



VILLAGE OF HARRISON HOT SPRINGS

NOTICE OF MEETING AND MEETING AGENDA

COMMITTEE OF THE WHOLE

DATE: Friday, March 21, 2014
TIME: 10:30 a.m.
LOCATION: Council Chambers, Harrison Hot Springs

1. CALL TO ORDER

Meeting called to order by Mayor Facio.

2. INTRODUCTION OF LATE ITEMS

3. APPROVAL OF AGENDA

4. ITEMS FOR DISCUSSION

1.	Report of Manager of Development and Community Services - Verbal Re: Liquor Policy	Item 4.1
2.	Report of Deputy Chief Administrative Officer/Corporate Officer – March 7, 2014 Re: Smoking and e-cigarettes	Item 4.2 Page 1
3.	Report of Deputy Chief Administrative Officer/Corporate Officer – March 12, 2014 Re: Temporary Sidewalk Extension Program Policy	Item 4.3 Page 3
4.	Dog off Leash	Item 4.4

5. PUBLIC QUESTIONS

6. ADJOURNMENT



VILLAGE OF HARRISON HOT SPRINGS

REPORT TO COUNCIL

TO: Mayor and Council **DATE:** March 7, 2014

FROM: Debra Key, Deputy Chief **FILE:** 3900
Administrative Officer/CO

SUBJECT: Smoking and E-cigarettes

ISSUE: To review the issue of smoking and e-cigarettes

BACKGROUND:

Staff has been asked by Council to review information with respect to smoking bylaws and the effects of the introduction of e-cigarettes.

In 2008, staff drafted a Smoking Bylaw but the bylaw did not receive any readings. At that time, a decision was made not to proceed as the issues of smoking and sale of products is legislated by the Provincial Government. The Village currently has a provision in its Park Regulation Bylaw that states:

"No smoking of tobacco shall be permitted in any of the buildings or structures in any beach or park wherein signs prohibiting same are displayed by order of the Village".

The current *Tobacco Control Act* prohibits:

1. Smoking in most fully or substantially enclosed public places and workplaces
2. Smoking within 3 metres of most public and workplace doorways and by open windows and air intakes
3. Display of tobacco products anywhere where tobacco is sold if accessible to youth under 19
4. Advertise and promote tobacco using certain methods such as countertop displays, hanging advertisements and self-serve displays;
5. Sell tobacco in public hospitals and health facilities, public universities and colleges, public athletic and recreational facilities; and provincial buildings;
6. Use tobacco in school and on school grounds

Under the Provincial legislation, smoking is only allowed on hospitality patios that are not "substantially enclosed". Proprietors are free to designate patios as non-smoking.

Staff has consulted with some municipalities on the issue of smoking bylaws. Some municipalities have adopted more restrictive bylaws, such as smoke-free patios. Others do not have smoking bylaws as Provincial legislation prohibits smoking as

defined above. Some municipalities have had existing bylaws that have been determined to be unenforceable so they have repealed their bylaws. Staff has also conferred with the Village Bylaw Enforcement Officer who advised that the Village has not received any complaints with respect to smoking.

Under the Provincial legislation, the *Tobacco Control Act* and Regulation are enforced by Tobacco Enforcement Officers who regularly conduct inspections and compliance under the *Act* and the Regulation as well as sections under the federal *Tobacco Act*.

The Government of Canada has posted information on new smoking products which include electronic cigarettes, cigars, cigarettos and pipes, as well as cartridges of nicotine solutions and related products. These products are regulated by Health Canada under the *Food and Drugs Act*. The sale of electronic cigarette products are not authorized in Canada.

The BC Healthy Living Alliance has recommended to UBCM that due to a lack of scientific research on the effects of e-cigarettes, they should be subject to the same regulations as other tobacco products. The users of e-cigarettes inhale a vaporized solution containing varying ingredients. The long-term effects of these substances have not been studied.

Staff is recommending that Council lobby the Provincial Government on the issue of electronic smoking products (e-cigarettes) and request they be subject to the same regulations as other tobacco products. Specifically:

- Not be sold to minors
- Not advertised, displayed or promoted in stores that are accessible to minors or where the signage may be seen from the outside
- Not allowed to be used in all places that are currently banned to smoking as outlined in BC's *Tobacco Control Act*

RECOMMENDATION:

THAT Council lobby the Provincial Government to regulate the use and sale of electronic cigarettes and other vaporizing systems intended to replicate the smoking experience under the British Columbia *Tobacco Control Act* and Regulations.

Respectfully submitted for your consideration;


Debra Key
Deputy Chief Administrative Officer/CO

CHIEF ADMINISTRATIVE OFFICER COMMENTS:


Ian Crane
Chief Administrative Officer



VILLAGE OF HARRISON HOT SPRINGS

REPORT TO COUNCIL

TO: Mayor and Council **DATE:** March 12, 2014

FROM: Debra Key, Deputy Chief **FILE:** 0340-50
Administrative Officer/CO

SUBJECT: Esplanade Block 1 Revitalization – Temporary Sidewalk
Extension Program

In April 2014, the construction and revitalization of Esplanade Avenue Block 1 Project is expected to be completed. Several business owners have inquired with the Village about the possibility of expanding their business operation out onto the municipal sidewalk.

Staff has drafted a Temporary Sidewalk Extension Program policy that will establish guidelines and provide direction for the temporary use of municipal sidewalks. It is hoped that the program will create a visual atmosphere and contribute to the promotion of social diversity and vitality in the Village core. The policy requirements will also outline criteria to ensure safety, protection and security of pedestrian movement, and ensure the Village's infrastructure is protected from any potential liability. The application will allow for additional patron seating or display of retail merchandise onto a certain portion of the municipal sidewalk.

Applicants will be required to apply to the Village for a Temporary Sidewalk Extension Application and pay a non-refundable application fee. The applicant will be required to provide a site plan, proposed area and description of use, perimeter structures or fences, furniture, landscaping and other accessories to be used and proposed hours of operation.

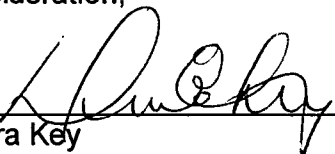
If the applicant meets the requirements in the policy and approved, they will be required to enter into a Licence of Occupation for temporary encroachment onto municipal infrastructure. The applicant will be required to pay a licence fee based on actual square footage of occupied space, provide proof of liability insurance and a security deposit.

The term of the Licence of Occupation will be seasonal and upon expiry of the term, all chattels will be required to be removed from the Licence Area.


RECOMMENDATION:

THAT staff be directed to proceed with the draft policy and implementation of the Sidewalk Extension Program.

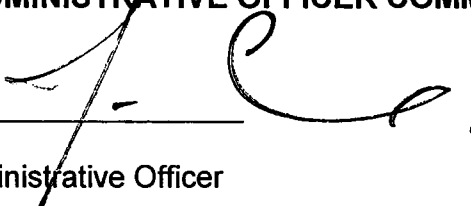
Respectfully submitted for your consideration;


Debra Key
Deputy Chief Administrative Officer

DIRECTOR OF FINANCE COMMENTS:


Dale Courtice
Director of Finance

CHIEF ADMINISTRATIVE OFFICER COMMENTS:


Ian Crane
Chief Administrative Officer

attachments

POLICY NAME	POLICY NUMBER 4.9
TEMPORARY SIDEWALK EXTENSION PROGRAM	DATE ADOPTED

1. PURPOSE

To establish guidelines and provide direction for the temporary use of municipal sidewalks. The use of a portion of municipal sidewalks may be permitted for occupation at the discretion of the Chief Administrative Officer or his delegate. Each application for a temporary sidewalk extension will be reviewed in conjunction with section 4 Design Guidelines.

The program is designed to create a visual atmosphere and contribute to the promotion of social diversity and vitality in the Village core. Business operators can make application to temporarily occupy additional space to take advantage of the outdoor climate and provide their patrons other options for seating and/or for display of retail merchandise.

2. POLICY

- a. The Temporary Sidewalk Extension Program allows for business operators to temporarily use portions of the municipal sidewalk in front of their places of business for patron seating or for the display of retail merchandise. The sidewalk area must be safely protected and secured to allow accommodation for pedestrian movement.

Business operators are required to submit a Temporary Sidewalk Extension Application and a non-refundable application fee. If approved, the applicant will be required to enter into a Licence of Occupation for temporary use of a portion of municipal sidewalk which includes a security deposit, proof of liability insurance, and licence fee based on the area of occupation.

- b. The term of the Licence of Occupation will be for the period of March 1st to October 31st. The following are stipulations that will govern the use of the area of temporary occupation:

- i. Food and beverage operators: furniture, landscaping, portable heaters, perimeter fences or structures may be located on the municipal sidewalk surface in accordance with an approved site plan.

All furniture, landscaping, portable heaters and perimeter fencing must be removed from the licenced area of occupation by November 15th of each year. Failure to remove any of the existing structures will result in the forfeiture of the security deposit and may compromise any future applications.

- ii. Retail sales: merchandise may be displayed on temporary tables and clothing racks on the municipal sidewalk in accordance with an approved site plan.

Display areas must be removed at the end of each business day. Failure to remove display areas may result in the cancellation of the Licence of Occupation agreement and furthermore forfeiture of the security deposit.

- iii. Smoking of any tobacco or electronic smoking product is prohibited within 3 metres of a door or an open window of a participating business and the surrounding Licence Area.
- c. Applicants must ensure they meet the requirements for any off-street parking spaces pursuant to the Village's current Zoning Bylaw. Patio or sidewalk signage must be in accordance with the Village's Sign Bylaw.
- d. Any extensions or amendments to existing seating areas requiring Liquor Control and Licensing Branch approvals will be the responsibility of the business operator.
- e. All businesses must have a valid Business Licence.
- f. No fixture, furnishings, landscaping, structure, perimeter fencing or portable heater may be affixed to the sidewalk whether on a temporary or permanent basis.
- g. Applicants are solely responsible at all times, for the security of any and all chattels placed in the Licence Area.

3. APPLICATION

A business operator is required to submit a Temporary Sidewalk Extension Application. The completed application must be accompanied by:

- a. site plan showing the proposed area of occupation, including the identification of any adjacent landscaping, street furniture, parking areas and bus stop locations;
- b. location of existing infrastructure (e.g. light standards, manholes, etc.);
- c. description of the proposed use;
- d. hours of operation;
- e. list of furniture, landscaping, perimeter structures or fences, merchandise, materials and other accessories to be placed in Licence Area;
- f. Materials and colour proposed to be used for perimeter fences and structures;
- g. Application Fee in the amount of \$200.00

All site plans, description of the proposed use, hours of operation, furnishings, materials and design must be approved by the Village.

4. DESIGN GUIDELINES

Design guidelines were developed in conjunction with the Official Community Plan's Lakeshore Development Permit Area Guidelines to ensure consistency throughout the waterfront area along Esplanade Avenue. All sidewalk extension designs must be consistent with the design guidelines described below and should include the following features:

- a. Structures should have a colour scheme complimentary to the adjoining building of which the business occupies, and the existing street landscaping and furniture design;

- b. The entrance and sidewalk area must not occupy more than one-half the width of the sidewalk abutting the premises and must provide a minimum of 1.8 m of clear, unobstructed sidewalk for pedestrian use and does not include loading zones;
- c. The entire occupation space cannot exceed the existing building frontage area and any structures must not overhang the occupation space;
- d. Any table and chair furniture must be of durable material, retain a high visual quality and be flush with the sidewalk. Other fixtures and furnishings must be freestanding and may include planters, flower boxes, portable patio heaters, umbrellas or other temporary accessories;
- e. Perimeter fences, structures or landscaping delineators may surround the sidewalk extension area and must not be physically anchored or attached to the municipal sidewalk surface. All perimeter fences, structures or landscape delineators must be not exceed a height of 1 m . The perimeter fences or structures must be of acceptable materials, such as permeable glass or wrought iron.

5. APPROVALS and CANCELLATION

All sidewalk extension applications must meet the criteria outlined in the policy for approval.

Applications that do not meet the criteria may not be approved.

At any time, the Chief Administrative Officer or his delegate may, without notice, order that any outdoor seating facility or retail merchandise area be vacated, and any structure(s) removed until further notice if the health, safety, welfare of the public of the Village of Harrison Hot Springs is threatened.



PO Box 160, 495 Hot Springs Road, Harrison Hot Springs, BC V0M 1K0
T: 604-796-2171 F: 604-796-2192 W: www.harrisonhotsprings.ca

APPLICATION FOR LICENCE TO OCCUPY TEMPORARY SIDEWALK EXTENSION PROGRAM

APPLICANT INFORMATION

NAME OF APPLICANT _____

Note: If applicant is not owner of the property, written authorization from the owner is required.

MAILING ADDRESS _____

BUSINESS NAME _____

BUSINESS ADDRESS _____

PHONE _____ CELL _____ FAX _____

SPECIFICATIONS:

Hours of Operation:		Number of Tables:	
Days of Operation:		Number of Chairs:	
Dimensions of Patio area:		Measurements for Fence or railing:	
Amenities (flower boxes, planters, umbrellas, heaters, etc.):		Type of Merchandise:	

LICENCE TO OCCUPY CHECKLIST:

CHECK IF ATTACHED

Application Fee (\$200.00) non-refundable	<input type="checkbox"/>
Site Plan including location of existing infrastructure	<input type="checkbox"/>
Description of proposed use	<input type="checkbox"/>
Materials and colour proposed for perimeter fences/structures	<input type="checkbox"/>
List of items to be placed in Licence Area	<input type="checkbox"/>
Valid Business Licence	<input type="checkbox"/>

If the applicant is not the registered owner, complete the owner information and attach a letter of authorization from the property owner(s), or have the owner sign the following authorization:

As owner(s) of the land described in this application, I/we hereby authorize _____
to act as applicant in regard to this application for a Licence to Occupy a portion of municipal sidewalk.

Signature _____
Date: _____

Signature _____
Date: _____

I have attached the required documentation, as noted on the Licence to Occupy Submission Checklist, along with the required application fee and hereby agree to submit further information deemed necessary for processing this application.

Applicant Signature: _____ Date: _____

This application will not be accepted unless it is complete and the required documents are attached.

**LICENCE TO OCCUPY MUNICIPAL SIDEWALK AREA
TEMPORARY SIDEWALK EXTENSION PROGRAM PROCESSING PROCEDURE**

1. Upon receipt of an application accompanied by the required fee and attachments, a file will be opened and a fee receipt will be given to the applicant.
2. The application will be reviewed to determine whether it is complete. If incomplete, the applicant will be required to provide additional information.
3. The application will be reviewed for compliance with relevant Village bylaws and policies. A site visit may be conducted to view the property.
4. Once application and design approval is granted, a Licence to Occupy will be initiated and will include requirements for:
 - a) Licence Fee (the minimum fee will be cost per square foot of area)
 - b) Proof of Insurance
 - c) Security Deposit
5. When the applicant returns a signed copy of the Licence to Occupy and includes the items listed in 4 above, a fully executed copy of the Licence to Occupy will be issued to the applicant for the term of the application.

NOTES:

Attached to this application is the Temporary Sidewalk Extension Program Policy 4.9. The policy sets out all of the requirements for a Temporary Sidewalk Extension. Also attached is the Temporary Sidewalk Extension Program Guidelines.

Applications for sidewalk extensions must include the following information:

- a) Site Plan showing the proposed area of occupation, including the identification of any adjacent landscaping, street furniture, parking areas and bus stop locations;
- b) Location of existing infrastructure (ie. light standards, manholes, etc);
- c) Description of the proposed use;
- d) Hours of operation;
- e) List of furniture, landscaping, perimeter structures or fences, merchandise, materials and other accessories to be placed in the Licence Area;
- f) Materials and colour proposed to be used for perimeter fences and structures;
- g) Application Fee

APPROVAL (office only)

Application Fee Paid (\$200.00)

☐

Receipt # _____

Approved

Date

Security Deposit (\$500.00)

☐

Receipt # _____

TEMPORARY SIDEWALK EXTENSION GUIDELINES

For Outdoor Cafes and Merchandise Displays



Village of Harrison Hot Springs
PO Box 160, 495 Hot Springs Road
Harrison Hot Springs, BC V0M 1K0
Telephone: 604-796-2171
Fax: 604-796-2192
[http://www. Harrisonhotsprings.ca](http://www.Harrisonhotsprings.ca)


HARRISON HOT SPRINGS
Naturally Refreshed

TEMPORARY SIDEWALK EXTENSION PROGRAM GUIDELINES

The purpose of this booklet is to provide general guidelines to the establishment and review of applications for temporary sidewalk extensions for sidewalk cafes and retail sales of merchandise on municipal sidewalks.

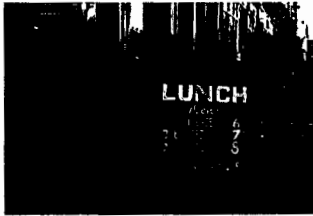
Outdoor Patios and Cafes and Retail Merchandise Displays

- *Tables and chairs shall be made of safe, sturdy and durable materials.*
- *Structures should have a colour scheme that compliments the adjoin building and the existing street landscaping and furniture design.*
- *Outdoor patio furniture, perimeter fencing or structures must not be physically anchored or attached to the municipal sidewalk surface.*



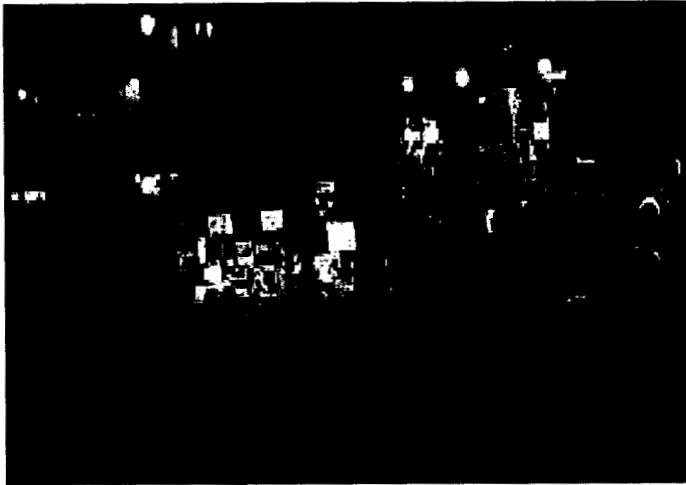
- *Perimeter fences, structures or delineators may surround the sidewalk extension area.*
- *All perimeter structures must not exceed a height of 1 metre.*
- *The perimeter structures must be of acceptable materials, such as permeable glass or wrought iron.*

- *Fixtures and furnishings must be freestanding and may include planters, flower boxes, portable heaters, umbrellas and other temporary accessories.*
- *Operators shall maintain any flower boxes and planting area*



- *The entire occupation space area cannot exceed the existing building frontage area and any structures must not overhang the occupation space.*
- *Patio or sidewalk signage must be in accordance with the Village's Sign Bylaw.*





- *Merchandise display areas must be removed at the end of each business day*
- *Operators are solely responsible at all times, for the security of any and all chattels placed in the Licence Area*

- *Merchandise may be displayed on temporary tables and clothing racks on the municipal sidewalk*
- *Operators shall be responsible for the proper maintenance of the Licence Area including properly disposing of all trash generated*



LICENCE OF OCCUPATION

This Agreement is made the _____ day of _____, 2014

BETWEEN:

< >

(the "Applicant")

OF THE FIRST PART

AND:

VILLAGE OF HARRISON HOT SPRINGS
PO BOX 160, 495 HOT SPRINGS ROAD,
HARRISON HOT SPRINGS, VOM 1K0

(the "Village")

OF THE SECOND PART

WHEREAS the Applicant operates a business premises having a civic address of < > *[insert civic address]* British Columbia, and legally described as:

**** *[Insert legal description]***

(the "Lands")

AND WHEREAS the Applicant has applied to the Village for approval to temporarily encroach upon and occupy a portion of a municipal sidewalk in the Village immediately adjacent to the Lands for the purpose of operating a sidewalk café or merchandise sales and the Village has agreed to the encroachment on the terms set out herein;

AND WHEREAS the Applicant applied for a Temporary Sidewalk Extension (the "Application") to temporarily occupy a portion of the municipal sidewalk to operate a Sidewalk Café or to sell merchandise;

NOW THEREFORE in consideration of the issuance of the Application by the Village to operate a Sidewalk Café or sell merchandise, THE PARTIES COVENANT AND AGREE AS FOLLOWS:

1. **Representations of the Village.** The Village represents and warrants to the Applicant that each of the representations and warranties of the Village made in or under this paragraph will be true and correct in all material respects at the execution of this Agreement:
 - (a) the Village is a municipal corporation duly incorporated and validly existing under the laws of the Province of British Columbia;
 - (b) the Village has all necessary power and capacity to enter into this Agreement and to carry out the transactions contemplated herein and the execution of this Agreement has been duly and validly authorized by all necessary proceedings required under the *Community Charter*; and
 - (c) the making and performance of this Agreement by the Village has been duly authorized and approved by the Council of the Village.

ENCROACHMENT

3. **Permission to Encroach.** Subject to the terms of this Agreement, the Village grants the Applicant permission to temporarily encroach on that portion of municipal sidewalk in the Village immediately adjacent to the Lands which is shown outlined on the sketch attached as Schedule "A" to this Agreement (the "Encroachment Area") for the purpose of placement and operation of a sidewalk café or sell merchandise.
4. **Rules and Regulations.** The use and operation of the Sidewalk shall be in strict compliance with the specifications, requirements, rules and regulations set forth in Schedule "B" of this Agreement.
5. **Term.** The term of this Agreement is for the period commencing on March 1st and expiring on October 31st.
6. **Fee.** The Applicant shall pay to the Village a license fee for the Term in the amount of < > (\$) DOLLARS *[fill in]* upon the execution of this Agreement.
7. **Licence Area** The Applicant may place on and within the Encroachment Area the fixtures, landscaping, furniture, structures, railings and other accessories and personal property described in Schedule "C" of this Agreement (collectively, the "Licence Area"). The Licence Area at all times during the term of this Agreement, remain at the sole risk of the Applicant, and the Applicant hereby releases, indemnifies and holds harmless the Village from any liability, cost, expense or damages which the Applicant may suffer or incur due to the loss of, or damage to the Licence Area or any portion thereof.

8. **Maintenance of the Licence Area.** The Applicant shall at all times and at its own expense keep and maintain the Licence Area authorized, in good condition, keeping all furniture, landscaping, barriers and fences properly aligned, plumb and properly finished.

The Applicant shall maintain the Licence Area and adjacent sidewalk in a clean and sanitary condition free from grease, papers, rubbish and debris to the satisfaction of the Village.

The Applicant shall not make any alterations to the Licence Area without the prior written consent of the Village. If the Applicant fails to keep the Licence Area maintained to the satisfaction of the Village, the Village may, in its sole discretion, require the removal of such debris, as it deems necessary, at the Applicants expense. The Applicant shall pay the costs of the removal to the Village forthwith on demand.

9. **Prohibition.** The Applicant shall not undertake alterations to the Licence Area without the written permission of the Village.
10. **Prohibition.** The Applicant shall not permit the Licence Area to encroach on any highway or portion of highway other than the Licence Area.
11. **Security Deposit.** The Applicant shall, upon execution of this Agreement, deposit with the Village the amount of \$500.00 as security for the Applicant's fulfillment of, and compliance with the terms and conditions of this Agreement.
12. **Termination for Cause.** If the Applicant violates any provision of this Agreement and, upon notice from the Village fails to remedy such violation within the time period specified in the Village's notice, the Village may terminate all the Applicant's rights under this Agreement on TWO (2) WEEKS written notice.
13. **Termination for Municipal Purposes.** The Village may, at any time and in its sole and absolute discretion, withdraw the rights it has granted to the Applicant under this Agreement and thereupon terminate this Agreement for municipal purposes that affect the health, safety and welfare of the public.
14. **Termination upon Sale or Transfer of Lands.** This Agreement shall terminate upon any sale, transfer or alienation of the Applicant's interest in or to the Lands, such termination being effective as of the date of transfer. All obligations of the Applicant relating to the removal of the Licence Area and restoration of the Encroachment Area shall apply despite such termination, unless, prior to the transfer date of the Lands, the transferee of the Lands enters into an agreement with the Village substantially in the form of this Agreement and to the satisfaction of the Village.

15. **Restoration of Encroachment Area.** Subject to paragraph 14, in the event that this Agreement is terminated for any cause or reason whatsoever, the Applicant shall, at its own expense, within such time as may be specified by the Village, remove the Licence Area fixtures from the Encroachment Area and otherwise restore the Encroachment Area to its original state to the satisfaction of the Village. If the Applicant fails to clear the Encroachment Area as required under this Agreement, the Applicant and its agents may remove all fixtures, including without limitation, all furniture, structures, personal property and all other things on the Encroachment Area. The cost of such removal and any deficiency may be taken from the Security Deposit and, if such is insufficient, such cost will be a debt due and owing to the Village by the Applicant upon receipt by the Applicant of the Village's invoice for the deficiency.
16. **Insurance.** The Applicant shall take out and maintain at its sole expense, at all times while this Agreement is in force, commercial general liability insurance providing coverage for acts or omissions by the Applicant, its employees and agents covering, without limitation, premises and operations liability, and contractual liability. The limits of liability for personal injury, property damage and contractual liability combined shall be for not less than \$2,000,000 for each occurrence and the insurance policy shall name the Village as an additional insured, state that the policy cannot be cancelled, lapsed or materially changed without thirty (30) days written notice to the Village. A cross liability clause shall be made part of the policy of commercial general liability insurance. Prior to the commencement of any work or occupation of the Encroachment Agreement, and otherwise as the Village may request, the Applicant shall file with the Village a certificate of insurance or such other proof satisfactory to the Village that such policy is in force. Should the Applicant neglect to obtain or maintain insurance as required or to deliver the certificate of insurance to the Village, the Village shall have the right to, but shall not be obligated to, obtain or maintain such insurance, and the Applicant hereby appoints the Village its true and lawful attorney to do all things necessary for this purpose. All monies expended by the Village for insurance premiums under the provisions of this Section shall be charged to the Applicant and payable by the Applicant to the Village forthwith on demand.
17. **Release.** The Applicant releases and forever discharges the Village and its elected and appointed officials, employees, servants and agents from all manner of claims of any nature whatsoever which may arise by reason of or in connection with the performance or non-performance of this Agreement by the Village or arising out of or in any way connected with the permission to encroach granted by this Agreement, the existence or use of the Encroachment Area, the maintenance, existence, use or removal of the structures, or the exercise by the Village of any of its rights in this Covenant.

18. **Indemnity.** The Applicant shall indemnify and save harmless the Village and its elected and appointed officials, employees, servants and agents from and against all actions, proceedings, claims and demands of any kind by any person arising out of or in any way connected with:
- a) the permission to encroach granted by this Agreement;
 - b) the existence and use of the Encroachment Area; or
 - c) the maintenance, existence, use or removal of the Licence Area;
- including without limitation, a claim for loss or injury to persons, including death, or damage to property.
19. **No Interest in Land.** This Agreement does not give the Applicant any legal or equitable interest of any kind in the Encroachment Area. The Encroachment Area retains its status as a municipal sidewalk.
20. **Right of Entry.** The Village's servants or agents shall have the right at any and all times to enter into and upon the Lands for the purpose of constructing, maintaining, inspecting or removing any public works or utility in the vicinity of the Encroachment Area or for the purpose of maintaining or removing the Licence Area under this Agreement.
21. **Independent Legal Advice.** The Applicant hereby represents and warrants to the Village that it has obtained independent legal advice from its solicitors prior to execution of this Agreement.
22. **Release.** Despite any law or rule of equity, the Applicant hereby releases, remises, saves harmless, forever discharges and covenants not to sue the Village, its elected officials, approving officers, officers, servants, employees, consultants, solicitors, agents, successors, and assigns, in respect of any and all actions, causes of actions, suits, debts, losses, costs, expenses, accounts, claims, demands, and damages howsoever arising which the Applicant now has or may hereafter incur or acquire against the Village, its elected officials, approving officer, officers, servants, employees, consultants, solicitors, agents, successors, and assigns, by reason of any cause, act, deed, matter, thing, omission, or commission, existing or arising in relation to any matter arising out of this Agreement.
23. **Termination of Rights of Encroachment.** Where this Agreement is terminated by the Village in accordance with paragraphs 12 or 14 of this Agreement, the Applicant shall not be entitled to a refund of any portion of the Licence Fee. Where this Agreement is terminated by the Village in accordance with paragraph 13 of this Agreement within the first 30 days of the Term, the Applicant shall be entitled to a pro-rata refund of a portion of the Licence Fee from the date of termination to the end of the Term.

24. **Village Rights Preserved.** This Agreement does not in any way restrict the right of the Village at any time to widen, raise or lower the highway or boulevard abutting or adjoining the Lands, even if the effect of the alteration in width or elevation or both may be to render the Encroachment Area useless for the purposes of the Applicant.

GENERAL PROVISIONS

25. Time is of the essence of this Agreement.
26. Wherever the singular or the masculine are used in this Agreement, they shall be construed as meaning the plural or the feminine or body corporate or politic where the context or the parties require.
27. This Agreement shall enure to the benefit of and be binding upon the parties hereto, their respective successors and permitted assignees.
28. The headings in this Agreement are inserted for convenience only and shall not be construed as part of this Agreement for the purpose of interpretation.
29. Neither this Agreement, nor any alteration, amendment, change or addition to this Agreement, is binding upon the parties unless it is in writing and signed by each of the parties.
30. The failure of either party to:
- (a) insist upon strict performance of any obligation hereunder to be kept, observed, or performed; or
 - (b) to exercise any right or option under this Agreement,
- will not be construed or operate as a waiver or relinquishment for the future of its right so to do and no waiver shall be inferred from or implied by anything so done or omitted.
31. All references in this Agreement are to Canadian dollars.
32. If any provision in this Agreement is for any reason held to be invalid, illegal or unenforceable in any respect, it is to be considered severed from this Agreement, and the remaining provisions of this Agreement will remain in full force and be binding upon the parties.
33. This Agreement is to be governed by and in accordance with the laws of British Columbia.
34. The entire agreement between the parties is contained in this Agreement, and there are no representations, warranties, covenants, agreements, conditions, terms, collateral

agreements by either of the parties to the other, or between the parties, in respect of the subject matter hereof other than those expressed in this Agreement.

35. Any notice, demand or request which may be, or is required, to be given under this Agreement will be sufficiently given or made if delivered by facsimile to the party to whom it is given or made, or if delivered, to the addresses set forth on the first page of this Agreement or at such other address as the parties may from time to time give notice in writing and any notice, demand or request so mailed will be deemed to have been given or made on the date of facsimile transmission or delivery if such transmission takes place prior to 4 p.m. on a business day, and otherwise on the next business day following the transmission or delivery.
36. This Agreement may be executed in two or more counterparts, each of which when so executed will be deemed to be an original and which together will constitute the one and the same agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day first above written.

< > by its authorized signatory(s): *[delete if
not a company]*)

Print Name:)

Print Name:)

VILLAGE OF HARRISON HOT
SPRINGS by its authorized signatories:)

Mayor)

Corporate Officer)

SCHEDULE "A"

(Attach sketch plan of Encroachment Area)

DRAFT

SCHEDULE "B"

(Set forth all requirements, rules, specifications and regulations governing use and operation of the Sidewalk Extension on the Encroachment Area)

DRAFT

SCHEDULE "C"

(Describe all furniture, landscaping, structures, railing, fences, accessories and merchandise materials [with drawings as applicable] to be placed in Encroachment Area by Applicant)

DRAFT