

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 provide the plans and details of the proposed Sidewalk Café showing
- (a) the area of the Sidewalk or Roadside to be occupied, and
 - (b) 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.
- (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, or
 - (viii) contravene the provisions of this 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,

- (c) there will be 1 meter of unobstructed Street space located between the Roadside Café and the adjacent motor vehicle travel lane,
- (d) 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
- (e) 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.

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.

Map of the City of Kingston, Ontario, showing the locations of Area 1 and Area 2. The map includes a scale of 1:7,000 and a north arrow. Area 1 is outlined in black and includes streets such as Chatham St, Herald St, Government St, Riggall St, Centennial St, Gormoran St, Randora Ave, Johnson St, Trounce Alley, Douglas St, Broad St, Lenoir St, and Windy Ridge Alley. Area 2 is outlined in black and includes streets such as Yater St, Chadcast, Fort St, Meares St, Rockland Ave, Budget Ave, and Rupert Terr. The map also shows the waterfront area with the harbor and the city of Kingston.

Area 2 Consists of the Remainder of the City