


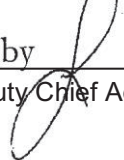
# HALIFAX

P.O. Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

**Item No. 11.1.2**  
**Halifax Regional Council**  
**May 12, 2015**

**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:** April 9, 2015

**SUBJECT:** Amendments to Administrative Order 15 – Sidewalk Café Fee Structure

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## ORIGIN

Item 11.1.8 raised at the March 31, 2015 meeting of Halifax Regional Council.

MOVED by Councillor Mason, seconded by Councillor Whitman that Halifax Regional Council direct staff to bring forward amendments to Administrative Order 15, the *License, Permit and Processing Fees Administrative Order*, to create a tiered fee system for sidewalk cafés as set out in this report.

## 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... (c) setting and amending the fees to be paid for (i) licences issued pursuant to a by-law of the Municipality, ... (iii) permits, applications and approvals required to be obtained from the Municipality or an employee of the Municipality pursuant to a by-law of the Municipality or an enactment, ... (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**

It is recommended that Halifax Regional Council adopt the proposed amendments to Administrative Order 15, as set out in Attachment C, to this report.

## **BACKGROUND**

On September 23, 2014, By-Law S-1000, the *Sidewalk Café By-Law*, was before Council for First Reading. Council passed First Reading of the By-Law, but also passed a motion requesting a staff report with respect to the fee structure for small cafés as follows:

*MOVED by Councillor Mason, seconded by Councillor Hendsbee that Halifax Regional Council, following approval of By-law S-1000, request a supplementary staff report regarding the possible creation of a tiered fee structure or fee subsidization for small capacity/low seating patios.*

A supplementary report addressing this item was before Council on March 31, 2015 (see Attachment A for a copy of this report). There were two recommendations approved by Council. They are as follows:

*MOVED by Councillor Mason, seconded by Councillor Whitman 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 License Administrator*

## **DISCUSSION**

This report addresses the first part of the March 31, 2015 motion. The second part of the motion requires re-drafting of certain sections of the *Sidewalk Café By-Law*, and due to the complexities involved the motion was broken into two components.

The proposed amendments shown in Attachment C add a new fee category to the table of fees in Administrative Order 15. No other changes are required to enact the new fee structure.

There is one other minor housekeeping item to address. Administrative Order 15 still lists a fee for a sidewalk café under the *Streets By-Law* (S-300) permit types. This was necessary under the old policy, which pre-dates the *Sidewalk Café By-Law*. As sidewalk cafés are no longer handled through *Streets By-Law* permits, but rather through *Sidewalk Café By-Law* licenses, this permit category should be removed. This change is also reflected in the proposed amendments in Attachment C.

## **FINANCIAL IMPLICATIONS**

As per the attached March 31, 2015 Supplementary Report attached (Attachment A), adopting the tiered fee structure subsidizes the smaller cafés by \$400 for each café in this category. Based on information from the 2013 café season, staff expect approximately 18 seasonal cafés will qualify as a “small” café under the proposed tiered structure. This represents a potential annual loss of \$7,200.00 as compared to the single flat rate fee currently set out in the Administrative Order. The cost centre that this revenue is applied to is C420.

## **COMMUNITY ENGAGEMENT**

No additional community engagement took place; items originate from requests from Council following First Reading held September 23, 2014.

**ENVIRONMENTAL IMPLICATIONS**

Implications not identified.

**ALTERNATIVES**

There are no recommended alternatives.

**ATTACHMENTS**

Attachment A – Item 11.1.8 – Supplementary Staff Report from March 31, 2014 Regional Council

Attachment B – Showing Proposed Amendments to Administrative Order 15

Attachment C – Amending Administrative Order 15

Attachment D – Incorporating Proposed Amendments to Administrative Order 15

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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.

Report Prepared by: Christopher Davis, P.Eng., Supervisor, Right of Way Services, 902.490.7462

Report Approved by: \_\_\_\_\_  
Tanya Davis, Acting Manager, Traffic Management, 902.490.8425

Report Approved by: \_\_\_\_\_  
Bob Bjerke, Director, Planning and Development, 902.490.1627

Financial Approval by: \_\_\_\_\_  
Greg Keefe, Director of Finance & ICT/CFO, 902.490.6308


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Original Signed



P.O. Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

**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.”

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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.

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

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

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

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.

Report Prepared by: Christopher Davis, P.Eng., Supervisor, Right of Way Services, 902.490.7462

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**Attachment B**

(Showing proposed changes)

**HALIFAX REGIONAL MUNICIPALITY  
ADMINISTRATIVE ORDER NUMBER 15  
Respecting License, Permit And Processing Fees**

19.

<b>By-law #</b>	<b>Short Title</b>	<b>Section</b>	<b>Fee</b>
By-law S-300	Streets By-law	23 (2)	
		<b>Activity</b>	
		Lateral Connection – Main	\$200.00
		Renew Lateral Connection – Main	\$200.00
		Sewer Cap Off	\$200.00
		Water Lateral Cap	\$200.00
		Water Lateral Main to Prop	\$200.00
		Extension to Sewer Main	\$700.00
		Sewer Main Repair	\$700.00
		New Watermain	\$700.00
		Watermain Relining	\$700.00
		Watermain Renewal	\$700.00
		Culvert	\$200.00
		Curb/Sidewalk Cut	\$200.00
		Utility Pole Support Anchor(s)	\$125.00
		Utility Pole Installation	\$125.00
		Replace Utility Pole	\$125.00
		Oversize Move	\$125.00
		<b>Sidewalk Cafe<sup>1</sup></b>	<b>\$200.00</b>
		Temporary Closure – Crane	\$200.00
		Partial Closure – Crane	\$200.00
		Partial Closure – Movie	\$200.00
		Temporary Closure – Movie	\$200.00
		Partial Closure – General	\$200.00
		Temporary Closure – General	\$200.00
		Overhead Power Lines	\$125.00
		Overhead Telecom Lines	\$125.00
		Monitor Well/Borehole	\$125.00
		Rickshaws	\$200.00
		Special Events	No Charge
		Overhead Banner	\$125.00
		Lateral Connection- Pro Line	\$200.00
		Renew Lateral Connection – Prop	\$200.00
		Water Lateral Renewal	\$200.00



Section 21

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
		<b>Seasonal Sidewalk Café License Fee for enclosed sidewalk cafés smaller than 9.29 square meters.</b>	<b>\$400 per Seasonal Sidewalk Café</b>
		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 C  
(Amending Administrative Order)**

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

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

1. It is ratified and confirmed that the chart in section 19 was amended by repealing the word "Sidewalk Café" and the fee for a Sidewalk Café of "\$200".
2. Section 21 is amended by adding the following row after the row starting "Seasonal Sidewalk Café License fee for" and before the row starting "All other Seasonal Sidewalk Café License Fee":

Seasonal Sidewalk Café License Fee for enclosed sidewalk cafés smaller than 9.29 square meters.	\$400 per Seasonal Sidewalk Café
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Done and passed by in Council this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
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 \_\_\_\_\_, 2015.

\_\_\_\_\_  
Cathy Mellett, Municipal Clerk

**Attachment D  
(Incorporating Proposed Changes)**

19.

<b>By-law #</b>	<b>Short Title</b>	<b>Section</b>	<b>Fee</b>
By-law S-300	Streets By-law	23 (2)	
		<b>Activity</b>	
		Lateral Connection – Main	\$200.00
		Renew Lateral Connection – Main	\$200.00
		Sewer Cap Off	\$200.00
		Water Lateral Cap	\$200.00
		Water Lateral Main to Prop	\$200.00
		Extension to Sewer Main	\$700.00
		Sewer Main Repair	\$700.00
		New Watermain	\$700.00
		Watermain Relining	\$700.00
		Watermain Renewal	\$700.00
		Culvert	\$200.00
		Curb/Sidewalk Cut	\$200.00
		Utility Pole Support Anchor(s)	\$125.00
		Utility Pole Installation	\$125.00
		Replace Utility Pole	\$125.00
		Oversize Move	\$125.00
		Temporary Closure – Crane	\$200.00
		Partial Closure – Crane	\$200.00
		Partial Closure – Movie	\$200.00
		Temporary Closure – Movie	\$200.00
		Partial Closure – General	\$200.00
		Temporary Closure – General	\$200.00
		Overhead Power Lines	\$125.00
		Overhead Telecom Lines	\$125.00
		Monitor Well/Borehole	\$125.00
		Rickshaws	\$200.00
		Special Events	No Charge
		Overhead Banner	\$125.00
		Lateral Connection- Pro Line	\$200.00
		Renew Lateral Connection – Prop	\$200.00
		Water Lateral Renewal	\$200.00
		Buried Electrical Lateral	\$200.00
		Buried Electrical Main	\$200.00
		Buried Telecom Lateral	\$200.00
		Buried Telecom Main	\$200.00
		Newspaper Boxes	\$125.00
		Refuse Container	\$125.00
		Advertising Benches	\$125.00
		Kiosk/Booths	\$125.00
		Transit Shelter	\$125.00
		Capital Project	\$125.00
		Repairs to Street Surface	\$125.00
		Repairs to sidewalk	\$125.00
		Road Construction	\$125.00
		Temp Workplace Adjacent to ROW	\$125.00
		Temporary Workplace on ROW	\$125.00
		Natural Gas Lateral	\$200.00
		Natural Gas Main (<20m)	\$200.00

<b>By-law #</b>	<b>Short Title</b>	<b>Section</b>	<b>Fee</b>
		Natural Gas Main (21m < 500m)	\$700.00
		Natural Gas Main (>500 m)	Staff Time
		24(1)(a)	\$1000.00 Security Deposit
		24 (1)(b)	
		<b>SID (Percentage of Pavement Reinstatement Cost)</b>	
		8.5 – 10	30%
		7.0 – 8.5	25%
		6.0 – 7.0	20%
		4.0 – 6.0	15%
		0.0 – 4.0	5%
		24 (1)(c)	15% of total restoration Cost based on current unit prices
		25 (2)	\$ 1000.00 Application Fee \$20,000.00 Security Deposit
		25(6)	\$65.00 per inspection
		28(h)(i) 28(h)(ii)	\$2 million per occurrence \$2 million per occurrence
		30(2)	\$1000.00 Security Deposit

20.

Section 21

<b>By-law #</b>	<b>Short Title</b>	<b>Details</b>	<b>Fee</b>
By-law S-1000	<i>Sidewalk Café By-law</i>		
		Seasonal Sidewalk Café 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
		Seasonal Sidewalk Café License Fee for enclosed sidewalk cafés smaller than 9.29 square meters.	\$400 per Seasonal Sidewalk Café
		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