

BE IT ENACTED by the Council of the Town of Middleton, under the authority of Section 172 (1) c of the *Municipal Government Act*, as amended.

1.0 Title

This Bylaw shall be known as Chapter 10 and may be cited as the “*Sidewalk Café Bylaw*.”

2.0 Purpose

This bylaw is intended to establish rules and guidelines for the installation and operation of Sidewalk Cafés. The Bylaw will be administered through the Chief Administrative Officer or his/her designate.

3.0 Definitions

- (1) “Sidewalk Café” means a group of tables and chairs, and other accessories belonging to an Owner, situated and maintained upon a public sidewalk for the use and consumption of food and beverages sold to the public, from or in, the Owner’s adjoining indoor food and beverage establishment.

4.0 Requirements

(1) Permitted Uses

- a. Sidewalk Cafés may be permitted within land use zones which permit, as primary uses, food and beverage establishments such as restaurants, cafes or pubs.
- b. Sidewalk Cafés are only permitted as an accessory use of a food and beverage establishment such as a restaurant, café or pub.
- c. Sidewalk Cafés may be used for restaurant use (including licensed restaurants) and may be used for lounge use to the extent permitted by any development agreement for lounge use in effect for the property.

(2) Hours of Operation

- a. Sidewalk Cafés may not be installed before May 1.
- b. Sidewalk Cafés must be removed by November 1.
- c. A Sidewalk Café shall be operated for no longer than the operating hours of the principal use to which it is an accessory.
- d. Once the Sidewalk Café is removed for the season the street, sidewalk and municipal property must be restored to its original condition (to the satisfaction of the Chief Administrative Officer or his/her designate).

- (3) Permits
- a. A permit issued by the Town of Middleton's Chief Administrative Officer authorizes the installation of:
 - i. A Sidewalk Café within a designated area with specified objects and accessories for a specific time period, and
 - ii. A temporary sidewalk within a designated area.
 - b. An annual permit to install and operate a Sidewalk Café must be acquired from the Chief Administrative Officer before a Sidewalk Café is installed.
 - c. Applications for a permit to install a Sidewalk Café are available from the Town of Middleton.
 - d. The permit applicant shall submit
 - i. A site plan, (drawn to scale) showing the delineated area of the proposed Sidewalk Café, placement and numbers of planters, awnings, tables, chairs, fences and all other accessories in relation to the public sidewalk; and to the indoor food and beverage establishment associated with it including the temporary sidewalk.
 - ii. The plan shall also show the location of utility poles, hydrants, bus shelters, maintenance holes, traffic signs and other elements within 2 metres of the edge of the proposed Sidewalk Café.
 - iii. A *Building Permit* may be required prior to the installation of a Sidewalk Café and the café shall conform to the requirements of the Building Bylaw.
 - iv. A *Sign Permit* may be required for any advertising within the Sidewalk Café in accordance with Part 7 of the Land Use Bylaw (Signs).
 - e. All required permits must be obtained in advance of Sidewalk Café installation.
- (4) Café Dimensions and Design
- a. Sidewalk Cafés shall not extend onto the frontage of abutting property owners, except that an extension of a maximum of 370 centimetres (12 feet) may be granted to each side of a Sidewalk Café, provided written permission has been provided by the adjacent property owner. In no case shall the total street length of a Sidewalk Café exceed 22 metres (72 feet).
 - b. Sidewalk Cafés shall not extend beyond the edge of the existing sidewalk (inside edge of curb).
 - c. All objects must be contained within the area approved for the Sidewalk Café.
 - d. Any lighting of the Sidewalk Café shall be of a temporary nature and shall not project light onto adjacent properties, nor conflict with traffic control indicators.
 - e. Landscaping of the Sidewalk Café is encouraged however this should be of a temporary nature, unless otherwise approved by the Chief Administrative Officer. Plant material must be contained within the designated Sidewalk Café area.
 - f. All umbrellas shall be located entirely within the approved Sidewalk Café area.
 - g. The elements of the Sidewalk Café, including; temporary sidewalks, landscaping, fencing and furnishings, shall be designed and finished to a standard that is consistent with general appearance of the existing downtown streetscapes and buildings.

- h. All elements shall be maintained in good repair and must be free of hazards.
- i. Wood treated with Chromated Copper Arsenate (CCA - and commonly referred to as pressure treated lumber) shall not be used in the construction of the temporary sidewalk or any other elements of the Sidewalk Café construction, except that CCA wood that formed part of the Sidewalk Café materials approved under a previous Sidewalk Café permit may be reused.
- j. The temporary sidewalk shall be constructed in such a way as not to block or otherwise interfere with the street drainage system.

(5) Temporary Sidewalks

- a. The Owner must provide a temporary sidewalk in the parking area adjacent to the Sidewalk Café to preserve free flow of pedestrian traffic.
- b. The temporary sidewalk is a requirement of the Sidewalk Café application and must conform with the specifications outlined below:
 - i. The temporary sidewalk must be no less than 180 centimetres (6 feet) wide and no more than 210 centimetres (7 feet) wide.
 - ii. The base of the temporary sidewalk must provide a smooth, level transition between the existing sidewalk and the temporary sidewalk surface.
 - iii. When wooden decks are used to create the temporary sidewalk a non-slip surface must be applied.
 - iv. Street traffic shall be blocked at each edge of the temporary sidewalk in both directions by triangular shaped planters with a minimum weight of 1000kg and minimum height of 60cm. The planters shall be maintained with healthy plant materials at all times through the duration of the Sidewalk Café.
 - v. A fence or barrier must be installed along the street side of the temporary sidewalk to delineate the edge of the structure and prevent pedestrians from entering the street.
 - 1. The fence or barrier shall be between 107 centimetres (3.5 feet) and 120 centimetres (4 feet) in height.
 - 2. Fencing may provide partial visual screen but shall not be opaque
- c. When a temporary sidewalk is proposed, the Traffic Authority will review the proposal to ensure that vehicles and pedestrians may continue to move safely and that barrier free access is provided.

(6) Waste, Storage and Maintenance

- a. The Sidewalk Café Owner shall maintain the Sidewalk Café area, the temporary sidewalk area, and the immediately adjacent area, in a clean and safe condition, free of hazards at all times.
- b. Waste receptacles and work-stations should be located along the building wall.
- c. The Owner shall ensure any refuse originating in the café is removed from the street right-of-way.

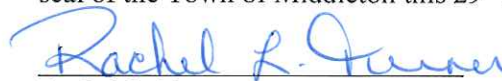
- (7) Building Access
 - a. The Owner shall maintain a minimum width of 120 centimetres (4 feet) of unobstructed (barrier free) access to the entrance of the building.
- (8) Utility Access
 - a. The Town of Middleton and public utility agencies retain the right of entry to the approved Sidewalk Café area and the temporary sidewalk for the installation, maintenance and repair of pipes, cables, wires, poles, hydrants and other elements as necessary.
 - b. In the case of emergency repairs of utility infrastructure noted in clause “a” above, entry may be made without notice. For scheduled work, a minimum notice of 48 hours will be given.
 - c. When access is required by the Town or a Public Utility for a purpose such as those noted in “a.” above, the owner shall remove the Sidewalk Café improvements and re-install them at the Owner’s expense.
- (9) Emergency Access
 - a. The Town of Middleton retains the right of entry to the approved Sidewalk Café for emergency vehicle access.
- (10) Application and Approval Process
 - a. No Owner shall establish or maintain a Sidewalk Café without a permit granted under this Bylaw.
 - b. When a permit application is received the Chief Administrative Officer will advise adjacent property owners of the proposed Sidewalk Café.
- (11) Refusal
 - a. If an application does not meet the requirements of the Bylaw, the Chief Administrative Officer shall refuse the application for a Sidewalk Café permit. The Chief Administrative Officer shall provide a written notice to the applicant outlining the reasons the application was refused.
- (12) Revocation of Permit
 - a. Where an Owner fails to conform to the terms and conditions of a permit the Chief Administrative Officer may order the Owner in writing to remove the Sidewalk Café. If the Owner fails to comply with such an order within 24 hours of notification, the Town may take such action needed to have the Sidewalk Café removed at the expense of the Owner.
- (13) Appeal Process
 - a. If an application is refused or a permit is revoked by the Chief Administrative Officer, the Owner may appeal the action of the Chief Administrative Officer to Council. An appeal shall be made in writing to the Chief Administrative Officer and shall outline the reasons for the appeal.

- b. Council shall consider the appeal at a regular or special meeting of Council and may overturn or affirm the decision of the Chief Administrative Officer.
 - c. Council shall notify the appellant of the date and time of the Council meeting at which the appeal is to be considered.
 - d. Council shall make a decision on an appeal within 30 days of the date the appeal is received by the Chief Administrative Officer.
- (14) Liability
- a. The Owner of a Sidewalk Café must carry a minimum of \$1,000,000 liability insurance for the operation of the Sidewalk Café and name the Town as co-insured and must indemnify the Town of Middleton and save it harmless from any and all claims of injury to persons or damage to property attributable in whole or in part to the existence, location and operation of a Sidewalk Café in the public right-of-way.
 - b. The Town of Middleton shall be notified 30 days before the cancellation of this insurance.
- (15) Variance
- a. The Chief Administrative Officer may vary any of the prescriptive dimensional requirements of this Bylaw by up to 10 percent of the requirements to allow some flexibility to accommodate physical anomalies of a site, so long as the intent of the particular requirement is not compromised.
- (16) Metric Units
- a. Metric units are used for the prescriptive dimensional requirements of this Bylaw. Approximate equivalent Imperial units are provided in brackets following the metric units for the convenience of the reader.

CERTIFICATE

I, Rachel L. Turner, Town Clerk of the Town of Middleton, do hereby certify that the bylaw, of which the foregoing is a true copy, was duly passed at a duly called meeting of the Town Council of the Town of Middleton held on the 18th day of April, 2016.

GIVEN under the hand of the Town Clerk and the corporate seal of the Town of Middleton this 29th day of April, 2016.



Rachel L. Turner
Town Clerk

1. Date of First Reading: March 21, 2016
2. Date of advertisement of Notice of Intent: March 31, 2016
3. Date of Second Reading: April 18, 2016
4. Date of Publication of Notice of Passing: April 28, 2016