

# SIDEWALK CAFÉ BYLAW No. 3441

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**2019**

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**CITY OF NELSON**

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**THE CORPORATION OF THE CITY OF NELSON**

**SIDEWALK CAFÉ BYLAW No. 3441, 2019**

**BEING A BYLAW TO REGULATE SIDEWALK CAFES IN THE CITY OF NELSON**

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**THE CORPORATION OF THE CITY OF NELSON**  
**Sidewalk Café Bylaw No. 3441, 2019**

WHEREAS section 8 of the *Community Charter* allows Council to set regulations on the use of public places;

WHEREAS section 35 of the *Community Charter* states the right of possession of every highway in a municipality is vested in the municipality;

WHEREAS section 194 of the *Community Charter* allows Council to impose fees payable in respect of the use of municipal property;

AND WHEREAS the Council of the Corporation of the City of Nelson deems it advisable to issue Permits, set fees, and regulate the operation of sidewalk cafes within the City of Nelson;

NOW THEREFORE the Council of the Corporation of the City of Nelson in open meeting assembled enacts as follows:

## PART 1: INTERPRETATION

### Definitions

In this Bylaw, the following terms have the following meanings:

**“Applicant”** means an applicant for a Permit, and for the purposes of this Bylaw, also means the holder of a Permit, once issued;

**“Application”** means an application for a Permit;

**“Building Code”** means the current British Columbia Code as adopted by the Province of British Columbia and as amended or re-enacted from time to time;

**“Building Official”** means a person appointed by the City as the Building Official under the Building Bylaw, and includes his or her lawful designate.

**“Business”** means the carrying on of a commercial or industrial undertaking of any kind or nature or the providing of professional, personal or other services for the purpose of gain or profit and for the purpose of this Bylaw includes not-for-profit or other type of benevolent organization;

**“City”** means the Corporation of the City of Nelson;

**“Council”** means the duly elected Council for the Corporation of the City of Nelson;

**“Director”** means the Director of Development Services for the City of Nelson and includes his or her lawful designate;

**“Fees and Charges Bylaw”** means the Corporation of the City of Nelson’s Fees and Charges Bylaw No. 3092, 2008, or any subsequent revisions;

**“Frontage”** means common boundary shared by a property line and a street.

**“Official Community Plan”** means the Corporation of the City of Nelson’s Official Community Plan Bylaw No. 3247, 2013, or any subsequent revisions.

**“Permit”** means a Permit for a Sidewalk Café issued under this Bylaw;

**“Sidewalk”** has the same meaning as under the City of Nelson Traffic Bylaw No. 3156, 2010;

**“Sidewalk Café”** means an outdoor patio, sidewalk patio, street patio or deck located on a sidewalk or other portion of a street, including parking stalls, permitted by a Sidewalk Café permit for the purpose of serving food and beverages in an outdoor setting to seated patrons in conjunction with an existing business.

**“Street”** means a public street, road, highway or other public way which provides principal access to a lot.

## PART 2 – APPLICATION AND PERMIT REQUIREMENTS

### 2.1 Permit Required

- 2.1.1 Unless otherwise exempted by this Bylaw, a Sidewalk Café is only allowable with a valid Permit and no person shall construct, erect, modify, convert, expand, reconstruct, relocate or replace any such Sidewalk Café without first having obtained a valid Permit.
- 2.1.2 Despite 2.1.1, a person may place tables and chairs on a sidewalk without a Permit if:
- The tables and chairs are located on the sidewalk immediately adjoining the business and wholly located within 0.8m of the property line of which the business is located;
  - There are no more than 3 tables and six chairs;
  - The sidewalk is unimpeded at a minimum width of 1.6m for the length of the sidewalk for which the tables and chairs are placed;
  - The tables and chairs are removed from the sidewalk at the close of business each day;
  - There are no constructed fixtures on the sidewalk adjacent to the business;
  - A proof of comprehensive general liability insurance in an amount not less than \$5 million and to the satisfaction of the City is provided.

### 2.2 Application Requirements

- 2.2.1 No Permit for erection of a Sidewalk Café shall be issued until:
- A full and complete Application, as determined by the City, has been submitted;
  - The proposed work set out in the Application conforms to this Bylaw and all other applicable bylaws of the City;
  - The Applicant for the Permit has paid the prescribed fee as specified in Fees and Charges Bylaw;
  - Evidence of the Applicant's comprehensive general liability insurance in an amount not less than \$5 million, has been received; and
  - The City is added as an additional insured in the comprehensive general liability insurance with respect to any loss, claims, actions, damages, costs (including solicitor costs), liability and expense in connection with loss of life, personal injury, damage to property or any other loss or injury whatsoever arising from the design, construction, maintenance, operation, or removal of a Sidewalk Café or from sidewalk or street remediation related thereto.
- 2.2.2 Every permit holder must
- comply with this Bylaw,
  - ensure that all of the restrictions, requirements, specifications, terms and conditions of the Permit are met,
  - comply with the plans and specifications forming part of the Permit, and complete the work required by the plans and specifications of the Permit,
  - submit a request to the Building Official to inspect the Sidewalk Café before use of the Sidewalk Café each year, and
  - be bound by any waiver and indemnity which forms part of the Application and a Permit.

2.2.3 Where the Permit holder fails to keep the Sidewalk Café in accordance with the specifications and conditions of the Permit, the City may cause any part of the Sidewalk Café to be removed and may charge the costs of the removal to the Applicant.

## **2.3 Permit Renewal**

2.3.1 The Director may renew an approved Permit annually if,

- a) the renewal application fee is paid,
- b) proof of business license is provided,
- c) proof of insurance as outlined in subsection 2.2.1 is provided,
- d) the Sidewalk Café was lawfully installed the previous year; and
- e) the approved Sidewalk Café has not substantially changed.

## **2.4 Existing Sidewalk Café**

2.4.1 A Sidewalk Café in existence prior to the coming into effect of this Bylaw will be permitted to continue if:

- a) a Permit was issued for the lawful installation of the sidewalk café; and
- b) it complies with section 2.3.1 of this Bylaw.

## PART 3 – SIDEWALK PATIO SPECIFICATIONS

### 3.1 Validity Period

- 3.1.1 A Permit is valid from May 1 to October 31 in the year it is issued.
- 3.1.2 Despite 3.1.1, the Permit validity period may be extended subject to the approval of the Director.
- 3.1.3 Upon expiry of a Permit, all fixtures and structures placed within a street must be completely removed within 7 days.
- 3.1.4 Despite 3.1.1, a Sidewalk Café that is operating under a valid Permit may make application to Council to operate for a 12 month period if:
- the design and location do not impede circulation on the sidewalk,
  - the location does not impede snow clearing and other required maintenance of the sidewalk or public space,
  - it does not occupy on-street parking stalls,
  - the design is complimentary to the building and public space,
  - the person enters into a covenant/encroachment agreement with the City on terms satisfactory to the City; and
  - any other specific conditions related to the proposed location are deemed acceptable.

### 3.2 Location

- 3.2.1 A Sidewalk Café located on the sidewalk or on on-street parking stalls, shall be limited to the linear frontage of its parent business. In the case of a business located on a corner lot, the Sidewalk Café may be extended along one additional street provided it complies with other requirements of this Bylaw.
- 3.2.3 A Sidewalk Café shall not occupy more than one parallel on-street parking stall or three angle or perpendicular parking stalls. Combine usage of angled, perpendicular and parallel parking stalls is prohibited.
- 3.2.4 The area of the sidewalk between the business and the Sidewalk Café shall maintain a minimum width that is free and clear of any obstructions for pedestrian of:
- 2.0 m along Baker Street; or
  - 1.6 m along all other streets.
- 3.2.5 Despite Section 3.2.4, a Sidewalk Café may be permitted to be located directly against a building subject to the approval of the Director.
- 3.2.6 No Sidewalk Café shall be permitted along Highway 3A frontage, within 6 metres of a stop sign, or in a location where visibility or safety is deemed an issue by the Director.
- 3.2.7 Subject to the approval of the Director, a Sidewalk Café may extend onto a neighboring business frontage if written agreement is granted yearly from the adjacent business owner and provided the Sidewalk Café does not utilise additional on-street parking stalls.

### 3.3 Design

- 3.3.1 All sidewalk cafés will be reviewed against the general design guidelines within the Official Community Plan.
- 3.3.2 All sidewalk cafés must have a colour scheme and building material that are complimentary to the building containing the parent business.
- 3.3.3 When a Sidewalk Café includes a patio structure, it shall be as close to the elevation of the existing sidewalk grade as possible.
- 3.3.4 All sidewalk cafés shall be barrier-free accessible, unless it is shown, to the satisfaction to the Director, to be impractical.
- 3.3.5 Sidewalk Café lighting shall not project onto the street or adjacent properties.
- 3.3.6 Except for a menu board, no signage shall be permitted on a sidewalk café.
- 3.3.7 Except for the point of entry, partitions shall be installed to separate the Sidewalk Café from vehicular traffic along the road and pedestrian traffic along the sidewalk and shall:
- a) be 1m in height measured from the Sidewalk Café level;
  - b) have a bottom rail at 75mm above grade;
  - c) unless a transparent glass or plastic type material is used, have vertical or horizontal members made of wood or metal and not exceed 50mm in width to allow transparency; and
  - d) not be predominated by a lattice type material.
- 3.3.8 Despite 3.3.7, the Building Code may take precedence over the partition requirements.
- 3.3.9 Awnings or shading structures are permitted provided they are securely fastened to a frame that is either retractable or demountable. Such structures may require additional permits at the discretion of the Director.
- 3.3.10 Planters are permitted provided they are located within the area of the sidewalk café.

### 3.4 Hours of Operation

- 3.4.1 No Sidewalk Café shall be permitted to:
- a) play amplified music after 10:00 p.m.;
  - b) operate later than 12:00 a.m.

### 3.5 Maintenance

- 3.5.1 The Applicant must keep and maintain the Sidewalk Café in a clean, sanitary, attractive condition satisfactory to the Director and must keep the sidewalk surrounding or adjacent to the Sidewalk Café free from papers, rubbish and debris of any kind.



## PART 4 - AUTHORITY OF THE DIRECTOR

4.1 The Director is authorized to:

- a) determine the form of an Application for a Permit;
- b) prescribe the form of Permit;
- c) issue and renew a Permit for the operation of a Sidewalk Café in accordance with terms and specifications set out in this Bylaw, and impose additional terms, conditions, restrictions and requirements;
- d) refuse to issue or renew a Permit, if
  - i. the information submitted is insufficient to determine compliance with the provisions of this bylaw or another enactment;
  - ii. the incorrect information is submitted;
  - iii. there was contravention of any specification or condition of the Permit being considered for renewal;
  - iv. it would be prohibited by any other bylaw or regulation; or
  - v. the Director considers that the activities proposed or contemplated under the Permit cannot be carried out safely and with a minimum risk of injury to persons, damage or loss to property, inconvenience to others using the street, residents or businesses in the vicinity, or to the public generally.
- e) suspend, amend, vary, revoke, or cancel any Permit, without compensation to the permit holder, if
  - i. there is a contravention of any specification or condition of the Permit,
  - ii. the Permit was issued in error;
  - iii. the Permit was issued on the basis of incorrect information;
  - iv. in the opinion of the Director, a portion of the Sidewalk Café area is required for the installation of municipal utilities or other municipal purposes; or
  - v. the Director considers that the activities under the Permit are not being carried out safely and with a minimum risk of injury to persons, damage or loss to property, inconvenience to others using the street, residents or businesses in the vicinity, or to the public generally.

## **PART 5 – APPEAL**

- 5.1 An appeal lies to Council from the refusal, suspending, revoking or cancelling of a Permit by the Director, and Council may uphold the decision, or may overturn the decision and may impose conditions on the issuance of the Permit.

## **PART 6 – ENFORCEMENT AND PENALTIES**

- 6.1 A person who:

- a) contravenes or fails to comply with this Bylaw;
- b) permits, suffers or allows any act or thing to be done in contravention of this Bylaw;
- c) fails to carry out an order made under this Bylaw; or
- d) fails or neglects to do anything required under a Permit

commits an offence and each day such an offence continues or is permitted to continue will constitute a separate offence.

- 6.2 Any person violating any provision of this Bylaw is liable on summary conviction to a fine as prescribed in the Corporation of the City of Nelson Bylaw Notice Enforcement Bylaw No. 3195, 2011 and any subsequent revisions. A separate offence shall be deemed to be committed on each day during, or on which, a violation occurs or continues.

## **PART 7 – SEVERABILITY**

- 7.1 If any part, sub-section or phrase of this Bylaw is held to be invalid by a court of competent jurisdiction, the invalid portion shall be severed, and the remainder of the Bylaw shall be deemed to have been enacted without the invalid portion.

## **PART 8 – CITATION**

- 8.1 This Bylaw may be cited as “The Corporation of the City of Nelson Sidewalk Café Bylaw No. 3441, 2019”.

## **PART 9 – EFFECTIVE DATE**

- 9.1 This Bylaw comes into force and effect upon its adoption.