



REPORT FOR ACTION

Harmonized Bylaw and Fees for Sidewalk Cafés, Parklets and Marketing Displays

Date: November 24, 2017

To: Joint Licensing and Standards, and Public Works and Infrastructure Committees

From: Executive Director, Municipal Licensing and Standards, and General Manager, Transportation Services

Wards: All

SUMMARY

This report outlines the proposed new bylaw and fees for sidewalk cafés, parklets and marketing displays in Toronto.

The bylaws and fees for sidewalk cafés and marketing displays in Toronto have not been comprehensively reviewed or updated since amalgamation. As a result, standards for this commercial use of the public sidewalk are inconsistent across the city and do not always reflect the current accessibility needs of the public, given the growth of the city's population density, pedestrian volumes, and ageing population.

Over the past two years, Municipal Licensing and Standards (MLS) and Transportation Services have been reviewing existing regulations and conducting extensive consultations with residents, accessibility advocates and the business community.

The report outlines the results of these consultations and includes recommendations for a new bylaw to bring more consistency and clarity to the rules governing sidewalk cafés and marketing displays in Toronto. The recommendations are crafted to improve the accessibility and vibrancy of Toronto's sidewalks, while mitigating the potential economic impact on existing café permit holders.

To enhance pedestrian movement and accessibility of Toronto's sidewalks, the new bylaw includes:

- Pedestrian clearway requirements that are responsive to the characteristics of different street types (i.e., a minimum 1.8 metre for local roads, 2.1 metre for arterial and collector roads, and 2.5 metre on specified Downtown Toronto streets where the sidewalk is at least 5 metres wide)
- Accessibility requirements such as white cane-detectable features for the visually-impaired i.e. fencing or planters.

- New fines and the authority to cancel or suspend permits under certain conditions that will strengthen the City's enforcement capacity.

To enhance the café experience and vibrancy of Toronto's sidewalks, while reducing the impact on local communities, the new bylaw:

- Introduces 9 new café options such as parklet cafes, curbside cafés, and temporary year round café enclosures,
- Enables the creation of public parklets, which are public spaces installed in parking lanes for people to sit, relax and enjoy the city,
- Permits small café types, such as a storefront bench, without requiring a permit or fee,
- Expands public notification for new café applications.

The recommendations also incorporate a number of measures to mitigate the potential impact that the above changes might have on existing permit owners.

- New and simplified permit fees that remain below market value and will be phased-in over 10 years to minimize the impact on permit holders that are subject to a fee increase.
- The new pedestrian clearway and other accessibility requirements will only become applicable to existing permit holders upon permit transfer (i.e. change in ownership) or 2025, whichever is earliest.
- Design support and funds will be available to help existing permit holders on main streets to comply with the new bylaw. Funds may be used to relocate or modify some street elements (i.e. bike rings) as one approach to enhance accessibility.

A number of internal divisions and external agencies were consulted in the preparation of the report, including Economic Development and Culture, City Planning, Legal Services, City Clerks, Toronto Building, Toronto Fire Services, Toronto Public Health, Urban Forestry, Toronto Parking Authority (TPA) and the Alcohol and Gaming Commission of Ontario (AGCO).

RECOMMENDATIONS

The Executive Director, Municipal Licensing and Standards and General Manager, Transportation Services recommend that:

1. City Council establish a separate Toronto Municipal Code Chapter for sidewalk cafés, public parklets, and marketing displays, in accordance with the recommendations contained in this report.

Definitions

2. City Council establish the following definitions for sidewalk cafés, public parklets and marketing displays:

AWNING - A removable or retractable unenclosed temporary structure, affixed to a building, made of light material having a light metal or reasonably equivalent frame covered by fire-proof canvas or similar sail goods material, plastic, fibreglass or light

aluminum which is erected over a licensed frontage café, temporary year-round café enclosure, or marketing display area. If the structure is attached to the surface of a street, it is not an awning under this chapter.

APPLICANT – A person applying for a permit under this Chapter.

ARTERIAL ROAD - Any street that is designated as such in the City's road classification system, as amended from time to time.

BOULEVARD CAFÉ – Has the same meaning as sidewalk café.

BUSINESS IMPROVEMENT AREA – An area designated as an improvement area by a by-law passed under the City of Toronto Act, 2006 or predecessor legislation.

CHIEF BUILDING OFFICIAL – The Chief Building Official of the Toronto Building Division for the City of Toronto and his or her designate.

COLLECTOR ROAD - Any street that is designated as such in the City's road classification system, as amended from time to time.

CURBSIDE – The portion of a sidewalk located immediately adjacent to the edge of the portion of the street used for vehicle traffic, where the edge is demarcated by a continuous poured raised concrete curb.

CURBSIDE CAFÉ – A sidewalk café that is located curbside.

EMERGENCY WORK – Work within a street that must be completed immediately due to health or safety concerns, or due to the urgent need to restore essential services, as determined in the sole and exclusive opinion of the City.

EXECUTIVE DIRECTOR – The Executive Director of the Municipal Licensing and Standards Division for the City of Toronto and his or her designate.

FORMER BY-LAW – Means Chapter 313, Streets and Sidewalks of the former City of Toronto; by-law 16-97 of the former City of East York; by-law 41-93 of the former Municipality of Metropolitan Toronto; by-law Number 29607 of the former City of North York; by-law 3343-79 of the former Borough of York; and any permission or approval of the City of Toronto or any predecessor municipality to an operator of a sidewalk café granted at any time immediately prior to the date this Chapter came into force.

FRONTAGE CAFÉ – A sidewalk café that is located immediately adjacent to the frontage wall of the associated establishment.

FURNISHING AND PLANTING ZONE – The zone or area of the sidewalk and boulevard that provides space for a wide range of street elements such as trees, other plantings, litter and recycling bins, benches, street lights, and bicycle racks.

GENERAL MANAGER - The General Manager of Transportation Services for the City of Toronto and his or her designate.

LOCAL ROAD - Any street that is designated as such in the City's road classification system, as amended from time to time.

MARKETING DISPLAY - Displaying, placing or exposing any goods, articles, foodstuffs, or merchandise within a street for the purposes of retail sale from inside the adjoining commercial or industrial premises

OBSTRUCTION – Any fixture or object that interferes with the pedestrian clearway including but not limited to street furniture, fire hydrants, fire department connections, hydro poles, planters and plants, street trees, open tree pits, publication boxes, parking meters, A-frame signs, bicycle parking including the bicycle, benches, ramps, street lights, traffic lights/boxes, waste bins, transit shelters, bollards, merchandise, fences, pillars, and utilities.

OPERATOR – the operator of the business on the property associated with a sidewalk café, parklet café or marketing display.

PARKLET CAFÉ– A type of sidewalk café that is a temporary lateral projection into the curb lane or parking lane of a street that is used for a sidewalk café.

PEDESTRIAN CLEARWAY – the zone or area of sidewalk that accommodates pedestrian movement, is free of obstructions, and must be a clear and continuous path that provides universally accessible, safe and comfortable passage for pedestrians.

PERMIT - A permit issued under this article.

PERMIT AREA - the part of the street for which a permit was issued under this article

PERMIT HOLDER – the holder of a permit issued under this article or where a permit has been transferred, the new owner or operator to whom the permit has been transferred;

PUBLIC PARKLET – A temporary lateral projection into the curb lane or parking lane of a road that is used for a public space.

SERVICE ANIMAL - An animal described in subsection 80.45(4) of O.Reg. 191/11, Integrated Accessibility Standards.

SIDEWALK - The portion of a street that is improved for the use of pedestrians.

SIDEWALK CAFÉ – an outdoor eating area located in a street that is operated in conjunction with an eating or drinking establishment as defined in the Toronto Municipal Code, Chapter 545, Licensing, as long as food or drink is served to the public under the control of the eating or drinking establishment; and includes a curbside café, frontage café, parklet café and temporary year-round café enclosure. A sidewalk café does not include a small frontage café or small curbside standing café.

SMALL CURBSIDE STANDING CAFÉ – A sidewalk café that consists only of a single table, without any seating, extending no greater than 1.2 metres in length, running parallel to the curb line, and standing no taller than 1.2 metres from the top of the standing café table to the surface of the sidewalk, with all parts of the standing café and its patrons within the furnishing and planting zone of the sidewalk.

SMALL FRONTAGE CAFÉ – A sidewalk café that consists only of a single line of seating, with or without tables, extending no greater than 0.8 metres out from the frontage wall of the adjoining eating establishment.

SMALL MARKETING DISPLAY – A Marketing Display, that extends onto the sidewalk no greater than 0.5 metres from the frontage wall of the adjoining establishment.

STREET - A highway as defined in the City of Toronto Act, 2006.

TEMPORARY YEAR-ROUND CAFÉ ENCLOSURE – A temporary structure, constructed pursuant to a building permit issued by the Chief Building Official, and pursuant to a heritage permit where a property is included on the Heritage Register, temporarily enclosing a permitted sidewalk café, consisting of an awning or cover affixed to an adjacent building and a canvas or similar sail goods material between and affixed to the top rail of the fence and the awning or cover, with material which meets all building code and fire code standards."

Proposed Requirements

3. City Council direct that:

- a. Any person who wants to install a sidewalk café, public parklet, or marketing display must apply for and obtain a permit from the City; pay all applicable fees, including permit and application fees; and, enter into a written agreement with the City in a form satisfactory to the Executive Director or General Manager in the case of public parklets.
- b. A small frontage café, small curbside standing café, or small marketing display on a sidewalk does not require a permit, application, or fee, but the operator must comply with the requirements set out in the new by-law.

Applications for Permits

4. City Council direct that to apply for a permit, applicants must submit:

- a. name, contact information, and business information;
- b. if the applicant is not the owner of the property adjoining the location of the proposed sidewalk café, public parklet or marketing display, a letter signed by the property owner indicating that the property owner does not object to the application;

- c. detailed, scaled plans and specifications to the satisfaction of the Executive Director or the General Manager, in the case of public parklets, including but not limited to detailed designs, site plans and photographs, property dimensions, sidewalk and street dimensions and photographs, location and separation distances to street elements and utilities, and other construction specifications such as for awnings, fencing, platforms or parklet elements, as may be required;
- d. site plan details that show the design will be accessible to persons with disabilities as per the requirements in the by-law;
- e. proof that the adjoining property is zoned for industrial or commercial uses; and
- f. any other information deemed necessary by the Executive Director or General Manager, in the case of public parklets.

Notice Requirements for Sidewalk Café and Public Parklet Applications

5. City Council direct that, upon receipt of a complete application for a sidewalk café or public parklet, the Executive Director or General Manager, in the case of public parklets, will notify the following people:

- a. the Applicant;
- b. the local Ward Councillor;
- c. the local Business Improvement Area under Toronto Municipal Code, Chapter 19, if applicable; and
- d. any resident associations registered with the City Clerk that includes the proposed café location within its area of representation.

6. City Council direct the Executive Director to mail notifications to all property owners and occupants located within a 60 metre radius of the proposed café location, if the sidewalk café is being proposed along a local road.

7. City Council direct that all sidewalk café applicants, other than applicants for public parklets, must display a notice of the application in a form, size and manner satisfactory to the Executive Director on the associated establishment for no less than twenty-one (21) days commencing on a date specified by the Executive Director.

Thresholds for Refusing an Application

8. City Council direct the Executive Director or General Manager, in the case of public parklets, to refuse an application for a sidewalk café, public parklet, and/or marketing display if:

- a. the application contains false, misleading or fraudulent information;

- b. in the case of sidewalk cafés and public parklets,
 - i. staff receives an objection to the application from the local Councillor within 21 days of the Councillor receiving notice; or
 - ii. staff receives more than one objection to the application from any member of the public during the 21 day period of displayed public notice.
- c. staff receives an objection from Transportation Services, Toronto Fire Services, Parks, Forestry and Recreation, City Planning, Enbridge, Toronto Hydro, and any other utility company deemed necessary by the Executive Director;
- d. the proposed sidewalk café, public parklet, or marketing display does not meet the requirements of this by-law or any policy adopted in accordance with the by-law; or
- e. the applicant has outstanding fees or fines with the City.

Appeal Process

9. City Council direct that:

- a. An applicant will be notified if their application has been refused.
- b. An applicant can appeal the refusal of the application within 14 days of receipt of the notice of refusal.
- c. The appeal must be made in a form acceptable to the Executive Director and must include grounds for the appeal.

Appeals – Changes to Delegation of Authority

10. City Council delegate to the General Manager, Transportation Services the authority to hear, review and make final decisions with regard to appeals in relation to parklets (i.e. parklet café and public parklets) and appeals of pedestrian clearway requirements for any permit under the new by-law.

11. City Council amend Chapter 27, Council Procedures, to remove appeals in relation to parklets and/or pedestrian clearway requirements under the new by-law from Community Council's authority to hear, review and make final decisions with regard to boulevard café and marketing display permit appeals.

Appeals – General Manager, Transportation Services

12. City Council direct that:

- a. The General Manager may consult with a staff working group, including staff from Economic Development and Culture and City Planning in considering appeals on the grounds of parklets and pedestrian clearway requirements.

b. The General Manager will review the appeals of application refusals related to parklets and pedestrian clearways and may make the following decisions that are sent to the Executive Director for notification to the applicant:

- i. refuse the appeal,
- ii. grant the appeal and direct that permit be issued with any additional terms and conditions as determined by the General Manager if there are no other grounds under appeal, or
- iii. grant the appeal for the parklets or the pedestrian clearway and if there are other grounds in the appeal apart from those on parklets or pedestrian clearways, the remainder of the appeal will be forwarded to Community Council for further consideration.

Appeals – Community Councils

13. City Council direct that:

a. The Executive Director prepare and forward a report to the appropriate Community Council upon receipt of an appeal on grounds other than parklets or pedestrian clearways and the report include the,

- i. applicant's appeal information
- ii. Executive Director's decision
- iii. reasons for the refusal to issue the permit; and
- iv. General Manager's decision and conditions in relation to the approval of a pedestrian clearway appeal, where applicable.

b. A notice of the appeal hearing will be provided to any person who submitted an objection to the application.

c. Community Council will provide the applicant and any other person with the opportunity to be heard and may make the following decisions;

- i. refuse the appeal, or
- ii. grant the appeal and direct that permit be issued under a set of terms and conditions as determined by Community Council.

d. If an appeal is refused for any reason, the application fee will not be refundable.

Permit Issuance

14. City Council direct that a permit may be issued when all the following conditions are met:

- a. an application is approved or an appeal is granted,

- b. an applicant has entered into a written agreement with the City that is satisfactory to the Executive Director or the General Manager in the case of an application for a public parklet,
- c. an applicant has agreed to indemnify and save harmless the City from any actions, loss, costs, claims or damages arising from the use of the sidewalk or street for the purposes of the permit,
- d. an applicant has paid the annual permit fee and tree installation fee, if applicable, and
- e. an applicant has obtained the applicable approvals from Toronto Building, Toronto Fire Services and other City agencies, as may be necessary in the opinion of the Executive Director.

Permit Renewal

15. City Council direct that:

- a. Permits for a sidewalk café, public parklet and marketing display must be renewed by permit holders annually on the date the permit was initially issued.
- b. A permit will not be renewed if the permit holder is in violation of this by-law and/or has unpaid fees or fines under the by-law.

Permit Requirements

16. City Council direct that:

- a. Permit holders shall install and maintain the sidewalk café, public parklet or marketing display in accordance with the approved permit plan and permit agreement.
- b. Permit holders comply with any other applicable by-law or legislation.
- c. Permit holders maintain in good standing a business licence issued under Chapter 545, Licensing, where applicable.
- d. Permit holders maintain at all times a policy of Commercial General Liability insurance in an amount and form satisfactory to the City of Toronto.
- e. All permit holders, other than holders of a public parklet permit, display a permit notice issued by the Executive Director on the street door or in the lower front window of the adjoining business in a way that is visible at all times from the public sidewalk.

17. City Council direct that permit holders are not allowed to:

- a. Place or permit the placement of lighting, heating, barbeques, platforms, visual screens, ramps, and awnings in the permit area, without first obtaining permission to do so from the Executive Director or the General Manager, in the case of public parklets.
- b. Place or permit the placement of any café or marketing elements including chairs, tables, planters, umbrellas and sales goods outside the permitted area with the exception of an umbrella canopy if it is a minimum of 2.1 meters above the sidewalk surface.
- c. Place or permit the placement of any outdoor carpeting, artificial turf or other surface covering on any portion of the sidewalk or street.
- d. Refuse entry of any person into a permit area on the basis of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status, or disability.
- e. In respect of any person with a disability being accompanied by a service animal, by reason only of the presence of the said service animal:
 - i. refuse to serve such person;
 - ii. refuse to permit such person to enter with such guide dog or service animal into or upon any place, premises, vehicle or thing to which the licence relates; or
 - iii. refuse to permit such person and such guide dog or service animal to remain in or upon such place, premises, vehicle or thing.
- f. Obstruct, hinder or interfere with the free access of a Municipal Enforcement Officer, employee, agent of the City, or any utility provider to enter any portion of the permit area for the purpose of the installation, maintenance or repair work or inspection of any part of the permit area.
- g. Damage, prune or attach any object or permit the damaging, pruning or attachment of any object to a tree.
- h. Use the permit area for any purpose other than for the use permitted by the Executive Director or General Manager, in the case of public parklets, in accordance with the by-law.
- i. Assign, transfer or sub-let the permission for the use of any portion of the permit area to any other person, except in accordance with the by-law.

Permit Transfer

18. City Council direct that to transfer a permit, the new owner or occupant must apply to transfer a permit and pay the applicable transfer application fee.

19. City Council direct that public parklet permits are not transferable.

20. City Council direct the Executive Director to approve an application to transfer a permit for a sidewalk café or marketing display if:

- a. the pedestrian clearway, fencing and accessibility of the permit area meet the requirements of the by-law;
- b. the permit area has not been altered in any way from the terms of the original agreement with the City, other than to meet the pedestrian clearway, fencing and accessibility requirements of the by-law;
- c. the Councillor for the ward in which the property is located has been notified of the application to transfer and has not objected within 21 days of being notified; and
- d. the new owner or occupant has entered into a new agreement with the City in a manner satisfactory to the Executive Director.

Permit Cancellation, Suspension, Reduction of Permit Area & Temporary Removal of Café/Marketing Installations

Permit Cancellation by Community Council

21. City Council authorize Community Councils to cancel permission for the use of any portion of the sidewalk or street at any time and for any reason.

22. City Council direct that the affected permit holder receive notice of the item on the agenda and be allowed to speak to the matter before Community Council makes its decision.

Permit Cancellation by Executive Director and General Manager

23. City Council direct that the Executive Director or General Manager may cancel a permit, without reporting to Community Council, if:

- a. the annual permit fee has not been paid 90 days after the payment due date;
- b. it is determined that the permit was obtained through the submission of false, misleading or fraudulent information;
- c. the permit holder has failed to remove all the café or marketing elements from the sidewalk or street within thirty days of receiving notice in writing from the Executive Director or General Manager, in the case of a public parklet, instructing the permit holder to remove all elements from the sidewalk or street;
- d. the associated property lacks the applicable business licence; or

e. the associated property is demolished, substantially altered and/or subject to redevelopment.

24. City Council direct the Executive Director to provide the permit holder a written notice of the permit cancellation.

Permit Suspension by Executive Director and General Manager

25. City Council authorize the Executive Director or General Manager, in the case of public parklets, to suspend permission for the use of the sidewalk or street if they have reason to believe that:

a. the use poses a risk to public health and safety; or

b. the provisions of the permit are being violated by the permit holder and a decision by Community Council is pending in respect to the violations.

26. City Council direct that the Executive Director and General Manager, in the case of public parklets, may require any person to take any action to terminate a use that poses a risk to the health or safety of any person. If a person fails to comply, the City may take the action and terminate the danger.

27. City Council direct that no café or marketing activities or elements be allowed in the permit area during the permit suspension.

28. City Council direct the Executive Director to provide the permit holder with a written notice of the permit suspension.

Reduction or Relocation of Permit Area

29. City Council authorize the Executive Director to direct the permit holder to reduce the size of the permit area or relocate the permit area at any time if, in the opinion of the Executive Director, the permit area poses a risk to the health or safety of any person, and where the reduction or relocation terminates the risk to the health and safety of any person.

Temporary Removal of Installations for Civic Works, Emergencies and Permit Suspensions

30. City Council authorize the Executive Director or General Manager, in the case of a public parklet, to require the temporary removal of sidewalk café and marketing installations due to planned street improvements, civic works, emergencies and/or permit suspensions.

31. City Council direct that any installation can be removed within the permit area with or without notice in the case of an existing or potential emergency.
Responsibilities of Permit Holder

32. City Council direct that, within 30 days after receiving written notice about a permit cancellation, reduction, relocation, or temporary removal due to civic works, emergencies or permit suspensions, the permit holder must:
- a. remove all equipment, furnishings and personal property from the sidewalk or street at his or her own expense; and
 - b. replace and restore the sidewalk or street to a safe and proper condition to the satisfaction of the Executive Director or General Manager, in the case of a public parklet.
33. City Council direct the permit holder cannot make any claim against the City on account of the removal.
34. City Council authorize, if following the 30 days' notice the permit holder has not undertaken the necessary removal actions, the Executive Director, or General Manager in the case of a public parklet, to undertake any work necessary to remove all equipment, furnishing and personal property from the sidewalk or street and restore them to a safe and proper condition.
35. City Council authorize the Executive Director and General Manager to charge the costs of the removal to the owner and/or recover those costs by adding them to the tax roll and collecting them in the same manner as property taxes.
36. City Council direct that, where a permit is cancelled due to public safety reasons or civic works, the Executive Director or General Manager, in the case of a public parklet, shall refund the permit holder the pro-rated portion of the annual permit fee applicable for each remaining day in the permit year.
37. City Council direct that where a permit area is reduced, the Executive Director shall refund the permit holder the pro-rated portion of the annual permit fee applicable to the reduced area by square metre to each remaining day in the permit year.

Requirements for New Café Types and Public Parklets

Separation from Residential Zone Requirements

38. City Council direct that all sidewalk café permit applications provide for:
- a. A minimum separation distance of 30 metres measured from the closest part of the permit area to the nearest lot in a Residential Zone, Residential Zone Category or Residential Apartment Zone Category, as set out in the applicable zoning by-law.
 - b. A minimum separation of one metre between the permit area and any entrance to a dwelling unit that may be located on a local road within an adjacent building or within the building containing the eating establishment.
 - c. A minimum separation of six metres between the permit area and the extended boundary of a Residential Zone, Residential Zone Category or

Residential Apartment Zone Category containing properties fronting on the opposite side of the street across from the proposed permit area.

Pedestrian Clearway and Accessible Entrance Requirements

39. City Council direct that, with the exception of temporary year-round café enclosures, pedestrian clearway widths for all sidewalk cafés, small frontage café, small curbside standing café and public parklets must:

- a. be no less than 1.8 metres on a local road,
- b. be no less than 2.1 metres for a collector or arterial road, and
- c. for streets in Downtown Toronto in Attachment 2, where the sidewalk is at least 5 metres (as measured from the face of the building's exterior wall on the ground floor to the face of the curb), the pedestrian clearway must be at least 2.5 metres unless a different minimum is determined by the General Manager.

40. City Council direct that the pedestrian clearway must:

- a. be continuous and unobstructed along the full length of the permit area and not have changes in direction of more than 20 degrees along a street block;
- b. be measured from the outermost edge of the permit area to the closer of the nearest obstruction or back of curb for frontage permit areas, or in the case of curbside cafés, be measured from the outermost edge of the permit area adjacent to the pedestrian path to the closer of the nearest obstruction on the sidewalk or the property line; and
- c. comply with conditions set by the General Manager where the permit area may be expanded or altered based on time-of-day pedestrian clearway requirements (for example at times when pedestrian traffic volumes are higher).

41. City Council direct that a sidewalk café or public parklet must be designed so as to permit easy access by a person in a mobility device, and contain at least one entrance of minimum width equal to the entrance of the associated establishment but in no case less than 1.0 metre.

Small Frontage Café

42. City Council establish a new category for small frontage cafés, with the following requirements:

- a. be located against the building wall of the associated establishment, facing the street, and not extend across a neighbouring frontage;
- b. not extend further than 0.8 m out from the building wall of the establishment and have a maximum width of 5.5 metres across the building frontage or the width of the associated establishment frontage, whichever is smaller;

- c. meet the minimum pedestrian clearway standards set out in the by-law and maintain the pedestrian clearway unencumbered at all times;
- d. remove tables and chairs from the sidewalk at the time of business closing, and during the period between November 15 and April 14, inclusive; and
- e. shade umbrellas, fencing, railing, partition or enclosure of any kind must not be placed on the small frontage café area.

Small Curbside Standing Café

43. City Council establish a new category for small curbside standing cafés with the following requirements:

- a. be located at the curbside in front of the associated establishment;
- b. be located on a street with posted speeds of 40 kilometres/hour or less;
- c. be no less than 15 metres before the curb edge of an intersection or a pedestrian crossover;
- d. be no less than 9 metres after an intersection or pedestrian crossover;
- e. have a minimum 0.5 metres set back from the curb face to the nearest edge of the standing café table;
- f. not extend longer than 1.2 metres in length running parallel to the curb line;
- g. not be taller than 1.2 metres from the top of the standing café table to the surface of the sidewalk;
- h. all parts of the standing café table and its patrons must be within the furnishing and planting zone;
- i. meet the minimum pedestrian clearway standards in this by-law;
- j. have no seating, chairs, shade umbrellas, fencing, partition or enclosure permitted;
- k. be stable and sturdy, and easily removed during non-business hours;
- l. be removed during the period between November 15 and April 14, inclusive;
- m. be designed with a lower rail or box frame so it is cane-detectable for the visually-impaired, and is see-through in visibility between the table top, the legs and bottom frame;
- n. must not present trip hazards to pedestrians or patrons, such as having a base that extends out, and

- o. be removed at any time for any reason as required by the City.

Extended Frontage, Curbside or Parklet Café

- 44. City Council permit sidewalk cafés to extend across the front of an adjacent establishment, or across the curbside area or parking area of the adjacent establishment in accordance with the by-law.
- 45. City Council direct that applicants proposing extended frontage, curbside or parklet cafés provide, as part of their applications, a letter of consent from the adjacent property owner across whose area the frontage, curbside or parklet café will extend to the satisfaction of the Executive Director.
- 46. City Council direct that any adjacent property owner that wants to revoke their consent for an extended frontage, curbside or parklet café must provide written notice to the Executive Director and the permit holder, and the revocation of the extended portion of the permit area will occur at the time permit expiry.

Temporary Year-Round Café Enclosure

- 47. City Council permit temporary year-round café enclosures for frontage cafés on a local road in accordance with the by-law.
- 48. City Council direct that permit holders of temporary year-round café enclosures must obtain a building permit from the Chief Building Official and a heritage permit, where applicable.
- 49. City Council direct that temporary year-round café enclosures must meet the following requirements:
 - a. provide an unobstructed, minimum pedestrian clearway width of 2.5 metres along the full frontage of the permit area and not result in the pedestrian clearway changing in direction more than 20 degrees along the street block;
 - b. not be built in such a way that impedes access to any of the buildings fire protection equipment or fire department connections;
 - c. not be built over gas mains, transformer vaults, manholes, or other utilities or services without the express consent of the owner of the utility or service;
 - d. not interfere with the operation of, or access to, any utilities or services above or below ground;
 - e. provide access to carry out construction, reconstruction, maintenance or repairs to underground utilities and services located in the permit area twenty-four (24) hours per day.

- f. create an enclosure around the sidewalk café using temporary side curtains or removable wall panels from September 15 to May 15, inclusive, and roll up or remove the curtains or panels from the permit area from May 16 to September 14, inclusive;
- g. be designed and constructed in a way that the temporary year-round café enclosure can be removed upon 24 hours' notice;
- h. meet all requirements in the Ontario Building Code, including zoning and other applicable laws, and Ontario Fire Code;
- i. meet or exceed all applicable electrical wiring and lighting safety standards and codes; and
- j. Meet any additional terms and conditions that the Executive Director deems appropriate..

50. City Council direct that a permit holder of a temporary year-round café enclosure is responsible for:

- a. any costs associated with the removal or partial removal of the temporary year-round café enclosure to accommodate the construction, reconstruction, maintenance or repairs to underground utilities and services; and
- b. any costs of relocating any existing utility or service required to accommodate the construction of the temporary year-round café enclosure where the utility or service relocation is approved by the owner of the utility or service.

Curbside Café

51. City Council establish a new category for curbside cafés, which must be located:

- a. at the curbside in front of the applicant's establishment;
- b. on a street with posted and operating speeds of,
 - i. 40 kilometres/hour or less; or
 - ii. greater than 40 kilometres/hour if approved by the General Manager based on a review of factors such as street context, number and width of travel lanes, traffic volumes and speeds, setbacks, and other safety-related considerations;
- c. no less than 15 metres before the closest curb edge of an intersection or a pedestrian crossover;
- d. no less than 9 metres after the closest curb edge of an intersection or pedestrian crossover;

e. a minimum 0.5 metres set back from the curb face (as measured from the café edge).

52. City Council direct that curbside cafés must have fencing or cane-detectable planters for the visually-impaired.

53. City Council direct that all parts of any umbrellas in a curbside café must be set back at least 0.8 metres from the curb face. Shade umbrellas may project into the pedestrian clearway to the lesser of half the umbrella's width or 1.5 meters. The umbrella's lowest edge must be at least 2.1 meters above the sidewalk surface.

Parklets

54. City Council establish new categories for parklet cafés and public parklets, which must be located:

a. only within parking spaces where there are no posted time-based parking, standing or stopping prohibitions in effect;

b. on a street with posted and operating speeds of,

i. 40 kilometres/hour or less; or,

ii. greater than 40 kilometres/hour if approved by the General Manager based on a review of factors such as street context, number and width of travel lanes, traffic volumes and speeds, setbacks, and other safety-related considerations;

c. No less than 30.5 metres before the closest curb edge of a signalized intersection;

d. No less than 15 metres before the closest curb edge of an unsignalized intersection or pedestrian crossover;

e. No less than 9 metres after the closest curb edge of an intersection, except where barriers such as a curb extension is present. Where a curb extension is present, the parklet may be located in a parking space adjacent to the curb extension;

f. No less than 9 metres after a pedestrian crossover;

g. No wider than 2.0 metres in depth; and

h. With a minimum 0.5 metres set back from the adjacent travel lane (as measured from the edge of the parklet café or public parklet closest to the adjacent travel lane) or a greater setback as determined by the General Manager if considered on a street where posted and operating speeds are greater than 40 kilometres/hour.

55. City Council direct that parklet cafés and public parklets must meet the following requirements:

- a. have a secure, stable, and safe vertical barrier along the perimeter of the parklet, except between the parklet and the sidewalk;
- b. have a vertical barrier at least 0.9 metres in height and any opaque portions of any barrier must not be greater than 0.9 metres in height, measured from the surface of the street, to preserve sight lines;
- c. include a wheel stop within the permit area at a distance of 1.2 metres from each end of the parklet platform, unless determined otherwise by the General Manager; and have secure, stable and safe planters in the permit area at each end of the parklet, either freestanding or integrated with the parklet platform, to help protect the parklet from moving traffic and parking vehicles;
- d. have retro-reflective marking tape at each end of the parklet and all other parklet materials must minimize glare for drivers and cyclists;
- e. not have jersey barriers;
- f. have platform surfaces level with the sidewalk with a cross slope (from curb to outer parklet edge) of no greater than 2% and a running slope (along the street) of no greater than 5%;
- g. have a platform that is stable, safe, slip-resistant, and accessible with no transitions greater than 13mm between the level of the sidewalk curb and the parklet platform;
- h. not block stormwater drainage and overland flow;
- i. not be used as a detour of an existing sidewalk;
- j. have all parts of any umbrellas on a parklet be set back 0.8 metres from the parklet edge adjacent to the travel lanes and parking spaces;
- k. be removed entirely, including the platform and all related elements from the permit area, at the sole expense of the permit holder, during the period from November 15 to April 14, inclusive; and
- l. be closed to the public and removed if at any time the General Manager is concerned that a parklet poses a risk to the health or safety of any person.

56. City Council authorize the General Manager to temporarily close any highway or portion of a highway to vehicular traffic from April 14 to November 15 of any year, or any period between those dates, for permitted parklet installations without requiring compliance with section 937-5 of Chapter 937, Temporary Closing of Highways.

Common Requirements for Curbside Cafés & Parklets

57. City Council direct that curbside cafés, parklet cafés and public parklets meet the following requirements:

- a. be located at least 3 metres from any mid-block curb ramp with tactile walking surface indicators and at least 1 metre from any driveway or laneway;
- b. not result in more than 12 metres of curbside café(s), parklet café(s) and/or public parklet(s) fronting along any block of a street;
- c. provide access between adjacent curbside cafés or parklets for pedestrians from the street to the property line that is unobstructed and at least 1 metre in width;
- d. have an unobstructed emergency access route, in conformance with the Ontario Building Code and Fire Code;
- e. not interfere with curbside garbage collection;
- f. not have waste receptacles in use by servers or patrons, or work stations for servers in the permit area;
- g. not have outdoor food preparation in the permit area;
- h. not have any enclosures, structures, or visual screens on or over the permit area;
- i. not be adjacent to, or in a location that interferes with, transit stop zones, taxi zones and/or loading zones; and
- j. meet any minimum separation distances to utilities or public infrastructure set out in Attachment 4 that may be required for safety, operations and maintenance as determined by the General Manager.

Requirements for Sidewalk Café Elements

Minimum Separation Distances

58. City Council direct that fixed and portable café elements must meet the minimum separation distances from sidewalk elements and utilities set out in Attachment 4.

Visual Screens

59. City Council direct that permit holders of a frontage café located on a local road have a visual screen on the edge of the permit area facing a residential area and that the visual screen meet the following requirements:

- a. have a maximum height of 1.8 metre;

- b. not be permitted on any café other than frontage café on a local road; and
- c. not be installed in a permit area if the Executive Director determines the visual screen poses a risk to the safety of any member of the public or obscures a traffic control sign or heritage building feature.

Fence

60. City Council direct that a permit holder must provide fencing if the proposed permit area is located on an arterial or collector road, and is a frontage café or curbside café.

61. City Council direct that fencing is not permitted on any marketing displays, small frontage cafés, parklet cafés and public parklets.

62. City Council direct that fencing must be:

- a. easily removable and located on the perimeter of the permit area; and
- b. at least 1.2 metres from any fire hydrant;
- c. designed so that pumper or fire department (Siamese) connections on adjoining buildings shall be clearly visible and directly and easily accessible from the street, and the location of access openings in the fence shall be satisfactory to the Fire Chief and the Executive Director;
- d. curved or angled at a street corner where the frontage café extends around the corner to accommodate unimpeded pedestrian movement;
- e. designed to provide detectability for the visually-impaired by including at least one of the following features:
 - i. lower rail height between 75mm and 150mm above the sidewalk surface with a contrasting colour to the sidewalk; or
 - ii. planter boxes with a detectable base that are spaced no more than 0.3 metres apart from each other except for the entrance.
- f. no shorter than 0.9 metres and no taller than 1.2 metres for the height of the top rail of the fence or top of the opaque part of planters and plants;
- g. no taller than 0.9 metres in height for all opaque parts of the fence or planters with plants within 30 metres of any intersection to maintain sightlines;
- h. self-supporting or supported by removable plates attached to the paved surface of the permit area so long as no parts of the fence create a trip hazard and do not project beyond the limits of the permit area; and

- i. not permitted to penetrate the surface of the sidewalk with footings, although bolt attachments are acceptable.

63. City Council direct that fencing must not be attached to properties on the heritage register, street trees, street furniture, or utilities/services

Retractable Cafés

64. City Council authorize the Executive Director to require a permit holder to remove and relocate a fence, white cane-detectable planters and/or café elements on a daily basis and at times specified to comply with the time-of-day pedestrian clearway requirements determined by the General Manager.

Decks

65. City Council direct that:

- a. Decks are never to be installed without first obtaining a permit for the installation of the deck from the Executive Director and the Chief Building Official.
- b. Decks are only permitted on sidewalk cafés where the sidewalks exceed a slope of 5%.

66. City Council direct that decks on sidewalk cafes, except for parklet cafés, meet the following requirements:

- a. not be higher than what is required to accommodate a level area and the deck framing members which shall be the minimum depth required;
- b. have a skirt or screen wherever there is a gap or opening between the surface of the sidewalk and the bottom boards of the deck;
- c. not be physically attached to the street;
- d. comply with the standards for decks, platforms and ramps set out in the Accessibility for Ontarians with Disabilities Act and the Ontario Building Code;
- e. provide a break in the railing of a minimum width of 1 metre at the high side of the slope to provide wheelchair access;
- f. not be constructed over existing underground services (i.e. hydro vaults, chambers, maintenance holes, etc.), except with prior written approval given by the relevant utility or service;
- g. be removed by a permit holder to the satisfaction of the Executive Director upon 30 days' notice should future installation of services within the sidewalk area be required; and

- h. be removed by the permit holder at the end of the café season in accordance with the by-law.

Operational Requirements for Sidewalk Cafes and Public Parklets

Seasonal Operation

67. City Council direct that all sidewalk café permit holders, except those with a permit for temporary year-round café enclosures, remove all sidewalk café elements including fencing from the permit area, at the sole expense of the permit holder, from November 15 to April 14, inclusive.

Hours of Operation

68. City Council direct that if the permit area is located on a local road, a permit holder must ensure that the sidewalk café is closed and cleared of customers by 11:00pm or, in accordance with the alternative hours of operation adopted by Community Council for the permit area.

69. City Council authorize Community Councils to impose temporary or permanent alternative operating hours on sidewalk café permit holders, where a request by a permit holder has been made.

70. City Council authorize Community Council to designate events as special events under the by-law and to enable the establishment of temporary alternative operating hours for the duration of the special event for any permit holder or for permit holders located in any specified area of the City.

71. City Council amend Chapter 27 in order to delegate final decision making authority to Community Councils for the imposition of alternative operating hours and temporary alternative operating during special events.

Amplified Sound

72. City Council direct that sidewalk café permit holders meet the following requirements in regards to amplified sound:

- a. No amplified sound is permitted on any sidewalk café.
- b. Door and windows of an establishment associated with a permit area must be closed if the establishment has interior music or amplified sound.

73. City Council direct that amplified sound on a curbside café, parklet café, or public parklet be allowed only if the permit holder has obtained an approved street event permit under Chapter 743, Streets and Sidewalks, Use of.

Radiant Heater

74. City Council direct that radiant heaters only be permitted on frontage cafés and temporary year-round café enclosures, if the permit holder obtains prior written approval from the Executive Director and complies with the following requirements:

- a. An application site plan must show the location and specifications of the proposed heating unit,
- b. Permit holders that operate a radiant heater on the permit area must ensure the radiant heater is:
 - i. certified for outdoor use;
 - ii. certified by and installed according to guidelines of the Standards Council of Canada;
 - iii. installed in accordance with the location and specifications of the submitted site plan;
 - iv. installed and operated in conformity with the manufacturer's instructions and specifications, including clearance from combustible materials; and
 - v. inspected by a representative of the energy provider and a copy of the inspection certification must be provided to the Executive Director.

75. City Council direct that any heating unit must be located on the permit area in a way that does not present a hazard to sidewalk café patrons or pedestrians; and directs heat waves away from any trees or landscaping.

Portable Propane Heater

76. City Council direct that propane heaters only be permitted on frontage cafés and temporary year-round café enclosures if the permit holder obtains prior written approval from the Executive Director and complies with the by-law.

77. City Council direct that an application site plan must show the location and specifications of the proposed heating unit.

78. City Council direct that a permit holder that operates a portable propane heater must:

- a. Install and operate the portable propane heater in conformity with the manufacturer's instructions and specifications, including clearance from combustibles and securing the portable propane heating unit to the permit area utilizing the manufacturer's listed parts.
- b. Install the portable propane heater in accordance with the location and specifications of the submitted site plan.

c. Comply with the requirements as set out in Technical Standards and Safety Act, 2000 Ontario Regulation 211/01 Propane Storage and Handling.

d. Provide evidence satisfactory to the Executive Director respecting completion of a training course in the use of propane by all persons intended to be operating the propane unit on the permit area.

79. City Council direct that any heating unit must be located on the permit area in a way that does not present a hazard to sidewalk café patrons, pedestrians or vehicles; and directs heat waves away from any trees or landscaping.

Barbecue

80. City Council direct that barbecues only be permitted on frontage cafés and temporary year-round café enclosures if the permit holder obtains prior written approval from the Executive Director and complies with the following requirements:

a. An application site plan must show the location and specifications of the proposed barbecue.

b. A permit holder that operates a barbeque must install the unit in accordance with the location and specifications of the submitted site plan.

c. A permit holder that operates a barbecue must maintain a clearance of at least 1.2 metres between any barbeque and café seating areas or any added heat sources (e.g., radiant or propane heaters), and the clearance shall be defined by a portable physical barrier made of a fireproof material, with dimensions of not less than 1.2 metres in width and 2 metres in height.

Marketing Display Requirements

81. City Council direct that a permit holder for a marketing display must meet the following requirements:

a. be the owner or the occupant of the ground floor premises adjoining the permit area;

b. provide a minimum separation of 1 metre between the permit area and any adjacent entrance to a dwelling unit;

c. not erect any fences or enclosures around the permit area;

d. not store merchandise on the sidewalk overnight if the permit area is located on a collector or arterial street;

e. limit the placement and display of materials and merchandise to a height that is easily accessible for patrons standing on the sidewalk surface;

f. not place or display or allow the placement or display of any materials beyond the permit area;

g. not play or emit amplified sound or live music in any permit area;

h. ensure that marketing display stands that come into direct contact with food must be corrosion resistant and non-toxic; free from cracks, crevices and open seams; and the bottom of the marketing display stand is placed no less than fifteen centimetres above ground; and

Extended Frontage Marketing Display

82. City Council direct that marketing displays whose permit areas extend across the front of an adjacent property be permitted if they meet the following requirements:

a. An applicant for an extended frontage marketing display must provide as part of their permit application a letter of consent to the satisfaction of the Executive Director from the adjacent property owner.

b. An adjacent property owner that wants to revoke their consent for an extended frontage marketing display must provide written notice to the Executive Director and the permit holder, and the revocation of the extended portion of the permit area will occur at the time permit expiry.

Small Marketing Display

83. City Council direct that small marketing displays meet the following requirements:

a. be located against the building wall of the establishment, facing the street, and cannot extend across a neighbouring frontage;

b. may extend no further than 0.5m out from the building wall of the associated establishment and can have a maximum width that is the lesser of 5.5 metres across the building frontage or the width of the adjoining establishment frontage;

c. the pedestrian clearway adjacent to the small marketing display must meet the minimum pedestrian clearway standards set out in the by-law and the pedestrian clearway must be maintained unencumbered at all times;

d. all marketing display stands and goods must be removed from the permit area at the end of each day at the time of business closing; and

e. shade umbrellas, fencing, railings, partitions or enclosures of any kind are not permitted on a small marketing display permit area.

Pedestrian Clearway Requirements for Marketing Displays

84. City Council direct that the pedestrian clearway width for marketing displays must:

- a. be no less than 2.2 metres on a local road;
- b. be no less than 2.5 metres on a collector or arterial road; and
- c. for streets in Downtown Toronto in Attachment 2, where the sidewalk is at least 5 metres (as measured from the face of the building's exterior wall on the ground floor to the face of the curb), the pedestrian clearway must be at least 2.5 metres unless a different minimum is determined by the General Manager.

85. City Council direct that the pedestrian clearway must:

- a. be continuous and unobstructed along the full length of the permit area and not have changes in direction of more than 20 degrees along a street block; and
- b. be measured from the outermost edge of the permit area to the closer of the nearest obstruction or back of curb.

86. City Council direct that marketing displays must be designed so as to permit easy access by a person in a mobility device, and contain at least one entrance of minimum width equal to the entrance of the associated establishment but in no case less than 1.0 metre.

Requirements for Café and Marketing Awnings

87. City Council direct that the placement of awnings or similar temporary installations be permitted only over the permit area of frontage cafés or marketing displays.

88. City Council direct that a permit holder that wishes to erect an awning or similar temporary installation over the permit area, must receive prior approval from the Executive Director and submit the following information prior to the installation of any awning or similar temporary installation:

- a. Certificate of Fireproof rating for the awning or similar temporary installation;
- b. site plan details showing the location of the awning or similar temporary installation;
- c. mechanical specifications for framing;
- d. mounting and materials used;
- e. applicable permit approvals from the Chief Building Official;
- f. applicable permit approvals from Heritage Preservation Services if the proposed installation is being attached to a building on the Heritage Register; and
- g. any other information required by the Executive Director.

89. City Council direct that any awning framework, awning, curtain, canopy, fabric or similar sail goods material used in an awning or similar temporary installation must be:

- a. at least 2.1 metres above the level of the street or sidewalk;
- b. in conformity with CAN/ULC-S109, "Flame Tests of Flame-Resistant Fabrics and Films; and
- c. in conformity with the Ontario Building Code.

90. City Council direct that the permit holder must pay in advance of erecting any awning or similar temporary installation an additional annual charge.

Requirements for Sidewalk Café and Marketing Lighting

91. City Council direct that lighting related to the permit area must meet the following requirements:

- a. comply with all applicable safety standards and codes;
- b. consist of temporary fixtures and be removed from November 15 to April 14, inclusive;
- c. be directed into the permit area to avoid casting glare on passersby and nearby properties;
- d. not have any power cables or lighting elements run on or over the pedestrian clearway;
- e. not be attached or affixed to street elements, street trees or utilities; and
- f. must obtain its power from a private source or from a Business Improvement Area where permission has been granted.

Maintenance, Cleanliness and Orderliness Requirements for Sidewalk Cafes, Public Parklets and Marketing Displays

92. City Council direct that all permit holders are required at all times and at their own expense to:

- a. maintain all portions of the permit area and the street around the permit area in clean and sanitary condition, including removing all debris and cigarette butts;
- b. keep any objects and furnishings associated with the permit area in good and proper repair and condition, including the immediate removal of all graffiti;
- c. secure all moveable objects, including café furniture, with cable wire or similar device during non-business hours; and

- d. pay all utility, service, infrastructure or other rates, fees and charges that are incurred due to the operation of the permit area.

Temporary A-frames

93. City Council amend Chapter 693, Signs, and any other necessary by-laws to prohibit any location where a small frontage café or small marketing display has been installed to hold a Temporary A-frame sign permit; and/or erect a Temporary A-frame sign.

Enforcement

Offences and Penalties

94. City Council direct that anyone who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to a fine of no more than \$100,000.

95. City Council direct that directors or officers of a corporation knowingly concurring in the contravention of any offence under this by-law by the corporation are guilty of an offence.

96. City Council direct that anyone who contravenes any provision of the by-law may be subject to fines for continuing and multiple offences and special fines where it is determined that the conduct could have resulted in economic advantage or gain to the party found to have breached this by-law.

Permit Review

97. City Council authorize the Executive Director to prepare a report for the appropriate Community Council in cases where the operation of a sidewalk café or marketing display has caused, in the opinion of the Executive Director, significant disruptions to any member of the public for reasons including but not limited to noise.

98. City Council direct that the report from the Executive Director will include:

- a. a summary of the nature of the disturbance; and
- b. a summary of the conduct of the permit holder;
- c. the recommendation for a review of the permit conditions, including but not limited to operating hours, or revocation of the permit.

99. City Council direct the City Clerk to notify the affected permit holder of the hearing date at the Community Council and the permit holder will be given the opportunity to depute the matter to the appropriate Community Council.

Inspections, Orders and Remedial Actions

100. City Council authorize the Executive Director and General Manager to conduct inspections, issue orders for compliance, take remedial action, and take any other enforcement activities consistent with the authorities in the City of Toronto Act, 2006 for non-compliance with the by-law or any former by-law.

Seizure of Goods

101. City Council authorize the Executive Director or General Manager to move, take, or store a permit holder's sales goods or café elements in accordance with the Repair and Storage Liens Act where a permit holder is in contravention of the new by-law.

102. City Council direct that any seized goods or café elements that remain unclaimed after 60 days from the date of seizure become the property of the City and can be sold.

103. City Council direct that any seized perishable object or refreshment become a property of the City upon removal and can be disposed of immediately.

Transition of Existing Permit Holders

104. City Council direct that existing permit holders can continue to operate under the terms and conditions of their approved permit and agreement with the City as of the day before this by-law comes into force, except for the following requirements whereby existing permit holders must comply with this by-law immediately upon its coming into force:

- a. definitions; appeals; fees and charges; indemnification and insurance; business licence and applicable regulations; term; permit renewal, permit transfer, permit review; permit cancellation or suspension; reduction in permit area or relocation; permit refund; temporary removal of installations for civic works; emergencies and permit holder responsibilities; accessible entrance; maintenance, upkeep and cleanliness; permit to be posted on premises; hours of operation; amplified sound; seasonal operation; extended frontage, curbside or parklet café – consent from neighbouring property owner; radiant heaters; decks; awnings; propane heaters and barbeques; marketing displays; café and marketing lighting; enforcement; seizure of goods; and offences and penalties.

105. City Council direct that all permit holders must meet the pedestrian clearway and fencing requirements of this Chapter by their permit expiry date in 2025.

106. City Council direct that any complete application for a café or marketing display received before May 1, 2018 will be processed under the applicable by-law as it existed prior May 1, 2018 and appeals made in relation to that application will also be processed under the former by-law.

Fees

107. City Council amend Municipal Code, Chapter 441, Fees and Charges, to include the new permit fees for sidewalk cafés, public parklets and marketing displays set out in Attachment 1.

108. City Council direct the Executive Director to apply any permit fee increases for existing sidewalk café and marketing display permit holders equally over a ten (10) year period starting May 1, 2018.

109. City Council direct the Executive Director to apply any resulting permit fee decreases for existing sidewalk café and marketing display permit holders at the time of the first permit renewal following May 1, 2018.

110. City Council direct new sidewalk café applicants to pay a one-time \$1,300 tree planting fee when,

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

111. City Council direct that a tree planting fee will not be collected if:

- a. there is no available space to plant a tree;
- b. there is already a tree at the proposed sidewalk café location;
- c. the application is for a marketing display or parklet café.

112. City Council direct that the non-refundable fee of \$1,300 collected for tree planting be contributed to the Tree Canopy Reserve (XR1220) at the end of every fiscal year to ensure actual revenues collected are available to expand the tree canopy and facilitate long term planning.

Implementation

113. City Council direct that the new municipal code chapter and any related or necessary by-law amendments come into effect on May 1, 2018.

114. City Council authorize the City Solicitor to make stylistic and technical changes in the drafting of the by-law and any related and necessary amendments to existing by-laws including Chapter 743, as a result of the adoption of the new by-law.

FINANCIAL IMPACT

The current annual program cost for the intake and review of applications, as well as the issuance of permits, is \$0.539 million. The total program costs include salaries and benefits, materials and equipment, indirect (overhead costs). The current program costs are fully recovered through user fee and permit fee revenue.

This report outlines proposed program costs of \$1.143 million. Table 1 below illustrates the annual impact of the current program, expenditures and revenues, compared to the projected impact of the proposed program and includes both MLS and Transportation Services (Table 1A).

Table 1: Annual financial impact of current and proposed program

		Current (\$000's)	Proposed (\$000's)
Gross Expenditures	Total Expenditures (a)	\$ 538.7	\$ 1,143.2
Revenue	Application Fees (average)	38.0	252.4
	Permit Fees (average)	692.4	825.4
	Total Revenue (b)	730.3	1,077.8
Public Realm reserve funding for haulage			105.0
Net Expenditures (c= a-b)		\$ (191.6)	\$ (39.6)

Table 1A: Annual proposed program costs by Division

Divisional Annual Operating Costs		Municipal Licensing and Standards	Transportation Services	Proposed Total Program (\$000's)
Gross Expenditures	Total Expenditures (a)	\$706.7	\$436.5	\$1,143.2
Revenue	Application Fees (average)	252.4		252.4
	Permit Fees (average)	825.4		825.4

Divisional Annual Operating Costs		Municipal Licensing and Standards	Transportation Services	Proposed Total Program (\$000's)
	Total Fee Revenue (b)	\$1,077.8	\$0.0	\$1,077.8
	Recovery from MLS for 3 staff (c)	(331.5)	331.5	0.0
	Public Realm reserve funding to correct substandard clearways (d)		105.0	105.0
Net Expenditures (e= a-b-c-d)		(\$39.6)	\$0.0	(\$39.6)

The non-salary costs funded from the public realm reserve funds are one-time costs that will be used to assist existing permit holders with substandard pedestrian clearways comply with the harmonized bylaw. The funding will be used over three years (i.e. 2018-2020) and no further costs will be incurred afterwards.

The new proposed program expenditures include the current operating costs plus 6.0 new positions (Table 2). These new positions are recommended to be added to the existing complement to enhance program enforcement; administration and customer service; and oversight of issues related to pedestrian movement and accessibility in the permit application process and implementation plan. The temporary positions are required for the implementation years and MLS will re-evaluate the need for these positions at future year budget processes.

Table 2: Additional complement for the proposed program

Division	Status		Positions	Description
	Perm.	Temp.		
MLS	1.0	2.0	3.0	Support A, Support B, and Students
Transportation Services	3.0	-	3.0	Project Manager, Project Lead and Engineer Technologist Technician 1
Total	4.0	2.0	6.0	

In addition, adoption of the implementation plan in this report will require funding in the amount of \$450,000 from the Public Realm Reserve Fund (XR1410) to support the contract services portion of the program which involves working with approximately 150 sidewalk café locations from 2018 to 2020 that have substandard pedestrian clearways of less than 1.5 metres (the Province-wide AODA minimum). Priority locations will be based on main street locations, pedestrian volumes and accessibility issues. This funding will support work to improve accessibility at these locations through design services and/or the relocation or modification of some street elements.

The anticipated adjustments for revenue and expenses have been submitted as "New and Enhanced Service Priorities" through the 2018 Operating Budget of Municipal Licensing & Standards and of Transportation Services Division, currently being recommended to Budget Committee. All costs and revenue assumptions are based on current volume estimates associated with the proposed framework. Full year impacts will be reviewed, reflected, and considered in future budget processes.

Financial Impact for the Toronto Parking Authority

Parklet cafes will be permitted in on-street paid parking spaces that are operated by the Toronto Parking Authority. Permit fees for parklet cafes will directly offset revenue that is lost from associated on-street paid parking spaces that are displaced by the parklet cafes. The offset of paid parking revenue will vary by permit application and its location. Overall, the recommendations in this report are expected to have a minimal impact on the revenues of the Toronto Parking Authority.

The above information is consistent with projected program costs included in the recommended 2018 Operating Budget.

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

DECISION HISTORY

On May 5, 2017, Licensing and Standards Committee referred the letter [LS19.3 Regulatory Framework to Permit Year Round Full Patio Café Enclosures](#) from Mayor John Tory and Councillor Cesar Palacio to the Executive Director, Municipal Licensing and Standards, for consideration and report back to Committee, on the issue of year-round enclosed patio cafes in the fourth quarter of 2017.

On April 18, 2017, Licensing and Standards Committee adopted [LS18.2 Framework and Consultation Plan for a Harmonized Sidewalk Café and Marketing Bylaw](#), which directed the Executive Director, Municipal Licensing and Standards to undertake additional consultations with stakeholders and the public on the Framework for a Harmonized Sidewalk Café and Marketing Bylaw as well as the proposed Fee structure and report back in the fourth quarter of 2017 on the harmonized bylaw, a non-refundable tree planting fee of \$1,300 for new café applicants and the proposal to permit year-round enclosed cafes.

At its meeting of April 12, 2017, Public Works and Infrastructure Committee adopted [PW20.9 A Framework for the Toronto Sidewalk Café Design Manual](#) directing the General Manager, Transportation Services to complete additional consultations and report to City Council in the fourth quarter of 2017 on a finalized Toronto Sidewalk Café Design Manual, implementation plan, and on creating a level playing field for patios on private property, including in strip plazas.

COMMENTS

Sidewalk cafés and marketing displays are important to civic life and private enterprise in Toronto. However, the bylaws that govern these uses have not been updated since amalgamation and as a result, standards are inconsistent across the city and do not always reflect the current accessibility needs of the public. Staff have conducted research and public consultations to develop regulations that support Toronto's rich café and marketing culture while helping create universally accessible sidewalks and streets.

Public Consultation and Data Collection

Summary of Public Consultations

From 2014 to 2016, City staff conducted a number of consultation activities on the need for a harmonized sidewalk café, parklet and marketing bylaw in Toronto that included: 12 public meetings, 14 stakeholder meetings and an online survey. Overall, staff collected feedback from approximately 850 residents, businesses and other stakeholders, which includes 502 survey respondents.

During consultations, staff heard concerns from businesses about the potential impact of fee increases and rule changes on the operations and outdoor capacity of their sidewalk cafés. Staff also collected input from residents and accessibility advocates about the need for accessible sidewalks and how communities can be more effectively engaged in reviews of new permit applications.

In April 2017, Public Works and Infrastructure Committee and Licensing and Standards Committee directed staff to conduct additional consultation on a proposed framework for sidewalk cafés and marketing displays in Toronto. Additional public and stakeholder consultations were held from June 13 to July 28, 2017, including:

- Two public meetings - at City Hall and North York Civic Centre,
- Five meetings with stakeholders including Business Improvement Areas, Toronto Association of Business Improvement Areas, accessibility advocates, and design professionals, and
- Online feedback form.

These consultations engaged approximately 390 business owners and residents from across the city as shown in Attachment 5. Attachment 6 lists the key comments gathered from the different stakeholder groups. Despite some differing opinions, most stakeholders expressed support for the City's harmonization initiative, the new café types, and the development of pedestrian clearway requirements based on street characteristics, including wider pedestrian clearways on Downtown streets with high pedestrian volumes.

Goals of new bylaw for sidewalk cafés, parklets and marketing displays

Based on extensive research and consultation feedback, staff are recommending a new bylaw for all sidewalk cafés and marketing displays in Toronto that will not only harmonize standards, fees and processes but also:

- Update pedestrian clearway and design standards to improve the accessibility of Toronto's sidewalks,
- Provide businesses with new café type options, such as curbside and parklet cafés,
- Strengthen the City's enforcement capacity through the introduction of new fines and the authority to cancel or suspend permits under certain conditions,
- Reduce the impact of harmonization on existing permit holders.

The recommended provisions for a harmonized bylaw are described in a summary format in the following sections of the report.

Pedestrian movement and accessibility

The proposed harmonized bylaw aims to improve pedestrian movement and accessibility, and to better address the needs of residents and businesses through:

- Improved clarity and guidance around minimum pedestrian clearway requirements,
- Standards that are adapted to different street types; and,
- Improved accessibility provisions and transition plan for existing permit-holders that mitigates impacts on businesses.

Harmonized standards based on street type

The proposed pedestrian clearway requirements in the harmonized bylaw do not differ significantly from the existing rules for sidewalk cafés and marketing displays, which generally require a 2.1 metre minimum width for unimpeded pedestrian movement.

Recognizing that different streets in the City of Toronto have a different character, the harmonized bylaw adapts the pedestrian clearway requirements to different road classes as summarized in Table 3.

Table 3: Summary of the minimum widths required for pedestrian clearways for sidewalk cafes and marketing displays by road classification

Type of Street	Sidewalk Café	Marketing Displays
Local road	no less than 1.8 metres	no less than 2.2 metres
Collector or arterial road	no less than 2.1 metres	no less than 2.5 metres
Downtown Toronto - special streets	no less than 2.5m where the sidewalk is 5 metres or more from building face to the face of curb	no less than 2.5m where the sidewalk is 5 metres or more from building face to the face of curb

Additional space requirements for Downtown streets with wider sidewalks

The proposed bylaw will require a greater than 2.1 metre minimum pedestrian clearway on specific street segments in Downtown Toronto as laid out in Attachment 2, where higher pedestrian volumes need to be accommodated. The proposed bylaw will help maintain the function and character of these streets.

For Downtown streets in Attachment 2, where the distance from the building face to the face of the curb is at least 5 metres, the pedestrian clearway must be at least 2.5 metres unless a different minimum is determined by the General Manager. The building face is considered the face of a building's exterior wall at ground level and not from any columns of a colonnade or arcade.

This standard is consistent with comparable jurisdictions including New York City and the City of Seattle, which only permit sidewalk cafés to take up 50 per cent of the sidewalk whenever the sidewalks are wider than 5 metres. The City of Toronto's proposed bylaw, however, only sets a 2.5 metre minimum and may allow sidewalk cafés and marketing displays to take up more than 50 per cent of the sidewalk unless otherwise determined by the General Manager, such as in the case of a Community Council-approved precinct plan or streetscape master plan that sets out a different minimum requirement.

Rationale for the pedestrian clearway requirements

Since the late 1980s, the former municipalities of East York, Metropolitan Toronto and York have required boulevard café and marketing display permit holders to provide a minimum of 2 or 2.1 metres of sidewalk space (or greater as determined by the area municipality) for unimpeded pedestrian movement.

The width of 2.1 metres enables two people using assistive devices to pass each with a small buffer between them. This width is also the minimum needed to allow two people to walk together and enable one other person to pass walking in the opposite direction.

Since amalgamation, Toronto's City Council has adopted a number of policies and plans that reinforce the importance of walkability and walking conditions for Toronto residents:

- *Toronto Pedestrian Charter* (2002)
- *Toronto Accessibility Design Guidelines* (2004)
- *Vibrant Streets Guidelines* (2007, 2012)
- *Toronto Walking Strategy* (2009)
- *Toronto Seniors Strategy* (2013)
- *TransformTO* (2017)

While the *Accessibility for Ontarians with Disabilities Act* (AODA) sets a province-wide minimum of 1.5 metre for the pedestrian clearway, Section 3 of the AODA states that any existing municipal bylaws, policies and standards that exceed the AODA shall prevail and not be diminished or lowered by the AODA.

The City of Toronto requires higher minimum pedestrian clearway standards due to the needs of its significant population and higher pedestrian volumes. The AODA applies to

444 municipalities with a median population of 7,081 (2016), meanwhile the City of Toronto has 2.7 million people using its streets, sidewalks, and amenities.

The proposed harmonized bylaw provides clearer design guidance for pedestrian clearways to help Toronto become more age-friendly and accessible in alignment with the city's own vision, goals and policies, and the AODA.

Improved clarity and design guidance for the pedestrian clearway

The proposed harmonized bylaw establishes specific requirements on how the pedestrian clearway must be measured. The pedestrian clearway must be unobstructed and will be measured from the outermost edge of the permit area to a) the nearest obstruction such as parked bicycle attached to a bike ring, or b) the back of the curb, whichever is closer for frontage cafés.

For marketing displays, the pedestrian clearway must include space for patrons, similar to the standards in the Street Vending by-law, which is why the pedestrian clearway requirements are wider.

In the case of curbside cafés, the pedestrian clearway is between the curbside café and the area in front of the associated establishment. As such, it will be measured from the edge of the curbside café permit area to the closer of the nearest obstruction on the sidewalk or the property line.

The pedestrian clearway must also be continuous along the full length of the permit area, and not have sharp turns that are more than 20 degrees. Attachment 3 provides further information and illustrations on how the pedestrian clearway width and deviations will be measured.

New applicants and accessibility requirements

The harmonized bylaw requires all new applications for sidewalk cafés, marketing displays and public parklets to show that their designs are fully accessible to persons with disabilities, including entrances to the permit area, minimum pedestrian clearways, and white cane-detectable features for the visually-impaired, such as fencing or planters.

Existing permit holders and accessibility requirements

In order to mitigate the impact that the proposed requirements may have on businesses, staff recommend that existing permit holders continue to operate under the pedestrian clearway and fencing requirements of their original agreement with the City until the earlier of the following:

- **Time of permit transfer**, including a change in owner,
- **Permit expiry date in 2025**, the year which the AODA aims to achieve accessibility for Ontarians with disabilities.

At the earlier of these points, the sidewalk café or marketing display will have to comply with the pedestrian clearway standards and white cane-detectable fencing and/or

planters requirements set out in the harmonized bylaw. Any previous Community Council approvals that exempted permit holders from the pedestrian clearway requirements of existing bylaws would be superseded by the pedestrian clearway requirements of the harmonized bylaw at the time of permit transfer or permit expiry date in 2025. This may require some sidewalk cafes to reconfigure their café patio layout or reduce in size to accommodate the new pedestrian clearway requirements.

Existing permit holders are not permitted to make significant modifications to their permit area under their existing permit without further approval from the City. If an existing permit holder wants to make significant modifications to their existing permit area, they will be required to submit a new application, pay applicable fees and comply with the standards set out in the proposed harmonized bylaw. This requirement is consistent with the current approach to permit holders seeking significant modifications to their permit area.

Design support and funding to help existing permit holders

City staff will provide design support and funding from the Public Realm funds to assist permit holders with locations that have pedestrian clearways less than the Province-wide AODA minimum of 1.5 metre and are located on a main street with high pedestrian volumes. Where appropriate and feasible, the design support and funds will help to relocate and/or modify some street elements, such as relocating bike rings, resizing waste bins or benches, and installing walkable tree grates, to improve accessibility and reduce impacts on businesses.

New café types and rules for marketing displays

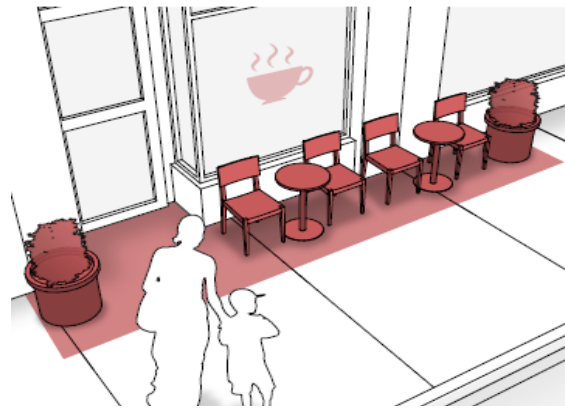
The harmonized bylaw expands the opportunities available to businesses through the introduction of nine new café types and two new marketing types. By permitting new design configurations, the harmonized bylaw will help existing and new businesses find creative ways to meet the City's requirements. The City of Toronto's businesses and residents will benefit from increased options to enhance the café experience and the vibrancy and accessibility of Toronto's streets city-wide.

New permitted encroachments: small frontage café, small marketing display & small curbside standing café

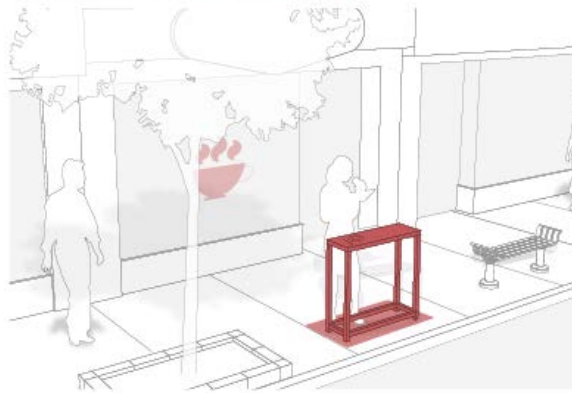
It is common for businesses to place small items in front of their establishment that do not take up much sidewalk space, such as a small table and chair for customers. This report recommends that these uses be allowed as a permitted encroachment without requiring a fee and application.

Figure 1: Small frontage café and curbside standing café

SMALL FRONTAGE CAFÉ



CURBSIDE STANDING CAFÉ



New encroachments must maintain the minimum pedestrian clearway and all objects must be removed at business close each day. Small frontage encroachments are limited to an extension of 0.8m out from the building wall (0.5 metre in the case of marketing) and can have a maximum width of 5.5 metres across the building frontage. For a small curbside standing café, they must not be taller than 1.2 metre and not extend longer than 1.2 metre, with all parts of it (including patrons) must be within the furnishing and planting zone.

Staff also recommend that at locations where an operator has installed a small frontage café or small marketing display, the operator not be entitled to a permit for an A-frame sign. During consultations, staff heard regular concerns from residents and accessibility advocates about the challenges to navigating the pedestrian clearway due to the placement of A-frame signs on the sidewalk.

New Options for Sidewalk Cafés

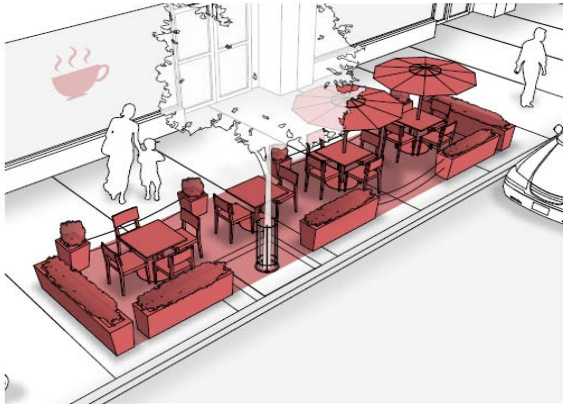
The new bylaw introduces new café options for business owners that will enable greater flexibility to achieve an accessible and attractive public realm, and to enhance the café experience. These new café options are illustrated below and include: curbside, frontage and curbside split café, parklet café and curbside and parklet café combination.

- Curbside cafés occupy the furnishing and planting zones.
- A frontage and curbside split café creates two separate café areas that are bisected by a sufficiently wide, straight and continuous pedestrian clearway.
- A parklet café uses a permanent parking space in the curb lane or parking lane of a street for café space.
- A curbside and parklet café combination occupies the furnishing and planting zone as well as a parking space in the curb lane or parking lane of a street for café space.

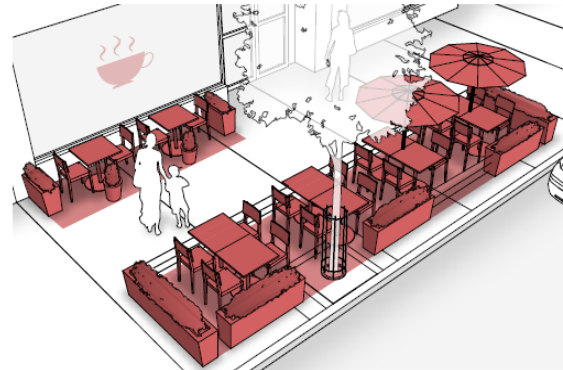
For a complete list of design requirements for each of these café types, see the recommendations section of the report.

Figure 2: New café options in the harmonized bylaw

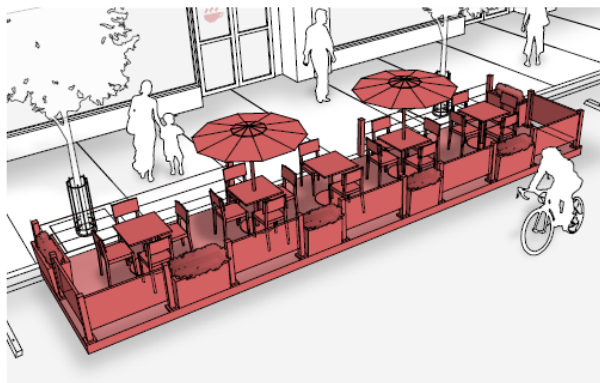
CURBSIDE CAFÉ



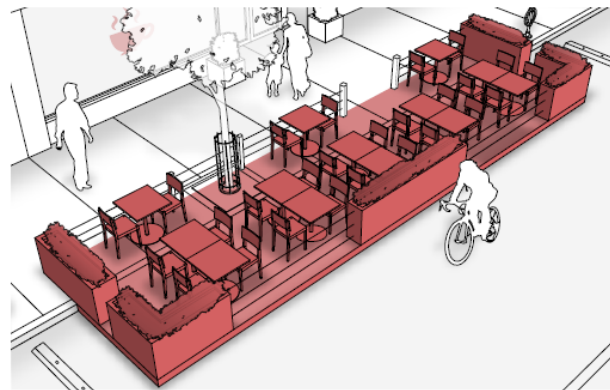
FRONTAGE AND CURBSIDE SPLIT CAFÉ



PARKLET CAFÉ



CURBSIDE & PARKLET CAFÉ COMBINATION



Public parklets

A public parklet involves the conversion of a permanent on-street parking space into public space. Jurisdictions such as Chicago, New York City, and Philadelphia, have used public parklets to expand public space, increase public seating and enhance the vibrancy of sidewalks using attractive elements such as planters. The City of Toronto has experimented with parklets by allowing them as exemptions through Community Council.

The new bylaw will establish public parklets as a new type of permitted encroachment in the right-of-way under certain conditions. A public parklet must be sponsored by a non-governmental organization such as local Business Improvement Areas, business associations or community groups that will be responsible for its design, installation and maintenance. In addition, applicants for public parklets would be required to submit a right-of-way permit application to Transportation Services and meet the parklet requirements in the new bylaw.

Extended Frontage, Curbside or Parklet Café or Frontage Marketing Display

To provide greater flexibility for businesses, staff recommend café or marketing display operators be allowed to extend their café or marketing across areas in front of adjacent establishments. This permission could be useful at locations where an existing café or

marketing display must be amended to provide a wider pedestrian clearway. Extending the café along the frontage, curbside or parklet area could serve to minimize any potential reduction of café capacity.

In such cases for extended options, a written letter of consent from the adjacent property owner would be required as part of the application process. If consent is subsequently revoked by the adjacent property owners, permission to use the extended use would be cancelled at the expiry date of the permit.

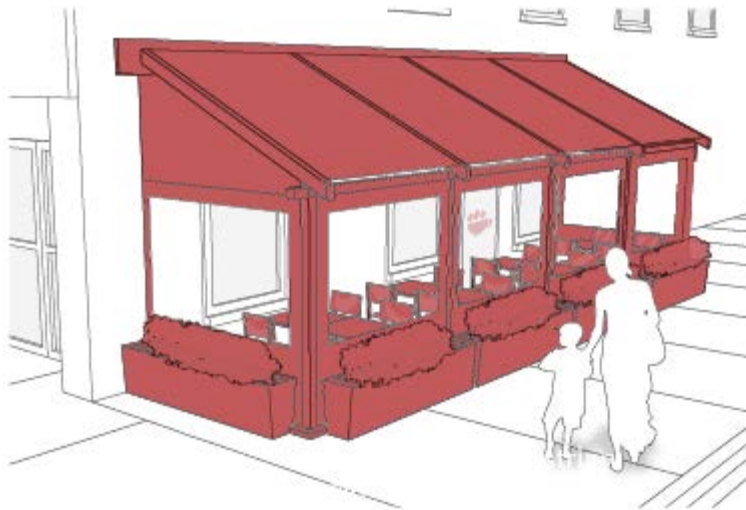
Temporary Year-Round Café Enclosures

In May 2016, Licensing and Standards Committee directed staff to consult on the concept of enclosed year-round cafes. Comments on this new concept were mixed.

- Those concerned felt that the structures may become "permanent" and introduce year-round nuisance issues (noise, patrons smoking) into residential areas. Some environmental concerns were raised, particularly with regard to energy efficiency.
- Supportive responses were mostly accompanied with conditions such as greater enforcement of noise and smoking regulations, wider pedestrian clearways and higher permit fees.

Figure 3: Temporary year-round café enclosure

TEMPORARY YEAR-ROUND CAFÉ ENCLOSURE



The existing bylaw already includes permissions for a temporary enclosed café, but prohibits its use from November 1 - April 1. Also, the bylaw does not expressly require the structure to be taken down or removed during this period. Staff believe that it is better to have the structure animated and in use throughout the year, rather than for it to sit un-used on the sidewalk for 5 months. In addition, allowing cafés to operate in the colder

months is a measure intended to embrace Toronto's winter climate.

For these reasons, staff recommend that the harmonized bylaw allow temporary year-round café enclosures under a set of conditions, including:

- Applicants must apply for a separate permit class and pay the associated permit fee (133\$/m² in the central zone, \$66.50/m² in the outer zone),
- Enclosure must be located on a local road,
- Enclosure must comply with the requirements of the Ontario Building Code, including zoning and other applicable laws, and the Ontario Fire Code,
- Enclosure must maintain a minimum 2.5 metres pedestrian clearway,
- Enclosure must be made of temporary materials,

- Enclosure must create an open atmosphere (by removing temporary window enclosures) during the regular café season (May 16 - September 14), so that the enclosure functions as a sidewalk café and is not functioning as a permanent building extension,
- Enclosure must be fully accessible and barrier free.
- Permit holders must provide access to carry out construction, reconstruction, maintenance or repairs to underground utilities and services located in the permit area twenty-four (24) hours per day.

Retractable café

The new bylaw introduces a new permissible type of café called a retractable café. This type of café would require the permit holder to remove and relocate the fence/cane-detectable planters, and café elements on a daily basis, at specified times, such as during times of high pedestrian volumes.

This new provision allows the coordination of sidewalk cafés on a street block to pull back their café elements during the morning period, providing space for commuting pedestrians. This option is not contemplated during afternoon and evening commuting time when cafés would potentially have patrons on patios.

Figure 4: Example of retractable café option



Sidewalk marketing displays

Flexible standards for temporary marketing displays

The current regulations in Toronto list the materials allowed to construct a marketing display stand such as wood and plastic. To provide businesses with more flexibility, staff recommend not including limitations on the use of material for marketing displays in the proposed bylaw. However, marketing displays will need to comply with height and permit clearance requirements, which are detailed in the staff recommendations.

Discontinuation of the “temporary marketing enclosure” permit category

The current Toronto bylaw allows business operators to erect a "temporary marketing enclosure" under certain circumstances. The bylaw also requires these enclosures to have solid walls, doors, electrical wiring, heating, skylights, and insulation. None of the other former municipalities permitted a temporary marketing enclosure in their bylaws.

The proposed bylaw recommends discontinuing 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 on a public sidewalk. The permanence of these structures has also created challenges for the city when access to the boulevard is required for infrastructure works.

New regulations to de-clutter sidewalks

A visual survey of marketing displays shows that many business operators have a tendency to store merchandise on the city sidewalk after the end of each business day, year-round. Although this has become a common practice over time, the intention of the temporary marketing display provisions was not to allow permanent year-round occupation of public space.

The proposed bylaw recommends prohibiting the overnight storage of merchandise on the public sidewalks along arterial streets and setting a maximum height for the display of merchandise to be within easy reach of a customer from standing height.

Application and Review Process

New standards for all permit applications

Staff recommend that the new bylaw delegate authority to the General Manager, Transportation Services and the Executive Director, MLS to establish application submission requirements so that staff are provided with the right information to effectively review and assess a permit request. Currently there are no minimum standards for accompanying materials in the application process, including site plan drawings. 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. To assist with implementation, staff will develop a template to demonstrate what information and format will be required.

Delegate authority to General Manager to review appeals related to parklets and pedestrian clearway requirements

Staff recommend that the appeal process for all applicants that do not meet the minimum pedestrian clearway standards or parklet (i.e. parklet café and public parklet) requirements in the new bylaw be transferred from Community Council to the General Manager of Transportation Services. The General Manager or her delegate will review and assess any such appeals in consultation with a staff working group, including representatives from Economic Development and Culture, and City Planning to make a determination. This delegation of authority will allow for the consistent application of pedestrian clearway and parklet requirements across the city.

Community Councils will continue to hear, review and make final decisions with regards to all other sidewalk café and marketing display permit appeals.

Delegate authority to staff to issue permit

Staff recommend that the new bylaw authorize staff to issue and renew permits for sidewalk cafés, parklets and marketing provided the application complies with the requirements of the new bylaw in order to advance consistency and efficiency in the review and approval process. This is consistent with the current approach in former Toronto.

In the former cities of Etobicoke and North York, all permit applications for sidewalk cafés and marketing displays are approved by Community Council and formalized through a Legal Agreement drafted by the Legal Services Division. The proposed process is more efficient because a permit can be issued almost immediately upon confirmation that the application complies with the bylaw; whereas, the crafting of a Legal Agreement can take a number of months.

Updated community engagement process for new sidewalk café applications

Community engagement ensures that the local impacts of a proposed sidewalk café are afforded consideration during the application review process. Staff heard during consultations that there is a need to reduce administrative burdens for operators as well as deepen engagement for local residents around permit decision making. To balance these objectives, staff recommend the following changes to the community engagement process.

Expanding public notification

In the former City of Toronto, if the proposed café is located on an arterial road, the applicant must post notice on the associated establishment's window for a minimum period of 14 days. The local Councillor also receives notification of a new café application.

If the proposed location for a café is along a residential street, only residents living on the same street and same block of the proposed location are notified of the application and receive a ballot. This excludes local residents that may live directly behind the proposed location or around the corner on another street. Residents also receive minimal information on the proposed design for the café.

To increase public awareness of new café applications, staff recommend that all proposed cafés, regardless of location, be required to post notice for a period of 21 days. Staff also propose that notification be provided to the local Business Improvement Area and registered resident association, in addition to the local Councillor.

If the proposed café location is on a local road, staff recommend that residents within a 60 metre radius receive notification along with a site plan for the proposed café and an email/mailling address to provide their input and/or objections. This proposal will capture

all residents living within a reasonable proximity of the proposed café and support informed feedback from the community.

Improving efficiency of community engagement in application review

Currently, applications for café locations on arterial roads are refused if there is one objection, whereas applications for café locations on local roads are refused if there is a negative polling outcome or insufficient response rate (fewer than 25% of ballots). One in three applications is refused because of an insufficient response rate to the poll. These results do not always reflect the wishes of local residents and create an uncertain climate for business.

Staff recommend that the new bylaw provide the public 21 days to submit comments through email or post mail and require staff to refuse a café application if there is *more than one objection*. This will make it easier for members of the public to participate in the sidewalk café application review process and address the efficiencies of the previous polling process.

Non-compliance with any other bylaw requirements would also trigger a refusal. The applicant will retain the ability to appeal the decision to Community Council for all issues apart from the pedestrian clearway requirements or parklets, which are delegated to the General Manager, Transportation Services.

Regulations Related to Permit Operations

Display of permit and demarcation of permit area

Staff recommend a new requirement that all permit holders display their City issued permit in a location of the establishment that is clearly visible from the exterior. City staff will demarcate the permit area through the use of markings (e.g., with skid-resistant, reinforced polyurethane, pavement marking tape) to help businesses and residents understand the limits of the permit area.

These requirements are intended to make it easier for residents and bylaw enforcement officers to identify locations that are not in compliance with bylaw requirements and permit conditions.

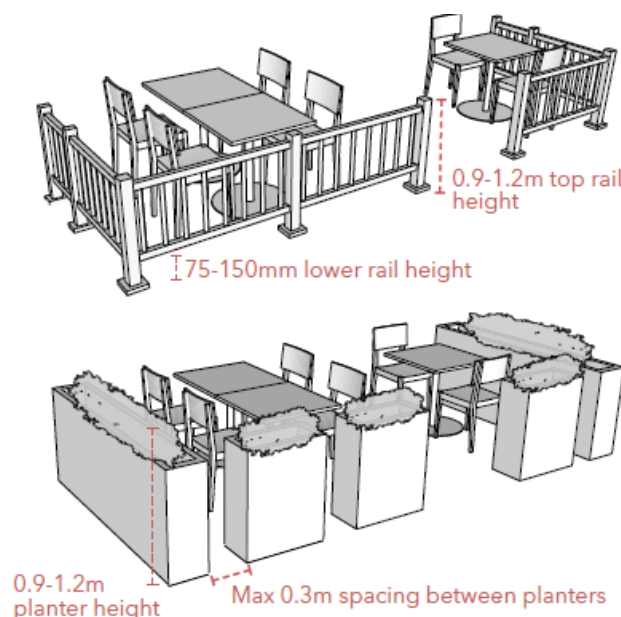
Sidewalk café fencing requirements

During recent consultations, staff sought feedback on the potential of reducing fencing requirements around sidewalk cafés and making fencing optional. Accessibility advocates voiced strong concerns, indicating that a lack of fencing would create problematic conditions for the visually-impaired when navigating sidewalks. Residents also expressed concerns that lack of fencing could result in cafés spilling out beyond the permitted area.

In response to this feedback, staff recommend the following new requirements for fencing, which are adapted to the sidewalk café type and location.

- **Arterial and collectors:** All sidewalk cafés on arterials and collectors will be required to provide fencing or cane-detectable planters, because these are busier streets with higher pedestrian volumes, which are generally associated with greater accessibility challenges.
- **Local roads:** Sidewalk cafés on local roads are *not* required to provide a fence, but must have cane-detectable planters or elements at each end of the patio, not the entire perimeter of the patio area.
- **Small frontage café:** Small frontage cafés are *not* required and *not* permitted to provide a fence because the small and removable nature of this café type makes it not feasible.
- **Liquor Licence:** The Liquor Licence Act requires sidewalk cafés that are licenced for the sale and service of alcohol to install a 0.9 metre high partition to define the area where alcohol is permitted to be served. The new bylaw will allow for either fencing or planters to be used as a partition.

Figure 5: Sidewalk café fencing requirements in the harmonized bylaw



Some of the notable changes to the fencing requirements in the harmonized bylaw include:

- increasing the required clearance between fixed fencing and any fire hydrant/fire connections from 1 metre to 1.2 metres as required by the Toronto Municipal Code;
- specific fencing requirements for parklet cafés or public parklets to address the safety of café patrons;
- prohibiting the attachment of fences to heritage properties, street trees, street furniture or utilities; and
- removing prescribed construction materials for fences to provide business

owners with more flexibility.

Continued restrictions on amplified sound

Staff heard during consultations that noise from cafés can be a nuisance for local residents. For these reasons, staff recommend that the new bylaw continue to prohibit amplified sound on sidewalk cafés located on both local and collector and arterial roads.

30-metre separation distance from Residential Zones for new permits

Requiring physical separation between a sidewalk café and residential uses can help address nuisance impacts such as noise. 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 Bylaw is 25-metres. The zoning bylaw 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 new bylaw will ensure a consistent approach for sidewalk cafés located on private property and the public sidewalk; and will establish a city-wide standard.

Staff are also recommending the following clarifications in the proposed bylaw to facilitate implementation:

- Minimum 30-metre separation distance would only apply to new applications. Existing cafés would not be required to comply with the new measure, even upon transfer of the permit; and,
- The separation requirement only applies to properties that are in a Residential Zone (i.e. it does not apply residential properties located in a mixed commercial-residential zone).

Seasonal removal of sidewalk café elements from November 15 to April 14

Staff recommend that business operators be required to remove café elements such as fencing from the sidewalk between November 15 and April 14. This timeframe coincides with the City's contract period for snow removal. Year-round cafés would be exempted.

Current regulations do not provide specific dates for fence removal. The proposed requirement would provide clarity to all stakeholders and increase the accessibility of sidewalks with high pedestrian volumes, particularly during winter months.

Cafés on private property (e.g. strip plazas)

At the meeting of April 12, 2017, Public Works and Infrastructure Committee requested the General Manager to report back on how to create a level playing field as it relates to patios on private property, including in strip plazas. Staff consulted with the City Planning Division in preparing a response to this request.

When a café is located on private property, it must comply with the Zoning Bylaw. Part of the Zoning Bylaw requirements for commercial spaces such as strip plazas usually includes the provision of a certain number of parking spaces. If there is a surplus of parking spaces (i.e. more than required under the zoning bylaw), it would be relatively straight forward for the owner or operator of the strip mall to establish an outdoor patio provided that the minimum requirement is maintained on the lot.

If the number of existing parking spaces on the lot is the minimum number required under the zoning bylaw and the owner wanted to establish an outdoor patio there, then any reduction in parking spaces would have to be provided elsewhere on the site. Alternatively, relief would have to be sought from the zoning bylaw. Depending on how many parking spaces are repurposed to a patio use, this relief can be sought by way of a minor variance application to the Committee of Adjustment; or a rezoning application to the Planning Division. In some cases a parking study may also be required.

In addition, there are some other zoning requirements which would also have to be met, and which apply to outdoor patios regardless of whether or not they are located in strip malls or in other commercial areas. For example, the zoning bylaw requires a minimum separation of 30-metres between a café located on private property and the closest lot in a Residential Zone. For consistency, staff have recommended this same separation distance be included for sidewalk cafes in the harmonized bylaw.

Any outdoor patio located on private property is not subject to the community engagement provisions; fees; design or locational standards proposed as part of the harmonized bylaw.

Enhanced enforcement

During consultations, staff heard from residents and accessibility advocates that there needs to be enhanced enforcement of sidewalk café and marketing conditions that challenge pedestrian movement such as A-frame signs, large planter boxes and the placement of marketing goods beyond the permit area. Residents and business owners also raised concerns about sidewalk cafés and marketing displays operating without a permit.

Staff recommend that the new bylaw include new enforcement tools such as higher maximum fines, new set fines, as well as the ability to seize and remove goods.

Authority to seize and remove goods for sale and café elements

Staff recommend that the new bylaw include provisions that permit the Executive Director, MLS to seize and remove goods for sale, or café elements, from sidewalk cafés, parklet cafés, and marketing displays that are found to be in contravention of the new bylaw. While these powers would only be exercised in extreme cases, they will allow enforcement staff to address problematic locations more effectively.

Allow the review of permit conditions at nuisance locations

During consultations, residents were particularly concerned about the issue of noise from sidewalk cafés. To address this concern, staff propose that the new bylaw enable staff to refer nuisance locations to Community Council for resolution. In the case of noise complaints, such a resolution could include a review of operating hours for the sidewalk café.

Permit amendment, suspension, and cancelation

Current regulations allow MLS to suspend a permit where there is reason to believe that the provisions of the agreement are being violated, pending consideration by Community Council.

Staff recommend that the Executive Director, Municipal Licensing and Standards and General Manager, Transportation Services gain the authority to:

- cancel a permit, without reporting to Community Council, if permit fees have not been paid following a period of 90 days from the permit expiry date,
- cancel a permit, without reporting to Community Council, if it is determined that the permit was obtained through the submission of false, misleading or fraudulent information,
- amend a permit area, if it is determined that a portion of the permit area poses a risk to public safety. An applicant can appeal the amendment to the General Manager, Transportation Services. In instances where a reduced permit area is required, a refund of permit fees equivalent to the value of the reduced area is recommended.

Introduce new fines

The proposed harmonized bylaw for boulevard cafés, parklets and marketing displays will establish new offences under the *City of Toronto Act, 2006* to charge negligent business owners and these offences will have higher maximum fines (up to \$100,000). These changes would represent an increase in the potential charges and penalties. It should be noted that while the City can make recommendations about fine amounts, fine amounts are ultimately set through the provincial court system.

In addition to these general fines, the bylaw will establish a number of other fines under the *City of Toronto Act, 2006* that may be available depending on the circumstances:

- *Continuing fines* for each day that the offence continues, maximum of \$10,000 per day.
- *Special fines* for an offence which are designed to eliminate or reduce any economic advantage or gain from contravening the bylaw, no maximum fine.

Request new set fines

Enforcement staff can issue a set fine ticket under Part I of the *Provincial Offences Act* that sets out a specific amount that may be paid out of court for certain bylaw violations. The fine depends on the offence and the amount that has been set by the Regional Senior Justice upon request from the City. The recipient can pay the ticket or dispute it through the provincial court, at which point the court will determine the amount of the fine, if any.

Recommended Fees and Implementation

Recommended \$1,131.80 application fee for sidewalk cafés and marketing displays

A comprehensive review of the application fee schedule for sidewalk cafés and marketing displays was undertaken in accordance with the City of Toronto User Fee Policy. This comprehensive review has not been undertaken by the City since amalgamation, so the existing application fees vary substantially. An application for a sidewalk café in former East York is \$62.77; in former Toronto it is \$275.47; while in former Etobicoke it is \$747.91.

During recent consultations, staff sought feedback on a \$1,300 application fee for a sidewalk café, marketing display and parklet café. In accordance with the User Fee Policy, the application fee was set at a rate that recovers the cost of providing a city service, including direct and indirect (overhead) costs. Staff heard concerns from local businesses that the proposed application fee was too high.

To ensure Toronto's application fee is competitive and does not present a barrier to entry for small businesses, staff recommend that the application fee be further reduced from \$1,300 to \$1,131.80. This recommended fee represents a 50% cost recovery and the other 50% of the cost will be funded by the permit fee revenue and will have net zero impact on the general tax base.

Permit fees, zones and phased implementation

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.”

Staff undertook a review of the existing permit fees for the following reasons:

- permit fees for sidewalk cafés and marketing displays have not been comprehensively reviewed since amalgamation and as a result, they vary greatly across the city, from a low of \$5.50 / m² (in former York) to a high of \$114.12 / m² (former North York),
- permit fees for sidewalk cafés have imbedded disparities such as the lowest permit fees (\$20.08/m²) existing 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.

Recommended permit fee zones

As with the current fee system, the variables that influence any given permit fee include the location of the establishment (i.e. fee zone); and the type of establishment (i.e. marketing display or sidewalk café).

The following two permit fee zones are recommended to replace the seven fee zones currently in place:

- Central Zone, is comparable to the downtown area defined in Map 6 of the Official Plan (See Map 7, Attachment 1 (b))
- Outer Zone is the remainder of the City outside of the downtown area (See Map 7, Attachment 1 (b))

Staff sought feedback on the proposed fee zones during the summer 2017 consultations. The recommended fee zones appear to be well understood and accepted by residents and the business community.

Recommended permit fees

The recommended permit fees are shown in Table 4 below. The recommended permit fees are unchanged from those that were included in the April 2017 framework report, and presented during stakeholder consultations in the summer of 2017.

Table 4: Recommended Permit Fees

Recommended Fee Zone	Recommended annual permit fees, except where noted			
	Sidewalk Café (\$/m ²)	Marketing Display (\$/m ²)	Year-round Enclosed Café (\$/m ²)	Parklet Café (\$/month)
Central Zone	\$88.31	\$62.65	\$133.00	\$931
Outer Zone	\$44.14	\$38.12	\$66.50	\$596

The recommended fees are approximately 18% of their market value in recognition that these type of commercial uses of the public sidewalk contribute to the vibrancy of Toronto streets and local economic development. Approximately 65% of sidewalk cafes and marketing displays are also located in the Outer Zone, where lower fees apply. The business community and residents generally supported the proposed permit fees, although some residents indicated that the fees were too low, particularly those for year-round cafés.

10 year phase-in for recommended permit fees

Staff recommend that the proposed permit fees take effect on May 1, 2018. At this time, the fees would be applied in full for any new applicant. Staff recommend that any decreases in permit fees for existing permit holders would also come into force at this time. The most significant decrease resulting from the recommended permit fees will be in the former municipality of North York, where the current rates are highest. Existing permit holders in this area will benefit from a 60% reduction in permit fees.

Staff originally proposed to phase-in any increases in permit fees for existing permit holders over a 15-year period in order to minimize the impact of these increases. During recent consultations, staff heard from residents that the proposed phase-in period was too long.

Staff recommend that a reasonable time frame is 10 years to phase-in permit fee increases. Any increases for existing permit holders resulting from the recommended permit fees would be phased in equally over the 10-year period. The impact of the proposed permit fees on local business would be further mitigated by not subjecting the fees to annual inflationary increases over this period. Staff believe this approach provides the local business community with long-term stability and certainty.

Recommended permit fee for parklet cafés and public parklets

Staff worked with the Toronto Parking Authority (TPA) to establish permit fees that would apply to parklet cafes and public parklets.

The recommended permit fees for parklet cafés are \$931/ month in the Central Zone; and \$596/month in the Outer Zone (inclusive of an administrative fee). These fees are based on the average size of a parking stall (i.e. 14.3 m²) and reflect the weighted average revenue generated by area (m²) for on-street paid parking spaces in each fee zone, as determined by the TPA. The recommended parklet café permit fees will ensure the program has minimal revenue impact to the TPA. Any changes to the on-street paid parking regulations, specifically the hourly rates and hours of operation, will impact the expected revenue generated by the on-street paid parking space. As such, staff would be required to amend the related parklet café permit fee, as needed.

Staff recommend that applicants for public parklets be required to complete a right-of-way permit application and pay a permit fee of \$538.10 per year, which is comparable to similar street occupancy fees.

Public parklets are free and open for public use, and as such, are seen as an extension of public space and a public amenity. Public parklets will also require a sponsor, such as a BIA or non-profit organization, to commit to meeting the design, liability and insurance requirements for installation, maintenance and operation.

Recommended \$1,300 fee for tree planting

The in-force Toronto Bylaw requires new café applicants to pay a non-refundable fee of \$3,000.00 for the installation of one tree if the City has determined that the café location is suitable for tree planting. None of the other former bylaws have this requirement.

In April 2017, Licensing and Standards Committee directed staff to report on the requirement that any sidewalk café application pay a non-refundable fee of \$1,300 to compensate for the loss of growing space and for the installation of two trees on another nearby location. The proposed fee did not elicit many comments during consultations, and only three respondents to the online survey indicated they felt it was too high.

Based on the Committee's directive and consultation outcomes, staff recommend that new applicants for sidewalk cafes pay a one-time \$1,300 fee when:

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

The fee for tree planting would not be required if:

- There is no available space to plant a tree;
- There is already a tree at the proposed sidewalk cafe location; and
- The application is for a marketing display or parklet café.

The funds collected through this fee will be used to fund tree planting at other locations identified by Urban Forestry. This requirement supports the City's goal to increase the overall canopy cover to 40%, and the Official Plan vision to create a city with attractive, comfortable tree-lined streets.

Implementation and Next Steps

New applicants

As of May 1, 2018, all new permit applicants must meet the requirements of the harmonized bylaw for sidewalk cafes, public parklets, and marketing displays set out in the recommendations.

New permit applications that are complete and submitted before May 1, 2018 will be processed under the applicable bylaw that existed prior May 1, 2018 and appeals made in relation to those applications will also be processed under the applicable former bylaw.

Unpermitted locations and permit holders that exceed their permit area

In the case of a sidewalk café or marketing display that is operating without a permit, enforcement staff will work with the business owner to either bring them into compliance with the applicable regulations or have the installations removed from the sidewalk. Similar enforcement actions will be undertaken with existing permit holders that are operating outside their permitted area.

Existing permit holders within their permitted area

Existing permit holders can continue to operate under the terms of their original agreement with the City *only* as it pertains to the following requirements:

- Pedestrian clearway standards
- Fencing requirements
- Minimum separation distances to street furniture and utilities
- Separation from residential zone
- Operating hours
- Visual screen requirements
- Temporary year-round café enclosures

All existing permit holders will be required to comply with the pedestrian clearway standards and fencing requirements set out in the new bylaw at the earliest of the following conditions:

- permit transfer (i.e. change in ownership); or,
- permit expiry date in 2025, the year in which the City of Toronto aims to be more accessible and age-friendly as prescribed by the AODA.

To support prospective business owners in understanding their responsibilities and the harmonized by-law requirements, staff will develop communication strategies including educational materials and outreach to allow for increased awareness about the harmonized bylaw and informed decision-making.

Design support and funding

City staff will provide some supportive resources to existing permit holders to comply with the new bylaw. Locations on main streets will be prioritized given higher pedestrian volumes. Resources include design support, and potential funds to relocate or modify some street elements and/or to help reconfigure the sidewalk café.

Status report

Staff recommend a report back to Public Works & Infrastructure Committee and Licensing and Standards Committee by the end of 2020 on the progress and impacts of the proposed harmonized bylaw and implementation plan. The report back will also include a five-year work plan for 2020 to 2025 on how staff will continue to improve sidewalk conditions and further Toronto's vision of becoming a more age-friendly, accessible and vibrant city by 2025.

CONTACT

Carleton Grant
Director, Policy & Strategic Support
Municipal Licensing and Standards
Tel. (416) 338-5576
Email: carleton.grant@toronto.ca

Elyse Parker
Director, Public Realm Section
Transportation Services
Tel. (416) 338-2432
Email: elyse.parker@toronto.ca

SIGNATURE

Tracey Cook
Executive Director
Municipal Licensing and Standards

Barbara Gray
General Manager
Transportation Services

ATTACHMENTS

- Attachment 1 (a): Additions to Municipal Code, Chapter 441 related to fees for sidewalk cafes, marketing displays and parklets
- Attachment 1 (b): Sidewalk café and marketing display permit fee zones
- Attachment 2: Map of Downtown streets where wider pedestrian clearways are required only on sidewalks wider than 5 metres
- Attachment 3: Measuring pedestrian clearway width and deviations
- Attachment 4: Minimum separation distances for all sidewalk cafés and marketing displays from street furniture and utilities
- Attachment 5: Geographic reach of summer 2017 consultations
- Attachment 6: Summary of key feedback from summer 2017 consultations