

COMMON COUNCIL REPORT

M&C No.	2022-076
Report Date	February 18, 2022
Meeting Date	March 21, 2022
Service Area	Growth and Community Services

Her Worship Mayor Donna Noade Reardon and Members of Common Council

SUBJECT: Use of Sidewalks By-law – By-law Amendment

AUTHORIZATION

Primary Author	Commissioner/Dept. Head	City Manager
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RECOMMENDATION

Your City Manager recommends Common Council authorize 1st and 2nd Readings of the Amendment to the Use of Sidewalks By-law, By-law Number LG-13, in the form attached to M&C 2022-076.

EXECUTIVE SUMMARY

City staff are continuously looking for improvement opportunities as it relates to delivery of public services and providing clarity and predictability to our applicants to utilize the right-of-way.

This report seeks endorsement of Common Council to amend the Use of Sidewalks By-law. The amendment clarifies insurance requirements, parking fees and submission requirements for Sidewalk Cafes, permission requirements for Sidewalk Vendor sites and removes outdated and superseded sections of the By-law related to sidewalk openings.

There are no new fees and no additional costs to applicants. There are potential cost savings for applicants in the case of insurance requirements for sidewalk cafes.

PREVIOUS RESOLUTION

May 3, 2021, the following resolution was passed:

RESOLVED that the by-law entitled, “By-Law Number L.G.-13, A By-law respecting the Use of Sidewalks within The City of Saint John,” repealing and replacing the By-law entitled “By-law Number M-21, A Law respecting the Use of Sidewalks within The City of Saint John and all amendments thereto” to include the fee adjustment initiative for Street Occupancy permits, Sidewalk Café permits and Sidewalk Vendor sites, and to update for the new Local Governance Act, be read a third time, enacted, and the Corporate Common Seal affixed thereto.

REPORT

In May 2021 the Use of Sidewalks by-law was repealed and replaced to include updates in line with the *Local Governance Act*, fee adjustments related to the Sustainability Plan and procedures for Street Occupancy Permit and Sidewalk Café applications previously approved through Common Council policy.

Throughout 2021 updates to the by-law were proposed from various City departments based on the implementation of the document.

The proposed amendment to the Use of Sidewalks By-Law includes the following:

Insurance Requirements for Sidewalk Cafés

Paragraph 5(4)(b) is repealed and replaced with the following:

“(b) Proof of comprehensive general liability insurance on an occurrence basis of:

(i) not less than two million dollars (\$2,000,000.00) naming the City as additional insured and containing a cross-liability clause **if the applicant does not serve alcohol;**

or

(ii) not less than five million dollars (\$5,000,000.00) naming the City as additional insured and containing a cross-liability clause **if the applicant serves alcohol;”**

Sidewalk Café applicants are currently required to provide proof of \$5,000,000 comprehensive general liability insurance on an occurrence basis containing a cross-liability clause and naming the City of Saint John as additional insured.

Throughout 2021 the City was provided feedback that this insurance requirement was difficult and costly to obtain for small businesses that serve food and drink only.

Through discussion with Risk Management and the Insurance and Claims Coordinator, it was determined that a \$5,000,000 policy would be required only if the venue serves alcohol within the City right-of-way. It is proposed that applicants that do not serve alcohol will be required to provide proof of \$2,000,000 comprehensive general liability insurance.

The City granted 18 Sidewalk Café permits in 2021. This change in insurance requirements would benefit 7 of the permit holders.

Confirmation of Liquor License Extension

The following subsection is added immediately after subsection 6(2):

“6(3) If an application includes the sale of alcohol, a permit holder shall not operate the sidewalk café until proof of liquor license extension has been provided to the City.”

Applicants obtain liquor license documentation from the Department of Public Safety at the Province of New Brunswick. Extension of a liquor license to include the Sidewalk Café space requires an inspection conducted by the City’s Fire

Prevention and Code Enforcement Service. It is proposed that confirmation of the Liquor License extension will be required for a Sidewalk Café within the City right-of-way.

Removal of Outdated and Superseded Language and Requirements

Section 16 is repealed.
Section 17 is repealed.

Sections 16 and 17 of the Use of Sidewalks By-Law were used to define requirements for openings in sidewalks and were very outdated. Openings included vaults, coal-holes and manholes within the sidewalk lines of any street within the City.

Permanent occupancy of the street right-of-way for utility use is handled differently today and under other by-laws and council adopted policies. For example, installation of any new utility may require a stop-up-and-closure, license agreement, surveyed plans, etc. Such installation and occupancy are handled through agreement by our Real Estate team with the City's General Counsel Office.

Sidewalk Vendor Sites

Subsection 18(1) is repealed and replaced with the following: "18(1) No person shall sell or offer for sale anything from a sidewalk vendor site unless: (a) he has obtained a licence issued under the Peddlers and Hawkers By-law; (b) he has paid the sidewalk vendor site fee as prescribed in Schedule "A".

In accordance with the Peddlers and Hawkers By-law, no person shall engage in the business of a peddler, hawker or transient trader within the boundaries of the City without a valid license. Peddling and hawking on streets and sidewalks is controlled through the Use of Sidewalks By-law. There are special sidewalk vendor sites within the Business Improvement Area that are available to rent seasonally. Updates to this section of the By-law look to improve clarity and the "first come first served" nature of rental of these sites.

There are no new requirements proposed.

Parking Fees

Schedule "A" is repealed and replaced with the following: Schedule "A" Fees The following non-refundable fees shall be required in the administration of this By-law:
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Type of Application or Service	Required Application Fee
Sidewalk Café Permit – Level 1	\$100.00 plus \$2.00 per square foot of total area and \$500.00 per parking space
Sidewalk Café Permit – Level 2	\$100.00 plus \$4.00 per square foot of total area and \$500.00 per parking space
Sidewalk Café – Security Deposit – Level 1	\$100.00
Sidewalk Café – Security Deposit – Level 2	\$200.00
Street Occupancy Permit	\$150.00
Street Occupancy Permit – Extension per week	\$20.00
Sidewalk Vendor Site Fee	\$340.00

To provide clarity to applicants, the fee table in Schedule “A” is proposed to be repealed and replaced. The replacement removes outdated and superseded fees covered previously in Sections 16 and 17 and adds the requirement for payment of parking fees.

Payment for parking fees has always been a requirement of a Sidewalk Café that occupies a parking space within the City right-of-way. This proposed amendment clarifies fees for applicants and allows a single payment to the City.

There are no new fees and no new requirements proposed.

STRATEGIC ALIGNMENT

The proposed By-law amendment aligns with Common Council’s priorities of BELONG and PERFORM.

BELONG: We value a welcoming community.

Sidewalk Cafes and Sidewalk Vendor Sites promote vibrancy in Saint John’s urban core. Clarifying requirements within the By-law allow applicants to apply for and receive approval efficiently.

PERFORM: We value the best use of our resources.

Clarifying fees, insurance requirements and permit application requirements allow the One Stop Development Shop to deliver services to the public reliably, consistently and in line with our plans, policies, procedures and best practices.

SERVICE AND FINANCIAL OUTCOMES

Annually, the Use of Sidewalks By-law accounts for approximately \$22,650 in revenue through permit fees. 40 Street Occupancy Permits were issued in 2021 at a fee of \$150 each.

Sidewalk Café permit application fees account for approximately \$16,400.00. As part of the City’s ENCORE program, fees were waived in 2021.

Fee adjustments are not proposed as part of the By-law amendment before Common Council.

INPUT FROM OTHER SERVICE AREAS AND STAKEHOLDERS

Permits and licenses given under the Use of Sidewalks By-law are authorized by the Commissioner of Public Works and Transportation Services Department. The Commissioner has reviewed the proposed By-law changes.

Questions related to insurance were reviewed by Risk Management.

Items related to coordination and administration of permits and fees were reviewed by the Director of Permitting and Development and the Manager of Customer Service & Operations.

Fire & Emergency Management Services was consulted related to inspections and extension of liquor licenses to include Sidewalk Cafes.

The General Counsel's Office has provided the attached Amendment to the Use of Sidewalks By-law.

ATTACHMENTS

Amendment No.1 re Section 5, 6, 16, 17, 18 & Schedule A