
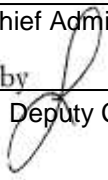




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**Item No. 11.1.8**  
**Halifax Regional Council**  
**March 31, 2015**

**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:** March 4, 2015  
**SUBJECT:** Sidewalk Café By-Law – Tiered Fees and Annual Café Approvals

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#### **SUPPLEMENTARY REPORT**

##### **ORIGIN**

Regional Council motion, September 23, 2014, Item 11.1.3, request a supplementary staff report regarding the possible creation of a tiered fee structure or fee subsidization for small capacity/low seating patios.

Regional Council motion, October 21, 2014, Item 9.1, that a staff report be provided addressing the implications of the License Administrator taking the place of Council in the granting or refusing of a café license.

##### **LEGISLATIVE AUTHORITY**

*Halifax Regional Municipality Charter*, s58(3): “The Council may exercise by by-law any of the duties and powers that it may exercise by resolution or policy.”

*Halifax Regional Municipality Charter*, s60(1): “The Council may make policies... (d) delegating the power to issue, refuse, suspend, cancel or revoke licences and permits, but not including building permits and development permits.”

*Halifax Regional Municipality Charter*, s324(2): “The 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.”

By-law Number S-1000, the *Sidewalk Café By-Law*.

Administrative Order Number Thirty-two, the *By-law Development Administrative Order*, s2(2) and s5(a).

Administrative Order Number Fifty-four, the *Procedures for the Development of Administrative Orders*, s8(a) and s27.

**RECOMMENDATION ON NEXT PAGE**

## **RECOMMENDATION**

It is recommended that Halifax Regional Council direct staff to bring forward amendments to:

1. Administrative Order 15, the *License, Permits and Processing Fees Administrative Order*, to create a tiered fee system for sidewalk cafés as set out in this report; and,
2. By-law S-1000, the *Sidewalk Café By-law*, and to Administrative Order 2014-016-GOV, the *Delegation to the Appeals Committee Administrative Order*, to delegate annual café approvals to the Licence Administrator.

## **BACKGROUND**

There are two Council requests that are being handled simultaneously in this report. The first is related to the tiered fee structure for small / low capacity cafés, and the second is related to the approval process for annual café applications.

Before By-Law S-1000, Sidewalk Cafés were permitted in accordance with the Sidewalk Café Policy. In the Policy, cafés were subject to “Rental Fees”, calculated as a function of the area of the café multiplied by a “per square foot per season” rate. The rate varied based on the location of the café; there were different rates for downtown Halifax, the remainder of Halifax peninsula, downtown Dartmouth, and the remainder of HRM. All applicants also paid a \$200 permit fee.

The current fee structure in By-Law S-1000 was devised to reflect the actual costs of the services provided; a cost recovery model. Application review, licensing, and inspections should be similar regardless of the size of the café; so all seasonal café operators would pay the same amount regardless of the size of the café. By setting the application fee at \$800 per seasonal café, revenues were projected to be very similar to those levied under the Policy.

Annual cafés were not permitted under the Policy. By-Law S-1000 has provisions that would allow cafes to be licenced for annual encroachment terms under certain conditions. As there was no existing approval process under the Policy for these types of applications, Staff constructed the process to mirror that of permanent encroachments on the street as per By-Law E-200, the Encroachments By-Law, under the rationale that cafés licenced to remain in place year-round are very similar to other types of permanent encroachments on the street. Such encroachments under By-law E-200 require Council approval.

## **DISCUSSION**

### ***Tiered Fee Structure***

Staff conducted a cross jurisdictional scan regarding fee structures for cafés. Some jurisdictions offer a reduced application or license fee for “small” sidewalk cafés. The fee reduction takes into consideration an applicant’s ability to recover licensing costs based on the seating capacity of the café.

It is recommended that Council direct Staff to amend Administrative Order 15 to create a new fee category for small cafés. A café having an area of 9.29 square meters (100 square feet) would have a capacity of approximately 10 people. As an applicant’s ability to recover licencing fees may be limited if the capacity is 10 persons or less, this may be an appropriate area for which to consider a reduced fee. Dividing the “small” café category at this size is supported by the cross-jurisdictional review.

A new “small” café category created for those cafés under 9.29 square meters (100 square feet), 18 cafés would qualify as “small” cafés based on a data from cafés permitted in HRM in 2013. Even if the licence fee were set at \$400 rather than \$800 as per the current legislation, 14 of those 18 “small” café applicants would still see an average fee increase of \$91.08 from 2013 levels under the Policy, while only four (4) café applicants would see an average decrease of \$17.22 from 2013 levels. Setting fees for the “small” café category at \$400 balances the economics identified by the industry.

### ***Annual Café Approvals***

By-Law S-1000 originally was drafted to reflect approval processes for annual cafés similar to permanent encroachments under the Encroachments By-Law (E-200). In response to questions related to delegating authority for approval of Annual Café applications, Staff determined that this authority can be delegated from Council to Staff. Staff recommend that Council delegate this authority to the Licence Administrator which requires amendments to By-Law S-1000 and Administrative Order 2014-06-GOV.

### **FINANCIAL IMPLICATIONS**

In 2013, HRM issued 51 permits for seasonal sidewalk cafés. When the policy was replaced by the By-Law, application fees for seasonal cafés were originally set at \$800 per café per season because the total or permit and rental fees collected under the former Sidewalk Café Policy totalled \$41,775.81 in 2013. The current flat rate fee structure will ensure the revenues collected will be very similar to those collected in past years.

$$51 \times \$800 = \quad \mathbf{\$40,800} \qquad \mathbf{Net\ difference\ from\ 2013\ fees: \text{-\$975.81}}$$

The recommended tiered fee structure – lowering the fees for smaller cafés to \$400 would result in reduced revenues.

$$\begin{array}{rcl} 33 \times \$800 & = & \$26,400 \\ 18 \times \$400 & = & \$ 7,200 \\ & & \text{-----} \\ & & \mathbf{\$33,600} \end{array} \qquad \mathbf{Net\ difference\ from\ 2013\ fees: \text{-\$8,175.81}}$$

The cost of the services rendered by staff to support the administration and enforcement seasonal sidewalk cafés – regardless of their size – remains unchanged. Under this model, adopting the tiered fee structure subsidizes the smaller cafés by approximately \$400 for each café in this category.

### **COMMUNITY ENGAGEMENT**

No additional community engagement took place; items originate from requests from Council following First Reading and as a result of comments from the Public Hearing held October 21, 2014.

### **ENVIRONMENTAL IMPLICATIONS**

Implications not identified.

### **ALTERNATIVES**

In order to remain effectively cost neutral, fees collected under the tiered fee structure would have to equal the amount collected under the current \$800 flat rate. The following alternatives explore options for a tiered fee structure with revenues similar to the current levels:

1. Decrease application fees to \$400 for 18 “small” cafés, and increase the application fees to \$1000 for all other seasonal cafés.
2. Direct staff to propose a decreased rate for “small” cafés being less than \$800, and increase the application fees for all other seasonal cafés which would result in similar revenues compared to the current flat rate fee structure.

These alternatives are not recommended.

### **ATTACHMENTS**

None.

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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