

CORPORATION OF THE CITY OF NEW WESTMINSTER

BYLAW NO. 6370, 1997

A Bylaw to Permit Encroachment on City Sidewalks
for the purpose of Operating a Sidewalk Cafe

WHEREAS the Municipal Act R.S.B.C. 1979 c.290 empowers Council, by bylaw, to regulate uses of or involving a highway or portion of it or a public place;

AND WHEREAS the Municipal Act provides that no person may excavate in, cause a nuisance on, encumber, obstruct, injure, foul or damage any portion of a highway or other public place except as permitted by bylaw;

NOW THEREFORE, the City Council of the Corporation of the City of New Westminster, in open meeting assembled, ENACTS AS FOLLOWS:

1. This Bylaw may be cited for all purposes as "New Westminster Sidewalk Cafe Encroachment Bylaw, No.6370, 1997".
2. No person shall occupy any portion of a highway or other public place for the purpose of operating a sidewalk cafe without first entering into an Encroachment Agreement with the City, in the form attached as Schedule "A" to this Bylaw, which is incorporated into and forms part of this Bylaw (the "Encroachment Agreement"). The City is under no obligation to enter into an Encroachment Agreement with any person.
3. Every person entering into an Encroachment Agreement and encroaching on the City's streets for the purpose of operating a sidewalk cafe, shall upon execution of the Encroachment Agreement pay to the City the following;
 - (a) a flat rate fee of \$2.50 for each square foot of sidewalk encroached upon, per year;
 - (b) a security deposit in the amount of \$600.
4. No person shall encroach upon the City's streets for the purpose of operating a sidewalk cafe, unless the sidewalk cafe is an extension of a restaurant or cafe which occupies a building immediately behind the street property line.
5. No sidewalk cafe shall extend beyond the width of the abutting restaurant or cafe's frontage.

6. The outside edge of the sidewalk cafe shall not extend into the sidewalk any closer than 6 feet from the face of the curb. The minimum clearance from any obstruction on the sidewalk to the outer edge of the sidewalk cafe shall be 5 feet.

7. Every application to encroach upon the City's streets for the purpose of operating a sidewalk cafe shall be accompanied by the following:

- (a) a letter of application indicating the applicant's willingness to enter into an Encroachment Agreement with the City and providing a description of the purpose and design of the sidewalk cafe;
- (b) four copies of a site plan of the restaurant, the sidewalk cafe and the adjacent sidewalk and curb, clearly showing all exits, outside tables and chairs, bus zones, parking, landscaping and any other City street furniture to a distance of 15 feet on either side of the restaurant frontage;
- (c) such other information as may be necessary to illustrate any features of the sidewalk cafe's design.

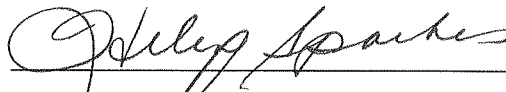
8. The City Engineer shall have all powers and authority necessary to enforce the provisions of this Bylaw.

9. Highway Encroachment Bylaw No. 5740, 1988 does not apply to an encroachment for the purposes of operating a sidewalk cafe.


10. "New Westminster Sidewalk Cafe Encroachment Bylaw, No. 6179, 1994" is hereby repealed.

GIVEN THREE READINGS this *3RD* day of *FEBRUARY* 1997.

RECONSIDERED and FINALLY PASSED and ADOPTED and the seal of the Corporation of the City of New Westminster affixed this *10th* day of *FEBRUARY* 1997.



MAYOR



CITY CLERK

SCHEDULE "A"

THIS ENCROACHMENT AGREEMENT dated the day of
19

BETWEEN:

(the "Applicant")

AND:

CORPORATION OF THE CITY OF NEW WESTMINSTER
City Hall
511 Royal Avenue
New Westminster, B.C.
V3L 1H9

(the "City")

RECITALS

- A. The Applicant is the restaurant or cafe operator on the Lands defined in this Agreement.
- B. The Applicant has requested that the City grant its permission to use the Encroachment Area defined in this Agreement for the purpose of operating a sidewalk cafe.
- C. The City agrees to grant the Applicant's request subject to the provisions of the City's bylaws as amended from time to time and subject to the terms and conditions of this Agreement;

THIS AGREEMENT WITNESSES THAT in consideration of the promises contained in this Agreement and other good and valuable consideration THE PARTIES HEREBY AGREE AS FOLLOWS:

Lands

1. The restaurant or cafe is operated on lands situated in the City of New Westminster, British Columbia, which are more particularly described as:

(the "Lands")

Permission to Encroach

2.(1) The City, subject to the terms of this Agreement, grants the Applicant permission to encroach upon that portion of highway in the City which is shown outlined on the Sketch attached as Schedule "1" to this Agreement and which is further described as:

(the "Encroachment Area")

2.(2) The Applicant shall not undertake any construction or other work, or deposit any chattels or other materials associated with the sidewalk cafe in the Encroachment Area (collectively the "Works") without the written permission of the City. The Applicant shall not permit the Works to encroach on any highway other than the Encroachment Area.

Title

3. This Agreement does not give the Applicant any legal or equitable interest of any kind in the Encroachment Area. The Encroachment Area retains its status as a highway.

Payment

4.(1) Upon execution of this Agreement, the Applicant shall, for the first year of this Agreement, pay to the City the current annual encroachment fee prescribed by Section 3 of the City of New Westminster Sidewalk Cafe Encroachment Bylaw No. 6370, 1997. (the "Encroachment Fee"), and an amount of \$600.00 to be held by the City as a security deposit against the works. This deposit will be released to the applicant upon termination of the Agreement less any charges, if any, incurred by the City associated with maintenance or removal of the works.

4.(2) Each year thereafter on the anniversary date of the execution of this Agreement, the Applicant shall pay to the City the prevailing Encroachment Fee for that year as prescribed by Section 4 of the City of New Westminster Sidewalk Cafe Encroachment Bylaw, No. 6370, 1997.

Maintenance

5.(1) The Applicant shall at all times and at his own expense keep and maintain the Works and the Encroachment Area in good and sufficient repair to the satisfaction of the City.

5.(2) The Applicant shall not make any structural alterations to the Works without the prior written consent of the City.

5.(3) If the Applicant fails to keep the Works in good repair to the satisfaction of the City, the City may, in its sole discretion, cause such repairs to be made, including structural changes, as it deems necessary at the Applicant's expense. The Applicant shall pay the costs of the repairs to the City forthwith on demand.

Design Specifications

6. The Applicant shall ensure that the sidewalk cafe and the Works conform to the following requirements and specifications:

- (a) the limits of the Encroachment Area shall be demarcated by means of moveable planters and/or fences which shall be not less than 30" nor more than 48" in height;
- (b) the Works located upon the Encroachment Area shall consist only of seating, tables, umbrellas, planters and fences; and
- (c) no portion of the sidewalk cafe shall extend beyond the Encroachment Area.

Indemnity and Insurance

7.(1) The Applicant indemnifies and holds harmless the City from all claims of any kind, however caused, whether known or unknown, arising out of or in any way connected with:

- (i) the permission to encroach granted by this Agreement;
- (ii) the existence and use of the Encroachment Area; or
- (iii) the construction, maintenance, existence, use or removal of the Works.

7.(2) The indemnity in Subsection (1) includes, without limitation, a claim for loss or injury to persons or to property due to the Applicant's negligence or to the Applicant's failure to comply with the City's bylaws or any one of them or with any provision of this Agreement.

7.(3) The Applicant shall take out and maintain, with such companies and on such terms as are acceptable to the City, at the Applicant's expense, at all times while this Agreement is in force, comprehensive general liability

insurance covering without limitation premises and operations liability, and contractual liability. The limits of liability for personal injury, property damage and contractual liability combined shall be for not less than \$2,000,000. for each occurrence or such other reasonable amount as may be determined by the City from time to time for each occurrence. The Applicant shall have the City named as an additional named insured under the policies of comprehensive general liability insurance. A cross liability clause shall be made part of the policies of comprehensive general liability insurance. All policies shall provide that they shall not expire, be cancelled or be materially changed without at least thirty (30) days prior written notice to the City by registered mail. Prior to commencement of any work hereunder, and otherwise as the City may request, the Applicant shall file with the City certified copies of each insurance policy required hereunder, or such other proof satisfactory to the City that all such policies are in force as may be applicable. Should the Applicant neglect to obtain or maintain insurance or obtain and maintain insurance as aforesaid or to deliver the policy or policies therefor to the City, the City shall have the right to, but shall not be obligated to, obtain or maintain such insurance, and the Applicant hereby appoints the City its true and lawful attorney to do all things necessary for this purpose. All monies expended by the City for insurance premiums under the provisions of this Section shall be charged to the Applicant and payable by the Applicant to the City forthwith on demand.

8. No finding of negligence, whether joint or several, as against the City in favour of any third party in an action to which the Applicant was not a party, shall operate to relieve or shall be deemed to relieve the Applicant in any manner from any liability to the City, whether such liability arises under this Agreement, under the provisions of the Municipal Act as amended from time to time or otherwise.

Release

9. The Applicant releases the City from all claims of any kind, whether known or unknown, which the Applicant now has or at any future time may have, however caused, arising out of or in any way connected with the permission to encroach granted by this Agreement, the existence and use of the Encroachment Area, the construction, maintenance, existence, use or removal of the Works, or the exercise by the City of any of its rights in this Agreement.

Security

10. The City retains the right on the termination of this Agreement to proceed with the enforcement of any security or indemnity provided in this Agreement or otherwise.

Termination

11.(1) If the Applicant violates any provision of this Agreement or of the City's bylaws, the City may terminate all the Applicant's rights under this Agreement on two weeks' notice. If the owner fails to remove the works as

required by the City, the City may in its sole discretion, cause the works to be removed at the owner's expense.

11.(2) The City, may at any time in its sole discretion, withdraw the rights it has granted to the Applicant in this Agreement and terminate the Agreement on four weeks' notice. Should the City exercise its discretion under this Subsection, then the City shall reimburse the Encroachment Fee to the Applicant, on a proportionate basis, based on the remaining portion of the year.

11.(3) On receipt of notice under Subsection (1) or (2), the Applicant shall, within the time period stated in the notice, at his or her expense, remove the Works and otherwise restore the Encroachment Area to the satisfaction of the City.

11.(4) Where the Council of the City considers that, in its sole discretion, the interest of the public in the highway on which the Encroachment Area lies makes it necessary or advisable, the Council may shorten the time limits in this Section.

Assignment

12. The Applicant shall not assign any of its rights and obligations arising from this Agreement without the prior written consent of the City.

Right of Entry

13. The City's employees or agents shall have the right at any and all times to enter into and upon the Lands for the purpose of constructing, maintaining, inspecting or removing any public works or utility in the vicinity of the Encroachment Area or for the purpose of maintaining or removing the Works under this Agreement.

Alterations to City Property and Public Works

14. In the event of any alteration or change made necessary to any meter, water service, sewer or other public works or utility in the vicinity of the Lands by the construction, maintenance, use or removal of the Works, the Applicant shall reimburse the City for whatever expenses it may incur in making the alterations or changes that are deemed necessary by the City.

City's Rights Reserved

15. This Agreement does not in any way restrict the right of the City at any time to widen, raise or lower the highway or boulevard abutting or adjoining the Lands, even if the effect of the alteration in width or elevation or both may be to render the Works, the Encroachment Area, or both useless for the purposes of the Applicant.

Licenses and Permits

16. The Applicant shall, at his or her expense, obtain and maintain all licenses, certificates, permits and authorizations, including Provincial liquor licensing permits, as may be necessary and required to operate the sidewalk cafe.

Interpretation

17. The waiver of default by either party shall not be deemed to be a waiver of any subsequent default by that party.

18. Whenever it is required or desired that either party deliver or serve a notice on the other, the delivery or service shall be deemed to be satisfactory if and deemed to have occurred when the notice has been:

- (a) served personally, on the date of service, or
- (b) mailed by pre-paid registered mail, on the date received or on the sixth day after receipt of mailing by any Canada Post Office, whichever is the earlier, so long as the notice is mailed to the party at the address on the first page of this Agreement for that party or to whatever address to which the parties from time to time may in writing agree, except that in the event of a strike or disruption in postal service, the notice shall not be deemed to be received until actually received.

19.(1) Whenever the singular or masculine is used in this Agreement, the same is deemed to include the plural or the feminine or the body politic or corporate as the context so requires.

19.(2) Every reference to each party is deemed to include the heirs, executors, administrators, successors, assigns, employees, agents, officers, elected officials and invitees of such party whenever the context so requires or allows.

20. Section headings are included for convenience only. They do not form a part of this Agreement and shall not be used in its interpretation.

21. Any opinion which the City is entitled to form in this Agreement may be formed on behalf of the City by the City Engineer, in which event the opinion of the City Engineer shall be deemed to be the opinion of the City for the purposes of this Agreement.

22. If any part of this Agreement is for any reason held to be invalid by the decision of a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not effect the validity of the remainder of this Agreement.

23. This agreement shall enure to the benefit of and be binding on the parties hereto NOTWITHSTANDING any rule of law or equity to the contrary.

24. This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia.

25. IN WITNESS WHEREOF the parties have executed this Agreement under seal.

SIGNED, SEALED AND DELIVERED)

by _____)

in the presence of:)

Witness)

Address)

Occupation)

(Insert Name of Applicant)

The Corporate Seal of the City)
was hereunto affixed in the)
presence of:)

Mayor)

City Clerk)