

V.2. Outdoor Café Permit Issuance Process

TABLE OF CONTENTS

1.	INTRODUCTION.....	79
2.	AUDIT SCOPE.....	79
3.	FINDINGS, RECOMMENDATIONS AND ACTION PLANS	79
	3.1. Maintaining the Permit Register	81
	3.2. Compliance with Regulatory Criteria and Internal Permit Issuance Procedures	84
	3.3. Ensuring Permit Holder Compliance with Requirements	98

V.2. OUTDOOR CAFÉ PERMIT ISSUANCE PROCESS

1. INTRODUCTION

The city regulates the periodic use by outdoor cafés of public property to ensure the safety of residents and a balanced mix in the use of such property. The *By-law concerning the occupancy of public property* (R.B.C.M., chapter O-0.1) governs such use. While this by-law covers the city as a whole, a borough's own by-laws on the use of public property apply to that borough.

Under section 67.1, Schedule C of the Charter of Ville de Montréal (the Charter), each borough council may exercise the city's jurisdiction over the use of public property within that borough. Such councils are entitled to adopt their own regulatory frameworks and fee structures for the use of public property, issue the necessary permits and collect the related fees. This is the case of the four borough councils that have adopted such by-laws.

The seasonal period for use of public property runs from May 1 to October 31 and outdoor cafés must obtain permits for such use. Permits can be renewed annually.

2. AUDIT SCOPE

This audit sought to ensure that outdoor café permits are approved and issued in compliance with regulatory criteria, that related fees are collected as stipulated and that controls are in place to ensure strict compliance with the permit issuance process.

Our audit considered permits issued or renewed during 2010 for outdoor cafés on public property in the Rosemont–La Petite-Patrie, Plateau-Mont-Royal, Sud-Ouest and Outremont boroughs. Permits issued for outdoor cafés on private property were excluded from this audit.

3. FINDINGS, RECOMMENDATIONS AND ACTION PLANS

The process established by **Rosemont–La Petite-Patrie, Plateau-Mont-Royal and Sud-Ouest boroughs** for issuing outdoor café permits begins when the appropriate business unit receives a request for such a permit. The applicant must complete and submit the designated form, accompanied by the necessary documents.

Once the completed application is submitted, a permit is issued to applicants in compliance with the requirements.

Applications for outdoor café permits are forwarded to a municipal engineering technical officer or a traffic/parking inspector in the Division des études techniques who reviews the application, obtains the approvals needed to issue the permit and checks compliance with plans and regulations.

The process is somewhat different in **Outremont borough**. A technical committee, consisting of the director of the Direction de l'aménagement urbain et du patrimoine and the manager of the Division des permis et inspections (division manager), reviews new permit applications. Once the application is deemed acceptable, a project summary and plans are submitted to the Comité consultatif d'urbanisme (CCU).

Under by-law AO-2 concerning the CCU, the committee reviews every case, permit and certificate application submitted by the director of Direction de l'aménagement urbain et du patrimoine with respect to urban planning, architectural and aesthetic criteria.

Borough council approval (or CCU recommendation) of an outdoor café's planned layout, along with other conditions appearing in by-law 1054-2, are the main preconditions for permit issuance.

Once the process is completed **in these four boroughs**, a technical officer or traffic/parking inspector inspects the premises to ensure that it complies with the plans and the technical requirements (clearance from building entrance, terrace size, etc.) and to layout and construction requirements (specifics on the installation of the railings and platform, for example). If discrepancies are noted, measures will be taken (transmission of non-compliance notices) to ensure that the applicant performs the necessary corrective actions.

We examined outdoor café permit files to substantiate our findings.

Our audit primarily focused on the examination of permit register controls, compliance with regulatory criteria and internal permit issuance procedures, as well as on follow-ups to ensure compliance by permit holders with their obligations.

3.1. MAINTAINING THE PERMIT REGISTER

3.1.A. Background and Findings

The permit register for outdoor cafés occupying public property should be properly established and updated to ensure that it serves as a reliable source of information and provides a complete picture of the specifics of each of the permits issued or pending. The register makes it easier to follow up on permits, particularly in terms of regulatory compliance, annual renewal and fee collection.

Our audit determined that the Division des études techniques does maintain a register of businesses authorized to operate outdoor cafés on public property.

We matched outdoor cafés listed in this register with those identified during our inspection of the borough's main streets to assess the register's completeness.

FINDING

This process revealed that two of the five outdoor cafés visited in Rosemont–La Petite-Patrie borough did not appear in the register of permits issued by the borough.

This finding was brought to the attention of the manager of the Division des études techniques in charge of permit issuance. After checking, he confirmed that our finding was indeed true. We accordingly examined a letter dated May 5, 2010 addressed to the 18 selected café operators on boulevard Saint-Laurent. However, the two establishments that we had identified did not appear on the list of those cited by the borough. At the time we finalized our audit, the borough had not taken any action to remedy the situation (e.g., sending a notice of non-compliance.)

FINDING

Given the number of merchants operating outdoor cafés without a permit and without having paid the required annual fees, we wonder whether the measures taken to ensure compliance with regulations governing this type of activity are adequate.

This same process proved effective in **Plateau-Mont-Royal borough**, since the five outdoor cafés visited appeared in the borough's register.

The process proved satisfactory In **Sud-Ouest borough**, although the outdoor café did not appear on the register in one case. Properly maintained records did however confirm the issuance of a permit to the operator.

FINDING

The same process in Outremont borough served to identify one establishment that was operating an outdoor café but was not listed in the 2010 register.

The division manager explained this omission as an oversight that occurred at the start of the season when the permanent data for permit renewals was manually entered from the prior year's information.

Consequently, the operator was not notified of the need to obtain a permit and pay the related fees. This case in 2010 was an exception to the rule, since permits for previous years were located for this establishment .

FINDING

One of the files we examined also revealed an inconsistency between the area used in calculating fees (area recorded on the permit) and that appearing on the plans approved by the council.

The division manager also explained this discrepancy as an error that occurred when permanent data was entered at the start of the season.

FINDING

While underestimating fees is not a major financial concern, it does, however, raise questions about the accuracy of the data entered in the permit register.

The two permit holders involved were notified that their files were not in good standing. We subsequently determined that they had in fact paid the required fees.

3.1.B. Recommendations

We recommend that the Division des études techniques of Rosemont–La Petite-Patrie borough implement the controls needed to ensure that all outdoor café operators hold a valid permit, in accordance with borough by-laws and requirements.

We recommend that the Division des permis et inspections of Outremont borough ensure that the permit register is complete and accurate, particularly at the start of the season when permanent data from the previous year’s register is entered, to facilitate follow-ups on permits issued, especially with respect to regulatory compliance, annual renewals and fee collection.

3.1.C. Action Plan of the Relevant Business Unit

- **ROSEMONT–LA PETITE-PATRIE BOROUGH**

[TRANSLATION] “Conduct regular inspections in the borough.

Take photos, as appropriate. Keep photos on file.

Maintain a follow-up chart of business owners who operate an outdoor café on public property, whether or not they hold a permit.

Notify business owners operating an outdoor café on public property without a permit that they must comply with regulations.” (Planned completion: May 2011)

- **OUTREMONT BOROUGH**

[TRANSLATION] “Conduct a general review early in the year of permanent data from the previous year’s register.

Following this review, contact each all registered applicants from the previous year to check if they intend to renew their outdoor café permits. Advise those that intend to renew about the approval process (CCU and borough council resolution), as well as the relevant deadlines, in case they plan to make changes to the layout or area of the outdoor café.” (Planned completion: February of each year)

3.2. COMPLIANCE WITH REGULATORY CRITERIA AND INTERNAL PERMIT ISSUANCE PROCEDURES

The Charter states that the boroughs exercise the city's authority to authorize the use of public property. The boroughs can set conditions of use by adopting their own by-laws and by establishing internal procedures to ensure compliance with these permit issuance conditions.

3.2.1. ROSEMONT–LA PETITE-PATRIE BOROUGH

3.2.1.1. REGULATORY COMPLIANCE

3.2.1.1.A. Background and Findings

In 2010, various borough by-laws regulated permit issuance for outdoor cafés on public property, including:

- The former city's *By-law concerning the occupancy of public property* (R.B.C.M., chapter O-0.1), amended in June 2007 by the borough council's by-law RCA-45 *By-law amending the by-law concerning occupancy of public property (R.B.C.M., chapter O-0.1 of the former city) in Rosemont–La Petite-Patrie borough*.
- *By-law concerning fees* (RCA-40), adopted by the borough council in December 2006, and most recently updated in March 2010, which annually sets fees to be collected for all municipal activities and is used to establish the fee structure for the use of public property.
- The borough's urban planning by-law (01-279).

During our audit, we examined the official files of the selected outdoor cafés for which permits were issued (8 of 10 outdoor cafés) to verify that regulatory criteria had been met. We also checked that the permit issuance process ensured adequate separation of duties at key steps of the process.

Among our sample's eight outdoor cafés, incidentally, the borough only issued one a new permit in 2010. The other seven had received their permits in previous years. Since a permit remains valid as long as its conditions of issuance are not altered, the city's Service des finances billed and collected fees from these seven outdoor cafés for the 2010 summer season, according to borough procedures.

Our review of the official files of the eight outdoor cafés we selected determined that most of the regulatory criteria for receiving permits had been met, except for the following issues, which could benefit from improvements.

In particular, the borough's *By-law concerning the occupancy of public property* (R.B.C.M., chapter O-0.1) stipulates that the permit is issued to the applicant on condition that the applicable fees for the right to occupy public property are paid to the city as of the first date of occupancy in accordance with the *By-law concerning fees* in effect in the current fiscal year (section 36, paragraph 3).

FINDING

We found that new permits are in fact issued to applicants before the borough bills or fully collects usage fees.

Once the traffic/parking inspector receives the letter of requirements signed by the applicant, she issues a pre-approved permit already signed by the manager of the Division des études techniques. The inspector then prepares a letter outlining the required fees (rent) due for the periodic use of public property and sends it to the applicant. A 30-day grace period is allowed for fee payment.

FINDING

This practice does not comply with the *By-law concerning the occupancy of public property* and exposes the borough to situations in which it may be difficult to collect fees, while allowing an applicant who has not paid fees to operate an outdoor café with a valid permit.

FINDING

Moreover, an examination of the list of 25 outdoor cafés that were granted new permits by the borough in 2010 showed that seven of them (including one of the eight selected for the audit) still owed annual rental fees at the time of our audit.

Based on information obtained from those with whom we met, the Division des études techniques sent the applicants a reminder dated September 17, 2010 in the case of two of the seven outdoor cafés. However, no reminder was sent to attempt to collect outstanding fees in

the case of the other five, which still had not paid their fees as of September 30, 2010. The traffic/parking inspector did tell us, though, that verbal agreements had been reached with the operators of these outdoor cafés.

We wanted to examine more closely the process by which the borough successfully collected fees from applicants for new permits issued in 2010. To do so, we broadened our sample to include new permits issued in 2010 to five other outdoor cafés. The results of our audit showed that the calculation of fees prepared by the traffic/parking inspector, as well as the payment received from the applicant, matched the proof of collection produced by the Direction des affaires publiques et du greffe (Division du service à la clientèle) representative. We found no accounts receivable for outdoor café permits billed and collected by the Service des finances in previous years. Our audit accordingly demonstrated that applicant payments had been collected.

3.2.1.1.B. Recommendations

To ensure compliance with regulations governing the use of public property by outdoor cafés, we recommend that the Division des études techniques of Rosemont–La Petite-Patrie borough:

- **Only issue permits when applicants have met the requirements, including payment of related fees (fee to review the permit application and fee for the right to use public property).**
- **Promptly collect all unpaid amounts owed by permit holders in default.**

3.2.1.1.C. Action Plan of the Relevant Business Unit

[TRANSLATION] “We sent out notices to collect unpaid amounts owed by permit holders in default for the 2010 season. Only one operator remained in default after we sent them and we will revoke its permit as stipulated in the by-law. All other permit holders are now in compliance.

For 2011, we will:

- *Study the application*
 - *When all documents required to consider the application have been received;*
 - *When all application fees have been paid.*
- *Issue permits for the periodic use of public property by outdoor cafés:*
 - *When the letter of requirements signed by the operator confirming acceptance of all the requirements and the commitment to comply with them has been received;*
 - *When all fees pertaining to permit issuance and use of public property have been collected.” (Planned completion: January 2011)*

3.2.1.2. SEPARATION OF DUTIES

3.2.1.2.A. Background and Findings

As previously mentioned, our audit also involved ensuring that a sufficient separation of duties was present at key steps of the permit issuance process.

FINDING

Based on the audit, we concluded that there was sufficient separation of duties, except for tasks related to revenues generated by permit issuance (application fee and rental).

Our audit did not detect any irregularities in the collection of payments by applicants. However, in an effort to tighten internal controls around this key step in the permit issuance process, we believe that the responsibility for receiving applicant payments must be separated from the rest of the process. Consequently, someone other than traffic/parking inspector who is in charge of permit issuance should be assigned to this task.

3.2.1.2.B. Recommendations

We recommend that the Division des études techniques of Rosemont–La Petite-Patrie borough review its separation of duties to segregate responsibilities for receiving payments from applicants from the rest of the process, in an effort to tighten internal controls for collecting fees pertaining to the issuance of outdoor café permits.

3.2.1.2.C. Action Plan of the Relevant Business Unit

*[TRANSLATION] "Payments received and receipts issued by the Accès Montréal office (BAM)."
(Planned completion: February 2011)*

3.2.2. PLATEAU-MONT-ROYAL BOROUGH

3.2.2.1. REGULATORY COMPLIANCE

3.2.2.1.A. Background and Findings

The borough had various by-laws regulating the issuance of permits for outdoor cafés on public property in 2010, including:

- A by-law of the former city (Montréal prior to demerge) concerning the use of public property (R.B.C.M., chapter O-0.1) that was adopted in June 2006 and amended by the borough

council in May 2009 through adoption of the *By-law amending the By-law concerning occupancy of public property* (R.B.C.M., chapter O-0.1) in *Le Plateau-Mont-Royal borough* (2009-03).

- A by-law concerning borough fees, adopted in May 2006 and last updated in May 2010 by the borough council's adoption of a by-law (2010-09).
- An urban planning by-law for Plateau-Mont-Royal borough (01-277-21).

Our audit examined official records supporting permit issuance to the 10 outdoor cafés selected, to ensure compliance with various regulatory criteria. We also checked that a separation of duties was ensured at key steps of the permit issuance process.

The borough issued new permits in 2010, incidentally, to three of the 10 outdoor cafés that were part of our sample. The other seven had been received permits in prior years.

Our review of the records pertaining to the 10 selected outdoor cafés demonstrated compliance with most permit issuance regulations.

For example, the applicants had paid all fees (application and rent) for new permits issued by the borough in 2010 (3 of the 10 outdoor cafés selected) in compliance with the current by-law. Fees for the other seven outdoor café permits that had been issued in prior years and that were billed and collected by the Service des finances had also been paid.

Apart from the seven outdoor cafés that were part of our selection, a more in-depth examination of the Service des finances' list entitled [TRANSLATION] "Billing Miscellaneous Revenues: Plateau-Mont-Royal's Outdoor Cafés," detected 19 outdoor cafés with unpaid balances. According to the information obtained from the Service des finances employees that we contacted, the city's recovery procedure provides operators with a 40-day grace period to pay amounts due once a bill is issued. A reminder is then sent out and operators with overdue accounts are asked to make arrangements to pay the arrears due. The matter is turned over to the city's Service des affaires juridiques et de l'évaluation foncière, if necessary. We checked with an official from the Service des finances about the 8 outdoor cafés with unpaid balances among the 19 surveyed and asked what steps had been steps taken to recover the amounts due. The information we received demonstrated compliance with established collection procedures.

Although we found that there was overall compliance with regulations pertaining to permit issuance, we believe that there is room for improvement, as discussed below.

FINDING

Under the Division des études techniques permit issuance process, an outdoor café permit application must first be submitted to the appropriate parties at the Direction de l'aménagement urbain, des services aux entreprises et des affaires publiques (DAUSE) who then make the necessary checks before confirming that the establishment complies with zoning regulations. However, the records we examined for the 10 outdoor cafés offered no evidence that DAUSE had conducted any such checks.

According to information obtained from those with whom we met, communications between the Direction des travaux publics and DAUSE regarding the required verifications is usually verbal or by email and may not appear in the Division des études techniques' records. We also observed that the Division des études techniques does not use any verification mechanisms (e.g., a checklist) to ensure that all borough requirements are met prior to issuing a permit. Although our audit did not reveal any major issues of noncompliance, we believe that the permit issuance process could be improved by including such a checklist in the records and using it to ensure that requirements have been met before a permit is issued. This checklist could greatly facilitate the work of the supervisor in charge of signing permit issuance approvals.

3.2.2.1.B. Recommendations

We recommend that the Division des études techniques of Plateau-Mont-Royal borough acquire a verification mechanism to ensure that all regulatory criteria have been met and that all required certifications have been obtained before a permit is issued.

3.2.2.1.C. Action Plan of the Relevant Business Unit

[TRANSLATION] "Applications for outdoor café permits will still be submitted to the Division des études techniques.

Zoning compliance verification requests will now be conducted by email between DAUSE, Affaires publiques and the Division des études techniques.

The Division des études techniques will process applications that comply with zoning requirements to ensure the enforcement of regulations and the receipt of payment.

We will update the information sheet on regulatory criteria to be met for obtaining an outdoor café permit." (Planned completion: March 2011)

3.2.2.2. SEPARATION OF DUTIES

3.2.2.2.A. Background and Findings

Our audit also considered whether there was sufficient separation of tasks at key steps of the permit issuance process, particularly in terms of responsibilities pertaining to:

- Feasibility studies for setting up an outdoor café, in compliance with existing zoning regulations and borough planning laws and regulations.
- Application processing and compliance with regulatory provisions involved in permit issuance.
- Collection of fees generated by permit issuance.
- Approval for permit issuance.

FINDING

Based on this audit, we concluded that there was sufficient separation of duties, other than that with respect to revenues generated by permit issuance process (application fees and rent).

Our study of the borough's new permit issuance process revealed that the city's engineering technical officer performs the following tasks:

- Receives the permit application, accompanied by the necessary documents and payment application fees.
- Reviews the application in conjunction with DAUSE (Division des permis et inspections).
- Calculates the rent for periodic occupancy of public property based on the regulatory fee structure.
- Sends the letter of requirements to be signed and returned by the applicant.
- Receives the annual rent, which is then forwarded for deposit to the Direction des services administratifs, des relations avec les citoyens et du greffe.
- Prepares the permit, which is then signed by the manager of the Division des études techniques.

Our review of records for the 10 outdoor cafés selected revealed that the permits issued had all been approved by the manager of the Division des études techniques. As previously mentioned, our audit also did not detect any irregularities in the collection of applicant payments. However, in an effort to tighten the internal controls around this key step in the permit issuance process, we believe that responsibilities for receiving payments by applicants must be separated from the

rest of the process. Someone other than the city engineering technical officer should accordingly be assigned to this task.

3.2.2.2.B. Recommendations

We recommend that the Division des études techniques of Plateau-Mont-Royal borough review its separation of duties in the outdoor café permit fee collection process to segregate responsibilities for collecting applicant payments from the rest of the process as part of an effort to tighten internal controls around the collection of revenues generated by permit issuance.

3.2.2.2.C. Action Plan of the Relevant Business Unit

[TRANSLATION] “BAM will collect application fees.

Once DAUSE has approved compliance with zoning regulations, the Division des études techniques will be responsible for calculating surface areas, permit costs and regulation enforcement.

The Division des études techniques will notify the applicant with a letter of requirements outlining applicable rules and regulations, dimensions, posting of the plan and the amount payable to BAM.

The Division des études techniques will prepare the permit after BAM has received payment,.

The Division des études techniques manager will approve and sign the permit.

The permit, accompanied by its plan, will be sent to the applicant (Division des études techniques).” (Planned completion: March 2011)

3.2.3. SUD-OUEST BOROUGH

3.2.3.1. COMPLIANCE WITH BY-LAWS

3.2.3.1.A. Background and Findings

In 2010, various borough by-laws pertained to permit issuance for outdoor cafés on public property, including:

- A new borough council by-law adopted in May 2010 concerning the use of public property by outdoor cafés (RCA 10-22010), which applies to certain sectors of the borough.
- A borough council by-law concerning the use of public property by outdoor cafés on boulevard Monk (RCA 07-22011) temporarily applied to outdoor cafés in the 2010 summer season until it was replaced by by-law RCA 10-22010 on November 1, 2010
- Chapter O-0.1 of city by-law R.B.C.M., which applies to sectors not covered by borough by-law RCA 10-22010, under which one permit was issued prior to implementation of the new borough council by-law (RCA 10-22010).
- A borough council by-law on fees (RCA 07-22004).
- A planning by-law for Sud-Ouest borough (01-280).

Our audit examined documents supporting permit issuance for each of the outdoor cafés selected, to verify compliance with applicable by-laws.

According to our review, borough permits generally complied with existing rules and regulations. If the applicant failed to provide documentary evidence required by regulations (e.g., proof of liability insurance), we determined that the technical officer in charge generally made note of the missing documents and delayed permit issuance until the application was fully compliant, even if the applicant had paid all fees for the period of use.

As previously mentioned, under the Division des études techniques' permit issuance process, an outdoor café's application must first be submitted to the appropriate party at DAUSE, who conducts the necessary checks and confirms the feasibility of installing the outdoor café on public property pursuant to the borough's planning by-law.

FINDING

We found no evidence of the results of the checks performed by DAUSE in the majority of files examined (six out of nine cases). Based on information obtained from the those with whom we met, communication between the Direction des travaux publics and DAUSE concerning the required checks was usually verbal or by email and unrecorded in Division des études techniques records.

We concluded that the separation of duties at key steps in the issuance process was sufficient. We determined that the process provided for tasks to be performed by different people having distinct duties and responsibilities.

3.2.3.1.B. Recommendations

We recommend that the Division des études techniques of Sud-Ouest borough develop a checklist to ensure that all regulatory criteria have been met and that all required certifications have been obtained prior to authorization of permit issuance.

3.2.3.1.C. Action Plan of the Relevant Business Unit

[TRANSLATION] “The permit application form for an outdoor café already includes a list of documents to be included. It will be amended in keeping with the following procedural steps:

1. The applicant must complete the form and submit it to DAUSE. DAUSE will check if zoning regulations permit the creation of an outdoor café and if the Certificate of Occupation is compliant.

DAUSE then forwards the appropriate form, marked ‘accepted’ or ‘rejected,’ to the technical officer in charge of the file.

2. If rejected, the application is archived. If approved, the technical officer asks the applicant to complete the file and ensure that all is in order, based on the form, before calculating the rent. The layout plan is then submitted to DAUSE for review and notification.

The information contained in the notice from DAUSE is entered (checkbox) on the card attached to the application.

3. Once DAUSE has approved the current year’s rent, the applicant is notified and the permit is issued upon receipt of BAM’s confirmation of payment, which is then kept on file (if the payment is by cheque, a copy of the cheque is attached to the file).” (**Planned completion: February 2011**)

3.2.4. OUTREMONT BOROUGH

3.2.4.1. REGULATORY COMPLIANCE

3.2.4.1.A. Background and Findings

As previously mentioned, boroughs have the power to adopt their own by-laws to regulate permit issuance.

Outremont borough's by-law 1054-2 concerning outdoor cafés and by-law AO-6 concerning fees define, for example, the permit application process and prerequisites for permit issuance.

The borough's procedure for issuing outdoor café permits includes certain controls to ensure compliance with regulations, including:

- Except under the exceptional circumstances described below, the borough council (the highest authority) must adopt a resolution approving an outdoor café's layout plan before a permit can be issued. The council also acts on a recommendation of the CCU (consisting of one council member, six borough residents who are urban planners or professionals in related disciplines and four other borough residents) that first studies the plan. This step is a key element of the process.
- The separation of duties that has been implemented by the borough also constitutes a satisfactory means of control, since it requires different individuals or authorities to carry out the main steps involved in permit issuance:
 - The application is reviewed by an information clerk or urban planning technician and by a technical committee. The division head then sends the file to the urban planning advisory committee (CCU) for review and recommendations.
 - Once the CCU makes its recommendation, the plans for issuing a new permit or changing the layout must be approved by a borough council resolution.
 - The division head or the director of Aménagement urbain et du patrimoine approves permit renewals.
 - The applicant then appears in person to sign and collect the permit and pays any fees to the secretary of the directorate, who processes the payment.
 - The Direction des services administratifs, greffe et relations avec les citoyens enters the payment in the borough's books.

By-law 1054-2 stipulates that issuance of an outdoor café permit is subject to several conditions. The main condition is borough council approval, based on the CCU's recommendation of the outdoor café's layout plan. Some other conditions also apply, including:

- The owner or manager must release the Ville de Montréal and the borough of all liability for any accident that might occur on city or borough property or on the sidewalk or pavement, arising out of their activity.
- Outdoor café hours are restricted to 8 a.m.–midnight for a restaurant and 8 a.m.–10 p.m. for a grocery store.
- Borough sidewalks must be kept clear of obstructions at all times.
- No outside advertising is permitted.

Once the council has approved the outdoor café's layout plan, the information clerk or urban planning technician will calculate annual permit fees, pursuant to section 8.2 of borough by-law AO-6 concerning fees.

The permit and a placard are prepared and signed by an authorized representative of the Direction de l'aménagement urbain et du patrimoine. The permit is deemed to have been issued once the applicant also signs it and pays the related fees.

FINDING

Our tests generally determined compliance with regulatory criteria for permit issuance.

However, two cases should be highlighted:

- **In one, a permit was renewed without council approval of the layout plans.**
- **In all other instances, the records contained no proof that permit holders had assumed liability for damage to property or persons resulting from the outdoor café's operation.**

We found one establishment that had been granted temporary approval by the borough council for setting up an outdoor café in 2006. This permit holder made changes to the layout in 2007 without prior approval of the plans. Since that time, the CCU had expressed reservations about the new plan and refused to recommend it for council borough approval. The permit holder has refused to revise the layout.

The permit holder states that it refused because the new layout had been discussed with individuals who, he said, were duly accredited by the city and the borough and that significant costs had been assumed when the application was submitted to the Division des permis et inspections. The only information in the record about such discussions is a letter requesting that the permit holder agree to submit a complete layout file responding to the CCU's comments. There was no decisive follow-up to this request, which was made in 2008.

The director of the Direction de l'aménagement urbain et du patrimoine has subsequently approved the annual renewal of outdoor café permits and keeps his supervisor, the borough director, advised of these approvals.

FINDING

This is a serious instance of regulatory non-compliance since, as of the present date, the applicant has failed to comply with the by-law. He presented those in charge of issuing outdoor café permits at the Direction de l'aménagement urbain et du patrimoine and CCU with a *fait accompli* and has not modified the project in any significant way.

This redesign project was not submitted to the borough council for approval, since it was never endorsed by the CCU.

Such non-compliance has implications with respect to the fair treatment of applicants and consistency in providing a good fit within the local environment for projects overseen by the CCU and the borough council. Measures must be taken to prevent such situations from arising and to ensure that they do not persist or recur.

3.2.4.1.B. Recommendations

To avoid unfair treatment of applicants and to prevent potential problems of consistency in providing a good fit for such projects within the local environment, we recommend that the Direction de l'aménagement urbain et du patrimoine of Outremont borough:

- Ensure compliance at all times with the rule that the borough council must approve an outdoor café's planned layout before installation begins.
- Resolve the current irregular situation and renew the permit if the borough council so decides.
- Submit all similar cases to the borough council so it can make informed decisions and ensure follow-up, as appropriate.

3.2.4.1.C. Action Plan of the Relevant Business Unit

[TRANSLATION] "Submit applications that have not received a favourable recommendation from the CCU to the borough council for approval and in particular files mentioned in the audit report.

Formally notify the applicant in the aforementioned case that SAUP (Direction de l'aménagement urbain et du patrimoine) intends to submit the application, which did not receive the CCU's recommendation, for approval by the borough council.

Following this notice, invite the applicant in the above matter to consider submitting a new layout for the outdoor café to SAUP that CCU and the appropriate authorities could recommend for approval by the borough council, where pertinent." (Planned completion: February 2011)

3.2.4.2. LIABILITY INSURANCE

3.2.4.2.A. Background and Findings

On another matter, section 4.3 of by-law 1054-2 states that *[TRANSLATION]* “the owner or manager must release the Ville de Montréal and borough from all liability for any accidents that might occur on city or borough property or on the sidewalk or pavement, stemming from this activity.” Whereas section 67 of Schedule C of the Charter states that *[TRANSLATION]* “The city may, by by-law . . . (9) hold the persons authorized to occupy the public domain responsible for any damage to property or injury to persons as a result of the occupation and require that they take up the defense of the city and not hold it liable in any claim made against it by reason of such damage or injury.” To be more specific, the by-law should use the terms “hold responsible,” as per the wording of section 67.

FINDING

Our review of the files also demonstrated that the applicants were not asked for proof of liability insurance.

In the interests of prudence, measures could be implemented for more effectively meeting this provision of the by-law concerning municipal liability. Some boroughs, for example require proof that applicants have liability insurance. These boroughs:

- Specify in their by-laws the amount of liability coverage required.
- Stipulate in their by-laws that written proof of liability coverage must be submitted before the permit is issued.

3.2.4.2.B. Recommendations

To act with the necessary prudence in matters of civil liability, we recommend that Outremont borough’s Division des permis et inspections propose to the authorities an amendment of by-law 1054-2 concerning outdoor cafés so that:

- The wording would comply with that of Schedule C of the Charter of Ville de Montréal regarding civil liability.
- The necessary supporting documents would be required to ensure sufficient liability coverage before an outdoor café permit is issued.

3.2.4.2.C. Action Plan of the Relevant Business Unit

[TRANSLATION] “Draft an amendment to by-law 1054-2 in conjunction with the Service des affaires juridiques et de l’évaluation foncière of Ville de Montréal and the manager, Services

administratifs, greffe et relations avec les citoyens, to include a clause on civil liability in compliance with the Charter of Ville de Montréal and submit it for borough council approval.

Add a requirement that the applicant submit proof of liability coverage prior to being issued an outdoor café permit, in accordance with the recommendation to modify the borough's application form that must be duly completed and signed by permit applicants as stated above." (Planned completion: March 2011)

3.3. ENSURING PERMIT HOLDER COMPLIANCE WITH REQUIREMENTS

Follow-up mechanisms should be implemented after a permit is issued to ensure that permit holders comply with the borough's requirements for the use by outdoor cafés of public property cafés. Adequate follow-up should be provided in the event of violations.

3.3.1. ROSEMONT–LA PETITE-PATRIE BOROUGH

3.3.1.A. Background and Findings

Prior to 2010, the traffic/parking inspector conducted post-issuance compliance checks, accompanied by preparation of a report and follow-ups of inspections.

FINDING

While the same types of activities were conducted in 2010, they were not documented and no notices of non-compliance were issued, according to information obtained from the inspector in charge. As previously indicated, however, the results of our outdoor café inspections pinpointed instances of non-compliance with borough requirements.

We believe that review and consideration of the full record of follow-ups requires documentation of all inspections aimed at enforcing borough regulations. Written notices of non-compliance should also be sent to violators so that the requested remedial measures are applied.

3.3.1.B. Recommendations

We recommend that Rosemont–La Petite-Patrie borough's Division des études techniques take the necessary measures to notify applicants of violations detected during inspections by sending out written notices of non-compliance to ensure the observance of borough requirements.

We also recommend that the Rosemont–La Petite-Patrie borough Division des études techniques include information in its outdoor café permit records pertaining to work performed and ultimately:

- Results of all inspection visits, to ensure compliance with borough requirements.
- Follow-ups and decisions pertaining to non-compliance notices sent to violators.

3.3.1.C. Action Plan of the Relevant Business Unit

[TRANSLATION] *“Implement a legal response procedure:*

- *Send a notice of non-compliance with a deadline for taking corrective action.*
- *If the outdoor-café operator fails to correct the situation within the established timeframe:*
 - *Issue an official document listing the violations detected during inspections and the actions required of the operator.*
 - *Possibility of damages by a third party (the city may remove objects located on public property at the operator’s expense).” (Planned completion: January 2011)*

“Record all follow-ups to inspections and other activities in the physical record of each operator of an outdoor café on public property.

Place copies of non-compliance notices, official documents and permit revocation notices, as the case may be, in violators’ files.” (Planned completion: May 2011)

3.3.2. PLATEAU-MONT-ROYAL BOROUGH

3.3.2.A. Background and Findings

The borough sets specific requirements for applicants seeking permits for the periodic use of public property by outdoor cafés. These requirements are contained in the “letter of requirements” signed by the applicant, which forms an integral part of the permit issued and in the document entitled *Cadre normatif à l’émission des permis pour les cafés-terrasses* [Regulatory Framework for Outdoor Café Permits] that is given to the applicant when the permit is issued.

Among these requirements are:

- Specifications for the authorized size of the outdoor café.
- Restrictions on furniture used for the outdoor café.
- Specifications for the perimeters of the outdoor café (e.g., railings).
- Restrictions on all forms of advertising.

- Obligation to preserve the premises and restore them to their original condition.
- Agreement to comply with all municipal rules and regulations.
- Limits on sunshades and retractable awnings.
- Removal of equipment (after the season), etc.

Once a permit is issued, a team of traffic/parking inspectors reporting to the Division des études techniques monitors compliance with borough by-laws and requirements. This process enabled us to review their inspections and learn what they observed. In our audit, we received an inspection register entitled *[TRANSLATION] 2010 Summary of Outdoor Café Inspections*. This record dated September 8, 2010 logs visits to 56 of 82 establishments with outdoor café permits. We found such information in this summary as the corporate name and address of outdoor cafés, inspection dates and times, the inspector's initials, the name of the individuals with whom the inspector met, a summary of activities performed (often accompanied by photos) and a statement of whether a notice of non-compliance was or was not issued. According to the information obtained from the people with whom we met, the inspection team was unable to inspect all outdoor cafés during the 2010 summer season because of staff turnover within the Division des études techniques.

We inspected the 10 outdoor cafés selected in our audit to check their compliance with permit issuance requirements. We found that the three that had received new permits from the borough in 2010 all complied with the requirements. We also found evidence in the inspection record of inspections by a traffic inspector to validate the new outdoor cafés' compliance with plans and technical requirements.

FINDING

Our inspections of the other seven selected outdoor cafés (which had been issued permits in previous years) revealed that five permit holders had not complied with requirements.

FINDING

Four of these five outdoor cafés were among those not inspected during the 2010 period of use. The inspector's visit to the fifth failed to detect the violation that we found.

3.3.2.B. Recommendations

We recommend that Plateau-Mont-Royal borough's Direction des travaux publics take all necessary measures to ensure that permit holders comply, in a timely manner, with the requirements set out by the borough concerning the use by outdoor cafés of public property.

3.3.2.C. Action Plan of the Relevant Business Unit

[TRANSLATION] "The technical officer who issues the permit must, within 30 days, measure the terrace to ensure that it complies with permit requirements. The technical officer must also ensure that the railings comply and take a photo for future reference.

Traffic/parking inspectors and police officers will be asked to ensure that clearances around the outdoor cafés meet requirements.

The outdoor café's floor plan must be posted in the place of business.

Traffic/parking inspectors and police officers must also ensure that the outdoor café complies with the by-law on advertising and that its floor plan is clearly visible." (Planned completion: March 2011)

3.3.3. SUD-OUEST BOROUGH

3.3.3.A. Background and Findings

Once an operator is issued an outdoor café permit, the technical officer in charge must, according to borough procedures, inspect the premises to ensure that the facility complies with the approved plans and technical requirements (e.g., size of building access clearance, terrace area), and with layout and construction requirements (e.g., specifics regarding railing and platform installation) stipulated in the by-law. Any violation detected must be stated in a non-compliance notice sent to the operator, accompanied by a request for corrective actions to be made by a certain deadline (e.g., 10 days). The current by-law sets penalties for violations that persist despite notification.

Our review of the files of the nine selected outdoor cafés showed that, when violations were found during the technical officer's inspection of the premises (in three of the nine cases), a copy of the notice of non-compliance sent to the operator had been placed in the record.

FINDING

We found no mention in the records of information obtained in inspections of sites found in compliance with plans and regulatory requirements. We believe that information gathered in all inspections aimed at ensuring compliance with borough requirements must be documented in borough records to provide a full history of follow-up measures and for the sake of accountability.

FINDING

Moreover, we could not find any documents that would indicate if operators met their deadlines for implementing corrective actions in cases of non-compliance notices sent to violators.

Although few permits are issued and the technical officer currently responsible for this activity is familiar with the records, we believe that the files would benefit from more thorough documentation of decisions and other activities with respect to tolerance or non-tolerance of a violation. Such records would be particularly useful if a different officer is assigned to the case.

3.3.3.B. Recommendations

We recommend that Sud-Ouest borough's Division des études techniques document its monitoring efforts in outdoor café records to list actions taken and, ultimately, report on:

- The results of all inspections aimed at ensuring compliance with borough requirements.
- Follow-ups on non-compliance notices sent to violators and decisions made on such matters.

3.3.3.C. Action Plan of the Relevant Business Unit

[TRANSLATION] "An inspection report will be included in the record. This report will, at the very least, contain the following information:

- *Inspector's name.*
- *Date.*
- *Name of the individual(s) encountered.*
- *Reason for visit.*
- *Issue(s) checked.*
- *Comments.*

- *Notices given and follow-up, if required.*
- *Fines.” (Planned completion: May 2011)*

3.3.4. OUTREMONT BOROUGH

3.3.4.A. Background and Findings

The Division des permis et inspections employs three inspectors who generally patrol all borough streets every week. Follow-up visits are conducted during these patrols. Inspectors produce a *Feuille d’inspection de la semaine* [Weekly Inspection Report], in which they record addresses of the establishments, permit numbers, inspection dates, nature of the work and specific remarks for every permit involving an inspection, whether this does or does not pertain to an outdoor café.

According to the manager, the inspectors are quite familiar with features of outdoor café plans approved by the borough council. This knowledge enables them to inspect the facilities visually during their weekly patrols. Once the installation is deemed compliant with borough requirements, a note is added to the inspection report, but no other document or comment is put in the permit holder’s record.

FINDING

Of the 10 establishments selected for our sample, six records did not contain any comments relating to an inspection by inspectors during the year the permits were first issued. The four other files, however, included copies of violation notices sent to permit holders, demonstrating that inspections had occurred.

The records contain a roadmap of some of the steps taken by the inspectors, but do not include all information on how notice deadlines are managed or what measures are taken to respond to infraction notices and to ensure compliance with permit conditions and restrictions. When inspectors detect violations of by-laws or council restrictions, they follow up with permit holders. Their first action is usually a verbal notice to holders, reminding them of their obligation to comply with the conditions that they accepted when signing their permits. If the situation persists, inspectors issue a written violation notice that is entered in a “suivi des avis certifiés émis” [follow-ups on official notices] report. It lists the notice dates and numbers, permit holder dates of receipt, time allowed, nature of the violation and comments on follow-up of the situation. If the violation notice fails to achieve the desired results, or if stronger measures are required, an infraction report may be sent to the permit holder.

Measures to be taken in the event of an infraction are determined on a case-by-case base, in the inspector's best judgment. In more complex situations, the division manager and director of the Division d'aménagement urbain et du patrimoine are asked to give their opinions.

In our opinion, the process implemented by the Division des permis et inspections to follow up infraction notices ensures that instances of non-compliance with by-laws are either resolved within the period specified or action is taken with the permit holder. The records do not, however, contain any documentation on permit holder compliance with their obligations. It would be desirable to place information in permit holder files stating that the necessary measures were taken to ensure compliance with obligations. This would make accountability easier.

3.3.4.B. Recommendations

We recommend that the Outremont borough Division des permis et inspections record the results of inspection visits in permit holder files to ensure compliance with all conditions set out in the by-laws and to facilitate accountability.

3.3.4.C. Action Plan of the Relevant Business Unit

[TRANSLATION] "Draft an annual account or report detailing inspection visits to permit holders. Inspectors will record in this report any violations of the applicable provisions of by-law 1054-2, along with efforts made to correct the situation. The division manager will provide training in the use and dissemination of this report to a SAUP technical committee meeting attended by the SAUP director." (Planned completion: February 2011)