

HALIFAX

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

Item No. 11.1
Halifax Regional Council
April 11, 2017
April 25, 2017
June 13, 2017

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Jacques Dubé, Chief Administrative Officer

DATE: March 21, 2017

SUBJECT: By-law S-1002, Amending Sidewalk Café By-law

Original Signed by 

ORIGIN

On June 14, 2016 Regional Council passed the following motion:

THAT Halifax Regional Council request a staff report regarding possible amendments to By-Law S-1000 "Respecting the Regulation of Sidewalk Cafés" to allow a requirement for a surety or bond to be provided by a tenant which could be used to cover the cost of the removal of the sidewalk café if the tenant goes out of business.

LEGISLATIVE AUTHORITY

Clause 188 (1) (c), section 191 and subsection 324(2) of the *Halifax Regional Municipality Charter*, SNS 2008, c.39:

- 188 (1)(c) A council may make by-laws, for municipal purposes, respecting...(c) persons, activities and things in on or near a public place or place that is open to the public.
- 191 Without limiting the generality of Section 188 but notwithstanding the *Motor Vehicle Act*, the Council may, by by-law, regulate vending, any class of vending, mobile vendors and the placement of vending machines on the streets of the Municipality.
- 324 (2) The 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 an agreements, including terms and conditions, for particular encroachments.

RECOMMENDATION

It is recommended that Halifax Regional Council continue to require the written consent of the property owner when an applicant for a sidewalk café license is a tenant.

BACKGROUND

On October 21, 2014, Regional Council adopted By-law S-1000, the *Sidewalk Café By-law* ("By-law"). This By-law outlines the public safety, design, and licencing requirements vendors must meet to set up sidewalk cafés in the municipal street right of way.

The By-law currently requires a sidewalk café applicant that is a tenant to provide written consent from the owner of the property abutting the proposed café as part of the application process.

On June 14, 2016 Regional Council directed staff to consider amendments to the By-law to allow a surety or bond to be provided to the Municipality by an applicant tenant as an alternative to the current requirement for written consent from the property owner. The bond or security would allow tenants to apply for sidewalk cafés without the approval of the landlord and it would be held to cover the cost of the removal of the sidewalk café if the tenant goes out of business. For the purposes of the drafted By-law, this has been called a "security deposit".

If a license was approved on this basis, the Municipality would be granting permission to use the municipal right of way (ROW) but the license would not alter any terms of the lease between the property owner and the tenant (including any restrictions that would otherwise prevent the sidewalk café from being installed).

Based on the 2 seasons the By-law has been in force, the Municipality has received about 45 applications each year. Approximately 41 of these applications were made by tenants with the consent of the landlord. To date, there has only been one instance where removal of a cafe was necessary. In that case, the tenant became bankrupt. However, as written consent from the owner is already a By-law requirement, the owner removed the cafe from the street.

DISCUSSION

There are a number of considerations that staff took into account when considering the concept of allowing building tenants to apply for sidewalk cafés without the permission of the building owner.

Firstly, it must be noted this process would allow tenants to install significant structures in the ROW immediately in front of a commercial building without the consent of the building's owner. While this does grant Municipal permission to install the café in the ROW, it does position the Municipality as a third party in a potential conflict between the tenant and the landlord respecting use of the commercial building.

Secondly, while utilization of a surety or bond would be a voluntary option for a café applicant, it does represent additional municipal regulation at a time when Council, industry and community expectations generally favour a reduction of Municipal regulation. It would also result in additional costs for those tenants who choose that option and there would be administrative implications for the Municipality to oversee the process as outlined in the Financial Implications section below.

Thirdly, the Municipality has capacity under the current By-law to remove non-compliant cafés at no cost to the general taxpayer. Adding the alternative for a surety or bond to the By-law would provide no additional advantage to the Municipality with respect to the removal of non-compliant cafés. As noted above, in the two years since the By-law had been approved, the Municipality has not been required to compel the removal of any non-compliant cafés. Only one café was removed due to business failure and, in that instance, the structure was removed by the property owner without being compelled to do so by the Municipality.

Finally, while some assumptions can be made based on routine discussion with some individuals in the restaurant business, there has been no formal industry engagement on this particular By-law change and there is no statutory obligation for a public hearing for this type of bylaw amendment.

Under these circumstances, staff do not recommend any change to the By-law to accommodate the addition of an option to allow tenants to apply for sidewalk cafés using a surety or bond in lieu of the consent of the property owner. Should Council elect to proceed with the By-law amendment as described in this report, staff recommend the minimum statutory requirements of that process be augmented to include consultation with the restaurant industry and the relevant business improvement districts prior to the final consideration.

Potential Amendment

Notwithstanding staff's recommendation, Council may choose to proceed with an amendment to the By-law to allow the option as described in the June 2016 Council motion. With this in mind, staff has prepared the required amendments for Council to consider.

To effect the change, several sections of the By-law need to be amended. Currently, section 13 of the By-law requires an applicant, who is a tenant, to provide to the Municipality the written consent of the owner agreeing to the café when he or she applies. An amendment is needed to allow a tenant that is the only restaurant operating in the property, the **option** to either: (1) provide the Municipality with the consent of the owner (status quo); **or** (2) a security. Accordingly, those applicants who are tenants and have the consent the owner of the land will not be required to incur the costs of purchasing a security and these amendments will not affect them.

Secondly, section 13A needs to be added to set the amount of the security. Staff estimates the cost of removing a sidewalk café at \$20 for every foot the café fronts on a street. This calculation has been set out in section 13A. There is a corresponding amendment to the definition of "café plan" (already required by the By-law for an application for a café license) to require, if a security is going to be provided, the amount of frontage be indicated on the cafe plan.

The amended By-law does not specify the exact form of security that is required. Rather, it will be in the form acceptable to the Treasurer. This will allow flexibility depending on the applicant's financial position. For example, a certified cheque or bank draft will reduce the customer's bank account balance by the full amount of the certified cheque or bank draft. In comparison, a letter of credit or letter of guarantee would reduce the available credit by the amount of the letter of credit or letter of guarantee.

To provide some context around the cost of a security, if the sidewalk café has 50 feet of frontage, the amount of security required would be \$1,000 (50 feet at \$20 per foot). While the costs for a security will vary depending on a variety of factors, including as the relationship of the customer to the issuing financial institution, an estimate of the cost for the \$1,000 security is as follows:

Type of Security	Approximate Issuance Cost	Approximate Annual Cost
certified cheque	\$15.00	None
bank draft	\$7.50	None
letter of credit	\$250	1 to 4 percent of its value
letter of guarantee	\$250	1 to 4 percent of its value

Thirdly, the By-law needs to be amended to allow the security to be used. Currently, sections 41 and 42 makes the owner of the property responsible for any work done by the Municipality under the By-law. This includes:

- repairing or alter the sidewalk where café is a safety issue, danger or hazard;
- repairing or restoring the street;
- removing sidewalk on or before the license expires; and
- removing the sidewalk café because the café license has been revoked.

Section 42A needs to be added to allow the security deposit to be used to offset these costs. In this way, if the tenant goes out of business, has provided a security deposit and the Municipality removes the sidewalk café, the security deposit can be used to offset the cost of removal.

Lastly, the By-law needs to address the return of the security deposit. Section 13A would require the security deposit to be retained during the term of the café license. At the end of the term, the Treasurer may return it providing the License Administrator is satisfied that all the work that may have been ordered or required by the By-law has been completed. In an event that work is required, any balance could be returned once the outstanding work is completed to the satisfaction of the License Administrator. The Treasurer may, at the request of the applicant, retain the security deposit and apply it to a new application for a café license, providing the security continues to be valid and the person who provided the security deposit is the same person applying for the new café license. This could reduce the costs to the applicant as new security will not need to be issued for the next café season.

FINANCIAL IMPLICATIONS

In the event that Council chooses to adopt the amendments to the By-law noted above, direct financial implications for the municipality would be relatively minimal.

Additional application processing time for staff to coordinate the routine deposit and release of the security for compliant cafés would range from approximately 45 - 90 minutes per application depending on the type of security being used. This process would typically take place at the beginning and end of the summer/fall season. Depending on the total volume of cafés utilizing this option, the required processing time required could result in some delay in returning deposits which, in turn, could have minor financial implications for the applicant.

In the event the security was to be utilized to carry out the removal of a non-compliant café, additional staff time from Finance, Planning & Development and Legal Services would be required on a case-by-case basis. While funds withdrawn from the security deposit would be used to offset the physical costs of removal, the administration of the process would be carried out by staff within the operating budget. Based on records from the café program over the past two years, the frequency of this taking place is expected to be low and therefore the associated financial implications would be expected to be correspondingly minor.

RISK CONSIDERATION

There are no significant corporate risks associated with the recommendations or alternatives included in this Report.

There may be some incidental reputational risk associated with these amendments being seen to conflict with the Municipality's ongoing efforts on regulatory/red tape reduction. However, given the minor nature of the amendment and the relatively narrow scope, both the impact and the likelihood of this risk are low.

COMMUNITY ENGAGEMENT

No additional community engagement has taken place. However, should Council elect to proceed with the amendments as outlined in the report, staff recommend industry consultation be conducted prior to final consideration of approval.

ENVIRONMENTAL IMPLICATIONS

None

ALTERNATIVES

1. Regional Council could adopt By-law S-1002 as amended. This is not recommended for the reasons set out in the Discussion Section of this report. If Regional Council decides to proceed with the By-law Amendment, Notice of Motion is required. The Notice of Motion would be as follows:

Take Notice that at a subsequent regularly scheduled meeting of Halifax Regional Council, I intend to move By-law S-1002, further amending By-law S-1000, the *Sidewalk Café By-law*, as set out in Attachment 2 of the staff report dated March 21st, 2017.

2. Regional Council could defer this matter and direct that staff consult with the restaurant industry before moving forward with the amendments. This would require the following motion be put and passed:

That Halifax Regional Council:

- (1) Direct that the Chief Administrative Officer direct staff to consult with the restaurant industry on the proposed amendments set out in Attachment 2 of this report and staff prepare a report summarizing the feedback received from that consultation; and
- (2) First Reading of By-law S-1002 be deferred until the staff report is received.

ATTACHMENTS

Attachment 1 Showing Proposed Changes to Sidewalk Café By-law

Attachment 2 Amending By-law

Attachment 3 Incorporating Proposed Changes to Sidewalk Café By-law

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: Derk Slaunwhite, Senior Solicitor, 902.490.1800

Attachment 1
(Showing Proposed Changes)

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;

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

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

Types of Café License

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

- (a) a seasonal café license; and
- (b) an annual café license.

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

- (a) shall commence on a date being no 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, **if other than the applicant**;

(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

(a) the width of the roadway is not reduced;

(b) the sidewalk café does not create vehicular congestion;

(c) the sidewalk café does not present a risk of harm to the health or safety of the public;

(d) the sidewalk café does not constitute a nuisance;

- (e) the sidewalk café does not unreasonably interfere with municipal services, including fire service, police service, sanitation services and winter maintenance;
- (f) the sidewalk café does not unreasonably interfere with the public's use or enjoyment of the street including the sidewalk;
- (g) the sidewalk café does not unreasonably interfere with the construction or installation of a municipal work, service, utility or other improvement;
- (h) a minimum sidewalk width of 2.1 m (7 feet) remains unobstructed, including being unobstructed by sidewalk cafés, municipal infrastructure or municipal street furniture; and
- (i) HRM or any utility has reasonable access to maintain or install a utility or service.

Requirements of a Granted Café License

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

- (a) the type of encroachment that is authorized by the café license;
- (b) the encroachment term;
- (c) the civic address of the principal use property;
- (d) the name of the person to whom the café license is granted; and
- (e) such other terms and conditions as may be necessary in the opinion of the License Administrator.

Encroachment Term

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

(2) 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.

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.

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

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

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

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

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

Sidewalk Café Access

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

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

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

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

Sidewalk Café Removal

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Cost of Work

41. If the Council, 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 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.

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

Mayor

Municipal Clerk

Attachment 2
(Amending By-law)

**HALIFAX REGIONAL MUNICIPALITY
BY-LAW NUMBER S-1002 RESPECTING
THE REGULATION OF SIDEWALK CAFÉS**

BE IT ENACTED by the Council of the Halifax Regional Municipality, under the authority of Sections 188(1)(c), 191 and 324(2) of the *Halifax Regional Municipality Charter*, SNS 2008 c.39, as amended, that By-law S-1000, the *Sidewalk Café By-Law*, is further amended as follows:

1. Section 2 is amended by:

(a) adding the words and commas “and, if the applicant is providing a security deposit, the total frontage measured in feet that the sidewalk café fronts on each street” after the word “exits” and before the semi-colon in clause g;

(b) adding clause aca after clause ac and before clause ad as follows:

(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;

(c) adding clause aha after clause ah and before clause ai as follows:

(aha) “Treasurer” means the Treasurer of the Municipality, and includes a person acting under the supervision and direction of the Treasurer;

2. Section 13 is amended by :

(a) striking out the comma and words “, if other than the applicant” after the word “property” and before the “semi-colon”;

(b) adding the words and comma “if the applicant is a lessee, either a security deposit pursuant to sections 13A and 13B or” at the beginning of the clause; and

(c) adding clause ba after clause b and before clause c as follows:

(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;

3. Sections 13A and 13B are added after section 13 and before section 14 as follows:

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.

4. Section 42A is added after section 42 and before section 43 as follows:

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.

Done and passed in Council this _____ day of _____, 2017.

Mayor

Municipal Clerk

Attachment 3

**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;

(al) "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:

(ii) 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

(a) the width of the roadway is not reduced;

- (b) the sidewalk café does not create vehicular congestion;
- (c) the sidewalk café does not present a risk of harm to the health or safety of the public;
- (d) the sidewalk café does not constitute a nuisance;
- (e) the sidewalk café does not unreasonably interfere with municipal services, including fire service, police service, sanitation services and winter maintenance;
- (f) the sidewalk café does not unreasonably interfere with the public's use or enjoyment of the street including the sidewalk;
- (g) the sidewalk café does not unreasonably interfere with the construction or installation of a municipal work, service, utility or other improvement;
- (h) a minimum sidewalk width of 2.1 m (7 feet) remains unobstructed, including being unobstructed by sidewalk cafés, municipal infrastructure or municipal street furniture; and
- (i) HRM or any utility has reasonable access to maintain or install a utility or service.

Requirements of a Granted Café License

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

- (a) the type of encroachment that is authorized by the café license;
- (b) the encroachment term;
- (c) the civic address of the principal use property;
- (d) the name of the person to whom the café license is granted; and
- (e) such other terms and conditions as may be necessary in the opinion of the License Administrator.

Encroachment Term

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

(2) 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.

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.

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

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

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

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

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

Sidewalk Café Access

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

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

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

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

Sidewalk Café Removal

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Cost of Work

41. If the Council, 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.