



## The Corporation of the Municipality of Arran-Elderslie

<b>Policy Name:</b>	Sidewalk Policy		Policy No: PW02-2022
<b>Department:</b>	Public Works		
<b>Effective Date:</b>			
<b>Date Revised:</b>			
<b>Authority:</b>	By-Law No. XX-2022	<b>Repealed Authority:</b>	

### Coverage:

This policy shall cover all sidewalks in the Municipality of Arran-Elderslie.

At the discretion of the Municipality, construction signage and other materials related to public utilities or municipal business are exempt from this policy.

### Policy Statement:

To establish a policy to allow for the encroachment of patios, cafés, benches, trees, planters, bike racks, signage, other décor items or activities onto municipal property.

In order to erect, install or maintain décor items, bike racks, a sidewalk café or patio or other activity on the sidewalk, a valid encroachment agreement must be entered into with the Municipality of Arran-Elderslie in accordance with this policy.

Council understands and is committed to the beautification and enhancement of our commercial areas but also recognizes the importance of ensuring accessibility standards are maintained. Décor Items and Sidewalk patios/cafés on the sidewalks provide an opportunity for downtown businesses to extend activities and create an atmosphere downtown that people want to spend time in. A sidewalk café or patio, when designed and facilitated appropriately, can make a significant contribution to the downtown community.

## Contents:

### Definitions:

**Sidewalk Café or Café:** means a group of tables and chairs and other accessories situated and maintained upon a public sidewalk, parking space or municipally owned property 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, parking space or municipally owned property 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 located adjacent to the business.

**Bike Rack:** means an area where a cyclist can park a bicycle for an extended period of time. The design or the rack can vary and the number of bicycle parking stations can also vary by design.

**Signage:** means any permanent or removable sign being erected by the applicant that encroaches over the sidewalk. For example, a perpendicular sign.

**Décor Items:** means any removable item that is placed on the sidewalk for aesthetic purposes. This can include but is not limited to; planters, benches, trees, art pieces, etc.

**Municipality:** Refers to the Municipality of Arran-Elderslie as a governing body.

**Certificate of Insurance (COI):** a COI is issued by an insurance company or broker. The COI verifies the existence of an insurance policy and summarizes the key aspects and conditions of the policy. For example, a standard COI lists the policyholder's name, policy effective date, the type of coverage, policy limits, and other important details of the policy.

**Commercial General Liability Insurance:** liability coverage for bodily injury and/or property damage claims brought against the insured by a third party or member of the public.

**Liquor Liability Insurance:** Liability coverage for claims arising out of the sale, manufacture or serving of alcoholic beverages. Under standard Commercial General Liability policies, coverage is excluded if the insured is in the business of serving alcohol. If selling, serving or making alcohol, liquor liability coverage needs to be ADDED to the existing general liability policy or purchased on its own.

### **General Provisions:**

1. Any person who wishes to erect, install, and/or maintain any décor item or activity on Municipally owned or Municipally maintained lands, shall be required to submit an application to the Municipality seeking permission to do so, together with drawings or plans sufficient to describe the encroachment, to the Municipality's satisfaction.
2. The Municipality shall review the application to ensure the erection, installation, maintenance of the encroachment on, or encroachment onto Municipal owned lands, does not or will not:
  - a. Interfere with the Municipality's intent and purpose in holding the Municipal owned land.
  - b. Create an unsafe condition,
  - c. Create liabilities for which the Municipal cannot assign full responsibility to the owner of said encroachment.
  - d. Create a situation that is contrary to any Municipal By-Law, Municipal Policy or Resolution, or any Provincial or Federal regulation or legislation;
  - e. Interfere with work, plans, efforts, or initiatives of the Municipality to maintain Municipal owned lands;
  - f. Interfere with any utility or other similar installation located on Municipal owned lands; or
  - g. The applicant is unable to reasonably demonstrate a need for the encroachment.
3. Décor Items, bike racks, signage, sidewalk cafés or sidewalk patios and other activities shall only be approved if their location and construction maintain a safe, secure and comfortable sidewalk environment for all pedestrians.
4. Décor Items, bike racks, bike repair stations, signage, sidewalk cafés or sidewalk patios and other activities cannot obstruct on-street parking and shall comply with O. Reg. 191.11 Integrated Accessibility Standards.
5. Décor Items, bike racks, bike repair stations, signage, sidewalk cafés or sidewalk patios and other activities placed on the pedestrian right of way must be placed at a minimum height of one (1) metre to reduce trip hazard risks.
6. Encroachment agreements may impose specific conditions in the agreement to address concerns identified by the Municipality.

7. In the event that locates are required, it is the responsibility of the applicant to make the necessary arrangements and pay the associated fee.
8. Encroachment agreements shall be annual from April 1 to October 31. Items may not be placed before approval is granted and must be removed on or before the end date of the agreement. All encroachment agreements shall be terminable by the Municipality or applicant upon ten (10) days written notice. Encroachment agreements cannot be assigned or transferred.
9. The Permit Holder shall, to the fullest extent permitted by law, hold harmless, defend at its own expense, and indemnify the Municipality of Arran-Elderslie, its officers, employees, agents, and volunteers, (the Municipality) against any and all liability, claims, losses, damages, or expenses, including reasonable attorney's fees, arising from all acts or omissions of the Permit Holder or its officers, agents, or employees by reason of, resulting from, or otherwise related to, either directly or indirectly, the presence or operation of the sidewalk encroachment; excluding, however, such liability, claims, losses, damages, or expenses arising from the Municipality's sole negligence or willful acts.
10. The Permit Holder must have Commercial General Liability Insurance including but not limited to bodily injury including death, personal injury, property damage, tenant's legal liability and cross-liability/severability of interest provisions in the amount of Two Million Dollars (\$2,000,000.00) per occurrence with a property damage deductible not to exceed \$1,000 or as agreed to by Permit Holder and name The Corporation of the Municipality of Arran-Elderslie as an Additional Insured.
11. The Commercial General Liability Policy shall contain an endorsement to provide the Municipality of Arran-Elderslie with (30) days prior written notice of cancellation
12. The agreement holder shall furnish the Municipality with a certified copy of the aforementioned insurance policy or an insurance policy or an insurance certificate in a form acceptable to the Municipality prior to commencement of this agreement. The certificate shall be mailed, faxed, emailed or dropped off to the Clerk's Department.
13. Any Permit Holder involved in the sale or furnishing of alcoholic beverages shall also maintain Liquor Liability Insurance with a minimum per occurrence limit of not less than Two Million Dollars (\$2,000,000.00) per

occurrence. The Corporation of the Municipality of Arran-Elderslie shall be named as Additional Insured on the Liquor Liability Insurance policy.

14. The Liquor Liability Insurance Policy, if required, shall contain an endorsement to provide the Municipality of Arran-Elderslie with (30) days prior written notice of cancellation.
15. All insurance policies/coverage shall contain a Cross Liability and Severability of Interest clauses.
16. The applicant shall maintain the required insurance coverage during the term of the Permit. The Municipality of Arran-Elderslie may cancel a Permit for failure to maintain or provide the required insurance coverage.
17. The Municipality reserves the right to register the encroachment agreement on title of the property if deemed appropriate to do so; this will be determined on a case by case basis.
18. Temporary Sidewalk Use/Outdoor Patios **will not**:
  - Permit use of patio heaters;
  - Permit smoking;
  - Provide service between the hours of 11:00 pm and 7:30 am (EST).

#### Special Conditions

1. Where the Décor Items, bike racks, bike repair stations, signage, sidewalk cafés or sidewalk patios and other activities, take place on County of Bruce owned lands, the applicant will apply for an encroachment agreement through the County of Bruce. The County of Bruce will work with the Municipality of Arran-Elderslie to ensure the application and drawings meet the requirements of the Sidewalk Policy and are acceptable to the Municipality.
2. Applications will be considered on a case by case basis by the Municipality. A list of conditions to be met for approval may be sent to the County of Bruce. If the application is not acceptable, a list providing the reasons for non-approval will be provided to the County of Bruce.
3. The County of Bruce will contact the applicant with the approval or the conditions or approval, or the disapproval of the application.
4. If the proposed encroachment will be placed on both Municipal and County property, an encroachment permit will be required by both parties, along with the applicable fees.

## **Sidewalk Patio and Sidewalk Café Conditions**

1. No person shall establish a Sidewalk Café or Sidewalk Patio unless an encroachment agreement has been entered into with the Municipality.
2. The operator of a Sidewalk Café or Sidewalk Patio shall apply for and obtain permission through the execution of an encroachment agreement, prior to the installation of fencing and/or furnishings.
3. Sidewalk Café or Sidewalk Patio furnishings, fences and other improvements must be removable and not permanently fixed in place. All objects must be contained within the approved Sidewalk Café or Sidewalk Patio area and removed during the off-season or after the Sidewalk Café or Sidewalk Patio ceases operation. The street, sidewalk and Municipal owned lands must be restored to its original condition to the satisfaction of the Municipality.
4. All Sidewalk Cafés and Sidewalk Patios must comply with applicable Smoking Legislation and all other Federal, Provincial and Municipal Laws.
5. Music or other entertainment provided for patrons of a Sidewalk Café or Sidewalk Patio shall not be amplified or create a nuisance to abutting property owners. The Municipality reserves the right to revoke agreements, 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.
6. The Municipality and all public utility agencies retain the right of access to the approved Sidewalk Café or Sidewalk Patio areas 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 Café or Sidewalk Patio improvements shall be removed and reinstalled upon completion of the work required.

## **Sidewalk Patio and Sidewalk Café Requirements**

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, accessible parking spaces, trees, bike racks, benches, hydrants, parking metres, shelters, manholes, traffic signs, catch basins, awnings and any other physical or drainage features of the street within 6 metres (19.7 ft) of any public utility that may be affected by the development. If alcoholic beverages will be served, a copy of the establishments approved liquor licence allowing the sale and consumption of alcoholic beverages within the proposed area must be submitted along with the application.

**2. Design**

The design of the Sidewalk Café or 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 Municipality of Arran-Elderslie shall be considered in review of applications. Café and Patio aesthetics shall conform with the Municipality's community toolkits and façade improvement guidelines, where applicable.

**3. Location:**

Patios that extend from the building façade are required to ensure that a minimum 1.5 metre unobstructed pedestrian corridor is maintained. The unobstructed pedestrian corridor does not include the utility strip/boulevard area.

**4. Fencing:**

Fencing of a Sidewalk Patio that sells alcoholic beverages, must form a fully enclosed perimeter. Fencing shall conform with Municipal established façade improvement guideline, where applicable.

The fencing requirements are as follows and must be in compliance with the Alcohol and Gaming Commission of Ontario:

- a. 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 (ie. No bolts/brackets) except as authorized by Public Works unless alternative supports are approved by the Municipality such as planters, weights, etc.;
- c. Fencing should be of solid construction and be designed for easy removal from the site;
- d. Fencing shall not include point finials or similar features to the top of the fence;
- e. Fencing located within 6 metres (20 ft) of the intersection shall not

obstruct the vehicular view angles as determined by the Municipality;

- f. Fencing to be removed by October 31<sup>st</sup> of each year to allow for sidewalk maintenance and snow clearing.
5. Umbrellas:  
Umbrellas shall be located entirely within the approved Sidewalk Café or Patio fence area.
6. Waste and Storage:  
Sidewalk Café and Sidewalk Patio operators shall maintain the Sidewalk Café or Patio area; and the immediately adjacent area, in a clean and safe working condition at all times. Refuse containers are not allowed within the Sidewalk Café or Patio area. The storage of waste is not allowed.
7. Access:  
A Sidewalk Café or Sidewalk Patio operator shall maintain a minimum width of 1.1 metres (42 inches) of unobstructed entrance to a Sidewalk Café or Sidewalk Patio. Barrier free access shall be maintained.
8. Lighting:  
Lighting of a Sidewalk Café or Sidewalk Patio shall be approved provided all lighting is task oriented and will not spill onto abutting properties or interfere with the vehicular traffic travel lanes. All lighting shall be contained within the patio area.
9. Signs & Advertising:  
No signs or advertising with a Sidewalk Café or Sidewalk Patio shall be approved with the exception of a menu and no smoking/no vaping sign(s).
10. Sidewalk Patio Furnishings:  
All tables, chairs and decorative accessories in a Sidewalk Café or 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. 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 Municipal shall approve how the furnishings are anchored.
11. Site Visibility Triangle:

Where Sidewalk Cafés or Sidewalk 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.

**12. Hours of Operation:**

Sidewalk Cafés and/or Sidewalk Patios must be closed no later than 11PM. Special consideration may be given to extend the hours of operation with a noise by-law exemption request to Council.

***Bike Rack Conditions***

1. No person shall erect a bike rack unless an encroachment agreement has been entered into with the Municipality.
2. Bike racks must be removable and not permanently fixed in place. All objects must be contained within the approved bike rack area and removed during the off-season. The street, sidewalk and Municipal owned lands must be restored to its original condition to the satisfaction of the Municipality.
3. The Municipality and all public utility agencies retain the right of access to the approved bike rack areas 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 or forty-eight (48) hours will normally be given. The bike rack shall be removed and reinstalled among completion of the work required.

***Bike Rack and Repair Station Requirements:***

**1. Information Requirements**

The applicant shall submit a site plan illustrating the proposed location and placement of the bike rack which includes any utility poles, accessible parking spaces, trees, benches, hydrants, parking metres, shelters, manholes, traffic signs, catch basins, awnings and any other physical or drainage features of the street within 6 metres (19.7 ft) of any public utility that may be affected by the development.

**2. Location:**

Bike racks shall be placed to ensure a minimum 1.5 metre unobstructed pedestrian corridor is maintained. The unobstructed pedestrian corridor does not include the utility strip/boulevard area.

**3. Site Visibility Triangle**

Where bike racks 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.

***Planters, Benches and Other Décor Item Conditions:***

1. No person shall erect planters, benches or other décor items on the sidewalk unless an encroachment agreement has been entered into with the Municipality.
2. All Décor Items must be removable and not permanently fixed in place. All objects must be contained within the approved area and removed during the off- season. The street, sidewalk and Municipal owned lands must be restored to its original condition to the satisfaction of the Municipality.
3. The Municipality and all public utility agencies retain the right of access to the approved 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 or forty-eight (48) hours will normally be given. The décor items shall be removed and reinstalled among completion of the work required.

***Planters, Benches and Other Décor Item Requirements:***

**1. Information Requirements**

The applicant shall submit a site plan illustrating the proposed location and placement of the décor items which includes any utility poles, accessible parking spaces, trees, benches, hydrants, parking metres, shelters, manholes, traffic signs, catch basins, awnings and any other physical or drainage features of the street within 6 metres (19.7 ft) of any public utility that may be affected by the development.

**2. Location:**

Décor Items shall be placed to ensure that a minimum 1.5 metre unobstructed pedestrian corridor is maintained. The unobstructed pedestrian corridor does not include the utility strip/boulevard area.

**4. Site Visibility Triangle**

Where planters, benches and other décor items 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.

## ***Signage Conditions and Requirements***

### **1. Information Requirements**

The applicant shall submit a site plan illustrating the proposed location and placement of the signage which includes the measurements of the sign and the height at the base of the sign after installation.

### **2. Design**

The sign content will be limited to menu items and/or other content directly related to the business activities.

### **3. Location**

Signage shall be placed to ensure a minimum 1.5 metre unobstructed pedestrian corridor is maintained. The unobstructed pedestrian corridor does not include the utility strip/boulevard area. The Municipality will be provided an opportunity to inspect the sign after installation to ensure it meets the minimum installation requirements as noted in the signage guidelines.

### **5. Site Visibility Triangle**

Where signage is 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.

## ***Temporary Accessible Ramps***

### **1. Information Requirements**

The applicant shall submit a site plan illustrating the proposed location and placement of the temporary accessible ramp which includes the measurements of the length of the ramp encroaching onto Municipal owned or maintained property, the height of the ramp at various points, and the plan for removal and installation.

### **2. Design**

The temporary accessible ramp should be designed in such a way that does not create slip, trip or fall hazard for the general public or staff of the establishment.

### **3. Access**

The temporary accessible ramp shall be removed nightly and should

not be installed when not in use to avoid tripping hazards for the other users of the public sidewalk.

**4. AODA Requirements**

The temporary accessible ramp should meet all the requirements for accessible ramps as outlined in the Accessibility for Ontarians with Disabilities Act, 2005 including the proper length, degree of incline and placement.

**5. There is no fee for the installation of a temporary accessible ramp.**

***Application and Fees***

Applications will be submitted for review and approval to the Public Works manager or designate, accompanied by the required fee as per the Municipality's Fees and Charges Bylaw.

Approval will be on an annual basis to ensure applications follow current legislative requirements.

***Compliance***

Failure to comply with the terms of this policy and any additional conditions as provided in the approved encroachment agreement will result in the termination of the agreement. Permit holders will be provided notice in writing of the violation and provided a timeline of no more than three (3) calendar days to comply. If the violation is not corrected, the Municipality reserves the right to remove the items at the expense of the permit holder.

Patios, cafés, benches, trees, planters, bike racks, signage, other décor items or activities onto municipal property without a valid encroachment permit will be required to submit an application and applicable fee within three (3) calendar days. The Municipality reserves the right to remove all items at the expense of the owner if no application is received.

***Inspection***

To ensure compliance, the Chief Building Official or designate will inspect the associated features as approved in the application. If found to be non-compliant, the features will need to be removed.