

**Council Date: May 25, 2010****SUBJECT: 2010-7145 South Murphy Avenue Sidewalk Policy 2010 (Study Issue)****BACKGROUND**

In April 2005, Council approved an outdoor dining policy for the 100 block of South Murphy Avenue to regulate the type, location and appearance of long-term outdoor dining uses in the public right-of-way (refer to Policy 1.1.10 in Council policy manual). In November 2005, City Council approved a new Murphy Streetscape Revitalization Plan for this block of South Murphy Avenue. The streetscape envisioned and approved under this plan is currently under construction and Murphy Avenue is expected to re-open in May/June 2010. Additionally, in November 2005, Council also approved an interim policy on moving street furniture at the request of merchants and property owners that was valid during the interim time period between the Murphy Avenue Streetscape Design Plan project approval and completion of the first phase of implementation.

The South Murphy Avenue Sidewalk Policy being proposed (see Attachment A) is a comprehensive policy document that provides revised policies and guidelines regulating operational aspects of Murphy Avenue businesses. This proposed policy is intended to be a comprehensive document with guidelines for the display and sale of merchandise, signage, pedestrian circulation, relocation of street furniture and regulations governing outdoor dining uses along the sidewalk. Staff recommends that Council approve the *South Murphy Avenue Sidewalk Policy* document, as attached (see Attachment A).

**EXISTING POLICY*****Community Vision Element***

*IX. DYNAMIC DOWNTOWN:* To create and support a strong and attractive traditional downtown which serves as the community's central marketplace, common gathering place, and symbolic center.

**DISCUSSION**

Use of the public right-of-way in the 100 block of South Murphy Avenue by businesses is a privilege not generally offered in other commercial areas in the City. The City is committed to maintaining the street for use by the general public while providing opportunities for businesses to flourish.

The purpose of the Murphy Sidewalk Policy (refer Attachment A) is:

- To set up standards for the use of the “frontage zone” portion of the sidewalk by business owners/operators for outdoor merchandise display, seating and/or signage. The “frontage zone” is defined as the area on the sidewalk immediately adjacent to the buildings and is generally 2-feet wide.
- To ensure that the pedestrian zone remains unobstructed to allow for the movement of pedestrians.
- To allow for the use of the “furnishings zone” and “frontage zone” of the sidewalk for outdoor dining under specified conditions. The “furnishings zone” (defined as the space between the throughway zone for pedestrians and the street) is where the City owned ‘features’ (light posts, benches, planters etc.) are placed.
- To set up procedures for moving street furniture under limited circumstances.

The guidelines provided in Attachment A have been developed specifically for, and are unique to, the right-of-way on the 100 block of South Murphy Avenue. The policy does not apply to furniture on private property or to the public right-of-way located elsewhere in the City.

#### **FISCAL IMPACT**

No additional fiscal impacts associated with the approval of the proposed policy are anticipated at this time.

#### **PUBLIC CONTACT**

Public contact regarding the hearing was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Safety; and by making the agenda and report available at the Sunnyvale Library, the Office of the City Clerk and on the City's Web site. Notification of hearings was provided by mailing notices to interested parties and through updates on the City website.

Staff met with the Sunnyvale Downtown Association on May 11, 2010 and provided an overview of the draft policy. About 20 businesses were in attendance, including about nine interested in providing outdoor dining. Staff members from planning, economic development, fire and public works were in attendance and answered questions. There was a request to consider allowing outdoor dining furniture to remain on the sidewalk (i.e. not requiring it to be taken in every night), or at to only require it be brought in before cleaning days. Staff cannot anticipate whether there will be a regular cleaning schedule for the sidewalk. Bringing in the tables and chairs in daily will facilitate cleaning, promote safety and discouraging temptations to “chain up” furniture to trees or city street furniture.

**ALTERNATIVES**

1. Approve the attached South Murphy Avenue Sidewalk Policy (Attachment A)
2. Approve the South Murphy Avenue Sidewalk Policy with modifications
3. Deny the South Murphy Avenue Sidewalk Policy and direct staff to return to Council with a revised policy

**RECOMMENDATION**

Staff recommends Alternative 1: Approve the attached policy.

Reviewed by:

Hanson Hom, Director of Community Development  
Reviewed by: Trudi Ryan, Planning Officer  
Prepared by: Surachita Bose, Associate Planner

Approved by:

Gary M. Luebbbers  
City Manager

**Attachments**

- A. South Murphy Avenue Sidewalk Use Policy (including regulations for merchandise display, signage, furniture relocation and outdoor dining)



# City of Sunnyvale South Murphy Avenue Sidewalk Use Regulations

## COUNCIL POLICY

### **SUBJECT: POLICY REGARDING USE OF THE PUBLIC SIDEWALK ON THE 100 BLOCK OF SOUTH MURPHY AVENUE**

#### **POLICY PURPOSE:**

The City is committed to the preservation and enhancement of the 100 Block of Historic South Murphy Avenue as Sunnyvale's "Main" Street. This policy is intended to promote the attractive commercial and historic environment of Murphy Avenue by allowing private use of the public sidewalk, while ensuring a successful streetscape and protection of the general public.

#### **DEFINITIONS:**

For the purpose of this document, the following terms are defined as follows:

- 1. Frontage Zone:** The 'frontage zone' portion of the sidewalk is defined generally as the space on the public sidewalk closest to the building facades measuring approximately 2-feet from the right-of way line. This linear strip extends along both sides of Murphy Avenue from Evelyn Avenue to Washington Avenue.
- 2. Pedestrian Zone:** The 'pedestrian zone' is the area between the 'frontage zone' and the 'furnishings zone' that is available for pedestrian circulation. The width of the pedestrian zone shall be at least 5 feet at any given point.
- 3. Furnishings Zone:** The 'furnishings zone' of the sidewalk is defined as the space between the 'pedestrian zone' and the two feet behind the face of curb where the City owned 'public features' (light posts, benches, planters etc.) are placed. The width of the furnishings zone varies throughout Murphy Avenue depending on the presence of adjacent on-street parking and other streetscape furniture items.
- 4. MPP (Miscellaneous Plan Permit):** A miscellaneous plan permit is an administrative process to allow the determination of the dimensions, colors, materials, architectural elevations, design and placement of the physical characteristics of a project.



# S. Murphy Avenue Sidewalk Use Regulations



The purpose of the Murphy Sidewalk Policy is:

- a. To establish standards for the use of the “frontage zone” portion of the public sidewalk by business owners/operators for outdoor merchandise display, seating and/or signage.
- b. To allow for the use of the “furnishings zone” and “frontage zone” of the public sidewalk for outdoor dining under specified conditions.
- c. To maintain accessible pedestrian access at all times, both along the sidewalk and into businesses.
- d. To establish procedures for relocating public street furniture under limited circumstances.

These guidelines have been developed specifically for, and are unique to the sidewalk portion of the public right-of-way on the 100 block of South Murphy Avenue. The policy does not apply to furniture on private property, to the street portion of the public right-of-way on the 100 block of South Murphy Avenue or to the public right-of-way located elsewhere in the City.



# S. Murphy Avenue Sidewalk Use Regulations

## **POLICY STATEMENT:**

### **A. USE OF THE CITY SIDEWALK RIGHT-OF-WAY**

#### **A.1. Frontage zone:**

1. The frontage zone of the public sidewalk along the 100 Block of South Murphy Avenue may be used for the display of signage, merchandise or other items relating to the legal business operation of the adjacent business, and deployed daily during business hours by business owners or operators. Use of the frontage zone requires maintaining private features and the furnishings zone in a neat and safe condition.

2. All signage and merchandise in the frontage zone shall comply with the requirements outlined in Section B.

3. Outdoor dining in the frontage zone requires prior approval of an MPP (refer to Section C).

**A.2. Pedestrian zone:** The pedestrian zone shall remain clear without any obstructions to allow for the movement of pedestrians.

#### **A.3. Furnishings zone:**

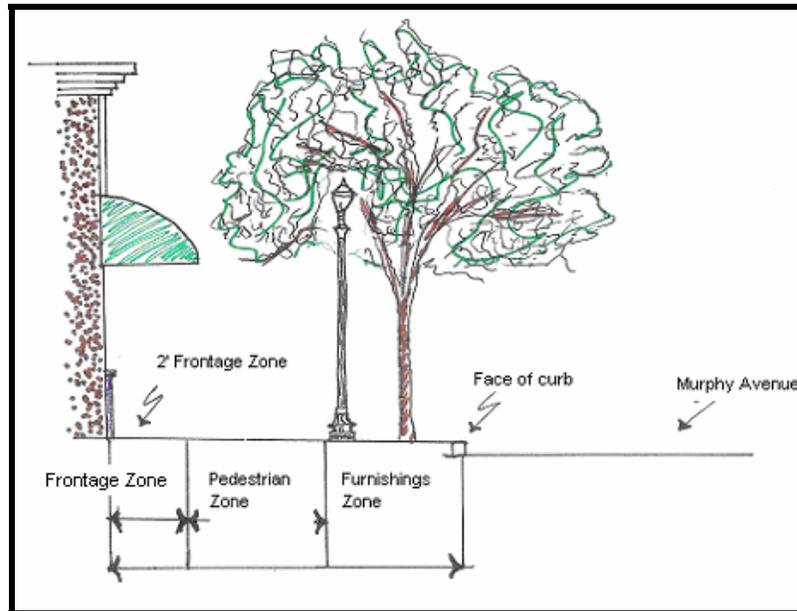
1. Public Features: This policy applies to the following types of public street furniture/furnishings:

- benches, trash receptacles, street lights, ash receptacles, trees, tree grates, planer urns, or other furnishings managed by the City, and
- planters, signs, ash cans or other items required as a condition of approval, or other permanent features.
- newsracks which are regulated by the Special Newsrack District policy

2. Outdoor seating for dining or other business use in the furnishings zone requires approval of an MPP (refer to Section C). Use of the furnishings zone for outdoor dining requires maintaining tables, chairs and the dining area in a neat and safe condition.

3. Removal and/or relocation of public street furnishings requires approval of an MPP and payment of associated costs (refer to Section D).

## S. Murphy Avenue Sidewalk Use Regulations



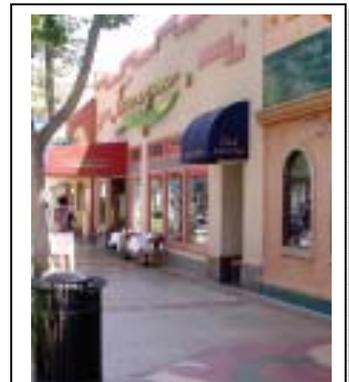
Murphy Avenue Sidewalk Area

### B. FRONTAGE ZONE OF THE PUBLIC SIDEWALK

**B.1. Private Features:** This policy applies to the following types of private street furnishings: planters, outdoor seats, tables, freestanding signs (A-Frame, sandwich boards, etc.), merchandise holders/displays, or any other items placed by business owners or operators.

#### B.2. Allowed Uses

1. The frontage zone of the sidewalk can be used for the following street furnishings, depending on the business type: un-fixed outdoor seating or dining, free-standing signs, sandwich board signs, outdoor display of merchandise (e.g. racks, tables), planters or landscape boxes, or ash cans.
2. All private street furnishings may be placed and kept within the frontage zone of the public sidewalk (identified by the charcoal band pavers) closest to the building facades, only during business hours, with the exception of approved planters that may be left in the frontage zone after business hours. Outdoor seating for dining in the frontage zone requires approval of an MPP (refer to Section D).
3. All other types of street furnishings not specifically described above shall be prohibited unless it is determined by the



## S. Murphy Avenue Sidewalk Use Regulations

Community Development Director that they are similar and appropriate to the allowed furnishings.

4. Business owners may use only the frontage zone of the sidewalk directly adjoining their business frontages. No items are allowed within entry or exit areas of any business or building.
5. Only business owners or operators that have frontage on the 100 Block of South Murphy Avenue may utilize the frontage zone of the sidewalk.

### **B.3. Required Permits**

1. No permits are required to place allowed street furnishings during business hours (listed above) in the frontage zone of the sidewalk area.
2. All private street furnishings must meet the design criteria listed in the Design Criteria sections of this policy.

### **B.4. Design Criteria for Freestanding Signs**

1. Freestanding signs, such as A-Frames or sandwich boards or menu boards, shall be limited to one (1) per business.
2. Freestanding signs shall be limited to a maximum of four (4) feet high and two (2) feet wide in any direction.
3. Freestanding signs shall not lean against the building or any other structure, but must be self supportive.
4. Freestanding signs shall have an open base, with cut-outs or legs.
5. Freestanding signs shall not be moving, animated, or have changeable copy (reader board), with the exception of a grease board feature on the sign face.
6. Freestanding signs materials should be either wood or metal (not flat sheet siding). Materials such as plastic, foam, paper, cardboard, laminated paper, or vinyl are discouraged. PVC pipe frames are prohibited. Recycled products may be considered provided they have a similar design affect as wood or metal.
7. Freestanding signs shall be made to be secure and shall not blow or move in the wind. Balloons of any type are prohibited.
8. Freestanding signs shall not be permanently affixed to the ground or chained to anything.
9. Freestanding signs shall be moved inside the business when the business is closed.
10. No sign shall detract from the historic character of Murphy Avenue or otherwise be a visual/physical nuisance.

## S. Murphy Avenue Sidewalk Use Regulations

### **B.5. Design Criteria for Merchandise Displays**

1. Outdoor merchandise displays, such as clothes racks, tables, shelves, etc. shall be limited to one (1) per business.
2. Displays shall not exceed five (5) feet high and two (2) feet deep. The length of merchandise displays are limited to the length of the business frontage.
3. The total square footage of merchandise displays and window signage shall not exceed more than 50% of store front windows.
4. Displays shall not be permanently affixed to the ground, and shall be moved inside the business when the business is closed.
5. Displays shall be made to be secure and shall not blow or move in the wind.

### **B.6. Design Criteria for Private Planters**

1. Private planters shall be a maximum of three (3) feet high and (2) feet wide in any direction.
2. Planters shall not be permanently affixed to the sidewalk but may remain on the sidewalk after business hours. Planters must be planted and maintained in a neat manner. Planters with dead plants or poorly maintained must be removed. Placement of planters must comply with applicable accessibility and safety standards.
3. The applicant is responsible for any and all damages to the public right-of-way resulting from private planters.

### **B.7. Design Criteria for Other Private Street Furnishings**

1. Other street furnishings not specifically described by this policy shall be prohibited unless specifically approved by the Community Development Director, using similar design criteria.

## **C. OUTDOOR DINING IN THE PUBLIC SIDEWALK**

The purpose of this policy is to regulate the type, location and appearance of outdoor dining uses on South Murphy Avenue where the sidewalk is to be utilized.

Outdoor dining shall be allowed to occur during business hours around the existing street furniture in the “furnishings zone” and in the “frontage zone” of the public right-of-way subject to approval of a Miscellaneous Plan Permit (MPP) from the Director of Community Development. The permit may be revoked for non-compliance with permit conditions.

## S. Murphy Avenue Sidewalk Use Regulations

MPP applications must be accompanied by a letter of authorization from the Sunnyvale Downtown Association, or the equivalent association at that time, prior to staff action on the permit. These policy guidelines establish criteria for the review of each application by the Director of Community Development. The policy is intended to (1) ensure pedestrian and fire lane access, (2) prevent a cluttered appearance; and (3) promote an attractive commercial environment.

### C.1. Uses

1. Proposed outdoor dining uses shall be directly related to the main commercial use, and operated by the same personnel. Each use is subject to MPP approval at staff level.
2. The MPP granted to an establishment shall be reviewed at the beginning of each year to ensure continued compliance with the requirements of this policy. Any violation of the requirements of this policy could result in revocation of the MPP by the Director of Community Development.
3. The MPP, once activated through compliance with conditions imposed by the Director of Community Development, shall become null and void if the property is not used for such purpose for a period of three months or more.

### C.2. Location

1. The outdoor dining use shall be adjacent to the building the business occupies along Murphy Avenue, and is not allowed in any parking lot, landscaped area, loading or fire zone, or pedestrian crosswalk or breezeway. The use shall not encroach upon the frontage of neighboring businesses, except when the street is closed to vehicular traffic for outdoor public events (such as the summer Wednesday Night Music and Market, the Saturday Farmers Market, and the Art and Wine festival) or when written approval has been granted by the adjoining business for the use of their frontage. The business must obtain both written approval from those neighboring businesses and provide liability insurance to cover the outdoor dining in front of those neighboring businesses.
2. The outdoor dining use shall not obstruct pedestrian movement or access from any doorway, as determined by the Building Safety Division and Fire Prevention Unit. At least five (5) feet of pedestrian clearance shall be provided around the use. The five (5) feet may include adjacent available public sidewalks.
3. The outdoor dining use shall not block access points to pedestrian crosswalks, and shall be located at least fifteen (15) feet from any driveway or fire hydrant. The 40-foot clear corner sight triangle shall be kept free of all obstructions.
4. A single permit may be issued for any eating establishment which occupies more than one adjacent parcel, or for two separate eating establishments on adjacent parcels that wish to operate a single outdoor dining facility.

## S. Murphy Avenue Sidewalk Use Regulations

### C.3. Appearance

#### Furniture

1. Tables with individual chairs are required for outdoor dining (no bench seating). Each table shall be setup to accommodate no more than four (4) persons in the furnishings zone. Each table shall be setup to accommodate no more than two (2) persons in the frontage zone. Configurations of tables and chairs shall be approved by the Building Safety Division and Fire Prevention Unit for compliance with related codes regarding (i.e. occupant loads, disabled access, and egress).
2. Tables and chairs shall be of either metal or wood construction. Recycled products may be considered provided they have a similar design affect as wood or metal. Tables and chairs shall not have legs or braces which protrude, creating a hazard for passers by, or that damage the pavement.
3. Tables and chairs shall be moved inside the business when the business is closed.
4. Umbrellas which are free-standing or used as part of the table assembly, must be open on all sides with no unprotected protrusions around the perimeter. The top portion of the umbrella (i.e. the cover) may extend into the pedestrian zone provided it is taller than seven feet to prevent obstruction to the movement of pedestrians. The diameter of the umbrella shall generally be 7 ft. or less in width.
5. Freestanding umbrellas shall be made to be safely weighted down (not be permanently secured) to the public sidewalk, so they will not become a safety hazard to the public, or damage the pavement
6. Freestanding umbrella bases shall be made to be aesthetically compatible with the historic nature of Murphy Avenue.
7. Outdoor heaters in the furnishings zone require approval of the Fire Prevention Unit and shall be considered on a case-by-case basis. Gas operated outdoor heaters shall not be allowed in the frontage zone. Electric heaters built into the building façade require approval of a Landmark Alteration Permit (LAP).
8. The permittee holds the responsibility to maintain the outdoor furnishings in a safe and attractive condition. Dining tables and the area must be bussed and kept free of food wastes that would attract nuisances. Feeding of wildlife is prohibited. Business shall immediately remove any material from the pavement in or near the outdoor dining areas to avoid slip hazards, and vectors.

#### Other Physical Accessories

1. Lighting fixtures, area delineation accessories, planters or any other furnishings used in conjunction with outdoor dining shall be subject to the review process prior to issuance of the MPP.

## S. Murphy Avenue Sidewalk Use Regulations

### Table Service Ware

Service ware (i.e. plates, cups, utensils) shall not be disposable type, i.e. no single-use service ware allowed.

### Aesthetic

A standard on aesthetics is appropriate and desirable to assure that sidewalk encroachments complement, rather than detract from, the Murphy Avenue streetscape. The applicant must submit detailed design plans for staff review and comment. General guidelines to be used in the review include:

1. The outdoor dining furniture shall be reasonably compatible in scale, design and color with the character of the building facade and adjacent structures.
  - a. The dining area should have a coordinated color scheme, preferably consisting of no more than two colors.
  - b. Canvas is the preferred material for umbrellas. Stationary metal shades are unacceptable. Any graphics on sun shades should be incidental to the design. Type styles and logos should relate to the existing architectural style of Murphy Avenue.

### Structural Upgrading

To further the City's efforts to revitalize Murphy Avenue, certain structural standards relating to the facade of the eating establishment must be met before outdoor dining will be allowed on the public right-of-way. These guidelines are consistent with those found in the Murphy Avenue Design Guidelines adopted in 1994 and represent the minimal conditions expected.

1. **Paint:** Harmonious color and appropriate to the streetscape.
2. **Storefront Windows:** Large window areas to illuminate the interior, and to allow views of the street.
3. **Signage:** Appropriate size and material, reflective of the general character of Murphy Avenue in design and color.

If appropriate, other improvements may be required to rooflines, tile work, doors, awnings, or other architectural details to ensure their compatibility and acceptable condition.

### **C.4. Other Regulatory Considerations**

#### Smoking

1. Business must comply with local and state regulations regarding smoking.

## S. Murphy Avenue Sidewalk Use Regulations

2. Eating establishments must make ashtrays available to outdoor tables on request, or proactively provide ashtrays at tables where outdoor restaurant patrons are smoking.
3. Smoking is prohibited within 5-feet of the building entry.

### Trash

1. Trash generated from outdoor dining service shall be deposited with the regular restaurant trash, not in Murphy Avenue streetscape City trash receptacles.
2. Businesses must keep outdoor dining areas clean and free of food wastes and debris, and clean the pavement daily at the end of the outdoor use.

### Food Service

The following are regulations set forth by the Santa Clara Health Department. With regard to outdoor dining, non-conformance to these standards will result in the revocation of the City's MPP.

1. Food preparation must take place inside the eating establishment only.
2. No outside food displays are allowed.
3. Condiments must be kept in closed containers (ketchup bottles, squeeze bottle, individual packets).

### Serving of Alcoholic Beverages

Restaurants must comply with Alcoholic Beverage Control (ABC) requirements for serving alcohol in outdoor eating areas. Failure to comply with all applicable ABC standards will result in the revocation of the MPP. At a minimum, these requirements include:

1. Alcoholic beverages may only be served in outdoor areas which are contiguous to the eating establishment (i.e. the area must not be separated from the restaurant by a public sidewalk).
2. The restaurant operator must provide a visual barrier or delineation to distinguish the outdoor serving area from the public walkway.
3. Alcoholic drinks may not be prepared (mixed) in the outdoor area.
4. Physical conditions must allow visual monitoring of alcohol consumption from within the establishment, or the establishment must provide regular waiter/waitress service to the outdoor area.

ABC requires that the licensee obtain approval for premise expansion. The licensee must show evidence that the City has issued the MPP. Issuance of an MPP to an establishment intending to serve alcoholic beverages in the encroachment area will

## S. Murphy Avenue Sidewalk Use Regulations

include a condition that the permittee provides a copy of the ABC approval to the Planning Division within 45 days after service begins.

### Insurance

Permittee is required to maintain a policy of commercial general liability insurance with limits of not less than \$1 million per occurrence and \$2 million aggregate. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City of Sunnyvale. The City of Sunnyvale, its officers, employees, agents and volunteers must be named as additional insured and provided with a signed endorsement to the policy. A certificate of insurance alone will not suffice. The preferred endorsement form is CG20101185, but others can be issued with the approval of the City's Risk Manager.

### Indemnification

Except as to the sole negligence or willful misconduct of the City, the permittee shall defend, indemnify and hold the City, and its officers, employees, agents and volunteers harmless from any and all loss, damage, claim for damage, liability, expense, or cost, including attorneys' fees, which arise out of the permitted outdoor dining in the public right-of-way.

## **D. PUBLIC FEATURES RELOCATION: PERMIT REQUIREMENTS**

### **D.1. Applicable Parties**

Only business owners, operators or property owners on South Murphy Avenue may request to relocate the public street furniture/furnishings to a suitable new location on South Murphy Avenue.

### **D.2. Permits**

The Miscellaneous Plan Permit (MPP) process will regulate the operation of street furniture/furnishings movement in the public right-of-way. MPP applications must be endorsed by the Sunnyvale Downtown Association (SDA), or the equivalent association at that time, prior to staff action on the permit. The policy guidelines establish criteria for the review of each application by the Director of Community Development and the City Engineer.

### **D.3. Location**

1. Applicants can request to relocate certain street furniture (Bench, trash receptacle, ash receptacle) to a suitable new location on South Murphy Avenue. The applicant is responsible to pay all costs associated with the relocation.
2. The applicant must obtain written approval from the business(es) adjacent to the location where the furniture is to be moved.
3. The new location shall not obstruct pedestrian movement or access from any doorway, as determined by the Building Safety Division and Fire Prevention Unit. At least five (5) feet of pedestrian clearance shall be provided on the public sidewalks.

## S. Murphy Avenue Sidewalk Use Regulations

4. The new location shall not block access points to pedestrian crosswalks, and shall be located at least fifteen (15) feet from any driveway or fire hydrant.
5. The new location shall be consistent with the approved 2005 Streetscape Revitalization Plan for Murphy Avenue.

### D.4. Removing Furniture

Applicants can request that certain street furniture be removed (bench, trash receptacle, ash receptacle) from the streetscape entirely if a suitable new location cannot be found, subject to the determination that there is no longer a need for the specific item of furniture. The applicant is responsible to pay all costs associated with the relocation. Removal should be consistent with 2005 Streetscape Revitalization Plan for Murphy Avenue and is subject to review and approval by the Director of Community Development and the City Engineer.

### Options

#### Public

1. When applicants request street furniture to be moved or removed it shall be done by City forces. the applicant will bear all the costs and must reimburse the City for all related expenses.
2. A deposit for the estimated cost of the action will be required prior to any approval or action by City forces.

#### Private

1. Applicants have the ability under this policy to contract with a private party to move the furniture at their own costs, if such relocation or removal is approved by the City. This will require issuance of an Encroachment Permit in addition to the MPP permit required for relocation. The applicant shall pay the costs of the encroachment permit. The Director of Public Works shall have review authority over all Encroachment Permits.

**Report to Council No.** \_\_\_\_\_

**Approved by Council on** \_\_\_\_\_

**City Clerk Certification** \_\_\_\_\_

