



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

**Date:** February 20, 2019

**To:** Economic and Community Development Committee

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

**Wards:** All

### SUMMARY

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This report proposes a new harmonized bylaw and fees for sidewalk cafés, parklets and marketing displays in Toronto. Sidewalk café has the same meaning as boulevard café in this report and its recommendations. A harmonized bylaw will ensure that consistent application and processing standards are applied across the city. This report builds on a December 2017 report recommending a harmonized Bylaw. Major changes in this current report include a reduced application fee, reduced fee for tree planting, revised option for year-round cafés, and elimination of a proposed 2025 deadline for all permits to comply with the new bylaw's pedestrian clearway standards.

The Sidewalk Café bylaws that are in effect today were enacted by the former municipalities of Toronto prior to amalgamation. The lack of consistency from this is a challenge to administer and enforce on a uniform basis; can confuse the public who view these inconsistencies as frustrating and inefficient; and does not foster a progressive business climate. Creating consistent city-wide standards that reflect the current accessibility needs of the public and which are responsive to the city's growing population and business environment are primary goals of this project. Updating the standards will optimize opportunities for enhancing local vibrancy. Specific objectives and implementation points of the proposed harmonized bylaw for sidewalk cafes, public parklets, and marketing displays follow.

#### Enhancing pedestrian movement and accessibility

- New pedestrian clearway requirements respond to the context 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)
- New accessibility requirements such as cane-detectable features will improve mobility for the visually-impaired (i.e. fencing or planters)
- Public parklets, which are public spaces installed in parking lanes, will provide more places for people to sit, relax and enjoy the city

## **Enhancing Toronto's business climate**

- New café configurations, such as parklet cafes and curbside cafés, provide additional opportunities for commerce in more areas of the city
- Small café types, such as a storefront bench, will be permitted as-of-right, with no requirement for a permit, no application, and no fees
- Consistent city-wide regulations and processes will improve clarity in terms of regulatory compliance
- New opportunities for winter café operations will be allowed for businesses.

## **Updated Fees**

This report recommends updated application fees and permit fees for sidewalk cafes and marketing displays. The application fee review was undertaken in accordance with the City of Toronto User Fee Policy, and has a foundation in cost recovery. The permit fee is an annual fee that a business pays to use public space for commercial purposes. The recommended permit fees have a foundation in market value, and have been significantly discounted to reflect the value that sidewalk cafes add in terms of street animation and economic development. Additional discounts are recommended for sidewalk cafes and displays that are located in areas classified as Neighbourhood Improvement Areas; and in Kensington Market, which is a National Historic Site of Canada, where marketing displays are formally recognized heritage attributes.

## **Implementation**

The proposed harmonized Bylaw will be implemented in a manner that provides certainty to the business community and which secures gradual improvements to the pedestrian realm over time.

- Increases in fees for existing permit holders will be phased in over 10-years
- Proposed permit fees will not be subject to inflationary increases for the next 10 years
- Existing permits will be "grandparented" and brought into compliance with the harmonized Bylaw over time, when the permit is transferred to someone else; when the street that the business is located on is reconstructed; or when an existing permit holder applies to amend the size of their permit area (for example, by adding a new curbside café).
- 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.

## **Consultation and Collaboration**

The harmonized Bylaw is a multi-divisional initiative. Internal divisions and external agencies consulted in the preparation of the report include Economic Development and Culture, City Planning, Legal Services, City Clerks, Solid Waste Management, Toronto Building, Toronto Fire Services, Toronto Public Health, Parks, Forestry and Recreation, Corporate Finance, Toronto Parking Authority (TPA), Toronto Transit Commission (TTC), Toronto Public Utilities Coordination Committee, and the Alcohol and Gaming Commission of Ontario (AGCO).

The harmonized Bylaw reflects over 4 years of consultation with stakeholders and members of the public, which included 14 public meetings, 19 stakeholder meetings and

an online survey. Overall, staff collected feedback from approximately 850 residents, 390 business owners, and other stakeholders including Business Improvement Areas, accessibility advocates, design professionals, and the Toronto Accessibility Advisory Committee.

## **RECOMMENDATIONS**

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The Executive Director, Municipal Licensing and Standards and the 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 the adjacent building, that is made of light material having a light metal or reasonably equivalent frame covered by fire-proof canvas or similar sail goods, that is installed over a permitted café or marketing 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 bylaw.

**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** – A board of management for an area designated as a Business Improvement Area established under Municipal Code Chapter 19.

**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 BYLAW** – Means Chapter 313, Streets and Sidewalks of the former City of Toronto; bylaw 16-97 of the former City of East York; bylaw 41-93 of the former Municipality of Metropolitan Toronto; bylaw Number 29607 of the former City of North York; bylaw 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** - A display, placement or exposing of 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 in the associated establishment 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.

**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 bylaw.

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

PERMIT HOLDER – the holder of a permit issued under this bylaw 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 - A service animal as defined in 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 where food or drink is served to the public by an eating or drinking establishment as defined in Toronto Municipal Code, Chapter 545, Licensing, and includes a curbside café, frontage café, and parklet café. A sidewalk café does not include a small frontage café, small curbside standing café, or a public parklet.

SMALL CURBSIDE STANDING CAFÉ – A permitted encroachment that consists only of a single table, without any seating, running parallel to the curb line, with all parts of the standing café and its patrons within the furnishing and planting zone of the sidewalk.

SMALL FRONTAGE CAFÉ – A permitted encroachment that consists only of a single line of seating, with or without tables, on the sidewalk against the frontage wall of the associated establishment.

SMALL MARKETING DISPLAY – A permitted encroachment that consists of a marketing display on the sidewalk against the frontage wall of the associated establishment.

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

### **Permit Application 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 the 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 bylaw.

4. City Council direct that to apply for a permit, applicants must submit:
  - a. a complete application in the form prescribed by the Executive Director or General Manager, and pay in advance an application fee in the amount specified in Attachment 1;
  - 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, as may be required to determine if the proposed sidewalk café, public parklet, or marketing display complies with the requirements set out in the new bylaw, including but not limited to detailed designs showing the permit area will be accessible to persons with disabilities, site plans and photographs, property dimensions, sidewalk and street dimensions and photographs, location and separation distances to street elements and utilities, and other stamped architectural/ engineering detailed drawings or construction specifications for items such as for awnings, fencing, platforms or parklet elements;
  - d. proof that the adjoining property is zoned for industrial or commercial uses; and
  - e. 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, in the case of sidewalk café applications along a local road, to notify all property owners and occupants located within a 60 metre radius of the proposed café location.

7. City Council direct that all sidewalk café applicants must display a notice of the application in a form, size and location 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, staff receive multiple objections to the application from members of the public during the 21 day period of displayed public notice;
- c. staff receive an objection from Transportation Services, Toronto Transit Commission, Toronto Fire Services, Parks, Forestry and Recreation, City Planning, Enbridge, Toronto Hydro, or 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 bylaw or any policy adopted in accordance with this report; 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 may 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 or the General Manager and must include the applicant's grounds for the appeal.

### **Appeals – Changes to Delegation of Authority**

10. City Council delegate to the General Manager the authority to hear, review and make final decisions with regard to appeals in relation to:

- a. the location, design and safety of parklet cafés;
- b. the location, design and safety of public parklets; or

c. refusal of an application due to a failure to meet pedestrian clearway requirements under the new bylaw.

11. City Council amend Chapter 27, Council Procedures, to remove appeals in relation to the location, design and safety of parklet cafés and public parklets; and/or pedestrian clearway requirements under the new bylaw from Community Council's authority to hear, review and make final decisions with regard to sidewalk 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, such as staff from the Economic Development and Culture division and/or City Planning division, in considering appeals in relation to the location, design and safety of parklet cafés and public parklets; or pedestrian clearway requirements.

b. The General Manager will review appeals of application refusals in relation to the location, design and safety of parklet cafés and public parklets; or pedestrian clearway requirements and may make the following decisions:

i. refuse the appeal and uphold the refusal of the application, or

ii. grant the appeal subject to any terms and conditions determined to be appropriate by the General Manager.

c. The General Manager will forward their decision on the appeal to the Executive Director and the Executive Director will:

i. Notify the applicant that their appeal has been refused and their application will be refused; or

ii. Where the appeal was granted and the only grounds for appeal were in relation to the location, design and safety of parklet cafés and public parklets; and/or pedestrian clearway requirements, issue the applicant a permit with the terms and conditions determined to be appropriate by the General Manager; or

iii. Where the appeal was granted and there are grounds for appeal other than those in relation to the location, design and safety of parklet cafés and public parklets; and/or pedestrian clearway requirements, forward the remainder of the appeal to Community Council for consideration on those other grounds for appeal.

*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 the location, design and safety of parklet cafés and public parklets; or pedestrian clearway requirements and the report include the:
  - i. applicant's grounds for the appeal;
  - ii. grounds for refusal of the application; and
  - iii. 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 refunded.
- e. Where an application has been considered and refused by Community Council, a further application for the same address or location shall not be accepted within two (2) years from the date of the prior application.

## **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 the fee for tree planting, if applicable; and
  - e. an applicant has obtained the applicable approvals from Toronto Building, Toronto Fire Services, City Planning Heritage Preservation Services, and other City divisions and agencies, as may be necessary in the opinion of the Executive Director.

## **Term and Permit Renewal**

15. City Council direct that:

- a. For permits requiring a business licence, the term and renewal date of the permit shall be harmonized to the term and anniversary of the date upon which the associated business licence was issued;
- b. For permits issued that do not require a business licence, the renewal date shall be the 12-month anniversary of the date of issuance of the permit; and
- c. A permit will not be renewed if the permit holder is in violation of this bylaw, has unpaid fees or fines under the bylaw, or cannot produce a certificate of insurance for the permit area.

## **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 bylaw 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 associated establishment 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, canopies, awnings or any other elements 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 permit 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 the permit area; or
  - iii. refuse to permit such person and such guide dog or service animal to remain into or upon the permit area.
- f. Obstruct, hinder or interfere with the free access of a Bylaw 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.
- 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 bylaw.

### **Permit Transfer**

- 18. City Council direct that to transfer a permit, the new owner or occupant must complete an application in the form prescribed by the Executive Director and pay in advance a transfer fee in the amount specified in Attachment 1 to the report from the Executive Director and General Manager dated February 20, 2019.
- 19. The responsibility lies with the existing permit holder to advise the owner or occupant that the permit area was legally installed and that a requirement to comply with the bylaw upon transfer may result in an amended or reduced permit area size.
- 20. City Council direct that public parklet permits are not transferable.
- 21. 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, visual screens, and accessibility of the permit area meet the requirements of the new bylaw;

- b. the permit area has not been altered in any way from the terms of the agreement with the City, other than to meet the pedestrian clearway, fencing and accessibility requirements of the new bylaw;
- c. Where extended hours of operation were approved by Community Council in relation to the previous operation of the sidewalk cafe, the closing hours proposed for the sidewalk cafe under the transferred permit are now consistent with the default requirements of the new bylaw, as if no alternative hours had been approved by Community Council;
- d. the Councillor for the ward in which the property is located has been notified of the application to transfer and has not objected within 14 days of being notified;
- e. the permit area and all elements in the permit area meet minimum separation distances to utilities or public infrastructure set out in Attachment 6 to the report of the General Manager and Executive Director dated February 20, 2019 that may be required for safety, operations and maintenance as determined by the General Manager; and
- f. the new owner or occupant has entered into a new agreement with the City in a form satisfactory to the Executive Director.

### **Amending a permit area**

22. City Council direct any permit holder seeking to amend the size of a permit area to satisfy the Permit Application Requirements of the new bylaw.

### **Pedestrian Clearway and Accessible Entrance Requirements**

23. City Council direct that all permit areas and permitted encroachments must have an adjacent pedestrian clearway width of:

- a. no less than 1.8 metres on a local road,
- b. no less than 2.1 metres for a collector or arterial road, and
- c. for streets in downtown Toronto in the areas outlined in Attachment 3 to the report from the Executive Director and General Manager dated February 20, 2019, despite the requirements in subsections a and b above, 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.

24. City Council direct that the pedestrian clearway must:

- a. run adjacent along the full length of the permit area and not have changes in direction of more than 20 degrees along a street block;

- b. for frontage permit areas, have its width be measured from the outermost edge of the permit area to the closer of the nearest obstruction or back of curb;
- c. for curbside permit areas, have its width be measured from the 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
- d. 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).

25. City Council direct that all permits issued under this bylaw be designed so as to permit 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 Sidewalk Cafés and Public Parklets**

#### *Separation from Residential Zone Requirements*

26. City Council direct that all sidewalk café permit areas provide for:

- a. A minimum separation distance of 30 metres from the closest part of the permit area to the nearest lot in a Residential Zone Category or Residential Apartment Zone Category, as set out in the applicable zoning bylaw.
- b. A minimum separation of one metre from the closest part of the permit area to 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 from the closest part of the permit area to the extended boundary of a lot in a Residential Zone Category or Residential Apartment Zone Category on the opposite side of the street across from the proposed permit area.

#### **Small Frontage Café**

27. City Council permit owners and occupiers of land adjoining the street to maintain small frontage cafés as permitted encroachments provided that the General Manager is satisfied that the encroachment conforms to the following criteria:

- 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 associated 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 new bylaw and maintain the pedestrian clearway unencumbered at all times;
- d. remove tables and chairs from the sidewalk at the time of business closing;
- e. not have any shade umbrellas, fencing, railing, partition or enclosure of any kind placed on the small frontage café area;
- f. meet minimum separation distances to utilities or public infrastructure set out in Attachment 6 to the report of the General Manager and Executive Director dated February 20, 2019 that may be required for safety, operations and maintenance as determined by the General Manager; and
- g. have cane detectable features for the visually-impaired in the form of a small planter with a detectable base at each end of the small frontage café, or street furniture with a detectable base.

### **Small Curbside Standing Café**

28. City Council permit owners and occupiers of land adjoining the street to maintain small curbside standing cafés as permitted encroachments on the boulevard provided that the General Manager is satisfied that the encroachment conforms to the following criteria:

- 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 upstream of the curb edge of an intersection or a pedestrian crossover;
- d. be no less than 9 metres downstream of an intersection or pedestrian crossover;
- e. be set back a minimum 0.5 metres from the curb face;
- 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 the new bylaw;
- j. have no seating, chairs, shade umbrellas, fencing, partition or enclosure permitted;

- k. be stable and sturdy, and removed from the sidewalk at the time of business closing;
- 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 on the sidewalk to pedestrians or patrons, such as having a base that extends out;
- o. be removed at any time for any reason as required by the City; and
- p. meet minimum separation distances to utilities or public infrastructure set out in Attachment 6 to the report of the General Manager and Executive Director dated February 20, 2019 that may be required for safety, operations and maintenance as determined by the General Manager

### **Curbside Café**

29. City Council permit the granting of a new category for sidewalk café permits for curbside cafés, which must have permit areas located:
- a. at the curbside in front of the applicant's establishment, unless the applicant has obtained permission for an extended curbside café;
  - 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 20 metres upstream of a transit stop and if there is no transit stop, no less than 15 metres upstream of the closest curb edge of an intersection or a pedestrian crossover;
  - d. no less than 9 metres downstream of the closest curb edge of an intersection or pedestrian crossover; and
  - e. be set back a minimum 0.5 metres from the curb face.
30. City Council direct that curbside cafés must have fencing or cane-detectable planters for the visually-impaired.
31. 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 Harmonized Bylaw and Fees for Sidewalk Cafes, Parklets, and Marketing Displays

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**

32. City Council permit the granting of permits for parklet cafés and public parklets which must have permit areas located:

- a. only within parking spaces where there are no restrictions or prohibitions for parking, standing or stopping in effect at any time of day;
- 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 upstream of the closest curb edge of a signalized intersection;
- d. No less than 18 metres upstream of the location of a transit stop and if there is no transit stop, no less than 15 metres upstream of the closest curb edge of an unsignalized intersection or pedestrian crossover;
- e. No less than 9 metres downstream of 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 downstream of a pedestrian crossover;
- g. No wider than 2.0 metres in depth; and
- h. With a minimum 0.5 metre set back from 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.

33. 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 able to safely bear the weight of people and elements on the platform, and is stable, safe, slip-resistant, and accessible between the level of the sidewalk and the parklet platform, and that complies with the standards for decks, platforms and ramps set out in the Accessibility for Ontarians with Disabilities Act and the Ontario Building Code;

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 at least 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.

34. City Council make the following changes to delegations of authority to enable parklet cafés and public parklets to be reviewed and processed efficiently:

a. Amend Chapter 937, Temporary Closing of Highways, to delegate to the General Manager the authority to temporarily close to vehicular traffic the curb lanes or any portion thereof on any highway (with the exception of those highways listed in section 937-4) for a period up to and including 180 consecutive days from April 15 of one year to November 15 of that same year for the purpose of permitting parklet cafes and public parklets when an applicant has been issued a permit under the new municipal code chapter established under recommendation 1;

- b. Exempt the General Manager, in carrying out her authority under Part a above, from Section 937-5 of Chapter 937, Temporary Closing of Highways, the requirement to notify the local Ward Councillor of the pending closure and the requirement to report on the proposed closure if so requested by the local Ward Councillor; and
- c. Amend Chapter 27, Council Procedures, to provide that the current delegation to Community Council to temporarily close local roads, collector roads, and minor arterial roads does not include closures delegated to the General Manager, in carrying out the authority under Part a above.
- d. City Council authorize the City Solicitor to introduce the necessary bills to give effect to the General Manager's authority under recommendation 34(a) and make any necessary clarifications, refinements, minor modifications, technical amendments, or by-law amendments as may be identified by the City Solicitor in order to give effect to the implementation of parklet cafes and public parklets.

### **Common Requirements for Curbside Cafés & Parklets**

35. City Council direct that permit areas for 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 1.8 metres 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 outdoor food preparation;
- g. not have any enclosures, structures, or visual screens;
- h. not be adjacent to, or in a location that interferes with, transit stop zones, taxi zones and/or loading zones; and
- i. meet minimum separation distances to utilities or public infrastructure set out in Attachment 6 to the report from the General Manager and Executive Director dated February 20, 2019 that may be required for safety, operations and maintenance as determined by the General Manager.

## Requirements for All Sidewalk Café Elements

### *Minimum Separation Distances*

36. City Council direct that all elements in a sidewalk café permit area, including fixed and portable sidewalk café elements, must meet the minimum separation distances set out in Attachment 6 to the report from the General Manager and Executive Director dated February 20, 2019.

### *Visual Screens*

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

- a. have a maximum height of 1.8 metres; and
- b. not be installed in a permit area if the Executive Director or General Manager 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 or sightlines for transit safety and operations.

### *Fences, Frontage Cafés and/or Curbside cafés*

38. City Council direct that a permit holder must provide fencing in accordance with the requirements in the bylaw if the proposed permit area is located on an arterial or collector road, and is a frontage and/or curbside café.

39. City Council direct that fencing is not permitted on any small frontage cafés and small curbside standing café; and that frontage cafés on local roads are not required to provide a fence but must have cane-detectable planters or elements at each end of the permit area, not the entire perimeter of the permit area.

40. City Council direct that any fencing installed in a frontage and/or curbside permit area on an arterial or collector road must be:

- a. easily removable and located on the perimeter of the permit area;
- b. at least 1.2 metres from any fire hydrant;
- c. designed so that pumper or fire department (Siamese) connections on adjoining buildings are 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;

i. not penetrating the surface of the sidewalk with footings other than bolt attachments; and

j. not be attached to properties on the Heritage Register, street trees, street furniture, or utilities/services.

### *Surface Grading and Paving*

41. City Council direct that a permit holder shall pave and maintain any portion of the sidewalk or boulevard to be used for the purpose of the sidewalk café or marketing display to the satisfaction of the General Manager where the surface of the sidewalk is deemed by the General Manager to require surface grading and/or paving, such as the conversion of sod or grassy boulevards to concrete, or an uneven surface to a level surface.

### **Retractable Cafés and Displays**

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

### **Decks**

43. City Council direct that:

a. Decks are never to be installed without the permit holder first obtaining permission for the installation of the deck from the Executive Director and the Chief Building Official.

b. Decks are only permitted on frontage cafés on a local road where the sidewalks exceed a slope of 5% or special accommodation is being made to protect mature trees.

44. City Council direct that decks on frontage café permit areas 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 to achieve a level area;

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 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 utilities such as hydro vaults, chambers, maintenance holes, etc., except with prior written approval given by the relevant utility or service;

g. not impede sidewalk or roadway drainage;

h. be removed by a permit holder to the satisfaction of the Executive Director upon 30 days' notice at the expense of the permit holder if the Executive Director provides notice to the permit holder to do so.

### **Common Requirements for Sidewalk Cafes and Marketing Displays**

45. City Council direct the following conditions to apply to sidewalk cafes and marketing displays at all times:

a. Permit holders shall not use the permit area in whole or in part for any purpose other than the operation of a sidewalk café or marketing display, as applicable, in accordance with this bylaw.

b. The permit holder shall not use the permit area for storage of any café elements, in the case of a sidewalk café permit.

### **Seasonal Operation**

46. City Council direct frontage sidewalk cafes and marketing displays be permitted on a sidewalk year-round when the following additional conditions are met:

- a. The café or marketing display is located against the building wall of the associated establishment;
- b. The minimum pedestrian clearway requirement is met;
- c. The permit holder provides snow and ice clearing and removal for the pedestrian clearway adjacent to the permit area in accordance with applicable City standards;
- d. The permit holder applies salt and sand to the pedestrian clearway adjacent to the permit area in accordance with applicable City standards; and
- e. The permit holder does not use the permit area for the storage of snow.

47. City Council direct that all sidewalk café and marketing display permit holders with permit areas not located against the building wall of an associated establishment remove all elements including fencing from the permit area, at the sole expense of the permit holder, from November 15 to April 14, inclusive.

### **Operational Requirements for Sidewalk Cafes and Public Parklets**

#### *Hours of Operation*

48. 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, for any sidewalk café, in accordance with the alternative hours of operation imposed by Community Council for the permit area.

49. City Council delegate authority to Community Councils for final decisions to impose temporary or permanent alternative operating hours on sidewalk café permit holders, except for special events, where City Council will retain the ability to set alternative hours under subsection 62.1(1) of the *Liquor Licence Act*.

#### *Amplified Sound*

50. 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. Doors and windows of an establishment associated with a permit area must be closed if the establishment has interior music or amplified sound.

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

### *Radiant Heater*

52. City Council direct that radiant heaters only be permitted on frontage cafés, and only if the permit holder obtains prior written approval from the Executive Director and complies with the following requirements:

- a. An application site plan must be submitted to the Executive Director showing 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 site plan approved by the Executive Director;
  - 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.

### *Portable Propane Heater*

53. City Council direct that propane heaters only be permitted on frontage cafés, parklet cafés and public parklets and only if the permit holder obtains prior written approval from the Executive Director, or the General Manager in the case of public parklets.

54. City Council direct that an application site plan be submitted to the Executive Director, or the General Manager in the case of parklets, and show the location and specifications of the proposed heating unit.

55. 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 site plan approved by the Executive Director.
- 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.

## *Barbecue*

56. City Council direct that barbecues only be permitted on frontage cafés on local roads and only if the permit holder obtains prior written approval from the Executive Director and complies with the following requirements:

- a. An application site plan must be submitted to the Executive Director and show the location and specifications of the proposed barbecue.
- b. A permit holder that operates a barbecue must install the unit in accordance with the location and specifications of the site plan approved by the Executive Director.
- c. A permit holder that operates a barbecue must maintain a clearance of at least 1.2 metres between any barbecue 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.

57. 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.

## **Extended Marketing Display or Sidewalk Café**

58. City Council allow permit areas to extend across the front of an adjacent establishment, or across the curbside area or parking area of the adjacent establishment in the case of a parklet café, provided the permit holder obtains consent for an extended frontage from the Executive Director in accordance with the bylaw.

59. City Council direct that applicants proposing an extended frontage, as part of their applications, provide a letter of consent from the adjacent property owner across whose area the frontage will extend to the satisfaction of the Executive Director.

60. City Council direct that any adjacent property owner that wants to revoke their consent for an extended frontage must provide written notice to the Executive Director and the permit holder at least 45 days in advance of the permit renewal, and the revocation of the extended portion of the permit area will occur at the time of permit renewal.

## **Marketing Display Requirements**

61. 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 one metre from the closest part of the permit area to any entrance to a dwelling unit that may be located on a local road within an adjacent building or within the building containing the ground floor premises adjoining the permit area;
- c. not erect any enclosures around the permit area;
- d. limit the placement and display of materials and merchandise to a height that is easily accessible for patrons standing on the sidewalk surface;
- e. not place or display or allow the placement or display of any materials outside of the permit area;
- f. not play or emit amplified sound or live music in any permit area;
- g. 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
- h. ensure that any screens or fencing in the permit area is temporary in nature, of suitable and uniform materials, kept in good repair, in a safe condition, and free from hazards including trip hazards, and provides accessibility and detection for the visually-impaired.
- i. meet any minimum separation distances to utilities or public infrastructure set out in Attachment 6 to the report from the General Manager and the Executive Director dated February 20, 2019 that may be required for safety, operations and maintenance as determined by the General Manager.

### *Small Marketing Display*

62. City Council permit owners and occupiers of land adjoining the street to maintain small marketing displays as permitted encroachments on the sidewalk provided that the General Manager is satisfied that the encroachment conforms to the following criteria:

- a. be located against the building wall of the associated establishment, face the street, and not extend across a neighbouring frontage;
- b. extend no further than 0.8m 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 associated establishment frontage;
- c. the pedestrian clearway adjacent to the small marketing display must meet the minimum pedestrian clearway standards set out in the bylaw 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;
- e. shade umbrellas, fencing, railings, partitions or enclosures of any kind are not permitted on a small marketing display area; and
- f. meet any minimum separation distances to utilities or public infrastructure set out in Attachment 6 to the report from the General Manager and the Executive Director dated February 20, 2019 that may be required for safety, operations and maintenance as determined by the General Manager.

### **Requirements for Café and Marketing Awnings**

63. 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 in accordance with the requirements of the new bylaw.

64. City Council direct that a permit holder seeking to erect an awning or similar temporary installation over the permit area may not apply for a canopy or awning under section 743-14 of Chapter 743, Streets and Sidewalks, Use of, but instead must receive prior approval from the Executive Director after supplying 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 City Planning, 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.

65. 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.

66. City Council direct that the permit holder must pay in advance of erecting any awning or similar temporary installation the fee specified in Chapter 441, Fees.

### **Requirements for Sidewalk Café and Marketing Lighting**

67. 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, if not meeting conditions for year-round operation;
- 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**

68. 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 sweeping, clearing and removing all debris and cigarette butts;
- b. keep any objects and furnishings associated with the permit in good and proper repair and condition, including the immediate removal of all graffiti; and
- c. pay all utility, service, infrastructure or other rates, fees and charges that are incurred due to the operation of the permit.

### **Temporary A-frame Signs**

69. City Council authorize the City Solicitor to amend Chapter 693, Signs, and any other necessary bylaws to prohibit any location where a small frontage café or small marketing display has been installed, and where the building frontage is 6-metres or less, to hold a Temporary A-frame sign permit; and/or erect a Temporary A-frame sign on the sidewalk.

## **Reduction or Relocation of Permit Area**

70. City Council authorize the Executive Director, or General Manager in the case of public parklets, 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, to the satisfaction of the Executive Director or General Manager.

71. City Council authorize the Executive Director, or General Manager in the case of public parklets, to amend the size and/or location of all permit areas along a street, if the street is subject to substantial reconstruction and / or redesign, in order to satisfy the pedestrian clearway requirements of the new bylaw following reconstruction.

72. 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 term.

## **Temporary Removal of Installations for Civic Works or Emergencies**

73. 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 and/or civic works.

74. City Council direct that any installation can be removed within the permit area without notice in the case of an emergency.

75. City Council direct that, where a permit is cancelled due to an emergency, planned street improvement or civic works, the Executive Director shall refund the permit holder the pro-rated portion of the annual permit fee applicable for each remaining day in the permit year.

## **Enforcement**

### *Inspections, Orders and Remedial Actions*

76. 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 bylaw or any former bylaw.

### *Offences and Penalties*

77. City Council direct that anyone who contravenes any provision of this bylaw or an order issued under this bylaw is guilty of an offence and upon conviction is liable to a fine of no more than \$100,000.

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

79. City Council direct that anyone who contravenes any provision of the bylaw 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 bylaw.

80. City Council direct that the owner of the adjoining property shall ensure that no sidewalk café, public parklet, or marketing display contravenes a provision of the bylaw or any former bylaw.

*Permit Cancellation by Community Council*

81. City Council delegate authority to Community Councils to revoke a permit and cancel permission for the use of any portion of the sidewalk or street at any time and for any reason.

82. Where Community Council is considering revocation of a permit, 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.

83. A permit holder is not eligible to re-apply for a sidewalk café or marketing permit for one year following revocation by Community Council.

*Permit Cancellation by Executive Director and General Manager*

84. City Council delegate authority to the Executive Director or General Manager in the case of public parklets, to revoke 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.

85. City Council direct the Executive Director to provide the permit holder a written notice of the permit revocation, describing the information that the City has to justify the cancellation.

*Temporary Seasonal Permit Suspension by Executive Director and General Manager:  
No report required to Community Council*

86. City Council delegate authority to the Executive Director to immediately suspend permission for the use of the sidewalk or street, without reporting to Community Council, if they have reason to believe that the permit holder has not complied with the Common Requirements for Sidewalk Cafes and Marketing Displays outlined in recommendation 45, 46, and 47 of this report. The suspension shall last until the next April 14.

87. City Council direct the Executive Director to provide the permit holder with a written notice of the temporary seasonal permit suspension, describing the information that the City has to justify the temporary suspension.

88. City Council direct that no sidewalk café or marketing activities or elements, including fencing, be allowed in the permit area during the temporary seasonal permit suspension.

*Permit Suspension by Executive Director and General Manager: report required to  
Community Council*

89. City Council authorize the Executive Director or General Manager, in the case of public parklets, to immediately suspend permission for the use of the sidewalk or street for a period of 30 days or until such time as the item can be considered by Community Council if:

- a. in the opinion of the Executive Director or the General Manager, a reduction in permit area has not terminated a risk to public health and safety;
- b. the provisions of the permit agreement are being violated by the permit holder;
- c. the permit holder is conducting activity in such a way that would infringe on the rights of other members of the public; or
- d. the permit holder has violated any law or bylaw.

*Actions following a permit suspension, excluding temporary seasonal suspension*

90. City Council direct that following the issuance of a permit suspension under recommendation 89, the Executive Director shall forward a report to Community Council with the following:

- a. a summary of the reason for the suspension;
- b. the recommendation for a review of the permit conditions, including but not limited to operating hours, or revocation of the permit.

91. City Council direct the Executive Director to provide the permit holder with a written notice of the permit suspension, describing the information that the City has to justify the suspension.

92. 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 speak to the matter to the appropriate Community Council.

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

94. City Council authorize the Executive Director to recover the permit notice displayed on the street door or in the lower front window of the adjoining business during the period of time when the permit has been suspended, or permanently in the case of a cancellation; and direct that no person shall display a permit that has been cancelled or is otherwise invalid.

### **Responsibilities of Permit Holder**

95. City Council direct that, within 30 days after receiving written notice about a permit cancellation, reduction, relocation, or temporary removal due to planned street improvements, civic works, or permit suspension, 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.

96. City Council direct that the permit holder cannot make any claim against the City on account of the removal.

97. 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.

### **Seizure of Goods**

98. City Council authorize the Executive Director or General Manager to move, take, or store a permit holder's sales goods or café elements and any other things placed or installed in the permit area in accordance with the Repair and Storage Liens Act where a permit holder is in contravention of the new bylaw.

99. City Council authorize the Executive Director and General Manager to charge the costs of the removal and storage to the permit holder and/or owner and/or recover those costs by adding them to the tax roll and collecting them in the same manner as property taxes.

100. 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.

101. 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**

102. 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 bylaw comes into force, except for the following requirements whereby existing permit holders must comply with this bylaw immediately upon its coming into force:

a. permit renewal; permit requirements; permit transfer; amending a permit area; common requirements for sidewalk cafes and marketing displays; seasonal operation excluding the minimum pedestrian clearway; radiant heater; portable propane heater; height limitation on the display of marketing materials and merchandise; reduction or relocation of permit area; temporary removal of installations for civic works or emergencies; enforcement; responsibilities of permit holder; seizure of goods; and fees.

103. City Council direct that any complete application for a sidewalk café or marketing display received before September 1, 2019 will be processed under the applicable bylaw as it existed prior September 1, 2019 and appeals made in relation to that application will also be processed under the former bylaw.

### **Fees**

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

105. City Council direct the Executive Director to phase in any permit fee increases for existing sidewalk café and marketing display permit holders equally over a ten (10) year period starting on September 1, 2019.

106. City Council direct the Executive Director, in consultation with the Chief Financial Officer, to bring forward as part of the annual budget process, updated permit fees for sidewalk cafes and marketing displays that reflect the annual increase that will result from recommendation 105.

107. 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 September 1, 2019.

108. City Council direct the Executive Director to cease applying the phase in of any remaining permit fee increases arising through recommendation 105, for any existing Harmonized Bylaw and Fees for Sidewalk Cafes, Parklets, and Marketing Displays



permit holder convicted under this bylaw or a former bylaw, and instead apply the permit fee that would otherwise apply to a new permit holder, to take effect at the next renewal date for that permit.

109. City Council direct new sidewalk café applicants to pay a one-time \$650 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.

110. 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.

111. City Council direct that the non-refundable fee of \$650 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.

112. City Council direct that small frontage cafés, small curbside standing cafés, and small marketing displays shall not be required to submit an application or pay any permit or encroachment fee, but shall, at the expense of the owner or occupant maintaining the encroachment adjacent to their property, pursuant to Municipal Code Chapter 743, Streets and Sidewalks, Use Of, and to the satisfaction of the General Manager, maintain all café or marketing elements in a state of good repair.

## **Implementation**

113. City Council increase the Approved 2019 Operating Budget for Transportation Services by \$228,333 gross and \$0 net, fully recovered from Municipal Licensing & Standards and the Public Realm Reserve Fund, for addressing pedestrian clearway issues on main streets where pedestrian volumes are highest and the hiring of three (3) new temporary positions for enhanced application review, processing and business support to new / existing permit-holders and delivery of new design support services. These temporary positions will be considered for conversion to permanent staff as part of the 2020 budget process.

114. City Council increase the Approved 2019 Operating Budget for Municipal Licensing and Standards by \$155,333 gross and \$0 net, for program restructuring to fund the hiring of one (1) new temporary position in ML&S for the intake and processing of applications and issuance of permits and including the transfer of funds to Transportation Services to deliver design review and support to new / existing permit-Harmonized Bylaw and Fees for Sidewalk Cafes, Parklets, and Marketing Displays

holders. The temporary position will be considered for conversion to permanent staff as part of the 2020 budget process.

115. City Council direct that the new municipal code chapter and any related or necessary bylaw amendments come into effect on September 1, 2019.

116. City Council authorize the City Solicitor to make stylistic and technical changes in the drafting of the bylaw and any related and necessary amendments to existing bylaws including but not limited to Chapter 441, Fees; Chapter 743 Streets and Sidewalks; and Chapter 693 Signs, as a result of the adoption of the new bylaw.

117. City Council authorize the City Solicitor to make and submit any amendments to repeal the former bylaws at a future date.

## FINANCIAL IMPACT

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In the current program, Municipal Licensing and Standards (MLS) is responsible for the entire application review and permit issuance process. This report outlines a proposed new program structure, which will require a shift in the roles and responsibilities needed to administer, regulate and enforce the enhanced program and its implementation and will include Transportation Services resources.

This change will result in an overall net increase of three temporary and one permanent positions to the MLS and Transportation Services 2019 approved complement (Table 1). These new positions are required to enhance program compliance and oversight; administration and customer service; enhanced business support to new and existing permit-holders; delivery of new design support services; and the modification/relocation of street elements at permit locations to address pedestrian movement and accessibility in the permit application process and implementation plan.

**Table 1: Additional Complement for the Proposed Program Structure**

Division	Positions	Description
	Temporary	
MLS	1	Support Assistant A
Transportation Services	3	Project Manager, Project Lead and Engineer Technologist Technician 1
Total	4	

The current annual program cost for the intake and review of applications, as well as the issuance of permits, is \$0.813 million. The new program costs are anticipated to be \$1.107 million:

- The total program costs include salaries and benefits, materials and equipment, and indirect (overhead) costs.

- They also include recommended discounts for marketing displays and sidewalk cafes in Neighbourhood Improvement Areas, and in Kensington Market where these uses are formally recognized heritage attributes.

Due to the timing of the implementation the proposed changes will result in zero net expenditure impact in 2019. Table 2 below illustrates the annual impact of the current program, expenditures and revenues.

**Table 2: Annual Financial Impact of Current and Proposed Program (2020)**

(\$000's)	Current Program Cost	Proposed Program Cost	Change Proposed vs Current
Total Program Cost* (a)	\$ 812.5	\$ 1,107.3	\$ 294.8
Total Revenue (b)	\$ 737.9	\$ 1,032.7	\$ 294.8
Net Program Cost (d = a-b)	\$ 74.6	\$ 74.6	\$ -

\*Exclusive of one-time costs to be funded through Public Realm reserve

Table 3 below shows the projected impact of the proposed program and includes both MLS and Transportation Services. The proposed net program costs will result in a net variance of \$0.074 million in the first year of implementation (fiscal year 2020) because of the phased-in permit fee increase. It is anticipated that all program costs will be fully recovered by fiscal year 2023.

**Table 3: 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)	\$ 725.3	\$ 382.0	\$ 1,107.3
Revenue/Reserve Funds	Total Fee Revenue (b)	\$ 1,032.7	\$ -	\$ 1,032.7
	Recovery from MLS for 3 staff (c)	\$ (382.0)	\$ 382.0	\$ -
Net Expenditures (e= a-b-c)		\$ 74.6	\$ -	\$ 74.6

Furthermore, one-time non-salary costs will be incurred to assist existing permit holders and permit transferees with pedestrian clearway improvements to comply with the harmonized bylaw. This one-time funding (Table 4) will be in the amount of \$450,000

from the Public Realm Reserve Fund (XR1410) to support the contract services portion of the program (relocating bicycle rings, adding walkable tree grates, etc.).

**Table 4: Reserve Funding - Public Realm**

Year	Transportation Services	Reserve Fund Account	Amount (\$000's)	Description
2019	Public Realm Reserve Fund	XR1410	\$ 105.0	One-time
2020	Public Realm Reserve Fund	XR1410	\$ 240.0	One-time
2021	Public Realm Reserve Fund	XR1410	\$ 105.0	One-time
Overall total for the 3-year period from 2019 to 2021 for funds to support grandparented businesses and improve pedestrian clearways			\$ 450.0	Total Overall

This amount covers working with approximately 150 sidewalk café locations over the period of 2019 - 2021 that have pedestrian clearway issues on main streets where pedestrian volumes are highest. This funding will improve accessibility at these locations through design services, purchase of street elements/materials, and/or the cost of relocation or modification of street elements. A report back is proposed in three years to report on progress on improving pedestrian clearways to support sidewalk café and marketing display permit-holders.

*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.

All costs and revenue assumptions are based on current volume estimates associated with the proposed program structure. Any further adjustments to expenditures and/or revenues will be reviewed and considered as part of the 2020 Budget Process.

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

**EQUITY IMPACT**

Standards and processes implemented through the harmonized bylaw for sidewalk cafes and marketing displays will support the mobility of pedestrians of all ages and abilities on public sidewalks, in the vicinity of these uses, in a safe and unimpeded

manner. Discounted fees are recommended for locations within Neighbourhood Improvement Areas to promote economic opportunity and social development in areas of the city that are below the average equity benchmark.

## **DECISION HISTORY**

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On December 4, 2017, the Joint Licensing and Standards and Public Works and Infrastructure Committees referred the item [JC1.1 Harmonized Bylaw and Fees for Sidewalk Cafés, Parklets and Marketing Displays](#) to the Executive Director, Municipal Licensing and Standards, and the General Manager, Transportation Services, for further consideration and report back on matters such the impact of proposed fees, fee zones, and pedestrian clearway requirements on existing businesses.

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 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**

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Sidewalk cafés and marketing displays are important to civic life and private enterprise in Toronto. The impact of these uses on the city is substantial: opportunities for outdoor dining and socializing provided by sidewalk cafés are well understood to enhance liveability, social cohesion, neighbourhood safety and amenity. However, the bylaws that govern these uses have not been updated since amalgamation. This patchwork of regulations result in inconsistent standards that do not always reflect current accessibility requirements. Nor do they address small business support consistent with Toronto's current main street business climate, changes to the public realm, or demands for improved enforcement. Staff have conducted research and public consultations to develop regulations that support small business and Toronto's rich café

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

and marketing culture, while also helping to create universally accessible sidewalks and streets.

## **Project Scope**

The project proposes harmonized and updated regulations for sidewalk cafes and marketing displays that are located on the public right-of-way. Cafes and marketing displays located on private property do not fall under regulations of the proposed harmonized Bylaw and are not within the scope of this review. When these uses are located on private property, they must comply with the applicable Zoning Bylaw. This includes locations where a building is setback from the property line to provide a more generous sidewalk zone, as well as in other commercial spaces such as strip plazas.

Issues related to accessibility and pedestrian movement are within the scope of the proposed Bylaw insofar as they relate directly to sidewalk café and marketing uses on the public sidewalk. Other issues that impact accessibility and pedestrian movement – such as the alignment of curb cuts, or vehicles parked illegally on the sidewalk – are regulated by other Toronto Municipal Code chapters and are not within the scope of this review.

## **Stakeholder Consultation**

### Summary of Consultations

The recommendations within this report build on extensive consultations with stakeholders. A summary of these consultations follows.

- 2014 to 2016

Staff conducted 12 public meetings and 14 stakeholder meetings with residents and businesses. Feedback from 502 respondents was collected through an online survey.

- 2017

A further 390 business owners and residents from across the city were engaged through 2 public meetings, 5 meetings with stakeholders (Business Improvement Areas, accessibility advocates, and design professionals) and an online feedback form. Additional information about these consultations is provided in Attachment 7 and 8.

- 2019

The focus of more recent stakeholder consultations were on the revised approach to grand-parenting and year-round cafes; and on a further reduction of administrative fees. Consultations were held with industry stakeholders (Ontario Restaurants, Hotel and Motel Association (ORHMA); Toronto Association of Business Improvement Areas (TABIA); and specific BIA's including Entertainment District BIA and Danforth Mosaic BIA); accessibility and pedestrian advocates; and with the general public.

## **Summary of Issues**

There was general support from stakeholders about the 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.

The local business community is concerned about the challenges of conducting business in today's climate of increasing hydro rates and increasing rents. Specific concerns related to this review included the proposed increase in permit fees and administrative fees; and the impact of proposed Bylaw amendments on their operations.

Residents and accessibility advocates expressed concerns about the need for accessible sidewalks for pedestrians of all ages and abilities; the need for enforcement; and the need for community engagement in the application process. These advocates also expressed significant concerns over year-round café proposals given the reduced sidewalk space for walking in winter conditions.

Attachment 8 lists the key comments gathered from the different stakeholder groups in 2017. Further detail about stakeholder concerns is outlined in related sections of the report below.

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

Based on extensive research and consultation, 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 position, including the introduction of new fines and the authority to cancel or suspend permits; and
- 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 around sidewalk cafes and displays, 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.

## 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 streets have different characteristics, the harmonized bylaw adapts the pedestrian clearway requirements to different road classes as summarized in Table 5.

**Table 5: Summary of recommended minimum widths required for pedestrian clearways by road classification**

Type of Street	Pedestrian Clearway standard
Local road	no less than 1.8 metres
Collector or arterial road	no less than 2.1 metres
Downtown Toronto - identified streets	no less than 2.5m where the sidewalk is 5 metres or more from the face of the building to the face of curb

## Additional space requirements for Downtown streets with wider sidewalks

A pedestrian clearway greater than 2.1 metres is recommended for some Downtown street segments, where higher pedestrian volumes need to be accommodated. For Downtown streets listed in Attachment 3, 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 (such as in the case of a Community Council-approved plan like a precinct plan or master plan). The building face is considered the face of a building's exterior wall at ground level. A wider pedestrian clearway will help maintain the function and character of these streets.

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.

In making this recommendation, staff have evaluated the impact of an increased pedestrian clearway on current permit holders. Impacts would be manageable as fifteen (15) of the identified downtown streets do not presently have any sidewalk café or marketing permits along them. Only 4 of the identified streets have marketing displays (total of 27 permits). Only 7 of the identified streets have 5 or more sidewalk café permits along them. This information is summarized in Attachment 4.

## 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 Harmonized Bylaw and Fees for Sidewalk Cafes, Parklets, and Marketing Displays



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 1.5 metre width for newly constructed or redeveloped exterior paths of travel, it is important to note that this is a minimum and municipalities in Ontario have adopted their own standards to reflect their local contexts.

Staff recommend pedestrian clearway standards that reflect Toronto's pedestrian volumes and street contexts due to the fact that Toronto has a significantly higher population and higher pedestrian volumes. The AODA applies to 444 municipalities with a median population of 7,081 (2016), while 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.

### **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 a hydro pole or parked bicycle attached to a bike ring, or b) the back of the curb, whichever is closer for frontage cafés.

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 5 provides further information and illustrations on how the pedestrian clearway width and deviations will be measured. Attachment 6 outlines the minimum separation distance required between all sidewalk cafes and marketing displays, from street furniture and utilities. These separation distances have been developed in consultation with other city

divisions, Fire Services, the Toronto Public Utilities Coordination Committee, and the Toronto Transit Commission.

## Accessibility Requirements

The harmonized bylaw requires all new applications for sidewalk cafés, marketing displays and public parklets to show that their designs are 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.

## New café types and rules for marketing displays

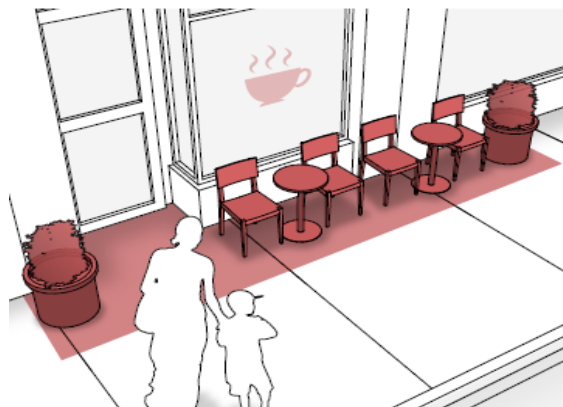
The harmonized bylaw expands the opportunities available to businesses through the introduction of twelve (12) sidewalk café types and three new marketing types. By permitting new design configurations, the harmonized bylaw will help existing and new businesses find creative ways to generate business on public sidewalks while also meeting requirements for accessibility and safety on public sidewalks. Residents will benefit from increased options to enhance the café experience and the vibrancy and accessibility of Toronto's streets.

### New permitted encroachments: small frontage café and small curbside standing café

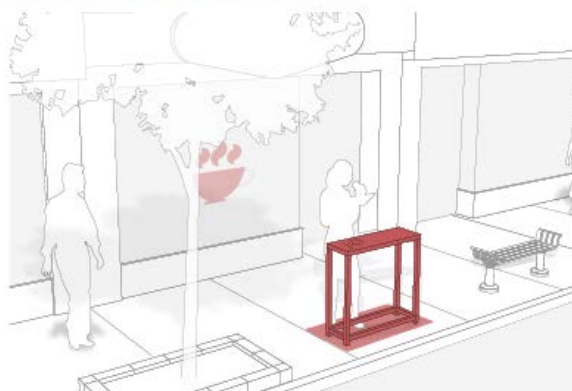
It is common for businesses to place small items in front of their establishment that do not take up much sidewalk space, such as a small table and chair for customers. This report recommends that these uses be allowed as a permitted encroachment without requiring an application or annual permit fee.

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 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 (including patrons) within the furnishing and planting zone. If there is insufficient

space to provide the minimum pedestrian clearway, these encroachments are not permitted.

### **New Options for Sidewalk Cafés**

New café options are proposed 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 café, parklet café and various combinations of these configurations.

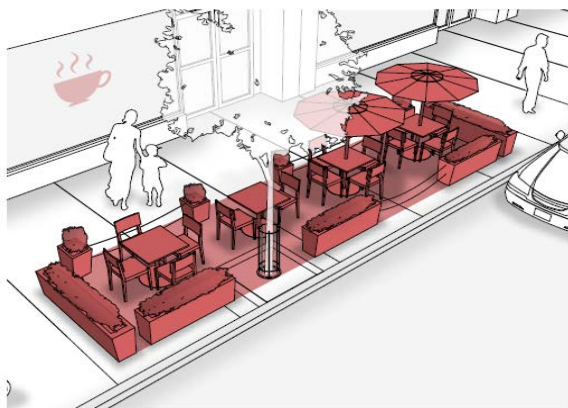
- Curbside cafés occupy the furnishing and planting zones.
- A frontage and curbside split café creates two separate café areas that are bisected by a sufficiently wide, straight and continuous pedestrian clearway.
- A parklet café uses a permanent parking space in the curb lane or parking lane of a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

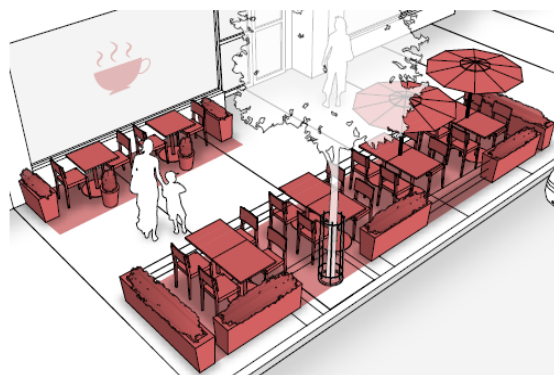
There has been a growing trend in recent years for local businesses in Toronto to seek approval for these configurations. Because they are currently not contemplated under the existing bylaws, authority must be granted by Community Council or by City Council in the case of Parklet Cafes. In 2018, City Council considered 5 reports related to parklet cafes. Including permission for these configurations within the harmonized bylaw recognizes that they are becoming increasingly popular, and will introduce a more efficient process for review and authorization.

Figure 2: New café options in the harmonized bylaw

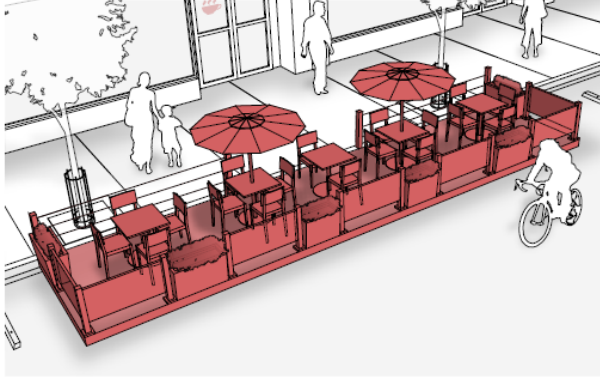
**CURBSIDE CAFÉ**



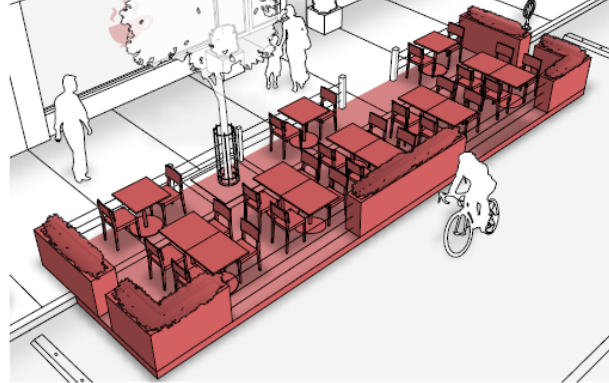
**FRONTAGE AND CURBSIDE SPLIT CAFÉ**



## 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 and Council.

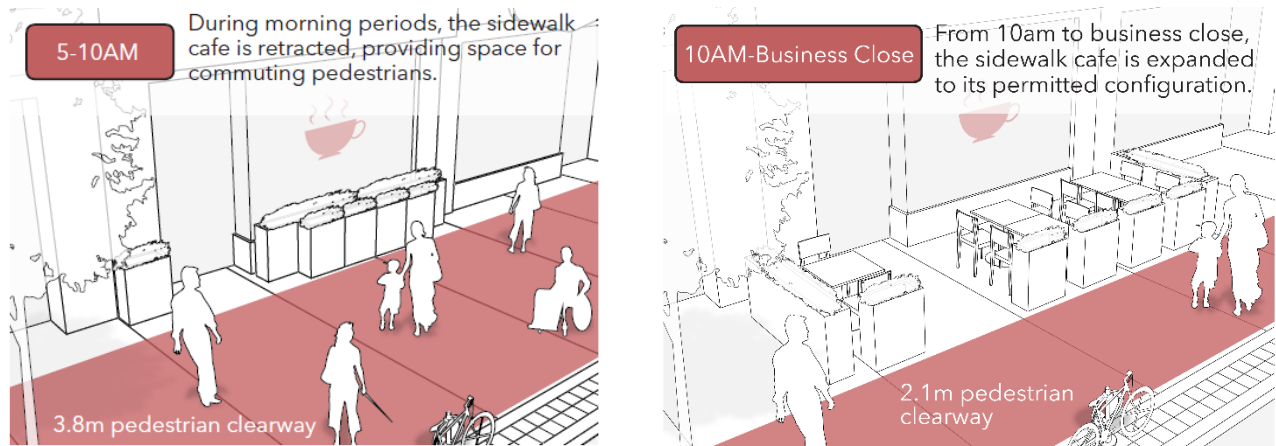
The new bylaw will permit public parklets in the right-of-way under certain conditions. A public parklet must be sponsored by an entity such as local Business Improvement Areas, business associations or community groups that will be responsible for its design, installation and maintenance. In addition, 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.

### 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 the morning commute period when there are high pedestrian volumes.

This new provision allows the coordination of sidewalk cafés on a street block to retract their café elements during the morning period, when people are walking to take transit, get to work or school. This option is not contemplated during afternoon and evening commuting time when the cafés are likely to be in use.

Figure 3: Example of retractable café option



### Extended Frontages for Sidewalk Cafés and Marketing Displays

To provide greater flexibility for businesses, staff recommend café or marketing display operators be allowed to extend these uses 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. Extended frontages could serve to minimize any potential reduction of permit area.

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 with written notice to the Executive Director at least 45 days in advance of the permit renewal, permission for the extended use would be cancelled at the expiry date of the permit.

### Year-Round Cafés and Marketing Displays

The December 2017 Joint Licensing and Standards and Public Works and Infrastructure Committees directed staff to report back on options for moving forward with year-round café enclosure permits. Since that time, staff have undertaken additional consultation with stakeholders and members of the public. The year-round enclosure configuration is no longer included as part of recommendations for the harmonized Bylaw for the following reasons:

- There was minimal interest for the proposal amongst industry stakeholders. At the January 2019 TABIA inter-departmental meeting, members did not express any concerns about this option not being included in the harmonized bylaw
- Local residents raised concerns about the structures becoming a permanent feature on the street, introducing year-round nuisance issues (noise, smoking etc.) into residential areas; and
- The architectural and design community raised concerns about turning public space over to more permanent private uses.

Staff have instead developed a new year-round option as an alternative to the year-round enclosed café configuration. The new option allows for all sidewalk cafés and marketing displays located against the building frontage to operate year-round provided that the following conditions are met:

- The sidewalk café or marketing display is along the building frontage, against the building wall;
- The minimum pedestrian clearway is provided\*
- The permit area is not used for the seasonal storage of café elements, in the case of a sidewalk cafe
- The permit holder clears and removes the sidewalk of snow, and does not use the permit area for snow storage
- The permit holder applies salt and sand to the sidewalk, and
- The permit area is in regular daily use as a sidewalk café or marketing display.

Note\*: Pedestrian clearway minimums are required for new applicants; existing permit-holders are not required to meet minimum pedestrian clearways until the compliance thresholds take place, i.e., permit transfer, street redesign/reconstruction, or the permit area is amended.

No additional cost is proposed for this configuration, however the conditions outlined above are intended to provide clear expectations in terms of animation and sidewalk maintenance to the businesses that choose to operate over winter. Accompanying this new option, additional enforcement regulations are recommended that provide the Executive Director with the authority to temporarily suspend a permit for the remainder of the winter season (until April 14) if the permit holder does not comply with the conditions noted above. During the period of temporary seasonal permit suspension, all elements including fencing must be removed from the permit area.

This concept embraces Toronto's "Winter City" climate, providing residents with increased options for social interaction in the colder season, and businesses with an additional opportunity to trade and animate the street in winter. Other cities that provide similar options include Vancouver, Ottawa, and Chicago. The year-round option was developed in consultation with Transportation Services (Road Operations); Corporate Finance (Insurance and Risk Management); and Economic Development and Culture division.

Staff presented this option as part of consultations held in the winter of 2019. While it was supported by businesses, the majority of residents and accessibility advocates were not in favour. They felt sidewalk cafes would be rarely used in winter, and that allowing fences to remain in place year-round would have a negative impact on the walkability of sidewalks during the winter.

## **Marketing Display Options**

### **Small Marketing Display**

Similar to the recommendation for Small Frontage Cafes, a new Small Marketing Display encroachment is recommended that will allow operators to place a small Harmonized Bylaw and Fees for Sidewalk Cafes, Parklets, and Marketing Displays

amount of goods for sale on the sidewalk without requiring a permit. The permitted encroachment is limited to an extension of 0.8m out from the building wall and can have a maximum width of 5.5 metres across the building frontage. If there is insufficient space to provide the minimum pedestrian clearway, the encroachment is not permitted.

### **Flexible design 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 material used 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 businesses to erect a "temporary marketing enclosure" under certain circumstances. The bylaw allows 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. Together with the recommendation not to include a temporary year-round enclosed configuration, this ensures the harmonized bylaw has a consistent approach for permanent structures on the public right-of-way.

### **New regulations to de-clutter sidewalks**

A new regulation for the display of merchandise is recommended that will limit the display of goods on the public right-of-way to a height that is within easy reach of a customer from standing height. The intent of this recommendation is to ensure that items for sale are displayed in a safe and accessible manner, and to minimize clutter. New requirements for fencing of marketing displays are also recommended, requiring them to be temporary in nature, safe, accessible and detectable for the visually-impaired, and kept in good repair. These recommendations respond to a request from the Planning and Growth Management Committee to regulate and/or limit the amount of merchandise that can be displayed outdoors.

## **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. This approach, which allows for application requirements to change over time, is consistent with the in-force Toronto bylaw, and will ensure that staff are provided with the necessary information to effectively and efficiently evaluate a permit application.

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

Staff recommend that where appeals involve issues on parklet cafés, public parklets, or pedestrian clearway standards, those issues be heard and decided by the General Manager rather than Community Councils. The General Manager or her delegate will review and assess any such appeals in consultation with a staff working group, that may include representatives from Economic Development and Culture, and/or 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 issues in sidewalk café and marketing display permit appeals.

### **Delegate authority to staff to issue permit**

It is recommended that staff be authorized to issue and renew permits for sidewalk cafés, parklets and marketing displays provided the application complies with the requirements of the new bylaw. This process is consistent with the current approach in former Toronto, and will ensure city-wide consistency and efficiency in the review and approval process.

In the former cities of Etobicoke and North York, permits for sidewalk cafés and marketing displays must be approved by Community Council and formalized through a Legal Agreement. The proposed process would enable staff to issue permits faster, whereas the crafting of a unique Legal Agreement can take time depending on particular circumstances.

### **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**

To increase public awareness about a new café application, 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 local resident associations, in addition to the local Councillor.

If the proposed café location is on a local road, staff also recommend that residents within a 60 metre radius receive notification about the application along with a site plan for the proposed café and a City email/ mailing address to provide their input. This proposal will ensure all residents living within a reasonable proximity of the proposed café are informed and have an opportunity to provide feedback.



The current process of public notice is inconsistent. In former North York, no public notice for a new application is required. In former 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. If the proposed location for a café is along a residential street, a poll is conducted. Only residents living on the same street and same block of the proposed location are notified of the application and receive a ballot. The recommended process will ensure the City has a consistent city-wide approach to public notice regarding a sidewalk café application.

### **Improving efficiency of community engagement in application review**

Under the in-force Toronto Bylaw, applications for cafés along an arterial road are refused if there is one objection, whereas applications for cafés along a local road are refused if there is a negative polling outcome or an insufficient response rate to the poll (fewer than 25% of ballots). In practice, 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 are multiple objections. This approach will make it easier for members of the public to participate in the sidewalk café application review process, while also addressing inefficiencies of the polling process.

In addition to multiple objections, non-compliance with any other bylaw requirements would also trigger a refusal of the application. 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 recommended for delegation to the General Manager, Transportation Services.

### **Process to amend a permit area**

If the holder of an approved permit seeks to expand the area of the permit it would be treated as a new application, requiring public notice and payment of the application fee. Compliance with updated pedestrian clearway standards would be secured through the process of permit area expansion.

## **Regulations Related to Permit Operations**

### **Display of permit and demarcation of permit area**

Staff recommend a new requirement that all permit holders display a City issued permit in a location of the establishment that is clearly visible from the exterior. If City staff are approved, such staff would 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. This recommendation applies both for sidewalk cafes and marketing displays.

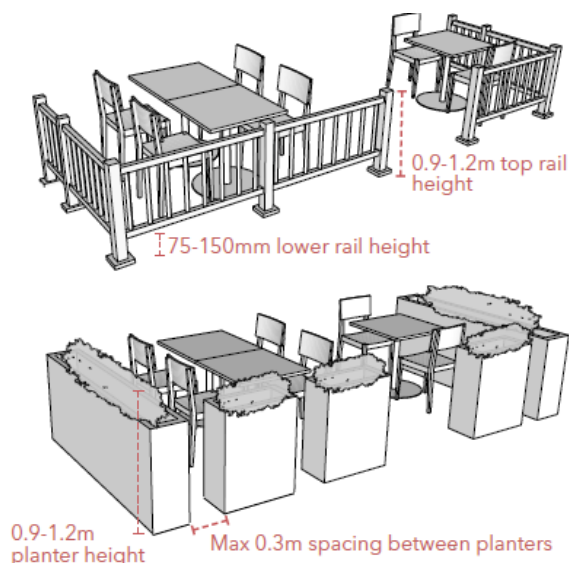
## Sidewalk café fencing requirements

During consultations, staff sought feedback on the potential of reducing fencing requirements around sidewalk cafés and making fencing optional. Accessibility advocates voiced strong concerns with this, 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* permitted to provide a fence; however they are required to have cane detectable features such as a small planter with a detectable base at each end of the permit area, or street furniture with a detectable base. If the operator of a small frontage café wants to install a fence around the cafe, they would be required to submit an application for a sidewalk café permit.
- **Liquor Licence:** The Liquor Licence Act requires sidewalk cafés that are licensed for the sale and service of alcohol to be defined by a 0.9 metre high partition that makes the area easily distinguishable. Compliance with the Liquor License Act is the responsibility of the permit holder.

Figure 5: Sidewalk café fencing requirements in the harmonized bylaw



Some notable changes to the fencing requirements include:

- providing detectability for the visually-impaired with one of the following features a lower rail height between 75mm and 150mm above the sidewalk surface or planter boxes with a detectable base that are spaced no more than 0.3m apart for each other (except at the entrance);
- 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 prohibit amplified sound on all sidewalk cafés.

### **30-metre separation distance from Residential Zones for new permits**

Requiring physical separation between a sidewalk café and residential zones can help address nuisance impacts such as noise. Staff are recommending a minimum 30-metre separation distance between a sidewalk café and the closest lot in a Residential Zone. The current measure of separation within the in-force Toronto Bylaw is 25-metres. The recommended measure will ensure consistency with City-wide Zoning Bylaw 569-2013, which stipulates a 30-metre separation between an outdoor patio located on private property and the closest lot in a Residential Zone.

The following provisions are recommended to facilitate implementation:

- The minimum 30-metre separation requirement only applies to new applications. Existing permitted cafés that are in compliance with their permit would not be required to provide 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 to all residential properties, such as those located in a mixed commercial-residential zone).

### **Shade Umbrellas**

Under existing provisions, all portions of a shade umbrella must be contained within permit area. This requirement does not fully satisfy needs for weather protection at all times of the day. Staff recommend that up to one half of the umbrella be allowed to extend beyond the permit area into the pedestrian clearway, provided that the umbrella is safely affixed, and that all parts of the umbrella are a minimum 210 cm above the level of the sidewalk.

### **Awnings**

Awnings provide protection from the elements as well as shade to marketing displays and sidewalk cafes. Under existing bylaw provisions, permission to install an awning is required prior to its installation. The requirement to obtain prior authorization to install an awning is recommended under the harmonized bylaw (and will not be allowed under the process in Chapter 743, Streets and Sidewalks, Use of). If the subject property is on the Heritage Register, prior authorization would also be required from City Planning, Heritage Preservation Services. In accordance with the Ontario Building Code, fabrics used as part of an awning that is attached to a building shall be flame resistant.

## **A-Frame Signs**

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. At locations where the building frontage is 6-metres or less, if an operator has installed a Small Frontage Café, Small Curbside Cafe or Small Marketing Display, it is recommended that the operator not be entitled to a permit for an A-frame sign. This recommendation is intended to balance competing demands for sidewalk space. If the building frontage is greater than 6-metres, there would be sufficient space for a Small Frontage Café and an A-frame sign, without impacting the pedestrian realm.

## **Recommended Fees and Implementation**

### **\$865 application fee for sidewalk cafés**

The application fee for sidewalk cafes has not been reviewed by the City since amalgamation and subsequently this fee varies, depending on the location of the proposed café. In former East York, the application fee is \$62.77. In former Toronto, it is \$275.47. And in former Etobicoke, it is \$747.91.

A comprehensive review of the application fee has been undertaken in accordance with the City of Toronto User Fee Policy. This policy indicates that user fees may be established to recover costs incurred for the administration and enforcement of a service, as well as capital costs of that service. It also indicates that a User Fee may be subsidized by other sources of revenue under certain circumstances, such as when there is a benefit to the community. The recommended application fee of \$865 for a sidewalk café reflects 25% of the Full Service Cost of application intake and assessment. The remainder cost of the application and assessment process will be funded by permit fee revenue, with net zero impact on the general tax base.

The discounted rate recognizes that there are direct community benefits which stem from café and marketing uses such as street animation, safety, and opportunities for socialization. It also ensures that upfront costs are competitive and do not pose a financial barrier to entry into the market for prospective businesses. This fee has been developed through extensive consultation over the past 2 years with industry stakeholders as well as with staff from the Economic Development and Culture division. The application fee recommended within this report reflects a reduction of \$266 over the application fee recommended in the December 2017 report (\$1,131.80); and a further reduction of \$168.20 over the fee that staff originally proposed in the April 2017 framework report (\$1300).

### **\$765 application fee for marketing displays**

The recommended application fee for marketing displays was developed as part of the User Fee review outlined above, and reflects a reduction of \$366.80 over the fee proposed in the December 2017 report (\$1,131.80). The application fee for marketing displays is lower than the fee for sidewalk cafes as the process for staff to review and assess a marketing display application is less labour-intensive. The major difference

between the two application processes is that public notice and mail-outs to local residents are not required for marketing displays.

A full comparison of current and proposed application fees is included in Attachment 2(a).

### **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 never been comprehensively reviewed by the City. Some of the current fees were established decades ago (for example, the \$5.50/m<sup>2</sup> permit fee in former York was created in 1980).
- The current schedule has imbedded disparities that see the highest fee in former North York (\$114.12/m<sup>2</sup>), while among the lowest permit fees (\$20.08/m<sup>2</sup>) are in some of the City’s most marketable areas (e.g. Yorkville)
- The existing 7 fee zones (i.e. geographic areas that determine the specific permit fee) are founded on boundaries established prior to amalgamation, and are not reflective of today’s market.

As with the current permit 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).

### **Recommended permit fee zones**

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

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

The recommended fee zones have formed part of the fee-related consultations that have been held with stakeholders for the past 2 years. They were included in the framework report that was considered by the Licensing and Standards Committee (April 2017), and in the report considered by the Joint Committee (December 2017). The recommended fee zones are generally understood and accepted by residents and the business community.

Attachment 2 (b) shows the distribution of permits in the current fee zones and in the recommended fee zones.

## Recommended permit fees

The recommended permit fees, shown in Table 6 below, are unchanged from those that were included in framework report that was considered by the Licensing and Standards Committee (April 2017), and in the report considered by the Joint Committee (December 2017). The recommended fee zones, permit fees, and implementation points (noted below) have been included as part of public and stakeholder consultations held in the summer of 2017 and more recently in the winter of 2019. The business community and residents are generally supportive of the proposal (fee zones, permit fees, and implementation points).

Revenue collected through permit fees provides funding to the overall program costs. As noted previously in this report, the recommended application fee is set at a rate that will recover 25% of total program costs. Remaining costs will be recovered through permit fees.

**Table 6: Recommended Permit Fees**

	Recommended annual Permit Fees	
Recommended Fee Zone	Sidewalk Café (\$/m <sup>2</sup> )	Marketing Display (\$/m <sup>2</sup> )
Central Zone	\$88.31	\$62.65
Outer Zone	\$44.14	\$38.12

Attachment 1(b) shows the current fees in each fee zone, and the annual change in permit fees for existing permit holders that will result from the implementation points noted above.

## Implementation of permit fees

Staff recommend that the proposed permit fees take effect at the same time as the Bylaw, on September 1, 2019. The following implementation points are recommended:

- The majority of existing permit holders will experience an increase in permit fees. To minimize the impact of this, the increase will be phased in equally over a 10-year period
- Permit fees not be subject to inflationary increases for the next 10-years
- Permit fees apply in full for any new applicant, and for any existing permit that is transferred to another person
- For any existing permit holder wishing to expand their permit area (e.g. through the addition of a curbside or parklet café) the proposed permit fees would apply in full to the expanded permit area

- Approximately 12 permit holders in North York and 16 permit holders in former Toronto will benefit from reduced permit fees. These decreases will take effect when the bylaw comes into force.

Staff have carefully studied the impact of proposed permit fees, and are particularly conscious of the impact on existing businesses that are operating under long-term business models and costing assumptions. The implementation points above have been developed in consultation with stakeholders and are intended to minimize the impact of potential increases in permit fees for existing permit holders, and to provide long-term certainty and stability to local business.

### **15% Discounted Fees: Neighbourhood Improvement Areas**

The Toronto Strong Neighbourhoods Strategy (TSNS) 2020 is the City's action plan for ensuring that neighbourhoods can succeed and thrive. Part of this strategy has involved identifying Neighbourhood Improvement Areas (NIAs) – areas with a neighbourhood equity score that falls below the equity benchmark approved by City Council in April 2014. Of Toronto's 140 neighbourhoods, a total of 31 have been identified as NIAs.

Sidewalk cafes and marketing displays can offer direct social and economic benefits for communities such as employment, street animation, and the convenience of "buying local". These benefits can help neighbourhoods work towards improving the physical surroundings as well as providing economic opportunity and social development – key elements of equity and well-being

A discount of 15% for application and permit fees is recommended for businesses located within the City's NIAs. The objective of this discount is to reduce financial barriers, promote equity and align with the overall goals of TSNS 2020. Currently, there are only 4 NIAs with sidewalk café and marketing displays, with a total of 16 permits. A 15% discount of permit fees translates to an annual total saving of approximately \$1380 for these 16 permit holders. However, with 8 of the 31 NIA's being located in Scarborough - where sidewalk cafes and marketing displays are currently not permitted - this discount could have a greater impact following harmonization, when these uses become permitted city-wide.

### **15% Discounted Fees: Kensington Market National Historic Site**

Kensington Market was formally recognized as a National Historic Site by the Government of Canada in 2006. The market's canopies and outdoor stalls were identified as elements of the heritage value of this historic site. The City of Toronto Official Plan contains policies which encourage incentives for the conservation and maintenance of heritage properties. A discount of 15% for application and permit fees is recommended to support this historic use in Kensington Market. This discount translates to an annual total saving of approximately \$8500 for current permit holders in Kensington Market. This discount has been factored into the proposed annual program costs.

### **Recommended permit fee for parklet cafés**

The recommended permit fees for parklet cafés are \$1093/ month in the Central Zone; and \$683/month in the Outer Zone. These fees have been developed by the Toronto Parking Authority (TPA), and are based on the average size of a typical on-street parking space, which is 14 square metres. The fees reflect the weighted average revenue that is generated for paid on-street parking in each fee zone and as such, are expected to have minimal revenue impact to the TPA.

The recommended implementation points for permit fees outlined above will not apply to parklet cafes. As changes are made to on-street paid parking regulations, including hourly rates, parklet café fees will be amended to reflect these changes. This will continue to ensure that the overall revenue impact of a parklet café is minimal for the TPA.

### **No permit fee for public parklets**

In consultation and support of the TPA, no permit fees are proposed for public parklets. These configurations are intended for public use, and are viewed as an extension of public space and a public amenity. Public parklets will 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. However, staff recommend that applicants of public parklets be required to complete a right-of-way permit application and pay a fee of \$538.10 per year, which is comparable to similar street occupancy fees.

### **Recommended \$650 fee for tree planting**

The in-force Toronto Bylaw requires new café applicants to pay a one-time 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. The Bylaw assigns discretion to Urban Forestry, Parks, Forestry and Recreation division, as to when the fee should be collected. None of the other former bylaws have a fee for tree planting.

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. Stakeholders expressed concerns with the amount of this fee. Through consultations with the Parks, Forestry and Recreation division and the Economic Development and Culture division, staff are recommending the fee for tree planting be further reduced to \$650. The reduced fee will help ensure that upfront costs do not create a barrier to entry into the market for small business entrepreneurs.

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



## *Implementation of the Fee for Tree Planting*

The Fee for Tree Planting would be required for new applications only, when:

- a new permit is approved at a location where there is a soft, unpaved boulevard; and,
- Urban Forestry has determined that the proposed 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.

## **Implementation and Effect of the Harmonized Bylaw**

### **Conditions for grandparenting existing permit holders**

Staff are recommending that existing sidewalk café and marketing permits continue to operate under the conditions of their original approvals, i.e. be "grandparented" until one of the following takes place:

- When the permit is transferred to someone else, such as a new owner;
- The road on which the permit is located is the subject of significant redesign and reconstruction, such as may take place through a capital project or an Environmental Assessment process; or
- The business to which the permit is associated with applies to amend the permit area, for example, by adding a new curbside café to the existing building frontage cafe.

This proposal is similar to that included in the December 2017 report, except that the 2025 deadline for existing permit holders to comply with the pedestrian clearway standards is no longer proposed. This new proposal provides greater stability for businesses, while also securing gradual sidewalk improvements for a growing population and changing demographic.

When one of the three compliance thresholds outlined above is triggered, the sidewalk café or marketing display will have to comply with the pedestrian clearway standards and white cane-detectable fencing and/or planter 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 when one of the compliance thresholds is met (i.e. permit transfer or street reconstruction).

### **Summary of Impact Analysis**

Following the Joint Committee meeting in December 2017, staff were directed to provide specific numbers regarding the impact of the pedestrian clearway requirements on existing sidewalk café permit holders. In undertaking this analysis, staff used the field data collected by summer students in the summer of 2017. The field data included

sidewalk cafés and marketing displays on city streets across the city wherever they were found. The survey included sidewalk cafés and marketing displays that had permits and ones that did not have permits. The survey involved measuring the dimensions of sidewalk cafés and marketing displays, as well as the measurements of resulting pedestrian clearways and notes on sidewalk café and marketing elements (umbrellas, tables and chairs etc.) and on obstructions in the pedestrian clearway (A-frame signs, planters etc.).

### **Key Statistics from the 2017 Field Data**

- 336 sidewalk cafés with permits were found to not comply with existing pedestrian clearway requirements. in the bylaws and would need to comply upon permit transfer or the other triggers for compliance noted above
- About 60% of the existing sidewalk café permit holders appear to have exceeded their allowable size by at least 2 square metres
- Approximately 57 sidewalk cafes and 17 marketing displays would need to be adjusted at the time of transfer to comply with the proposed new 2.5m pedestrian clearway on select Downtown streets.
- Compliance with pedestrian clearway standards could be provided at about 150 potential locations by relocating or modifying a piece of street furniture or other obstruction (movable planter, bench, bollard, bike ring, etc.)

The above impact analysis has a margin of error that is difficult to quantify due to the challenges with field data collection. For example, it can be challenging to visually identify the property line when performing measurements. Numbers may appear worse than they are as many locations especially on side streets have pinchpoints resulting from other street elements (e.g., hydro poles or trees at the back of the sidewalk) that are not attributed to the sidewalk café. This first city-wide survey was a pilot and will inform future field work.

### **Design support and funding to help existing permit holders**

If the staff resources are approved, city staff will provide design support and funding from the Public Realm funds to assist permit holders with locations that are on main streets with high pedestrian volumes and constraints and challenges with meeting the minimum pedestrian clearways. 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. This will support businesses upon permit transfer and in advance to support grand-parenting on main streets in locations with high pedestrian volumes while aiming to improve pedestrian conditions with increased pedestrian activity on our vibrant main streets.

### **New applicants**

When the harmonized bylaw comes into force on September 1, 2019, all new applicants will be required to meet the new standards within 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 September 1, 2019 will be processed under the applicable bylaw that existed prior to September 1, 2019. Appeals made in relation to those applications will also be processed under the applicable former bylaw.

## **Compliance Program**

Historically, enforcement of sidewalk cafes and marketing displays has been based on Service Requests (complaints). Since 2014, there have been an annual average of 200 complaints related to sidewalk cafes and marketing displays. The majority of this work has been performed by 2 Bylaw Enforcement Officers that were housed in the Business Licensing and Regulatory Services (BLRS) unit. Throughout public and stakeholder consultations, people expressed concerns around compliance and enforcement. Pedestrian and accessibility advocates want to see the City dedicate the resources and time necessary to comprehensively enforce the recommended rules, particularly those which support safe and accessible sidewalks. Local businesses also want to see all sidewalk café and marketing display operators comply with the bylaw.

MLS is in the process of restructuring enforcement of sidewalk cafes and marketing displays. In the new model, enforcement will be performed by MLS's Bylaw Enforcement service line. This team includes 40 Bylaw Enforcement Officers assigned to Licensing Enforcement who enforce bylaws related to licensed businesses, noise and holiday shopping; and 30 officers who enforce bylaws related to street vending, posterage, and public squares. The 2 Bylaw Enforcement Officers previously within the BLRS unit have been transferred into the Bylaw Enforcement service line.

Bylaw Enforcement seeks compliance through education, partnerships and enforcement initiatives. New tools - outlined further below - are recommended within this report to aid compliance, such as higher maximum fines, updated set fines, and the ability to seize and remove goods. These new tools will improve compliance by creating stronger incentives for businesses to follow the rules.

To ensure that resources are directed efficiently, Bylaw Enforcement will develop a fulsome compliance strategy during the implementation phase following enactment of the bylaw. This will include communication plans, partnership development, risk-based targeted inspections and graduated enforcement efforts. Staff will monitor enforcement demands and outcomes that arise through harmonization of the Bylaw and will include results of this work in the report back.

### **Authority to seize and remove goods**

Staff recommend that the new bylaw include express 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 and efficiently.

## **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. There are certain circumstances under which MLS may wish to suspend or cancel a permit. However, suspending or cancelling a permit has potential financial consequences for the permit holder and therefore requires processes to be in place to ensure transparency and fairness. The following processes for suspensions and cancelations are recommended:

- Temporary suspension of permit by Executive Director, with no notice required to Community Council

The year-round café configuration is recommended on the premise that the permit holder takes additional responsibility for clearing the sidewalk of snow as well as salting the sidewalk. If the permit holder neglects to perform this work, or is unable to perform this work, it will be necessary for the City to respond. To facilitate prompt snow clearance in these situations, it is recommended that Executive Director be granted the authority to temporarily suspend the café permit upon the first occurrence of non-compliance, effective for the remainder of the winter season (until April 14). Upon receiving notice of temporary suspension, the permit holder will be required to remove the fence surrounding the permit area, and all related café or marketing elements. This will ensure sufficient space for mechanical snow clearance is provided for the remainder of the winter season. Following the end of the winter season, on April 14, the temporary suspension would be lifted and the permit holder would be able to reinstall the café or marketing display.

- Suspension of permit by Executive Director, with notice required to Community Council

There will be some instances that warrant a temporary suspension until the issue can be resolved with due process. If a permit holder is conducting activity in such a way that it infringes on the rights of other members of the public, a review of the permit conditions may be warranted. Examples could include concerns related to noise, or continually obstructing pedestrian movement by expanding the marketing display or café beyond the approved permit area. Community Council is the recommended forum in these instances.

- Cancellation or Amendment of Permit by Community Council

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 Community Council authorizing conditions to address the nuisance, such as alternative operating hours for the sidewalk café. Should Community Council decide to cancel a permit through this process, it is recommended that the permit holder be ineligible to re-apply for a sidewalk café or marketing permit for one year following the cancelation.

- Cancellation of the permit by Executive Director, with no notice to Community Council

Staff recommend that if the conduct of a permit holder is found to meet the following criteria for ineligibility, the permit Executive Director, Municipal Licensing and Standards and General Manager, Transportation Services will have the authority to cancel a permit:

- if permit fees have not been paid following a period of 90 days from the permit expiry date;
- if it is determined that the permit was obtained through the submission of false, misleading or fraudulent information;
- if the associated property lacks the applicable business licence; and
- if the associated property is demolished, substantially altered and/or subject to redevelopment.

### **Introduce new fines**

The proposed harmonized bylaw for sidewalk 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; and
- 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. Following enactment of the harmonized bylaw, staff will work with Legal Services to update the list of set fines to ensure they are reflective of the new regulations.

### **Cancellation of 10-year permit fee phase-in if charges result in a conviction**

If a service request (complaint) results in a charge under this bylaw and a subsequent conviction through the courts, it is recommended that the proposed 10-year phase in of permit fees be cancelled for that permit holder. Following a conviction, the permit holder would be required to pay the permit fees in full. This provision is part of the broader compliment of increased enforcement tools recommended for the harmonized bylaw, Harmonized Bylaw and Fees for Sidewalk Cafes, Parklets, and Marketing Displays

and is intended to provide a direct incentive for businesses to comply. Staff feel that this provision balances the permit holder's interests in procedural fairness, with the general public interest in seeing businesses follow the rules. In implementation, staff will develop education materials to ensure that businesses are aware of this provision before it takes effect. Since 2014, enforcement action has resulted in 10 convictions for sidewalk cafes and 32 convictions for marketing displays.

### **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.

## **Next Steps**

Staff recommend the harmonized bylaw come into force on September 1, 2019. This will provide a period of approximately 5 months for staff to update licensing, IT systems, administration, communications, and compliance plans. During this period, staff will be migrating café and marketing permit information, including any conditions that may be placed on those permits, to the Open Data Portal. This will make it easier for members of the public to identify permitted locations and be aware of any terms that apply to those permits. A monitoring and evaluation process will be developed to measure all performance indicators, including complaints, pedestrian clearway compliance rates, and effect of the grand-parenting provisions. The following materials will also be developed to help businesses:

- A sidewalk café manual to help businesses understand the new café configurations and accessibility standards.
- Educational materials related to the sale-of-business provisions which trigger compliance with the updated accessibility standards; and other materials related to the potential financial implications of not complying with the bylaw and permit conditions.

Staff will monitor implementation of the harmonized bylaw and report back on enforcement results, and improvements that are made to sidewalk conditions.

## CONTACT

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## SIGNATURE

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Elizabeth Glibbery  
Interim Executive Director  
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Barbara Gray  
General Manager  
Transportation Services

## ATTACHMENTS

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- Attachment 1 (a): Amendments to Municipal Code, Chapter 441 related to fees for sidewalk cafes, marketing displays and parklets
- Attachment 1 (b): Permit fee increases for existing permit holders
- Attachment 1 (c): Recommended Permit Fee Zones
- Attachment 2 (a): Comparison of Application Fee by Use – Current and Proposed
- Attachment 2 (b): Distribution of permits by zone - Current and Proposed
- Attachment 3: Map of Downtown streets where wider pedestrian clearways are required only on sidewalks wider than 5 metres
- Attachment 4: Impact analysis on existing café and marketing permits of a wider pedestrian clearway on proposed Downtown streets
- Attachment 5: Measuring pedestrian clearway width and deviations
- Attachment 6: Minimum separation distances for all sidewalk cafés and marketing displays from street furniture and utilities
- Attachment 7: Geographic reach of summer 2017 consultations
- Attachment 8: Summary of key feedback from summer 2017 consultations