

*SIDEWALK CAFE POLICY*

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**1.0 AUTHORITY**

This Policy is made pursuant to the *Municipal Government Act*, RSNS 1998, as amended from time-to-time and hereinafter referred to as the "Act".

Pursuant to Section 49(1)(c)(iii), *Power to make policies*, of the *Act*, Council may make policies, to set and amend the fees to be paid for permits, applications and approvals required to be obtained from the municipality pursuant to a by-law of the municipality or an enactment.

The Streets and Sidewalks By-law allows Council to enter into leases for the seasonal or temporary use of a sidewalk as a sidewalk café or restaurant.

**2.0 PURPOSE**

The purpose of this Policy is to set consistent guidelines under which owners of food establishments may expand their operation by providing a seasonal outdoor dining area and to further add to the vitality of areas of the Municipality that have commercial food establishments on roads with Municipally owned sidewalks.

This Policy may be cited as the Sidewalk Café Policy.

**3.0 DEFINITIONS**

- (a) "Council" means the Council of West Hants Regional Municipality;
- (b) "Engineer" means the Municipal Engineer and includes a person acting under the supervision and direction of the Engineer;
- (c) "licensing authority" means the Development Officer for the Municipality who will receive applications for sidewalk café permits under this Policy;
- (d) "Municipality" means the West Hants Regional Municipality;
- (e) "Owner" means owner of a food establishment in West Hants Regional Municipality;
- (f) "Sidewalk café" means a group of tables and chairs, and other accessories belonging to an Owner, 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, the Owner's adjoining indoor food and beverage establishment;
- (g) "Traffic Authority" means a person appointed by Council policy, as traffic authority for all or part of the Municipality. A traffic authority has, within the Municipality, the powers of a traffic authority of a city or town pursuant to the *Motor Vehicle Act*.

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**4.0 REQUIREMENTS**

No person will use any portion of a sidewalk as a sidewalk café without first obtaining a Sidewalk Café Permit from the licensing authority of the Municipality in accordance with the provisions in this Policy.

**4.1 Access**

The Owner will maintain a minimum width of 3 feet 6 inches (1.1 metre) of unobstructed, barrier free walkway to the entrance of the building from the sidewalk.

**4.2 Accessory Use**

Sidewalk cafés will abut a food and beverage establishment and will be considered an accessory use.

**4.3 Connected Sidewalk Cafés**

- (a) The Municipality may approve a sidewalk café permit for a continuous, connected sidewalk café along the frontage of separate lots as long as the Sidewalk Café Permit for the continuous, connected sidewalk café ensures:
- i. safety and accessibility for customers and sidewalk users;
  - ii. the impact on traffic and parking is considered minimal by the Traffic Authority;
  - iii. and that the sidewalk café and replacement sidewalk:
    - is constructed of the same material for its entire length;
    - allows access to the entrance of all individual businesses; and
    - the connection is agreed upon by all abutting lot owners.
- (b) An application for a continuous, connected sidewalk café will be treated as one (1) sidewalk café permit application and will be charged one (1) fee.
- (c) All lot owners are required to sign the application or provide an authorization statement for the application for a connected sidewalk café.

**4.4 Design**

The design of the sidewalk café should be consistent with the age and character of the building for which it serves as an accessory use. As the Municipality wishes to enhance the beauty of the Municipality with aesthetically pleasing designs and plantings, the inclusion of these items will be considered in review of all applications.

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The Municipality retains the right of access to the approved sidewalk café for emergency vehicle access.

**4.6 Fencing**

- (a) Sidewalk café fences will not exceed 3 feet (1 metre) in height.
- (b) Open fencing or fabric insert panels will be used.
- (c) Fencing should incorporate a solid base perimeter to facilitate identification of the barrier by visually impaired individuals.
- (d) Any fencing located within 20 feet (6 metres) of an intersection will not obstruct the vehicular view angles, as determined by the Traffic Authority.

**4.7 Hours of Operation**

A sidewalk café will be open to the public for no longer than the hours the principal use to which it is accessory is open to the public.

**4.8 Insurance**

- (a) The Owner 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 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.
- (b) Proof of insurance will be provided before the sidewalk café permit is issued.
- (c) The Municipality will be notified ten (10) days before the cancellation of this insurance.

**4.9 Landscaping**

Landscaping of the sidewalk café is encouraged, however, this should be of a temporary nature, unless otherwise approved. Plant material must be contained within the approved sidewalk café area.

**4.10 Lighting**

Any lighting of the sidewalk café will be of a temporary nature and will not project onto adjacent properties nor conflict with traffic control indicators.

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**4.11 Location**

Sidewalk cafés are permitted on sidewalks owned by the Municipality in areas designated Commercial as identified on the Generalized Future Land Use Map of the relevant Municipal Planning Strategy.

**4.12 Noise**

Music or other entertainment provided for patrons of a sidewalk café will not create a nuisance to neighbouring property owners or occupants. The Municipality reserves the right to revoke a Sidewalk Café Permit where this nuisance occurs.

**4.13 Placement or Removal of Improvements**

- (a) All improvements must be contained within the area approved for the sidewalk café.
- (b) All umbrellas will be located entirely within the approved sidewalk café area.
- (c) All tables, chairs and decorative accessories in the sidewalk café should be constructed using weather resistant materials.
- (d) Any improvements may only remain in place during the period for which the sidewalk café is licensed.
- (e) Sidewalk café furnishings, fences, awnings, screens, signs, lighting and other sidewalk café improvements must be removable and not permanently fixed in place.
- (f) When the operation ceases, the street, sidewalk and Municipal property must be restored to its original condition to the satisfaction of the Engineer.

**4.14 Season**

Operation of the sidewalk café will be from May 15 until October 15, unless otherwise approved on the permit.

**4.15 Sidewalk Use**

Where the sidewalk café inhibits free flow of pedestrian traffic, in the opinion of the Municipality, the Owner will provide a temporary sidewalk adjacent to the sidewalk café with a minimum width of 5 feet (1.5 metre), subject to the

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approval and specifications of the Municipality. Consideration must be given to accessibility and traffic movement and safety based on the requirements of the Traffic Authority.

Sidewalk cafés will not extend onto the frontage of abutting lots, unless written permission is obtained from abutting lot owners.

**4.16 Utility Access**

- (a) The 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.
- (b) In case of emergency, no notice may be given, although for scheduled work, a minimum notice of 48 hours will normally be given.
- (c) If necessary for utility access, sidewalk café improvements will be removed and reinstalled at the sidewalk cafés Owner's expense.

**4.17 Waste and Storage**

- (a) The sidewalk café Owner will maintain the sidewalk café area, and the immediately adjacent area, in a clean and safe condition at all times.
- (b) Waste receptacles and work-stations should be located along the building wall.
- (c) The Owner will ensure any refuse originating in the café is removed from the street right-of-way.

**5.0 APPLICATION REQUIREMENTS**

Every application for a Sidewalk Café Permit will be made in writing to the licensing authority, and will contain:

- (a) The name, mailing address, telephone number, and e-mail address of the applicant;
- (b) The name and street address of the food establishment;
- (c) A site plan drawn to the scale of 1 to 60 that shows:
  - i. the delineated area of the proposed sidewalk café;
  - ii. the 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; and
  - iii. the location of utility poles, hydrants, parking metres, bus shelters, manholes, traffic signs, etc.

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- (d) Written confirmation that the applicant notified the abutting lot owners, or occupants of the abutting lot, about the proposed sidewalk use and their ability to comment to the Municipality. The notification must advise recipients that only comments received by the Municipality within ten (10) days of the date of the notice will be considered.

**6.0 APPROVAL PROCESS**

- (a) No Owner will establish a sidewalk café unless approval has been granted by the Municipality;
- (b) All permits for sidewalk cafés issued in the Municipality will be personal to the individual or business it is issued to and will be signed by the Development Officer and Clerk and sealed with the seal of the Municipality and will bear date of the day of issue;
- (d) A Sidewalk Café Permit issued under this Policy will be conspicuously displayed at all times at the owner's business;
- (e) An application may be refused if the requirements are not met. A refusal will be provided in writing and identify the reasons for refusal.

**7.0 REVOCATION**

Where an Owner fails to conform to the terms and conditions of approval, the Municipality may order that the sidewalk café be removed from the public sidewalk on which it is located. If the Owner fails to comply with such an order within twenty-four (24) hours of notification, the Municipality may take such action needed to have the sidewalk café removed at the Owners expense.

**8.0 APPEAL PROCESS**

A decision of the licensing authority to refuse to issue or to revoke a permit may be appealed to Council within fourteen (14) days of the decision of the licensing authority by written notice of appeal delivered to the Clerk. Council will convene an appeal hearing within sixty (60) days of receipt of the appeal letter and may, following the appeal hearing, confirm or rescind the licensing authority's decision.

**9.0 OTHER PERMITS REQUIRED**

An Owner must determine from the Municipality whether the Owner requires additional permits in association with the Sidewalk Café Permit. Among others,

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- (a) Development and Building permits may be required prior to the installation of barriers, structures and awnings and these will conform to the requirements of the Building Code and the relevant Land Use By-law.
- (b) A development permit may be required for any advertising signs within the sidewalk café, and these must conform to the relevant Land Use By-law.
- (c) The approval of an application under this Policy will not in any way imply that any requirements from any Provincial licensing authority have been met. It will be the Owner’s responsibility to apply for and obtain any and all necessary Provincial permits and licenses.

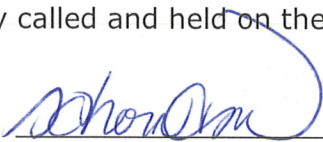
**10.0 FEES**

- (a) There will be an annual rental charge for the use of sidewalk café space payable to the Municipality in accordance with the Municipality’s Fee Policy.
- (b) This rental charge will be payable in full in advance for the entire term of the permit.
- (c) Any additional costs incurred by the Municipality as a result of the Sidewalk Café Permit will be billed to and paid by the applicant.

**11.0 REPEAL**

The Sidewalk Café Policy of the former Town of Windsor dated July 2, 2003 is hereby repealed.

I, Shelleena Thornton, Acting Municipal Clerk of the West Hants Regional Municipality, in the Province of Nova Scotia, do hereby certify that this is a true copy of the Policy as adopted by the Council of the West Hants Regional Municipality at a meeting duly called and held on the 22<sup>nd</sup> day of June 2021.

  
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 Shelleena Thornton

<i>Adoption</i>	
<i>Notice to Council:</i>	<i>June 8, 2021</i>
<i>Approval:</i>	<i>June 22, 2021</i>
<i>Description: Seasonal outdoor dining</i>	