

## APPENDIX A



### USE OF PUBLIC SPACE - GUIDING PRINCIPLES -

#### Purpose

The City of Victoria owns and manages a wide variety of public spaces, including roads, sidewalks, parks, squares and green spaces. The *Community Charter* indicates that one of the purposes of a municipality is providing for stewardship of the public assets of its community. As valuable public assets, these spaces must be managed in a manner that reflects the public interest. Generally, these spaces are open to all members of the public and commercial uses are not permitted. However, the City may allow short and long-term exclusive use of these spaces for a variety of commercial and non-commercial purposes, including:

- festivals and events
- block parties
- filming
- parking
- merchandise displays
- outdoor markets
- sidewalk cafes, and
- street vending.

It can be challenging to balance the various interests that may be impacted by an exclusive use of public space. To assist Council and staff, this document outlines a set of principles that can be used to develop policies and procedures and guide decisions regarding use of public space. The principles reflect the Four Point Plan set out in the 2011-2012 Corporate Strategic Plan, which includes:

- Pursuing Operational Excellence
- Building a Strong Community
- Growing Our Economy, and
- Respecting our Environment.

The principles are not meant to be applied as “absolutes” as they may lead to conflicting results depending upon the use under consideration. Decision-makers will likely need to balance the various guiding principles when determining whether a particular use of public space is appropriate and, if so, how the use should be managed.

#### Definitions

**Commercial use** is any use that generates income for a business. It does not include uses by non-profit or not-for-profit organizations.

**Non-commercial use** is any use by non-profit or not-for-profit organizations, including uses that raise funds for the organization.

**Public space** is any City-owned land, area or space that is accessible and open to members of the public. It includes roadways, parks, squares and sidewalks.

### **Application**

The principles set out in this document apply to any exclusive or dedicated use of public space, although there are some variations in the application of the principles to commercial and non-commercial uses. The description of each principle clearly indicates whether it applies to all uses of public space or only to specific types of uses. The application of the principles to commercial and non-commercial uses is also highlighted in the summary table following the guiding principle descriptions. As can be seen from that table, three of the principles (3, 10 and 11) apply only to commercial uses, while principle 4 applies only to non-commercial uses.

### **Guiding Principles**

#### ***Pursuing Operational Excellence***

##### **1. Use of public space must be consistent with all applicable legislation, bylaws, plans and agreements**

Any use of public space must comply and be consistent with federal and provincial legislation and any applicable City bylaws, plans or agreements. For example, the Business Licence Bylaw makes it clear that use of public space for business purposes is only allowed if expressly permitted by bylaw. Other bylaws regulating use of public space are listed at the end of this document. Relevant plans include, but are not limited to:

- the Official Community Plan
- the Downtown Core Area Plan
- Local Area Plans
- the Parks Master Plan, and
- individual Park Management Plans.

##### **2. The City pursues opportunities to raise revenue through the use of public space**

The City explores options for revenue growth. Charges for the use of public space are an alternative source of City revenue that can complement tax revenues.

##### **3. The City charges fair market value and full cost recovery for the commercial use of public space**

Section 25 of the *Community Charter* restricts Council from providing assistance to businesses. This means that the City must charge fair market value for the use of public spaces by commercial enterprises. The determination of fair market value should take into account any restrictions on the use of the public space or terms and conditions of the use that limit its value. This also means that the City will determine and charge commercial users the full cost of any City services required to support or facilitate the commercial use.

**4. The City determines charges for non-commercial use of public space based upon the purpose of the use and the nature of any community benefits**

Non-commercial uses of public space by non-profit organizations for such purposes as concerts, festivals, demonstrations or performances may provide desirable social and cultural benefits to the community. In order to assist organizers with developing and sustaining these types of events, the City may provide public space and required City services at reduced or no cost, depending upon the purpose of the use and the nature of any community benefits.

***Building a Strong Community***

**5. Use of public space must not unduly impact public access, safety or mobility**

The defining characteristic of public space is that it is space that is accessible and open to members of the public. Mobility and accessibility influence the City's liveability and social well being. When determining whether to allow use of public space, the City will consider impacts on public access, egress, safety and mobility. This means that uses that block access to or egress from an area, other than on a temporary basis, or create safety hazards, will generally not be permitted.

**6. Use of public space must be compatible with the purpose of the space**

Public spaces have a variety of purposes. For example, boulevards beautify roadways, act as a safety buffer, provide a corridor for trees and serve as a location for public services and utilities. The City will consider the purpose of the public space in question when deciding whether to allow a particular use. Uses that are incompatible with the purpose of a space will generally not be permitted.

**7. Use of public space must be compatible with neighbouring residential or commercial uses**

Use of public space may impact the quality of life of neighbouring residents or the economic viability of neighbouring businesses. The City will consider these impacts when deciding whether to allow use of public space and the appropriateness of specific activities.

**8. Use of public space must be consistent with the aesthetics and character of the space and any applicable design guidelines**

Public places play a large role in shaping the identity of the communities in which they are located. Any use of a public place must be in keeping with the aesthetics and character of the space and its neighbourhood. For some neighbourhoods, the City has developed design guidelines to ensure that construction and use are compatible with the characteristics of that neighbourhood.

***Growing Our Economy***

**9. The City supports use of public space that increases the vibrancy of neighbourhoods**

Victoria is a vibrant centre for government, business and cultural activity. Uses occurring in public spaces may contribute to the vigour, activity and liveliness of a neighbourhood. For example, the proposed Downtown Core Area Plan recognizes that outdoor cafes and dining areas enliven streets and public places and encourages their development on public property.

## **10. The City welcomes commercial uses of public space that provide opportunities for economic growth**

The City creates a welcoming environment for new businesses to locate and for existing businesses to grow and expand. This environment can be fostered by making public space available for commercial uses.

## **11. The City provides equal opportunities to commercial users who wish to access public space**

Section 25 of the *Community Charter* makes it clear that Council must not provide a grant, benefit, advantage or other form of assistance to a business, unless it is for heritage purposes or otherwise authorized under that Act. Bylaws may establish different classes of persons, places or activities but may not discriminate within a class. This means that, where public space is made available for commercial uses, the City provides equal opportunities for interested businesses to engage in that use. This does not mean that commercial users always have equal rights of access to a particular space. For example, any restaurant that meets the bylaw criteria may apply to operate a sidewalk café but only an adjacent restaurant can operate a café on a particular section of sidewalk.

### ***Respecting Our Environment***

## **12. Use of public space must not damage public property or the environment**

The City manages and maintains its infrastructure, parks, open spaces and green spaces for the benefit of all residents, businesses and visitors. Uses that may damage public property will generally not be permitted.

The City has also committed to actions to protect the environment in a broader sense, including initiatives to increase energy efficiency and reduce greenhouse gas emissions. Any impacts on these initiatives will be considered when deciding whether to allow use of public space.

Generally, the City will give preference to uses or technologies that produce fewer emissions or otherwise have less impact on the environment.

### **Summary Table**

<b>Guiding Principle</b>	<b>Commercial uses</b>	<b>Non-commercial uses</b>
<b>Pursuing Operational Excellence</b>		
1. Use of public space must be consistent with all applicable legislation, bylaws, plans and agreements	✓	✓
2. The City pursues opportunities to raise revenue through the use of public space	✓	✓
3. The City charges fair market value and full cost recovery for the commercial use of public space	✓	
4. The City determines charges for non-commercial use of public space based upon the purpose of the use and the nature of any community benefits		✓
<b>Building A Strong Community</b>		
5. Use of public space must not unduly impact public access, safety or mobility	✓	✓



Guiding Principle	Commercial uses	Non-commercial uses
6. Use of public space must be compatible with the purpose of the space	✓	✓
7. Use of public space must be compatible with neighbouring residential or commercial uses	✓	✓
8. Use of public space must be consistent with the aesthetics and character of the space and any applicable design guidelines	✓	✓
<b>Growing Our Economy</b>		
9. The City supports use of public space that increases the vibrancy of neighbourhoods	✓	✓
10. The City welcomes commercial uses of public space that provide opportunities for economic growth	✓	
11. The City provides equal opportunities to commercial users who wish to access public space	✓	
<b>Respecting Our Environment</b>		
12. Use of public space must not damage public property or the environment	✓	✓

### **Key Related Bylaws**

The following City bylaws regulate the use of public space:

- Business Licence Bylaw, No. 89-71 (prohibits carrying on business in a public place unless otherwise expressly permitted by bylaw)
- Outdoor Market Bylaw, No. 93-121 (allows and regulates the operation of outdoor markets on public property)
- Parks Regulation Bylaw, No. 07-059 (regulates use of parks)
- Recreation Fees Bylaw, No. 06-56 (specifies fees for use of various public spaces)
- Sidewalk Cafes Regulation Bylaw, No. 02-75 (allows and regulates the operation of sidewalk cafes)
- Sign Bylaw, No. 92-30 (prohibits signs in public spaces unless expressly permitted)
- Street Vendors Bylaw, No. 89-72 (allows and regulates street vendors and street entertainers)
- Streets and Traffic Bylaw, No. 09-079 (regulates use of streets and sidewalks)
- Zoning Regulation Bylaw, No. 80-159 (regulates use of land and buildings)