

The Corporation of the
Municipality of West Perth

By-law No. 052-2013

Being a by-law to adopt a Sidewalk Patio and Café Policy

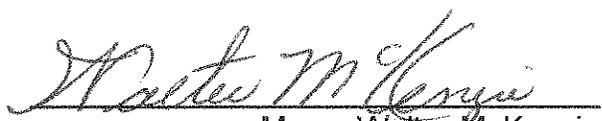
WHEREAS the Municipal Act, 2001, c. 25, as amended, provides that a municipal council may delegate by by-law various responsibilities associated with the regulation of encroachments, including enforcement and inspection related to the same;

AND WHEREAS the Council of the Municipality of West Perth considers it desirable and necessary to regulate encroachments on municipally owned lands for the purposes of sidewalk patios and cafes;

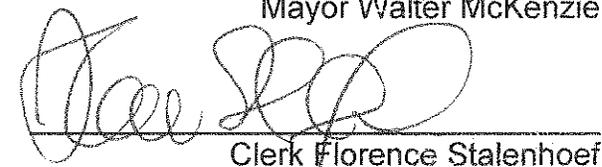
NOW THEREFORE the Council of the Corporation of the Municipality of West Perth enacts as follows:

1. That the Sidewalk Patio and Café Policy attached here to as Schedule A is hereby adopted.
2. That this By-law shall come into force and effect upon the date of passage.

Read a first and second time this 21st day of May, 2013.



Mayor Walter McKenzie

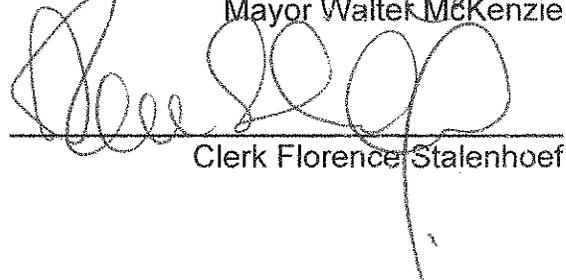


Clerk Florence Stalenhoef

Read a third and final time and finally passed this 21st day of May, 2013.



Mayor Walter McKenzie



Clerk Florence Stalenhoef

Schedule 'A'

Sidewalk Patio and Sidewalk Café Policy

Purpose

To establish a policy to allow for the encroachment of Sidewalk Patios and Sidewalk Cafés on public sidewalks.

This policy has been created in response to inquiries from local indoor eating and beverage establishments, as well as local eating and beverage establishments that may in the future desire to have a Sidewalk Patio or Sidewalk Café.

Policy

The Municipality of West Perth recognizes that the development of Sidewalk Patios and Sidewalk Cafés supports a vibrant, active and an attractive Downtown Commercial Core, with a pedestrian environment that is comfortable, accessible and aesthetically pleasing. At the same time, private use of public sidewalks must allow for the safe, unobstructed travel of persons of varying accessibilities throughout the Downtown Commercial Core.

The use of Municipal sidewalks for the Open Display of Merchandise is not part of this policy, and shall continue to be regulated under By-law #079 - 2010.

Definitions

This policy differentiates between a Sidewalk Patio and a Sidewalk Café.

“**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, sold to the public from, or in, an adjoining or adjacent indoor food and beverage establishment. A Sidewalk Patio shall 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 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 shall extend no wider than the width of the associated indoor food and beverage establishment. A Sidewalk Café shall not be enclosed by a fence, and no service or consumption of alcohol is permitted.

A. General Provisions:

1) Location:

Sidewalk Patios and Cafés shall only be permitted within the areas shown and/or described in Appendix “A, B and C” of this policy. Within the lands shown and/or described in Appendix “A, B and C” 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').

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.

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) 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. All furnishings shall be black in colour.

4) Elevated Platforms and Outdoor Carpets:

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

5) Lighting:

Lighting of Sidewalk Patios or Sidewalk Cafés, other than approved lighting on the façade of the associated indoor food and beverage establishment building, shall not be permitted.

6) Propane Heaters:

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

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.

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 9:00 pm. 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.

9) Signage and Awnings:

All signage and awnings shall comply with the provisions of the Municipality's Sign By-law (By-law #080 – 2010).

10) Smoking:

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

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.

12) Enforcement:

Where the Municipality's Chief Building Official, By-law Enforcement Officer, Fire Chief or Operation Manager, 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.

B. Specific Provisions - Sidewalk Patios:

1) Application Process:

- a) Any person who wishes to erect, install, maintain, or carry on a Sidewalk Patio on a public sidewalk shall be required to annually submit an application 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) Deposits:

a. Administrative Deposit:

- i. Upon initial application, the applicant shall deposit with the Municipality an "Administrative Deposit" in the amount of \$800.00, to be used for the preparation of the Sidewalk Patio Agreement. If required, additional amounts may be requested by the Municipality before further processing any application. The Administrative Deposit balance remaining, if any, after the agreement is prepared shall be returned to the applicant.
- ii. Upon application in subsequent years, and provided that the application is substantially consistent with the previous year and would not alter the Sidewalk Patio Agreement previously prepared (as determined solely by the Municipality), the Municipality in its absolute discretion may forego requesting the submission of an Administrative Deposit.

b. Security Deposit:

- i. Upon initial application, the applicant shall also deposit with the Municipality \$2,000.00 as a "Security Deposit". The Security Deposit shall be applied to the cost or expense incurred by the Municipality to enforce the Sidewalk Patio Agreement. Upon the annual dismantling of the Sidewalk Patio area to the full satisfaction of the Municipality and the termination of the Sidewalk Patio Agreement, the balance of the Security Deposit remaining, if any, shall be returned to the applicant.
 - ii. Upon application in subsequent years, the applicant shall re-submit such \$2,000.00 Security Deposit to the Municipality, with any balance remaining being returned to the applicant upon the annual dismantling of the Sidewalk Patio area and termination of the Sidewalk Patio Agreement.
- 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 policy;
 - 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.

2) Sidewalk Patio Agreement:

- a) The Sidewalk Patio may be established only after the execution of a Sidewalk Patio Agreement between the applicant and Municipality. Authority for the Municipality to enter the Sidewalk Patio Agreement shall be through Council.
- b) The Sidewalk Patio Agreement shall ensure that the items identified by the applicant in their application, as well as the items identified by the Municipality during the application review process, are incorporated. A Sidewalk Patio Agreement may impose specific conditions or provisions to address identified concerns.
- c) The Sidewalk Patio Agreement shall renewed annually. The Sidewalk Patio Agreement 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 Agreement or terms and provisions of the Sidewalk Patio and Sidewalk Café Policy.
- d) The execution of the Sidewalk Patio Agreement 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 Agreement will set out the requirement for liability insurance, which must remain in full force and effect for the entire term of the Agreement. Such insurance shall be in the minimum amount of five million dollars (\$5,000,000.00) per occurrence, and shall name the Corporation of the Municipality of West Perth 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 Agreement, 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 Agreement shall not be alleged as a defense by the applicant in any action, by any person, for damages suffered.
- g) Once the Sidewalk Patio Agreement has been executed, the Municipality shall be provided with thirty (30) days written notice by the applicant of any intention to:
 - a. Transfer the associated indoor food and beverage establishment; or
 - b. Change the occupier of the associated indoor food and beverage establishment to an individual other than the applicant, or a company controlled by the applicant.

Upon receipt of such notice the Municipality shall, in its sole discretion, determine whether it wishes to continue with the terms of the Agreement or terminate the Agreement.

3) Location:

A Sidewalk Patio may extend out no more than 2.5 metres (8.2 feet) from the building façade, ensuring that a minimum 1.5 meter (ground to sky) unobstructed pedestrian corridor is maintained.

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

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 1.1 metres (42 inches) to a maximum of 1.2 metres (48 inches). 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 Policy.

All furnishings, fences, and other improvements shall be contained within the Sidewalk Patio area and be removed 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 are prohibited.

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.

6) Compliance with Health Regulations:

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

C. Specific Provisions - Sidewalk Cafés:

1) Application Process:

- a) On an annual basis, any person who wishes to erect, install, maintain, or carry on a Sidewalk Café on a public sidewalk shall be required to submit an application 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) Following the Municipality's review of the application and provided that the Sidewalk Café is acceptable to the Municipality, the applicant will be provided with a letter from the Municipality acknowledging permission to establish the Sidewalk Café for that respective year, including any terms and conditions by which the applicant must comply. This letter must be issued prior to the Sidewalk Café being established.

2) Location:

A Sidewalk Café shall be located immediately against the building façade and may extend out no more than 2.0 meters (6.6 feet) from the building façade, ensuring that at all times a minimum 2.0 meter (ground to sky) unobstructed pedestrian corridor is maintained.

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

3) 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.

Fencing and umbrellas are prohibited within the Sidewalk Café area.

4) Beverage Service:

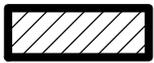
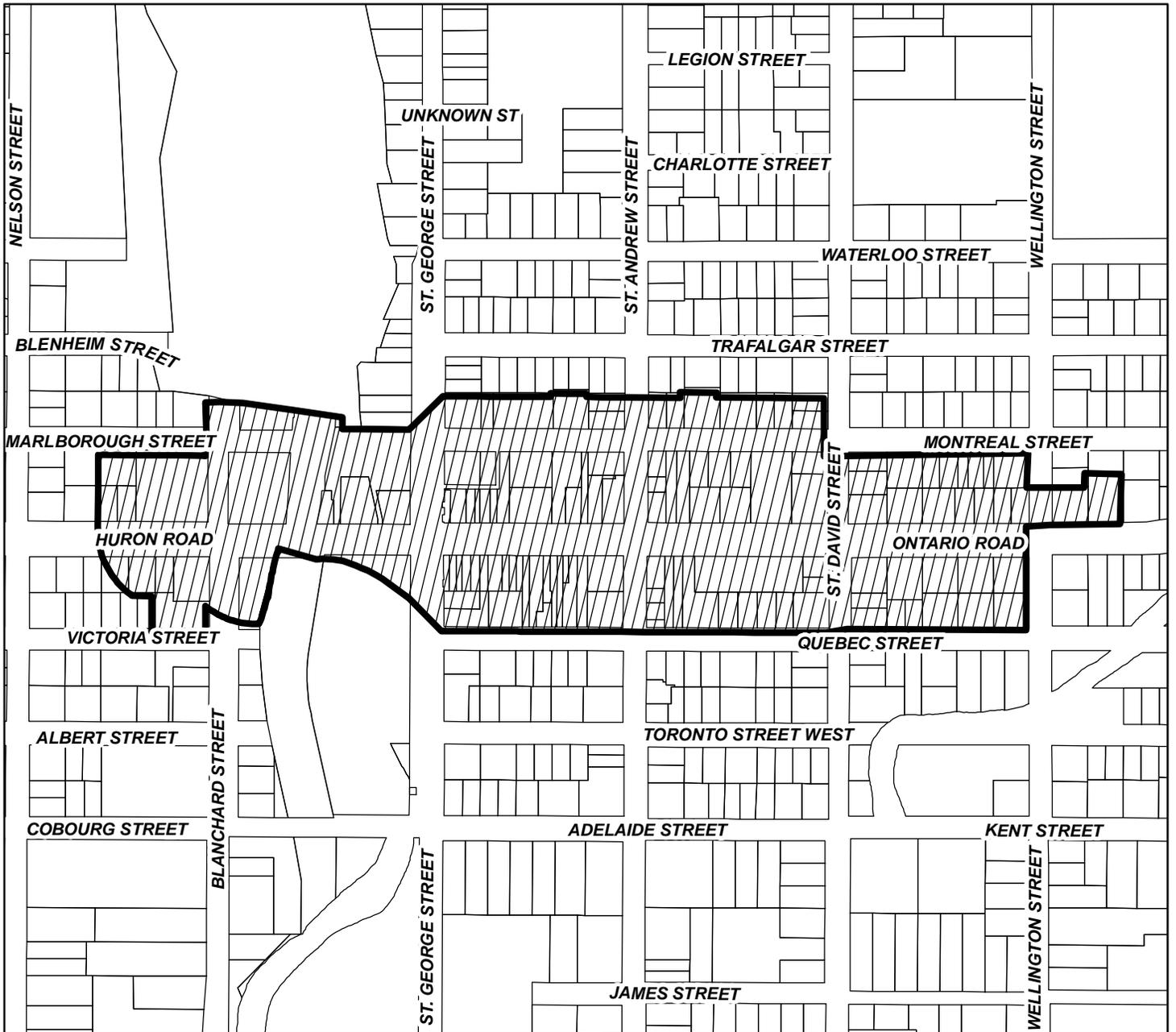
A Sidewalk Café may have non-alcoholic beverage service and consumption, but shall not be permitted to be licensed for the service or consumption of alcoholic beverages.

5) Compliance with Health Regulations:

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

Appendix 'A'
Sidewalk Patio and Sidewalk Cafe Policy

MUNICIPALITY OF WEST PERTH
Mitchell Ward

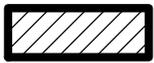


AREA AFFECTED BY POLICY



Appendix 'B'
Sidewalk Patio and Sidewalk Cafe Policy

MUNICIPALITY OF WEST PERTH
Hibbert Ward
Dublin



AREA AFFECTED BY POLICY



Appendix 'C'
Sidewalk Patio and Sidewalk Café Policy

MUNICIPALITY OF WEST PERTH
Logan Ward
Monkton

Within the Village Settlement Area of Monkton:

No person shall use any area on or over Municipal property, streets, sidewalks, highways or encroach thereon for a Sidewalk Patio or Sidewalk Café, save an except those Municipal property, streets, sidewalks, highways that abut lands zoned "Hamlet/Village Commercial Zone", as shown on Key Map 3 of Schedule "A" to the Municipality of West Perth's Comprehensive Zoning By-law No. 100-1998.

Appendix 'D'
Sidewalk Patio and Sidewalk Café Policy

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 | |

FOR SIDEWALK PATIO APPLICATIONS:

Upon application, the Applicant shall deposit with the Municipality:

- \$800.00 - ("Administrative Deposit") – For preparation of the Sidewalk Patio Agreement
- \$2,000.00 – ("Security Deposit") – For enforcement of the Sidewalk Patio Agreement

NOTE: Prior to the execution of the Sidewalk Patio Agreement, 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 \$5,000,000.00 which names the Corporation of the Municipality of West Perth 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 completion of a fully executed Sidewalk Patio Agreement between the Municipality and the Applicant.
- 2) *Sidewalk Café* – May be established only after the Applicant receives a letter from the Municipality authorizing such establishment.

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 Policy and have read and understood the provisions of said Policy.

I acknowledge that in the event permission is granted to me erect a Sidewalk Patio or Café, any non-compliance with specific Policy 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 Policy 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