



Committee of the Whole Report

For the Meeting of June 15, 2017

To: Committee of the Whole **Date:** May 25, 2017
From: Jonathan Tinney, Sustainable Planning and Community Development
Subject: Sidewalk Café Bylaw Update – Noise, Parklet Trial Installation and Fees for Use of Parking Stalls

RECOMMENDATION

That Council direct staff to:

1. Monitor potential noise issues related to sidewalk cafés under the existing Noise Bylaw and Nuisance (Business Regulation) Bylaw and report back to Council in two years with analysis and recommendations.
2. Bring forward amendments to the Sidewalk Café Bylaw to update the fees for sidewalk cafés using the adjacent parking stall so that it is double the amount currently charged for sidewalk cafés occupying a sidewalk.
3. Conclude the Parklet Trial Installation (700 block Fort Street) and bring back to Council proposed bylaw regulations for parklets.

EXECUTIVE SUMMARY

The purpose of this report is to present Council with recommendations related to noise concerns with sidewalk cafés and to update the fees associated with sidewalk cafés using adjacent parking stalls. On June 23, 2016, Council directed staff to “review the bylaws and bring back to Council possible amendments that may address hours of operation in relation to noise concerns with sidewalk cafes.”

Staff have reviewed the bylaws and recommend for Council's consideration that the existing regulations sufficiently address potential noise issues associated with sidewalk cafés and that instead, staff be directed to monitor and report back to Council in two years.

The rationale for this recommendation is that:

- over the last 12 months the City has only received two noise complaints related to restaurant patios and both of these were on private property which would not be affected by changes to the Sidewalk Café Bylaw
- potential noise issues that may be caused by sidewalk cafés are currently regulated through the Sidewalk Café Bylaw, Noise Bylaw, and Nuisance (Business Regulation) Bylaw
- sidewalk café licences are only issued if the application complies with the Sidewalk Café Bylaw, and other City bylaws, including the Noise Bylaw. The City can refuse or cancel a licence for failure to comply with the bylaws.

Additionally, to more closely reflect the fee structure in the Streets and Traffic Bylaw, staff recommend that Council consider updating the fees for a sidewalk café that occupies a public parking stall to be twice the amount that is charged for a sidewalk café located on a sidewalk. Overall, this would result in fees decreasing from approximately \$15,000 to approximately \$3,500 for two parking stalls per year in the downtown. The equivalent fee outside of downtown would be approximately \$2,000. This fee structure would help encourage applications for these types of sidewalk cafés which could add to street vibrancy and economic vitality.

Staff also recommend for Council's consideration to direct staff to conclude the Fort Street Parklet Trial and bring back to Council proposed bylaw regulations for parklets. A licence would be required so that an organization of record takes responsibility for the installation for liability purposes and in case issues arise related to bylaw contraventions. If a licence is not acquired than the Fort Street Parklet would need to be removed.

PURPOSE

The purpose of this report is to present Council with recommendations related to noise concerns with sidewalk cafes and to update the fees associated with sidewalk cafes occupying adjacent public parking stalls

BACKGROUND

In 2016 staff reviewed the Sidewalk Café Bylaw and presented the results to Council and at the June 23, 2016 Council Meeting a motion was passed adopting updates to the Sidewalk Café Bylaw (attached in Appendix A). Since the amendments were adopted circumstances have resulted in staff recommending further updates for Council's consideration. In the Issues and Analysis section of this report, the background information relevant to each proposed change is discussed.

ISSUES & ANALYSIS

Potential Noise Issues

At the June 23, 2016 Council Meeting a motion was passed directing staff to "review the bylaws and bring back to Council possible amendments that may address hours of operation in relation to noise concerns with sidewalk cafés" (minutes attached in Appendix A). Staff have reviewed the bylaws and believe that the existing regulations sufficiently address potential noise issues associated with sidewalk cafés.

From May 1, 2016 to May 1, 2017 the City received noise complaints related to two food vending establishment patios. Both of these were on private property and thus, did not require a Sidewalk Café licence. No noise complaints were received related to sidewalk café licences during this time period.

The current Sidewalk Café Regulation Bylaw (Appendix B) addresses potential noise issues associated with sidewalk cafés primarily in the following ways:

- staff may require that the applicant submit a noise assessment to aid with the assessment of the application and may deny granting the licence for a number of reasons including if the sidewalk café would contravene bylaws such as the Noise Bylaw (Section 6(1)(b)). Staff would work with the applicant to try to address any issues before denying a licence

- staff may cancel an existing sidewalk café licence in a number of circumstances outlined under section 12 of the Bylaw, including if the sidewalk café constitutes a nuisance or has ceased to comply with a bylaw, such as the Noise Bylaw. Staff would work with the licence holder to try to address any issues and provide the applicant with an opportunity to be heard before cancelling a licence.

The Noise Bylaw (Appendix C) addresses potential noise issues associated with sidewalk cafés primarily in the following ways:

- a person in a public place or a person who is the owner or occupier of real property must not make or permit any other person to make a noise which disturbs the quiet of persons in the neighbourhood or vicinity between the hours of 10:00 p.m. one day and 7:00 a.m. the next (Section 11(1))
- shouting, using a sound amplification device or making other noise on streets is prohibited (Section 12(1))
- in commercial premises a person must not make, or permit to be made, noise from music or voice amplification equipment which exceeds 65 dBC during the night time (Section 15).

In addition, the City has adopted the Nuisance (Business Regulation) Bylaw which requires business licence holders to abate activity that causes a nuisance or violates the Noise Bylaw. This bylaw includes provisions to ensure that noise emissions from the business do not disturb the neighbourhood and comply with the City's bylaw dealing with the regulation of noise. Business licence holders that have been investigated for six incidents of nuisance in the preceding 12 month period are subject to be charged for future repeat nuisance investigations.

Updating the Sidewalk Café Bylaw to require that all sidewalk café licence holders only operate their sidewalk cafés during specific hours would take immediate effect and would apply to all current and future sidewalk cafés. There would be no opportunity for this requirement to be waived and all sidewalk cafés on public property would need to be vacated after the specified hour.

Further, the addition of hours would only apply to sidewalk café licences. It would not apply to any other businesses with patios that operate on private property. Staff have not conducted a thorough review, but, from a preliminary scan have determined that there are over fifteen restaurants with outdoor patios on private property that do not require sidewalk café licences, including: Tre Fantastico, Canoe Club, Fire and Water, Bartholomews, Bubbies Kitchen, Hot House Pizza, Moka House, Strathcona (rooftop), Bin 4 Burger, Q Café, Fol Epi Dockside, Agrius, Heron Rock Bistro, the Loft, Fernwood Inn, Beagle Pub, Pizzeria Primastrada (Fort Street), and Cocina Pequena (1600 Bay Street).

It should also be noted that there may be cases, such as with the Beagle Pub, where a portion of the patio is on private space and a portion is on the sidewalk. If Council updated the Sidewalk Café Bylaw to include hours of operation that do not correspond with a business's opening hours, a business would be required to vacate the portion of the patio that is under the sidewalk café licence but not the portion that is on private property. In this case, the current Beagle Pub hours do not exceed the recommended hours of operation for Sidewalk Cafés and therefore would not be an issue.

Fees for Sidewalk Café use of Adjacent Parking Stall

At the June 23, 2016 Council Meeting a motion was passed to adopt the Sidewalk Cafés Regulation Bylaw No. 16-038 (Appendix B).

This updated Sidewalk Café Bylaw permits businesses to apply for sidewalk café licences to occupy adjacent parking stalls subject to the regulations in the bylaw. No applications for this type of sidewalk café licence have been received to date.

The fees for this type of sidewalk café licence are set to the same fees to permit temporary occupation of a street as set out in s.106(3)(b)(ii) of the Streets and Traffic Bylaw. This equals approximately \$15,000 for two parking stalls per year. The rationale for charging the same fee is that the sidewalk café licence would occupy public parking stalls on the street. However, the Streets and Traffic Bylaw specifies that occupancy of a portion of the sidewalk is half the rate charged for similar occupancy of the street/parking spaces.

To more closely reflect the on-street/sidewalk occupancy fee structure in the Streets and Traffic Bylaw, staff recommend that Council consider updating the fees for a sidewalk café in a parking stall to be twice the amount that is charged for a sidewalk café on a sidewalk. This would result in fees equalling approximately \$3,500 for two parking stalls per year in the downtown. The equivalent fee outside of downtown would be approximately \$2,000. This fee structure would help encourage applications for these types of sidewalk cafés which could add to street vibrancy and economic vitality.

A sidewalk café that occupies an adjacent parking stall must not negatively impact traffic or safety or result in insufficient parking or loading space. The licence would not be approved without a review of parking demand and support shown from adjacent businesses.

Parklet Trial Installation – 700 block Fort Street

At the May 14, 2015 Council Meeting a motion was passed where Council endorsed the Fabulous Fort Pilot Parklet project proposed by the 700 block Fort Street Business Association and the Downtown Victoria Business Association, to waive street occupancy fees for this trial, and to direct staff to report back to Council on the pilot project (staff report attached in Appendix D).

Overall, the parklet trial has been successful in that it has not generated significant complaints from neighbouring businesses or the public and has not had a negative impact on parking supply and traffic safety.

Therefore, staff recommend for Council's consideration to direct staff to conclude the Fort Street Parklet Trial and bring back to Council proposed bylaw regulations for parklets. A licence would be required so that an organization of record takes responsibility for the installation for liability purposes and in case issues arise related to bylaw contraventions. A fee should also be collected for consistency with the Sidewalk Café Bylaw.

If a licence is not acquired then the Fort Street Parklet would need to be removed.

OPTIONS & IMPACTS

As directed by Council, staff have reviewed the bylaws and are bringing back to Council possible amendments that may address hours of operation in relation to noise concerns with sidewalk cafés.

Option 1: Rely on Existing Noise, Nuisance, and Ticket Bylaws and Monitor and Report Back in Two Years, Conclude Parklet Trial and Bring Back to Council Proposed Bylaw Regulations for Parklets, and Update Fees for Sidewalk Cafes in Parking Stalls (Staff Recommendation)

Staff recommend for Council's consideration that staff monitor potential noise issues related to sidewalk cafés under the existing Noise Bylaw and Nuisance (Business Regulation) Bylaw and report back to Council in two years with analysis and recommendations, rather than introducing changes at this time.

Potential advantages with Option 1:

- existing bylaws already address potential noise issues related to sidewalk cafés
- this option would allow staff to gather more information and analyse any potential noise issues associated with sidewalk café licensees over a longer period of time
- bylaw enforcement officers may enforce the existing Noise Bylaw by issuing tickets, if needed, for all outside food vending businesses on public or private property
- this option would not require consultation at this time and therefore would be less intensive on staff time and resources
- economic vitality and street activity would not be negatively impacted by the requirement of closing hours.

Potential disadvantages with Option 1:

- this option would rely on the existing regulations that address noise in the Sidewalk Café Bylaw and the Noise Bylaw without completely shutting down outdoor patios at certain times.

Option 2: Update Noise Bylaw with Hours of Operation, Conclude Parklet Trial and Bring Back to Council Proposed Bylaw Regulations for Parklets, and Update Fees for Sidewalk Cafes in Parking Stalls

Alternatively, Council could consider directing staff to update the Noise Bylaw to include hours of operation for food vending establishments serving customers outdoors. If Council wishes to proceed with this option, staff recommend for Council's consideration that the closing hour be set to 12:00 a.m. to match the standard Food Primary Liquor Licence operating hours.

Potential advantages with Option 2:

- potential noise violations resulting from outdoor patios of food vending establishments after 12:00 a.m. would be ticketable
- this option would apply to outdoor patios for all food vending businesses on public or private property.

Potential disadvantages with Option 2:

- this option could not be waived for specific businesses unless the owner has received an exemption for an outdoor special event under section 20 of the Noise Bylaw. Therefore, all existing and future outdoor patios for food vending businesses would have to adhere to the hours
- since hours of operation were not considered with the last Sidewalk Café Bylaw update, Council may wish to consider requesting consultation for this option. This would require staff time and resources to complete
- economic vitality and street activity may be negatively impacted.

Option 3: Update Sidewalk Café Bylaw with Hours of Operation, Conclude Parklet Trial and Bring Back to Council Proposed Bylaw Regulations for Parklets, and Update Fees for Sidewalk Cafes in Parking Stalls

Another option for Council's consideration is to direct staff to add hours of operation to the Sidewalk Café Bylaw to address noise concerns. If Council wishes to proceed with this option, staff recommend for Council's consideration that the closing hour be set to 12:00 a.m. to match the standard Food Primary Liquor Licence operating hours.

Potential advantages with Option 3:

- potential noise complaints resulting from sidewalk cafés operating after 12:00 a.m. may be reduced, and violators may be ticketed or subject to cancellation of their sidewalk café licence.

Potential disadvantages with Option 3:

- this option would apply only to businesses with sidewalk café licences, not patios on private property
- this option could not be waived for specific businesses. Therefore, all existing and future sidewalk café licences would have to adhere to the hours
- since hours of operation were not considered with the last Sidewalk Café Bylaw update Council may wish to consider requesting consultation for this option. This would require staff time and resources to complete.
- economic vitality and street activity may be negatively impacted.

Accessibility Considerations

The proposed updates do not impact accessibility considerations.

2015 – 2018 Strategic Plan

Updating the fees for Sidewalk Cafes in adjacent parking stalls contributes to "Strategic Objective 5: Create Prosperity Through Economic Development" of the *2015-2018 Strategic Plan*.

Impacts to Financial Plan

There are currently no Sidewalk Café Licences in adjacent parking stalls. Therefore, reducing the fees will not have a substantial impact on the *Financial Plan*.

Official Community Plan Consistency Statement

The proposed updates are consistent with the goals and policies of the *Official Community Plan* (2012), *Downtown Core Area Plan* (2011), and *Guiding Principles on the Use of Public Space* (2011).

CONCLUSIONS

Potential noise issues that may be caused by sidewalk café licences are currently addressed through specific regulations in the Sidewalk Café Bylaw and Noise Bylaw. As directed by Council, staff have reviewed the bylaws and brought back to Council possible amendments that may address hours of operation in relation to noise concerns with sidewalk cafés; however, based on the review of the bylaws, staff recommend for Council's consideration to direct staff to monitor potential noise

issues related to sidewalk cafés under the existing Noise Bylaw and Nuisance (Business Regulation) Bylaw and report back to Council in two years with analysis and recommendations. Additionally, staff recommend for Council's consideration that the Parklet Trial Installation be concluded, proposed bylaw regulations for parklets be brought back to Council, and the fees for Sidewalk Cafés using adjacent parking stalls be updated.

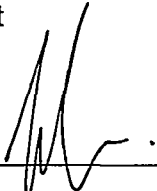
Respectfully submitted,


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Report accepted and recommended by the City Manager:



Date: June 9, 2017

List of Attachments

- Appendix A - June 23, 2016 Council Meeting Minutes
- Appendix B - Sidewalk Cafés Regulation Bylaw (Bylaw No. 16-038)
- Appendix C - Noise Bylaw (Bylaw No. 03-012)
- Appendix D - 'Parklet' Trial Installation – 700 block Fort Street Report, Governance and Priorities Committee meeting of May, 7, 2015