

**TOWN OF SIDNEY
BYLAW NO. 2177**

**A BYLAW TO AUTHORIZE THE PLACEMENT OF TEMPORARY FIXTURES ON
SIDEWALKS WITHIN THE TOWN OF SIDNEY**

WHEREAS Section 35 (1) of the *Community Charter* states that the soil and freehold of every highway in a municipality is vested in the municipality;

AND WHEREAS Section 8 (3)(b) and Section 36 (1) of the *Community Charter* allows Council to set regulations on the use of public places including highways;

AND WHEREAS the Council of the Town of Sidney deems it advisable to license, set fees and regulate the operation of temporary sidewalk cafes within the Town of Sidney;

NOW THEREFORE the Council of the Town of Sidney in open meeting assembled, enacts as follows:

Citation:

1.1 This Bylaw may be cited as the Town of Sidney “**Sidewalk Café Regulations and Licensing Bylaw 2177, 2019.**”

Definition:

2.1 For the purposes of this Bylaw:

Applicant means an applicant for a License;

Council means the Council of the Town of Sidney;

Director means the Director of Engineering at the Town of Sidney and his or her delegate;

Food Vending Business means a restaurant, diner, lunch counter, dining lounge or public house, or a combination of any of these;

License means a Temporary Sidewalk Café License;

License Holder means a person who has been granted a Temporary Sidewalk Café License from the Town;

Temporary Sidewalk Café means an area of a Sidewalk wherein objects, which may consist of tables, chairs, screens, umbrellas and portable planters, are placed for seating and serving customers as an extension of an adjacent food vending establishment;

Town means the Town of Sidney;

Sidewalk means a sidewalk as defined in the Town of Sidney Streets and Traffic Regulation Bylaw No. 1966, 2010.

Licensing:

- 3.1 No person shall carry on a Temporary Sidewalk Café within the Town of Sidney without having first obtained a License and having paid the license fee of fifty dollars (\$50).
- 3.2 An owner in possession or an occupant of property abutting a Sidewalk may establish, operate and maintain a Temporary Sidewalk Café on a designated portion of the Sidewalk if:
 - a) that owner or occupant is using the property abutting the Sidewalk for a commercial purpose by operating a Food Vending Business; and
 - b) that owner or occupant obtains a Temporary Sidewalk Café License.
- 3.3 An Applicant shall fill out the application form prescribed by the Director for that purpose, and as part of the application shall provide to the Town drawings, plans and details of the proposed Temporary Sidewalk Café which show:
 - a) the area of the Sidewalk to be occupied;
 - b) the location of any objects which shall be placed within the area of the Sidewalk to be occupied.
- 3.4 In consideration for the issuance of the License, the License Holder agrees to indemnify the Town in accordance with the agreement included in the License application.
- 3.5 An Applicant must, at the time of application for the License, provide to the Town proof of a commercial general liability insurance policy over the Temporary Sidewalk Café in the minimum amount of \$2 million per occurrence, which must contain:
 - a) a cross liability clause and a waiver of subrogation clause in favour of the Town; and
 - b) a clause requiring the insurer not to cancel or change the insurance without first giving the Town 30 days' prior written notice thereof.
- 3.6 Any person in charge or control of premises where a Temporary Sidewalk Café operation is carried on shall at all times keep the License prominently displayed in the License Holder's business area to which the public has access.
- 3.7 The Director and Town Bylaw Enforcement personnel are hereby authorized to enter, at any reasonable time, upon any premises in order to ascertain whether the provisions of this Bylaw are being obeyed.
- 3.8 A License granted under this Bylaw is valid for a 1 year period to commence on the 1st day of January and to terminate on the 31st day of December in each and every year, unless earlier terminated in accordance with this Bylaw. No license fee paid hereunder shall be refundable.
- 3.9 A License holder must not assign or transfer the permission for the use of the portion of the Sidewalk authorized in the License without the prior written consent of the Director.

Powers of Director:

- 4.1 The Director may grant a License where the Director is satisfied that:
 - a) the Applicant
 - i. has paid the application fee;
 - ii. has fully completed the application form and provided all information required;

- iii. holds a valid business license for a Food Vending Business on the premises adjacent to the Sidewalk area over which the License is proposed;
 - iv. has obtained all additional applicable federal, provincial and municipal permits or licenses; and
 - b) the Temporary Sidewalk Café will not
 - i. unreasonably obstruct or interfere with vehicle, bicycle or pedestrian traffic or safety;
 - ii. unreasonably obstruct or interfere with the ability of the Town or any permitted third-party utility company to construct, install, repair or maintain a municipal work, service, utility or other improvement;
 - iii. unreasonably interfere with the public's use and enjoyment of the Sidewalk or adjoining roadway;
 - iv. unreasonably interrupt the sightlines along the Sidewalk or roadway;
 - v. cause damage to the Sidewalk;
 - vi. contain fixtures which cannot easily be removed; or
 - vii. contravene the provisions of this Bylaw or another enactment.
- 4.2 The Director may refuse to issue or renew a License where the Director is satisfied that:
 - a) the Applicant has not met the conditions to approve the Application; or
 - b) the application contains false or misleading information.
- 4.3 The Director may suspend any License, for such period which the Director may determine, or cancel a License, if:
 - a) the Temporary Sidewalk Café does not strictly adhere to the plans, design, or other information provided by the Applicant in the application;
 - b) the License Holder fails to comply with a term or condition of the License;
 - c) the License Holder has ceased to comply with a bylaw or has otherwise ceased to meet the lawful requirements to operate the Temporary Sidewalk Café for which the License was issued;
 - d) the License Holder is convicted of any offence under any municipal bylaw or other statute in respect of the Food Vending Business for which the License Holder is licensed or with respect to the Temporary Sidewalk Café;
 - e) the Director determines that the continued operation of the Temporary Sidewalk Café would present a risk of harm to the health or safety of the public or constitute a nuisance; or
 - f) the Temporary Sidewalk Café area is required for the construction, installation, repair or maintenance of a municipal work, service, utility or other improvement.
- 4.4 Before cancelling or refusing to renew a License, the Director must provide written notice to the License Holder at the address set out on the License application and provide the License Holder with an opportunity to make submissions to the Director regarding the proposed cancellation or refusal.
- 4.5 Where the Director suspends, cancels or refuses to renew a License, written notice of the suspension, cancellation or refusal and the right to appeal the Director's decision to Council under Section 5 of this Bylaw must be sent to the License Holder at the address set out on the License application.

- 4.6 Upon cancellation or refusal of renewal of a Temporary Sidewalk Café License, the License Holder shall, at the License Holder's own cost and expense, remove all fixtures, furnishings, and personal property from the Sidewalk within 14 days of notice being sent under Section 4.5, or, where the License Holder appeals to Council, within 14 days of a decision of Council which upholds the cancellation or non-renewal of the License.
- 4.7 Where any License Holder neglects, refuses or fails to give up possession of the Sidewalk or remove the Temporary Sidewalk Café as required under this Bylaw, or fails to do so within the time specified, the Director may cause any fixtures, furnishings or personal property located on the Temporary Sidewalk Café License area to be removed and disposed of, and may cause the Sidewalk to be restored to a safe and proper condition, all at the License Holder's expense.
- 4.8 The Director may prepare, from time to time, forms to be used for the purpose of making applications under this Bylaw, including but not limited to a form of license application.

Appeal:

- 5.1 Any person whose license has been suspended, cancelled or refused by the Director under Section 4 of this Bylaw may appeal the decision to Council within 30 days of the date that written notice of the decision is sent to the address set out on the application form.
- 5.2 An appeal under this Section must be made by submitting a written notice of the request and a summary of the License Holder Applicant's reasons for the appeal to the Town, and upon receiving such request, the Town must place the request on the agenda of the next regular Council meeting at which the matter can conveniently be dealt with, and notify the License Holder of the time and place of such Council meeting.
- 5.3 The License Holder or Applicant, or their representative, may appear before Council at the Council meeting and present oral and written submissions to the Council in support of the appeal.
- 5.4 Upon hearing an appeal under this Section, Council may confirm, set aside, or modify the suspension, cancellation or refusal on such terms as it may deem fit.

Regulation of Business:

- 6.1 The designated portion of the Sidewalk for which a Temporary Sidewalk Café License is issued shall not be less than
 - (a) 1.0 meter from the curb, or
 - (b) 0.6 meters from the curb, where the traffic lane adjacent to the curb is used for parking.
- 6.2 In addition to 6.1 above, an owner in possession or an occupant of property abutting a Sidewalk on Beacon Avenue, Bevan Avenue or Sidney Avenue must ensure a 2-metre unobstructed accessible walkway is maintained.
- 6.3 An owner in possession or an occupant of property abutting a Sidewalk on a street other than Beacon Avenue, Bevan Avenue or Sidney Avenue must ensure a 1.5-metre unobstructed accessible walkway is maintained. The Temporary Sidewalk Café shall be immediately adjacent to the private property.

- 6.4 Where a proposed Temporary Sidewalk Café would cover a portion of the Sidewalk fronting upon an adjacent business to the Food Vending Business operated by the Applicant, approval for the extended area may be granted if written permission is received from the adjacent business owner approving the area.
- 6.5 Every License is subject to the following conditions:
- (a) The License Holder must permit Town staff, contractors or a third-party utility company permitted by the Town to enter the Temporary Sidewalk Café for the purpose of constructing, installing, repairing or maintaining any municipal work, service, utility or other improvement, and where requested by the Director, the License Holder shall remove the Temporary Sidewalk Café within 24 hours, or immediately in the event of an emergency, to facilitate such access;
 - (b) Every License Holder must, at all times and at the License Holder's own expense, keep and maintain the Temporary Sidewalk Café in a clean and sanitary condition satisfactory to the Director, and must keep the public property immediately surrounding or adjacent to the Temporary Sidewalk Café free from rubbish and debris of any kind;
 - (c) If the License Holder fails to keep the Temporary Sidewalk Café in a clean and sanitary condition, or permits the accumulation of rubbish and debris of any kind upon the public property immediately surrounding or adjacent to the Temporary Sidewalk Café, the Director may cause the Temporary Sidewalk Café to be cleaned and/or the debris and rubbish on the immediately surrounding or adjacent public property to be collected, and may charge the License Holder the actual cost of such cleaning and collection;
 - (d) The tables, chairs, screens, umbrellas and portable planters shall be removed from the Sidewalk when the Food Vending Business associated with the Temporary Sidewalk Café is closed for business;
 - (e) A License Holder must ensure there are no signs which promote a third party in the Temporary Sidewalk Café;
 - (f) A License Holder must not use a Temporary Sidewalk Café for any purpose other than seating and serving customers of the Food Vending Business; and
 - (g) During the term of the License, the License Holder must maintain in force the insurance required by Section 3.5 of this Bylaw, on those terms and conditions.

Offences:

- 7.1 A person who contravenes, violates or fails to comply with any provision of this bylaw, or who suffers or permits any act or thing to be done in contravention or violation of this bylaw, or who fails to do anything required by this bylaw, commits an offence and shall be liable, upon conviction, to a fine of not more than \$10,000.00 and not less than \$200.00, the cost of prosecution and any other penalty or order imposed pursuant to the *Community Charter* (British Columbia) or the *Offence Act* (British Columbia), as amended from time to time. Each day that an offence against this bylaw continues or exists shall be deemed to be a separate and distinct offence.

Repeal:

8.1 The “Town of Sidney Sidewalk Café Regulations and Licensing Bylaw No. 1408, 1997” and amendments thereto are hereby repealed.

Read a first time the 9th day of September, 2019.

Read a second time the 9th day of September, 2019.

Read a third time the 9th day of September, 2019.

Adopted the 16th day of September, 2019.

MAYOR

CORPORATE OFFICER