

## TORONTO MUNICIPAL CODE, STREETS AND SIDEWALKS

shall be authorized to undertake all further cleaning as necessary and charge the cost to the licence holder.

- (3) No licence issued under this section shall be renewed unless all charges made under Subsection E(1) and (2) have been paid in full to the City by the licence holder prior to April 1 of the year of renewal.
- F. Any holder of a licence under this section shall as of July 31, 1998 ensure that no goods are displayed or sold within the licensed portion of the boulevard except goods which are the same or similar to those sold as part of the primary business carried on within the abutting premises occupied by the owner or occupant. **[Added 1998-07-31 by By-law No. 553-1998; amended 1998-10-30 by By-law No. 797-1998]**
- G. (1) The Commissioner may, after providing the holder of a licence under this section with notice and an opportunity to be heard by the Committee, recommend to the Committee and Council that the size of the licensed area be reduced so as to ensure sufficient space for the safe passage of pedestrian traffic on the sidewalk. **[Added 1998-07-31 by By-law No. 553-1998]**
- (2) Where Council directs that the size of the licensed area shall be reduced, subsection 313-35B(8) shall apply with respect to the reduction of the licensed area by the licensee. **[Added 1998-07-31 by By-law No. 553-1998]**

### § 313-36. Boulevard cafes.<sup>48</sup>

- A. Despite any City by-law, where the owner or occupant of property, which may be lawfully used for industrial or commercial purposes and which abuts on a boulevard, lawfully operates on the property a licensed victualling house, restaurant, take-out restaurant, refreshment establishment or lunch counter which is subject to inspection by the Medical Officer of Health and in which washroom facilities are located, the owner or occupant may apply to establish, maintain and operate a boulevard cafe in conjunction with that operation on the portion of the boulevard between the street line and a line located forty-six hundredths (0.46) metre back of and parallel to the sidewalk and that is not less than two and one-tenth (2.1) metres from the curb.
- B. Application procedure.
- (1) The owner or occupant shall complete an application in the form prescribed by the Commissioner, and shall pay in advance a processing fee in the amount specified in Schedule A at the end of this chapter.

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<sup>48</sup>Editor's Note: This section was passed under the authority of paragraph 3 of section 308 and section 310 of the Municipal Act, R.S.O. 1990, c. M.45., and the City of Toronto Act, 1993 (No. 3).

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- (2) The Medical Officer of Health shall report to the Commissioner with respect to the application and the existence of approved washroom facilities to be used in conjunction with the boulevard cafe.
- (3) The Commissioner of Buildings and Inspections shall report to the Commissioner indicating whether the boulevard cafe is located in an area which may be used for commercial or industrial purposes.
- (4) Where the application is for a boulevard cafe to be located on a residential flankage, the Commissioner shall require that a poll be conducted under Chapter 90, Polling and Notification Procedures. **[Amended 1996-09-16 by By-law No. 1996-0450; 1997-10-06 by By-law No. 1997-0633]**
- (5)<sup>49</sup> Where the application is for a boulevard cafe to be located on a commercial frontage, the Commissioner shall prepare a notice advising of the application and shall post the notice on the property in a manner so that the notice is visible to passersby, for a period of not less than fourteen (14) days before a date specified by the Commissioner. **[Added 1997-10-06 by By-law No. 1997-0633]**
- (6)<sup>50</sup> Where the Commissioner determines that the application does not comply with this chapter and the policies of Council, where the results of the poll taken under Subsection B(4) are that the majority, as defined in § 90-2G, are not in favour of the application, or where the Commissioner receives one or more letters of objection in response to the public notice posting set out in Subsection B(5), the Commissioner shall refuse the application. **[Added 1997-10-06 by By-law No. 1997-0633]**
- (7)<sup>51</sup> Upon receipt of the polling or public notice results regarding a boulevard cafe, the Commissioner shall inform the Ward Councillor and the Ward Councillor may bring the application before the next regular meeting of the City Services Committee for consideration. **[Added 1997-10-06 by By-law No. 1997-0633]**
- (8) If the application is not refused under Subsection B(6) or referred to the City Services Committee under Subsection B(7), the Commissioner shall approve the application. **[Added 1997-10-06 by By-law No. 1997-0633<sup>52</sup>]**

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<sup>49</sup>Editor's Note: Former Subsection B(5), regarding boulevard cafes located on a residential flankage, amended 1995-05-16 by By-law No. 1995-0367, was repealed 1996-09-16 by By-law No. 1996-0450.

<sup>50</sup>Editor's Note: Former Subsection B(6), regarding polls requested by a Councillor, was repealed 1995-05-16 by By-law No. 1995-0367.

<sup>51</sup>Editor's Note: Former Subsection B(7), regarding the Commissioner's right to refuse an application, amended 1995-05-16 by By-law No. 1995-0367, was repealed 1996-09-16 by By-law No. 1996-0450.

<sup>52</sup>Editor's Note: This by-law also provided for the redesignation of former § 313-36B(8) and (9) as § 313-36B(9) and (10), respectively.

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- (9) Where an application has been refused by the Commissioner, the applicant may appeal the refusal under § 313-77.
- (10) Where a refusal is appealed in writing under § 313-77, the Commissioner shall prepare and forward a report to the Committee setting out the grounds for refusal of the application, which shall be considered in conjunction with the appeal. **[Added 1995-03-27 by By-law No. 1995-0215]**
- C. **[Amended 1996-09-16 by By-law No. 1996-0449]** Where the application includes permission to place and operate a portable propane heating unit or a barbecue within the licensed boulevard cafe areas, the following provisions apply in addition to those set out in Subsection A:
- (1) In the case of a barbecue:
- (a) The operator shall obtain a certificate from the Medical Officer of Health respecting compliance with the regulations made under the Health Protection and Promotion Act<sup>53</sup> with respect to the barbecue food preparation and service area.
  - (b) A clearance of one and two-tenths (1.2) metres shall be maintained between the barbecue and cafe seating areas, and the clearance shall be defined by a portable physical barrier made of a fireproof material, with dimensions of not less than one and two-tenths (1.2) metres in width and two (2) metres in height.
  - (c) Where the barbecue is proposed to be fuelled by or equipped with propane, Subsection C(2)(d) and (e) apply with necessary modifications.
- (2) In the case of a portable propane heating unit:
- (a) The propane heating unit shall be installed and operated in conformity with the manufacturer's instructions and specifications, including clearance from combustibles.
  - (b) The propane heating unit shall be secured to the boulevard utilizing the manufacturer's listed part.

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<sup>53</sup>Editor's Note: See R.S.O. 1990, c. H.7.

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- (c) The propane heating unit shall be located so that it does not present a hazard to cafe patrons or pedestrians.
- (d) The operator shall attach a locking device of a design satisfactory to the Commissioner to the propane heating unit. **[Added 1997-05-12 by By-law No. 1997-0203<sup>54</sup>]**
- (e) The operator shall obtain evidence satisfactory to the Commissioner respecting completion of a training course in the use of propane by all persons intended to be operating the propane heating unit.
- (f) The operator shall obtain a report from the holder of a certificate under Ontario Regulation 348/96 made under the Energy Act with respect to propane heating units, that the proposed propane heating unit meets the requirements of the Propane Storage, Handling and Utilization Code (Ontario Regulation 250/94).

### C.1 Boulevard Cafe Decks **[Added 1999-03-04 by By-law No. 121-1999]**

- (1) Where the application includes permission to construct and maintain a boulevard cafe deck within the licensed boulevard cafe area, the following provisions apply in addition to those set out in Subsections A and C:
  - (a) Boulevard cafe decks shall only be permitted on sidewalks or boulevards that exceed a slope of 5% and over.
  - (b) The deck shall be no higher than what is required to accommodate a level area and the deck framing members (which shall be the minimum depth required).
  - (c) A skirt or screen shall be provided where the distance between the grade and the top of the deck is greater than the total thickness of the deck and framing members.
  - (d) Wood used for the decking, skirt, uprights, or railing shall be treated, painted, or stained.
  - (e) When wood is used for the uprights;
    - (i) post widths shall not exceed 0.10 m x 0.10 m (4 x 4 inches);

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<sup>54</sup> Editor's Note: This by-law also provided that former § 313-36C(2)(d) and (e) be redesignated as § 313-36C(2)(e) and (f), respectively.

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- (ii) top and bottom railings shall not exceed 0.06 m x 0.09 m (2.5 x 3.5 inches);
    - (iii) pickets or balusters shall not exceed 0.04 m x 0.04 m (1.5 x 1.5 inches); and
    - (iv) the spacing between the pickets or balusters shall not exceed 0.10 m (4 inches).
  - (f) A minimum width of 1.03 m (3.3 ft.) break in the railing shall be provided at the high side of the slope to provide wheelchair access.
  - (g) Boulevard cafe decks shall not be constructed over existing underground services (i.e. hydro vaults, chambers, maintenance holes, etc.), except with prior written approval given by the relevant public utility.
  - (h) Should future installation of services within the boulevard area be required, the boulevard cafe owner shall, upon receipt of a 30 day notice, remove the boulevard cafe deck.
  - (i) The owner or occupant shall ensure that the boulevard cafe deck is removed at the end of the cafe season.
  - (j) Prior to receiving a licence or permission, the boulevard cafe owner shall enter into a written agreement with the City of Toronto, the terms, conditions, and form of the agreement to be satisfactory to the City Solicitor.
- (2) Boulevard cafe decks approved by the former City of Toronto Council on or before December 31, 1997 are exempt from the requirements in Subsection C.1 (1).
- D. Subsection B applies with necessary modifications to applications to expand a boulevard cafe that already has an unexpired boulevard cafe licence.
- E. Prior to receiving a licence or permission, enter into an agreement with the City containing the following terms and conditions, and any other terms and conditions as may be agreed upon by the owner or occupant and the City:
- (1) The owner or occupant shall pave and maintain any portion of the boulevard to be used for the purpose of the boulevard cafe to the satisfaction of the Commissioner.

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- (2) Where the owner or occupant places outdoor carpeting, artificial turf or other similar surface material upon the paved surface of any portion of the boulevard:
  - (a) The surface material shall not be affixed in any way to the paved surface and shall be maintained in a condition satisfactory to the Commissioner.
  - (b) The surface material shall be designed and installed to prevent hazardous conditions at any entrance to a boulevard cafe area.
  - (c) The surface material shall be removed from within the street allowance when the boulevard cafe ceases to be in regular daily use.
- (3) The owner or occupant shall not use the area occupied for any purpose other than a boulevard cafe and shall not serve or permit to be served anything not served from the abutting premises.
- (4) The owner or occupant shall pay in advance an annual charge per square metre of any portion of the boulevard proposed to be used for the purpose of the boulevard cafe in accordance with Subsection H.
- (5) The owner or occupant agrees to permit the Commissioner or any public utility to enter any portion of the boulevard proposed to be used, for the purpose of the installation, maintenance and repair of pipes, cables, wires, poles and other installations.
- (6) The owner or occupant shall indemnify and save harmless the City from any action, claim, damage or loss whatsoever arising from the use of the boulevard or anything undertaken or neglected to be undertaken in connection with the use.
- (7) The owner or occupant shall not use the cafe or the boulevard in whole or in part for any purpose other than the operation of a boulevard cafe in accordance with this chapter.
- (8) The owner or occupant shall, at all times and at his or her own expense, keep and maintain any portion of the boulevard proposed to be used in a clean, sanitary, attractive condition satisfactory to the Commissioner and the Medical Officer of Health and shall keep and preserve good order in and around the cafe and shall keep the boulevard and sidewalk surrounding or adjacent to the cafe free from papers, rubbish and debris of all kinds.

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- (8.1) In addition to the requirements of subsection (8), the occupant or owner shall, at all times and no less than on a daily basis, at his or her own expense, sweep and clear the boulevard and the sidewalk surrounding and within the boulevard café and ensure that they are clear of all debris, including cigarette butts. **[Added 2004-10-28 by By-law No. 978-2004]**
- (9) The owner or occupant shall pay all water and hydro-electric rates and charges made or chargeable in respect to the operation of the cafe.
- (10) The owner or occupant shall at all times observe and comply with, and endeavour to ensure strict observance of and compliance with, all statutory requirements, rules, regulations and by-laws of every municipal or other authority which in any manner affect or relate to the cafe or the use of the boulevard and operation of the cafe, including, without limitation the by-laws of the Metropolitan Corporation and The Metropolitan Toronto Police Services Board.
- (11) Removal.
- (a) Upon the termination of the permission for the use of any portion of the boulevard, the owner or occupant shall, at his or her expense, remove all equipment, furnishings and personal property from the boulevard upon thirty (30) days' notice in writing from the Commissioner to do so and shall not make any claim against the City on account of the removal and shall replace and restore the boulevard to a safe and proper condition to the satisfaction of the Commissioner.
- (b) If the owner or occupant neglects, refuses or fails so to do within the time specified in the notice, then the Commissioner may remove all installations from the boulevard and restore it to a safe and proper condition and may charge the costs of it to the owner or occupant.
- (c) The certificate of the Commissioner of the costs shall be final and the City may recover the costs from the owner or occupant in any court of competent jurisdiction as a debt owing by the owner or occupant to the City.
- (12) The owner or occupant shall, during the period of use of any portion of the boulevard and at the owner's or occupant's expense, cause to be maintained at all times a policy of insurance satisfactory to the City Treasurer in which the City is named insured and is indemnified against all liabilities which may in any way arise from the use of the boulevard.

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- (13) The owner or occupant agrees that the Council may at any time, without reason, cancel permission for the use of any portion of the boulevard for the cafe, after giving written notice to the owner or occupant and providing the owner or occupant with an opportunity to speak to the matter before the Committee.
- (14) The owner and occupant agrees that the Commissioner may, upon giving notice in writing to the owner or occupant, suspend permission for the use of the boulevard where the Commissioner has reason to believe that the provisions of the agreement are being violated by the owner or occupant, pending the consideration by the Committee of a report from the Commissioner respecting the violations, and the owner or occupant agrees that boulevard cafe shall not be operated during any suspension.
- (15) The owner or occupant shall not assign or transfer the permission for the use of any portion of the boulevard without the prior consent of Council.
- (16) The owner or occupant agrees that if permission has been granted to place and operate a barbecue or a propane heating unit within the licensed boulevard cafe areas, the owner or occupant shall operate and maintain the barbecue or propane heating unit as required by this chapter and shall at any time provide the Commissioner with a report from the holder of a certificate under Ontario Regulation 348/96 made under the Energy Act with respect to the propane heating unit or the barbecue if it is fuelled or equipped with propane. **[Added 1996-09-16 by By-law No. 1996-0449]**
- (17) **[Added 1999-03-04 by By-law No. 121-1999]** The owner or occupant agrees that, where permission has been granted after December 31, 1997 to construct and maintain a boulevard cafe deck, the owner or occupant shall construct and maintain the boulevard cafe deck as required by this chapter, and agrees that:
- (a) Should future installation of services within the boulevard area be required, the boulevard cafe owner shall, upon receipt of a 30 day notice, remove the boulevard cafe deck.
  - (b) The owner or occupant shall ensure that the boulevard cafe deck is removed at the end of the cafe season.
- (18) **[Added 2002-08-01 by By-law No. 600-2002]** For applications received on or after May 23, 2002, the owner or occupant agrees that:

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- (a) where he is notified by the City that he should do so, he shall arrange with EDCT for an inspection for one tree installation at the location;
  - (b) the decision on the feasibility of tree planting is to be made by EDCT and its decision is final;
  - (c) should the installation inspection by EDCT find that the location is suitable for tree planting, EDCT will advise the applicant;
  - (d) where EDCT has advised that the location is suitable for a tree to be planted, the applicant shall pay to the City a non-refundable fee in the amount of \$2,900.00 for the planting of a tree by the City; and
  - (e) the licence will not be granted until the fee for the tree installation has been collected by the City.
- F. Additional terms and conditions for cafe located on residential flankage.
- (1) In addition to the provisions of the agreement set out in Subsection E, where a boulevard cafe is located on a residential flankage, the agreement shall contain the terms and conditions in Subsection F(2) or the other terms and conditions as may be agreed upon by the owner or occupant and the City.
  - (2) The owner or occupant shall:
    - (a) Ensure the boulevard cafe is closed and cleared by 11:00 p.m. or, where Council has authorized extended hours of operation, the closing time as authorized by Council. **[Amended 1996-09-16 by By-law No. 1996-0443]**
    - (b) Ensure there is no outdoor music or amplified sound.
    - (c) Ensure doors and windows located on the residential flankage of the refreshment establishment shall not be left open or propped open while there is music or amplified sound in the interior.
    - (d) Erect visual barriers satisfactory to the Commissioner between the boulevard cafe and the abutting residential area.
    - (e) Maintain a minimum separation of one (1) metre between the boulevard cafe perimeter and any entrance to a dwelling unit located within an adjacent building or within the building containing the refreshment establishment.

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- (f) Ensure that no part of the boulevard cafe is less than twenty-five (25) metres from a residential zone.
  - (g) Ensure that there is a minimum separation of six (6) metres between the boulevard cafe perimeter and the extended boundary of a residential zone district containing properties fronting on the opposite side of the street across from the proposed boulevard cafe.
- F.1
  - (1) **[Added 1999-04-15 by By-law No. 185-1999]**In addition to the provisions set out in Subsection E, where a boulevard cafe is located on the Queen Street East frontage, between Coxwell Avenue and Victoria Park Avenue, the agreement shall be deemed to include the requirement that the owner or occupant ensure that the cafe is closed and cleared by 11:00 p.m.
  - (2) **[Added 1999-04-15 by By-law No. 185-1999]**The restriction on the hours of operation as set out in Subsection F.1(2) shall not apply:
    - (a) Where Council has imposed a specific closing time restriction on an affected cafe.
    - (b) On special event days as determined by the Commissioner.
- G. The owner or occupant of every boulevard cafe shall provide in conjunction with the boulevard cafe a fence as follows:
  - (1) The fence shall be located on the perimeter of the licensed boulevard cafe area and shall be constructed of materials such as metal railings and posts with or without fabric inserts, which enhance the light appearance of the fence and permit visual accessibility to the cafe.
  - (2) Proximity to fire hydrants; access.
    - (a) The fence shall not be located less than one (1) metre from any fire hydrant.
    - (b) Pumper connections on the face of the abutting building shall be clearly visible and directly and easily accessible from the street.
    - (c) The location of access openings in the fence shall be satisfactory to the Fire Chief and the Commissioner.

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- (3) The entrance/exit openings in the fence shall have a minimum width equal to that of the entrance of the adjacent eating establishment or eight-tenths (0.8) metre, whichever is the greater.
  - (4) The fence shall provide at least one (1) entrance having a width of not less than one (1) metre that is located and designed so as to permit easy access by a person in a wheelchair. **[Amended 1995-03-27 by By-law No. 1995-0249]**
  - (5) Where the boulevard cafe is permitted to extend around the eating establishment on two (2) boulevard areas, any enclosing fence shall be rounded or splayed at the curb radius to facilitate pedestrian movement.
  - (6) To maximize visual access between the sidewalk and the cafe:
    - (a) The height of the railing of the fence shall not be less than nine-tenths (0.9) metre or more than one and two-tenths (1.2) metres.
    - (b) The fence shall not be more than nine-tenths (0.9) metre in height within thirty (30) metres of an intersection.
  - (7) The fence may be free-standing if its supports do not project beyond the limits of the boulevard cafe area, or the fence may be supported on removable plates anchored to the paved surface of the boulevard cafe area, as determined satisfactory by the Commissioner, but any post shall not penetrate below the surface grade and footings shall not be used.
  - (8) The fence shall be easily removable.
  - (9) The fence shall be removed from within the street allowance during any period when the boulevard cafe operation is not in regular daily use.
  - (10) The owner or occupant of the boulevard cafe shall indemnify and save harmless the City from any action, claim, damage or loss whatsoever arising from the erection and maintenance of the fence on the City boulevard.
- H. A licence issued under this section shall be issued on a yearly basis (April 1 to March 31), and the owner or occupant shall pay in advance an annual charge per square metre for any portion of the boulevard to be used for the purpose of the boulevard cafe in the amount specified in Schedule A at the end of this chapter calculated for the following areas.
- (1) Area 1, being an area composed of:

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- (a) The area bounded by and including Spadina Avenue, Spadina Crescent, Bloor Streets West and East, Sherbourne Street, Lower Sherbourne Street and the Lakefront, excluding Area No. 2.
  - (b) The area bounded by and including Spadina Avenue, Dundas Street West, Bathurst Street and College Street.
  - (c) Yonge Street, from Bloor Street to north City limit.
  - (d) St. Clair Avenue East and West, from Avoca Avenue to Avenue Road.
  - (e) Eglinton Avenue East and West, from Mount Pleasant Road to Duplex Avenue.
- (2) Area 2, being an area bounded by and including York Street, University Avenue, Dundas Street West and East, Victoria Street, Colborne Street, Church Street, The Esplanade, Yonge Street and the Lakefront.
- (3) Area 3, being any portion or portions of the boulevard proposed to be used within any area not in Area 1 or Area 2.
- H.1 **[Added 2002-08-01 by By-law No. 600-2002]** A boulevard cafe licence issued prior to May 23, 2002 and subsequent renewals of that licence are exempt from the requirements in § 313-36E(18) provided the boulevard cafe licence continues to be held by the original applicant.
- I. Transfer of boulevard cafe licences.
- (1) Despite Subsection A, an application for the transfer of an existing boulevard cafe licence may be reviewed and approved by the Commissioner and no public notice or poll as required under Subsection B shall be required if:
    - (a) The previously licensed boulevard cafe is not altered in any way, physically and operationally.
    - (b) The Councillor for the ward in which the property is located has been notified of the transfer and has expressed no concerns.
    - (c) Where extended hours of operation were approved by Council in relation to the previous operation of the boulevard cafe, the closing hours proposed for the boulevard cafe under the transferred licence are now consistent with the requirements of this chapter.

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- (2) Where an application for the transfer of an existing boulevard cafe licence does not comply with Subsection I(1), the application shall be processed in accordance with the procedure set out in Subsection B.
- (3) Where an application for the transfer of an existing boulevard cafe licence is made on or after May 23, 2002, the applicant shall comply with § 313-36E(18). **[Added 2002-08-01 by By-law No. 600-2002]**

### **§ 313-37. Temporary partial cafe enclosure or boulevard cafe awning.<sup>55</sup>**

- A. The holder of a boulevard cafe area licence who wishes to erect a temporary partial cafe enclosure on the licensed boulevard cafe area shall submit an application to the Commissioner, together with any drawings, plans or details of the structure as the Commissioner deems necessary for the processing of the application.
- B. Despite any City by-law, where an application has been considered and refused by the Commissioner or by Council under this section, a further application for the same address or location shall not be considered within two (2) years from the date of the prior application.
- C. Where an application has been refused by the Commissioner, the applicant may appeal the refusal under § 313-77. **[Added 1997-10-06 by By-law No. 1997-0633<sup>56</sup>]**
- D. Where a refusal is appealed in writing under § 313-77, the Commissioner shall prepare and forward a report to the Committee setting out the grounds for refusal of the application, which shall be considered in conjunction with the appeal. **[Added 1997-10-06 by By-law No. 1997-0633]**
- E. Restrictions and requirements.
  - (1) A temporary partial cafe enclosure shall be not less than forty-five hundredths (0.45) metre from the rear of an existing sidewalk or two and thirteen hundredths (2.13) metres from an existing curb, whichever location is furthest from the curb; or where, in the opinion of the Commissioner, a sidewalk of more than one and sixty-eight hundredths (1.68) metres in width is required, the temporary partial cafe enclosure shall be not less than forty-five hundredths (0.45) metre from the rear of the sidewalk.

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<sup>55</sup>Editor's Note: This section was passed under the authority of paragraph 3 of section 308 and section 310 of the Municipal Act, R.S.O. 1990, c. M.45., and the City of Toronto Act, 1993 (No. 3).

<sup>56</sup>Editor's Note: This by-law also provided for the redesignation of former § 313-37C, D and E as § 313-37E, F and G, respectively.