



Council Report

For the Meeting of May 26, 2016

To: Council **Date:** May 17, 2016
From: Jonathan Tinney, Sustainable Planning and Community Development
Subject: Sidewalk Café Bylaw Update – Potential Noise and Safety Issues

RECOMMENDATION

1. That Council consider giving first, second and third readings to the Sidewalk Cafés Regulation Bylaw (No 16-038) attached to this report, with final adoption to follow on June 9, 2016.
2. That Council give first, second and third readings to the Ticket Bylaw, Amendment Bylaw (No. 9) attached to this report, with final adoption to follow on June 9, 2016.
3. That Council approve the Sidewalk Café Guidelines which have been updated with noise mitigation guidelines and are attached to this report.

EXECUTIVE SUMMARY

The purpose of this report is to present Council with clarification on potential safety and noise issues that may occur in the public right-of-way as a result of sidewalk café licences. Sidewalk cafés play an important role in creating street vibrancy and supporting economic vitality, however, a balance must be struck with protecting other functions of the public right-of-way and ensuring nearby residents, businesses, and visitors are not negatively impacted.

Potential safety and noise issues that may be caused by sidewalk cafés are currently mitigated through the Sidewalk Café Bylaw and Noise Bylaw. To further mitigate potential late night noise, staff recommend that more information be required at the application stage so staff may assess potential noise issues. This would allow staff to make a more thorough assessment before it becomes a concern. Sidewalk café licences would only be issued if the application complies with the Sidewalk Café Bylaw, and other City bylaws, including the Noise Bylaw. While the City could refuse or cancel a licence on this basis, staff would work with applicants to consider design revisions that could mitigate noise levels as part of licence applications, or work with licence holders to achieve voluntary compliance in addressing noise concerns. The Sidewalk Café Guidelines have also been updated to communicate this objective to future applicants.

PURPOSE

The purpose of this report is to present Council with clarification on potential safety and noise issues that may occur in the public right-of-way as a result of sidewalk café licences, and recommend an approach to strengthen the application process to assist staff in assessing noise concerns before a licence is issued.

BACKGROUND

At the Council meeting of April 28, 2016, a motion was passed directing staff to consider revisions to the Sidewalk Café Bylaw update to mitigate potential late night noise concerns and to provide Council with clarification on potential safety issues in the public right-of-way.

ISSUES & ANALYSIS

Sidewalk cafés are important to the City because they bring street vibrancy and economic vitality, however, it is important that they do not negatively impact public use of the right-of-way or nearby residents, businesses, and visitors. The purpose of the Sidewalk Café Bylaw is to regulate the construction, placement, use and maintenance of objects and fixtures on public sidewalks that support sidewalk cafés to ensure access, safety, mobility, and to protect public property.

The Sidewalk Café Bylaw and Noise Bylaw currently regulate noise and safety issues. To further mitigate potential noise concerns, staff recommend that the process be adjusted as described below to better anticipate potential noise issues at the application stage.

Potential Late Night Noise Issues

Noise levels and types are currently regulated by the Noise Bylaw throughout the city for both private and public property. The bylaw divides the city into districts with different requirements for different areas of the city and also differentiates between day time and night time requirements. All sidewalk cafes must meet these requirements.

The Sidewalk Café Bylaw in its current form does not prescribe limited hours of operation. Introducing this as a new regulation in the updated bylaw would require considerations for how hours of operation should be treated in different areas of the city, given that street blocks and adjacent land uses within each context vary greatly. The City did not consult with stakeholders and the public on hours of operation as a potential bylaw amendment, so the potential impacts to current and future licence holders and feedback by the general public are not known at this time. Further, the Sidewalk Café Bylaw only applies to sidewalk cafés in the public right-of-way and does not apply to outdoor commercial patios on private property which would be regulated by the Noise Bylaw.

Given these factors, staff recommend that Council consider noise mitigation be addressed through the Sidewalk Café Guidelines and application requirements to provide a more flexible and proactive approach to potential noise issues. The recommended approach would also provide equity among public and private cafés in how late night noise issues are regulated in the City.

To that end, the proposed Sidewalk Café Bylaw has been amended to include a clause that would allow staff to request a noise assessment report for new sidewalk café applications (the new clause is 6(b) on page 5 of the attached Bylaw). Sidewalk café applications with potential noise concerns would need to be revised or would be refused at the application stage. Existing sidewalk cafés with demonstrated noise concerns could be cancelled during operation if appropriate. However, before refusing or cancelling a licence, staff would work with applicants and licence holders to consider how noise impacts may be mitigated through changes to the sidewalk café.

Clarification of Railing Requirements

Safety is one of the primary concerns of the Sidewalk Café Bylaw regulations and is ensured with a number of requirements, including prescribed clearances from curbs and widths for clear pedestrian passageway. Railings are required for sidewalk cafés that are located in the adjacent parking stall to separate moving vehicles from people for safety, but are not mandatory for sidewalk cafés on the sidewalk itself. This approach is intended to provide flexibility and the ability to determine appropriate design solutions based on each location and surrounding context.

In certain circumstances, a railing may not be necessary or desirable, for example, in a public square or plaza.

It is recommended that the regulations remain in their current form, and that applications be assessed case-by-case to ensure public access and safety are maintained. All sidewalk cafés must conform to the approved plans on file and no parts may overhang or encroach outside of the sidewalk café area. If a sidewalk café licence holder wishes to make a change to their sidewalk café, they must submit a new application to the City for assessment.

OPTIONS & IMPACTS

Option 1 – Move the updated Sidewalk Café Bylaw forward for adoption (Recommended)

Council may consider first, second and third readings of Bylaw No. 16-038 which includes an additional regulation to permit staff to request a noise assessment at the time of application. This would permit the updated Bylaw to be in place for the upcoming summer season.

Option 2 – Direct staff to explore limited hours of Sidewalk Café operations

Council may direct staff to explore limiting hours of Sidewalk Cafes, however, this would delay the Sidewalk Café Bylaw updates, and would require additional staff work and stakeholder engagement. Staff do not recommend this approach at this time. However, if noise issues arise in future and additional noise regulations are deemed necessary, bylaw amendments and further engagement could be considered at that time.

CONCLUSIONS

Potential safety and late night noise issues that may be caused by sidewalk café licences are currently addressed through specific regulations in the proposed Sidewalk Café Bylaw and existing Noise Bylaw. As directed by Council, staff have considered strengthening noise mitigation in the Sidewalk Café Bylaw, guidelines and application process. This will allow staff to require additional information regarding increased noise to help assess the potential impacts. A Sidewalk Café licence will not be issued for an application that will be unsafe or will be in contravention of the Noise Bylaw. If an existing Sidewalk Café causes issues around safety or noise, staff will work with licence holders to address the issues or cancel the licence.

Respectfully submitted,



Rob Bateman
Planner
Development Services Division


ALT.



Jonathan Tinney
Director
Sustainable Planning and Community Development

Report accepted and recommended by the City Manager:

Date:


May 20, 2016

List of Attachments

Appendix A - Sidewalk Café Bylaw No. 16-038
Appendix B - Ticket Bylaw, Amendment Bylaw (No.9)
Appendix C - Sidewalk Café Guidelines

NO. 16-038

SIDEWALK CAFÉS REGULATION BYLAW**A BYLAW OF THE CITY OF VICTORIA**

The purpose of this Bylaw is to replace the Sidewalk Cafes Regulation Bylaw No. 02-075 with an updated bylaw under which the City may authorize the placement of movable and fixed 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 in an open meeting enacts the following provisions:

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PART 1 - INTRODUCTION**Title**

- 1 This Bylaw may be cited for all purposes as the "Sidewalk Cafés Regulation Bylaw".

Definitions

- 2 For the purposes of this Bylaw:

"Applicant" means an applicant for a Licence, and 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 licensed Sidewalk Café which has fixtures erected within the licensed Sidewalk Café area consisting of both roof and walls;

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

"Roadside" means that portion of Street which abuts a Sidewalk or a property line, and is used for motor vehicle parking or loading purposes when not designated as a café area;

"Roadside Café" means a Roadside area wherein structures are constructed, placed or fixed for seating and serving customers as an extension of an existing food vending establishment;

"Sidewalk" includes

- (a) a Sidewalk, as defined in the Streets and Traffic Bylaw,
- (b) Centennial Square,
- (c) Bastion Square,
- (d) Gladstone Mall, and

- (e) Millie's Lane;

"Sidewalk Café" includes

- (a) an area of a Sidewalk wherein structures are constructed, placed or fixed for seating and serving customers as an extension of an existing food vending establishment, and
- (b) a Roadside Café;

"Street" has the same meaning as in the Streets and Traffic Bylaw.

PART 2 - LICENCE REQUIREMENTS

Licence Required

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

Sidewalk Cafés

- 4 (1) An owner in possession or an occupant of property may establish, operate and maintain a Sidewalk Café on a designated portion of the Sidewalk or Roadside if
 - (a) that owner or occupant is using the property abutting
 - (i) that portion of Sidewalk,
 - (ii) that portion of Roadside, or
 - (ii) the Sidewalk which abuts that portion of Roadside,
 for the commercial purpose of operating a food vending establishment,
 - (b) that owner or occupant possesses a valid Licence, and
 - (c) that owner or occupant places, constructs and maintains the Sidewalk Café in strict accordance with the terms of the Licence.
- (2) The designated portion of Sidewalk for which a Licence is issued
 - (a) must leave at least 1.5 meters of unobstructed Sidewalk space along the entire Sidewalk Café area, and

- (b) where a Sidewalk Café consists of only Sidewalk, must leave at least 1 meter of unobstructed Sidewalk space between the Sidewalk Café area and the edge of the curb separating the Sidewalk from the roadway.
- (3) The unobstructed space set out in subsection 2(a) may overlap the unobstructed space set out in subsection 2(b).

Heaters

- 5 (1) An Applicant for a Licence may place heaters within the designated portion of the Sidewalk or Roadside for which the Licence is issued provided 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
 - (i) conforms to the standards established by the Canadian Standards Association and certified to the standards of Underwriters Laboratories of Canada,
 - (ii) is done in strict accordance with all Provincial safety regulations and the manufacturer's instructions, and
 - (iii) does 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 or Roadside 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
 - (a) provide the plans and details of the proposed Sidewalk Café showing:

- (i) the area of the Sidewalk or Roadside to be occupied, and
 - (ii) the location and type of all fixtures or other objects which shall be placed within any area of the Sidewalk or Roadside to be occupied; and
 - (b) submit a noise assessment if requested by the Director.
- (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 subsection (1),
 - (iii) holds a valid business licence issued by the City, and
 - (iv) has obtained all additional applicable federal, provincial and municipal permits or licences, and
 - (b) the Sidewalk Café 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 permitted third party utility company to construct, install, repair or maintain a municipal work, service, utility or other improvement,
 - (iii) unreasonably interfere with the public's use and enjoyment of the Sidewalk, Roadside or adjoining roadway,
 - (iv) unreasonably interrupt the sightlines along the Sidewalk, Roadside or roadway,
 - (v) present a risk of harm to the health or safety of the public,
 - (vi) contain fixtures which cannot be easily removed,
 - (vii) cause damage to the Sidewalk or Roadside,
 - (viii) contravene the provisions of this or any other Bylaw.
- (3) In addition to the provisions set out in subsection (2), the Director may only grant a licence to a Roadside Café if the City's Director of Engineering and Public Work is satisfied that
- (a) the Roadside Café will not result in insufficient parking or loading space within the street block,

- (b) the Roadside Café does not exceed 2.5 meters from the curb into the Street, there will be 1 meter of unobstructed Street space located between the Roadside Café and the adjacent motor vehicle travel lane,
- (c) on all sides where the Roadside Café is exposed to the Street, there will be railings of at least 1.07 meters in height from curb elevation which contain reflectors visible to traffic, and
- (d) the designated Roadside Café area will not be located on a portion of Street exceeding a 5% slope.

PART 4 - CONDITIONS OF LICENCE

Conditions

- 7 (1) Every Licence is subject to the following conditions:
- (a) for the purpose of constructing, installing, repairing or maintaining any municipal work, service, utility or other improvement owned by the City or a permitted third party utility company, the Applicant must
 - (i) allow the Director and the employees or agents of the City and of any permitted third party utility company to enter the portion of the Sidewalk or Roadside 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 subsection (1)(a), or fails to do so within the time specified under that subsection, 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 the Applicant's own expense, the Applicant must keep and maintain the Sidewalk Café in a clean, sanitary, attractive condition satisfactory to the Director and must keep the Sidewalk surrounding or adjacent to the Sidewalk Café free from papers, rubbish and debris of any kind;
 - (d) the Applicant must 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 must 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 must not make

any claim against the City on account of such removal and must replace and restore the Sidewalk or Roadside 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 or Roadside 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 paragraph (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;
- (k) 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 subparagraph (i) and 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 or Roadside 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 subsection (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(4) apply with the necessary changes.

Sidewalk Café Fixtures

- 9 (1) An Applicant who holds a Licence for a Sidewalk Café which contains fixtures must ensure that all fixtures are affixed in a manner which allows them to be

completely removed, and the Sidewalk restored, with minimal reasonable effort.

- (2) The Applicant must, at its own cost and expense, remove all fixtures, furnishings and personal property from the Sidewalk
 - (a) immediately upon Licence expiration, if the Licence is not renewed, or
 - (b) upon 30 days' notice of Licence cancellation in writing from the Director and must cease occupation of the licensed area within that time.

Enclosed Sidewalk Café

- 10 (1) Subject to subsection (2), a person may not place, construct or keep an Enclosed Sidewalk Café.
- (2) An Enclosed Sidewalk Café which validly existed on March 1, 2016 may be kept, provided
 - (a) there is no additional construction or improvements added to the Sidewalk Café, except for basic repair,
 - (b) repair to the Sidewalk Café is limited to replacing or maintaining the Enclosed Sidewalk Café's shape and design as it existed on March 1, 2016,
 - (c) the Applicant continuously holds a valid Licence, and
 - (d) the Applicant continuously holds a valid business licence.
- (3) If an Enclosed Sidewalk Café is damaged to the extent that 40% or more of the Enclosed Sidewalk Café must be replaced or repaired, the Enclosed Sidewalk Café must be removed and may not be rebuilt.

PART 5 - REFUSAL AND CANCELLATION OF LICENCE

Refusal

- 11 (1) The Director may refuse to issue a Licence to an Applicant if the Director is satisfied that either of the following circumstances apply:
 - (a) the Applicant has not met the conditions to approve the Application pursuant to sections 6(2) or 6(3);
 - (b) 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(1) apply.

Cancellation

- 12 (1) The Director may cancel a Licence if the Director is satisfied that any of the following circumstances have occurred:
 - (a) the Sidewalk Café does not strictly adhere to the plans, design, or other information provided by the Applicant in the Application;
 - (b) the Applicant fails to comply with a term or condition of the Licence;
 - (c) 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;
 - (d) the Applicant is deemed, under the *Local Government Act*, or the *Offence Act* to have pleaded guilty to an offence referred to in paragraph (c);
 - (e) 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;
 - (f) the continued operation of the Sidewalk Café would
 - (i) present a risk of harm to the health or safety of the public,
 - (ii) constitute a nuisance,
 - (iii) unreasonably obstruct or interfere with vehicle, pedestrian or bicycle traffic,
 - (iv) unreasonably interfere with the ability of the City or any permitted third party utility company to construct, install, repair or maintain a municipal work, service, utility or other improvement,
 - (v) unreasonably interfere with the public's use or enjoyment of the Sidewalk or the Roadside or adjoining roadway,
 - (vi) unreasonably interfere with the sightlines along the Sidewalk, Roadside or roadway, or
 - (vii) cause damage to the Sidewalk, Roadside or roadway;
 - (g) the Licence area is required for the construction, installation, repair or maintenance of a municipal work, service, utility or other improvement.
- (2) 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.
- (3) If the Director cancels a Licence pursuant to subsection (1)
 - (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 paragraph (a).
- (4) 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 City Clerk within 30 days of the decision, together with a written summary of the Applicant's reasons for requesting the reconsideration;
 - (b) the City Clerk 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.
- (5) By resolution of its Council, the City may at any time cancel a Licence issued under this Bylaw.
- (6) Before cancelling a Licence pursuant to subsection (5), 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 subsection (4).

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) the annual Licence fees prescribed in Schedule A.

PART 7 – RELATIONSHIP TO OTHER BYLAWS

Parks Regulation Bylaw

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

Streets and Traffic Bylaw

- 15 If, with respect to any matter relating to a Sidewalk or Street, there is a conflict between this Bylaw and the Streets and Traffic Bylaw, this Bylaw prevails.

PART 8 - GENERAL

Signs

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

Removal, Detention and Impounding

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

Offences

- 18 (1) A person commits an offence and is subject to the penalties imposed by this Bylaw, the Ticket Bylaw 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**

19 The Sidewalk Cafes Regulation Bylaw No. 02-75 is repealed.

PART 10 – COMMENCEMENT**Commencement**

20 This Bylaw comes into force on May 16, 2016.

READ A FIRST TIME the day of 2016

READ A SECOND TIME the day of 2016

READ A THIRD TIME the day of 2016

ADOPTED on the day of 2016

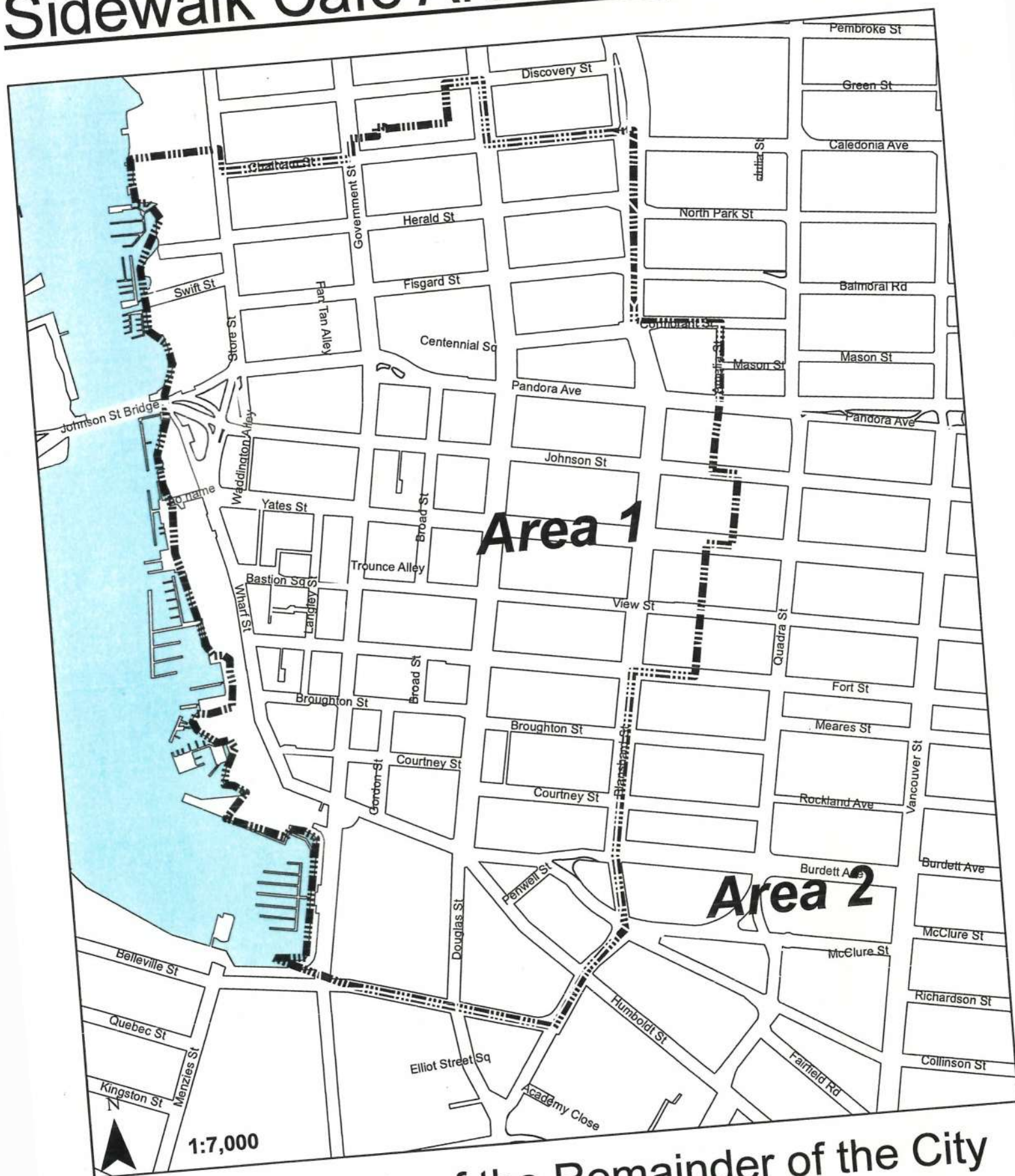
CITY CLERK

MAYOR

SCHEDULE A**SIDEWALK CAFÉ ANNUAL LICENCE FEES**

1. The annual Licence fees constitute:
 - (a) an administrative fee of \$50.00; and
 - (b) an occupation fee, as set in section 2 of this schedule.
2. The occupation fee for a Sidewalk Café shall be the sum of the following:
 - (a) for any portion of Sidewalk used by the Sidewalk Café:
 - (i) \$6.20 per square foot in Area 1, as set out in Appendix 1,
 - (ii) \$3.80 per square foot in Area 2, as set out in Appendix 1; and
 - (b) for any portion of Roadside used by the Sidewalk Café, the fees set out in s. 106(3)(b)(ii) of the Streets and Traffic Bylaw.

Sidewalk Café Area Map



Area 2 Consists of the Remainder of the City

NO. 16-043

TICKET BYLAW, AMENDMENT BYLAW**A BYLAW OF THE CITY OF VICTORIA**

The purpose of this Bylaw is to amend the Ticket Bylaw to reflect changes to offences under the Sidewalk Cafés Regulation Bylaw.

Under its statutory powers, including sections 260 and 264 to 273 of the *Community Charter*, and B.C. Regulation 425/2003, the Council of the Corporation of the City of Victoria enacts the following provisions:

- 1 This Bylaw may be cited as the "TICKET BYLAW, AMENDMENT BYLAW (NO.9)".
- 2 Bylaw No. 10-071, the Ticket Bylaw, is amended by repealing Schedule EE and replacing it with the Schedule EE attached to this bylaw.

READ A FIRST TIME the	day of	2016
READ A SECOND TIME the	day of	2016
READ A THIRD TIME the	day of	2016
ADOPTED on the	day of	2016

CITY CLERK

MAYOR

Schedule EE

Sidewalk Cafés Regulation Bylaw Offences and Fines

Column 1 – Offence	Column 2 – Section	Column 3 – Set Fine	Column 4 – Fine if paid within 30 days
Operate Sidewalk Café w/o licence	3	\$250	\$200
Improperly place propane heater	5(1)	\$250	\$200
Fail to keep café area clean	7(1)(c)	\$250	\$200
Modify structure other than allowed	7(1)(d)	\$250	\$200
Operate an Enclosed Sidewalk Café	10(1)	\$250	\$200
Allow signs other than as prescribed	16	\$250	\$200



Sidewalk Café Guidelines

Sidewalk cafes add vibrancy to our community and provide a welcoming place for people to meet, relax and dine. They can transform our streets by creating energy and drawing people into the area.

In the City of Victoria, sidewalk café licenses allow businesses to expand their restaurant or café to provide outdoor seating in some public spaces including sidewalks. The sidewalk café 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 main function of sidewalks is to support the movement of people throughout the city.

- Locations and design of sidewalk cafés should enhance the pedestrian experience along sidewalks and not negatively impact the movement of people or vehicles in the area.
- 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 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.

night. To ensure that Sidewalk Cafes comply with the Noise Bylaw, applicants may be required to provide more information, such as a noise assessment report, and/or make design changes to mitigate potential noise issues.

Maintain Accessibility

Sidewalk cafes should be designed to be accessible both inside the café and in the surrounding areas.

- A minimum horizontal clearance of 1.5 m from the sidewalk café 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 than 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 passageway for pedestrians must only be on sidewalks or hardscaped surfaces for pedestrian safety and to avoid damage to grass, trees, and other vegetation. Access and passageway must not include tree grate surfaces or other tree well areas covered by pavers or other material.
- Unless the sidewalk café has permission

to occupy the adjacent parking stall, a minimum clearance of 1.0 m from the nearest curb is required to separate the sidewalk café from traffic and parked cars. A distance greater than 1.0 m may be required in high traffic areas to ensure public safety.

Maintenance and Operations

The business with the sidewalk café licence is responsible for its maintenance.

- The business holding the license is responsible for the proper maintenance of the sidewalk café at all times, including repairs, painting, cleaning, and hazards.
- No cooking is allowed in the sidewalk café area.
- Trash receptacles are not permitted within the sidewalk café area.
- All objects associated with a sidewalk café such as furnishings, awnings, umbrellas, signage, lighting, and planters should be located within the sidewalk café area at all times with no parts overhanging outside of the area.
- 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.

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FOR MORE INFORMATION:

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Maintenance and Operations, continued

- A sidewalk café must not obstruct delivery access to buildings.
- Sidewalk cafes must 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 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.
- 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.

Impacts to Neighbouring Trees and Boulevards

Consideration for neighbouring trees and boulevards should be taken into account with the design of sidewalk cafes.

- A sidewalk café must 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 or City drains.

- No pesticide or fertilizer applications shall be applied to street trees.

Furnishings

- 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 must be contained within the perimeter of the sidewalk café area.
- Furnishings must be limited to dining purposes only (e.g. tables, chairs, and accessories) and 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

- Heaters must not be placed within 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 and Signage

Lighting fixtures should complement the character of the business.

- 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.
- No signage or third party advertising, other than for the business operating the café, is permitted.

Use of Adjacent Parking Stall

Cafés or restaurants may apply to the City to use an adjacent parking stall for a sidewalk café. In these cases, the following guidelines apply in addition to the guidelines above.

A sidewalk café must:

- Provide a one metre buffer between the outer edge of the sidewalk café and adjacent travel lane and should not extend more than 2.5 m from the curb into the street.
- Have railings that are a minimum of 1.07 m in height from curb elevation on all sides that are exposed to the street with reflectors for visibility to traffic.
- Only be located where permanent parking or loading is permitted. It must not occupy a lane used by moving traffic at any time.
- Provide adequate space to allow vehicle access to adjacent parking stalls.
- Not be located on a street exceeding a running slope of 5%.

These guidelines provide guidance to applicants and City staff when reviewing applications.

For further detail, please refer to the Sidewalk Café Bylaw (No. 16-038). Additional City Permits may be required.