



Planning and Land Use Committee For the Meeting of November 12, 2015

To: Planning and Land Use Committee **Date:** October 29, 2015
From: Jonathan Tinney, Sustainable Planning and Community Development
Subject: Sidewalk Café Bylaw Update – Progress Report

RECOMMENDATIONS

That Council direct staff:

1. To bring forward an updated *Sidewalk Café Bylaw* (No. 02-75) based on the following approach:
 - a. that the type of sidewalk cafés distinguish between whether objects are fixed in place or not;
 - b. that fully enclosed sidewalk cafés are no longer permitted;
 - c. that only fixtures that are easily removable are permitted;
 - d. that clearances from the curb be updated for safety and clarity;
 - e. that heater regulations be updated for safety and clarity;
 - f. that the fees be updated to simplify the process and for consistency with City policy;
 - g. that the adjacent parallel parking stall be an option for sidewalk café use in some circumstances;
 - h. that the Bylaw language be improved for clarity.
2. To prepare design guidelines to provide guidance for sidewalk café design and application review.
3. To proceed with public consultation, focused on providing information on the bylaw and process changes to stakeholders for feedback.
4. To incorporate refinements into the draft *Sidewalk Café Bylaw* in response to the input received from the public consultation and report back to Council with the proposed Bylaw by February 2016.

LEGISLATIVE AUTHORITY

Pursuant to Section 8 of the *Community Charter*, Council may, by bylaw, regulate, prohibit and impose requirements relating to public places, health, safety, protection of persons or property and the protection and enhancement of the well-being of its community in relation to nuisances, disturbances and objectionable situations.

Pursuant to Section 35 of the *Community Charter*, Council may grant licenses of occupation, or permits of encroachments, with respect to highways which are vested in the City, including the sidewalk portions of those highways.

In accordance with Section 194 of the *Community Charter*, the City may impose fees to exercise its authority to regulate, prohibit and impose requirements and to use municipal property.

EXECUTIVE SUMMARY

The purpose of this report is to present Council with a proposed approach for updating the *Sidewalk Café Bylaw* (No. 02-75), improvements to the process associated with establishing sidewalk cafés and to seek direction to proceed with focused public consultation for feedback on the proposed changes.

Sidewalk cafes can help achieve City-wide objectives with regards to placemaking and economic development by contributing to the vibrancy of public spaces and facilitating economic vitality. The *Sidewalk Café Bylaw* was adopted in 2002 and regulates the construction, placement, use and maintenance of objects and fixtures on public sidewalks that support sidewalk cafés to ensure access, safety, mobility, consistent character, and to protect public property. As sidewalk patios have evolved over the years they have become all-year dining areas with associated fixtures for weather protection. The Bylaw needs to be updated as it does not anticipate structures or types of technology (such as heat sources) that are commonly installed as part of patios. The process also needs to be updated to improve customer service and streamline the review process.

There are many considerations with sidewalk café licence proposals that span various City departments ranging from placemaking, economic development, transportation, fire and safety, structural considerations and how proposed patios may affect servicing and other infrastructure within the public Right-of-Way. It is important that the regulations address any potential issues while encouraging street activity and economic vitality.

Staff have reviewed the City of Victoria *Sidewalk Café Bylaw* (No. 02-75) in conjunction with regulations and practices from other municipalities, site visits, and review with various City departments. Based on this review, comprehensive revisions are proposed to make the City's regulations and application process more efficient, effective and up-to-date with current practices. These changes will:

- improve customer service
- encourage vibrancy on sidewalks
- promote economic growth
- maintain public access, safety, and mobility on sidewalks
- ensure sidewalk cafés are consistent with the character of the area
- improve consistency with other City processes, policies and regulations
- protect public property from damage.

Staff suggest that several key areas in particular need revisions including definitions of sidewalk café types; appropriate fixture techniques; clearances for pedestrian passageway and traffic safety; access to utilities; heater safety; as well as fee structures and amounts. In addition, staff propose a new set of design guidelines to be used by applicants and staff to guide applications and approvals on aspects such as urban design, context, character and street vibrancy.

PURPOSE

The purpose of this report is to present Council with a proposed approach for updating the *Sidewalk Café Bylaw* (No. 02-75) and improvements to the process associated with establishing sidewalk cafés, and to seek direction to proceed to public consultation and the subsequent refinement of the draft Bylaw.

BACKGROUND

Accommodating sidewalk cafés within public space can achieve City-wide objectives with regards to placemaking and economic development, by contributing to the vibrancy of public spaces and facilitating economic vitality throughout Downtown and other commercial areas of the City. The *Sidewalk Café Bylaw* (2002) regulates the construction, placement, use and maintenance of objects and fixtures on public sidewalks that support sidewalk cafés to ensure access, safety, and mobility, consistent character, and to protect public property.

At the Planning and Land Use Committee (PLUC) meeting of April 16, 2015, it was moved that “Council expects receipt of a report reviewing sidewalk café regulations in the next three months”. Following this direction and over the Summer months, staff prepared bylaw updates focused on permitting associated structures and technology (such as heat sources for weather protection) that are commonly installed as part of patios. As this Bylaw update forms part of a more comprehensive approach to improve the sidewalk café licence process, additional time was spent preparing design guidelines as a supplement to updated regulations, to assist applicants (and staff in review processes) in how patios can best be integrated along sidewalks and within public spaces to achieve placemaking and economic development objectives. In addition, staff are also improving the customer experience and the application review process through more coordinated reviews.

Historically, the City has issued permits for sidewalk cafés, at approximately five new permits per year. In total, there are currently 94 sidewalk cafés with licenses that are renewed annually. These originated as seasonal sidewalk cafés, some as basic as removable tables and chairs to more elaborate installations defining the patio area. Over the years, these have evolved and have extended their operations beyond the summer season through patio designs that offer weather protection. There are a few circumstances where fully-enclosed patios were permitted that in effect appear as privatization of public space, however, most are designed in a manner that balances weather protection and patron comfort with maintaining open-air characteristics to contribute to sidewalk vibrancy.

To that end, the City is working to improve the application and review process and update the *Sidewalk Café Bylaw* to better facilitate the establishment of outdoor patios in a manner that meets City objectives.

ISSUES AND ANALYSIS

There are many considerations with sidewalk café licence proposals ranging from placemaking (urban design and heritage); economic development (encouraging active commercial uses at ground level throughout Downtown, including restaurants that contribute to sidewalk interest and vibrancy); transportation (in the form of pedestrian circulation); fire and safety (regarding types of heat sources); structural considerations and how proposed patios may affect servicing and other infrastructure within the public Right-of-Way. It is important that the regulations take a balanced approach to these topics, and address any potential issues while encouraging street activity and economic vitality.

Proposed Approach

At the Planning and Land Use Committee meeting of April 16, 2015, staff indicated that the City of Victoria *Sidewalk Café Bylaw* (No. 02-75) should be updated as it does not meet current needs of applicants or the public. It is also difficult for staff to administer because it does not reflect current practice. Staff have reviewed the *Sidewalk Café Bylaw* in conjunction with regulations and practices from other municipalities, site visits, and review with various City departments. In addition to this, staff are making improvements to the application and review process.

The proposed changes to the *Sidewalk Café Bylaw* and process will increase efficiency and effectiveness and help to encourage street activity and economic vitality in the downtown core as well as the rest of the City. These changes will:

- improve customer service
- encourage vibrancy on sidewalks
- promote economic growth
- maintain public access, safety, and mobility on sidewalks
- ensure sidewalk cafés are consistent with the character of the area
- improve consistency with other City processes, policies and regulations
- protect public property from damage.

It is proposed that the Bylaw itself include the prescriptive aspects including utility access, fire and safety, fees, and liability. A set of design guidelines to supplement the Bylaw would provide guidance for considerations that are not regulatory, such as urban design, context, character and street vibrancy.

Improved Application Process

Staff are improving the customer experience and the application review process to be more open, accountable, and responsive. These improvements will be in place ahead of the 2016 patio season when new applications and renewals would be anticipated. Specific improvements will include:

- A concise and easy to understand guide to the application process which will outline aspects such as how to apply, costs, technical requirements, and design guidelines.
- The application intake process will be coordinated by City business licencing staff. This will improve customer service by centralizing business licence and sidewalk café applications and providing one primary point of contact.
- The application review will be managed by the Sustainable Planning and Community Development Department (SPCD). The applications will be referred to appropriate City staff as necessary, for comments on elements such as heritage, utilities, transportation, heater safety, and other City permit requirements.

Bylaw Updates

The existing Bylaw (adopted in 2002) requires general revisions to update it to current bylaw practices, revisions for clarity and to avoid causing unintended consequences. A draft of the proposed Bylaw is attached (Attachment A) to this report to give a general idea of what form they are intended to take. The exact wording still needs to be confirmed.

Staff have identified the following key areas to be improved:

- **Definition of sidewalk café types:** The types of sidewalk cafés have been reviewed and will be revised. The current Bylaw distinguishes between a Temporary Sidewalk Café and an Enclosed Sidewalk Café. This is misleading since both types are required to be temporary in nature. It is also proposed that fully enclosed sidewalk cafés not be allowed on the right-of-way because they essentially function as an extension of private, interior space and do not contribute to street activity. City policy does not support the privatization of public space in this way and instead, encourages a balanced use of the space. Staff propose that the two types of sidewalk cafés be distinguished by whether any objects (e.g. railings, fences, etc.) are fixed in place or not as this will require special attention during the application review process.
- **Objects attached to the sidewalk:** Staff propose that the method of affixing objects in place (e.g. railings, fences, etc.) be limited to techniques that facilitate ease of removal and repair to the sidewalk. Generally, free standing or, if necessary, a plate with bolts affixed to the sidewalk is preferred. Private infrastructure installed on public property should be limited.
- **Pedestrian passageway and utility access:** Ensure sufficient clearances to allow for pedestrian passageway, access to utilities, and setbacks from moving traffic are updated for function and clarity.
- **Heater and fire safety:** The section on heaters is based on outdated technology. Staff propose that the Bylaw not specify types of heaters (e.g. propane, natural gas). Instead, the Bylaw will require all provincial and federal safety codes and certifications be met where necessary, providing greater flexibility with heater types and ensuring public safety.
- **Annual fees:** Staff propose that fees continue to be charged on a square foot basis (plus an application fee) to account for sidewalk café size. In accordance with legislative requirements, this fee will continue to be based on market value. However, in keeping with City policy to support economic vitality and street activity, staff propose to increase the fees only as necessary. This will require an appraiser to be hired to determine what the appropriate fees should be in the current market context. The existing bylaw has three potential reductions for annual fees: location in City, north facing, and abutment with the associated business. Staff propose to remove these reductions because they are not justified, do not provide appropriate incentives, and to simplify the process. The square foot fee amount would be based on the type of sidewalk café: movable would have lower fees than fixed sidewalk cafes because they have less of an impact on public space.
- **Use of adjacent parking stall:** It is proposed that sidewalk cafes be permitted in the adjacent parallel parking stall under certain circumstances. This would allow sidewalk cafes in locations that would otherwise be too difficult to accommodate without negatively impacting other sidewalk uses such as pedestrian passageway and utility access. It would also allow more design flexibility and creative solutions to sidewalk café goals. This practice has been successfully implemented in other cities, and builds upon the City's recent placemaking initiative on Fort Street in the form of a parklet. Further work will be required to determine the best approach to updating the *Sidewalk Café Bylaw* to permit this.

Design Guidelines Added

In response to the review of the *Sidewalk Café Bylaw*, the creation of new design guidelines (Attachment B) are proposed to provide clear guidance to applicants and City staff when reviewing applications. Although the DCAP includes general guidelines for outdoor dining

areas, there is a need for more detailed guidelines to achieve the City's objectives for placemaking and economic development, to assist restaurant owners in the design of their sidewalk cafés to achieve those objectives, and to assist staff in evaluating applications more efficiently. A draft of these design guidelines are attached to this report to give a general idea of what content is proposed. The exact wording, form and document design still need to be confirmed, subject to stakeholder feedback.

Specific aspects proposed to be addressed in the design guidelines include weather protection, sightlines and views, open appearance, and suitability to the surrounding setting. Staff have reviewed Sidewalk Café Design Guidelines used by other municipalities and propose using the following approach:

- clear and concise
- address specific goals
- flexibility to allow creative solutions
- organized by type of guideline for ease of use
- graphic/visual examples to guide best practice.

A review of other municipalities' Sidewalk Café regulations revealed that high-level discretionary guidelines are more common than more detailed and prescriptive approaches such as requiring choices be made from a "kit of parts". Staff believe that a high-level approach is preferred to allow applications to respond to specific context, site constraints, unforeseen circumstances, and allow for variation that increases visual impact of use of outdoor space.

Consultation on the Proposed Bylaw and Design Guidelines

Staff propose that outreach be focused on the current Sidewalk Café Licence holders and several key organizations including the Downtown Victoria Business Association, Greater Victoria Chamber of Commerce, BC Restaurant and Foodservices Association, and the BC Hotel Association. These licence holders and organizations will be informed of the proposed bylaw changes and process improvements, and invited to provide feedback to help finalize the proposed bylaw and design guidelines for Council's consideration.

Next Steps

It is proposed that staff complete the following next steps before reporting back to Council in February 2016 with the proposed Bylaw:

- **Determine fees based on market value:** An appraiser needs to be retained to determine the market value and consider whether the square foot fee amount needs to be adjusted.
- **Advance the draft Bylaw and design guidelines:** The draft Bylaw and design guidelines will be completed as outlined above.
- **Complete public consultation:** Public consultation will be completed as outlined above.
- **Report to Council:** Staff will complete the steps noted above and bring the results of the consultation and the proposed Bylaw to Council in February 2016.

OPTIONS AND IMPACTS

Option 1

Council may approve the proposed approach.

Option 1 Impact

This would direct staff to proceed with the work as outlined in this report. Staff would advance and further develop a draft Bylaw and design guidelines, proceed with public consultation, incorporate refinements, and report back to Council by February 2016. The proposed approach would result in comprehensive revisions to the Sidewalk Café regulations and application process making them more efficient, effective and up-to-date with current practices.

Option 2

Should Council wish to provide input on any aspects of the update to the *Sidewalk Café Bylaw* at this stage, Council may provide additional direction to incorporate into the staff recommendation.

Option 2 Impact

The impact of Option 2 is dependent on the additional direction that Council may incorporate into the staff recommendation.

2015 – 2018 Strategic Plan

This update to the Sidewalk Café regulations and application process contributes to "Strategic Objective 5: Create Prosperity Through Economic Development" of the 2015 - 2018 Strategic Plan and is accordingly item number 77 in the Operational Plan.

Impacts to 2015 – 2018 Financial Plan

This report proposes to update the sidewalk café fees to simplify the process and for consistency with other City policy. The impact on the 2015 - 2018 Financial Plan cannot be assessed until an appraisal to determine market rates is completed and appropriate fees are set.

Official Community Plan Consistency Statement

The proposed *Sidewalk Café Bylaw* and update is consistent with the goals and policies of the *Official Community Plan (2012)*, *Downtown Core Area Plan (2011)* (DCAP), and *Guiding Principles on the Use of Public Space (2011)*.

The DCAP contains specific policies on urban animation including high-level guidelines to encourage outdoor dining that contributes to vibrant streets. These general guidelines provide the foundation for the more detailed design guidelines proposed in this report (Attachment B).

CONCLUSIONS

The *Sidewalk Café Bylaw* has been reviewed in conjunction with regulations and practices from other municipalities, site visits, and review with various City departments. Based on this review, staff propose comprehensive revisions to make the City's regulations and process more

efficient, effective and up-to-date with current practices. This report summarizes the proposed approach to updating the *Sidewalk Café Bylaw*, the progress made to date, and recommends that Council direct staff to proceed with the approach.

A preliminary draft of the proposed Bylaw and design guidelines have been attached to this report to give a general idea of what form they are intended to take. Exact wording still needs to be confirmed.

Respectfully submitted,



Rob Bateman
Planner
Community Planning Division

Att.



Jonathan Tinney, Director
Sustainable Planning and
Community Development

Report accepted and recommended by the City Manager:



Date: Nov. 3, 2015

List of Attachments

- Attachment A: Draft *Sidewalk Café Bylaw No. 15-61*
- Attachment B: Draft Design Guidelines.

NO. 15-61

THE CORPORATION OF THE CITY OF VICTORIA

The purpose of this Bylaw is to replace the Sidewalk Cafés Regulation Bylaw No. 02-75 with an updated bylaw under which the City may authorize the placement of Movable and semi-permanent structures on sidewalks within the City of Victoria.

Under its statutory powers, including section 14 of the *Victoria City Act, 1919* and sections 8, 35 and 194 of the *Community Charter*, the Municipal Council of The Corporation of the City of Victoria enacts the following provisions:

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PART 1 - INTRODUCTION

Title

- 1 This Bylaw may be cited for all purposes as the "SIDEWALK CAFES REGULATION BYLAW".

Definitions

- 2 For the purposes of this Bylaw,

"Applicant" means an applicant for a Licence, and for the purposes of this Bylaw, also means the holder of a Licence, once issued;

"Application" means an application for a Licence;

"Director" means the Director of Sustainable Planning and Community Development for the City of Victoria;

"Enclosed Sidewalk Café" means a Sidewalk Café consisting of any fixtures erected within a licensed Sidewalk Café area, consisting of glass or plexiglass roofs and walls which are Movable in nature and removable, and tables, chairs, platforms and portable planters;

"Fixed Sidewalk Cafe" means an area of a Sidewalk where structure are constructed, placed or fixed for seating and serving customers as an extension of, and immediately adjacent to, the business address of an existing food vending establishment;

"Licence" means a licence for a Sidewalk Café issued under this Bylaw;

"Movable Sidewalk Café" means an area of Sidewalk where moveable furniture placed for seating and serving customers as an extension of, and adjacent to, the business address of an existing food vending establishment;

"Sidewalk" includes

- (a) every sidewalk within the meaning of the Streets and Traffic Bylaw
- (b) Centennial Square
- (c) Bastion Square
- (d) Gladstone Mall and
- (e) Millie's Lane

"Sidewalk Café" includes a Fixed Sidewalk Cafe and Movable Sidewalk Cafe;

PART 2 - LICENCE REQUIREMENTS

Licence Required

- 3 A person may not place, construct or keep a Sidewalk Cafe except as provided in this bylaw.

Sidewalk Cafes

- 4 (1) An owner in possession or an occupant of property abutting a Sidewalk may establish, operate and maintain a Sidewalk Café on a designated portion of the Sidewalk if:
- (a) that owner or occupant is using the property abutting the Sidewalk for a commercial purpose by operating a restaurant, diner, lunch counter, dining lounge, dining room, lounge or public house, or a combination of any of these;
 - (b) that owner or occupant possesses a valid Licence;
 - (c) that owner or occupant places, constructs and maintains the Sidewalk in strict accordance with the terms of the Licence.
- (2) The designated portion of the Sidewalk for which a Licence is issued shall not be less than 1m from the curb.

Heaters

- 5 (1) An Applicant for a Licence may place heaters within the designated portion of the Sidewalk for which the Licence is issued provided that the following conditions are satisfied:
- (a) the number and location of any proposed heaters is indicated on

the Application;

- (b) the installation and operation of any heater must:
 - (i) conform to the standards established by the Canadian Standards Association and certified to the standards of Underwriters Laboratories of Canada;
 - (ii) be used in strict accordance with all Provincial safety regulations and the manufacturer's instructions; and
 - (iii) not present a risk of harm to the health or safety of the public.

(2) The Director may require as a condition of the issuance of a Sidewalk Café Licence that:

- (a) heaters not be permitted within the designated portion of the Sidewalk for which the Licence is issued;
- (b) that the number and type of heaters be limited; or
- (c) that the location of heaters be confined to certain areas prescribed by the Director;

where in the opinion of the Director the number, type or location of the heaters proposed in the Application would present a risk of harm to the health or safety of the public.

PART 3 - LICENCE APPLICATION

Application

- 6 (1) To obtain a Licence, an Applicant must apply to the Director in the form prescribed by the Director, and must provide the plans and details of the proposed Sidewalk Café showing:
 - (a) the area of the Sidewalk to be occupied; and
 - (b) the location of any fixtures or other objects which shall be placed within the area of the Sidewalk to be occupied.
- (2) The Director may grant a Licence if the Director is satisfied that:
 - (a) the Applicant:
 - (i) has paid the Application fee pursuant to section 13(a);

- (ii) has fully completed the Application form and provided all information required pursuant to section 6(1);
 - (iii) holds a valid business licence issued by the City;
 - (iv) has obtained all additional applicable federal, provincial and municipal permits or licences;
- (b) the Sidewalk Cafe will not:
 - (i) unreasonably obstruct or interfere with vehicle, bicycle or pedestrian traffic or vehicle, bicycle or pedestrian safety;
 - (ii) unreasonably obstruct or interfere with the ability of the City or any public utility company to have access to or maintain a utility or service instillation;
 - (iii) unreasonably interfere with the public's use and enjoyment of the Sidewalk or adjoining roadway;
 - (iv) unreasonably interrupts the sightlines along the Sidewalk;
 - (v) present a risk of harm to the health or safety of the public;
 - (vi) constitute a nuisance;
 - (vii) detract from the character of the area;
 - (viii) contravene the provisions of this bylaw;
- (3) In addition to the provisions set out in section 6(2), the Director may only grant a licence for a Movable Sidewalk Cafe if the Director is satisfied that the Sidewalk Cafe does not include any fixtures.
- (4) The Application form, when approved and signed by the Director or Director's designate, and when issued to the Applicant, is the Sidewalk Café Licence.

PART 4 - CONDITIONS OF LICENCE

Conditions

- 7 (1) Every Licence is subject to the following conditions:

- (a) For the purpose of installing, maintaining or repairing any utility or service installation owned by the City or a public utility, the Applicant shall:
 - (i) allow the Director and the employees or agents of the City and of any public utility to enter the portion of the Sidewalk designated in the Licence; and
 - (ii) when requested by the Director, remove part of the Sidewalk Café within 48 hours, or immediately in the event of an emergency, for regularly scheduled utility or service installation, maintenance or repair.
- (b) Where an Applicant neglects, refuses or fails to remove part of a Sidewalk Café under section 7(1)(a), or fails to do so within the time specified under that section, the Director may cause any part of the Sidewalk Café to be removed for the purposes in that clause and may charge the costs of the removal to the Applicant.
- (c) At all times and at his own expense, the Applicant shall keep and maintain the Sidewalk Café in a clean, sanitary, attractive condition satisfactory to the Director and shall keep the Sidewalk surrounding or adjacent to the Sidewalk Café free from papers, rubbish and debris of any kind.
- (d) The Applicant shall not open, retract, remove, lower or affix any part of the Sidewalk Café structure if by doing so the area for which a Licence has been issued is enlarged.
- (e) The Applicant shall not use the Licence area for any purpose other than seating and serving customers.
- (f) Where an Applicant is required to remove any fixtures, furnishings and personal property pursuant to this bylaw, the Applicant shall not make any claim against the City on account of such removal and shall replace and restore the Sidewalk to a safe and proper condition to the satisfaction of the Director.
- (g) Where an Applicant neglects, refuses or fails to cease occupation of the Sidewalk as required pursuant to this bylaw, or fails to do so within the time specified, the Director may cause any fixtures, furnishings or personal property located on the Sidewalk to be removed and may cause the Sidewalk to be restored to a safe and proper condition and may charge the costs of such removal and restoration to the Applicant.
- (h) Where the City has incurred costs as specified in section 7(a)(g), a certificate of the Director setting out those costs shall be final and

the City may recover such costs from the Applicant in any Court of competent jurisdiction as a debt owing by the Applicant to the City.

- (i) A Licence is valid for a period of 12 months and may be renewed for additional periods of 12 months upon payment of the prescribed Licence fees, subject to the terms of this Bylaw.
 - (j) In consideration for the issuance of the Licence, the Applicant agrees to indemnify the City in accordance with the agreement included in the Application Form.
- (2) In addition to the provisions set out in section 7(a), each Licence for a Sidewalk Café with a heater is subject to the following conditions:
- (a) During the term of the Licence
 - (i) the Applicant must obtain and maintain in force commercial general liability insurance, in the minimum amount of \$2 million per occurrence; and
 - (ii) the City must be added as an additional insured, together with a cross liability clause, to every policy of insurance required to be maintained under section 7(2)(a)(i) and that the City must be provided with proof of such coverage prior to the issuance of a Licence, and at any subsequent time upon request of the Director or Director's designate.

No Assignment of Licence

- 8
- (1) An Applicant must not assign or transfer the permission for the use of the portion of the Sidewalk as authorized in the Licence without the prior written consent of the Director.
 - (2) Where the Director refuses to consent to assignment or transfer under section 8(1), the person who requested the assignment or transfer may appeal the Director's decision to Council, in which case the procedures outlined in section 12(5) apply with the necessary changes.

Fixed Sidewalk Cafe

- 9 An Applicant who holds a Licence for a Fixed Sidewalk Cafe must:
- (a) ensure that all fixtures are affixed in a manner which allows them to be completely removed, and the Sidewalk restored, with minimal reasonable effort; and

- (b) the Applicant shall, at its own cost and expense, remove all fixtures, furnishings and personal property from the Sidewalk upon 30 days' notice in writing from the Director, and shall cease occupation of the licensed area within that time.

Enclosed Sidewalk Cafe

- 10 (1) Subject to section 10(1)(2), a person may not place, construct or keep an Enclosed Sidewalk Cafe.
- (2) An Enclosed Sidewalk Cafes which validly existed on July 1, 2015 may be kept, provided:
 - (a) there is no additional construction or improvements added to the Sidewalk Cafe, except for basic repair;
 - (b) any repair to the Sidewalk Cafe may only replace or maintain the Enclosed Sidewalk Cafe's shape and design as it existed on July 1, 2015;
 - (c) if the Sidewalk Cafe is damaged to the extent that 40% or more of the Sidewalk Cafe must be replaced or repaired, the Sidewalk Cafe must be removed and not rebuilt;
 - (d) the Applicant continuously holds a valid Licence;
 - (e) the Applicant continuously holds a valid business licence; and
 - (f) the Applicant pays the fees required from Fixed Sidewalk Cafe Applicants who have issued a Licence, and in all other ways complies with all provision of this bylaw which are applicable to Movable Licence holders.

PART 5 - REFUSAL AND CANCELLATION OF LICENCE

Refusal

- 11 (1) The Director may refuse to issue a Licence to an Applicant if any of the following circumstances apply:
 - (a) the Director is not satisfied that the Applicant met the conditions to approve the Application pursuant to section 6(2); or
 - (b) the Director believes the Application contains false or misleading information.

- (2) The Director may refuse to renew a Licence if any of the circumstances described in section 12(2) apply.

Cancellation

- 12 (1) The Director is designated as a municipal officer for the purposes of this section, in accordance with section 192 of the *Local Government Act*.
- (2) The Director may cancel a Licence if the Director is satisfied that any the following circumstances have occurred:
 - (i) the Sidewalk Cafe does not strictly adhere to the plans, design, or other information provided by the Applicant in his or her Application;
 - (ii) the Applicant fails to comply with a term or condition of the Licence;
 - (iii) the Applicant is convicted of an offence under an Act or municipal bylaw in respect of the Sidewalk Café for which the Licence was issued;
 - (iv) the Applicant is deemed, under the *Local Government Act*, or the *Offence Act* to have pleaded guilty to an offence referred to subsection (iii);
 - (v) the Applicant has ceased to comply with a bylaw or has otherwise ceased to meet the lawful requirements to operate the Sidewalk Café for which the Licence is issued;
 - (vi) the continued operation of the Sidewalk Café for which the Licence was issued would present a risk of harm to the health or safety of the public, or would constitute a nuisance;
 - (vii) the continued operation of the Sidewalk Café unreasonably interferes with the ability of the City or any public utility company to have access to or maintain any utility or service installation;
 - (viii) the Licence area is required for the construction or installation of a municipal work, service, utility or other improvement;
 - (ix) the continued operation of the Sidewalk Café would unreasonably interfere with the public's use or enjoyment of the Sidewalk or the adjoining roadway.
- (3) Before cancelling a Licence, the Director must notify the Applicant of the proposed cancellation and provide the Applicant with an opportunity to be heard by the Director;
- (4) If the Director cancels a Licence pursuant to section 12(2)

- (a) the Applicant may apply to Council for reconsideration of the cancellation; and
 - (b) the Director must notify the Applicant of the right for Council reconsideration pursuant to section 12(4)(a).
- (5) When permitted pursuant to the provisions of this bylaw, an Applicant applying for reconsideration, by Council, of a decision of the Director must comply with the following procedures:
 - (a) the Applicant must deliver written notice of the request for reconsideration to the Corporate Administrator for the City within 30 days of the decision, together with a written summary of the Applicant's reasons for requesting the reconsideration;
 - (b) the Corporate Administrator must place the request for reconsideration on the agenda of a meeting of City Council at which the matter can be dealt with conveniently, to be heard within 45 days after the request for reconsideration is received;
 - (c) the Council may adjourn the hearing of the reconsideration request from time to time;
 - (d) the Applicant may attend the meeting of City Council at which the matter is to be considered, and at that meeting, may present oral and written submissions to the Council in support of the request for reconsideration;
 - (e) after hearing from the Applicant, and from the Director whose decision is the subject of the reconsideration request, the Council may:
 - (i) confirm the decision of the Director; or
 - (ii) rescind that decision and substitute in its place any other decision that the Council determines is appropriate.
- (6) By resolution of its Council, the City may at any time cancel a Licence issued under this Bylaw.
- (7) Before cancelling a Licence pursuant to section 12(6), Council for the City must provide the Applicant with an opportunity to be heard by Council, and for that purpose must follow the hearing procedures outlined in section 12(5).

PART 6 - APPLICATION FEES AND ANNUAL FEES

Fees

- 13 An Applicant for a Sidewalk Café Licence must pay to the City:
- (a) an Application fee of \$50.00 for any Application which is not a renewal of a Licence; and
 - (b) and the annual Licence fees prescribed in Schedule "B".

PART 7 – APPLICATION IN PARKS

Parks

- 14 If, with respect any matter relating to a Sidewalk in a Park, there is a conflict between this bylaw and the Parks bylaw, this Bylaw prevails.

PART 8 - GENERAL

Signs

- 15 (1) The holder of a Licence must ensure that there are no signs:
- (a) in the area of the Sidewalk Cafe;
 - (b) on fences, railings or other means of separating the Sidewalk Cafe from other areas of a Sidewalk
- which promote a third party.

Removal, Detention and Impounding

- 16 The provisions of the Streets and Traffic Bylaw for the removal, detention and impounding of objects unlawfully occupying a Sidewalk apply with necessary changes as applicable to objects on a Sidewalk in contravention of the provisions of this Bylaw or the terms of a Licence.

Ticket Bylaw

- 17 (1) A person commits an offence and is subject to the penalties imposed by this Bylaw, the TicketBylaw and the *Offence Act* if that person:
- (a) contravenes a provision of this Bylaw;
 - (b) consents to, allows, or permits an act or thing to be done contrary to this Bylaw; or
 - (c) neglects or refrains from doing anything required by a provision of this Bylaw.

- (2) Each day that a contravention of a provision of this Bylaw occurs or continues constitutes a separate offence.

PART 9 - REPEAL

Repeal

- 18 The Sidewalk Café Regulation Bylaw No. 02-75 is repealed.

PART 10 – COMMENCEMENT

Commencement

- 19 This bylaw comes into force upon adoption.

READ A FIRST TIME the day of 2015.

READ A SECOND TIME the day of 2015.

READ A THIRD TIME the day of 2015.

ADOPTED on the day of 2015.

CORPORATE ADMINISTRATOR

MAYOR

SCHEDULE A
(Note see s. 6.1(a))
SIDEWALK CAFÉ ANNUAL RENTAL FEES

1. The amount of the annual Licence fee constitutes:
 - (a) an administrative fee of: \$_____;
 - (b) an occupation fee.
2. The occupation fee for a Movable Sidewalk Café is \$_____ per square foot of sidewalk occupied.
3. The occupation fee for a Fixed Sidewalk Café is \$_____per square foot of sidewalk occupied.

Sidewalk Café Design Guidelines

The Sidewalk Café Design Guidelines are intended to clarify and provide standards for sidewalk cafes in order to enhance the quality and safety of the pedestrian experience and to encourage economic vitality and street activity.

General

- The primary function of sidewalks is for pedestrian movement. Locations and design of sidewalk cafés should enhance the pedestrian experience along sidewalks and not negatively impact pedestrian and vehicular movement.
- A sidewalk café can be allowed only if its location and construction will maintain a safe, secure and comfortable environment for pedestrians using the public right-of-way.
- A sidewalk café should have an open appearance that contributes to a feeling of vibrancy and activity on the street. A sidewalk cafe shall not be fully enclosed.
- A sidewalk café should reinforce the character of the area. The design and materials should respect the setting of the surrounding streetscape, buildings and neighbourhood.
- Sidewalk cafes should not negatively impact key public view corridors noted in other City policies.
- No third party advertising is permitted in a sidewalk café.



Maintenance and Operations

- The business holding the license shall be responsible for the proper maintenance of the sidewalk café at all times, including repairs, painting, cleaning, and hazards.
- No cooking shall be allowed in the sidewalk café area.
- Refuse receptacles are not permitted within the sidewalk café area.

Location and Area

- All objects associated with a sidewalk cafe such as furnishings, awnings, umbrellas, signage, lighting, and planters should be located within this area at all times with no parts overhanging.

- Sidewalk cafés may be built only in locations where they do not obstruct access to public utilities, service connections, access for emergency vehicles and exits from buildings.
- A sidewalk café shall not obstruct delivery access to private and public buildings.
- Sidewalk cafes shall not obstruct access to hanging basket lamp poles.
- The design must promote visibility to passing traffic and maintain clear sightlines at intersections and crossings.
- The design, location, and area of the sidewalk café must not adversely affect boulevard vegetation such as grass and trees or prevent City access and maintenance.
- Trees which have tree grates or other tree well areas covered by basalt, pavers and other materials should not be included in a sidewalk café area without additional fencing to keep patrons and site furniture away from these areas.
- Roadway and curb drainage must be maintained.

Circulation

- A minimum clearance of 1.5 m from the sidewalk cafe to the nearest sidewalk obstruction, such as a tree, bike rack, sign post, utility pole, bench, portable sign or bus shelter, is required to allow pedestrian passageway. A clearance greater of 1.5 m may be required in high pedestrian flow areas. The clearances for pedestrian passageway should remain as straight and clear as possible.
- Access and clearances for pedestrian passageway must be on hardscaped materials outside of any boulevard areas to avoid damage to grass, trees, and other vegetation and must not include tree grate surfaces or other tree well areas covered by basalt, pavers or other material.
- Unless the sidewalk café has permission to occupy the adjacent parking stall, the minimum setback of 1.0 m from the nearest curb is required to separate the sidewalk cafe from traffic and parked cars. A setback greater than 1.0m may be required in high traffic areas to ensure public safety.
- A sidewalk café that has permission to occupy the adjacent parking stall must not extend more than 2.5m from the curb into the street.



Fixtures

- All objects fixed in place, such as fences and railings, must be of significant strength yet allow easy removal within two working days.
- A removable deck may be approved if there is a need to level a steep incline (more than 5%) or to harmonize indoor and outdoor seating levels.
- A sidewalk café that has permission to occupy the adjacent parking stall must have railings that are 1.07m in height from curb elevation on all sides that are exposed to the street with reflectors for visibility to traffic.

Site Furniture

- Furnishings such as tables, chairs, and accessories should be moveable and of a solid weight for stability.
- Furnishings should be commercial grade, safe, sturdy, durable material and manufactured for outdoor use.
- All furnishings and accessories shall be contained within the perimeter of the sidewalk cafe area.
- Furnishings shall be limited to dining purposes only (e.g. tables, chairs, and accessories) and shall not obstruct the entrance to the café.

Weather Protection

- Awnings should be mounted on a removable wall bracket and be retractable.
- Weather protection, such as awnings, umbrellas or other similar solutions should be constructed of flame-resistant and fade-resistant canvas.

Heating Devices

- Heaters must not be placed with the dripline and/or closer than 2 metres from any part of adjacent street trees.
- The visual impact of heating devices/systems should be considered and arranged to be as unobtrusive as possible.
- All outdoor heating devices should be appropriate for use in a sidewalk café and complement the character of the business to which it is associated.
- All outdoor heating devices must conform



to safety standards established by the Canadian Standards Association (CSA) and certified by Underwriters' Laboratories of Canada (ULC), where necessary.

Lighting

- Lighting levels should be low and directed into the café rather than out towards the street.
- Light fixtures should complement the character of the business to which it is associated.

Signage

- No third party signage is permitted within the sidewalk cafe area.

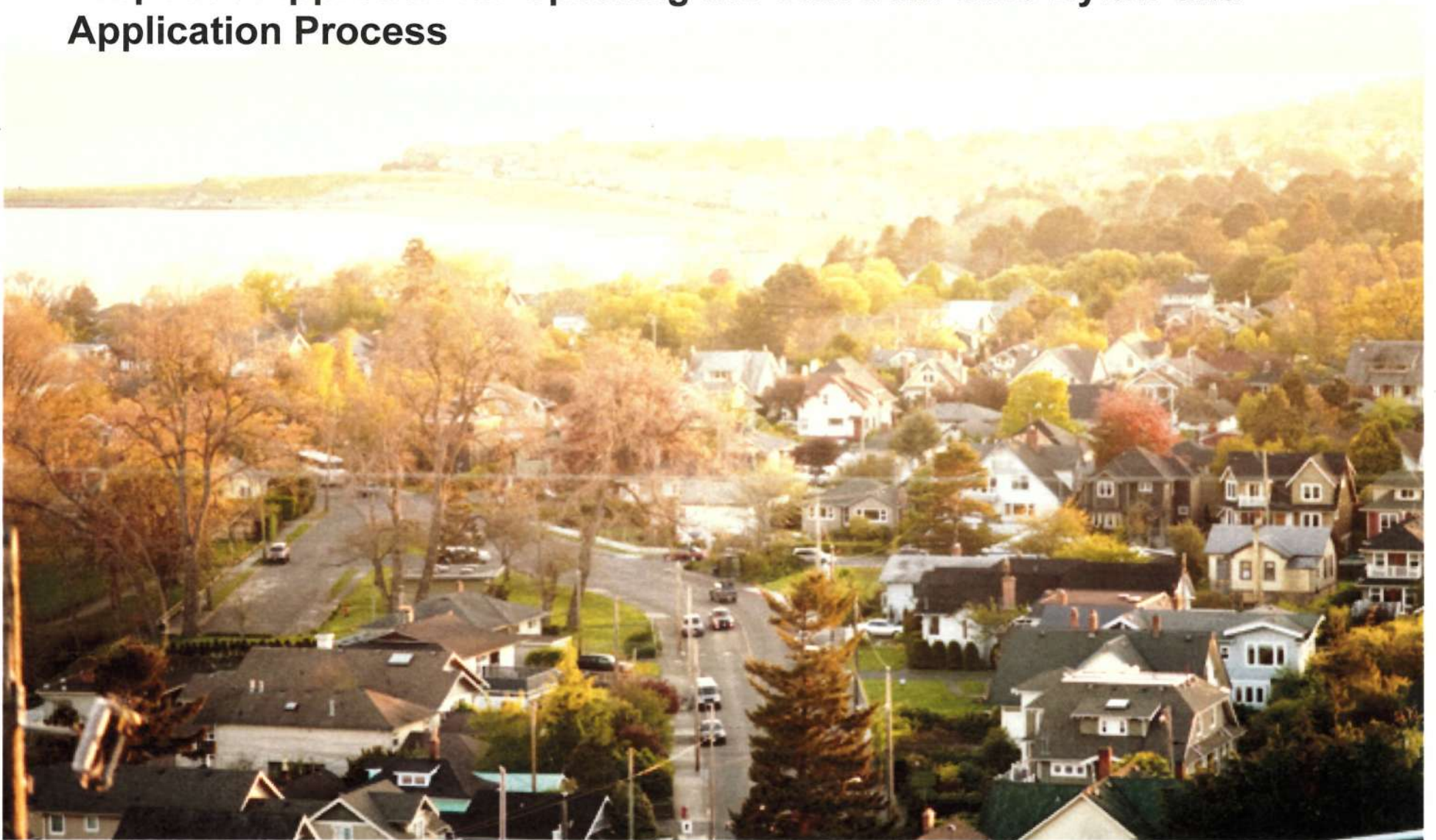
Street Tree Protection and Maintenance

- A sidewalk café shall not cause damage to a street tree.
- No items including, but not limited to, signage, banners and lighting may be hung, attached, draped or affixed to a street tree.
- No liquids or cleaning products shall be dumped, allowed to flow or to drain in to a tree well.
- No pesticide or fertilizer applications shall be applied to street trees.



Sidewalk Café Bylaw Update

Proposed Approach for Updating the Sidewalk Café Bylaw and Application Process



Purpose

- To present Council with:
 - A proposed approach for updating the Sidewalk Café Bylaw
 - A proposed approach for improvements to the process associated with establishing sidewalk cafés
- To seek direction to proceed to public consultation and the subsequent refinement of the draft Bylaw.



Background

- Sidewalk Cafés can help achieve City objectives related to street activity and economic vitality
- Bylaw regulates the construction, placement, use and maintenance of objects and fixtures on public sidewalks
- Adopted in 2002
- Currently 94 sidewalk cafés with licences (5 new per year)



Proposed Approach

- Improve customer service
- Encourage vibrancy on sidewalks
- Promote economic growth
- Maintain public access, safety, and mobility on sidewalks
- Ensure sidewalk cafés are consistent with the character of the area
- Improve consistency with other City processes, policies and regulations
- Protect public property from damage.



Improved Application Process

- Concise and easy to understand guide to the application process
- Application process coordinated by business licencing staff and review managed by Sustainable Planning and Community Development Department
- SPCD to review for urban design, placemaking, and economic development
- Collaborative review by City staff addressing elements such as heritage, utilities, transportation, heater safety, and other potential requirements
- Coordinated response to applicant



Bylaw Updates

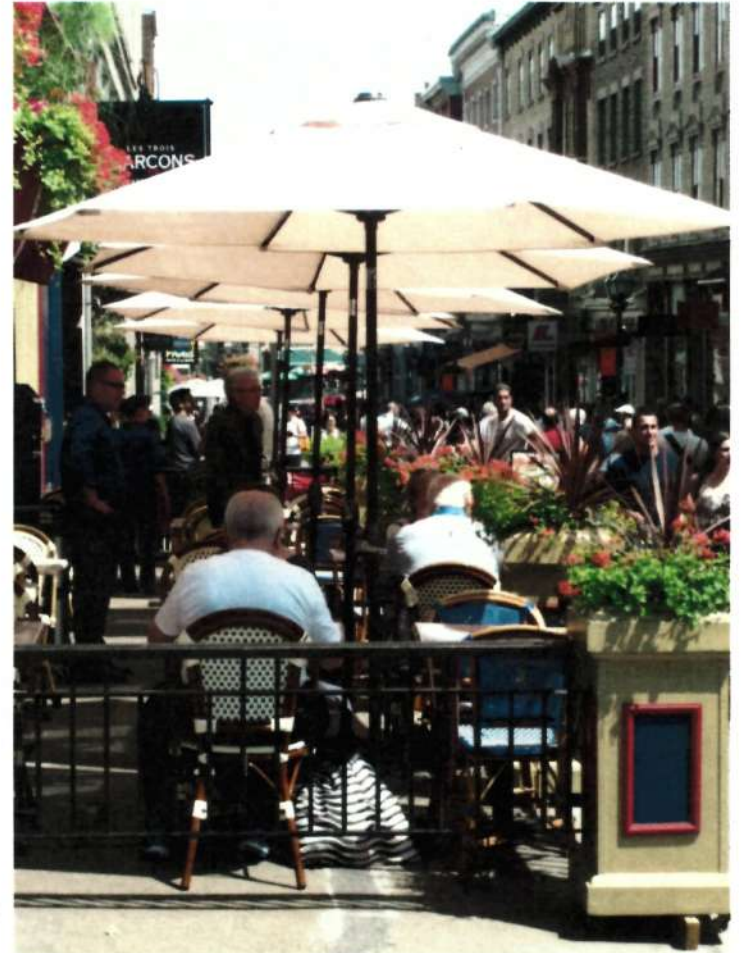
Key Areas to be Improved:

- Definition of sidewalk café types
- Objects attached to the sidewalk
- Pedestrian passageway and utility access
- Heater and fire safety
- Annual fees
- Use of adjacent parking stall



Design Guidelines Added

- Clear and concise
- Address specific goals
- Flexibility to allow creative solutions
- Organized by type of guidelines for ease of use
- Graphic/visual examples to guide best practice



Next Steps

- Determine fees based on market value
- Advance the draft bylaw and design guidelines
- Complete public consultation
- Report to Council with proposed bylaw by February 2016



Recommendations

That Council consider:

1. Directing staff to continue preparation of an updated Sidewalk Café Bylaw (No. 02-75) based on the following approach:

- a. that the type of sidewalk cafés distinguish between whether objects are fixed in place or not;
- b. that fully enclosed sidewalk cafés are no longer permitted;
- c. that only fixtures that are easily removable are permitted;
- d. that clearances from the curb be updated for safety and clarity;
- e. that heater regulations be updated for safety and clarity;
- f. that the fees be updated to simplify the process and for consistency with City policy;
- g. that the adjacent parallel parking stall be an option for sidewalk café use in some circumstances;
- h. that the Bylaw language be improved for clarity.

Recommendations (cont'd)

2. Directing staff to continue preparation of design guidelines to provide guidance for sidewalk café design and application review.
3. Directing staff to proceed with public consultation, focused on providing information on the bylaw and process changes to stakeholders for feedback.
4. Directing staff to incorporate refinements into the draft *Sidewalk Café Bylaw* in response to the input received from the public consultation and report back to Council with the proposed Bylaw by February 2016.

