

<b>Sidewalk Patio and Sidewalk Café Encroachment Policy</b>	
<b>Department:</b> Development Services	<b>Prepared By:</b> Chief Building Official
<b>Date of Passage:</b> July 9, 2012	<b>Resolution Number:</b> 130-2012
<b>Date of Revision:</b> March 14, 2016	<b>Resolution Number:</b> 62-2016
<b>Date of Temporary Revisions (for the Year 2020):</b> June 8, 2020	<b>Resolution Number:</b> 69-2020

**Purpose:**

To establish a policy to allow for the encroachment of Patios and Cafés on municipally owned property.

**Definitions:**

“**Decking**” means a raised platform constructed around a patio in an on-street parking area to ensure a 2 metre barrier free pedestrian corridor is maintained along a sidewalk.

“**Sidewalk Café**” or “**Café**” means a group of tables and chairs and other accessories situated and maintained upon a public sidewalk 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.

“**Sidewalk Patio**” or “**Patio**” means a group of tables and chairs and other accessories situated and maintained upon a public sidewalk for the use and consumption of food and beverages including alcoholic beverages or sale of goods sold to the public from, or in, an adjoining or adjacent indoor food and beverage or retail establishment located adjacent to the business.

**Fees:**

**Waiving of Encroachment Agreement fee and Annual fee for 2020**

Patios

\$250 – Encroachment Agreement Fee \*

\$100 – Annual Fee\*

Sidewalk Cafés

\$250 – Encroachment \*

\$100 – Annual Fee \*

\*Fees may be amended from time to time in the Fees and Charges By-law.

**Policy**

**General Provisions**

1. Any person who wishes to erect, install, maintain, or carry on an Sidewalk Café or Sidewalk Patio on Town owned lands shall be required to submit an application to the Town seeking permission to do so, together with drawings or plans sufficient to describe the encroachment, to the Town’s satisfaction, and payment of the applicable non-refundable encroachment application fee as set by the Town’s Fees and Charges By-law - to be waived for 2020.
2. The form, content, and information requirements of the application and of all applicable fees, including annual fees, shall be as prescribed by the Town from time to time. Encroachment agreements may include encroachment agreement annual fees and which will be established at the commencement of a term of an encroachment agreement.

3. The Town shall review the application to ensure the erection, installation, maintenance of the encroachment on, or encroachment onto Town owned lands, does not, or will not:
  - a) interfere with the Town's intent and purpose in holding the Town owned land;
  - b) create an unsafe condition;
  - c) create liabilities for which the Town cannot assign full responsibility to the owner of said encroachment;
  - d) create a situation that is contrary to any Town By-law, Town Policy or Resolution, or any Provincial or Federal regulation or legislation;
  - e) interfere with work, plans, efforts, or initiatives of the Town to maintain Town owned lands;
  - f) interfere with any utility or other similar installation located on Town owned lands; or
  - g) the applicant is unable to reasonably demonstrate a need for the encroachment.
4. Encroachment agreements may impose specific conditions in the agreement to address concerns identified by the Town.
5. Encroachment agreements shall be for a perpetual term. All encroachment agreements shall be terminable by the Town/or applicant upon ten (10) days written notice. Encroachment agreements cannot be assigned or transferred. Encroachment agreements made in 2020 will be for one season only. Businesses will need to reapply in 2021.
6. The execution of an encroachment agreement in respect of an encroachment 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, and the encroachment agreement may be terminated or suspended in accordance with the terms set out in this Policy and in the encroachment agreement.
7. Encroachment agreements will set out the requirement for the applicant to provide liability insurance naming the Town as an additional named insured.
8. All applications shall be circulated to the relevant Business Improvement Association for their information and comment.
9. Establishment proprietors must carry a minimum of \$2,000,000 liability insurance for the operation of a sidewalk patio or café naming the Town of Saugeen Shores as an additional named insured.

### **Special Conditions**

In addition to the General Provisions of this Policy, the following special conditions apply to every sidewalk patio and sidewalk café

10. No person shall establish a Sidewalk Patio/Café unless an encroachment agreement has been entered into with the Town.
11. The operator of a Sidewalk Patio or Sidewalk Café shall apply for and obtain permission through the execution of an encroachment agreement, prior to the installation of fencing and/or furnishings.
12. Sidewalk Patio furnishings, fences and other Sidewalk Patio improvements must

be removable and not permanently fixed in place. All objects must be contained within the approved Sidewalk Patio area and removed during the off-season or after the Sidewalk Patio ceases operation. The street, sidewalk and municipal property must be restored to its original condition to the satisfaction of the Town.

13. Music or other entertainment provided for patrons of a Sidewalk Patio shall not be amplified or create a nuisance to abutting property owners. The Town reserves the right to revoke permits, without reimbursement of fees, where this nuisance occurs. Nuisance may include, but shall not be limited to, police reports of loud, boisterous, or unreasonable noise, offensive language or other disruptive behaviour.
14. The Town and all public utility agencies retain the right of access to the approved 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 forty-eight (48) hours will normally be given. The Sidewalk Patio or Sidewalk Café improvements shall be removed and reinstalled at the Sidewalk Patio or Sidewalk Café.
15. The Town retains a right of access over, to and upon a Sidewalk Patio or Sidewalk Café for emergency vehicle access.
16. Sidewalk Patio and Retail Requirements
  - 16.1 *Information Requirements:* The applicant shall submit a site plan illustrating the proposed location and placement of planters, tables, chairs, fences and all other accessories to be included within the defined patio space which includes the patio building envelope and any utility poles, trees, bike racks, bench, hydrants, parking metres, shelters, manholes, traffic signs, catch basins, awnings and any other physical or drainage feature of the street within 6 metres (19.7 ft) of any public utility that may be affected by the development.
  - 16.2 *Design:* The design of a Sidewalk Patio shall be consistent with the character of the building, for which it serves as an accessory use, and the design guidelines for the Town of Saugeen Shores shall be considered in review of applications.
  - 16.3 *Location:* Patios that extend from the building façade shall not encroach more than 2.5 meters (8.2 feet) from the building, except where decking is provided, to ensure that a minimum 2 metre unobstructed pedestrian corridor is maintained. The unobstructed pedestrian corridor does not include the utility strip/boulevard area.
    - 16.3.1 Decking:

Decking may be considered provided it meets the following standards:

      - a) is built at the same height as the curb with a 2 metre minimum width
      - b) shall not encroach onto a vehicular travel lane
      - c) fencing shall be installed in accordance with Section 16.6 separating the decking from the vehicular travel lane
      - d) a skirt or screen shall be provided where the distance between the grade and the top of the decking is greater than the total thickness of the deck and framing members

- e) decking shall be constructed of wood and shall be treated, painted or stained
- f) decking to be located at a corner, immediately adjacent to a pedestrian crossing shall provide a minimum break of 1.03 metres to permit barrier free access
- g) all provincial requirements shall be addressed prior to approval of the patio.
- h) Decking must be inspected by the Town and meet the requirements of the Town prior to being occupied.
- i) The design of the decking must be reviewed by the Town's Accessibility Committee prior to construction.
- j) Construction materials, tools and equipment cannot be placed or operated on the sidewalk, or adjacent parking space or roadway during the construction of the deck.
- k) Any work being done on municipal property must be performed by a qualified, competent contractor approved by the Town of Saugeen Shores and Occupational Health and Safety standards must be adhered to at all times.

16.3.2 Port Elgin BIA: Within the boundaries of the Port Elgin BIA, decking is not permitted for lands abutting Highway 21/Goderich Street

- 16.4 *Accessory Use*: A Sidewalk Patio shall be located adjacent to or abutting the existing food and beverage or retail establishment and shall be considered an accessory use. A Sidewalk Patio shall ensure a free and clear access to the entrance.
- 16.5 *Hours of Operation*: A Sidewalk Patio shall be operated for no longer than the operating hours of the principle use to which it is accessory, and in any event must be closed not later than 11:00 p.m. on any given night, unless granted permission from the Town as an endorsed special event and operating not later than 1:00 a.m.
- 16.6 *Fencing*: Fencing of a Sidewalk Patio must form a fully enclosed perimeter.
  - a) The fencing requirements are as follows and must be in compliance with the Alcohol and Gaming Commission of Ontario for those serving: the minimum height for fencing is 1.1 metres (42 inches) to a maximum of 1.2 metres (48 inches);
  - b) fencing shall be supported by metal foot plates and shall not be designed to penetrate the surface of the sidewalks (i.e.: no bolts/brackets) except as authorized by Public Works unless alternative supports are approved by the Town such as planters, weights, etc.
  - c) fencing should be of solid construction and be designed for easy removal from the site;
  - d) fencing located within 6 metres (20 ft) of the intersection shall not obstruct the vehicular view angles as determined by the Town;
  - e) fencing to be removed by October 31<sup>st</sup> of each year to allow for sidewalk

maintenance and snow clearing.

- 16.7 *Umbrellas*: Umbrellas shall be located entirely within the approved Sidewalk Patio fence area. Umbrellas shall not contain advertising.
  - 16.8 *Waste and Storage*: Sidewalk Patio operators shall maintain the Sidewalk Patio area; and the immediately adjacent area, in a clean and safe working condition at all times. Refuse containers are not permitted within the Sidewalk Patio area but portable service carts may be used for collection and transport to the associated restaurant. The storage of waste is not permitted.
  - 16.9 *Access*: An operator shall maintain a minimum width of 1.1 metres (3ft 6in) of unobstructed entrance to a Sidewalk Patio. Barrier free access shall be maintained.
  - 16.10 *Landscaping*: Landscaping of the Sidewalk Patio is encouraged but should be of a temporary nature unless otherwise approved. Plant material must be contained within the approved Sidewalk Patio area, or at the discretion of the Town.
  - 16.11 *Lighting*: Lighting of a Sidewalk Patio shall be permitted provided all lighting is task oriented and will not spill onto abutting properties or interfere with the vehicular travel lanes. All lighting shall be contained within the patio area.
  - 16.12 *Signs & Advertising*: No signs or advertising within a Sidewalk Patio shall be permitted with the exception of a menu and no smoking sign(s). A single menu can be posted on the fencing but must be no larger than 40cm (16 inches) by 50 cm (20 inches) in size. **(Removed for 2020)**
  - 16.13 *Sidewalk Patio Furnishings*: All tables, chairs and decorative accessories in a Sidewalk Patio should be constructed using weather resistant materials. Any bar unit, service cart or server's work station shall be portable and shall not be permanently attached to the wall of the facing building or the fencing. Any electric or gas powered bar unit/service cart shall be approved by the Town. All furnishings and equipment with the exception of umbrellas shall not exceed the height of the fence. If furnishings are to be anchored to the sidewalk, the Town shall approve how the furnishings are anchored.
  - 16.14 *Season*: The months of operation shall be April 1st through October 30th unless otherwise approved.
  - 16.15 *Propane Heaters*: Propane Heaters are permitted on a Sidewalk Patio provided they are installed and operated in accordance with the manufacturer's instructions.
  - 16.16 *Site Visibility Triangle*: Where patios are located in proximity to intersections, staff will review the proposal to ensure that vehicular and pedestrian safety is maintained. Patios may require alterations to ensure safety.
17. Sidewalk Café Requirements
    - 17.1 *Information Requirements*: The applicant shall submit a site plan, drawn to scale which shows the delineated area of the proposed Sidewalk Café

against the business façade and proposed location and placement of table(s) and chairs which includes the café building envelope, public sidewalk and entrance to the indoor restaurant associated with the sidewalk café, awnings and any other physical or drainage feature of the street or beyond six (6) metres (19.7 ft) of any public utility that may be affected.

17.2 *Design:* The design of a Sidewalk Café shall be consistent with the character of the building for which it serves as an accessory use, and the design guidelines for the Town of Saugeen Shores shall be considered in the review of applications. A sidewalk Café shall consist of café tables and shall not encroach onto the pedestrian delineated pathway, except where decking is provided.

17.3 *Location:* Cafes that extend from the building façade shall not encroach more than 2 meter (6.6 feet) from the building or the lesser, except where decking is provided, to ensure that a minimum 2 meter unobstructed pedestrian corridor is maintained. The unobstructed pedestrian corridor does not include the utility strip/boulevard area.

17.3.1 Decking: Decking may be considered provided it meets the following standards:

a) is built at the same height as the curb with a 2 metre minimum width

b) shall not encroach onto a vehicular travel lane

c) fencing shall be installed separating the decking from the vehicular travel lane

d) a skirt or screen shall be provided where the distance between the grade and the top of the decking is greater than the total thickness of the deck and framing members

e) decking shall be constructed of wood and shall be treated, painted or stained

f) decking to be located at a corner, immediately adjacent to a pedestrian crossing shall provide a minimum break of 1.03 metres to permit barrier free access

g) all provincial requirements shall be addressed prior to approval of the patio

h) Decking must be inspected by the Town and meet the requirements of the Town prior to being occupied.

i) The design of the decking must be reviewed by the Town's Accessibility Committee prior to construction.

j) Construction materials, tools and equipment cannot be placed or operated on the sidewalk, or adjacent parking space or roadway during the construction of the deck.

k) Any work being done on municipal property must be performed by a qualified, competent contractor approved by the Town of Saugeen Shores and Occupational Health and Safety standards

must be adhered to all times.

17.3.2 Port Elgin BIA: Within the boundaries of the Port Elgin BIA, decking is not permitted for lands abutting Highway 21/Goderich Street

- 17.4 *Accessory Use*: A Sidewalk Café shall be located adjacent to the existing food and beverage establishment and shall be considered an accessory use. A Sidewalk Café shall ensure a free and clear access to the entrance.
- 17.5 *Hours of Operation*: A Sidewalk Café shall be operated for no longer than the operating hours of the principle use to which it is accessory, and in any event must be closed no later than 11:00 p.m. on any given night.
- 17.6 Fencing and umbrellas are permitted within the Sidewalk Café area. Fencing and umbrellas shall not impede pedestrian flow.
- Fencing shall conform with municipally established façade improvement guidelines. In the absence of façade improvement guidelines, patio aesthetics shall conform with district design guidelines.
- 17.7 A Sidewalk Café may have food service on the sidewalk, however, shall not be licensed to serve or consume liquor.
- 17.8 *Access*: An operator shall maintain a minimum width of 1.1 metres (3ft 6in) of unobstructed walkway to the entrance of a Sidewalk Café.
- 17.9 *Lighting*: Lighting of a Sidewalk Café shall be permitted provided all lighting is task oriented and will not spill onto abutting properties or interfere with the vehicular travel lanes. All lighting shall be contained within the café area.
- 17.10 *Sidewalk Café Furnishings*: All tables, chairs and decorative accessories in the Sidewalk Café should be constructed using sturdy weather resistant materials and be secure or of solid construction as not to be affected by the wind. Furnishings shall not exceed a height of 1.2 metres (48 inches). Furnishings may remain outside of business hours from April 1<sup>st</sup> to October 21<sup>st</sup>. The Town is not responsible for stolen furniture and it is the owner's responsibility to ensure none of the furniture is misplaced and/or creates an unsafe condition. If furnishings are to be anchored to the sidewalk, the Town shall approve how the furnishings are anchored.
- 17.11 *Season*: The months of operation may be year round with removal of furnishing required when the sidewalk is being cleared of snow or icy conditions exist.
- 17.12 *Propane Heaters*: Propane heaters are permitted on a Sidewalk Café provided they are installed and operated in accordance with the manufacturer's instructions.
- 17.13 *Storage of waste* is prohibited in a Sidewalk Café area.
- 17.14 *Site Visibility Triangle*: Where cafes are located in proximity to intersections, staff will review the proposal to ensure that vehicular and pedestrian safety is maintained. Cafes may require alterations to ensure safety.