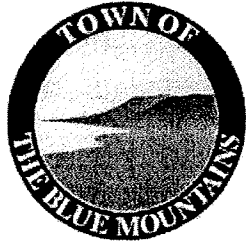


C.G

STAFF REPORT: BUILDING & BY-LAW DEPARTMENT



REPORT TO: Finance & Admin. Committee
MEETING DATE: May 22, 2008
REPORT NO.: SRB.08.31
SUBJECT: Commercial Use of Sidewalk By-law – Patio/Cafe Licence Fee
PREPARED BY: Sharon Long, Administrative Assistant, Building & By-law

A. Recommendations

THAT Council receive staff report SRB.08.31 for information purposes.

B. Background

Commercial Use of Sidewalk By-law No. 2004-34 authorizes the use of Town owned/controlled sidewalks for Patio/Cafe purposes pursuant to a licence and subject to specific conditions (Addendum "A"). As Council will note, the annual fee for this licence is \$50.00. In 2006 and 2007 Town Council adopted resolutions waiving this fee.

In 2007 time was expended by By-law Enforcement advising, reminding and finally personally requesting that business operator's comply by submitting applications and provide the necessary supporting documentation. Given that the By-law has been in existence for a few years and that there are costs related to the enforcement of this aspect of the By-law, Staff are not recommending that the fee be waived in 2007.

C. The Blue Mountains' Strategic Plan

"Providing a strong, well managed municipal government."

D. Environmental Impacts

N/A

E. Budget Impact

\$200.00 in revenue

G. Attached

A. Commercial Use of Sidewalk By-law No. 2004-34.

Prepared by,
Sharon Long
Sharon Long
Administrative Assistant, Building & By-law

Respectfully submitted,
David Finbow
David Finbow
Director, Building & By-law/CBO

CORPORATION OF THE
TOWN OF THE BLUE MOUNTAINS

BY-LAW NO. 2004 - 34

WHEREAS Section 11 of the *Municipal Act, 2001, c.25*, as amended, enables the council of a local municipality to pass by-laws respecting matters within its sphere of jurisdiction;

AND WHEREAS Section 55 of the *Municipal Act, 2001, c.25*, as amended, indicates that the Town of The Blue Mountains has jurisdiction over sidewalks within an upper-tier highway;

AND WHEREAS Section 150 of the *Municipal Act, 2001, c.25*, as amended, authorizes a municipality to licence, regulate and govern any business carried on within the municipality;

NOW THEREFORE the Council of the Corporation of the Town of The Blue Mountains enacts as follows:

PART I - ADMINISTRATION

1. Title

This By-law may be cited as the "Sidewalk Use By-law".

2. Definitions

- a. "business premise" shall mean a premise within a building in which a business occurs;
- b. "café" shall mean an outdoor area where:
 - (i) meals or refreshments or both may be offered, or
 - (ii) meals or refreshments or both may be served, or
 - (iii) meals or refreshments or both are intended to be consumed;
- c. "Chief Building Official" shall mean the person appointed by Council of the Town of The Blue Mountains as the Chief Building Official in accordance with the provision of the *Building Code Act*;
- d. "fixture" shall mean any item, object or thing and includes those fixtures usually associated with a patio and a café;
- e. "highway" shall have the same meaning as given or intended under the *Municipal Act, 2001, c.25* but shall exclude all provincial highways that are not under the jurisdiction of the Town;
- f. "Non-Residential Zone" means any zone that is not residential within the meaning of the applicable Zoning By-law;
- g. "patio" shall have the same meaning as "café";
- h. "place" means to do anything in the way of displaying, placing, standing, erecting or placing;
- i. "placement" shall have the same meaning as "place" as modified;
- j. "sidewalk" shall have the same meaning as given or intended under the *Municipal Act, 2001, c.25* and includes all sidewalks within the Town of The Blue Mountains within any "highway";
- k. "Town" shall mean the Corporation of the Town of The Blue Mountains;
- l. "vending machine" shall mean any machine or thing used for the sale of any item, object or thing and includes a newspaper box and soft drink, candy and potato chip vending machines or any similar type of vending machine.

PART II - GENERAL PROVISIONS

3. No Placement of Fixture on a Sidewalk Except in Accordance with By-law

No person shall place or permit, cause or authorize the placement of any fixture on a sidewalk except in accordance with the provisions of this By-law.

4. Fixture to be Immediately Adjacent and in Conjunction with Business Premise

No person shall place or permit, cause or authorize the placement of any fixture on a sidewalk except immediately adjacent to and in front of the business premise that s/he lawfully occupies.

5. Business Premise to be located in Non-Residential Zone

No person shall place or permit, cause or authorize the placement of any fixture on a sidewalk unless such person occupies a business premise within a Non-Residential Zone.

6. Free Unencumbered Pathway on Sidewalk to be Maintained

No person shall place or permit, cause or authorize the placement of any fixture on a sidewalk that would prevent a free, unobstructed 2.0 metre (6.56 feet) wide pedestrian pathway, within the limits of the sidewalk, immediately adjacent to the fixture on the sidewalk. Such 2.0 metre (6.56 feet) wide pedestrian pathway shall be measured from the curb to the fixture, or in the event of any tree, hydrant, street furniture, light standard, bike rack/lock-up, etc., be measured from such tree, hydrant, street furniture, light standard, etc.,

7. Placement of Fixture not to Obstruct Ingress/Egress/Exiting from Buildings

The placement of any fixture on a sidewalk shall not obstruct the ingress, egress or exiting from any building.

8. Placement of Fixture not to Obstruct Driveway/Laneway

The placement of any fixture on a sidewalk shall not obstruct any driveway or laneway.

9. Maximum Projection from Building

Except as permitted by Part III of this By-law, no person shall place any fixture on any sidewalk that projects more than 1.0 metre (3.28 feet) from the building in which the business premise that s/he occupies.

10. Fixture not to be Permanently Fixed

No person shall fix, either permanently or temporarily, any fixture to any sidewalk or to any item within the highway.

11. Compliance with Town Noise By-law

All activities on sidewalks must comply with Town Noise By-law No. 2002-9, as amended.

12. State of Repair

No person shall place any fixture or allow for the placement of any fixture on a sidewalk that is other than in a good state of repair.

13. Cleanliness

The sidewalk area immediately adjacent to the fixture shall be maintained in a clean and orderly fashion at all times.

14. Trip and Safety Hazards

The person responsible for the placement of the fixture shall ensure that the fixture does not create a trip or safety hazard.

15. Prohibition - Vending Machines

No person shall place any vending machine on any sidewalk.

16. Removal of Fixture by Town

Any fixture placed on a sidewalk other than in compliance with this By-law may be removed by the Town, its employees or agents, without notice and at the expense of the offending person or business.

17. Disposal of Fixtures By Town

The Town will retain any fixture collected pursuant to Section 13 of this By-law for a period of 30 days following which, if unclaimed, dispose of in any fashion that the Town deems appropriate.

PART III - SIDEWALK PATIOS/CAFES

18. Sidewalk Patio/Café Licence Required

No person shall establish a sidewalk patio or café unless a Sidewalk Patio/Café Licence has been issued by the Chief Building Official or his designate.

19. Sidewalk Patio/Café Licence Fee

There shall be a non-refundable Sidewalk Patio/Café Licence fee in the amount of \$50.00 per year. Such fee shall be paid at the time of application for the Licence.

20. Validity of Sidewalk Patio/Café Licence

A Sidewalk Patio/Café Licence shall be valid from the date of issuance to October 31 of the year that such Licence was issued.

21. Permitted Operation - Sidewalk Patio/Café Licence

No person shall operate a sidewalk patio/café between:

- a. November 1 to March 1 following;
- b. the hours of 11:00 p.m and 8:00 a.m.; and,
- c. other than the hours of operation of the business that it is associated with.

22. Sidewalk Patio/Café to be Operated in Conjunction with Business

No person shall operate a sidewalk patio/café except in conjunction with a business that occupies a building within the Town and such business is located in a business premise immediately adjacent thereto.

23. Sidewalk Patio/Café to be in Front of Business Premise

No person shall locate a sidewalk patio/café except immediately adjacent to and within the boundaries as projected onto the sidewalk of the business premise that s/he lawfully occupies.

24. Cleanliness

The sidewalk patio/café operator shall maintain the sidewalk patio/café area, and the immediately adjacent area, in a clean and safe condition at all times.

25. Sidewalk Patio/Café Licence Submission Requirements

The applicant for a Sidewalk Patio/Café Licence shall submit a site plan, drawn to scale which delineates the area of the propose sidewalk patio/café and proposed location and placement of all fixtures. The site plan shall show within 3.0 metres (9.84 feet) of the proposed sidewalk patio/café the location of utility poles, light standards, hydrants and other street furniture.

26. Design of Sidewalk Patio/Café

The design of the sidewalk patio/café shall be consistent with the character of the building in which the business premises is located which the sidewalk patio/café is operated in conjunction with.

27. Insurance Requirements

The operator of a sidewalk patio/café must carry a minimum of \$5,000,000 in liability insurance for the operation of the sidewalk patio/café with such Certificate of Insurance naming the Town and the County of Grey as insured parties. Proof of such insurance is required prior to the issuance of the Sidewalk Patio/Café Licence.

28. Indemnification

The operator of the sidewalk patio/café must indemnify the Town and the County of Grey from any and all claims related to the operation of the sidewalk patio/café. Such indemnification is required prior to the issuance of the Sidewalk Patio/Café Licence.

29. Revocation of Sidewalk Patio/Café Licence

The Chief Building Official may revoke a Sidewalk Patio/Café Licence if it is determined that the sidewalk patio/café has not been operated in compliance with the provisions of this By-law.

30. Denial of Sidewalk Patio/Café Licence

The Chief Building Official may deny a Sidewalk Patio/Café Licence if it is determined by the Chief Building Official that the proponent has operated a sidewalk patio/café at any location within the Town in contravention of this By-law.


PART IV - PENALTY

31. OFFENCES

Every person who contravenes any provision of this By-law is guilty of an offence and on conviction is liable to a penalty as provided in the *Provincial Offences Act*.

Read a first and second time this 10th day of May, 2004.

Read a third time and passed this 10th day of May, 2004.


Ellen Anderson, Mayor

