

**THE CORPORATION OF THE TOWN OF WHITBY**

**BY-LAW NO. 4223-98**

**BEING A BY-LAW TO LICENSE, REGULATE AND CONTROL OUTDOOR SIDEWALK  
PATIO CAFÉS**

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WHEREAS, Clause 310(a) of the Municipal Act, R.S.O. 1990, c. M.45, as amended, provides that by-laws may be passed by the council of every local municipality for leasing or licensing the use of untravelled portions of highways under the jurisdiction of the council to the owners or occupants of adjoining property for such consideration and upon such terms and conditions as may be agreed;

AND WHEREAS, Clause 310(b) of the Municipal Act, R.S.O. 1990, c. M.45, as amended, provides that by-laws may be passed by the council of every local municipality for regulating and controlling the use of untravelled portions of highways under the jurisdiction of the council which are leased or in respect of which the licence is granted;

AND WHEREAS, the Council of the Corporation of the Town of Whitby considers it desirable to pass a by-law to license, regulate and control the use of sidewalks by the owners or occupants of adjoining property for the purpose of outdoor sidewalk patio cafes;

NOW THEREFORE, the Council of the Corporation of the Town of Whitby enacts as follows:

**DEFINITIONS**

1. In this by-law,
  - (a) "Director of Public Works" means the Director of Public Works of the Corporation of the Town of Whitby or his or her designate;
  - (b) "Council" means the Council of the Corporation of the Town of Whitby;
  - (c) "outdoor sidewalk patio café" means an outdoor area used on a seasonal basis in association with an eating establishment where seating accommodation is provided and where meals and/or refreshments are served to the public for consumption on the premises and which is located on a sidewalk under the jurisdiction of the Corporation of the Town of Whitby pursuant to a valid sidewalk occupancy permit;

**By-law No. 4223-98 (Continued)**

- (d) "person" includes a corporation and the heirs, executors, administrators or other legal representatives of a person to whom the context can apply according to law; and,
- (e) "Town" means the Corporation of the Town of Whitby.

**GENERAL**

2. The Director of Public Works is responsible for the administration and enforcement of this by-law.
3. No person shall use or occupy any sidewalk under the jurisdiction of the Town for the purpose of an outdoor sidewalk patio café without first having obtained a licence in the form of a sidewalk occupancy permit from the Town to do so or without renewing the permit annually but no permit shall be issued or renewed unless under the authority of this by-law.
4. Every person wishing to use or occupy a sidewalk under the jurisdiction of the Town for the purpose of an outdoor sidewalk patio café shall annually file with the Director of Public Works an application for a sidewalk occupancy permit in the form as prescribed by the Town from time to time together with payment of a non-refundable permit application fee in the amount of \$100.00.
5. The Director of Public Works may approve an application for a sidewalk occupancy permit for an outdoor sidewalk patio café provided the applicant satisfies all of the Town's requirements, financial and otherwise, as set out in this by-law.
6. The Director of Public Works may refer to the Council any application for a sidewalk occupancy permit for a outdoor sidewalk patio café the approval of which in his or her considered opinion would not be in the public interest.
7. The Director of Public Works, by notice to the permit holder, may suspend a sidewalk occupancy permit for an outdoor sidewalk patio café where in the opinion of the Director of Public Works it is necessary to do so in the public interest.
8. Where the Director of Public Works has refused to issue a sidewalk occupancy permit for an outdoor sidewalk patio café or has suspended a sidewalk occupancy permit, the Council, on appeal of the person who is the applicant or the permit holder, may vary or rescind the decision.

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9. Although an applicant or permit holder has appealed from a decision of the Director of Public Works, the decision is effective until the appeal is disposed of by the Council.
10. Every person operating an outdoor sidewalk patio café shall comply with all of the regulations for outdoor sidewalk patio café's as set out in Schedule "A" attached to and forming part of this by-law.
11. No person shall, by virtue of one permit, conduct an outdoor sidewalk patio café in more than one location.
12. Where two or more persons carry on a business in partnership in the same eating establishment, only one permit is necessary.
13. No permit issued in accordance with the provisions of this by-law shall be transferred by the permit holder.
14. No person shall enjoy a vested or property right in any permit or the continuance of any permit and such permit and such rights shall remain the property of the Town.

**PENALTIES**

15. Every person who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to a fine in the amount provided for by the Provincial Offences Act, R.S.O. 1990, c. P.33, or any successor legislation in substitution therefore.

**VALIDITY**

16. Should any section, subsection, clause or provision of this by-law be declared by a court of competent jurisdiction to be invalid, it shall not affect the validity of the by-law as a whole, or any part thereof, other than the part so declared to be invalid.

**SHORT TITLE**

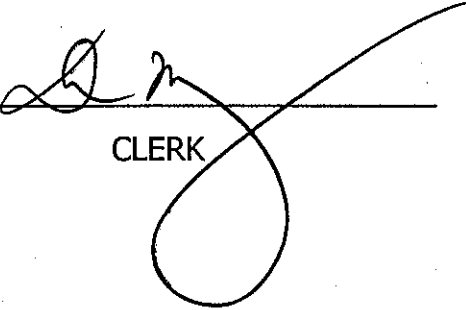
17. This by-law may be referred to as the Outdoor Sidewalk Patio Café By-law.

**By-law No. 4223-98 (Continued)**

**EFFECTIVE DATE**


18. This by-law shall come into force and take effect on the final passing thereof.

BY-LAW READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 13TH DAY OF JULY, A.D., 1998.



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CLERK



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MAYOR

## **SCHEDULE "A"**

### **TO BY-LAW NO. 4223-98**

#### **REGULATIONS FOR OUTDOOR SIDEWALK PATIO CAFÉS**

##### **PERMIT PERIOD**

1. The period of operation of an outdoor sidewalk patio café shall be April 1st to October 31st of each year.

##### **CLOSING TIME**

2. Outdoor sidewalk patio cafés shall not be opened before 11:00 a.m. and shall be cleared of patrons and closed by no later than 11:00 p.m..

##### **LOCATION OF OUTDOOR SIDEWALK PATIO CAFÉ**

3. An outdoor sidewalk patio café shall be completely located within the frontage and/or the flankage limits of the associated eating establishment.

##### **LAND USE SEPARATION DISTANCE**

4. The minimum separation distance between an outdoor sidewalk patio café and the boundary of any residential zone shall be 30.0 metres.

##### **INSURANCE**

5. The permit holder shall at all times indemnify and save harmless the Town for all loss, costs and damages which the Town may suffer, be at or be put to for or by reason or on account of any matter or thing which may occur, be done or arise by reason of the use of the sidewalk, or any other property of the Town, to gain ingress to or egress from the outdoor sidewalk patio café or anything which may be done thereon or which may be neglected to be done thereon by the permit holder, agents, servants or others.
6. The permit holder shall provide and maintain at his/her/its sole expense, liability and property damage insurance in the minimum amount of two million dollars (\$2,000,000.00) to protect the Town as owner of the sidewalk against all liability and shall complete an insurance certificate all to the satisfaction of the Town.

## **SIDEWALK**

7. The clear width of a sidewalk abutting an outdoor sidewalk patio café shall be a minimum of 1.5 metres it being understood that a minimum clear width of 1.5 metres shall be provided between the perimeter patio fence and any sidewalk obstruction such as a lamppost, a parking metre, a sidewalk planting, a fire hydrant, etc.. An additional 0.5 metres of sidewalk width shall be required within 9.0 metres of an intersection to provide for platooning of pedestrians.

## **DECK AND PLATFORM ELEVATION**

8. When the outdoor sidewalk patio is elevated above grade on a structure, the height of the deck surface shall be no greater than 0.5 metres.
9. All decking or platforms shall be sectional so as to be easily removable for storage off-site.
10. All decking shall be removed outside of the permit period.
11. Skirting shall be applied to the exposed sides of the platform to screen structural elements.
12. All exposed materials shall be painted or stained to co-ordinate with streetscape elements.

## **FENCES**

13. A fence or other barriers shall be used to delineate the perimeter of the outdoor sidewalk patio café with the exception of openings necessary to provide access.
14. The fence shall be a minimum of 0.75 metre in height and shall not be greater than 1.0 metre in height measured from the finished grade of the patio to the highest point of the fence. Side screens up to 2.0 metres in height shall be permitted provided they do not interfere with pedestrian and/or vehicular traffic. Front screens shall not be permitted. Despite this, rain screens consisting of clear plastic or mesh screening shall be permitted during rainy periods.
15. Fences and screens shall be removable at all times.
16. Fences and screens shall be removed outside of the permit period.

17. Fences shall be of sturdy construction. They shall not penetrate the surface of the sidewalk with footings.
18. The design, materials and colours used in the fencing shall be compatible with the streetscape.

### **AWNINGS**

19. If an awning is provided, the awning material shall be securely fastened to a frame which is either retractable or demountable.
20. Awnings shall be flame resistant and prefabricated and finished to fit the supporting structure.
21. Awnings and umbrellas shall be totally contained within the approved outdoor sidewalk patio café area.
22. Awning materials and colours shall co-ordinate with the surrounding buildings and streetscape elements.

### **FURNISHINGS**

23. All tables, chairs and decorative accessories shall be of an outdoor furniture design constructed using weather resistant materials.
24. Furnishings shall not be positioned in such a manner as to obstruct exit from the associated eating establishment and shall be totally contained within the approved outdoor sidewalk patio café area.
25. All furnishings shall be removed outside of the permit period.

### **LIGHTING**

26. All exterior lighting shall be task oriented and shall not spill into abutting private property or interfere with the public thoroughfare.
27. All exterior lighting associated with an outdoor sidewalk patio café shall be totally contained within the approved patio area.

## **PLANT MATERIALS**

28. Removal of street trees or plants or the pruning of street trees or plants must be approved by the Director of Public Works.
29. Planting of annuals, vines and container grown vegetation is encouraged but shall be totally contained within the approved outdoor sidewalk patio café area it shall be removed outside of the permit period.

## **SIGNAGE**

30. A menu card may be displayed at the entrance(s) within the outdoor sidewalk patio café.

## **REFUSE RECEPTACLE**

31. Garbage containers shall not be permitted within the outdoor sidewalk patio café area but portable service carts may be used for collection and transport to the interior of the eating establishment.

## **MAINTENANCE**

32. The permit holder shall keep the outdoor sidewalk patio café free from papers, garbage, rubbish and debris of any kind.
33. The Town or any public utility shall have the right to enter any portion of an outdoor sidewalk patio café at any time for the purpose of installing, maintaining or repairing pipes, cables, sidewalks, wires, poles and other installations.