

CORPORATION OF THE TOWN OF HAWKESBURY

By-law N° 34-2008

**Being a By-law to authorize the use of sidewalks
for terraces on Main Street**

WHEREAS paragraph 5 of Subsection 11(2) of the Municipal Act, 2001 states that a lower-tier municipality may pass by-laws, subject to the rules set out in subsection (4), respecting economic, social and environmental well-being of the municipality;

AND WHEREAS paragraph 7 of Subsection 11(3) of the Municipal Act, 2001 states that a lower-tier municipality may pass by-laws, subject to the rules set out in subsection (4), respecting structures, including fences and signs;

AND WHEREAS demands have been addressed, through the Business Improvement Area Board, from business owners to use part of the sidewalk on Main Street for the establishment of terraces;

AND WHEREAS the Municipal Council deems expedient to adopt guidelines for the purpose of dealing with applications for seasonal extended use of sidewalks within the Business Improvement Area.

NOW THEREFORE the Municipal Council of the Corporation of the Town of Hawkesbury enacts as follows:

1. **THAT** the guidelines for dealing with applications for the seasonal use of extended sidewalks within the Business Improvement Area on Main Street as set forth in Schedules A, B and C part of this by-law are hereby approved and adopted.
2. **THAT** this by-law shall come into force and take effect on the day of its third reading.

READ A FIRST, SECOND AND THIRD TIME THIS 28th DAY OF APRIL 2008.

Mayor

Clerk

(French version has priority over the English version as to its interpretation)

**Schedule A – By-law N° 34-2008
Standards for terraces**

General conditions

1. A person wishing to use part of a sidewalk to install a terrace accessory to a restaurant or dining room must present an official request to the Chief Administrative Officer of the town and attach all information required for its study.
2. All demands will be forwarded for comments to all administration departments. A full demand shall be studied within a delay of 45 days.
3. If the demand is accepted, a lease shall be signed between the town and the tenant. The tenant shall respect all terms and conditions of said lease or it may be annulled without any notice and compensation.
4. The construction of the terrace shall be similar to the sketch showed on Schedule B and respect the material shown on Schedule C. It is possible that the terrace differs from said sketch depending on the environment where it is situated and the requirements of different laws and by-law.
5. The tenant must obtain a written authorization from the owner of the property where the main activity is held and must attach it to his/her demand.

Definitions

“**Terrace**”: a linear perimeter situated outside where are installed tables, chairs and parasols and is adjacent to a building serving food;

“**Roadway**”: part of a public road built for and used for the circulation of vehicles;

“**Public road**”: the whole surface of land or of an infrastructure maintained by the town and on which are built one or more roadways open to the circulation of vehicles, one or more bicycle paths, one or more sidewalks and if applicable, one or more trails;

“**Tenant**”: the person responsible for the commerce who is requesting a terrace on the sidewalk and who will be responsible for the future lease with the town;

“**Town**”: Corporation of the Town of Hawkesbury;

“**Visibility triangle**”: perimeter located at an intersection left free of any obstacles, construction and landscaping to assure visibility and safety for vehicles and pedestrians.

General provisions

The following provisions apply to terraces:

- a) built on a sidewalk in front of the tenant’s commerce only;
- b) that are an accessory use to a restaurant or a dining room located within the business area of the BIA downtown;
- c) that shall not be located:
 - i) in front of an accessibility ramp;
 - ii) in front of a fire hydrant or any other fire apparatus;
 - iii) in front of a loading zone;
 - iv) inside a visibility triangle;

- v) in front an accessibility parking space unless the tenant is willing to pay for all expenses to relocate that parking space;
 - vi) inside of a required evacuation corridor of a minimum of 1.2 meter (4 feet) in width that shall be kept free of any tables, chairs or other obstacles that may impair the evacuation of people situated inside of the commerce or at upper floors, in case of an emergency;
- d) in all cases, the tenant must provide a certified copy of his liability insurance irrevocable without the consent of the town delivered by a broker authorized to carry business in Ontario and showing the following:
- covers the terrace activities and is valid for the whole period of time that the terrace will be operated;
 - must show the town as additional insured, and this without any cost of any kind to the town;
 - must have a minimum coverage of \$2,000,000,00 per event;
 - must have a special clause that all negligence of the insured (tenant) is not opposable to the town.
- e) the tenant discharges the town from any responsibilities for incidents and accidents that may happen on the terrace and commits himself/herself to assume all claims that may be filed against the town for that purpose.
- f) the tenant must give a copy or a proof showing that the owner of the commerce has obtained a permit delivered by the Alcohol and Gaming Commission of Ontario for the terrace.

Applicable standards, laws and by-laws

- a) all applicable construction, zoning, sanitary, peace and order and safety standards contained in any other laws and by-laws are applicable and the authorization given by the town to use the sidewalk for the construction of a terrace does not discharge the tenant from respecting each and every applicable laws and by-laws.
- b) The installation or the use of a lighting system pointing towards the public road or an adjacent building or that is flashing is prohibited.
- c) All decorative items installed on walls (eg: flower basket) shall respect a 2,4 meters clearance from the ground or may be installed on the ground on condition they are within the terrace perimeter.
- d) Under no circumstances a terrace shall be tolerated within a loading zone, a visibility triangle or in a matter that blocks access to a fire hydrant.
- e) All costs pertaining to the construction of a temporary sidewalk in the public road to bypass the terrace and all accessories required to respect the construction standards described in Schedules B and C are at the charge of the tenant.
- f) The temporary sidewalk and all accessories must respect the standards described in Schedules B and C.
- g) The tenant must provide a plan to scale showing how the terrace will be built. This plan must be prior approved by the town.
- h) Flower boxes respecting the construction standards described in Schedules B and C must be installed around the temporary sidewalk to assure pedestrians' safety. The installation and maintenance of these flower boxes are the responsibility of the tenant even if they are not within the rented space.

- i) The tenant is responsible to maintain the flower baskets installed within the rented perimeter even if it belongs to the town. The tenant is also responsible to clean every day the rented perimeter, the temporary sidewalk and all debris around the terrace and the temporary sidewalk.
- j) It is forbidden to encumber the sidewalk around the terrace with publicity signs, self-standing signs and other similar objects or to store any material used for the terrace.
- k) The tenant is responsible to put back to its original state the site and must vacant it no later than October 1st. Failing to restore the site, the town will proceed to its restoration at the tenant's expense.

Opening hours

Opening hours of the terraces are from 11:00 a.m. to 10:00 p.m. Monday to Thursday, from 9:00 a.m. to 11:00 p.m. Friday and Saturday and from 9:00 a.m. to 10:00 p.m. Sunday.

No exception in opening hours during holidays.

The terrace season will begin May 1st and end September 30th.

Other and final provisions

- a) The privilege given by the town for the use of part of a sidewalk for the construction of a terrace as an accessory activity to a restaurant or dining room shall not be interpreted as being a legal right for an owner to have a terrace in front of his/her commerce or shall not be considered as an acquired right for any owner who is or has benefited from such privilege.
- b) The agreement between the town and the tenant must be negotiated every year. The town may put an end to said agreement at any time for conflict of use or any other reasons that the town does not need to justify. The town will not compensate the tenant nor any other party involved for all expenses encountered.
- c) The tenant who fails to give the documents requested or that does not respect the conditions in the lease may be refused the use of the sidewalk for a terrace after a notice is sent by the clerk to correct the situation.
- d) The town may refuse to grant the right to use the sidewalk for a terrace or to limit the number of terraces or the size of terraces depending on the location or for monetary reasons or animation in the downtown core. Each demand for a terrace will be considered as a distinct demand and will be studied as such. It is possible that additional requirements may be asked depending on the case.

Schedule C – By-law N° 34-2008
Material to be used

Temporary sidewalk:

- built with treated wood of 2" x 4" or 2" x 6" depending on configuration;
- have a safety ramp with a handrail;
- built at level with the sidewalk;
- be a width of 42" (1100 mm) and to be accessible to wheel chairs;

Flower boxes:

- made of wood 1" x 3" painted forest green;
- size 2' x 2' x 3' of height;
- flowers;

Fence around terraces:

- be conformed with part IV of the Ontario Building Code.