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April 12, 2017

Licensing & Standards Committee
Attn: Dela Ting
10th Floor, West Tower, City Hall
100 Queen Street West
Toronto ON M5H 2N2

Re: LS 18.2. Framework and Consultation Plan for a Harmonized Sidewalk Café and Marketing By-law

Dear Councillors:

The St. Lawrence Neighbourhood Association is a registered not-for-profit organisation, founded in 1982, it represents residents who live in the area bounded by Yonge and Parliament and Queen and the rail berm. We have been following with great interest the development of the sidewalk café design manual and the associated by-law for several years and have participated in many public consultations.

In general we are very supportive of sidewalk cafes as they give life to our streets and the Association. There are many sidewalk cafes (and a few marketing displays) in our neighbourhood and they add vibrancy and life to our streets, we are fully supportive of the three major objectives identified in this Report.

In the attached Statement we have made specific comments on each of the matters highlighted in the Report; our major concerns are outlined below:

1.1 Pedestrian Clearway Standard. The primary role of a sidewalk/boulevard is for pedestrians (and those using mobility devices) and ‘obstructions’ like street furniture, cafes, and marketing displays must take second place.

1.4 Accessibility for Persons with Mobility Impairments. As the Access for Ontarians with Disabilities Act (AODA) is coming into force fully in 2025 we suggest that the By-Law should cover this and accessibility should be mandated by 2025 or when a transfer of ownership occurs – whichever comes first.

1.6 Use of Road Classification System to Determine Role of the Street. The City’s “Road Classification” was designed to describe roads and does not always adequately describe

neighbourhoods or pedestrian areas. While it may be a useful first step, we suggest this suggestion needs some further study.

1.7 Mechanism for Permit Issuance and Permit Display. We are **VERY** pleased to see that it will in future be obligatory to display a City permit. We hope that these displayed permits will clearly note the permitted operating hours and any restrictions concerning noise or amplified sound. As noted below, we also hope that all of this information will, in future, be included in the publicly accessible M.L & S online database of permits issued.

STANDARDS AND PROCESSES SPECIFIC TO SIDEWALK CAFES

2.2 Sidewalk Café Operating Hours. It is noted, “Cafés located on a residential flankage would be required to close by 11:00p.m (unchanged)”. Operating hours (and excessive noise) are the main cause of neighbourhood complaints in St. Lawrence and we **STRONGLY** suggest that the By-Law needs to deal with ‘neighbours’; in particular, ‘vertical neighbours’ or others living close to a café. In mixed residential-commercial buildings there can be residents living immediately above a café and their needs **MUST** be considered. **In our opinion 11pm closing should be obligatory not only on ‘residential flankages’ but if there are residents living above or close to the proposed café.**

2.6 Seasonal Removal of Sidewalk Café Elements: November 15 – April 14. We strongly support the proposal to clearly define what ‘the season’ is. We have far too many examples in the St. Lawrence neighbourhood where boulevard cafes become furniture storage areas in winter and where MLS inspectors have to be specifically summoned (through 311) each year to have fencing removed. Ideally the MLS would proactively inspect all licenced boulevard café locations in winter and immediately deal with any infractions.

2.8 Year-round Enclosed Cafés: Extended Season. In general we have no problem with this proposal but it will be important that these ‘winterised’ enclosures are not unsightly and that the enclosed area is actually used as a café and not a furniture storage area. See our comments on ‘fees’ below.

Other Matters

The Municipal Licencing online database of permits is a very useful resource, or could be, but it is essential that the information in it reflects things like the actual address of the café (not only the civic address of the permit holder) and that all restrictions regarding noise or hours be included. (In fact there is a larger problem with this public database and it is suggested that the Committee ask Staff to work towards ensuring it fully shows all information about all permits.)

3. UPDATING THE FEE STRUCTURE. We urge the Committee to remember that boulevard cafes (and marketing) can add to the vibrancy of City streets and that both are, generally, an asset. We oppose setting fees that will seriously impede the operation of (primarily) seasonal businesses. That said it is also important to remember that these activities occur on a public boulevard or sidewalk and the ‘regular uses’ of the sidewalks must take precedence.

We question why the same fee would apply to both a café that operated only during the normal April 15 to November 14 'season' and to an adjacent one that had applied for and been granted an extended season. We suggest that City Staff examine some sort of 'extended usage surcharge' – a fully 'winterised' boulevard café is, essentially, an extension of the building and should be taxed accordingly.

In our presentation to the Public Works and Infrastructure Committee we suggest, "... that PWIC may want to ask City Staff to look at the fees for the use of the public realm that are under your jurisdiction (boulevard parking for example) to ensure that they are in line with the fees proposed and adopted for other more 'civic' uses. It seems counter-productive to 'rent' public space for commercial boulevard parking at a far lower rate than the fees charged for the (much more useful and active) boulevard cafes." We suggest that the Municipal Licencing and Standards Committee also do this.

In the Report we note that there is a call for additional research and consultation. We are certainly not opposed to more information and further discussion but this process has already stretched on for many years and **it is our firm view that it must be concluded in fall 2017 so that the new rules can start to apply in 2018.**

It is important to remember that sidewalk cafés are on the public realm and receiving a permit to operate one is not a right. Circumstances change, areas become more heavily pedestrianised and need wider sidewalks and sometimes a boulevard café that was quite suitable in a non-residential or less busy district becomes unsuitable due to congestion, noise or other reasons in a district that becomes more residential and busier.

Sincerely,

Suzanne Kavanagh
President

Pc. Councillor Pam McConnell
Board of Directors, SLNA



STATEMENT ON BOULEVARD CAFÉS & BOULEVARD MARKETING

LS 18.2. Framework and Consultation Plan for a Harmonized Sidewalk Café and Marketing By-law

In general we are very supportive of sidewalk cafes as they give life to our streets and the Association has the following specific comments on the Framework and Consultation Plan for a Harmonized Sidewalk Café and Marketing By-law.

There are many sidewalk cafes (and a few marketing displays) in our neighbourhood and they add vibrancy and life to our streets, we are fully supportive of the three major objectives identified in this Report:

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

We have the following specific comments on each of the matters highlighted in the Report:

1.1 Pedestrian Clearway Standard. As noted in the Report, “supporting pedestrian movement is an essential function of the sidewalk.” The SLNA strongly supports this objective and have made this view known to the Public Works and Infrastructure Committee. **The primary role of a sidewalk/boulevard is for pedestrians (and those using mobility devices) and ‘obstructions’ like street furniture, cafes and marketing displays must take second place.**

1.2 Discontinuation of the Polling Process In the former City of Toronto. We have no objection to the discontinuation of polling, in our opinion it often does not reflect broader neighbourhood concerns.

1.3 Proposed Methods for Community Engagement in the Application Process. We support an improved way of gauging public interest and concern.

1.3.1 Public Notice posted for 14-days. This seems a reasonable length of time.

1.3.2 Mail-out to Residents living within 60m of a proposed Sidewalk Café. This seems to be a useful change but would suggest that if a proposed boulevard café is in a mixed commercial-residential building that all residents of that building should be polled, even if their civic address is just outside the 60m cut-off.

1.3.3 Notice of all new applications to the local City Councillor. This seems a reasonable way for the City to try to connect with neighbourhood associations, such as the SLNA; Councillors ought to know how to reach them.

1.3.4 Notice of all new applications to the local BIA. This seems very reasonable.

1.3.5 Handling objections through Public Notification. We assume that a Councillor can always have an application referred to Community Council and if so we have no objection to the automatic referral by Staff only occurs if two or more public objections are received.

1.4 Accessibility for Persons with Mobility Impairments. As the Access for Ontarians with Disabilities Act (AODA) is coming into force fully in 2025 we suggest that the By-Law should cover this and accessibility mandated by 2025 or when a transfer of ownership occurs – whichever comes first.

1.5 New Site Plan Requirements for Permit Applications. This seems sensible.

1.6 Use of Road Classification System to Determine Role of the Street. Clarity is always good but we point out that the City's "Road Classification" was designed to describe roads and a description of a road does not always adequately describe neighbourhoods or pedestrian areas. While it may be a useful first step, we suggest this suggestion needs some further study.

1.7 Mechanism for Permit Issuance and Permit Display. We are **VERY** pleased to see that it will in future be obligatory to display a City permit. We hope that these displayed permits will clearly note the permitted operating hours and any restrictions concerning noise or amplified sound. As noted below, we also hope that all of this information will, in future, be included in the publicly accessible M.L & S database of permits issued.

1.8 Permit Amendment, Suspension and Cancellation. We welcome the proposed clarifications on permit cancellation.

1.9 Multi-Year Permits. We have no objection to multi-year permits as they can allow a business owner to invest in better furniture or fencing. However, we would like it made clear that permits can still be cancelled based on any of the criteria noted in 1.8 above.

STANDARDS AND PROCESSES SPECIFIC TO SIDEWALK CAFES

2.1 New Sidewalk Café Configurations. As we have noted to the Public Works and Infrastructure Committee, we strongly support the proposal to allow various configurations of sidewalk café.

2.2 Sidewalk Café Operating Hours. We note with surprise that it is proposed:

"Where regular enforcement mechanisms (education, warnings, charges etc.) are not sufficient to resolve a complaint, the permit would be referred to Community Council by the Executive Director, where conditions could be imposed to address the complaints (new)". This appears to weaken the provisions noted in 1.8. iv above where it states: "Suspension of the permit where there is reason to believe that the provisions of the agreement are being violated, pending

consideration by Community Council (existing)". If a café is in violation of its permit conditions, or does not have a permit City Staff should immediately suspend its operation pending action by Community Council.

In paragraph ii it is noted "Cafés located on a residential flankage would be required to close by 11:00p.m (unchanged)". Operating hours (and excessive noise) are the main cause of neighbourhood complaints in St Lawrence and we **STRONGLY** suggest that the By-Law needs to deal with 'neighbours'; in particular, 'vertical neighbours' or others living close to a café. In mixed residential-commercial buildings there can be residents living immediately above a café and their needs **MUST** be considered. **In our opinion 11pm closing should be obligatory not only on 'residential flankages' but if there are residents living above or close to the proposed café.**

2.3 Amplified Sound and Visual Displays. As above, we consider that the By-Law must deal with those living above a café and not only those flanking one.

2.4 30-metre Separation Distance from Residential Zones for New Permits. We note that "The separation requirement only applies to Residentially-zoned properties (i.e.it does not apply to all residential properties, such as those located in a mixed commercial residential zone)" We are not opposed to rows of boulevard cafes (such as currently seen on King Street West and on The Esplanade) and wonder whether this should be such a rigid prohibition.

2.5 Sidewalk Café Fencing Requirements. We agree that the question of fencing needs to be flexible but fencing or markings must properly delineate all cafes for the benefit of those with reduced mobility and others. It is important to remember that these cafes are on public property and the needs of the public must take precedence over commercial interests.

2.6 Seasonal Removal of Sidewalk Café Elements: November 15 – April 14. We strongly support the proposal to clearly define what 'the season' is. We have far too many examples in the St Lawrence neighbourhood where boulevard cafes become furniture storage areas in winter and where MLS inspectors have to be specifically summoned (through 311) each year to have fencing removed. Ideally the MLS would proactively inspect all licenced boulevard café locations in winter and immediately deal with any infractions. That said (and though most of our 'café streets' are NOT on local roads), we do NOT support the automatic exclusion of 'local roads' from this proposed policy. If a permit holder on a local road wants to retain fencing 365 days a year they should have to specifically apply for this. As noted above, the Street Classification was designed to classify roads and using it to classify neighbourhoods or sidewalks is not going to be perfect.

2.7 New Permission for Sidewalk Cafés - Extended Frontages. We have no problem with this suggestion but think that the By-Law should not deal with the private contracts between two property owners. If a café permit holder wants to extend his/her café onto space in front of a neighbouring building it should be sufficient for the City if the adjacent property owner agrees. If the adjacent owners subsequently have second thoughts due to interference with their business, because they want to apply for a licence themselves or for any reason that should be their right. It is suggested that it would be sufficient if any application for licencing public space

on an adjoining property was submitted with a letter of permission from that property owner and we suggest that a letter of this sort ought to be an essential part of each application and renewal application.

2.8 Year-round Enclosed Cafés: Extended Season. In general we have no problem with this proposal but it will be important that these ‘winterised’ enclosures are not unsightly and that the enclosed area is actually used as a café and not a furniture storage area. But, see our comments on ‘fees’ below.

Other Matters

In the Report we note that there is, not unreasonably, no mention of the Municipal Licencing’s online database of permits. This is a very useful resource, or could be, but it is essential that the information in it reflects things like the actual address of the café (not only the civic address of the permit holder) and that all restrictions regarding noise or hours be included. (In fact there is a larger problem with this public database and it is suggested that the Committee ask Staff to work towards ensuring it fully shows all information about all permits.)

3. UPDATING THE FEE STRUCTURE. As a neighbourhood association, the SLNA has no strong views on fees but we urge the Committee to remember that boulevard cafes (and marketing) can add to the vibrancy of City streets and that both are, generally, an asset. We oppose setting fees that will seriously impede the operation of (primarily) seasonal businesses. That said, it is also important to remember that these activities occur on a public boulevard or sidewalk and the ‘regular uses’ of the sidewalks must take precedence.

We certainly question why the same fee would apply to both a café that operated only during the normal April 15 to November 14 ‘season’ and to an adjacent one that had applied for and been granted an extended season. We suggest that City Staff examine some sort of ‘extended usage surcharge’ – a fully ‘winterised’ boulevard café is, essentially, an extension of the building and should be taxed accordingly.

We note that the proposal is that the By-Law includes a “parklet café fee’ that would be based on the revenue from a parking spot set by the Toronto Parking Authority. For ease of operation and to more easily continue to mirror these TPA fees we suggest it may be best if these fees are actually set by TPA and thus adjusted automatically as parking fees change.

We note that the proposed By-Law includes a tree-planting fee. We have no problem with this concept but suggest it would surely be simpler if any fee of this sort was set by Urban Forestry to match any other tree planting fees they have.

In our presentation to the Public Works and Infrastructure Committee we suggest “... that PWIC may want to ask City Staff to look at the fees for the use of the public realm that are under your jurisdiction (boulevard parking for example) to ensure that they are in line with the fees proposed and adopted for other more ‘civic’ uses. It seems counter-productive to ‘rent’ public space for commercial boulevard parking at a far lower rate than the fees charged for the (much more useful and active) boulevard cafes.” We suggest that the Municipal Licencing and Standards Committee also do this.

4. SIDEWALK MARKETING DISPLAY. There are very few Marketing Display permits in our neighbourhood and we see no problems with the proposals in the Report. We fully agree that “Marketing Permits” should not allow holders to use the public sidewalks as permanent year-round storage.

5. NEXT STEPS: MOVING AHEAD

In the Report we note that there is a call for additional research and consultation. We are certainly not opposed to more information and further discussion but this process has already stretched on for many years and it is our firm view that it must be concluded in fall 2017 so that the new rules can start to apply in 2018.

April 2017.