If the sidewalk café removal is further to section 36A, notification pursuant to subsection 1, shall be at least five (5) business days prior to the anticipated date of sidewalk café removal.

Cost of Work

41. If the Council, a committee, the Engineer, the License Administrator or another employee of the HRM causes work to be done pursuant to sections 31, 33, 37 or 39, the proprietor shall be fully responsible for the cost of the work, with interest at the rate determined by the Council, by policy, from the date of the completion of the work until the date of payment.

42. In addition to any other remedies at law, if the Council, a committee, the Engineer, the License Administrator or another employee of the HRM causes work to be done pursuant to this By-law, the cost of the work, with interest at the rate determined by the Council, by policy, from the date of the completion of the work until the date of payment, is a first lien on the principle use property upon which, or for the benefit of which, the work was done.

Service

43. (1) Any Notice or Order under this By-law may be served personally, by mailing it to the person at the latest address shown on either the assessment roll or on the application for the café license, by electronic mail or by facsimile.

(2) A Notice or Order is deemed to have been served on the day after it is personally served or on the third calendar day after it was served by any other means.

Appeals

44. (1) The refusal by the License Administrator to grant a seasonal café license or a renewal of an annual café license may be appealed by the Applicant for such café license to the Council within four (4) business days of being served with a notice of the refusal.

(2) A notice of suspension or revocation issued by the License Administrator pursuant to section 22 may be appealed by the proprietor to the Council within four (4) business days of being served with the Notice.

(3) An Order that has been issued by the License Administrator pursuant to this By-law, may be appealed by the proprietor to the Council within four (4) business days of being served with the Order.

(4) The refusal by the Council to grant an annual café license is not subject to appeal.

45. An appeal pursuant to section 44 shall be commenced by filing a written notice with the Municipal Clerk which clearly states the grounds for the appeal.

46. If the proprietor files an appeal, but the Council is not scheduled to meet before the date on which the license is to be suspended or revoked, or the repairs, alterations or restoration are to be completed, the suspension or revocation or repairs, alterations or restoration shall be held in abeyance until the Council has rendered its decision on the appeal.

47. (1) After hearing an appeal, the Council shall:

(a) deny the appeal; or

(b) allow the appeal and reverse the decision of the License Administrator.

(2) If the appeal is allowed, the Council may make any decision the License Administrator could have made pursuant to this By-law including ordering the removal of the sidewalk café.

Delivering of Impounded Items

48. (1) Items removed from the street, pursuant to sections 37 and 39 shall be deemed seized.

(2) All items seized by a Peace Officer shall be delivered to a location specified by the License Administrator.

(3) The License Administrator shall detain all items seized and delivered by a Peace Officer pursuant to this By-law for a period of fourteen (14) calendar days.

(4) All items that are seized and delivered under this section are impounded items.

49. During the fourteen (14) calendar day period designated by subsection (3) of section 48 of this By-law, the License Administrator shall make reasonable efforts to notify the owner of the items that such items has been impounded.

50. Any items that has not had its owner identified within the fourteen (14) calendar days, shall become the property of the HRM and may be:

(a) sold; or

(b) destroyed.

51. An owner that has been notified that the License Administrator has impounded his or her item shall have the fourteen (14) calendar days, from the notification to redeem the item.

Compliance with Order

52. The proprietor shall comply with any Order issued under this By-law.

Penalty

53. A person who:

(a) violates or contravenes a provision of this By-law or an Order issued in accordance with this By-law;

(b) fails to do anything required by this By-law;

(c) fails to comply with an Order issued pursuant to this By-law;

(d) permits anything to be done in violation of this By-law or an Order issued in accordance with this By-law; or

(e) obstructs or hinders any person in the performance of their duties under this By-law or an Order issued pursuant to this By-law,

is guilty of an offence.

54. A person who commits an offence is liable upon summary conviction to a penalty of not less than two hundred and fifty dollars and not more than five thousand dollars and in default of payment, to imprisonment for a term of not more than two months.

55. Every day during which an offence pursuant to section 53 continues is a

separate offence.

Schedules

56. Any Schedules attached this By-law shall form part of this By-law.

Signature lines to be added upon approval.

Schedule ``A`` Design Standards

The following design standards shall be met to safeguard public health and safety:

Part I: General

1. Sidewalk cafés shall be adjacent to a principle use property.
2. Sidewalk cafés shall not extend onto the frontage of a property without abutter permission.
3. Sidewalk café signage shall comply with any By-law respecting the licensing of temporary signs.
4. Sidewalk cafés shall comply with any applicable Land Use By-law.
5. Sidewalk cafés shall comply with the Canadian Standards Association (CSA) Accessible Design for the Built Environment, CSA Standard B651, as amended from time to time.
6. The design of the café or the arrangement of the furniture shall not restrict access to emergency exits.
7. The design of the café or the arrangement of the furniture shall not restrict access to any above ground utility meters or shut-off valves

Part II: Barrier

8. All sidewalk cafés licensed for alcohol must be enclosed by a barrier.
9. A barrier shall be setback at least 0.45 m (1'-6") from any municipal street furnishings.
10. The barrier shall be installed in such a way that it does not reduce the unobstructed sidewalk width to less than 2.1m (7 feet), failing which, a temporary sidewalk shall be installed by the proprietor adjacent to the sidewalk café.
11. The minimum barrier setback from fire hydrants shall be 1.2 m (4'-0").
12. Barriers shall be at least 0.9 m (3'-0") in height, and no more than 1.2 m (4'-0") high.
13. Barriers higher than 0.9 m shall be at least 30 m (98'-0") away from the nearest intersection.
14. Barrier footings shall not penetrate the sidewalk.

Part III: Temporary Sidewalk

15. Placement of temporary sidewalks shall not impede vehicular and pedestrian traffic movement or safety.
16. Temporary sidewalks shall be guarded by a traffic barrier at ends exposed to vehicular travel.
17. Traffic barriers shall be no less than .81 m (2'-8") in height and no more than 1.05 m (3'-6") in height (in total of all elements).
18. Traffic barriers shall incorporate reflectors.
19. Temporary sidewalk surfaces shall be slip resistant.
20. Temporary sidewalk surfaces shall not impede pedestrian movement.
21. Temporary sidewalk construction shall maintain existing drainage patterns and storm water runoff volumes.

Part IV: Decks

22. The construction of a deck exceeding a height of 0.6 m (2'-0") shall comply with section 27 of this By-law.
23. Decks shall be as close to the elevation of the existing sidewalk grade as possible (accommodating a level surface area and deck framing).
24. Decks shall not be constructed over underground services (hydro vaults, chambers, maintenance holes, manholes, valves, etc.), without prior written approval from the relevant public utility, and must provide access to the infrastructure to the satisfaction of the affected utility.
25. Where alternate barrier-free access to the principle use property is not available, a ramp shall be provided within the deck area to facilitate barrier-free access.

Part V: Furnishings

26. Plant material shall be contained within the sidewalk café.
27. Umbrellas shall:
 - (a) be made of non-combustible material; and
 - (b) when open, not extend beyond the sidewalk café's barrier.

Part VI: Lighting

28. Sidewalk café lighting shall not project onto adjacent properties.

29. No sidewalk café shall place or permit lighting that, in the opinion of the Engineer, may:

- (a) be confused with any traffic signal light, control sign or device;
- (b) obstruct or interfere with the movement of motorists or pedestrians at any street intersection, any driveway street connection, any railway crossing or bridge;
- (c) produce or cause glare to motorists, pedestrians or neighbouring premises;
or
- (d) moves or appears to move.

Diagrams

30. The diagrams in this By-law are for illustrative purposes only and shall not form part of this By-law.

Attachment B

Effective: April 26, 1998

Revised April 8, 2008

Halifax Regional Municipality Sidewalk Café Policy

DEFINITION:

Sidewalk Café: For the purpose of this policy a sidewalk café is defined as a group of tables and chairs and other accessories situated and maintained upon a public sidewalk or pedestrian mall for the use and consumption of food and beverages sold to the public from, or in, an adjoining indoor food and beverage establishment.

1. Approval Requirement: No person shall establish a sidewalk café unless approval has been granted by the Halifax Regional Municipality and the municipality may impose such terms and conditions deemed necessary to conform with the guidelines contained herein.

Prior to granting an approval, the Halifax Regional Municipality shall refer a completed application to:

- (a) The area business commission, where the installation is located within a business improvement area, or abutting property owners where no business commission exists;
- (b) The Heritage Property Coordinator, where the installation is located adjacent to a registered Heritage property, or within a Heritage Preservation District.

Upon receiving advice from the area business commission, or the Heritage Property Coordinator or abutting property owners, the municipality may refuse to grant approval or impose such terms and conditions as are consistent with the guidelines contained herein.

2. Appeal: An applicant may appeal to Council, the municipal staff decision to refuse to grant approval or the terms and conditions of approval imposed.
3. Revocation of Approval: Where a person fails to conform with the terms and conditions of approval, then the Halifax Regional Municipality may order that the Sidewalk café be removed from the public sidewalk on which it is located. If the operator fails to comply with such an order within 24 hours notification, the municipality may take such action needed to have the sidewalk café removed.
4. Permits Required: The operator of a sidewalk café shall apply for and obtain, annually a Special Use of Streets Permit prior to commencement. A building permit will be required prior to the installation of barriers, structures and awnings.

5. Rental Fees: There shall be a rental charge for the use of sidewalk café space in each area described in Schedule 'A'.

Area A \$2.50 per square foot per season (\$.50 per square foot per month) -
Downtown Halifax

Area B \$1.25 per square foot per season (\$.25 per square foot per month) - **Peninsula
excluding Downtown Halifax**

Area C \$0.75 per square foot per season (\$.15 per square foot per month) -
Downtown Dartmouth

Area D \$0.50 per square foot per season (\$.10 per square foot per moth) - **Main
Street Areas in the Halifax Regional Municipality where buildings abut
sidewalks**

1. Where parking meters are removed, the fee shall be \$250.00 per meter, per season.
 2. Street meter removed, sleeve reinstalled, post reinstalled, meter head reinstalled -
\$150.00. Subsequent meters at same location - \$125.00
 3. Street post removed, sleeve reinstalled, post reinstalled, sign reinstalled \$145.00.
Subsequent sing posts at same location - \$120.00
6. Information Requirements: The applicant should submit a site site plan, drawn to scale of 1 inch equals 5 feet, which shows the delineated area of the proposed Sidewalk Café and proposed location and placement of planters, awnings, tables, chairs, fences and all other accessories in relation to the public sidewalk and to the indoor restaurant associated with it. The pln shall show the location of utility poles, hydrants, parking meters, bus shelters, manholes, traffic signs, etc.
7. Design: The design of the sidewalk cafés should be consistent with the age and character of the building for which it serves as an accessory use. Where the municipality has established design guidelines, i.e. Granville Mall and Agyle Street, these shall be considered in review of applications.
8. Conditions of Approval:
- a) Insurance: The operator of a sidewalk café must carry a minimum of \$2,000,000 liability insurance for the operation of the sidewalk café and must indemnify the Halifax regional Municipality safe and harmless from any and all claims of injury to persons or damage to property attributable, in whole or in part, to the existence, location and operation of a sidewalk café in the public right-of-way Proof of insurance shall be provided before the permit is issued. Said insurance shall require notification of the municipality 10 days before cancellation.

- b) Accessory Use: Sidewalk cafés shall be located adjacent to an existing food and beverage establishment and shall be considered an accessory use. Sidewalk cafés shall not extend across the frontage of adjacent uses unless written permission is obtained from abutting property owners.
- c) Hours of Operation: A sidewalk café shall be operated for no longer than the operating hours of the principal use to which it is an accessory and in any event must be closed not later than 2 a.m. on any given day.
- d) Sidewalk: The standard width of sidewalk space where a sidewalk café is to be approved is 10 feet. The Engineer may consider an application where the sidewalk width is not less than 7 feet (2.1 metres) and in the opinion of the Engineer the placement of the café leaves sufficient clear space for the safe movement of pedestrians.

Where the sidewalk café extends the width of the existing sidewalk, the operator shall provide temporary sidewalk adjacent to the sidewalk café, subject to the approval of the Engineer who shall consider traffic movement and safety based on the approval of the Traffic Authority.

- e) Fencing: Sidewalk cafés may be fenced around the perimeter but fences shall not exceed 3 feet (1 metre) in height. Open fencing is preferred to solid fencing but fabric insert panels may be used. Fencing should incorporate a solid base perimeter to facilitate identification of the barrier by visually impaired individuals. Any fencing located within 20 feet (6 metres) of an intersection shall not obstruct the vehicular view angles as determined by the Engineer.
- f) Structures & Awnings: The installation of structures and awning requires a Building Permit and shall conform to the requirements of the Building By-Law.
- g) Umbrellas: Any umbrellas shall be located entirely within the approved sidewalk café area.
- h) Waste and Storage: The sidewalk café operator shall maintain the sidewalk café area, and the immediately adjacent area, in a clean and safe condition at all times. Waste receptacles and work stations should be located along the building wall. The operator shall also ensure any refuse originating in the café area is removed from the street right-of-way.
- i) Access: The operator shall maintain a minimum width of 3 feet 6 inches (1.1 metres) of unobstructed walkway to the entrance of the building. Barrier free access shall be maintained.
- j) Landscaping: Landscaping of the sidewalk café is encouraged but should be of a

temporary nature unless otherwise approved. Plant material must be contained within the approved sidewalk café area.

- k) Lighting Any lighting of the sidewalk café shall be of a temporary nature and shall not project onto adjacent properties nor conflict with traffic control indicators.
 - l) Signs and Advertising Any signs or advertising within the sidewalk café area requires a sign permit and shall conform to the Sign By-Law and Zoning By-Law
 - m) Sidewalk Café Furnishings All tables, chairs and decorative accessories in the sidewalk café should be constructed using weather resistant materials.
 - n) Removal of Improvements Sidewalk café furnishings, fences, awnings, screens, signs, lighting and other sidewalk café improvements must be removable and not permanently fixed in place. All objects must be contained within the approved sidewalk café area and removed during the off-season or after the sidewalk café ceases operation. The street, sidewalk and municipal property must be restored to its original condition to the satisfaction of the Engineer
 - o) Noise: Music or other entertainment provided for patrons of a sidewalk café shall not provide a nuisance of abutting property owners. The Engineer reserves the right to revoke permits, without reimbursement of fees, where this nuisance occurs.
 - p) Utility Access The Halifax Regional Municipality and public utility agencies retain the right of access to the approved sidewalk café area for the installation, maintenance and repair of pipes, cables, wires, poles, hydrants, etc. as necessary. In case of emergency, no notice may be given. For scheduled work, a minimum notice of 48 hours will normally be given. Sidewalk café improvements shall be removed and reinstalled at the sidewalk café operator's expense.
 - q) Emergency Vehicle Access The Halifax Regional Municipality retains the right of access to the approved sidewalk café for emergency vehicle access.
9. Season: The months of operation shall be April 21 through October 31 unless otherwise approved.

* 4/8/08 revision: section 9 opening date

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1.0 Feedback on Sidewalk Cafés

In recent years, HRM has been granting temporary permits to restaurant owners who wish to extend their dining facilities on to municipal sidewalks. In 1998 HRM released a Sidewalk Café Policy that defined sidewalk cafés, set approval requirements, and listed the fees for renting sidewalk space. Since that time a variety of sidewalk cafés have sprung up and their numbers have been increasing each year. The summer of 2001 saw about 20 café permits issued downtown. The public, neighbouring retailers, café owners, the Downtown Halifax Business Commission (DHBC), and representatives of HRM have all watched the proliferation of sidewalk cafés with great interest. The response to these installations has generally been favorable with the exception of some concerns voiced by several adjacent business owners and some visually-impaired pedestrians.



For the purposes of this study, a sidewalk café is defined as *an outdoor extension of an eating or drinking establishment onto municipal property for seasonal or year-round use.*

If an establishment simply sets a couple of tables on the sidewalk on a daily basis, they are not considered within the scope of this study. This study is intended to review the current issues surrounding sidewalk cafés in the downtown core and make recommendations to improve their overall character and functionality. The study was also initiated to open a dialogue with the various stakeholders in hopes of improving the quality of café design in the downtown. The observations and recommendations of this study will form the basis of future updates to the HRM Sidewalk Café Policy.

The reasons for allowing portions of the public sidewalk for private café use are many. Sidewalk cafés add life to the streets and offer an alternative to the suburban shopping mall eatery or fast-food drive-through experience. The cafés provide the invaluable service of attracting people to the downtown core and make a positive contribution to urban



social life. Furthermore, they have become a necessity for some downtown café owners, whose only business, at certain times of the year, might be their sidewalk tables.

This study has been organized into several chapters. Chapter 1 provides an overview of the feedback received from various stakeholders with regards to downtown sidewalk cafés. Chapter 2 provides a summary of design recommendations based on recognized weaknesses in the current policy, public feedback, current trends in café design and observations of the design team and steering committee. Chapter 3 offers a mock permit application that is intended to streamline the permitting process and offer a palette of design ideas to café owners.

One of the requirements of this study was to initiate an open dialog with existing café owners and operators to better understand their concerns and ideas. In addition, the consulting team spoke to various adjacent business owners to gauge their feelings about the current standards of cafés. The findings are described in the following sections.

1.1 Café Owners and Managers

Throughout the month of June (2001) Peter Klynstra interviewed café owners in the study area. There was general agreement that the sidewalk cafés were a positive contribution to the downtown. Some owners contended that outdoor seating was the full extent of their business on hot summer evenings and they would not have 'any' business if they did not put out a sidewalk café.



Some café owners would like to see sidewalk cafés become a year-round installation. Since the summer is so short in Halifax, year-round cafés would offer opportunities to use the establishment on sunny days throughout the year. The other advantage is that café owners could build upon the investment they make in the initial installation, rather than having to expend resources just to reinstate the same patio every year. Annual investments would likely compound over the years and add significant value to the public streetscape. Furthermore, the temporary impression of seasonal installations is an issue of some contention for both the café owners and for HRM. Snow removal should not be an



issue for year-round patios if they are properly designed and constructed and if the owners remain responsible for sidewalk snow removal.

Materials for construction should compliment those found in the neighbourhood. Materials and architectural details should respect the adjacent façade and those that typify the area. To date, pressure treated lumber (HRM has required pressure treatment) has been the most popular material but this is primarily because wood is affordable and easy to remove and reuse. However, wood becomes very dangerous when it is wet, especially where boardwalks have a cross slope of 3%, or more, which is the case along some temporary sidewalk cafés. The selection of the most appropriate material should be based on historical precedents, aesthetics, safety, and good taste, rather than just ease of demolition and short-term economics.

The quality of furnishings should be kept above a minimum standard. Café owners generally agree that the integrity of the streetscape should not be diminished by the presence of cheap furnishings.



Café design and material selection should reflect the character and quality of the adjacent structure. This is particularly important for heritage buildings.

Plants should be a requirement for any sidewalk café installation. Planting adds a great deal to any streetscape and this is one way to get more plants on the street. The maintenance of street planting does not need much regulation, a smart business owner will take proper care of his/her own planting. No street trees should be permitted to be removed for sidewalk cafés.



The loss of parking spaces is a serious issue from the downtown merchant's perspective. The café owners see 'pedestrians' as a main source of business and they contend that the increase in pedestrian traffic, which accompanies the cafés, bring an increase in spending to all businesses downtown. Some merchants object to the loss of any parking spaces as a serious threat to their livelihood. The DHBC has addressed this issue to some extent by increasing parking on Grafton and Barrington by 20 spaces this year. This accounts for the 20 spaces lost to sidewalk

cafés. In any event, parking has been, and will continue to be, one of the main issues associated with sidewalk cafés.

1.2 Other Commercial Interests

The issue of parking is most contentious among the neighbouring retailers where sidewalk cafés are built in the parking lane. Retailers on Argyle St. who oppose the cafés notice an immediate decrease in the number of customers walking through their doors once the sidewalk café season opens. They contend that pedestrians do not want to walk on a street where convoluted boardwalks interrupt the sidewalk and drivers do not have any choice about losing opportunities for parking on the street.

Curbside parking in downtown Halifax is in great demand but the supply is limited. A number of different sources have noted that some merchants and seasonal rickshaws take up parking spaces, thereby contributing to the scarcity of parking. Fortunately, new parking spots have recently been added to maintain the current levels during the sidewalk café season and increase the numbers for the remainder of the year. Parking is now available along Barrington St., with the exception of one block, and a loading zone on Grafton St. has been converted to metered parking. The DHBC also intends to get more meters on Sackville St., Blowers St. and Argyle St.. One merchant suggested that streets should be metered on Saturday to reduce the number of people occupying parking spaces for the whole day.



One alternative to on-street parking is parking garages, which the Spring Garden Area Business Association capitalizes on by issuing parking vouchers that consumers can get from merchants. Unfortunately this model only works well when a parking garage is close by, which is not the case for most of downtown Halifax. However, there is a parking garage under construction at the corner of Hollis St. and Blowers St. It is expected that this new facility will relieve some of the parking pressure in the downtown.

Merchants also suggested that zones be established throughout the city that would exclude sidewalk cafés from some areas while permits for year-round sidewalk cafés could be granted in other areas. Fig. 1.0, on the following page, identifies the blocks where year-round cafés may not be considered. These blocks have been ruled out as major emergency routes and areas of high pedestrian traffic. In general, consideration should be given to year-round installations where there is a minimum of 3.65 m (12') between the curb and the building and the site is on a secondary street.

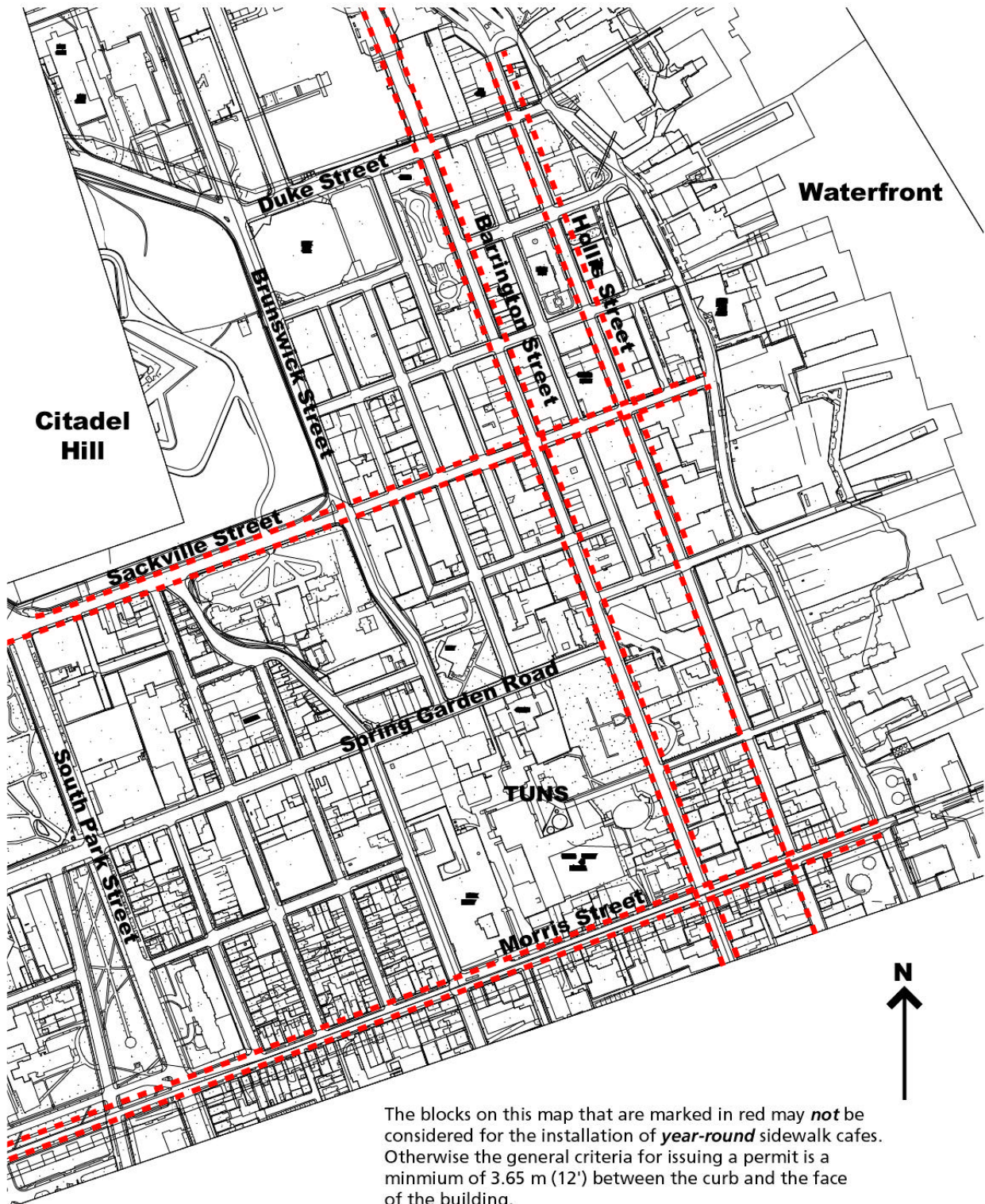


Fig. 1.0 Opportunities for Year-round Sidewalk Cafes
Downtown Halifax

Where cafés occur in an row along one side of a block, they should all be built to the same general layout with the café space situated in the parking lane and a direct line of pedestrian travel maintained along the existing sidewalk. In any case, sidewalk café regulations should be applied consistently to whole blocks rather than making isolated, and potentially myopic, applications to individual properties.

Merchants feel that permit fees for sidewalk cafés should be directed to a separate downtown fund rather than going into the general coffers. This fund could be used for marketing campaigns or streetscape improvements for the downtown area.

A minimum width should be specified for vehicular traffic on the street. Two lanes must be open at all times and they must be wide enough to accommodate commercial trucks (i.e. 5.5 m or 18'). Some merchants felt there may be enough space on Argyle St. to permit angled parking. To do this a single lane of



one-way traffic would need a minimum of 4.0 m (13') and a row of angled parking would need a minimum of 6.0 m (20'). Traffic engineers are opposed to this idea and the space required would eliminate the sidewalk cafés, thereby making the idea self-defeating. The possibility of closing down one block of Argyle St. was suggested by one merchant, this idea met with mixed opinions from the rest of the merchants on the street but the possibility could be explored. Pedestrian streets have, generally, been commercial failures in North America.

Sidewalk cafés could be limited by the number of parking spaces they consume, rather than just property boundaries. Since the boundaries of property and parking are not related, blindly extending property boundaries to define a sidewalk cafe can cause an unnecessary elimination of parking spaces. Some business owners felt there should be a cap on the number of parking spaces that could be consumed by any one café. At the very least, the impact on street parking should be given serious consideration when determining the layout of a sidewalk café.

In the end, sidewalk café regulations, whatever they may be, must be judiciously applied across the board and they must be policed to ensure that they are respected. At the moment, disapproving merchants feel that approvals for a sidewalk café are too easy to obtain and applications should go through a more rigorous Permit Process. Once approved, proper café construction and maintenance must be enforced. HRM should establish clear and simple strategies for revoking permits and rectifying infractions where they occur. Several merchants pointed to a lack of enforcement of existing regulations as a source of some of the minor issues arising from sidewalk café operations.

1.3 Public and Committee Input

Having more public eyes on the street is a real asset. It's good for tourism because it adds life to the street but it is also the most effective way to ensure public safety on the streets. There is an appreciable sense of security on a street that is well populated.

The current HRM guidelines define a season for sidewalk cafés that runs from the first of May until the thirty-first of October. These guidelines should remain, except where cafés are permitted to make a year-round installation.

Public safety is also aided by the best, most easily navigable, sidewalk. For this reason, where several non-adjacent sidewalk cafés occupy one side of the block they should be located in the parking lane allowing the sidewalk to function as it was intended. (See Chapter 2, Design Guidelines). This coordination of form, by block, will require a deadline for permit application early in the season so that neighbouring permits can be reviewed and coordinated before any installations are made. Universal access along sidewalks must be maintained for each sidewalk café, regardless of whether they are year-round or temporary. Currently, temporary structures are exempt from this regulation. The sidewalk cafés, as part of the public street, should also be accessible. There should be no obstructions to the smooth and continuous flow of pedestrian traffic around a sidewalk café and accessibility into adjacent shops should be maintained. That is, if the store floor elevation is already above or below the adjacent sidewalk elevation, then special provisions for accessibility do not need to be provided in the design of the café. For shops that are accessible, the café cannot compromise the accessibility.



1.4 Conclusions from Public Input:

- Sidewalk cafés are essential and greatly contribute to the success of downtown.
- Sidewalk cafes should be accessible.
- Cafés should be located to minimize dislocation of parking spaces.

- When several non-adjacent cafés occupy one side of one block they should all have the same layout. The actual sidewalk café should occupy the parking lane to leave a direct line of travel on the existing sidewalk.
- Materials and design of café enclosures should complement the adjacent buildings. Materials and design must respect heritage buildings.
- The permit authorities must ensure that every reasonable effort is made to minimize the disruption of adjacent businesses.
- Enforcement of any resulting regulations will be one key to the long term success of sidewalk cafés in Halifax.

2.0 Design Guidelines

The obvious economic return from a sidewalk café is the added tables that can be served in the course of a day. What is more important is the spirit that a well designed sidewalk café creates for the image of an establishment and for the downtown in general. A sidewalk café makes a strong impression on the street and will act as a magnet to draw people downtown. This is where the real benefit lies. A poorly designed café, on the other hand, can obstruct traffic flow, repel people to other adjacent streets that are less cluttered, and it can generally be a liability to the street. The following recommendations are meant to reduce potential café liabilities.



There are several distinct components of sidewalk café design. These include overall layout, posts, railings, surfacing, furnishings, planting, awnings and umbrellas (ceilings), signage, and parking. These components are described below. In addition these components form the basis of a new sidewalk permit application that is significantly easier to administer and enforce while still providing merchants some insight into new design techniques, materials, and methods. The proposed permit application for sidewalk cafés is found in the next chapter.

2.1 Layout

There are several alternative layouts for sidewalk cafés. Currently, only one layout (where the café is immediately adjacent the building) is permitted in the café policy. As a result, all sidewalk cafés in



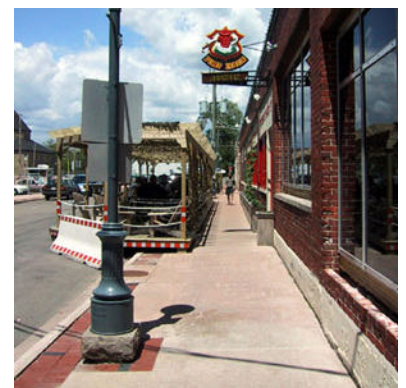
Halifax have been built on the sidewalk by the foundation of the associated building, while pedestrian traffic has been rerouted around the café through the adjacent parking lane at the curb (see Fig. 2.0). There are a number of apparent shortcomings to this layout which are listed below:

- The sidewalk, which is actively used a great deal more than the café and has been engineered for walking pedestrians, is replaced by the café; forcing the walking pedestrians onto sidewalks made of temporary materials (usually wood) of inferior quality.
- Where the temporary sidewalk meets the curb, there is often a slight elevation change or an unsafe separation.
- The presence of several cafés on a block causes pedestrians to zigzag along the sidewalks. This can be a real hazard to the visually impaired and can contribute to visual clutter on the street. Adjacent business owners often contend that this layout forces potential patrons away from their front doors, thereby reducing business.
- Where pedestrians are diverted to the parking lane, we observed many people avoiding the temporary boardwalk and just walking down the street. These people could not regain the boardwalk due to the required railing separating the boardwalk from street traffic.



In this sidewalk café configuration, it is important to maintain easy access through an open corridor from the sidewalk to the front door of the café. A 'crush zone' at the entrance to the café is important for people who need room to stop and read a menu or consult with friends. The transition from the sidewalk into the sidewalk café should present itself as an open invitation to casual observers and if people stop and gather, they should not cause any serious disruption in the flow of pedestrian traffic. Provisions should also be made to accommodate people that may be queuing up, especially where this happens on a regular basis. It is important to allow at least 2.1 m (7') of passage between the café and any obstructions such as trees, sign posts, etc. This standard is typical of other major cities like Toronto and Vancouver. The dimension may be reduced for short distances.

Aside from the typical HRM layout, there is another option that has been adopted throughout Atlantic Canada,



Maine, much of Canada, and many other parts of the world. The alternative is to maintain the pedestrian flow along buildings and set the sidewalk café by the parking lane (see Fig 3.0). This layout has a number of significant benefits. First, this layout minimizes disruption to pedestrian traffic flow by allowing a direct pedestrian thoroughfare as it exists.



This alternative eliminates one of the more serious complaints by sidewalk café opponents, the zigzagging sidewalk effect. Where the sidewalk is maintained, physical obstructions are minimized and conflicts with café staff are negligible where the café staff observes and respects the pedestrian right-of-way. Although it seems counterintuitive, what would appear to be a potential conflict between café staff and pedestrians has actually proven to be a very powerful promotional tool in other cities.

Nothing will draw patrons in quite like the sight of fresh food and beverages passing by, right under their noses. Waiters are used to carrying food through crowded rooms and traffic, therefore the interactions between pedestrians and staff are positive rather than the perceived fear of collisions. This layout also has the potential to yield more space for a sidewalk café while still meeting the minimum standard of 2.1m (7' wide) for pedestrian passage. This is because the pedestrian corridor to the front door of the establishment is eliminated, freeing up more room for tables and seats. In addition, it frees up more room at both ends of the café that were previously required to maintain a 2.1 m (7') sidewalk passageway (i.e. in most cases this transition occupies about 4.6 m (15') of space). The other advantage of this layout is that it offers double the amount of 'eyes on the sidewalk' to café owners (i.e. the tables on the inside wall of the restaurant now have a view of people on the sidewalk, unobstructed by café patrons).

Another major advantage for this layout is that café owners are responsible for building and maintaining their café, *not* the public sidewalk. Café owners are not in the business of sidewalk construction and maintenance but most of them have considerable interest



and skill in keeping a good sidewalk café. If a café owner intends to run electrical service to a sidewalk café on the outside of the sidewalk there cannot be any electrical conduits running on the ground across the pedestrian thoroughfare.

Some storefront doors swing out into the sidewalk space. This could complicate matters where sidewalk cafés are pushed out to the parking lane and pedestrian thoroughfares are maintained beside building foundations. In this case, the installation of 3' wide planters at either side of a door would alleviate any potential hazards. The resulting reduction in sidewalk width, for a short distance, is actually beneficial for public safety.

HRM staff will need to confirm acceptance of this sidewalk café layout with the Nova Scotia Liquor & Gaming Authority, but since it has been accepted in the neighbouring provinces of P.E.I. and New Brunswick, there are precedents for the concept that can be cited in other, more stringent, jurisdictions. Initial contact with the Liquor & Gaming Authority indicates that there is interest in exploring this issue further.

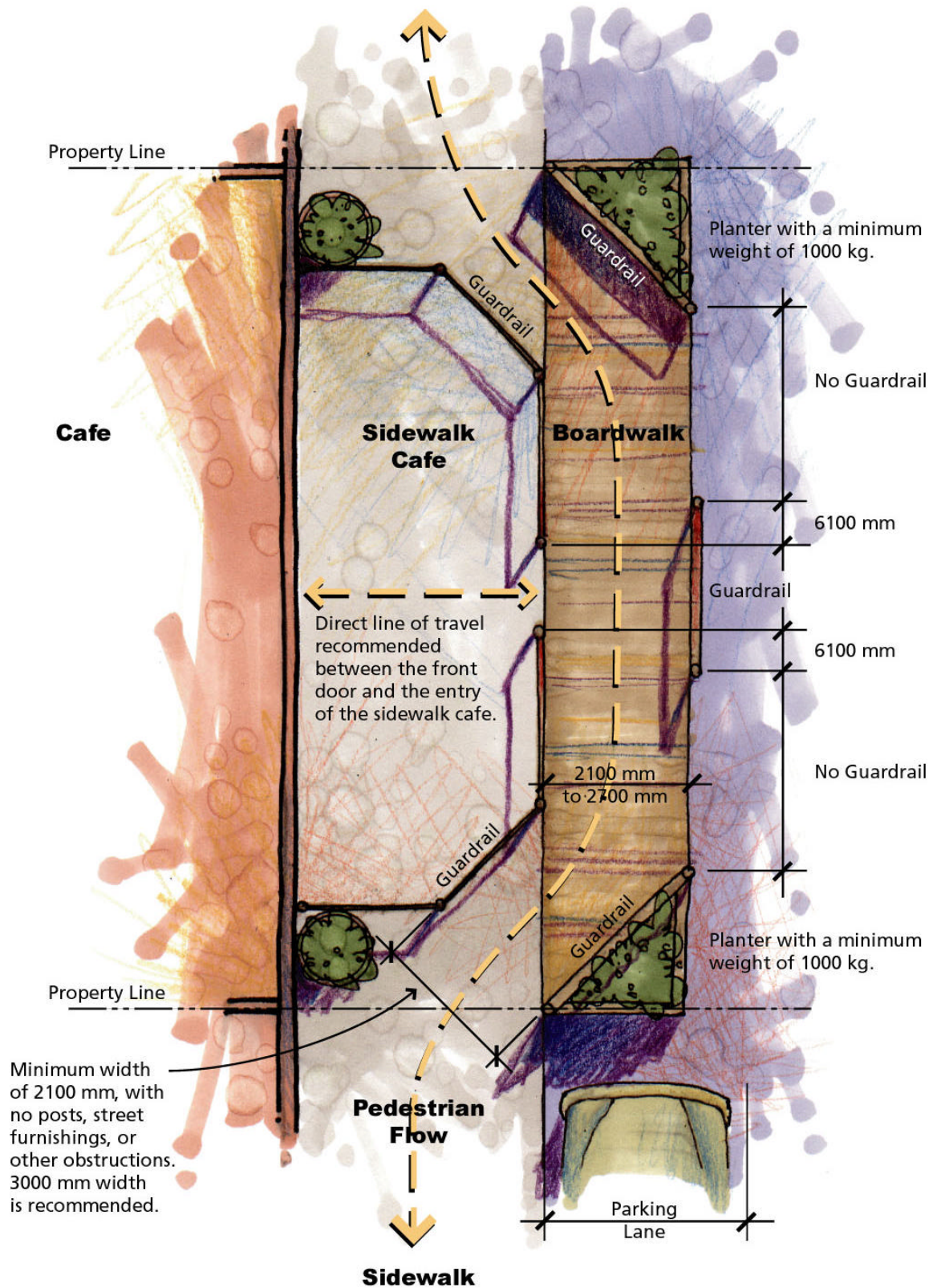


Fig. 2.0 Sidewalk Café Built by the Building
Pedestrian Thoroughfare Moved to the Parking Lane

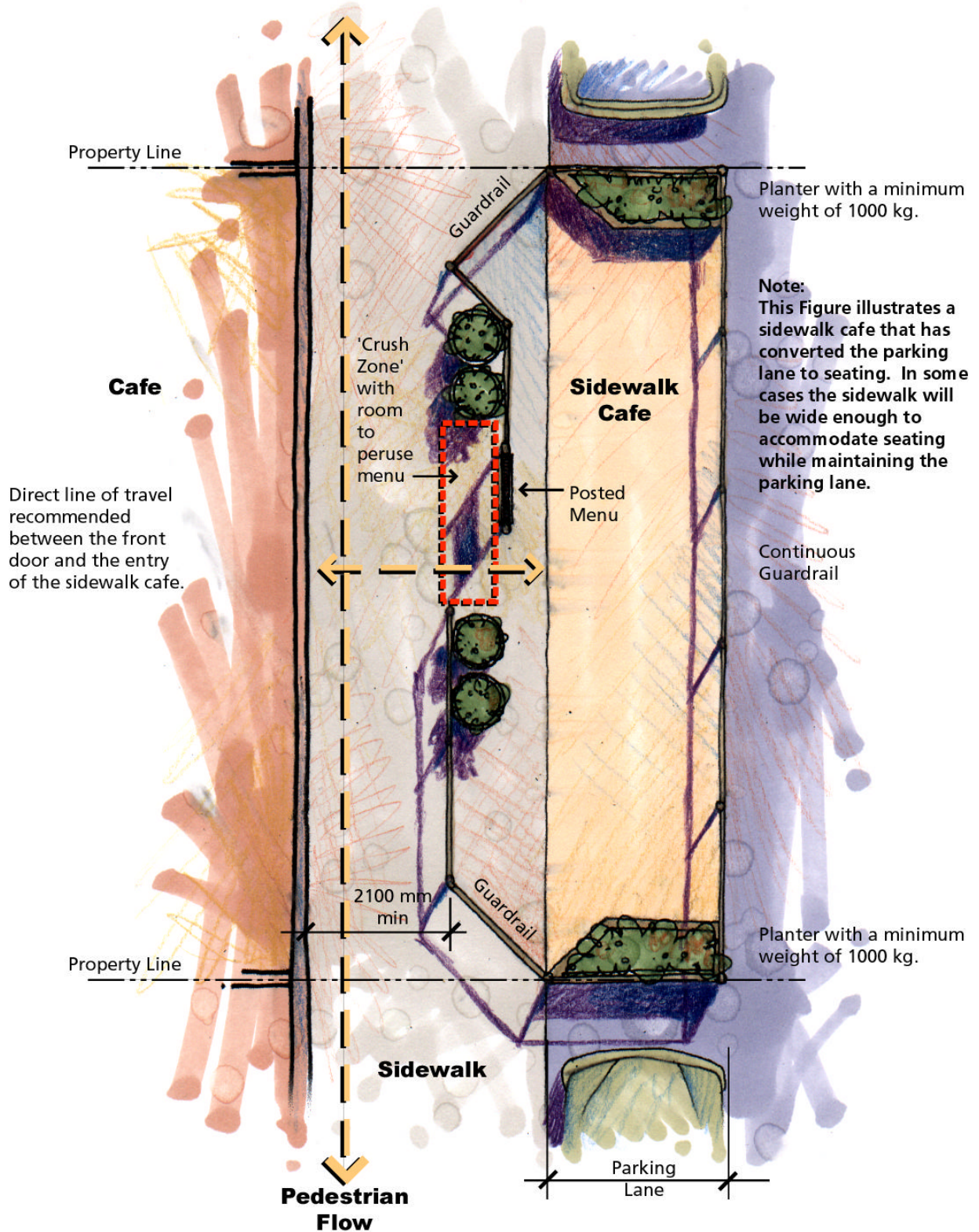


Fig. 3.0 Sidewalk Café Built in the Parking Lane
Pedestrian Thoroughfare Maintained at the Building

People who are sitting on a sidewalk café should have just enough insulation from the street to allow them to sit comfortably next to any pedestrian or vehicular traffic that may be moving by. The refuge they gain should not impede their view of the street; people want to see and be seen. Seats should have their backs set to the wall and tables should be arranged to capitalize on the views of other people and other activities on the street.



Recommendations for café layout:

- R-1 The preferred layout for sidewalks cafés is to have them built on the outside of the sidewalk, by the curb, as in Layout 1.1 on the Permit Application. This is particularly true where there is less than 3.65 m (12') between the face of the building and the curb or there is more than one café on a block.
- R-2 Where there is more than one sidewalk café in a block, each should be located on the outside of the sidewalk, as per Layout 1.1 on the Permit Application. Where an installation is to occupy the parking lane the seating space should be built on the outside of the sidewalk, as per Layout 1.2 rather than Layout 1.4 on the Permit Application.
- R-3 Sidewalk cafés on wide (greater than 3.65 m) sidewalks and secondary-streets should be considered for year-round permits (provided that 7.1 m of public thoroughfare is maintained). The previous recommendation (R-2) must apply to year-round cafés.
- R-4 A pilot project should be constructed on Argyle Street to explore the ramifications of a year-round sidewalk café that would require moving the curb out and exchanging curbside parking for café seating (Layout 1.2 on the Permit Application). This option warrants a thorough investigation before a definitive recommendation can be made. HRM should grant a one- or two-year permit to a café owner and share the construction costs of this pilot project.
- R-5 The most appropriate layout for sidewalk cafés should be assessed for an entire block and applied consistently across the block.

- R-6 When a café door opens into the sidewalk space, planters should be used to prevent accidental collisions between café patrons and pedestrian traffic. Alternatively, doors should be constructed to swing in, as per the National Building Code.
- R-7 Where the layout requires the diversion of a sidewalk to the parking lane, railings at the street edge should not be continuous along the boardwalk.
- R-8 Sidewalk café layouts should not appropriate any more than two parking spaces per establishment. Layouts may be offset from property boundaries to achieve this end, in consultation with adjacent business owners.

2.2 Accessibility

Sidewalk cafés are part of the public streets and, as such, they should be accessible. All cafés should meet the current requirements of *CSA Can/CSA-B651-95, Public Safety: A National Standard of Canada*.

The requirements of this standard are simple. Changes in elevation need to be marked with a tactile surface or edge, slopes must meet ramp standards, handrails must be provided on ramps, minimum dimensions should accommodate wheelchairs for at least a portion of the deck, surface treatments should be non-glare and slip-resistant, and any object which protrudes into a walkway should be marked with a tactile edge.

Decks are required to correct slopes of 5% and greater. Where decks are used they should be limited in height to the minimum dimension required to accommodate the lowest possible supporting structure. Decks elevated more than 600 mm (2'), at the highest point, should not be permitted. Ramps that meet barrier-free design standards should be provided for access to all decks.

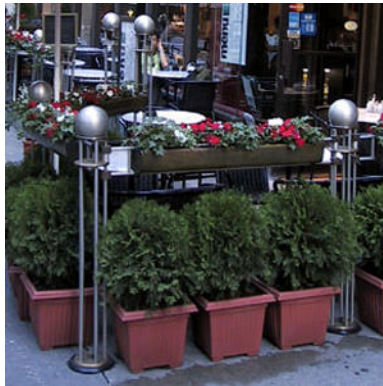
Recommendations for accessible design:

- R-9 All sidewalk cafés designs should adhere to the current edition of *CSA Can/CSA-B651-95, Public Safety: A National Standard of Canada*.
- R-10 Changes in elevation and obstructions (i.e. a sidewalk café) need to be marked with a tactile surface or edge.
- R-11 Slopes must meet CSA ramp standards and handrails must be provided on ramps.
- R-12 Surface treatments should be non-glare and slip-resistant.

- R-13 Minimum dimensions should be observed to accommodate the navigation of wheelchairs.

2.3 Posts

Posts support railings. They should be of a material which reflects the quality of the adjacent building(s). Loose, weak posts detract from the image of the café and the downtown. A decision on post material may also relate to the proposed method of attachment to the ground surface. Most existing sidewalk café posts in the downtown are comprised of pressure treated 100 x 100 mm (4"x4") timbers mounted to steel brackets which are screwed into temporary sidewalks and most of these are leaning at every angle except true vertical. In some cases, the posts are leaning in towards the sidewalk at such an angle that they become a real hazard to pedestrians.



See Figures 4.0 and 5.0 and the Sidewalk Café Mock Permit Application (Chapter 3) for more ideas on posts and connections.

Recommendations for post design:

- R-14 Posts can be made of iron, steel, aluminium, or any wood that resists splintering.
- R-15 Posts must be placed in the true vertical position.
- R-16 Posts should be anchored to generate significant strength yet allow easy repair. A direct moment connection between a post and the pavement is difficult to achieve and, while it is allowed, is not recommended. The preferred attachment method is to create structures that have a stable shape, anchored to decks, railings and/or buildings. The second preferred option is to bolt the post to a stable mass such as a planter.
- R-17 For year-round café construction, more substantial connections to the pavement should be considered. These can be concrete inserts or expansion anchor connections. Installations cannot be permanent because HRM reserves the right to request the removal any sidewalk café, for emergency purposes, in 24 hours.

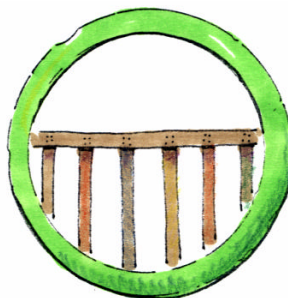


2.4 Railings

Sidewalk cafés that serve alcohol are required to have a barrier of 1.0 to 1.2 m (3 1/2' to 4') in height around them to conform to NS Liquor & Gaming Authority regulations. Where a temporary boardwalk is built around an outdoor café, in the parking lane, HRM policy currently requires that a railing be



erected along its length as well. This requirement effectively excludes people on the street from accessing the sidewalk. Railings, or large planters, at either end of the boardwalk will help guide pedestrian traffic from the municipal sidewalk to the boardwalk. Every effort must be made to ensure that the ends of boardwalks are kept open for the intended flow of pedestrian traffic. Temporary obstructions, such as two people who stop to talk, should not force people to by-pass the boardwalk and walk on to the street. When this happens, existing railings along the length of a boardwalk have prevented these pedestrians on the street from getting back onto the boardwalk and out of the path of oncoming cars. It is our opinion that this railing causes more problems than it cures and so it should be eliminated. With the length of the boardwalk accessible, motorists will have an opportunity to drop off passengers and pedestrians will have the freedom to quickly bypass temporary obstructions.



Finials, or pickets, which extend above a top railing, should not be permitted since these areas can easily catch a purse or clothing. Instead, all railings should be topped with a horizontal railing cap. Similarly, at the base, a 150 mm (6") high kick strip should be installed on all sidewalk ends (perpendicular to the street) to help visually impaired pedestrians navigate the street. Furthermore, planter boxes that hang from a guardrail must be suspended on the side that faces the café so that they do not present any protrusions to the pedestrian thoroughfare.

Among the opinions gathered through the course of this study, rope railings were unanimously favoured over chains. Chain railings are not recommended unless there is site-specific historical precedent. Where chains are approved they must be heavy-gauge, galvanized and suspended from substantial, metal posts. Chains are a heavy-duty material and their appearance should reflect this.

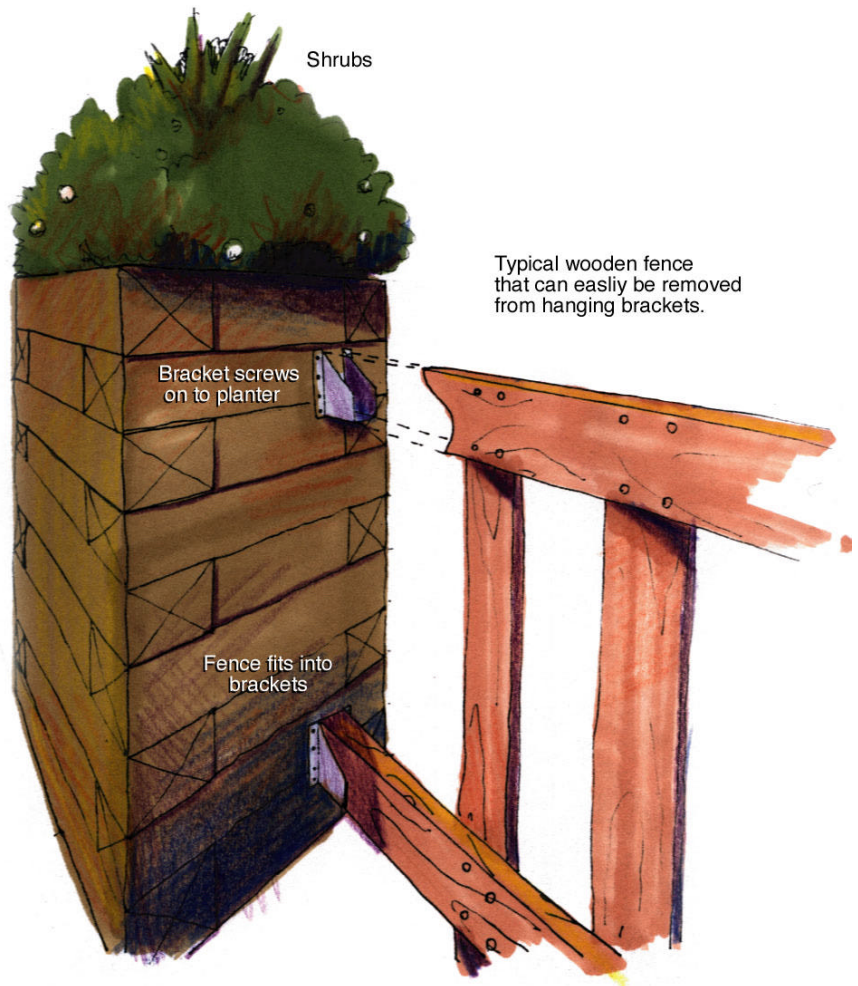


Fig. 4.0 Fence and Planter Detail

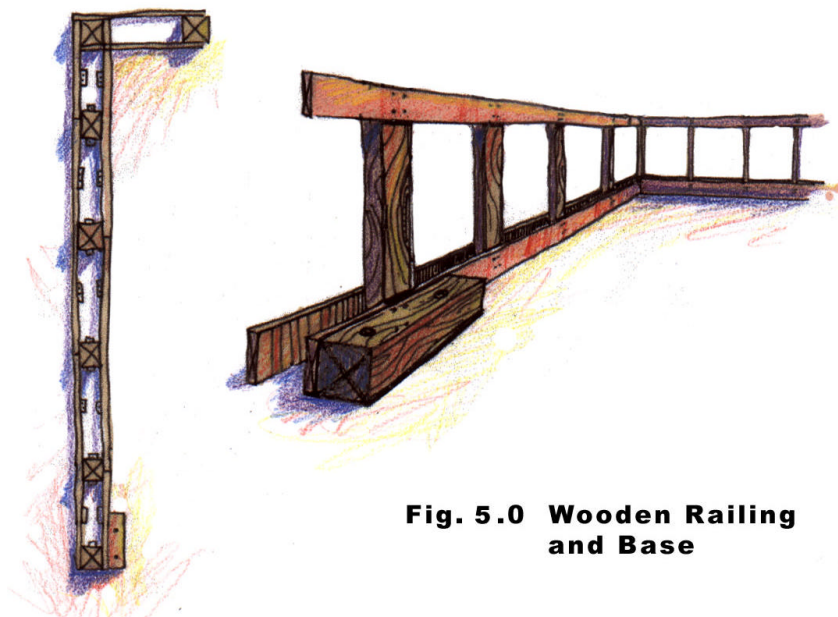


Fig. 5.0 Wooden Railing and Base

Metal, planters, or soft nylon ropes are the best option for sidewalk café railings. Ropes should be a minimum of 25 mm (1") in diameter, although smaller diameters may be appropriate where a designer can argue that they are a critical part of a their design concept. The ends of ropes are to be cut and tightly lashed with fine nylon twine to prevent fraying; cutting and fusing rope ends with a hot knife is an acceptable substitute but duct tape is not.

Recommendations for railing design:

- R-18 Openings between all posts and railings should conform to the general requirements of the CSA Guidelines for Children's Playscapes and Equipment. These guidelines are checked with a test probe that is 225 mm in diameter, used to represent a child's head, and another test probe, 155 x 90 mm, that is used to represent a child's torso.
- R-19 A kick plate railing for visually impaired should be provided at the ends of all cafés which impede the normal flow of people on the permanent sidewalk.
- R-20 Railings should not have finials which extend above the top rail.
- R-21 The top chain or rope should not sag below 2' in height
- R-22 Railings and posts on the street-side of temporary sidewalks should be removed with the exception of the very ends of boardwalks and a 1-2 m section in front of the sidewalk café entrance (see Fig. 2.0).
- R-23 Railings should be continuous where a sidewalk café is set in the parking lane (see Fig. 3.0). The railing should provide continuous containment such that a child could not move from the café to the street.
- R-24 Railings should be galvanized metal, aluminum, soft rope, planters, chain, or wood.
- R-25 Railings should be firmly attached to posts, planters, a deck, or a building.



2.5 Surfacing

Wood has been a popular material for boardwalks but the dangers of slipping, discussed in the previous section, must be addressed. Bare wood may be acceptable where it is used to build a café deck, since it is level and traffic patterns are very different. However, in most existing cases, the wood has been used to build a boardwalk, which is a replacement for the concrete sidewalk where slopes are often involved and traffic is

very heavy. Wood can be slippery and when used at cross slopes of greater than 3% it can be dangerous.

The simplest way to solve the problem of existing boardwalks, is to finish the wood with a no-slip surface. The slippery nature of wet wood is the main liability at the moment, assuming that drainage is properly addressed. Wood which has been treated with a slip-resistant coating or an applied slip-resistant surface must be used for future installations. Maintenance of slip resistant coatings or strips is essential as well.



All wooden surfaces must be surfaced four sides (S4S) and they must be treated with some slip-resistant coating such as adhesive traction strips or non-slip paint. Since these treatments have more problems adhering to pressure treated wood, and since the lifespan of wood in café use is limited by wear, not rot, pressure treated wood should not be employed. Rustproof, exterior wood screws, not nails, should be used to fasten all wood-work. Loose nails have been particularly problematic where decking gets a lot of traffic. Galvanized wood screws provide a much more secure way of fastening decking to joists. “Curbs” or headers should be provided on the street-side edge of all temporary sidewalks to reduce the potential of car tires displacing decking.

Bricks and concrete pavers are very slip-resistant and they have a much longer life-span than wood. Pavers can be employed as long as a containment curb is installed to keep them in place. Containment curbs can be constructed of stone, concrete, or 150x150 mm (6”x 6”) timbers (See Fig. 6.0). The curb must be fastened to the pavement using spikes, rebar, expansion anchors or adhesive. Once the curb is set then the pavement area within it is inlaid with a geotextile and backfilled with a base of compacted granular, a sand setting bed and unit pavers. Provisions must be made to maintain existing drainage patterns of stormwater runoff when using this approach.

There has been some talk of permanently removing street parking in favour of widening sidewalks in some select areas. Since restaurants and eating establishments can be relatively transitory, such actions should not be considered until the business has been active in their present location for at least 5 years. The cost of implementing this option would be borne by the applicant in negotiation with HRM planning & engineering staff.

The curb is to be securely fastened to the ground and all granular material is to be contained by a geotextile.

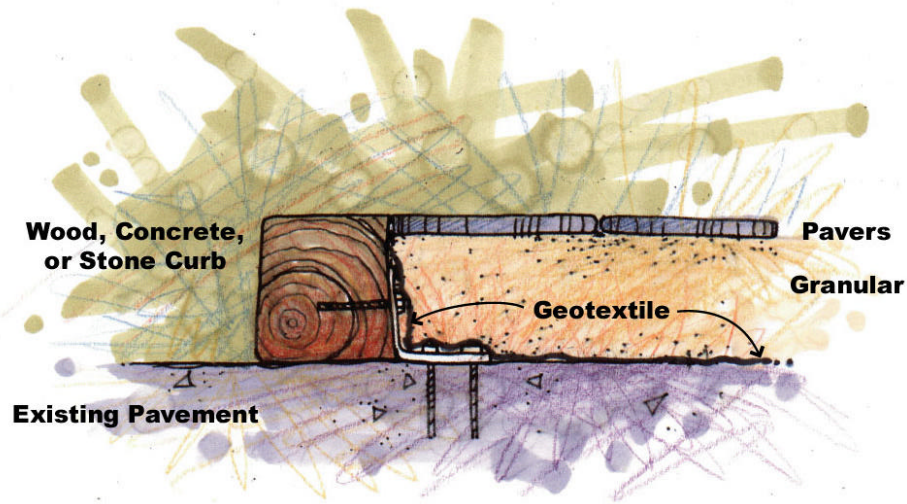


Fig. 6.0 Curb Attachment Detail

Recommendations for surface design:

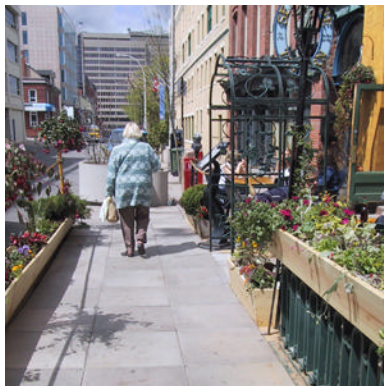
- R-26 All surfaces should be slip-resistant. Wooden surfaces for public travel must be treated with a slip-resistant surfacing.
- R-27 Where decks meet adjacent curbs, all surfaces must be flush and there shall be no spaces greater than 6mm (1/4").
- R-28 Headers must be placed at the curbside edge of surfaces (e.g. 150 x 150 mm (6"x6") timbers at the edge of decks, sidewalks, etc.)
- R-29 Surfaces similar to sidewalks are preferred. Concrete or masonry unit pavers and stone are materials of choice. Granular setting beds for these materials must be contained with a geotextile mattress.
- R-30 All wooden surfaces must be surfaced four sides (S4S); pressure-treated wood is not recommended.
- R-31 All connectors must be galvanized, stainless steel or otherwise rust-resistant. Rustproof, exterior wood screws, not nails, should be used to fasten all wood-work.
- R-32 All surfaces must maintain street and sidewalk drainage.



2.6 Furnishings

From an aesthetic point of view, wooden and metal chairs are the preferred materials for furnishings. However, at many existing sidewalk cafés plastic has already become the most popular material. Since chairs have to be gathered at the end of each day, secured at night, and replaced in the morning, lightweight plastic is the first choice for café operators. Regardless of materials, furnishings should clearly demonstrate consistency in form, colour, size, and materials.

Movable tables and chairs are an essential part of successful sidewalk cafés. Patrons really appreciate having the ability to manipulate their environment to suit themselves. This creates opportunities to gather tables to fit the size of a group, accommodate different social dynamics, and adjust seating as solar exposure fluctuates. The possibility of all these choices is as important as the exercise of it. If people know they can move when they want to, then they are just as likely to feel comfortable in staying put. Fixed furnishings could be useful at the corners of a sidewalk café if they were designed as an integral part of a handrail. Handrails are always in need of a solid anchor and this may be one way to provide them with some stability.



Recommendations for furnishings design:

- R-33 Furnishing materials and construction should respect the associated building and other sidewalk café materials. Wood and metal are preferred materials.
- R-34 Furnishings should clearly demonstrate consistency in form, colour, size, and materials.
- R-35 Furnishings should be mobile.

2.7 Planting

Planting is a great way to add life to any streetscape and it is particularly valuable around sidewalk cafés. Plants can add an attractive variety of textures and colours to a café and serve a number of useful functions. Planter boxes can be used to define the bounds of a sidewalk café and the boardwalks that may be associated with them. *Public Safety: A National Standard of Canada* calls for a tactile warning strip or surface at either end of a sidewalk obstruction to warn blind pedestrians making their way down the street with a cane. Installing planter boxes is an excellent way to provide value-added tactile edges. Similarly, the ends of a boardwalk should have a substantial barrier between the pedestrian thoroughfare and curbside parking (see Fig. 7.0). Large planters at the end of a boardwalk would be ideal for this purpose, provided they are easily visible for drivers (both day and night). To ensure that vandals do not disrupt planters, all

planters should have a minimum weight of 90 kg (200 lb). Any planter that is designed to protect people from vehicles should have a minimum weight of 1000 kg (2200 lb).



In some cases planter boxes, similar to window boxes, have been designed to hang from wooden handrails around a sidewalk café. These can be a valuable amenity as long as they do not present any sharp corners that a pedestrian might bump into. To avoid any such danger these planter boxes should be hung inside the café space, rather than over the sidewalk. Likewise, planters set on or near the ground plane should not pose any tripping hazards when pedestrians approach the edge of a sidewalk café. Selective plantings of ornamental grasses and creeping thyme will visually soften architectural corners but they will never eliminate the danger associated with sharp corners protruding into walkways.

Materials for construction should compliment the materials used on the rest of the sidewalk café. Plastic planter boxes provide an inexpensive container for soil but these may be unattractive unless they are set in a wooden box or dressed up in

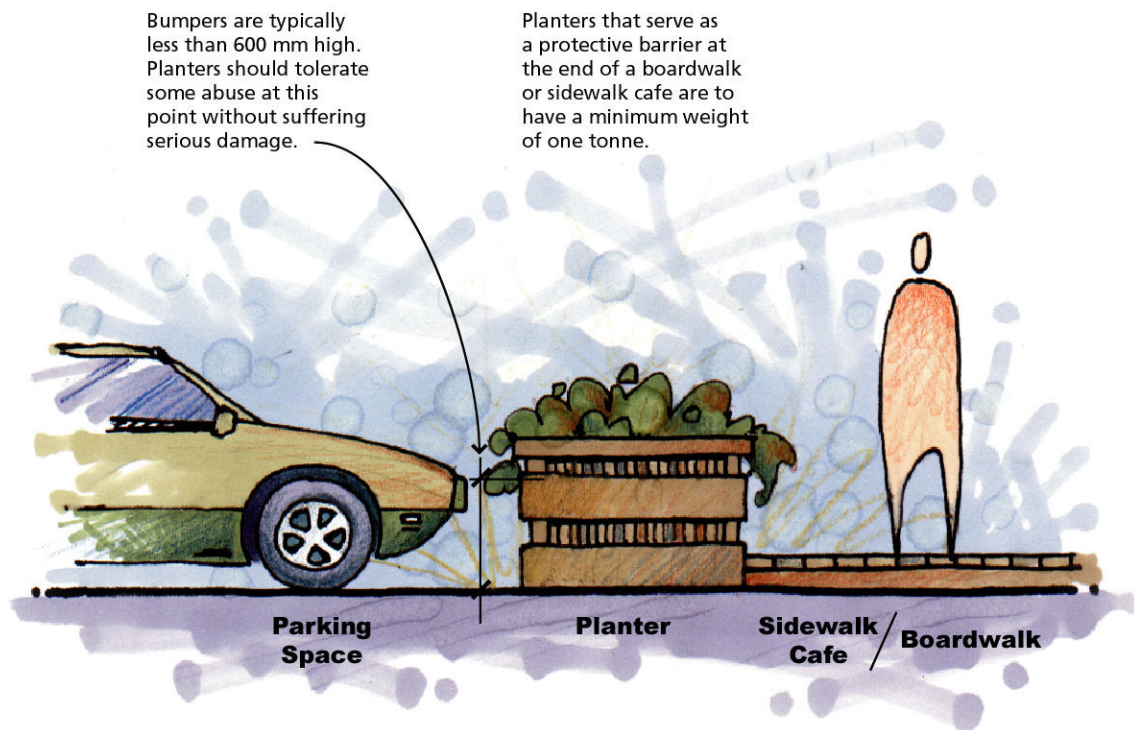


Fig. 7.0 Protective Planters

another appropriate manner. One shop on Argyle has come up with some creative planters that employ the flash of brand-new galvanized trash cans. This is an inexpensive solution that may not be appropriate in some cases but, in this case, it suits the spirit and character of the building and the shop that occupies it.



Plants are also an effective tool for accenting the entrance to a sidewalk café or a boardwalk intended to circumnavigate it. Arbours and trellises can be erected by doorways or gates, and covered with vines, but access to a boardwalk should be left wide open. Vertical accents may be used as long as sightlines are not obstructed where traffic patterns intersect.

Watering and drainage are an important consideration for planters. A regular supply of water, during off-hours, should be readily accessible and the overflow from hoses and planter boxes must be taken into account. Water should not pool on the sidewalk and wooden decking should be kept as dry as possible to avoid the hazards of slipping when wet.

Maintenance of plant material is difficult to regulate but a smart business manager will not need to be regulated and a careless manager is not likely to put plants out in the first place.



Sidewalk café owners should consider what planters will look like in winter where installations are year-round. Evergreen plants and winter ornamentals can be planted, otherwise dead plant material should be removed and soil beds raked clean and maintained that way for the winter. Year-round planters must not interfere with snow removal or storage on the sidewalk or street.

We recommend that no less than 1.0 m² of planters/plants be installed at every café.

Recommendations for planting design:

- R-36 Planters designed to protect people from vehicles should have a minimum weight of 1000 kg (2200 lb or 0.5 m x 0.5 m x 1m of topsoil) and they should be marked with reflective material.
- R-37 Planters should not have any sharp corners, abrasive edges, or tripping hazards for pedestrians. Planters should be located within the café unless their height is greater than 600 mm (2').

- R-38 Materials for construction should compliment the materials used on the rest of the sidewalk café.
- R-39 Planters must drain properly, to maintain healthy plants, and water must not pool on the sidewalk.
- R-40 No less than 1.0 m² of planters/plants should be installed at every café.

2.8 Awnings and Umbrellas



Awnings and umbrellas are an excellent way to moderate the microclimate where sun and rain influence the comfort of sidewalk café patrons. Umbrellas are a more versatile shade structures that offer patrons more flexibility in finding the sun or shade that they may be seeking. However, umbrellas do not provide any appreciable shelter from the rain unless they are extremely large. Large awnings will provide uniform shelter across a sidewalk café, which may not satisfy varying tastes for sunshine, but it could prove to be very effective and popular on a rainy day.

Retractable awnings should be favoured over fixed. Awnings attached to a heritage building will have to be approved by the Heritage Office. Furthermore, since they extend over public lands, all awnings require an encroachment permit. Umbrellas should not overhang the sidewalk unless they are 2.1 m (7') above the sidewalk elevation. Units that hang lower than 2.1 m (7') must not extend beyond the limits of the sidewalk café, this would pose a hazard for anyone that might walk into them.

Recommendations for awning and umbrella design:

- R-41 Nothing lower than 2.1 m (7') should intrude on the public envelope of pedestrian traffic.

2.9 Signage

Signboards that are an integral part of a façade are a desirable form of signage that run above the ground-floor windows, they extend the entire length of the façade, and they may be as much as 1.2 m (4') high. Backlit signboards are not permitted.

A portable sign that would be a welcome addition to the streetscape is sandwich-boards, which are no greater than 0.75 m² (8 ft²) per side (0.60m wide and 1.2 m tall) (2'x4').



Chalkboards should be favoured over changeable copy signs, especially those with day-glow letters. These sandwich-boards must not impede the flow of pedestrian traffic (minimum 2.1 m clearance on sidewalks) or restrict the visibility of drivers. A limit should be set at one portable sign per business.

Signs could be incorporated into the lateral ends of cafés as long as the sign occupies no more than 10% of the area of the lateral end.

Recommendations for signage design:

- R-42 Signage should be integrated into sidewalk cafés without making any serious physical intrusions (maintain minimum width of 2.1 m) on the sidewalk.
- R-43 Visual intrusions should be minimal with signage that is sensitively integrated into a building façade or discretely placed on the ground.

2.10 Parking

Displacement of parking by cafés should be minimized. Where parking spaces do not line up with property lines, a sidewalk café (built in the parking lane) may be offset from the property if this will preserve a parking space. No more than one parking space should be consumed by a sidewalk café per 6.1 m (20') of café frontage. No more than two spaces should be removed for any one sidewalk café. Removal and replacement of parking meters for sidewalk cafés must be performed by HRM staff at set prices determined each year.



The ends of a boardwalk or sidewalk café set in the parking lane should be guarded from on-coming traffic by a barrier that weighs at least 1000 kg (see Fig. 7.0). The barrier should carry a substantial visual mass to make pedestrians feel comfortable and to discourage drivers that might otherwise bump into them accidentally. The barrier should be easily visible from behind the wheel of a car, both day and night, but it should not obstruct a motorist's view of pedestrians. For this reason, barriers should be no less than 760 mm (2'-6") high but no

more than 1200 mm (4') high, including plants where they are incorporated. The structure should not have any corners or protrusions that might go unseen and cause injury to passing pedestrians. Planters must be sturdy and they should be able to take some abuse from car bumpers without getting badly marked or misshapen.

In some instances HRM has to remove parking meters from the sidewalk in order for a merchant to install a sidewalk café. The current guidelines address this issue but they should also make it clear that HRM is to be notified, well in advance, when a sidewalk café is to be removed. This measure is to ensure that any exposed parking meter stubs are immediately reinstalled for the safety of pedestrians and the convenience of motorists.



Recommendations for parking design:

- R-44 No more than one parking space should be consumed by a sidewalk café per 6.1 m (20') of café frontage. No more than two spaces should be removed for any one sidewalk café.
- R-45 Installations in the parking lane should be guarded by a barrier that weighs 1000 kg, or more. Barriers should be no less than 760 mm (2'-6") high but no more than 1200 mm (4') high, including plants where they are incorporated.

2.10 Other Considerations

Maintaining storm sewer drainage is critical on every café installation and provisions must be made to allow drainage to all catch basins on the street. Unless a new curb is installed to divert the flow of water (see Fig. 6.0), drainage must be maintained at the existing curb. Where an installation would otherwise interfere with the gutter, lay a pair of rigid, perforated 75 mm (3") pipes along the existing curb to ensure that stormwater drains as per usual.

Year-round café installations must provide adequate space for snow storage and removal. This means a minimum 2.1 m (7') clear distance with no intrusion from snowbanks.

The elevation of a sidewalk café should be as close to the elevation of the existing sidewalk as possible. Having café

furnishings set right on the sidewalk is preferred, but where there is a significant slope to the concrete this may not work. If a deck is required to correct a slope, it should be no higher than the minimum height required to put in a deck and the lowest possible supporting structure. Decks elevated more than 600 mm (2'), at the highest point, should not be permitted.



The reason that sidewalk cafés are permitted to impose upon public sidewalks is that they make a positive contribution to the public life on the street. There is a 'dialogue' between the pedestrian thoroughfare and a sidewalk café that enriches the downtown environment and makes it a more unique and desirable experience. As the grade change between café patrons and pedestrians increases the positive contribution of the sidewalk café is diminished. If this is taken to an extreme where pedestrians are looking at the feet of café patrons, then there is no positive contribution and therefore a sidewalk café should not have the right to impose upon the pedestrian environment.

Other recommendations:

- R-46 Provisions must be made for the drainage of stormwater to catch basins.
- R-47 Year-round installations must provide space for snow removal and storage.
- R-48 The elevation of a sidewalk café should be as close to the elevation of the existing sidewalk as possible. Decks may be used to correct slopes in excess of 5%, but they may not be elevated more than 600 mm (2').

2.11 Enforcement

The need for improved by-law enforcement was a comment heard at almost every meeting. It was generally agreed that the present resources for enforcement within HRM are limited and that the key to enforcement is 'self enforcement' or something that is easily administered. Summary offence tickets were seen as a mechanism that is relatively easy to enforce. There was also some discussion about requiring a security deposit, up-front, from café owners. This bond would be used to correct problems that might occur during construction or as a result of maintenance. A combination of these measures might be the best approach. Stakeholders favoured the idea of a summary offence ticket for by-law offenders.

- R-49 HRM should develop a sidewalk café enforcement policy.
- R-50 A summary offence ticket or security deposit mechanism

should be established.

- R-51 A deadline for permit applications (late March) should be established so that those reviewing applications can identify and coordinate all the areas applying for café permits
- R-52 A by-law enforcement officer should be assigned to the task for the month of sidewalk café installations (May). All installation permits should expire at the end of that month to ensure that installations are made during the month while an enforcement officer is reviewing the process. Periodic inspections should be made throughout the rest of the season.

3.0 Sidewalk Café Mock Permit Application

This chapter includes a seven page mock-up of a sidewalk café application that could be employed by HRM. For HRM, the forms are intended to simplify the permitting process, provide some consistency in application submissions, and ensure that all the important considerations are made. For the café owners, these forms are designed to clearly and concisely indicate what is required to meet regulations. It is also designed to give café owners some creative inspiration for developing new and attractive additions to the Halifax streetscape.

HRM will need to establish an annual deadline for permit application (March) so that all permits can be considered at the same time. This is critical for the coordination of sidewalk cafés on each block. If a new café opens up in the middle of a season, the owners may make an application after the submission deadline, but their layout would have to conform with the precedent set by their neighbours.

Along with the Permit Application, HRM should include any relevant sections of *Public Safety: A National Standard of Canada*, the National Building Code, Fire Regulations, and any other pertinent standards. This will save both HRM and the café owners a considerable amount of time during the application process.

Please refer to section 2.11 for more details of permit applications and enforcement.

Attachment D

	Halifax (Current)	Halifax (Proposed)	Edmonton (Alberta)	Fredericton (New Brunswick)	Ottawa (Ontario)	Toronto (Ontario)	Vancouver (British Columbia)	Wolfville (Nova Scotia)	Windsor (Ontario)
Legislation & Guidelines	• Sidewalk Café Policy	• Sidewalk Café By-law	• By-law 12513 – City Streets Development Control By-law • Sidewalk café guidelines.	• Café guidelines.	• Encroachments on City Highway By-law No. 2003 – 446 (ss.63-91)	• Toronto Municipal Code, Chapter 313-36 (Boulevard Cafés). • Harmonized café by-law is currently under development.	• Café guidelines.	• By-law 88 – The Sidewalk Café By-law.	• By-Law 25-2010 – Protection of Streets • Sidewalk café handbook.
Licenses & Permits	• Street and Services Permit • Encroachment Agreement	• Sidewalk Café Permit	• Café permit required. • License agreement required (enclosed cafés).	• Café permit required.	• Café permit required.	• License agreement required. • Encroachment agreement	• Café permit required. • License agreement required.	• Café permit required. • Sign permit required (café advertising) • Development agreement required (only where liquor service is offered without food service).	• Café permit required. • License agreement required. • Encroachment agreement required (enclosed year round cafés and/or cafes with awnings).
Application Package	• Application form. • Application fee. • Proof of insurance. • Site plan.	• Application form. • Application fee. • Proof of insurance. • Site plan. • Café plan. • Construction drawings.	• Application form. • Application fee. • Business license. • Proof of insurance. • Site plan. • Photos of area to be occupied by proposed café.	• Application form. • Application fee. • Proof of insurance. • Site plan. • Interior layout of food and beverage establishment. • Building permit.	• Application form. • Application fee. • Business license. • Site plan.	• Application form. • Application fee. • Proof of insurance. • Site plan. • Photos of area to be occupied by proposed café.	• Application form. • Application fee. • Business license. • Proof of insurance. • Site plan. • Extended liquor license.	• Application form. • Application fee. • Building permit. • Sign permit. • Site Plan.	• Application form. • Application fee. • Proof of insurance. • Site plan. • Photos of area to be occupied by proposed café. • Registered deed/ owner's endorsement.
Site Plan	• Applicant must submit a site plan drawn to scale that shows delineated area of the sidewalk café, and proposed location and placement of planters, awnings, tables, chairs, fences and all other accessories in relation to the public sidewalk and associated food and beverage establishment.	• Applicant must submit detailed construction drawings, site plan and café plan that are in a form prescribed by the License Administrator and comply with the café by-law design standards. • Site plan defined as scale drawing showing location of the sidewalk café relative to the street and the sidewalk, location of any municipal street furniture/infrastructure , and the food and beverage establishment. • Café plan defined as scale drawing showing the layout and size of the sidewalk café including the amount and location of furniture and exits.	• Applicant must submit a site plan that identifies face of building, property line, dimensioned location of proposed sidewalk café with setbacks from the curb, access, sidewalks and pedestrian path available for clear travel. • Applicant must submit detailed drawings that identify City fire connections, street furniture within or nearby the café area, as well as street trees and grates, bus pads and zones and parking meters. • Plans submitted must be to a professional drafting standard (rough sketches are not acceptable).	• Applicant must submit a site plan that identifies face of building, property line, dimensioned location of proposed sidewalk café with setbacks from the curb, access, sidewalks and pedestrian path available for clear travel.	• Applicant must submit 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 vertical barriers and half walls. • Applicant must submit 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	• Applicant must submit café site plan with relevant dimensions, the location of the street, sidewalk, side property line(s), fence enclosing proposed café area, utility poles, fire hydrant, street furnishings, trees, etc. • Detailed construction drawings required where café proposal involves major landscaping, partial or full enclosure or a deck.	• Applicant must submit a site plan (top down/front elevation/side elevation) showing fire department connections, sewers, water works, gas valves, the curb and all street furniture (trees, garbage containers, benches, bus zones, loading zones, telephone booths, etc.) and measurements indicating their location relative to the building face of the restaurant and the sidewalk patio vertical barriers.	• Applicant must submit a site plan, (drawn to scale) showing the delineated area of the proposed sidewalk café, placement and numbers of planters, awnings, tables, chairs, fences and all other accessories in relation to the public sidewalk; and to the indoor food and beverage establishment associated with it including the temporary sidewalk.	• Applicant must submit café site plan with relevant dimensions, the location of the street, sidewalk, side property line(s), fence enclosing proposed café area, utility poles, fire hydrant, street furnishings, trees, etc. • Applicant must submit a plan prepared by a licensed Architect, Professional Engineer, or trained professional showing exact location and dimensions of the café (year-round cafés with permanent enclosures only).
Public Notice/ Consultation (On Initial Application)	• Not addressed.	• Not addressed.	• Not addressed.	• Not addressed.	• Application circulated to residents and owners of properties zoned residential (within 90 metres of the proposed café).	• Poll required where café would flank residential properties. • Notice required where café would flank commercial properties.	• Not addressed.	• Property owners adjacent to proposed café advised of café permit application.	• Application circulated to owners of properties zoned residential (within 76.2 metres of the proposed café).
Application Review	• Application reviewed by multiple city business units and by Business Improvement District.	• Application reviewed by multiple city business units and by Business Improvement District. • Application subject to Heritage Property Act, By-law H-200 and By-law H-500 if in relation to a municipal heritage property. • Application for annual café license reviewed by Council.	• Application reviewed by multiple city business units. • If café sits on private property, the application is for an “outdoor patio” and is handled through the standard development permit process.	• Application reviewed by multiple city business units and by Business Improvement District.	• Application reviewed by multiple city business units and by Ward Councillor.	• Application reviewed by multiple city business units and by Ward Councillor.	• Application reviewed by multiple city business units. • If café sits partly on private property and partly on City property, both a development permit and a sidewalk patio permit are required	• Application reviewed by multiple city business units.	• Application reviewed by multiple city business units, by Ward Councillor, and by Business Improvement District.
Approval Authority	• Approval by Engineer.	• Approval by License Administrator (seasonal café licenses). • Approval by Council (annual café licenses) .	• Approval by Department of Sustainable Development (café permit) and Transportation Services (café license).	• Approval by Senior Planner.	• Approval by the General Manager of Transportation, Utilities and Public Works.	• Approval by Municipal Licensing & Standards Division	• Approval by Engineering Development Services.	• Approval by Development Officer	• Approval by CAO.

Appeals	• Refused application can be appealed to Council.	• Refused application can be appealed to committee of Council.	• Refused application can be appealed to General Manager of Transportation Services.	• Not addressed.	• Public objections to proposed café reviewed by Committee of Council.	• Refused application can be appealed to standing committee of Council.	• Not addressed.	• Refused application can be appealed to committee of Council.	• Not addressed.
Café Types	• No café type differentiation.	• Seasonal café (with or without enclosure) • Annual café	• Minor sidewalk café (unenclosed). • Major sidewalk café (enclosed).	• No café type differentiation.	• Café seating – one or two tables (under 76 cm in width) each table having one or two chairs. • Outdoor patio – food and beverage service area that may include tables, chairs, temporary entrance shelters, canopies, umbrellas, parasols and decorative planters	• Temporary partial cafe enclosure or boulevard cafe awning • Temporary full cafe enclosure	• Small sidewalk café patio (unenclosed). • Large sidewalk café patio (enclosed).	• No café type differentiation.	• Enclosure only (standard). • Enclosure only (non-standard) • No enclosure (maximum 5 square meters– no liquor service). • Year round enclosure. • Mini-café (maximum of 2 tables and 8 chairs – no liquor service).
Accessory Use	• Cafés are only permitted as an accessory use of a food and beverage establishment.	• Cafés are only permitted as an accessory use of a food and beverage establishment.	• Cafés are only permitted as an accessory use of a food and beverage establishment located on ground floor.	• Cafés are only permitted as an accessory use of a food and beverage establishment.	• Cafés are only permitted as an accessory use of a food and beverage establishment.	• Cafés are only permitted as an accessory use of a food and beverage establishment.	• Not addressed.	• Cafés are only permitted as an accessory use of a food and beverage establishment.	• Cafés are only permitted as an accessory use of a food and beverage establishment.
Frontage	• Cafés cannot extend onto the frontage of abutting property owners without adjacent property owners' permissions.	• Cafés cannot extend onto the frontage of abutting property owners.	• Cafés cannot extend onto the frontage of abutting property owners' permissions.	• Cafés cannot extend onto the frontage of abutting property owners without adjacent property owners' permissions	• Cafés cannot extend onto the frontage of abutting property owners.	• Cafés cannot extend onto the frontage of abutting property owners without adjacent property owners' permissions.	• Not addressed.	• Cafés cannot extend onto the frontage of abutting property owners without adjacent property owners' permissions.	• Not addressed.
Placement/ Location	• Café must be located immediately next to establishment permitted to serve food or beverages (along either front or side of the building).	• Café must be located immediately next to establishment permitted to serve food or beverages (along either front or side of the building).	• Café may be located immediately next to establishment permitted to serve food or beverages (along either front or side of the building) or may be located curbside	• Café must be located immediately next to establishment permitted to serve food or beverages (along either front or side of the building).	• Café must be located immediately next to establishment permitted to serve food or beverages (along either front or side of the building).	• Café must be located immediately next to establishment permitted to serve food or beverages (along either front or side of the building).	• Café may be located immediately next to establishment permitted to serve food or beverages (along either front or side of the building) or may be located curbside (no alcohol service and on trial basis only).	• Café may be located immediately next to establishment permitted to serve food or beverages (along either front or side of the building) or may be located curbside if there is no liquor service.	• Café must be located immediately next to establishment permitted to serve food or beverages (along either front or side of the building).
Pedestrian Circulation & Setbacks	• Standard width of a sidewalk where a café is to be apporved is 10 feet.	• Café must provide a minimum of 2.1 metres of unobstruced sidewalk width • Café must be no less than 1.2 metres from fire hydrant. • Café must be no less than 0.45 metres from municipal street furniture (bench, bus shelter, banner, garbage bin, flower pots etc.).	• Café not permitted on service grates, close to fire hose connections or near intersections, bus stops, commercial loading zones or pedestrian crossing areas. • In heavily used pedestrian areas, café must be set back a minimum of 2.5 metres from the curb, or provide a minimum of 2.5 meters of unobstructed sidewalk width. • In lightly used pedestrian areas, café must be set back a minimum of 2.0 meters from the curb, or provide a minimum of 1.5 meters of unobstructed sidewalk width.	• Café located at a street intersection, must be set back a minimum of 3 metres from the corner of the building. • Café located adjacent to a driveway/alley must be set back at least 1.5 metres from the corner of the building adjacent to the driveway/alley. • Café must be no less than 2.0 metres from the curb or any streetscape element (tree, parking meter post, bike rack, utility pole, garbage bin, etc.).	• Café must not obstruct or interfere with public travel, any public service, or maintenance operations, and must not create any public safety hazards, including sight obstructions. • All portions of the café that are above grade must be installed at least 0.5 metres from the edge of the curb. • Café must be at least 30 metres from property zoned for residential use. • Café must allow for a minimum unencumbered sidewalk width of 1.8 metres.	• Café must be no less than 2.13 metres from an existing curb. • Cafés must be at least 0.45 metres from the rear of a sidewalk. • Café must be at least 1.0 metres away from fire hydrant/pumper connections. • Café seating must be at least 1.2 metres from café barbecue. • Café must be at least 25 metres from property zoned for residential use.	• In heavily used pedestrian areas, café must provide a minimum of 3.65 meters of unobstructed sidewalk width. • In lightly used pedestrian areas, café must provide a minimum of 2.5 meters of unobstructed sidewalk width. • Café must be no less than 2.43 metres from any streetscape element (tree, parking meter post, bike rack, bench, bus shelter, fire hydrant, utility pole, garbage bin, etc.).	• Café cannot extend beyond the edge of the existing sidewalk (inside edge of curb).	• Café should be a minimum of 30 metres from properties zoned residential. • Enclosed cafés must allow for a minimum of 2.4 meters of unobstructed sidewalk width (3.7 meters if located near an intersection). • Unenclosed cafés can occupy a maximum of 1.8 meters (measured from building face or property line). • Café must be no less than 2.4 metres from any streetscape element (tree, parking meter post, bike rack, bench, bus shelter, fire hydrant, utility pole, garbage bin, etc.)
Temporary Sidewalks/ Boardwalks	• Where the sidewalk café extends the width of the existing sidewalk, a temporary sidewalk must be provided. • Temporary sidewalk is subject to approval by Engineer.	• Temporary sidewalk required in parking lane adjacent to the sidewalk café to preserve free flow of pedestrian traffic. • Temporary sidewalks must be guarded by a traffic barrier at ends exposed to traffic. • Traffic barriers shall be no more than 1.05 metres in height and no less than 0.81 metres in height.	• Not addressed.	• A temporary sidewalk may only be used where it replaces existing on-street parking spaces. • The construction and use of a temporary sidewalk must be to the satisfaction of the City. • Temporary sidewalks are not permitted on arterial streets or on streets identified as presenting a safety issue.	• Not addressed.	• Not addressed.	• Not addressed.	• Temporary sidewalk required in parking lane adjacent to the sidewalk café to preserve free flow of pedestrian traffic. • Temporary sidewalk must be no less than 1.80 metres wide and no more than 2.10 metres wide. • Fencing required along the street side of any temporary sidewalk. • Street traffic must be blocked at each edge of the temporary sidewalk in both directions by planters or other design features with a minimum weight of 1000kg and minimum height of 0.6 metres.	• Not addressed.

Fences/ Vertical Barriers	• Fencing/vertical barrier cannot exceed 1.0 metres in height. • Fences/vertical barriers located within 6 metres of an intersection shall not obstruct vehicle view angles. • Fencing/vertical barrier should not form a continuous solid barrier (i.e. should have open appearance).	• Fencing/vertical barrier is mandatory for cafés licensed to serve liquor. • Fencing/vertical barrier cannot exceed 1.2 metres in height or be less than 0.9 metres in height.	• Fencing/vertical barrier is mandatory for cafés licensed to serve liquor. • Fencing/vertical barrier cannot exceed 1.2 metres in height. • Fencing/vertical barrier cannot form a continuous solid barrier (i.e. must have open appearance).	• Fencing/vertical barrier cannot exceed 1.2 metres in height or be less than 1.0 metres in height. • Fencing/vertical barrier should not form a continuous solid barrier (i.e. should have open appearance).	• Fencing/vertical barrier is mandatory for cafés licensed to serve liquor. • Fencing/vertical barrier facing the street, or within 1 metre of sidewalk, must be 1.06 metres in height. • Fencing/vertical barrier not facing the street cannot exceed 2.0 metres in height. • Fencing/vertical barrier cannot form a continuous solid barrier (i.e. must have open appearance).	• Fencing/vertical barrier is mandatory for cafés licensed to serve liquor. • Fencing/vertical barrier cannot exceed 1.2 metres in height or be less than 0.9 metres in height. • Fences/vertical barriers with a height greater than 0.9 metres cannot be located within 30 metres of an intersection. • Fences/vertical barriers must be free standing (i.e. not penetrate surface grade of sidewalk). • Fencing/vertical barrier cannot form a continuous solid barrier (i.e. must have open appearance).	• Fencing/vertical barrier is mandatory for cafés licensed to serve liquor. • Fencing/vertical barrier cannot exceed 1.00 metres in height or be less than .75 metres in height. • Fencing/vertical barrier cannot form a continuous solid barrier (i.e. must have open appearance).	• Fencing/vertical barrier cannot exceed 1.20 metres in height or be less than 1.07 metres in height.	• Fencing/vertical barrier is mandatory for cafés licensed to serve liquor and for cafés occupying greater than 5 square metres. • Fencing/vertical barrier cannot exceed 1.00 metres in height or be less than .9 metres in height. • Fences with a height greater than 0.9 metres cannot be located within 30 metres of an intersection.
Decking	• Not addressed.	• Café decks are only permitted on sidewalks where there is an incline or where associated building's interior is more than 0.6 metres higher than sidewalk grade • Café decks cannot be higher than what is required to accommodate deck framing and a level surface area. • Café decks cannot be constructed over existing underground services (i.e. hydro vaults, chambers, maintenance holes, etc.), except with prior written approval given by the relevant public utility. • Cafe decks that exceed height of 0.6 metres above sidewalk grade must be inspected by professional engineer.	• Decks, platforms or server greeting stations may be allowed in cafés, subject to approval by the City, provided that they are not permanently attached to the pavement and can be removed at the end of the café season.	• Decks, platforms or server greeting stations may be allowed in cafés, subject to approval by the City, provided that they are not permanently attached to the pavement and can be removed at the end of the café season.	• Not addressed.	• Café decks are only permitted on sidewalks that exceed a slope of 5%. • Café decks cannot be higher than what is required to accommodate deck framing and a level surface area. • Café decks cannot be constructed over existing underground services (i.e. hydro vaults, chambers, maintenance holes, etc.), except with prior written approval given by the relevant public utility.	• Café decks, platforms and structures are not permitted except to level a steep incline (more than 5%) in the sidewalk or to harmonize indoor and outdoor seating levels. • Structural engineer approval required for decks that incorporate joists that are not in continuous contact with the ground.	• Not addressed.	• Cafés must be located at grade –elevated decks are not permitted. • Paving materials can be used (e.g. natural stone, unit pavers, concrete (textured/ coloured), granite, brick, or material to match accent pavers on the sidewalk.
Accessibility	• Café enclosure must have at least one walkway to entrance of building that is no less than 1.10 metres wide.	• Cafés must comply with CAN/CSA-B651-04 Accessible Design for Built Environment.	• Sidewalk Cafés must be designed for good accessibility.	• Owner must maintain a minimum width of 1.1 metres of unobstructed (barrier free) walkway to the entrance of the building • Café must be wheelchair accessible. • Sandwich board signs must not obstruct access.	• Not addressed.	• Café enclosure must have at least one entrance that is no less than 1.00 metres wide and located/designed so as to permit easy access by a person in a wheelchair.	• Bollard and chain fencing is not permitted as it poses a hazard to pedestrians with a visual disability. • Decks must be wheelchair accessible	• Owner must maintain a minimum width of 1.2 metres of unobstructed (barrier free) walkway to the entrance of the building. • Temporary sidewalks must accommodate barrier free access.	• Cafés must comply with CAN/CSA-B651-04 Accessible Design for Built Environment. • Cafés must conform with the City's Facility Accessibility Design Standards. • Cafes must comply with the Accessibility for Ontarians with Disabilities Act (AODA) and its regulations.
Upkeep	• Café operator must maintain café area and area immediately adjacent in a clean and safe condition.	• Café operator must maintain area surrounding/adjacent to café in clean, sanitary, attractive condition free from rubbish, papers and debris of any kind.	• Café area and furniture must be maintained in a clean and hygienic manner.	• Sidewalk and road surface must be kept clear of obstructions and debris to avoid hazard/ inconvenience to the public during café construction and operation.	• Café enclosure must be maintained in good repair. • Café owner is responsible for snow and ice removal from the café.	• Café elements must be maintained in good repair and must be free of hazards. • Graffiti must be removed immediately. • Right-of-way must be kept in a clean, sanitary, attractive condition, free from papers, rubbish and debris of all kinds.	• Not addressed.	• Café elements must be maintained in good repair and must be free of hazards. • Refuse originating in the café must be removed from the right-of-way.	• Café elements must be maintained in good repair and must be free of hazards. • Landscape maintenance must be done on a regular basis to ensure the health of plant material • Café owner is responsible for snow removal and salting within the café enclosure and its immediate surroundings

Aesthetics	• Café elements should be consistent with the age and character of the associated building.	• Not addressed.	• Café elements should reflect the architectural character of the adjacent building and streetscape, particularly in terms of furniture style, quality of construction, materials and type of fencing selected for the area enclosure.	• Café design, materials and colors of all accessories/ improvements for the sidewalk café must compliment the architectural style and colors of the building façade and existing street furniture.	• Not addressed.	• Not addressed.	• Use of well-maintained plants encouraged within the defined café area. • Decks in heritage districts must be finished with brick pavers in keeping with district.	• Café elements, including: temporary sidewalks, landscaping, fencing and furnishings, must be designed and finished to a standard that is consistent with general appearance of the existing downtown streetscapes and buildings.	• Café construction materials and enclosures must complement the character of the neighbourhood, surrounding area and be compatible with adjacent streetscape elements in terms of design, quality and colour schemes.
Advertising & Signage	• Café signage must comply with City sign by-law.	• Café signage must comply with City sign by-law. • Café signage cannot be placed on temporary sidewalk.	• A-frame signs permitted within the café area in locations that do not obstruct pedestrian movement. • Not more than one menu board, whether electronic or chalk board, will be permitted for each café. • Proprietary logo/signature or name of the café/restaurant may appear on awnings and umbrellas.	• Not addressed.	• Not addressed.	• Not addressed. • Signage by-law requires that A frame signs must be located within café area.	• Advertising cannot be attached to café railing.	• Not addressed.	• Endorsements/ advertising not permitted along fence enclosures, on umbrellas, tableware or covers. • Café signage cannot be illuminated. • Temporary menu display board permitted (must not obstruct the sidewalk or café entrances). • Café signage must comply with City sign by-law.
Utility/ Infrastructure Access	• City and public utilities retain right of access to accommodate construction, reconstruction, maintenance or repairs to underground utilities and municipal services (pipes, cables, poles, etc.).	• City and public utilities retain right of access to accommodate construction, reconstruction, maintenance or repairs to underground utilities and municipal services (pipes, cables, poles, etc.).	• Not addressed.	• City and public utilities retain right of access to accommodate construction, reconstruction, maintenance or repairs to underground utilities and municipal services (pipes, cables, poles, etc.).	• Not addressed.	• City and public utilities retain right of access to accommodate construction, reconstruction, maintenance or repairs to underground utilities and municipal services (pipes, cables, poles, etc.).	• Not addressed.	• Town and public utilities retain right of access to accommodate construction, reconstruction, maintenance or repairs to underground utilities and municipal services (pipes, cables, poles, etc.).	• City and public utilities retain right of access to accommodate construction, reconstruction, maintenance or repairs to underground utilities and municipal services (pipes, cables, poles, etc.).
EMS Access	• City retains right of access for emergency vehicle access.	• City retains right of access for emergency vehicle access.	• Not addressed.	• Not addressed.	• Not addressed.	• Not addressed.	• Not addressed.	• Town retains right of access for emergency vehicle access	• City retains right of access for emergency vehicle access
Café Seating Capacity	• Not addressed.	• Not addressed.	• Café area cannot exceed the interior floor area of the abutting eating or drinking establishment.	• Not addressed.	• Not addressed.	• Café seating capacity subject to applicable zoning by-law and Fire Code.	• Café seating capacity is the lowest number allowed by the Licenses and Inspections Branch of Community Services, the Health Department or the Fire Department.	• Restriction on lounge seating (i.e. seating for service of alcohol without food).	• Café seating capacity subject to Fire Code and Liquor License Act.
Café Elements/ Furnishings	• Café elements must be contained within the designated café area (umbrellas, chairs, tables, awnings, lighting, etc.).	• Café elements must be contained within the designated café area (umbrellas, chairs, tables, awnings, lighting, etc.).	• Café elements must be contained within the designated café area (umbrellas, chairs, tables, awnings, lighting, etc.).	• Café elements must be contained within the designated café area (umbrellas, chairs, tables, awnings, lighting, etc.).	• Café elements must be contained within the designated café area (umbrellas, chairs, tables, awnings, lighting, etc.).	• Not addressed.	• Café elements must be contained within the designated café area (umbrellas, chairs, tables, awnings, lighting, etc.).	• Café elements must be contained within the designated café area (umbrellas, chairs, tables, awnings, lighting, etc.).	• Café elements must be contained within the designated café area (umbrellas, chairs, tables, awnings, lighting, etc.).
Café Lighting	• Café lighting must not project onto adjacent property or the adjacent street(s) and must be of a temporary nature.	• Café lighting levels must be low and directed into the sidewalk café. • Café lighting must be wall mounted.	• Overhead lighting levels must be low, and directed downward into the café area, to reduce light impact on adjacent properties or pedestrians.	• Café lighting must not project onto adjacent property or the adjacent street(s) and must be of a temporary nature.	• Not addressed.	• Not addressed.	• Not addressed.	• Café lighting must be of a temporary nature and cannot project light onto adjacent properties, nor conflict with traffic control indicators.	• Café lighting must be directed into the café rather than out towards the street. • All light fixtures must be shielded to ensure full cut-off lighting. (i.e. 0% peak intensity radiating above 90° and no more than 10% peak intensity above 80 °).
Encroachment Period / Café Season	• April 1st to October 31st	• Seasonal cafés: 3rd Monday in April to October 31st • Annual cafés: one calendar year (renewable)	• In accordance with the approved licence of occupancy agreement or café permit. • Renewal of café permit and café licence is required every 5 years.	• May 1st to September 30th	• April 1st to November 14th – built structures permitted on right-of-way. • November 15th to March 31st – built structures not permitted on right-of-way. • November 15th to March 31st – café furnishings must be completely removed within two hours of being notified by the City (for winter maintenance operations).	• April 1st to March 31st. • Temporary full cafe enclosure is permitted only during the periods April 1st to May 30th and September 15th to November 1st. • Temporary partial cafe must be removed from right-of-way when cafe operation is not in regular daily use.	• Summer Term – April 1st to October 31st • Winter Term – November 1st to March 31st	• May 1st to November 1st.	• March 1st to November 30th. • Year round enclosure permitted at the discretion of the Planning and Engineering Departments.

Hours of Operation	• Café must be closed by no later than 2 a.m.	• Café must be closed when the associated food and beverage establishment is closed.	• Not addressed.	• Café must be closed when the associated food and beverage establishment is closed.	• Café must be closed by 11:00 p.m. if it is located within 30 metres of residential properties.	• Café must be closed by 11:00 p.m. unless extended hours are authorized by Council.	• Café must be closed between the hours of 11:00 p.m. and 07:00 a.m. unless otherwise indicated on café permit	• Café must be closed when the associated food and beverage establishment is closed.	• Not addressed.
Compliance/ Enforcement	• Traffic and Right of Way staff perform periodic inspections to ensure compliance with café by-law.	• Inspectors monitor café construction to ensure congruence with approved drawings • By-law enforcement officers perform periodic inspections to ensure compliance with café by-law.	• Inspectors monitor café construction to ensure congruence with approved drawings • By-law enforcement officers perform periodic inspections to ensure compliance with terms of the license agreement.	• Inspectors monitor café construction to ensure congruence with approved drawings. • By-law enforcement officers respond to complaints.	• By-law enforcement officers respond to complaints.	• Inspectors monitor café construction to ensure congruence with approved drawings. • By-law enforcement officers perform periodic inspections to ensure compliance with terms of the license agreement and Municipal Code.	• Inspectors monitor café construction to ensure congruence with approved drawings. • Engineering Services perform periodic inspections to ensure compliance with terms of the license agreement.	• Inspectors monitor café construction to ensure congruence with approved drawings. • By-law enforcement officers respond to complaints	• Inspectors monitor café construction to ensure congruence with approved drawings. • Engineering and Fire perform periodic inspections to ensure compliance with license agreement/ café handbook/ encroachment agreement
Grounds for License or Permit Revocation or Suspension	• Failure to conform to terms and conditions of approval.	• Failure to comply with City by laws. • Failure to comply with café by-law. • Area occupied by café required by City.	• Failure to conform to license agreement conditions.	• Failure to conform to conditions of approval and construction. • Failure to effect repairs to café.	• Failure to comply with City by laws. • Area occupied by café required by City or utility. • Unresolved noise complaints. • Failure to maintain café.	• Failure to comply with Municipal Code. • Failure to conform to encroachment agreement conditions. • Council may revoke café license, without giving reasons, provided that notice is given and the owner is given an opportunity to speak to the matter.	• Not addressed.	• Failure to conform to permit conditions. • Failure to comply with the café by-law. • Failure to comply with Order.	• Failure to conform to permit conditions. • 30 days' written notice by either party.
Café Removal	• Café must be completely removed, from the right-of-way at end of authorized encroachment period.	• Café must be completely removed, from the right-of-way at end of authorized encroachment period. • City may remove café from the right-of-way if owner fails to comply with café by-law.	• Not addressed.	• Café must be completely removed, from the right-of-way at end of authorized encroachment period.	• Café must be completely removed, from the right-of-way on or before 2 AM (between November 15th and March 31st	• Café must be completely removed, from the right-of-way at end of authorized encroachment period. • City may remove café from the right-of-way if owner fails to comply with an Municipal Code.	• Not addressed.	• Café must be completely removed, from the right-of-way at end of authorized encroachment period.	• Café must be completely removed, from the right-of-way at end of authorized encroachment period
Indemnification	• Applicant must indemnify and save harmless the City from any and all claims, demands, causes of action, loss, costs or damages resulting from the café.	• Applicant must indemnify and save harmless the City from any and all claims, demands, causes of action, loss, costs or damages resulting from the café.	• Not addressed.	• Not addressed.	• Applicant must indemnify and save harmless the City from any and all claims, demands, causes of action, loss, costs or damages resulting from the café.	• Applicant must indemnify and save harmless the City from any and all claims, demands, causes of action, loss, costs or damages resulting from the café.	• Applicant must indemnify and save harmless the City from any and all claims, demands, causes of action, loss, costs or damages resulting from the café.	• Applicant must indemnify and save harmless the City from any and all claims, demands, causes of action, loss, costs or damages resulting from the café.	• Applicant must indemnify and save harmless the City from any and all claims, demands, causes of action, loss, costs or damages resulting from the café.
Insurance (per occurrence)	• \$2 million general liability insurance. • Endorsed to provide the City with 10 days prior written notice of cancellation or material change.	• \$2 million general liability insurance for cafés without liquor service. • \$5 million general liability insurance for cafés with liquor service. • Cross-liability clause. • City as a named insured. • Endorsed to provide the City with 30 days prior written notice of cancellation or material change	• \$2 million general liability insurance.	• \$2 million general liability insurance. • City as a named insured.	• \$2 million general liability insurance. • Broad form property insurance coverage to the replacement value. • City as a named insured. • Endorsed to provide the City with 30 days prior written notice of cancellation or material change.	• \$2 million general liability insurance. • Cross-liability clause. • City as a named insured. • Endorsed to provide the City with 30 days prior written notice of cancellation or material change	• \$2 million general liability insurance for cafés without liquor service. • \$5 million general liability insurance for cafés with liquor service. • Cross-liability clause. • City as a named insured. • Endorsed to provide the City with 30 days prior written notice of cancellation or material change	• \$1 million general liability insurance. • City as a named insured.	• \$2 million general liability insurance. • \$2 million liquor liability insurance for cafés with liquor service. • Cross-liability clause. • City as a named insured. • Endorsed to provide the City with 30 days prior written notice of cancellation or material change.
Fees	• Administration fee \$200 • Per square foot fee \$2.50 - \$0.50/season • Per parking metre removed & reinstalled \$250/season • Per sign post removed & reinstalled \$150/season • Cafes in downtown pay higher fees	• License fee: Seasonal café with enclosure: \$800 • License fee: Seasonal café without enclosure: \$250 • License fee: Annual café \$1,400 initial / \$1,000 renewal • Per parking metre removed & reinstalled \$250/season • Per sign post removed & reinstalled \$125/season	• Application fee for unenclosed café – \$25 (application required every 5 years). • Application fee for enclosed café – \$100 (application required every 5 years). • No annual fee.	• No application fee. • No annual fee.	• Application fee – enclosed café \$55. • First time review fee without public circulation (enclosed café) \$299. • First time review fee with public circulation (enclosed café) \$500. • Per square metre fee (enclosed café) \$1.37/daily. • Permit fee (unenclosed café) \$156.	• Administration fee \$254 • Inspection fee \$56/hour • Per square metre fee \$11.49 - \$22.97/ annually • Additional fee applied to cafés with temporary full enclosures. • Where the café location is suitable for a tree to be planted, applicant must pay \$2,900 tree planting fee.	• Application fee \$210 • Per square meter fee \$15.79 - \$22.17* (7 months large patio permit / Summer term) • Per square meter fee \$11.22 - \$15.72* (5 months large patio permit / Winter term) • Flat fee (1 small patio permit \$292 – max 3 tables & 6 chairs) • Flat fee (2 small patio permits \$584 – max 6 tables & 12 chairs) • Flat fee (3 small patio permits \$876 – max 9 tables & 18 chairs) • Minimum fee \$339 • Patios located in the downtown pay higher fees	• Per square foot fee \$1 /annually	• Application fee \$275 • Permit fee \$1 • \$1,000 indemnity (refundable at end of season).

Restoration/ Remediation & Right of Recovery	• Not addressed.	• City can recover its own costs incurred in removing a sidewalk café and/or restoring the street to a safe and proper condition (recovery from café owner/operator or from commercial property owner).	• City can recover its own costs incurred in removing a sidewalk café and/or restoring the street to a safe and proper condition (recovery from café owner/operator).	• Not addressed.	• City can recover its own costs incurred in removing a sidewalk café and/or restoring the street to a safe and proper condition (recovery from café owner/operator).	• City can recover its own costs incurred in removing a sidewalk café and/or restoring the street to a safe and proper condition (recovery from café owner/operator).	• Not addressed.	• City can recover its own costs incurred in removing a sidewalk café and/or restoring the street to a safe and proper condition (recovery from café owner/operator).	• City can recover its own costs incurred in removing a sidewalk café and/or restoring the street to a safe and proper condition (recovery from café owner/operator).
Offences / Penalties	• Not addressed.	• Any person convicted of an offence is liable to a fine of not less than \$250 and not more than \$5,000	• Not addressed.	• Not addressed.	• Any person convicted of an offence is liable to a fine of not more than \$5,000	• Any person convicted of an offence is liable to a fine of not more than \$5,000	• Not addressed.	• Not addressed.	• Any person convicted of an offence is liable to a fine pursuant to the Provincial Offences Act.

Attachment E

Image of Sidewalk Café
Snow Event | April 7, 2012



ATTACHMENT F

HALIFAX REGIONAL MUNICIPALITY ADMINISTRATIVE ORDER NUMBER 15 RESPECTING LICENSE, PERMIT AND PROCESSING FEES

BE IT RESOLVED that Administrative Order 15, the *License, Permits and Processing Fees Administrative Order* is further amended as follows:

1. The Charter in section 21 is amended by repealing the word “Sidewalk Café” and the fee for Sidewalk Café of “\$200”.
2. Section 21 is added after section 20 as follows:

By-law #	Short Title	Details	Fee
By-law S-1000	<i>Sidewalk Café By-law</i>		
		Seasonal Sidewalk Cafe License Fee for unenclosed sidewalk café.	\$250 per Seasonal Sidewalk Café
		Seasonal Sidewalk Café License fee for unenclosed sidewalk café where the tables and chairs are removed from the sidewalk each day by the closing time of the principle use property.	No fee
		All other Seasonal Sidewalk Café License Fee.	\$800 per Seasonal Sidewalk Café
		Annual Sidewalk Café License Fee for: a) an initial Annual Sidewalk Café License or; b) a Substantive Change to a previous Annual Sidewalk Café License; or c) a change to the encroachment term.	\$1,400 per Annual Sidewalk Café
		Renewal of Annual Sidewalk Café License Fee.	\$1,000 per Annual Sidewalk Café
		Parking Meter Removal and Reinstatement Fee.	\$150 per meter per sidewalk café season
		Street Post Removal and Reinstatement Fee.	\$150 per street post per sidewalk café season

Attachment G
Community Engagement Feedback
(August 2014 Sessions)

Question	Staff Response
How many existing sidewalk cafés (as currently configured/located) could possibly get an annual café license?	4-6 existing sidewalk cafés (assuming Council approval is given and the by-law provisions are met).
If the sidewalk space occupied by the sidewalk café is reduced enough, would an annual café be possible?	Yes (assuming Council approval is given and the by-law provisions are met).
If a street re-design happens, would annual cafés be possible on Argyle?	Yes (assuming Council approval is given and the by-law provisions are met).
Would the café by-law have to be amended to allow for annual sidewalk cafés on Argyle?	No. The by-law's annual café provisions are not location/area specific.
What percentage of the sidewalk café must be accessible under the CSA Standard in the proposed by-law?	The sidewalk café seating area must accommodate service of persons with disabilities, but there is no percentage requirement.
Will sidewalk café seating areas have to accommodate minimum turning radius requirements for wheelchairs?	No. Turning radius requirements only apply to accessible ramps.
Will the by-law impose aesthetic requirements or require the use of certain types of construction materials?	No. However, inspections will be used to ensure that construction materials have not degraded to the point where public safety is at risk.
Will there be a public hearing on the draft by-law?	Council will decide whether to hold a public hearing.
What is planned to ensure that a bottleneck does not happen because of the new inspection prior to use requirement?	Café owner/operators will be asked to call 311 to let the City know when they expect to complete construction. Inspectors will diarize inspections based on the 311 calls.
Will street-side barriers be required on temporary sidewalks under the draft by-law?	No. However, barriers will still be required to enclose sidewalk café seating areas (per Alcohol and Gaming's liquor licensing requirements).
Can the \$5 million insurance requirement be reduced to \$2 million? According to RANS, this change in minimum insurance coverage is likely to cause hardship for owner/operators.	Staff maintains that the \$5 million insurance requirement is appropriate.
Why will an engineer's stamp be required for sidewalk cafés that are over 2 feet in height if there is going to be a municipal inspection prior to use?	An engineer's stamp is necessary to ensure that the structure is properly designed and does not pose a safety risk to the public. The municipal inspection will ensure that the structure has been built to the engineer's specifications and complies with the by-law.
If a sidewalk café is operating under an annual license and ownership changes, will	No. The encroachment would not have to be re-considered by Council (assuming the

Council have to re-consider the issue?	sidewalk café design remains unchanged).
• Will sidewalk cafés be subject to the requirements set out in the Municipal Alcohol Policy?	• No. The Municipal Alcohol Policy does not apply to the right of way.
• Will satellite café layouts be permitted if no alcohol is served?	• Yes. Sidewalk cafés 'adjacent' to the associated restaurant or bar are permitted (assuming License Administrator approval).
• If a sidewalk café fronts onto municipal park land can a sidewalk café be constructed on the park land?	• No. Sidewalk cafés must be constructed on the right of way.
• If a sidewalk café license is suspended or revoked, will there be a fee rebate?	• Yes. Fees will be rebated on a pro-rated basis.

ATTACHMENT H

HALIFAX REGIONAL MUNICIPALITY ADMINISTRATIVE ORDER NUMBER 2014-016-GOV RESPECTING DELEGATION OF COUNIL AUTHORITY TO THE APPEALS COMMITTEE

BE IT RESOLVED AS AN ADMINISTRATIVE ORDER by the Council of the Halifax Regional Municipality as follows:

Short Title

1. This Administrative Order may be cited as Administrative Order Number 2014-016-GOV, the *Delegation to the Appeals Committee Administrative Order*.

Interpretation

2. In this Administrative Order,

(a) “Appeals Committee” means the Committee established pursuant to Bylaw Number A-100, the *Appeals Committee Bylaw*.

Delegation of Authority Respecting Sidewalk Cafés

3. Pursuant to subsection 6(3) of By-law S-1000, the *Sidewalk Café By-law*, the Council delegates to the Appeals Committee the authority pursuant to sections 44 and 47 of that By-law to hear and determine appeals respecting

(a) a refusal by the License Administrator to grant a seasonal café license or to grant a renewal of an annual café licence;

(b) a notice of suspension or a notice of revocation issued by the License Administrator;
or

(c) an Order issued by the License Administrator.

Done and passed in Council this day of , 2014.

Mayor

Municipal Clerk

I, Cathy Mellett, Municipal Clerk of the Halifax Regional Municipality, hereby certify that the above noted Administrative Order was passed at a meeting of Halifax Regional Council held on the day of 2014,

Cathy Mellett, Municipal Clerk