

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original Signed by 
Jacques Dubé, Chief Administrative Officer

DATE: October 19, 2020

SUBJECT: Amendment to By-law S-1000, Respecting the Regulation of Sidewalk Cafés, to Permit Seasonal Café Owners to Apply for Annual Licenses and to Provide Additional Discretion to the License Administrator

ORIGIN

Staff-initiated, based on a September 28, 2020 request by the various Business Improvement Districts to the Mayor, CAO and Councillors, that the Municipality consider permitting outdoor seasonal sidewalk café patios to remain in place for the winter, due to COVID-19 operational difficulties.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter, 2008, c. 39:

Clauses 188(1)(a) and (c): Council may make by-laws, for municipal purposes, respecting
(a) the health, well being, safety and protection of persons;

.....

(c) persons, activities and things in, on or near a public place or place that is open to the public;

Section 191: notwithstanding the *Motor Vehicle Act*, Council may, by by-law, regulate vending on the street of HRM

Subsection 324(2): 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.

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

Subsection 3(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 earlier than April 15th in any calendar year; and

(b) shall end on a date no later than November 15th, in the same calendar year.

Section 15: The License Administrator may only grant an annual café license if all the factors listed in clauses (a) through (i) are met.

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;

Administrative Order 15, the *License, Permits and Processing Fees Administrative Order*, section 21A.

RECOMMENDATION

It is recommended that Halifax Regional Council adopt By-law S-1003, the purpose of which is to amend By-law S-1000, *Respecting the Regulation of Sidewalk Cafes*, as set out in Attachment C of this report to:

1. give the Licensing Authority discretion to consider the factors listed in section 15, including any mitigation, when determining if an annual sidewalk café license may be issued to an applicant;
2. give current seasonal sidewalk café license holders the opportunity to apply for an annual sidewalk café license prior to December 31, 2020; and
3. require owners be responsible for sidewalk snow removal where a sidewalk café license is issued.

BACKGROUND

In 2019, there were 16 licensed annual cafes and 42 licensed seasonal cafes. Fifteen (15) licensed annual cafes were approved for the 2020 season. Currently, there are 50 licensed seasonal cafes that have a legislated encroachment term from April 15th to November 15th.

DISCUSSION

Staff is recommending amendments to By-law S-1000 to provide an option for seasonal cafes to transition to annual facilities prior to December 31, 2020, therefore extending the season beyond the current date of November 15th. This may assist restaurant and café proprietors with economic recovery from COVID-19, should such establishments choose to extend their café season.

The recommended amendment will give the License Administrator the discretion to grant an annual café license even if the applicant does not meet all the requirements of Section 15. The current wording of the By-law does not allow consideration for situations involving reducing the width of the roadway, a factor that would need to be considered for all annual license requests.

Should proprietors wish to keep a café in place beyond November 15th, they must provide the Licensing Authority with the following prior to November 15, 2020:

1. proof of insurance that covers the period that the café will remain;
2. property owner permission letter to allow the sidewalk café beyond November 15th and covers the period that the café will remain;
3. confirmation that their plans are the same, if not new plans would be required.

Each café will be reviewed by HRM business units including Risk & Insurance, Transportation & Public Works and Planning & Development. Should these reviews result in denials of requests, the Licensing Authority would have discretion to consider whether a license should be issued.

On May 26, 2020, Regional Council passed amendments to Administrative Order 15, *Respecting Licenses, Permits and Processing Fees*, to forgive sidewalk café fees¹. The amendment waived the fees for sidewalk cafes from May 27, 2020 to December 31, 2020. An application from the seasonal café licensed business owner must be received prior to December 31, 2020 to be considered for an annual café license to permit a café to operate beyond December 31, 2020 and be applicable for the waiving of the license fee.

If the business does not wish to be considered for an annual café license, the café must be taken down as of end of day November 15, 2020.

Under the proposed amendments, owners will be responsible for clearing snow on the sidewalk. Snow clearing service standards must conform to existing HRM sidewalk snow clearing servicing levels which are outlined in Attachment D. Businesses will be responsible for clearing the café location as well as temporary sidewalks adjacent to patios. Associated windrows created by municipal plowing activities due to patio obstructions will also be the responsibility of the business owner.

Should Council decide not to have business owners remove snow and depending on number and location of patios approved, new staff (hand crews) would need to be hired by the Municipality, along with providing associated transportation for them. HRM's Road Operations team does not currently have the equipment or staff required for this additional work and further analysis of costing would be required should Council choose to add patio areas to their winter inventory responsibilities.

Regulatory Impact Assessment

In keeping with AO 2017-002-ADM, *The Charter of Governing Principles for Regulation Administrative Order*, a Regulatory Impact Assessment has been completed.

As outlined in the below financial implications, firms granted licenses will be responsible for snow-clearing during the winter period. Transportation and Public Works (TPW) has advised that additional staff and equipment would be required to complete this ~~work~~ seasonal work. If additional seasonal inventory is added, budget allocations will be required and sufficient time for acquisition of new staff and equipment. A detailed financial impact will need to be completed on adding snow clearing service to offset private costs to operators and sufficient time allotted to renegotiate terms under existing contracts in areas serviced by third party vendors.

A business impact assessment (BIA) was completed for this report. Proposed by-law amendments would increase flexibility and supply of café licenses given allowing firms more flexibility to adjust business models given public health uncertainties. The only discernable costs to firms from these adjustments would be potential increased snow removal costs related to private firms. The analysis suggests no impact to labour, operating or capital costs for firms while providing flexibility in business model adjustment.

FINANCIAL IMPLICATIONS

If the seasonal café license holder applies before December 31st, they will be included in the amendment that included forgiveness of fees. As long as council chooses to waive these fees, there will be a loss of revenue of approximately \$40K per year. The intent of the fee waiver is to provide aide to affected businesses, therefore; the fee waiver may be helping to protect a portion of the commercial tax revenue associated with those businesses.

¹ <https://www.halifax.ca/sites/default/files/documents/city-hall/regional-council/200526rc914.pdf>

If Council decides the business operators would not be responsible for additional snow clearing costs, that would create a pressure on the operating budget for HRM to cover those costs.

RISK CONSIDERATION

The Risk Assessment is set out in Attachment A of this report.

COMMUNITY ENGAGEMENT

No direct community engagement was completed to aid in the development of this report. Correspondence from the Business Improvements Districts in support extending the seasonal sidewalk café season was submitted to Council on September 28, 2020. External stakeholders include: Business Improvement Districts, Halifax Partnership and industry members.

ENVIRONMENTAL IMPLICATIONS

There are no Environmental Implications.

ALTERNATIVES

Regional Council could choose to enact only some or none of the proposed amendments. This is not recommended.

ATTACHMENTS

Attachment A - Seasonal to Annual Sidewalk Cafes Risk Assessment
Attachment B - Showing Proposed Changes to By-law S-1000
Attachment C - Amending By-law S-1003
Attachment D – Snow Clearing Standards

A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

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Changing Seasonal Sidewalk Café Licenses to Annual Sidewalk Café Licenses

	Problem	Regulation	Issues (incl. Insurance)	Risk			Mitigation/options
				Likelihood	Impact	Overall	
1	Seasonal sidewalks cafes must be removed by Nov. 15 th	By-law S-1000 - s. 36A – must remove sidewalk café from the street on or before the expiration of the encroachment term - s. 39(a) – the LA may cause the sidewalk café to be removed if the owner does not remove on or before expiration of encroachment term	- Seasonal café license holders may no longer be insured through their insurer, leaving HRM exposed - may be a period between the expiration of the Seasonal Café encroachment term and the ability of the LA to issue an Annual Café encroachment term.	5	2	High	- Require an updated Certificate of Insurance from the Café License holder for the year - LA is not required to order the removal of a seasonal sidewalk café immediately on expiration of the encroachment term. - Begin process to take amendments to By-law S-1000 to Council, with the potential for adoption by mid-December will leave a period of time when seasonal cafes remain in the ROW before amendments are adopted.
2	Annual sidewalk cafes must meet the criteria	By-law S-1000 s. 15 – the LA may only grant an annual café license if all the criteria listed are met, i.e. clause (a) the width of the roadway is not reduced.	- Patios impede the use of snow removal equipment.	4	3	High to Very High	- Amend By-law S-1000 to allow the LA to grant an annual sidewalk café license even if all the criteria are not met
3	Accessibility issues as a result of sidewalk café infrastructure left in the streets over the winter months	Clause 8(e): 8. No person shall construct, operate or vend at a sidewalk café (e) in an obstructive manner	Accessibility challenges exist every winter in HRM, which may be exacerbated by allowing seasonal sidewalk cafes to transition to annual sidewalk cafes.	4	3/4	High to Very High	Consult with HRM Accessibility Advisor for input before making decision to proceed with any changes

	Problem	Regulation	Issues (incl. Insurance)	Risk			Mitigation/options
				Likelihood	Impact	Overall	
4	Unable to meet the service standard for snow removal due to sidewalk café infrastructure impeding snow removal	Service standard adopted by Council Sept 30/20	HRM and Performance Based Contractors are held to the service standard.	4	3	High	Include provision in the By-law for the café license holder to be responsible for snow and ice removal.
5	Increased slip and fall claims due to patio infrastructure.	Annual café criteria s. 15 (c) the sidewalk café does not present a risk of harm to the health or safety of the public	Expect there will be an increase in slip and fall claims	4	2	High	Sidewalk Café license holders must indemnify HRM for slip and falls
6	Existing contracts for snow removal in the streets may be at risk if contractors need equipment that is different from what they contracted for	No regulation Contract issue	Increased price due to specialized equipment being required or hand shoveling and salting needs 75% of the current seasonal cafes are located in HRM snow and ice control areas, 25% are in areas covered by private contractors	2	3	Moderate	Increase budgeted amounts for snow removal in areas where the cafes will remain in place In-house snow removal may be at risk if more equipment and/or more hand crews are required Renegotiation of components of contracts with vendors and require 6 months notice of any changes. Negotiation may ensue. New or different equipment requires minimum one year. Tender development to award timelines. COVID delays on delivery have been noted.
7	Parking and loading for businesses		The addition of sidewalk cafes temporarily removes parking and loading for businesses and residents. With the winter season	3	1	Low	- Consult with HRM Parking Services to advise if impact to streets can be maintained for the future.

	Problem	Regulation	Issues (incl. Insurance)	Risk			Mitigation/options
				Likelihood	Impact	Overall	
			approaching, there will be limited spots available on street.				
8	Seasonal Sidewalk cafes change the design/layout of patios to conform with Annual Café license requirements, will require additional review and inspections	clause 14(b): 14. The License Administrator shall refuse to grant a café license if: (b) the proposed sidewalk café does not comply with the requirements of this By-law, including the Design Standards in Schedule A;	None	3	1	Low	- The number of sidewalk cafés owners wanting to change the footprint of the café are anticipated to be very low. Even if a larger number comes in, the inspections can be done very quickly.

**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 and, if the applicant is providing a security deposit, the total frontage measured in feet that the sidewalk café fronts on each street;

(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;

(la) “the Engineer” means the Director of Transportation and Public Works and includes a person acting under his/her authority;

(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;
- (aca) "security deposit" means a guarantee or surety in a form that is acceptable to the Treasurer that has been issued by a financial institution in the amount set out in section 13A;
- (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;
- (aha) "Treasurer" means the Treasurer of the Municipality, and includes a person acting under the supervision and direction of the Treasurer;
- (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;

(aa) “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 earlier than April 15th in any calendar year; and

(b) shall end on a date no later than November 15th, in the same calendar year.

(3) An annual café license shall permit a sidewalk café for an encroachment term not exceeding one calendar year.

(4) Repealed.

(5) Repealed.

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

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

(a) grant a seasonal café license;

(aa) grant an annual café license;

(b) refuse to grant a seasonal café license;

(ba) refuse to grant 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

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

6. Repealed.

7. Repealed.

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 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;

(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 cafe 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) if the applicant is a lessee, either a security deposit pursuant to sections 13A and 13B or a written consent from the owner of the principle use property;

(ba) if a security deposit is provided, confirmation the applicant is the only food establishment or licensed establishment located in the principle use property that is the subject of the application;

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

(d) an indemnity 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.

Security Deposit

13A. (1) If an applicant is providing a security deposit pursuant to clause b of section 13, the amount of the security deposit shall be based on the total frontage measured in feet that the sidewalk café fronts on each street multiplied by twenty dollars (\$20) per foot.

(2) Interest shall not be payable by the HRM on the security deposit.

(3) The Treasurer shall retain the security deposit on behalf of the HRM for the duration of the encroachment term set by the café license.

(4) After the encroachment term set by the café license, the Treasurer may

(a) return the balance of the security deposit to the applicant, provided that the Treasurer receives confirmation that the License Administrator is satisfied that any work that may be required or has been ordered pursuant to this By-law has been completed; or

(b) at the request of the applicant, retain the security deposit and apply the balance of the security deposit towards the security deposit for a new application for a café license, providing that the security deposit continues to be valid for the encroachment term of the new café license and the new applicant is the same applicant that provided the security deposit to the HRM.

13B A security deposit may only be provided by an applicant that is a lessee if such applicant is the only food establishments or licensed establishments located in the principle use property that is the subject of the application.

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 License Administrator may only grant an annual café license **if after consideration of the following factors:**

(a) **the impact of any reduction to** the width of the roadway **is not reduced;**

- (b) the ~~sidewalk café does not create~~ impact on vehicular congestion, if any;
- (c) the ~~sidewalk café does not present a~~ risk of harm to the health or safety of the public, if any;
- (d) whether the sidewalk café ~~does not~~ constitutes a nuisance;
- (e) the ~~sidewalk café does not unreasonably~~ degree of interfere with municipal services, including fire service, police service, sanitation services and winter maintenance;
- (f) whether the sidewalk café ~~does not unreasonably~~ interfere with the public's use or enjoyment of the street including the sidewalk;
- (g) whether 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) whether 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) The License Administrator may grant an annual café license with an encroachment term not exceeding one year.

(3) Repealed.

(4) Notwithstanding section 6 of Ordinance 173, the *Granville Mall Ordinance*, the License Administrator 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 two million dollars (\$2,000,000 CDN), with liquor not excluded.

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

(a) be maintained during the encroachment term; and

(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.

Requirements of Proprietor for Snow and Ice Removal

20A. HRM shall not provide snow removal service for the proprietor where a café license is granted.

20B. Notwithstanding By-law S-300, the *Streets By-law*, the proprietor shall:

(i) remove snow and ice from any sidewalk abutting the sidewalk café in accordance with the Winter Works Service Standards, as published from time to time; and

(ii) remove any snow windrows left by snow removal equipment due to presence of the sidewalk café infrastructure.

20C. No person shall deposit snow or ice on the travelled way of any street.

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), HRM 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 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; ~~or~~

(d) remove snow or ice from sidewalks as required by this By-law.

(2) Any maintenance, repair, alteration, ~~or~~ restoration or snow and ice removal 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; ~~or~~

(d) the proprietor does not comply with an Order to remove snow and ice under clause 32(1)(d), within twenty-four (24) hours 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, the Appeals 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, the Appeals 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.

42A The security deposit provided pursuant to section 13A may be used to offset any costs incurred by the HRM from work done pursuant to this By-law, including sections 31, 33, 37, 39, 41 or 42, and such use of the security deposit shall be in addition to any other remedies at law.

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 café license may be appealed by the Applicant 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) Repealed.

(5) 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.

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.

Done and passed in Council this 21st day of October, 2014.

Mayor

Municipal Clerk

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.

Notice of Motion:	September 9, 2014
First Reading:	September 23, 2014
Notice of Public Hearing Publication:	October 4, 2014
Second Reading:	October 21, 2014
Approval of Minister of Service Nova Scotia and Municipal Relations:	N/A
Effective Date:	November 1, 2014

Amendment # 1 – (By-law S-1001) – delegate annual café approvals to the License Administrator

Notice of Motion:	August 4, 2015
First Reading:	September 8, 2015
Notice of Public Hearing Publication:	September 19, 2015
Second Reading:	October 6, 2015
Approval of Minister of Service Nova Scotia and Municipal Relations:	N/A
Effective Date:	October 10, 2015

Amendment # 2 – (By-law S-1002)

Notice of Motion:	April 11, 2017
First Reading:	April 25, 2017
Notice of Public Hearing Publication:	May 27, 2017
Second Reading:	June 13, 2017
Approval of Minister of Service Nova Scotia and Municipal Relations:	N/A
Effective Date:	June 24, 2017

**HALIFAX REGIONAL MUNICIPALITY
BY-LAW NUMBER S-1003
RESPECTING THE REGULATION OF SIDEWALK CAFÉS**

BE IT ENACTED by the Council of the Halifax Regional Municipality that By-law S-1000, the *Sidewalk Café By-law*, is amended as follows:

1. amend section 15 by:
 - (i) striking out the word “if” after the word “license” at the end of the first line of the section;
 - (ii) adding the words and colon “after consideration of the following factors:” after the word “license” at the end of the first line of the section;
 - (iii) adding the words “the impact of any reduction to” before the word “the” at the beginning of clause (a);
 - (iv) striking out the words “is not reduced” after the word “roadway” and before the semi-colon at the end of clause (a);
 - (v) striking out the words “sidewalk café does not create” after the word “the” and before the word “vehicle” in clause (b);
 - (vi) adding the words “impact on” after the word “the” and before the word “vehicle” in clause (b);
 - (vii) adding the comma and words “, if any” after the word “congestion” and before the semi-colon at the end of clause (b);
 - (viii) striking out the words “sidewalk café does not present a” after the word “the” and before the word “risk” in clause (c);
 - (ix) adding the comma and words “, if any” after the word “public” and before the semi-colon at the end of clause (c);
 - (x) adding the word “whether” before the word “the” at the beginning of clauses (d), (f), (g) and (i);
 - (xi) striking out the words “does not” after the word “café” and before the word “constitute” in clause (d);
 - (xii) adding the letter “s” at the end of the word “constitute” in clause (d);
 - (xiii) striking out the words “sidewalk café does not unreasonably” after the word “the” and before the word “interfere” in clause (e);
 - (xiv) adding the words “degree of” after the word “the” and before the word “interfere” in clause (e);
 - (xv) striking out the words “does not unreasonably” after the word “café” and before the word “interfere” in clauses (f) and (g); and

- (xvi) adding the letter “s” at the end of the word “interfere” in clauses (f) and (g).
- 2. Adding the following header and sections after clause 20(2)(d) and immediately before the header “Transferability of a Granted Café License”:

Requirements of Proprietor for Snow and Ice Removal

20A. HRM shall not provide snow removal service for the proprietor where a café license is granted.

20B. Notwithstanding By-law S-300, the *Streets By-law*, the proprietor shall:

- (i) remove snow and ice from any sidewalk abutting the sidewalk café in accordance with the Winter Works Service Standards, as published from time to time; and

- (ii) remove any snow windrows left by snow removal equipment due to presence of the sidewalk café infrastructure.

20C. No person shall deposit snow or ice on the travelled way of any street.

- 3. Amend section 32 by:
 - (i) striking out the word “or” at the end of clause (1)(b);
 - (ii) striking out the period at the end of clause (1)(c);
 - (iii) adding a semi-colon and the word “; or” at the end of clause (1)(c); and
 - (iv) adding the following clause after clause (1)(c) and immediately before subsection (2):
 - (d) remove snow or ice from sidewalks as required by this By-law.
 - (v) striking out the word “or” after the word “alteration” and before the word “restoration” in subsection (2);
 - (vi) adding a comma after the word “alteration” and before the word “restoration” in subsection (2); and
 - (vii) adding the words “or snow and ice removal” after the word “restoration” and before the word “pursuant” in subsection (2).

- 4. Amend section 33 by:
 - (i) striking out the word “or” at the end of clause (b);
 - (ii) striking out the period at the end of clause (c);
 - (iii) adding the semi-colon at the word “; or” at the end of clause (c); and
 - (iv) adding the following clause after clause (c) and immediately before the header “Sidewalk Café Access”:
 - (d) the proprietor does not comply with an Order to remove snow and ice under clause 32(1)(d), within twenty-four (24) hours of being served with the Order.

Attachment D

Infrastructure Type	Priority	Definition	Existing Standard (Normal Circumstances)	Proposed Standard
Sidewalks, Walkways & MUPs (AT infrastructure) Including Pedestrian call buttons, tactile warning strips, pedestrian ramps and accessible parking spaces.	Priority 1	MUP - A facility separated from motor vehicle lanes and suitable for the broadest range of active transportation users including pedestrians, those using mobility aids such as wheelchairs, cyclists, skateboarders, and in-line skaters	Start time: After 5CM Finish Condition: Bare Time to completion fom end of event: 12 Hours	No change to standard, proposing officially adding school and health centre frontages to official P1 classification.
	Priority 2		Start time: After 15CM Finish Condition: Majority of surface bare, with salt/sand for traction Time to completion fom end of event: 18 Hours	No proposed changes
	Priority 3		Start time: After end of event Finish Condition: Majority of surface bare, with salt/sand for traction Time to completion fom end of event: 36 Hours	No proposed changes