



**Town of Winnipeg Beach  
BY-LAW # 04/2020**

**BEING A BY-LAW OF THE TOWN OF WINNIPEG BEACH FOR THE  
PURPOSE OF REGULATING THE USE OF THE TOWN OF WINNIPEG  
BEACH PUBLIC SIDEWALKS FOR "SIDEWALK PATIOS"**

**WHEREAS** The Municipal and Various Acts Amendments Act S.M., 1996, c. 58 provides in part as follows:

"232(1) a council may pass by-laws for municipal purposes respecting the following matters:

(a) the safety, health, protection and well-being of people, and the safety and protection of property.

(b) people, activities and things in, on or near a public place or a place open to the public, including parks, municipal roads, recreation centres, restaurants, facilities, retail stores, malls, and private clubs and facilities that are exempt from municipal taxation."

"232(2) without limiting the generality of subsection (1), a council may in a by-law passed under this Division

(a) regulate or prohibit.

(b) establish fees or other charges for services, activities or things provided or done by the municipality or for the use of property under the ownership, direction, management or control of the municipality"

**NOW THEREFORE THE TOWN OF WINNIPEG BEACH IN COUNCIL DULY  
ASSEMBLED ENACTS AS FOLLOWS:**

**Section 1: Definitions of Words and Phrases**

1. Where used in this By-Law, unless the context otherwise requires:

"Amplified Sound" means the sound created by any electronic device or group of connected electronic devices incorporating one or more loudspeakers or other electro-mechanical transducers intended for the production, reproduction or amplification of sound, including but not limited to a radio, television, amplifier, loud speaker, public address system, sound equipment that is clearly audible at a Point of Reception in a Residential or Commercially zoned area at any time

"Authority having jurisdiction" means:

- (a) The Council of the Town of Winnipeg Beach or
- (b) The person appointed by the council of the Town of Winnipeg Beach

"Barrier Free" means that the building or area can be approached, entered and used by persons with physical or sensory disabilities.

"By-Law Enforcement Officer" means the By-Law Enforcement Officer appointed or authorized by the Council of the Town of Winnipeg Beach to enforce by-laws of the Municipality.

"Council" means the Council of the Town of Winnipeg Beach in the Province of Manitoba.

"dB" for the purposes of the by-law dB shall mean "decibel".

“Divider” see fence or railing

“Extended sidewalk” means a temporary walkway constructed and placed by the Town, running parallel and adjacent to a sidewalk, for the purpose of increasing the width of the sidewalk to allow pedestrian traffic to navigate around a legal patio that is erected to the edge of the natural sidewalk.

“Fence or Railing” means the divider between the seating area and the remainder of sidewalk pedestrian area.

“Occasional Sidewalk Sale” means the sale of dry goods or any other type of goods offered for sale, other than food services, that are wholly owned, leased or consigned by an existing and properly licensed business and for duration of no more than three (3) consecutive days and for no more than three (3) occasions within a calendar year.

“Owner” in the case of any property means the registered owner of the property according to the current assessment records of the Municipality.

“Occupier” in the case of any property means any person in actual or constructive possession of the property pursuant to a lease, tenancy license or other right to occupy.

“Permanent Sidewalk Sale” means the sale of dry goods or any other type of goods offered for sale, other than food services, that are wholly owned, leased or consigned by an existing and properly licensed business and for a duration of more than three (3) consecutive days and for more than three (3) occasions within a calendar year.

“Permit” means the permission granted by the authority having jurisdiction in writing.

“Point of Reception” Any point on the premises of a person where noise originating from other than those premises is received.

“Public Works Foreman” means the person so appointed by Council of the Town of Winnipeg Beach from time to time and for the purposes of this by-law, shall include such person(s) as the Public Works Foreman is entitled to delegate his authority to by Council of the Town of Winnipeg Beach from time to time.

“Sidewalk” means footpath, whether or not paved or improved, that is intended primarily for the use of pedestrians and that either:

- a) forms part of that portion of a highway that lies between the curb line or, if there is none, the lateral boundary line of the highway, and
  - i) the adjacent property lines; or
  - ii) the straight production of the adjacent property lines to the curb line or if there is none, to the lateral boundary line, of an intersecting highway; or
- b) although not part of a highway, is maintained by the Town of Winnipeg Beach, set aside for pedestrian traffic only and for the purpose of giving access to property adjacent hereto.

“Sidewalk Patio” means the placement of tables and/or chairs on a public sidewalk.

“Sound Level Meter” means a device which meets the C.S.A. Standard Z107.1-1973.

“Town Inspector” means the person appointed as such from time to time by the Council of the Town. This may include the By-Law Enforcement Officer.

## **Section 2: Prohibitions**

- 2.1 Any person/occupier who fails to comply with any order or notice issued by the authority having jurisdiction, or who allows a violation to continue, contravenes the provisions of this By-Law.
- 2.2 No person/occupier shall create or use any sidewalk area for the use of an “Occasional Sidewalk Sale, a “Permanent Sidewalk Sale” or a “Sidewalk Patio” unless a valid permit exists.
- 2.3 No person/occupier shall deviate from the approved plans/specifications forming part of the permit, without first having obtained in writing permission from the authority having jurisdiction.

## **Section 3: Duties and Responsibilities of the Owner/Occupier**

### **3.1 OCCASIONAL SIDEWALK SALE PERMITS**

- 3.1(i) every owner/occupier shall allow the authority having jurisdiction to enter any premise at any reasonable time for the purpose of administering and enforcing this by-law.
- 3.1(ii) every owner/occupier shall obtain all permits, with the approval of the C.A.O. of the Town of Winnipeg Beach, for an “Occasional Sidewalk Sale” at least one day in advance of the event taking place. Fees for same will be as per Schedule “A”.
- 3.1(iii) every owner/occupier shall ensure that all means of displaying merchandise for sale shall in no way constitute a hazard to pedestrian traffic and must maintain a minimum 5-foot unobstructed pathway.
- 3.1(iv) every owner/occupier shall be responsible to have in force a liability insurance so as to safeguard the Town of Winnipeg Beach from any liability claims.
- 3.1(v) every owner/occupier shall keep the sidewalk area surrounding the sidewalk sale clean and free of debris and other such material.

### **3.2 PERMANENT SIDEWALK SALE PERMIT**

- 3.2(i) every owner/occupier shall allow the authority having jurisdiction to enter any premise at any reasonable time for the purpose of administering and enforcing this by-law.
- 3.2(ii) every owner/occupier shall obtain all permits or approvals on an annual basis in connection with the proposed “Permanent Sidewalk Sale” prior to any sale or event taking place. Fees for same will be as per Schedule “A”.
- 3.2(iii) every owner/occupier shall ensure that all means of displaying merchandise for sale shall in no way constitute a hazard to pedestrian traffic and must maintain a minimum 5-foot unobstructed pathway.
- 3.2(iv) every owner/occupier shall be responsible to have in force a liability insurance so as to safeguard the Town of Winnipeg Beach from any liability claims.
- 3.2(v) every owner/occupier shall keep the sidewalk area surrounding the sidewalk sale clean and free of debris and other such material.

### **3.3     SIDEWALK PATIO PERMIT**

3.3(i) A "Sidewalk Patio" permit will not be issued prior to April 15<sup>th</sup> of each year.

3.3(ii) every owner/occupier shall allow the authority having jurisdiction to enter any premise at any reasonable time for the purpose of administering and enforcing this by-law.

3.3(iii) every owner/occupier shall obtain all permits or approvals on an annual basis in connection with the proposed "Sidewalk Patio" prior to commencing the construction or placing of fences, railings or furniture. Fees for same will be as per Schedule "A".

3.3(iv) every owner/occupier shall install a fence or railing ("the barrier") to divide the "Sidewalk Patio" from the remainder of the sidewalk used for public pedestrian traffic and which must:

3.3 (iv)(a) be operated and maintained in such a manner so that nothing protrudes through the barrier that will constitute a hazard to pedestrian traffic and:

3.3(iv)(b) be maintained a minimum of 7 feet inward from the natural curb to the outer edge of the barrier where an extended sidewalk does not exist.

3.3(iv)(c) extend completely to the outer edge of the natural curb where an extended sidewalk exists.

3.3(iv)(d) be properly secured to the sidewalk with the approval of the Public Works Foreman and when removed any damage caused by securing said barrier shall be the responsibility of the owner/occupier and shall be repaired to the satisfaction of the Public Works Foreman.

3.3(iv)(e) be in place only for the period of May 1<sup>st</sup> through October 15<sup>th</sup>. Deviation from this period may be granted or requested at the discretion of the Chief Administrative Officer of the Town. Weather related issues may cause installation to occur after May 1<sup>st</sup> or removal to occur prior to October 15<sup>th</sup> of any given year.

3.3(v) Where alcohol is not served, the barrier may be a rope where:

3.3(v)(a) the rope is between 4" and 5" circumference and the lowest point is not less than 28" above the sidewalk.

3.3(v)(b) the supporting poles are not more than 3 feet apart.

3.3(v)(c) a minimum of 7 feet is maintained inward from the curb to the outer edge of the utilized area unless otherwise approved by resolution of Council.

3.3(iv)(d) extend completely to the outer edge of the natural curb where an extended sidewalk exists.

3.3(v)(e) must be properly secured to the sidewalk with the approval of the Public Works Foreman and when removed any damage caused by securing said barrier shall be the responsibility of the owner/occupier and shall be repaired to the satisfaction of the Public Works Foreman.

3.3(vi) every owner/occupier shall be responsible to keep the sidewalk patio clean and in a reasonable state of repair at all times. Where seating is provided, the owner/occupier must place a garbage receptacle and a smokers' receptacle within the patio, both to be approved by the Town. The owner/occupier shall be responsible for damage to any Town infrastructure or property (i.e. trees, light standards, sidewalk) located within the sidewalk patio, occurring during the hours that the establishment is open to the public.

3.3(vii) every owner/occupier shall have in force, prior to installation, liability insurance so as to safeguard the Town of Winnipeg Beach from any liability claims.

3.3(viii) No amplified sound is to originate from the area encompassing the 'sidewalk' patio area.

3.3(ix) Amplified sound emanating from a property owned or leased by the same individual, registered owner or occupier of the sidewalk patio area must not exceed 80 dB's at point of reception on the sidewalk patio area; as measured by the By-Law Enforcement Officer of the town, using a sound level meter which meets the C.S.A. Standard Z107.1-1973.

#### **Section 4: Duties and responsibilities of the authority having jurisdiction**

4.1 The authority having jurisdiction is responsible for the administration and enforcement of this By-Law.

4.2 The authority having jurisdiction shall issue in writing such notices or orders as may be necessary to inform the owner/occupier where a contravention of this by-law has been observed.

4.3 The authority having jurisdiction shall issue a permit to the owner/occupier constructor or agent when to the best of his/her knowledge, the applicable conditions as set forth in this by-law have been met.

4.4 The authority having jurisdiction may refuse to issue any permit:

(a) Whenever information submitted is inadequate to determine compliance.

(b) To any person who failed to pay any fee due and payable to the Town under this by-law.

#### **Section 5: Penalties**

5.1 Any person who uses The Town of Winnipeg Beach Public Sidewalks without having acquired the necessary permit shall be subject to a penalty not exceeding twice the amount of the applicable license fee. Said penalty shall be payable directly to the Town of Winnipeg Beach and such penalty shall be in addition to the appropriate permit fee which such person must obtain in addition to paying the penalty.

5.2 That any person who breaches any provision of this by-law shall be subject to a fine not exceeding five hundred (\$500.00) Dollars. Where the contravention, refusal, neglect, omission or failure, continues for more than one (1) day, the person is guilty of a separate offence for each day that it continues.

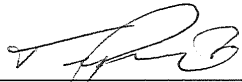
5.3 Where in the opinion of the authority having jurisdiction a situation exists and is a danger to the public, or a permit has not been obtained within a stipulated time of receipt of a notice of violation the authority having jurisdiction may remove the railing or fence (divider) and/or furniture.

- 5.4 The costs or actions or measures taken by the Town of Winnipeg Beach to carry out the enforcement of the By-Law are an amount owing to the Municipality by the owner of the property. In addition to all other rights of collection, which the Municipality may have at law, the Municipality may collect such amounts in the same manner as a tax may be collected or enforced under the Municipal Act.


**Section 6: Fees**

- 6.1 The permit fee shall be as set out in Schedule "A" attached hereto and may be amended from time to time by resolution of Council.
7. That By-Law No. 4/2019 is hereby repealed.

**DONE AND PASSED** as a by-law of the Town of Winnipeg Beach, in the Province of Manitoba, this 26<sup>th</sup> day of August 2020



Tony Pimentel  
Mayor



Roger A. Bouvier  
Interim Chief Administrative Officer

Read a first time on this 22<sup>nd</sup> day of July 2020  
Read a second time on this 26<sup>th</sup> day of August 2020  
Read a third time this 26<sup>th</sup> day of August 2020

**SCHEDULE "A"**

**Permit Fees (per calendar year)**

Sidewalk patio	\$ 8.00 per ft. of property frontage or
Minimum charge of	\$ 350.00
Permanent Sidewalk Sale	\$ 150.00
Occasional Sidewalk Sale	\$ 50.00