

THE CORPORATION OF THE CITY OF VICTORIA

The purpose of this Bylaw is to replace the Sidewalk Cafés Regulation Bylaw No. 91-137 with an updated bylaw under which the City may authorize the placement of temporary and semi-permanent structures on sidewalks within the City of Victoria.

Section 14 of the *Victoria City Act, 1919*, provides that Council may make bylaws which, among other things, may authorize and regulate the construction, placement, use and maintenance of fixtures on public sidewalks or streets in the City.

Under its statutory powers, including section 14 of the *Victoria City Act, 1919*, the Municipal Council of The Corporation of the City of Victoria enacts the following provisions:

PART 1 - INTRODUCTION

1.1 Title

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

1.2 Definitions

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 of Engineering" means the Director of Engineering 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 temporary in nature and removable, and tables, chairs, platforms and portable planters.

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

"Sidewalk" has the same meaning as under the Streets and Traffic Bylaw No. 92-84.

"Sidewalk Café" means an area of a Sidewalk where fixtures and other objects are placed for the use and convenience of customers of an adjoining restaurant, diner, lunch counter, dining lounge, dining room, lounge or public house, or an

establishment that is a combination of any of those.

"Temporary Sidewalk Café" means a Sidewalk Café consisting of fixtures and other objects which:

- (a) are placed, maintained and used on a licensed Sidewalk Café area;
- (b) are not permanently affixed to a Sidewalk; and
- (c) may consist of awnings, tables, chairs, platforms, railings, screens, umbrellas, and portable planters, and propane heaters to the extent permitted under this Bylaw;
- (d) the Applicant must comply with the insurance requirements stated in sections 3.5(a) and (b) of this Bylaw.

PART 2 - LICENCE REQUIREMENTS

2.1 Licence Required

A person may place and maintain fixtures on a Sidewalk for the purpose of a Sidewalk Café only if that person holds a valid Licence issued under this Bylaw.

2.2 Temporary Sidewalk Cafés

2.2.1 An owner in possession or an occupant of property abutting a Sidewalk may establish, operate and maintain a Temporary 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; and
- (b) that owner or occupant obtains a Temporary Sidewalk Café Licence.

2.2.2 Except as provided in section 2.2.3, the designated portion of the Sidewalk for which a Licence is issued shall not be less than:

- (a) 2.0 m from the curb; or

- (b) 0.6 m from the curb where the traffic lane adjacent to the curb is used for parking.

2.2.3 Where a Temporary Sidewalk Café is located on Government Street between Humboldt Street and Yates Street, the designated portion of the Sidewalk for which a Licence is issued for that Temporary Sidewalk Café shall not be less than 1 m from the curb.

2.3 An Applicant for a Temporary Sidewalk Café Licence must complete an Application in the form prescribed by the Director of Engineering and must provide to the City drawings, plans and details of the proposed Temporary Sidewalk Café which show:

- (a) the area of the Sidewalk to be occupied;
- (b) the location of any fixtures or other objects which shall be placed within the area of the Sidewalk to be occupied.

2.4 Enclosed Sidewalk Cafés

2.4.1 An owner in possession or an occupant of property abutting a Sidewalk that is wider than 3.6 m may establish, operate and maintain an Enclosed 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) neither the property abutting the Sidewalk nor the Sidewalk is adjacent to or abutting on a theatre, bus stop or taxi stand; and
- (c) that owner or occupant obtains an Enclosed Sidewalk Café Licence.

2.4.2 The designated portion of the Sidewalk for which a Licence is issued shall not be less than 2.0 m from the curb.

2.4.3 An Applicant for an Enclosed Sidewalk Café Licence must complete an Application in the form prescribed by the Director of Engineering, and must provide to the City drawings, plans and details that show:

- (a) the area of the Sidewalk to be enclosed and occupied; and
- (b) details of the structures proposed to be erected in the Enclosed Sidewalk Café;

- (c) the location of any fixtures or other objects to be placed within the area of the Sidewalk to be occupied.

2.4.4 An Applicant for an Enclosed Sidewalk Café Licence must also apply for and obtain a building permit under the provisions of Building Bylaw No. 93-111 in respect of any structures proposed to be erected on or adjacent to the Sidewalk as part of the Enclosed Sidewalk Café, and must also apply for and obtain a development permit for the proposed Sidewalk Café, if required under the provisions of the City of Victoria Zoning Bylaw and Official Community Plan.

2.5 Propane Heaters - Temporary Sidewalk Cafés

2.5.1 An Applicant for a Temporary Sidewalk Café Licence may place free-standing propane 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 free-standing propane heaters must be indicated on the Application for the Temporary Sidewalk Café Licence;
- (b) the installation and operation of any free-standing propane heater must be strictly in accordance with all Provincial safety regulations, and the manufacturer's instructions; and
- (c) the location and operation of the free-standing propane heaters within the Temporary Sidewalk Café must not present a risk of harm to the health or safety of the public.

2.5.2 The Director of Engineering may require as a condition of the issuance of a Temporary Sidewalk Café Licence that:

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

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

PART 3 - LICENCE APPLICATION

- 3.0 The Director of Engineering may prescribe the form of Application that must be completed by an Applicant for a Sidewalk Café Licence.
- 3.1 Every Application for a Sidewalk Café Licence must be signed by the Applicant, where the Applicant is an individual person, or in the case of an Applicant that is a corporation, must be signed by a director or officer of the corporation with authority to bind the corporation to the terms of the Licence.
- 3.2 The Application form, when approved and signed by the Director of Engineering or Director of Engineering's designate, and when issued to the Applicant, is the Sidewalk Café Licence.
- 3.3 Every 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 fee, subject to the terms of this Bylaw.
- 3.4 The Application form must state, and it must be a condition of every Sidewalk Café Licence issued by the Director of Engineering, that in consideration for the issuance of the Licence, the Applicant agrees to indemnify and save harmless the City and its Council members, officers and employees from and against any and all manner of claims, suits, actions, causes of action, demands and costs of any kind arising from or connected with the Applicant's use, occupation and operation of the Sidewalk Café, including claims for personal injury and property damage arising therefrom.
- 3.5 The Application form must state, and it must be a condition of every Temporary Sidewalk Café Licence issued by the Director of Engineering for a Temporary Sidewalk Café where freestanding propane heaters are to be permitted under the terms of the Licence, that:
 - (a) during the term of the Licence, the Applicant must obtain and maintain in force commercial general liability insurance, in the minimum amount of \$2 million per occurrence, insuring the Applicant against all claims, suits, actions, causes of action, demands and costs referred to in subsection 3.4(a);
 - (b) that the City must be added as an additional insured to every policy of insurance required to be maintained under section 3.4(b) and that the City must be provided with proof of such coverage prior to the issuance of a Licence and to any subsequent renewal of such Licence.

PART 4 - ADDITIONAL CONDITIONS OF LICENCE

4.1 Every Sidewalk Café 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 of Engineering and the employees or agents of the City and of any public utility to enter the portion of the Sidewalk designated in the Sidewalk Café Licence; and
 - (ii) when requested by the Director of Engineering, 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 4.1(a)(ii), or fails to do so within the time specified under that section, the Director of Engineering 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 of Engineering 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) Upon cancellation of the Licence as provided under Part 5, 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 of Engineering, and shall cease occupation of the licensed area within that time.
- (f) Where an Applicant is required to remove any fixtures, furnishings and personal property pursuant to the preceding subsection, 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 property condition to the satisfaction of the Director of Engineering.
- (g) Where an Applicant neglects, refuses or fails to cease occupation of the

Sidewalk as required under subsection 4.1(e), or fails to do so within the time specified, the Director of Engineering 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 the preceding subsection, a certificate of the Director of Engineering 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.

4.2 No Assignment of Licence

4.2.1 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 of Engineering.

4.2.2 Where the Director of Engineering refuses to consent to assignment or transfer under section 4.2.1, the person who requested the assignment or transfer may appeal the Director's decision to Council, in which case the procedures outlined in section 5.5 of this Bylaw apply with the necessary changes.

PART 5 - REFUSAL AND CANCELLATION OF LICENCE

5.1 Refusal

5.1.1 The Director of Engineering may refuse to issue a Licence to an Applicant if any of the following circumstances apply:

- (a) the Application is incomplete, or contains false or misleading information;
- (b) in the case of an Application for an Enclosed Sidewalk Café Licence, the Applicant has not obtained a building permit or development permit, as may be required;
- (c) the proposed Sidewalk Café does not comply with the requirements of this Bylaw;
- (d) the proposed Sidewalk Café would unreasonably interfere with the ability of the City or any public utility company to have access to or maintain a utility or service installation;

- (e) the proposed Sidewalk Café would unreasonably interfere with the public's use and enjoyment of the Sidewalk or adjoining roadway;
- (f) the proposed Sidewalk Café would present a risk of harm to the health or safety of the public, or would constitute a nuisance.

5.1.2 The Director of Engineering may refuse to renew a Licence if any of the circumstances described in section 5.3 apply.

5.2 Cancellation

The Director of Engineering is designated as a municipal officer for the purposes of this section, in accordance with section 192 of the *Local Government Act*.

5.3 The Director of Engineering is delegated the following powers in connection with the cancellation of a Licence:

- (a) before cancelling a Licence, the Director of Engineering must notify the Applicant of the proposed cancellation and provide the Applicant with an opportunity to be heard by the Director of Engineering;
- (b) after holding the hearing referred to in subsection (a), the Director of Engineering may cancel a Licence for any reasonable cause, including, without limiting this provision, any of the reasons set out in subsection (c);
- (c) the following circumstances may constitute reasonable cause for the cancellation of a Licence:
 - (i) the Applicant fails to comply with a term or condition of the Licence;
 - (ii) 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;
 - (iii) the Applicant is deemed, under the *Local Government Act*, or the *Offence Act* to have pleaded guilty to an offence referred to subsection (ii);
 - (iv) 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;
 - (v) 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;

- (vi) 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;
- (vii) the Licence area is required for the construction or installation of a municipal work, service, utility or other improvement;
- (viii) the continued operation of the Sidewalk Café would unreasonably interfere with the public's use or enjoyment of the Sidewalk or the adjoining roadway.

5.4 The Director of Engineering must notify the Applicant of the right to have Council reconsider the cancellation of a Licence by the Director of Engineering under section 5.3.

5.5 An Applicant applying for reconsideration, by Council, of a decision of the Director of Engineering to cancel a Licence, 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 of Engineering whose decision is the subject of the reconsideration request, the Council may:
 - (i) confirm the decision of the Director of Engineering; or
 - (ii) rescind that decision and substitute in its place any other decision that the Council determines is appropriate.

5.6 By resolution of its Council, the City may at any time cancel a Licence issued under this Bylaw.

- 5.7 Before cancelling a Licence issued under this Bylaw, 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 5.5 of this Bylaw, with the necessary changes.

PART 6 - APPLICATION FEES AND ANNUAL FEES

- 6.1 An Applicant for a Sidewalk Café Licence must pay to the City:
- (a) an Application fee of \$50.00 for an Application that is not a renewal of a Licence; and
 - (b) an annual Licence fee equal to the amount determined under Schedule "A".

PART 7 - GENERAL

- 7.1 The holder of a Sidewalk Café Licence must ensure that there are no signs:
- (a) in the area of the Sidewalk Café;
 - (b) on fences, railings or other means of separating the Sidewalk Café from other areas of a Sidewalk.
- 7.2 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 Sidewalk Café Licence.
- 7.3 A person who contravenes a provision of this Bylaw:
- (a) commits a separate offence each day on which the contravention occurs or continues; and
 - (b) is subject to the penalties prescribed by this Bylaw and the *Offence Act*.
- 7.4 The minimum penalty for a contravention of a provision of this Bylaw is:
- (a) for a first contravention, a fine of \$25.00; and
 - (b) for a subsequent contravention, a fine of \$100.00.

- 7.5 An offence notice may be delivered to another person by a person who:
- (a) is a Bylaw Officer of the City or is authorized by or under a resolution of the Council or under a subsisting contract with the City; and
 - (b) has reason to believe that the other person has committed an offence under this Bylaw.
- 7.6 An offence notice may be delivered by giving it to the person who is believed to have committed the offence.
- 7.7 The voluntary penalty for a first contravention of an act described in subsection 7.4(a) is:
- (a) \$10.00 if paid within 45 days from the date of the offence notice; and
 - (b) \$25.00 if paid after 45 days from the date of the offence notice.
- 7.8 The voluntary penalty for a subsequent contravention of an act described in subsection 7.4(b) is:
- (a) \$75.00 if paid within 14 days from the date of the offence notice;
 - (b) \$85.00 if paid after 14 days but within 45 days from the date of the offence notice; and
 - (c) \$100.00 if paid after 45 days from the date of the offence notice.

PART 8 - REPEAL

8.1 The Sidewalk Café Regulation Bylaw No. 91-137 is repealed.

READ A FIRST TIME the	13TH	day of	JUNE	2002.
READ A SECOND TIME the	13TH	day of	JUNE	2002.
READ A THIRD TIME the	13TH	day of	JUNE	2002.
ADOPTED on the	27TH	day of	JUNE	2002.

“ROBERT G. WOODLAND”
CORPORATE ADMINISTRATOR

“ALAN LOWE”
MAYOR

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

1. The amount of the annual rental fee for a Sidewalk Café is the amount calculated by subtracting Y from X where:
 - (a) X equals the rate shown in Table 1, according to year, type of Sidewalk Café and area of location of the Sidewalk Café, multiplied by the number of square feet of a Sidewalk occupied by the Sidewalk Café; and
 - (b) Y equals
 - (i) zero if the Sidewalk Café does not abut the real property of the Applicant for the Sidewalk Café Licence; and
 - (ii) 2 multiplied by the number of feet of street frontage of the Sidewalk Café if the Sidewalk Café abuts the real property of the Applicant for the Sidewalk Café Licence.
2. Despite section 1, the amount of the annual rental fees for a Sidewalk Café is reduced by 50% for a Sidewalk Café that faces north.
3. In Table 1
 - (a) Type A represents Temporary Sidewalk Cafés; and
 - (b) Type B represents Enclosed Sidewalk Cafés.
4. In Table 1, Areas 1 to 3 are the areas shown on the Sidewalk Café Area Map attached to this Schedule.

TABLE 1

Rates per square foot of Sidewalk occupied

		2002 RATES			2003 RATES
AREA 1	<i>TYPE A</i>	\$5.85	AREA 1	\$6.15	
	<i>TYPE B</i>	\$7.80		\$8.20	
AREA 2	<i>TYPE A</i>	\$3.00	AREA 2	\$3.15	
	<i>TYPE B</i>	\$4.00		\$4.20	
AREA 3	<i>TYPE A</i>	\$2.20	AREA 3	\$2.30	
	<i>TYPE B</i>	\$2.95		\$3.10	