

**The Corporation of the
Municipality of Huron East**

By-law No. 35-2015

**Being a by-law to adopt regulations and
licence fees for Sidewalk Patios and Cafés.**

WHEREAS under the provisions of Part IV of the Municipal Act, 2001, c. 25, as amended, municipalities may pass by-laws for the licensing, regulating and governing business;

AND WHEREAS under the provisions of Section 151 of the Municipal Act, 2001, c. 25, as amended, municipalities may provide for a system of licensing businesses and may impose conditions as a requirement of obtaining and continuing to hold a licence;

NOW THEREFORE the Council of the Corporation of the Municipality of Huron East enacts as follows:

1. **Short Title** – This By-law shall be cited as the Sidewalk Patio and Sidewalk Café By-Law.

2. **Definitions**

In this By-law “Sidewalk Patio” or “Patio” means a group of tables and chairs and other accessories situated and maintained upon a public sidewalk or other public property for the use and consumption of food and beverages, including alcoholic beverages, sold to the public from, or in, an adjoining or adjacent indoor food and beverage establishment. A Sidewalk Patio shall, when located on a municipal sidewalk, extend no wider than the width of the associated indoor food and beverage establishment, and shall be fully enclosed by a fence.

“Sidewalk Café” or “Café” means a group of tables and chairs and other accessories situated and maintained upon a public sidewalk or other public property for the use and consumption of food and beverages sold to the public from, or in, an adjoining or adjacent indoor food and beverage establishment, and located immediately against the respective building façade. A Sidewalk Café may extend, when located on a municipal sidewalk, no wider than the width of the associated indoor food and beverage establishment. A Sidewalk Café or part thereof located on a municipal sidewalk shall not be enclosed by a fence, and no service or consumption of alcohol is permitted in a Sidewalk Café

3. **General Provisions:**

3.1 **Location:**

Sidewalk Patios and Cafés shall only be permitted within the areas shown and/or described in Appendix “A and B” of this policy. Within the lands shown and/or described in Appendix “A and B” of this policy, no person shall be permitted to establish a Sidewalk Patio or Café on or over a public sidewalk, except permitted by the provisions of this policy.

On a corner lot, the Sidewalk Patio or Sidewalk Café shall not be located in the area formed by the projection of the front and side of the building, and the curb of the intersection (‘daylight triangle’).

On a corner lot, the Sidewalk Patio or Sidewalk Café shall not locate any fencing, furniture or fixtures on any part of a municipal sidewalk that is considered as the side lot line sidewalk of the property.

The parking of cars and the view of motorists at intersections shall not be impeded by such a Sidewalk Patio or Sidewalk Café.

Notwithstanding the provisions of this policy, the Municipality, in its absolute discretion, may determine the exact location, boundaries and configuration of a Sidewalk Patio or Sidewalk Café, on a case by case basis.

3.2 Hours of Operation & Season:

A Sidewalk Patio or Sidewalk Café may only be open during regular business hours, and no later than 11:00 p.m.

A Sidewalk Patio or Sidewalk Café is permitted only during the period of April 15th to October 15th (inclusive) of a respective year.

3.3 Furniture:

All tables, chairs and other accessories in the Sidewalk Patio or Sidewalk Café shall be constructed using sturdy weather resistant materials, and be secure and of solid construction as not to be affected by the wind. Furnishings shall not exceed a height of 1.2 metres (48 inches). No picnic tables shall be permitted in the Sidewalk Patio or Sidewalk Café area.

3.4 Elevated Platforms and Outdoor Carpets:

Elevated platforms and outdoor carpets are not permitted within a Sidewalk Patio or Sidewalk Café area.

3.5 Lighting:

All exterior lighting shall be task oriented and shall not spill into abutting private property.

3.6 Propane Heaters and Table Candles:

Propane heaters and table candles are prohibited within a Sidewalk Patio or Sidewalk Café area.

3.7 Garbage and Refuse:

The owner/occupier of the Sidewalk Patio or Sidewalk Café shall at all times be responsible for maintaining the area and keeping it free of dust, papers and rubbish of any kind.

3.8 Music and Entertainment:

Music or other entertainment provided to patrons of Sidewalk Patios or Sidewalk Cafés shall not be amplified or create a nuisance to neighbouring property owners. All music or entertainment shall cease by 10:30 pm. on Friday and Saturday nights and by 9:00 p.m. on all other nights. Where a nuisance occurs, music and/or entertainment must cease immediately and the Municipality reserves the right to revoke the privilege for that Sidewalk Patio or Sidewalk Café to have music and/or other entertainment in the future. Nuisance may include, but shall not be limited to, loud, boisterous, or unreasonable music, noise, offensive language or other disruptive behaviour.

3.9 Signage and Awnings:

All signage and awnings shall comply with the provisions of the Municipality's Sign By-law (By-law 6-2012).

3.10 Smoking:

Sidewalk Patios and Sidewalk Cafés must comply with the "Smoke Free Ontario Act", as amended, and associated legislation and regulations.

3.11 Right of Access:

The Municipality and all public utility agencies retain the right of access to the Sidewalk Patio or Sidewalk Café area for the installation, maintenance and repair of pipes, cables, wires, poles, hydrants etc., as necessary. In case of emergency, no notice will be given. For scheduled work, a minimum notice of seventy-two (72) hours will normally be given. All Sidewalk Patio or Sidewalk Café improvements shall be removed and reinstalled at the Sidewalk Patio or Sidewalk Café owner/occupier's expense.

The Municipality retains a right of access over, to and upon a Sidewalk Patio or Sidewalk Café for emergency vehicle access.

3.12 Occupancy

Occupancy load calculations for a sidewalk patio or sidewalk café shall be in accordance with Part 3 of the Ontario Building Code, with specific reference to the calculations in Table 3.1.17.1. In calculating the occupancy load calculation for a sidewalk patio or sidewalk café, the approved interior occupancy load of the establishment shall be taken into consideration and the approved occupancy load of the outdoor sidewalk patio or sidewalk café shall not exceed 50% of the approved interior occupancy load of the establishment. The combined occupancy (interior and exterior) shall be required to meet the plumbing fixture requirements for assembly occupancies found within Part 3 of the Ontario Building Code with specific reference to Section 3.7.4.3 of the Ontario Building Code.

3.13 Enforcement

Where the Municipality's Chief Building Official, By-law Enforcement Officer, Fire Chief or Public Works Coordinator, or authorized agent, identifies a Sidewalk Patio or Sidewalk Café to be in contravention of this Policy, such Official shall have the authority to cause the removal of the offending element of the Sidewalk Patio or Sidewalk Café, or the Sidewalk Patio or Sidewalk Café as a whole. Such removal shall be entirely at the expense of the Sidewalk Patio or Sidewalk Café owner/occupier.

4. Specific Provisions - Sidewalk Patios:

4.1 Application Process:

- a) Any person who wishes to erect, install, maintain, or carry on a Sidewalk Patio on a public sidewalk or public property shall be required to annually submit an application (attached as Appendix C) to the Municipality requesting permission to do so.
- b) Along with the application, the applicant shall submit a detailed site plan, drawn to scale, illustrating the proposed location, placement, dimensions and style of tables, chairs, fences and all other accessories to be included within the defined Sidewalk Patio area, as well as any awnings, utility poles, trees, planters, bike racks, benches, refuse containers, hydrants, shelters, utility holes, traffic signs/signals, catch basins and any other physical, utility or

drainage feature on the street/sidewalk within 6 metres (19.7 ft) of the proposed Sidewalk Patio.

- c) Along with the application, the applicant shall submit a “Sidewalk Patio” Licence Application fee of \$150.00 which is non-refundable.
- d) The Municipality shall review the application to ensure the erection, installation and maintenance of the proposed Sidewalk Patio onto the public sidewalk:
 - a. Is consistent with the provisions of the Sidewalk Patio and Sidewalk Café By-law;
 - b. Does not interfere with the Municipality’s intent and purpose of the municipal sidewalk;
 - c. Does not create an unsafe condition;
 - d. Does not Create liabilities for which the Municipality cannot assign full responsibility to the owner of the Sidewalk Patio;
 - e. Does not create a situation that is contrary to any Municipal By-law, Policy or Resolution approved by Municipal Council, or any Provincial or Federal regulation or legislation;
 - f. Does not interfere with work, plans, efforts, or initiatives of the Municipality to maintain municipal sidewalk; or,
 - g. Does not interfere with any utility or other similar installation located in proximity to the proposed Sidewalk Patio.

4.2 Sidewalk Patio Licence:

- a) The Sidewalk Patio may be established only after the issuance of a Sidewalk Patio Licence by the Municipality.
- b) The Sidewalk Patio Licence shall ensure that the items identified by the applicant in their application, as well as the items identified by the Municipality during the licence review process, are incorporated. A Sidewalk Patio Licence may impose specific conditions or provisions to address identified concerns.
- c) The Sidewalk Patio Licence shall be renewed annually. The Sidewalk Patio Licence shall terminate at the end of the respective season (October 15), or by the Municipality on twenty-four (24) hours written notice for any breach of the Licence or terms and provisions of the Sidewalk Patio and Sidewalk Café By-law.
- d) The issuance of the Sidewalk Patio Licence does not create any vested right in the owner or occupant of the premises to which the encroachment is appurtenant, or in any other person.
- e) The Sidewalk Patio Licence will set out the requirement for liability insurance, which must remain in full force and effect for the entire term of the Licence. Such insurance shall be in the minimum amount of two million dollars (\$2,000,000.00) per occurrence, and shall name the Corporation of the Municipality of Huron East as an additional named insured. A certificate of insurance shall be provided to the Municipality confirming the existence of the above noted insurance coverage, in a form satisfactory to the Municipality.

- f) Through the Sidewalk Patio Licence, the applicant shall agree to indemnify and save harmless the Municipality, its employees, agents and servants, against all actions, suits, claims and demands, which may be brought against or made upon the Municipality and against all loss, costs, damages, charges, or expenses whatsoever which may be sustained, incurred or paid by the Municipality, including any legal fees or court costs on a full indemnity basis, resulting from or in consequence of the applicant's use of the Municipal Lands. This Licence shall not be alleged as a defense by the applicant in any action, by any person, for damages suffered.
- g) A Sidewalk Patio Licence is not transferable.

4.3 Location:

A Sidewalk Patio may extend out no more than 2.5 metres (8.2 feet) from the building façade, onto a municipal sidewalk, ensuring that a minimum 1.5 metre (free and clear) pedestrian corridor is maintained.

Barrier free access to the Sidewalk Patio area shall be maintained at all times.

4.4 Furnishings, Fencing and Umbrellas:

Sidewalk Patio furnishings, fences, and other Sidewalk Patio improvements must be removable and not permanently fixed in place (ie no bolts or brackets). All furnishings, fences, and other Sidewalk Patio improvements shall be placed so that they are stable, and free from sharp edges, protrusions, or other features that may be hazardous to the public. The owner and/or occupier of the Sidewalk Patio is entirely responsible for the safety, protection and prevention of theft for any and all furnishings, fences and other improvements in the Sidewalk Patio area.

All Sidewalk Patios shall be fenced to form a fully enclosed perimeter. Fencing is to be constructed of ornamental iron, steel or aluminum, and painted black. The minimum height for fencing shall be .9 metres (35 inches) to a maximum of 1.2 metres (48 inches). If alcoholic beverages are to be served, the fencing requirements of the Alcohol and Gaming Commission of Ontario will supersede this requirement. Access to the Sidewalk Patio area shall have a minimum unobstructed width of 1.5 metres. Fencing shall be located no closer than 6 metres (20 feet) from an intersection, and shall be permitted only during the operating season established in this By-law.

All furnishings, fences, and other improvements shall be contained within the Sidewalk Patio area and must be removed, unless the Municipality grants written permission, during the off-season, or after the Sidewalk Patio ceases to exist.

Umbrellas shall be located entirely within the enclosed Sidewalk Patio area. Umbrellas with fluorescent and/or patterned colours or offensive slogans are prohibited.

4.5 Compliance with Alcohol Regulations:

Where a Sidewalk Patio includes the service and consumption of alcoholic beverages, licensing by the Alcohol and Gaming Commission of Ontario (AGCO) shall be required, and the regulations prescribed by the AGCO shall be adhered to, unless a higher standard is stipulated by the Municipality. Proof of authorization by AGCO to license the Sidewalk Patio area for the consumption and service of alcoholic beverages shall be supplied by the owner/occupier, to the Municipality.

4.6 Compliance with Health Regulations:

The owner/occupier of every Sidewalk Patio shall at all times comply with the requirements of the Huron County District Health Unit and/or the Medical Officer of Health.

5. **Specific Provisions - Sidewalk Cafés:**

5.1 Application Process:

- a) Any person who wishes to erect, install, maintain, or carry on a Sidewalk Café on a public sidewalk or public property shall be required to annually submit an application (attached as Appendix C) to the Municipality requesting permission to do so.
- b) Along with the application, the applicant shall submit a detailed site plan, drawn to scale, illustrating the proposed location, placement, dimensions and style of tables, chairs and all other accessories to be included within the defined Sidewalk Café area, as well as any awnings, utility poles, trees, planters, bike racks, benches, refuse containers, hydrants, shelters, utility holes, traffic signs/signals, catch basins and any other physical, utility or drainage feature on the street/sidewalk within 6 metres (19.7 ft) of the proposed Sidewalk Café.
- c) Along with the application, the applicant shall submit a “Sidewalk Café” Licence Application Fee of \$75.00 which is non-refundable.
- d) The Municipality shall review the application to ensure the erection, installation and maintenance of the proposed Sidewalk Café onto the public sidewalk:
 - a. Is consistent with the provisions of the Sidewalk Patio and Sidewalk Café By-law;
 - b. Does not interfere with the Municipality’s intent and purpose of the municipal sidewalk;
 - c. Does not create an unsafe condition;
 - d. Does not Create liabilities for which the Municipality cannot assign full responsibility to the owner of the Sidewalk Café;
 - e. Does not create a situation that is contrary to any Municipal By-law, Policy or Resolution approved by Municipal Council, or any Provincial or Federal regulation or legislation;
 - f. Does not interfere with work, plans, efforts, or initiatives of the Municipality to maintain municipal sidewalk; or,
 - g. Does not interfere with any utility or other similar installation located in proximity to the proposed Sidewalk Café.

5.2 Sidewalk Café License:

- a) The Sidewalk Café may be established only after the issuance of a Sidewalk Café Licence by the Municipality.

- b) The Sidewalk Café Licence shall ensure that the items identified by the applicant in their application, as well as the items identified by the Municipality during the licence review process, are incorporated. A Sidewalk Café Licence may impose specific conditions or provisions to address identified concerns.
- c) The Sidewalk Café Licence shall be renewed annually. The Sidewalk Café Licence shall terminate at the end of the respective season (October 15), or by the Municipality on twenty-four (24) hours written notice for any breach of the Licence or terms and provisions of the Sidewalk Patio and Sidewalk Café By-law.
- d) The issuance of the Sidewalk Café Licence does not create any vested right in the owner or occupant of the premises to which the encroachment is appurtenant, or in any other person.
- e) The Sidewalk Café Licence will set out the requirement for liability insurance, which must remain in full force and effect for the entire term of the Licence. Such insurance shall be in the minimum amount of two million dollars (\$2,000,000.00) per occurrence, and shall name the Corporation of the Municipality of Huron East as an additional named insured. A certificate of insurance shall be provided to the Municipality confirming the existence of the above noted insurance coverage, in a form satisfactory to the Municipality.
- f) Through the Sidewalk Café Licence, the applicant shall agree to indemnify and save harmless the Municipality, its employees, agents and servants, against all actions, suits, claims and demands, which may be brought against or made upon the Municipality and against all loss, costs, damages, charges, or expenses whatsoever which may be sustained, incurred or paid by the Municipality, including any legal fees or court costs on a full indemnity basis, resulting from or in consequence of the applicant's use of the Municipal Lands. This Licence shall not be alleged as a defense by the applicant in any action, by any person, for damages suffered.
- g) A Sidewalk Café Licence is not transferable.

5.3 Location:

A Sidewalk Café shall be located immediately against the building façade and may extend out no more than 2.5 meters (8.2 feet) from the building façade onto a municipal sidewalk, ensuring that at all times a minimum 1.5 meter (free and clear) pedestrian corridor is maintained.

Barrier free access to the Sidewalk Café area shall be maintained at all times.

5.4 Furnishings, Fencing and Umbrellas:

Sidewalk Café furnishings must be removable and not permanently fixed in place (ie no bolts or brackets). All furnishings shall be placed so that they are stable, and free from sharp edges, protrusions, or other features that may be hazardous to the public. The owner and/or occupier of the Sidewalk Café is entirely responsible for the prevention of theft of any and all furnishings.

All furnishings, fences, and other improvements shall be contained within the Sidewalk Cafe area and must be removed, unless the Municipality grants written permission, during the off-season, or after the Sidewalk Cafe ceases to exist.

Umbrellas shall be located entirely within the enclosed Sidewalk Café area. Umbrellas with fluorescent and/or patterned colours or offensive slogans are prohibited.

5.5 Beverage Service:

A Sidewalk Café may have non-alcoholic beverage service and consumption, but shall not be permitted to be licensed for the service or consumption of alcoholic beverages.

5.6 Compliance with Health Regulations:

The owner/occupier of every Sidewalk Café shall at all times comply with the requirements of the Huron County District Health Unit and/or the Medical Officer of Health.

6. That this By-Law shall come into force and effect upon the date of final passage thereof.

READ a first and second time and provisionally adopted this 2nd day of June, 2015.

Bernie MacLellan, Mayor

Brad Knight, CAO/Clerk

READ a third time and finally passed this 20th day of July, 2015.

Bernie MacLellan, Mayor

Brad Knight, CAO/Clerk

Appendix 'C'
Sidewalk Patio and Sidewalk Café

APPLICATION FORM

REQUEST:

- Sidewalk Patio
- Sidewalk Café

APPLICANT INFORMATION:

Applicant: _____

Business: _____

Physical Address of the Business: _____

Mailing Address/Postal Code: _____

Telephone: _____ Fax: _____ Email: _____

PROPERTY OWNER INFORMATION:

- Same as above?

Owner: _____

Physical Address of Property: _____

Mailing Address/Postal Code: _____

Telephone: _____ Fax: _____ Email: _____

DESCRIPTION OF SIDEWALK PATIO/SIDEWALK CAFÉ:

A detailed Site Plan must be attached, including proposed location, placement, dimensions and style of:

- Tables
- Chairs
- Fencing (Sidewalk Patios)
- Other accessories

The Site Plan shall also include details regarding the location of existing

- | | | |
|--|--|--|
| <input type="checkbox"/> Awnings | <input type="checkbox"/> Shelters | <input type="checkbox"/> Utility Holes/Catch Basins |
| <input type="checkbox"/> Utility Poles | <input type="checkbox"/> Bike Racks | <input type="checkbox"/> Any additional physical, utility or drainage features within 6 metres (19.7 feet) of the proposed Sidewalk Patio/Café |
| <input type="checkbox"/> Trees | <input type="checkbox"/> Benches | |
| <input type="checkbox"/> Planters | <input type="checkbox"/> Refuse Containers | |
| <input type="checkbox"/> Hydrants | <input type="checkbox"/> Traffic Signs/Signals | |

APPLICATION FEES:

Upon application, the Applicant shall forward the following non-refundable licence fee application:

- \$150.00 – For a Sidewalk Patio Licence
- \$75.00 – For a Sidewalk Café Licence

NOTE: Prior to the issuance of the Sidewalk Patio or Sidewalk Café Licence, the Applicant will also be required to provide:

- a certificate of insurance to the Municipality confirming the Applicant has a policy in the minimum amount of \$2,000,000.00 which names the Corporation of the Municipality of Huron East as an additional insured.
- Any required approvals from Agencies other than the Municipality (ie AGCO etc.)

APPROVAL:

- 1) *Sidewalk Patio* – May be established only after the issuance of a Sidewalk Patio Licence and the fulfillment of the terms and conditions attached to the Licence.
- 2) *Sidewalk Café* – May be established only after the issuance of a Sidewalk Café Licence and the fulfillment of the terms and conditions attached to the Licence.

SIGNATURE:

I, the undersigned, am authorized owner/agent to sign the above application and I certify the truth of all the statements or representations contained therein.

I also hereby acknowledge that I have received a copy of the Municipality's Sidewalk Patio and Sidewalk Café By-law and have read and understood the provisions of said By-law.

I acknowledge that in the event permission is granted to me erect a Sidewalk Patio or Café, any non-compliance with specific By-law provisions and/or conditions, plan, specifications, etc. proposed in the above application is prohibited and such could result in my permission being revoked.

I further acknowledge that in the event that permission is revoked for any cause or irregularity or non-conformity with the By-law or requirements of the Municipality, there shall be no right of claim whatsoever against the municipal corporation or any official, employee or agent thereof and any such claim is hereby expressly waived.

Applicant

Date

Property Owner (if different than Applicant)

Date