



## Framework and Consultation Plan for a Harmonized Sidewalk Café and Marketing By-law

**Date:** March 31, 2017

**To:** Licensing and Standards Committee

**From:** Executive Director, Municipal Licensing and Standards

**Wards:** All

### SUMMARY

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This report presents a framework for the harmonization of six in-force sidewalk café and marketing bylaws into a single bylaw; proposed new fees; and a consultation plan.

This report aligns with, and supports, the Transportation Services' (TS) report entitled, *A Framework for the Toronto Sidewalk Café Design Manual*, being presented to the Public Works and Infrastructure Committee on April 12, 2017.

Over the past two years, Municipal Licensing and Standards (ML&S) has been working with Transportation Services to review existing regulations and consult with stakeholders, with a view to developing a framework for a harmonized by-law.

In order to balance multiple interests, the following three project objectives have been identified:

- 1) develop consistent standards for the harmonized by-law (ML&S);
- 2) update the fee schedule (ML&S); and
- 3) ensure the sidewalk functions for all users through the permit process and through new sidewalk café design options and opportunities (TS).

ML&S's report includes a framework for the harmonization of existing by-laws into a single by-law, and associated fees. Key provisions include consistent city-wide standards that are easy to understand and provide clarity for decision-making, along with simplified permit fees: one for downtown and one for everywhere else.

Both of the above reports recommend further consultation and a report back to City Council in the fourth quarter of 2017.

## RECOMMENDATIONS

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The Executive Director, Municipal Licensing and Standards recommends that:

1. Licensing and Standards Committee direct the Executive Director of Municipal Licensing and Standards to undertake stakeholder and public consultation on the Framework for a Harmonized Sidewalk Café and Marketing By-law, and on the Fee Structure as outlined in this report, and report back with the harmonized by-law following this consultation to the Licensing and Standards meeting in the fourth quarter of 2017.

## FINANCIAL IMPACT

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There are no financial implications beyond what has already been approved in the current year's budget. A full assessment of the financial impact of the proposed framework will be prepared as part of the final report and reported out in the 2018 budget process.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

## DECISION HISTORY

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At its meeting of April 18, 2013, Licensing and Standards Committee referred an item titled "Status of a Harmonized Boulevard Café By-law" to the Executive Director, Municipal Licensing and Standards, for a further report to the Licensing and Standards Committee.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.LS20.4>

At its meeting of June 29, 2011, Licensing and Standards Committee referred an item titled "Year-Round Enclosed Sidewalk Cafés – Revised" to the Executive Director, Municipal Licensing and Standards, for a further report to the Licensing and Standards Committee.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.LS5.2>

At its meeting of March 24, 2011, the Planning and Growth Management Committee requested the Chief Planner and Executive Director, City Planning, in consultation with the Executive Director, Municipal Licensing and Standards and other appropriate staff, to investigate and report back to the Committee on ways to regulate and/or limit the amount of merchandise that can be displayed outdoors, in areas of the City that permit the outdoor display of merchandise.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.PG2.13>

## COMMENTS

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Sidewalk cafés and marketing displays have long been a feature of Toronto's urban landscape. Today, they are a vital element of both civic life and private enterprise. The importance of Toronto's sidewalk café and marketing program is evident in its scale. There are approximately 700 sidewalk cafés permitted throughout the city, and nearly 300 permitted sidewalk marketing displays. By comparison, there are approximately 100 sidewalk cafés in the City of Ottawa, 550 in Vancouver, 870 in Melbourne Australia and 1000 in New York City (Manhattan). The total City-wide area of public land that is currently permitted for sidewalk cafés and marketing displays in Toronto is approximately 2.6 hectares. This is an area roughly equivalent to the combined area of two downtown parks: Sherbourne Common (1.47ha) and Sugar Beach (0.87ha).

The framework and fee review within this report has been developed with the objective of supporting Toronto's rich sidewalk café and marketing culture, while also balancing localized needs to retain or improve neighbourhood vibrancy, liveability and character. The framework and the fee review has been informed by three phases of stakeholder consultations, and a review of best practices from other jurisdictions.

### **Stakeholder and Public Consultations**

Three phases of consultations with stakeholders representing public and industry interests have been held to help develop the framework for harmonization: the focus of phase 1 and phase 2 consultations was on policy directions. The focus of phase 3 was on the fee review. Primary stakeholders included residents and pedestrians, including those with disabilities; sidewalk café and marketing display permit holders; and the broader restaurant and convenience store industry.

Staff also consulted with a range of internal Divisions including City Planning, Legal Services, City Clerks, Toronto Building, Fire Services, Public Health, Urban Forestry, Real Estate Services, Economic Development and Culture, and Transportation Services. The Disability, Access and Inclusion Advisory Committee; the Toronto Association of Business Improvement Areas (TABIA); the Ontario Convenience Store Association (OCSA); the Toronto Parking Authority (TPA); and the Alcohol and Gaming Commission of Ontario (AGCO) have also been consulted in the preparation of the framework.

A summary of the outreach and engagement methodology; and a description of the consultation phases is included in Attachment 1.

### **Stakeholder Feedback on Policy Directions: Key Findings**

While the interests of different stakeholder groups often varied, some overarching common themes were apparent:

- All stakeholders were supportive of the harmonization project as a means of establishing consistent rules that are easily understood;
- Stakeholders were interested in seeing more variation of café configurations, with options such as parklets and curbside cafés received strong support;

- Stakeholders were also interested in options to "loosen up" the existing regulations; one example in this regard was removing the mandatory requirement for fencing around cafés that are not licensed for the sale of alcohol;
- Options for streamlining some typologies, particularly small café frontages with minimal footprints, were also supported by all.

Notwithstanding this common ground, some competing interests were also apparent, none more so than with issues of pedestrian movement and noise. Members of the public, including accessibility advocates, expressed concern and frustration with the following:

- the impact of late night café operations, particularly noise, upon quality of life;
- constraints to movement and mobility caused by obstructed sidewalks; and
- challenges to navigation for persons with vision impairments in the absence of predictable solid points along the sidewalk.

Industry stakeholders – particularly sidewalk café operators - were vocal about the importance of maintaining their existing permit areas. A summary of the primary interests from these stakeholders follows:

- The competitive nature of the restaurant industry was highlighted, where even the loss of just one extra table can have a significant impact upon the viability of a business. As an extension of this, concerns about the broader impact upon Toronto's restaurant industry and were also flagged as a consideration for any new By-law regulations;
- Operators felt that other sidewalk elements, such as transit shelters, post-and-ring bicycle parking or garbage bins, also compromise pedestrian movement along the sidewalk - the challenges of accessibility and movement are not purely the result of sidewalk cafés and marketing displays;
- Business operators felt that the economic impact for business owners should be considered when decisions to amend a permit area are being contemplated;
- Inconsistencies with the current application process were a concern, as were uncertainties in the outcome of an application that stem from the polling process.

### **Stakeholder Feedback on the Fee Structure: Key Findings**

A market-based approach to the permit fee review was introduced during phase 2 of consultations, however further consultations were held to provide a greater level of detail. As part of the phase 3 consultation, staff attended two inter-divisional TABIA meetings (November 15, 2016 and January 17, 2017); and a public meeting held on January 30, 2017. In accordance with the City's User Fee Policy, notice of the public meeting was provided to all café and marketing permit holders; and further circulated to stakeholders with the assistance of TABIA; ORHMA; and the Ontario Convenience Store Association (OCSA). The public notice included translation of the meeting details in French, Korean, Traditional Chinese, and Simplified Chinese. In recognition of challenges for the restaurant industry to participate in consultations, this meeting was also live-streamed via the City's [Get Involved YouTube channel](#). Approximately 50 stakeholders attended the meeting held on January 30, 2017, and more than 240 viewed it online.

### *Feedback on the Proposed Fees*

At the January 30, 2017, public meeting - and in the days following this meeting - significant concerns about the proposed permit fees were expressed by members of the industry (permit holders; BIA's etc.); residents; City Councillors; and by some media outlets. Approximately thirty written objections to the permit fee proposal were submitted. Additional comments encouraged the City to consider reduced permit fees for businesses that are in areas undergoing major redevelopment or construction. No comments in support of the proposed permit fees were provided. No comments were provided about the application fee or the proposed parklet café fees at the January 30, 2017 public meeting. There was some confusion about the proposed tree fee at this meeting, and why new applicants would be required to pay a fee for tree planting.

### **Jurisdictional Scan**

Staff examined sidewalk café and marketing regulations in a variety of regions to assess implementation options and potential improvements for Toronto. Cities examined included Vancouver, Ottawa, New York, Chicago, Boston, San Francisco, Philadelphia, Seattle, Portland, and Melbourne (Australia) among others. Through this research, a number of initiatives worthy of further examination in the Toronto context were identified. These included the use of parklet cafés (temporary patio extensions into the curb lane); curbside cafés (cafés adjacent to the curb, as opposed to being against the building face); various approaches to how issues of pedestrian movement and accessibility are addressed; and a variety of public notice processes. Initiatives from other cities that were well received by stakeholders and other partners have been incorporated into the proposed recommendations.

### **A Framework for Harmonization**

Given the complex nature of the issue at hand and the number of stakeholders, a framework for harmonization has been developed. The framework summarizes the major issues that have been identified to-date. Feedback received through this process will provide guidance to the final stakeholder consultation and the final Manual and supporting by-law.

## **1. ESTABLISHING CONSISTENT STANDARDS AND PROCESSES**

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Currently, there are 6 different by-laws in force that provide for café and marketing uses on the City's sidewalks. Although these by-laws were created for a similar purpose, they established different standards and procedures, all of which are still in effect today. Some examples of these inconsistencies follow:

- Sidewalk café applications in the former City of Toronto require a poll of residents if the application is located on a residential street, whereas no public notice is required for a café application in former North York
- Applications in former Toronto and East York are granted by way of a permit that is issued by staff; in former North York, York and Etobicoke they are granted through an Encroachment Agreement and authorized by Community Council;
- The former City of Scarborough prohibits sidewalk cafés and marketing displays on the public right-of-way; and

- Application fees vary considerably throughout the City, despite a similar process and effort to process them.

This lack of consistency is a challenge to administer and enforce on a uniform basis, can confuse the public who view these inconsistencies as frustrating and inefficient, and does not foster a progressive business climate. The following provisions are included in the framework to establish consistent standards and procedures.

### **1.1 Pedestrian Clearway Standard**

Supporting pedestrian movement is an essential function of the sidewalk. Because the sidewalk functions as a larger component of the transportation network, the Transportation Services Division is leading the review of this component of the project. Transportation Services is reporting out on this issue to the Public Works and Infrastructure Committee (PWIC), at its meeting of April 12, 2017.

### **1.2 Discontinuation of the Polling Process**

In the former City of Toronto, a poll of residents is required if the location of the café is on a residential street. The polling process is managed by Registry Services, City Clerk's Division, according to City of Toronto Municipal Code Chapter 190, Polling and Notification.

Staff have not included a polling process for new sidewalk café applications in the framework for harmonization for the following reasons:

- The poll results do not always provide an indication of the wishes of local residents (approximately one third of café applications on residential streets were refused in the past 7 years because local residents did not return their poll ballots);
- The time-frame of the polling process, and reliance on residents to return their ballots, creates an uncertain climate for business; and
- Equal or more residents will be notified through the proposed alternative community engagement techniques.

### **1.3 Proposed Methods for Community Engagement in the Application Process**

Community engagement ensures that public interests are taken into consideration during the application and evaluation process. Currently, there is no consistent city-wide approach to public notice for café applications. A common theme heard through the consultation process was this lack of consistency is confusing and raises issues of fairness. Concerns were also raised about the polling process. The following engagement processes are proposed for new sidewalk café applications, to ensure the local impacts of a proposed café are afforded due consideration:

#### **1.3.1 Public Notice posted for 14-days**

In the former City of Toronto, if the café is located on a "commercial street", the applicant must post notice on the café window for a minimum period of 14-days. This process is recommended for all new sidewalk café applications, regardless of location. A 14-day period of public notice is more than the period of public notice required for minor variance applications to the Committee of Adjustment (10 days), and the same as applications to injure or destroy healthy trees (14 days). It is also comparable to the notification period for sidewalk cafés that is used in many other cities including Ottawa

(15 days); Vancouver, Seattle, and Melbourne (14 days); and San Francisco and Los Angeles (10 days).

### **1.3.2 Mail-out to Residents living within 60m of a proposed Sidewalk Café**

In addition to public notice, the framework also includes a requirement for residents living within a 60-metre radius of a proposed new sidewalk café to be notified of the application by mail. A similar form of community engagement is currently a requirement for new café applications that are located in the former municipality of Etobicoke, by way of notice to all property owners within a 200-foot radius. Similarly, residents within 60-metres of a minor variance application receive notice through the mail.

### **1.3.3 Notice of all new applications to the local City Councillor**

City Councillors play a critical role in engaging local residents and have established communication techniques that allow for the prompt passage of information in languages commonly spoken amongst their constituents. While Councillors are notified in the current process, there is no requirement for this within the Toronto by-law. Subsequently, the requirement to notify local Councillors is included to ensure that consistent circulation practices are followed.

### **1.3.4 Notice of all new applications to the local BIA Notification, as applicable**

With greater options for cafés proposed within the By-law, staff anticipate that BIA's could play a greater role in the local coordination of sidewalk elements on a block by block basis. While the specifics of this role will vary from area to area, it could include, for example, assisting with the coordination of physical elements such as planters, umbrellas or fencing, or assisting individual business operators with the application process. Including BIA's in the notification process will ensure they – and other local businesses - are aware of potential changes in their area.

### **1.3.5 Handling objections through Public Notification**

Under current processes, staff will refuse an application if an objection is received through the process of public notice. The applicant can then appeal this decision for consideration by Community Council. This same process is included in the framework, with a slight amendment being that the application would be refused if more than one objection is received (the current requirement for refusal is one objection). If the applicant appeals the decision to refuse the application, any residents who objected would be notified of the subsequent meeting date of Community Council.

## **1.4 Accessibility for Persons with Mobility Impairments**

The current Toronto By-law includes provisions which require new café applications to be accessible. These requirements are included in the proposed framework, along with the following additional requirements:

- i. Marketing display applications must also be accessible; and
- ii. Upon transfer of a permit, sidewalk cafes and marketing displays must be accessible.

## **1.5 New Site Plan Requirements for Permit Applications**

Given the complexity of decision-making within the right-of-way, a proposal for new minimum site plan standards are included in the framework. This could include, for example, a scaled and dimensioned drawing of a certain size (for example, 11x17)

showing property lines, and all existing sidewalk elements at least 9-metres on either side of the proposed permit area. To assist with implementation, staff would develop a template to demonstrate these minimum standards.

The site plan drawing is a key element of the application process: it shows the location of the proposed permit area, and other key pieces of information such as the dimension of the sidewalk, the location of neighbouring permit areas, and other elements on the sidewalk (trees, bike rings, parking machines, fire hydrants, etc.). Currently there are no minimum standards or requirements for accompanying materials in the application process. In many cases, hand-drawn sketches that contain minimal information are provided. This can result in substantial delays to the application process, as staff need to request additional information, or verify the accuracy of the information provided through desktop and field surveys. Under this proposal, sketched site plans would no longer be accepted.

### **1.6 Use of Road Classification System to Determine Role of the Street**

The current process of regulating operating hours based on the physical characteristics of a street ("residential" or "commercial") has occasionally lead to confusion about which rules apply where. To provide clarity and certainty, staff recommend using the Road Classification System to determine the role of the street: "Local Road" would replace "Residential Street"; and "Arterial/Collector Road" would replace "Commercial Street". This change is not expected to have any bearing on the application process, other than providing greater clarity to stakeholders about which rules are applied.

### **1.7 Mechanism for Permit Issuance and Permit Display**

Under the proposed framework, applications that have been reviewed and deemed to be in compliance with the by-law would be issued by staff. The applicant would be required to enter into an agreement with the city outlining the terms and conditions of the permit. Currently, applications in former North York and Etobicoke all require the approval of Community Council. The recommended approach reflects the process that is currently in place in former Toronto. This is the preferred process for the harmonized by-law, as it ensures the most efficient manner for permit issuance of routine applications (those which comply with the by-law).

In addition, the framework requires all permit holders to display a permit marker in a location that is visible from the exterior of the establishment. This is intended to make it easier for residents and By-law enforcement Officers to identify locations that do not have a permit.

### **1.8 Permit Amendment, Suspension and Cancelation**

The in-force former Toronto By-law provisions for when and how a permit may be suspended or canceled are included in the framework. In addition, new provisions are proposed that allow the City to amend, suspend or revoke a permit if permit fees have not been paid; or if the boulevard is required for another municipal purpose.

The following provisions for when the City may amend, suspend or cancel a permit are included in the framework:



- i. Cancellation of permit if permit fees have not been paid following a period of 90-days from the permit expiry date (new);
- ii. Cancellation of permit if it is determined that the permit was obtained through the submission of false, misleading or fraudulent information (new);
- iii. Amendment of the permit area, if it is determined that a portion of the permit area is needed for another municipal purpose, pending consideration by Community Council (new);
- iv. Suspension of the permit where there is reason to believe that the provisions of the agreement are being violated, pending consideration by Community Council (existing);
- v. Cancellation by the City at any time, and removal of installations on 30-days notice of the cancellation (existing).
- vi. Cancellation of the permit, without reason, pending consideration by Community Council (existing)

In instances where a reduced permit area is required, a refund of permit fees equivalent to the value of the reduced area is recommended.

### **1.9 Multi-Year Permits**

Permits are currently issued for 1-year. The issuance of multi-year permits, along with multi-year business licenses, could facilitate the reduction of administrative burdens upon business operators. The authority to issue multi-year permits is therefore included in the framework.

*A summary of the proposed framework outlined herein is included in Attachment 2.*

## **2. STANDARDS AND PROCESSES SPECIFIC TO SIDEWALK CAFES**

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### **2.1 New Sidewalk Café Configurations**

A number of new sidewalk café configurations are proposed in order to provide greater flexibility and choice to café operators, and to assist with design options and opportunities. These configurations, which include curbside cafes and parklet cafes, are not currently permitted in the existing by-laws although permission for them can be granted on a case-by-case basis by Community Council. A new Small Café configuration (e.g. a bench or small table and chair) is also proposed. Additional information about these configurations is included in the Transportation Services report that will be considered by PWIC on April 12, 2017.

### **2.2 Sidewalk Café Operating Hours**

The following provisions relating to operating hours are included within the framework:

- i. Where regular enforcement mechanisms (education, warnings, charges etc.) are not sufficient to resolve a complaint, the permit would be referred to Community Council by the Executive Director, where conditions could be imposed to address the complaints (new);
- ii. Cafés located on a residential flankage would be required to close by 11:00p.m (unchanged);
- iii. No municipal restriction would be applied to cafés located on a commercial frontage (unchanged); and

- iv. Alternate operating hours that have been imposed by Community Council as a condition of approval would carry forward following harmonization.

Currently, cafés located on “residential” flankages are required to close by no later than 11:00pm. There is no broad municipal limit to operating hours for sidewalk cafés located on a commercial frontage, with the exception of a small segment along Queen Street East, which also has a closing time of 11:00pm. Limits or extensions to the hours of operation can be placed on a business as a condition of approval of any application by Community Council. During consultations, the issue of noise from sidewalk cafés was one of the major issues of concern raised by residents. In recognition of the need to address this concern, a new mechanism is included in the framework which will allow for the swift identification of problematic locations and referral to Community Council for resolution. In the case of a noise complaint, such a resolution could include – for example - a review of operating hours.

### **2.3 Amplified Sound and Visual Displays**

Currently, amplified sound is not permitted on cafés located on “residential” flankage, but there are no restrictions to amplified sound if the café is along a commercial frontage. The existing prohibition of amplified sound along residential flankages is carried forward in the framework. In response to concerns from residents about the impact of noise from cafés located along commercial frontages, new restrictions on amplified sound are included in the framework: specifically, amplified sound would be prohibited on cafés located on commercial frontages after 11:00 p.m. The framework also includes a proposed prohibition on visual displays (e.g. televisions) on all cafés. Exemptions to this prohibition, such as for major sporting events, could be made by Community Council.

### **2.4 30-metre Separation Distance from Residential Zones for New Permits**

Staff are recommending a minimum 30-metre separation distance requirement between a sidewalk café and the closest lot in a Residential Zone. The current measure within the in-force Toronto By-law is 25-metres. Requiring physical separation between cafés and residential uses can be helpful in addressing noise. The zoning by-law also requires a minimum separation of 30-metres between a café located on private property and the closest lot in a Residential Zone. Inclusion of this measure in the framework will ensure a consistent approach for sidewalks located on private property and the public sidewalk; and it will establish a city-wide standard for the by-law. To facilitate implementation, the following points are included in the framework:

- i. The proposed separation measure would only apply to new applications. Existing cafés would not be required to comply with the new measure, even upon transfer of the permit;
- ii. The separation requirement only applies to Residentially-zoned properties (i.e. it does not apply to all residential properties, such as those located in a mixed commercial residential zone);

### **2.5 Sidewalk Café Fencing Requirements**

The current by-laws require all sidewalk cafés to be fenced, and the Toronto by-law requires fencing to be constructed of materials such as metal railings and posts. The following recommendations are included in the framework to provide café operators with

more flexibility and choice, while also addressing needs for people with visual impairments who use fences as point of reference to aid navigation:

- i. Construction materials for fencing are not specified in the framework
- ii. The requirement for a fence around all café permits is not included in the framework (i.e. fencing around a café will not be a municipal requirement).
- iii. A permit area that does not have a fence must be delineated by pavement markings that clearly show the café perimeter, provide visual cues to pedestrians and café patrons, and define the pedestrian clearway;
- iv. The placement of solid objects at the leading and trailing edges of a café without a fence (planters, for example) to aid cane navigation for the visually impaired; and
- v. Gaps in fencing and partitions on the edge of the café abutting the pedestrian clearway must be no greater than 3 metres.

The Liquor Licence Act (LLA) requires all outdoors areas licensed for the sale and service of alcohol to be surrounded by a partition. "Partition" is an undefined term in the LLA, and can be implemented in a variety of ways such as a railing, planters, or stanchions. The proposals outlined above are in alignment with the LLA, and operators with a liquor licence would still be required to install a partition around the permit area. Operators that don't have a liquor licence would not be required to install a fence around the permit area. If the café operator did not install a fence and subsequently obtained a liquor licence at a later date, a fence around the perimeter of the café would need to be installed in order to comply with the LLA.

## **2.6 Seasonal Removal of Sidewalk Café Elements: November 15 – April 14**

Specific dates identifying the period when café elements, including fencing, must be removed from the sidewalk are included in the framework: the period of fence removal is between November 15 and April 14. This timeframe coincides with the city's contract period for snow removal. Cafés located on local roads would be exempt from this requirement, unless a specific request to remove this fence is made by the City. Year-round cafés would also be exempted.

The in-force Toronto By-law does not define specific dates for fence removal, but does require them to be removed when the café is not in regular daily use. Specific dates are however, included in café agreements that the City enters into in the former municipality of Etobicoke (October 1 – May 1). The inclusion of dates in the harmonized by-law for the removal of café elements will provide clarity to all stakeholders. The removal of fences and other café elements along arterial and collector roads in the winter months is beneficial for a number of reasons:

- It helps the city meet its objectives to clear snow from all high pedestrian-volume sidewalks
- It enhances pedestrian movement during winter when the build-up of snow and ice can make sidewalks more challenging to navigate
- It ensures that the public sidewalk is not used as winter storage space for café elements such as tables and chairs.

## **2.7 New Permission for Sidewalk Cafés - Extended Frontages**

To provide greater flexibility for café operators and to help further animate the street, the framework includes the ability for café operators to extend their café across the frontage of an adjacent establishment. It is anticipated that this provision will be useful at locations where an existing café must be amended to provide a wider pedestrian clearway: extending the café frontage could serve to minimize any potential reduction of café capacity. In implementation, a letter of consent from the adjacent property owner or occupant would be required as part of the application process. If the adjacent property owner or occupant subsequently decided to use the public sidewalk area fronting their property for the purpose of a sidewalk café or a marketing display, they must provide notice to the café owner in order to terminate their consent. If consent is revoked, permission to use the extended use would expire on the renewal date of the permit.

## **2.8 Year-round Enclosed Cafés: Extended Season**

The framework includes a proposal for some sidewalk cafés to operate year-round, through permissions for a temporary café enclosure. This configuration would only be considered on a local road. Allowing cafés to operate in the colder months is a measure intended to embrace Toronto's winter city climate: it will provide residents with increased options for social interaction in the colder season, and businesses with increased opportunities for growth and employment.

Staff will continue to work with Toronto Fire and Toronto Building during the next consultation phase to develop specific by-law provisions. Generally, the following requirements would apply:

- i. The enclosure must be made of temporary materials (canvas, sail cloth or similar as opposed to rigid construction material such as metal or vinyl siding)
- ii. The temporary sides must be removed during the regular café season (May 15 – September 15);
- iii. A building permit is required prior to the installation of any heat-generating equipment within the temporary café enclosure;
- iv. The enclosure must be fully accessible, and barrier-free; and
- v. The structure must meet all building and fire code standards, and be designed in a way that it can be removed for emergency repairs or construction on 24-hours notice.

*A summary of the proposed framework outlined herein is included in Attachment 2.*

## **3. UPDATING THE FEE STRUCTURE**

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A comprehensive review of the fee schedule for sidewalk cafés and marketing displays has been undertaken in accordance with the City of Toronto User Fee Policy. The fees associated with this project include: application fees; permit fees; and a fee for tree planting.

A permit fee is an annual fee that a business pays to the City for the right to use public space for commercial purposes. The authority to impose this fee comes from section 259(1)(c) of the *City of Toronto Act, 2006* which states that the City can impose a fee or charge “for the use of [the City's] property”.

The existing permit fees are outlined in Attachment 3.

A review of these fees has been undertaken as part of this project for the following reasons:

- The permit fees have never been comprehensively reviewed by the amalgamated City
- The current fees vary greatly, from a low of \$5.50 / m<sup>2</sup> (in former York), to a high of \$114.12 / m<sup>2</sup> (former North York)
- The current schedule has imbedded disparities that see the highest fee in former North York (\$114.12/m<sup>2</sup>), while among the lowest permit fees (\$20.08/m<sup>2</sup>) are in some of the City's most marketable areas (e.g. Yorkville)
- Permit fees for marketing displays are higher than those for sidewalk cafés in many areas
- The existing 7 fee zones (geographic areas that determine the specific permit fee) are founded on boundaries established prior to amalgamation.

### **3.1 Initial Fee Concepts Presented for Consultation**

The review of permit fees was undertaken in collaboration with the Real Estate Services Division. The foundation of this review was to establish a relationship between permit fees and the market value of the public sidewalk. In this approach, five new fee zones were proposed to replace the current seven zones. The proposed zones defined areas that were determined to have similar land valuations. Within each proposed zone, market value was determined by identifying average at-grade rental rates. The market rate value determined through this exercise ranged from \$473.00 /m<sup>2</sup> in the downtown, to \$258.00/m<sup>2</sup> in the east end.

Staff presented the market rate values at a stakeholder meeting on January 30, 2017. The permit fees presented at this meeting included discounts which factored in weather-based limitations of the café season; and the benefits that cafes bring to the city (tourism, street animation etc.). With these discounts, the proposed permit fees presented at this time ranged from \$272 /m<sup>2</sup> in the downtown; to \$148 /m<sup>2</sup> in the city's east end. A 5-year phase-in period was proposed.

Significant concerns about the fees were expressed by members of the industry (permit holders; BIA's etc.); residents; City Councillors; and by some media outlets. One of the clearest messages from this feedback was that the proposed permit fees did not give sufficient consideration to the public benefits offered by sidewalk cafes. The proposed 5-year phase-in was also of concern, with a longer period being preferable.

### **3.2 Proposed Permit Fees**

In response to the stakeholder feedback, staff developed revisions to the initial concepts. The Economic Development and Culture Division was consulted in this process. The number of proposed fee zones has been further simplified, with two being proposed for the harmonization framework: a "Central Zone", comparable to the Downtown area defined in Map 6 of the Official Plan; and an "Outer Zone", comprising the remainder of the city.

The proposed new fee zones are shown in Attachment 4.

The proposed annual permit fees for sidewalk cafés in each new zone are noted in Table 1 below.

Proposed Fee Zone	Sidewalk Café (\$/m <sup>2</sup> )	Year-round Sidewalk Café (\$/m <sup>2</sup> )
Central Zone	\$88.31	\$133.00
Outer Zone	\$44.14	\$66.50

Table 1: Proposed Annual Sidewalk Café Permit Fees, by Fee Zone

The proposed Central Zone fee was determined by increasing the existing applicable fee in the downtown by 10%. The proposed Outer Zone fee was then set at 50% of the proposed Central Zone fee. Approximately 65% of sidewalk cafés are located in the Outer Zone, where lower permit fees apply.

The following chart is a comparison of current fees; fees presented at the public meeting in January 2017; and fees proposed within this report:

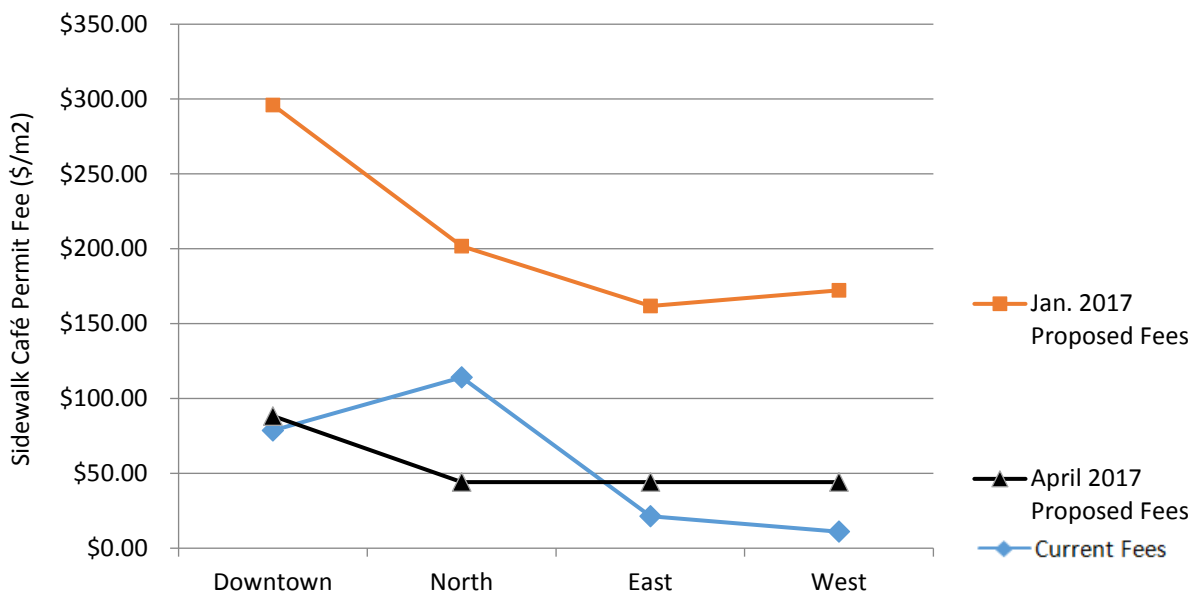


Chart 1: Comparison of Sidewalk Café Permit Fees

### 3.3 Implementation Plan for Proposed Permit Fees

The proposed fees will see rates for existing permit holders in North York drop from \$114.12/m<sup>2</sup> to \$44.14/m<sup>2</sup> (a drop of 60%). Staff recommend that this decrease be applied immediately following enactment of the new fee schedule.

Existing sidewalk café permit holders in other areas will experience a range of increases from a low of \$0.54 m<sup>2</sup>/year in the downtown to a high of \$4.55 m<sup>2</sup>/year, also in the

downtown. Cafés in this latter category are in the downtown neighbourhoods of Yorkville, King-Spadina, The Annex, Harbord Village, and Cabbagetown. The following implementation points are proposed as a way to mitigate the impact of permit fees on local business:

- i. The proposed permit fees would not be subject to annual inflationary increases over the next 15 years
- ii. Increases for existing permit holders would be phased in equally over a period of 15 years

The proposed permit fees would apply in full to new applicants following enactment of the new fees. Following the 15-year phase-in, all permit holders would be paying the proposed permit fees.

### **3.4 Proposed Permit Fee for Parklet Cafés**

Parklet cafes are among the range of new café configurations that are outlined within the report from Transportation Services and being considered by PWIC. A parklet café is a café located on a platform on a portion of the roadway that is designated for permanent on-street parking, with no peak period restrictions. The café platform is raised from the roadway and placed at the same level as the sidewalk.

Staff have worked with the Toronto Parking Authority (TPA) to establish proposed permit fees that would apply to parklet cafes: \$900/ month in the Central Zone; and \$565/month in the Outer Zone. These fees are based on the average size of a parking stall, which is 14.3 m<sup>2</sup>. The proposed fees will ensure the program has minimal revenue impact to the TPA. The proposed parklet café permit fees are reflective of the weighted average revenue generated by area (m<sup>2</sup>) for on-street paid parking spaces in each fee zone, as determined by the TPA. Any changes to parking rates made by the TPA would require an amendment to the related parklet café permit fee.

### **3.5 Proposed Application Fees**

The proposed application fee for a sidewalk café or marketing display is \$1,330.

The proposed application fee for a Small Frontage Café (such as a small bench or small table and chairs) and Small Marketing Display is \$140.00. This fee is lower for this later permit type because the review of this application is less labour intensive than a regular application.

As per the User Fee Policy, the application fee has been set at a rate that recovers the cost of providing a city service. In the case of a café or marketing permit application, this includes costs to intake the application, process payment, circulate it to other divisions, conduct site inspections, undertake public notice, and coordinate with the applicant and other stakeholders as necessary.

### **3.6 Proposed Fee for Tree Planting**

The in-force Toronto By-law requires new café applicants to pay a non-refundable fee of \$3,000.00 for the installation of one tree, where it has been determined by the City that the café location is suitable for tree planting. This provision was added to the former Toronto by-law as an amendment introduced in 2002. None of the other former by-laws have this requirement. In consultation with Urban Forestry, staff are recommending a

revised tree fee of \$652.50. The tree planting fee is a one-time fee that would only be paid when:

- i. a new permit is approved at a location where there is a soft, unpaved boulevard; and
- ii. Urban Forestry has determined that the proposed use (café or marketing display) would limit the ability to plant a tree there.

The fee for tree planting would not be required if:

- iii. There is no available space to plant a tree;
- iv. There is already a tree at the proposed café or marketing location; and
- v. The application is for a small Frontage Café or a Small Marketing Display.

The funds collected through this fee will be used to compensate for the loss of the tree growing space and will be used to fund tree planting at other locations identified by Urban Forestry. This requirement is in keeping with the City's goal to increase the overall canopy cover to 40%, and is in keeping with the Official Plan vision to create a city with attractive, comfortable tree-lined streets. The revised fee for tree planting was presented at the January 30, 2017 public meeting and matches the existing tree compensation fee associated with residential front yard parking permits.

*All of the proposed new fees are shown in Attachment 5.*

#### 4. SIDEWALK MARKETING DISPLAYS

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Sidewalk marketing takes place on a portion of the public sidewalk in front of a retail establishment, and is usually arranged visually to attract pedestrians or motorists passing by. Common forms of sidewalk marketing include the display of flowers, clothing, and food items such as fruit and vegetables. Sidewalk marketing is permitted in all of the former municipalities with the exception of former Scarborough. The following provisions for marketing displays are included in the framework for harmonization.

##### **4.1 No public notice required for Sidewalk Marketing applications (unchanged)**

None of the existing By-laws require any public notice for a marketing display application. This approach has been continued into the framework. Notice of the application will be circulated to the local Councillor and public utilities.

##### **4.2 New Permit Type - Small Marketing Display**

A new type of permit for marketing displays is proposed that will distinguish between larger displays that take up a lot of space, and much smaller displays. The new category, called a Small Marketing Display, can extend the width of the building frontage up to a maximum of 5.5 metres, and can project a maximum of 0.8 metres out from the building wall onto the public boulevard. A streamlined application process for marketing displays with this configuration is proposed: no site plan is required, and the processing time to issue the permit would be significantly less than for a larger permit area. Waiver of the annual permit fee (rental fee) is also proposed for this configuration, as is a reduced application fee.



### **4.3 Revised Standards for Temporary Marketing Display Designs**

The current Toronto by-law prescribes materials that a display stand must be built of: this includes include wood (provided it is painted with epoxy resin), stainless steel, galvanized metal, plastic, fibreglass, aluminum, or steel (provided it has a baked enamel finish). For reasons of efficiency, practicality and flexibility, it is recommended that all limitations on design standards for merchandise displays not be included in the framework for harmonization. Enforcing the current standards outlined above is onerous at an administrative level; and removal of the standards will provide businesses with more options and choice.

### **4.4 Discontinuation of the “Temporary Marketing Enclosure” Permit Category**

The former City of Toronto by-law allows business operators to erect a Temporary Marketing Enclosure under certain circumstances including the provision of a minimum pedestrian clearway and a suitable structure/display stand design. The detailed provisions within the By-law allows these enclosures to have solid walls, doors, electrical wiring, heating, skylights, and insulation.

Staff are recommending discontinuation of this permission. Despite these structures being labeled as “temporary”, the provision of roofing, heating, insulation, and electrical components makes them more of a permanent addition to a building that is located on the public sidewalk. On occasion, the permanence of these structures has created challenges for the city when access to the boulevard is required for infrastructure works. None of the other former municipalities provided for a temporary marketing enclosure in their By-laws.

### **4.5 New Restrictions to De-clutter the Sidewalk**

The following new requirements for sidewalk marketing displays are proposed:

- i. A proposed prohibition on the overnight storage of merchandise on the public boulevard overnight, along collector and arterial streets; and
- ii. A proposed maximum height for the display of merchandise, being one that is within easy reach of a customer from standing height

A visual survey of marketing displays shows that many business operators have a preference for storing merchandise on the city sidewalk after the end of each business day, on a year-round basis. Although this has become a common practice over time, the intention of the temporary marketing display provisions has never been to allow permanent year-round occupation of public space. The proposed prohibition on the overnight storage of merchandise, and on the maximum height for merchandise displays, respond to a request from the Planning and Growth Management Committee to regulate and/or limit the amount of merchandise that can be displayed outdoors.

### **4.6 Initial Fee Concepts Presented for Consultation**

The review of permit fees was undertaken in collaboration with the Real Estate Services Division. The same market based approach used for sidewalk cafes was used for this review, which included 5 new fee zones. As noted earlier, the market rate value determined through this exercise ranged from \$473.00 /m<sup>2</sup> in the downtown, to \$258.00/m<sup>2</sup> in the east end.

Staff presented the market rate values at a stakeholder meeting on January 30, 2017.

With discounts to account for seasonality, amenity, and the type of use (marketing), the proposed permit fees presented at this time ranged from \$234 /m<sup>2</sup> in the downtown; to \$128 /m<sup>2</sup> in the city's east end. A 5-year phase-in period was proposed. Comments received in response to these fees replicated those provided about the proposed fees for sidewalk cafes.

#### **4.7 Proposed Permit Fees**

The same two fee zones outlined for sidewalk café permits are proposed for marketing displays: a "Central Zone", comparable to the Downtown area defined in Map 6 of the Official Plan; and an "Outer Zone", comprising the remainder of the city (Attachment 2). The proposed annual permit fee for marketing displays in the Central Zone is \$62.65. The proposed fee in the Outer Zone is \$38.12. These proposed fees are generally reflective of market valuations for this use determined by the Real Estate Services Division, based on use of the sidewalk space for 4 months of the year. Approximately 70% of marketing displays are located in the Outer Zone, where lower permit fees apply.

#### **4.8 Implementation Plan for Proposed Sidewalk Marketing Permit Fees**

The proposed fees for marketing displays will see rates for existing permit holders in North York drop by 67% (from \$114.12/m<sup>2</sup> to \$38.12/m<sup>2</sup>). Staff recommend that any decreases that result from the proposed permit fees be applied immediately following enactment of the new fee schedule.

Existing marketing display permit holders in other areas will experience a range of increases from a low of \$1.02 m<sup>2</sup>/year in former Toronto Area 3, to a high of \$2.65 m<sup>2</sup>/year, also in former Area 3. Marketing displays in this latter category are in the downtown neighbourhoods of Yorkville, King-Spadina, The Annex, Harbord Village, and Cabbagetown.

The following implementation points are proposed as a way to mitigate the impact of permit fees on local business:

- i. The proposed permit fees would not be subject to annual inflationary increases over the next 15 years
- ii. Increases for existing permit holders would be phased in equally over a period of 15 years

The proposed permit fees would apply in full to new applicants following enactment of the new fees. Following the 15-year phase-in, all permit holders would be paying the proposed permit fees.

Proposed standards and processes specific to marketing displays are included in Attachment 2. All of the proposed new fees are shown in Attachment 5.

## **5. NEXT STEPS**

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### **Consultation**

The framework outlined within this report has been developed in response to feedback obtained during consultations that have been held with stakeholders and members of

the public over the past two years. ML&S will undertake a final round of consultations with the Transportation Services Division in the spring of 2017. This consultation will provide stakeholders and the public an opportunity to review and comment on the framework for harmonization; the proposed fees; and on proposed pedestrian clearway and design options for sidewalk cafes and marketing displays being developed by Transportation Services. Information will also be made available online at [www.toronto.ca/mlshaveyoursay](http://www.toronto.ca/mlshaveyoursay)

Feedback from this consultation will inform final directions and recommendations for the harmonized by-law, including implementation of this by-law. The harmonized by-law will then be brought forward to the Licensing and Standards Committee in the fourth quarter, 2017.

## **CONTACT**

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## **SIGNATURE**

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Tracey Cook  
Executive Director, Municipal Licensing & Standards

## **ATTACHMENTS**

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Attachment 1: Summary of Consultations  
Attachment 2: Proposed Framework for a Harmonized By-law  
Attachment 3: Existing Permit Fees for Sidewalk Cafés and Marketing Displays  
Attachment 4: Proposed Fee Zones  
Attachment 5: Proposed Fee Schedule