



THE CORPORATION OF THE CITY OF COURTENAY

## STAFF REPORT

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**To:** Council

**File No.:** 3030-00-01

**From:** Chief Administrative Officer

**Date:** June 15, 2015

**Subject:** Sidewalk Cafes in Downtown Courtenay

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### **PURPOSE:**

The purpose of this report is for Council to consider the issues related to sidewalk cafes and if Council deems it appropriate to direct staff to advance a sidewalk cafe program for Courtenay.

### **CAO RECOMMENDATIONS:**

That based on the June 15<sup>th</sup> 2015 Staff Report "Sidewalk Cafes in Downtown Courtenay", Council direct staff to develop a permitting process and amend the necessary bylaws to permit sidewalk cafes in downtown Courtenay; and

That Council direct staff to consult with the Downtown Courtenay Business Improvement Association for input prior to implementing a permitting process.

Respectfully submitted,

David Allen, BES, CLGEM, SCLGM  
Chief Administrative Officer

### **BACKGROUND:**

At the regular meeting on May 11, 2015, Council passed a resolution for staff to report on the issues related to sidewalk cafes and recommendations for permitting sidewalk cafes in downtown Courtenay. This report summarizes the issues related to sidewalk cafes, and provides potential approaches to be considered in the development of a sidewalk cafe program.

### **DISCUSSION:**

Sidewalk cafes are outdoor patios located on a sidewalk for the purpose of serving food and beverages to seated patrons in conjunction with an existing restaurant or cafe directly adjacent to the sidewalk cafe. Sidewalk cafes are a common feature in many municipalities and can play a role in activating the street and creating vibrancy in the downtown.

In many instances sidewalk cafes require the use of the parking stalls adjacent to the business in order to relocate the pedestrian traffic. While some jurisdictions permit seated cafes over parking stalls on the road, this report focuses only on cafes occupying the sidewalk area. Staff believe that in order to minimize

conflicts between pedestrians and cafe patrons/staff the cafe should be contiguous with the business frontage.

The primary tool the City could use to permit sidewalk cafes is Traffic Regulation Bylaw No. 1926, 1996. In general this bylaw prohibits the use of roads and sidewalks for anything other than pedestrian and vehicle movement. The bylaw does include the ability of the Director of Engineering and Public Works to issue Highway Use Permits to allow an applicant to “place, construct or maintain a loading platform, skids, rails, mechanical devices, buildings, signs **or any other structure or thing on a highway**”.

While there are a number of conditions related to the issuance of permits under this bylaw, it was not designed with sidewalk cafes in mind. Accordingly, staff would need to conduct a detailed review of the bylaw to bring forward the necessary amendments. Additionally, staff would need to prepare a permit template specific to sidewalk cafes and develop design criteria for both the cafe area and the reconstructed pedestrian boardwalk.

### Key Considerations

The following is a list of some items that will require consideration in developing a permit process.

- Access - Sidewalk cafes occupy what is normally pedestrian space, as such it is important that adequate space is retained for proper pedestrian circulation. Most municipalities require a minimum of 1.5 to 1.8 meters of unobstructed pedestrian space. This typically requires the construction of a temporary boardwalk over the parking stalls adjacent to the business. The temporary boardwalk or the retained area of sidewalk where space permits must be designed to be wheelchair accessible. Design guidelines generally restrict fencing, vegetation, or patio furniture from projecting into this pedestrian space.

The ability to maintain access to City infrastructure and third party utilities is also critical. Agreements generally retain the right for the City or utility companies to access the sidewalk cafe area for installation, maintenance and repair of infrastructure. In such situations the removal and reinstatement of the cafe would be at the owners' expense.

- Loss of parking space – In almost all cases the placement of a sidewalk cafe will result in the loss of parking spaces. As noted above this is generally through the loss of parking to accommodate a temporary pedestrian boardwalk.

While there are about 1500 free parking spaces downtown there is a perception by some that parking is an issue downtown. This perception is largely the result of people not being able to park directly in front of, or within a short walking distance of, the business they are going to. The spaces used for sidewalk cafes are typically premium short-term, high turnover, convenient parking spaces which local businesses want to maintain. Parking was a major part of the 2012 downtown forum. Consultation with the DCBIA prior to implementing a permitting process will be important to gauge current opinions.

- Safety - Barriers between temporary boardwalks and moving traffic or parking areas will need to be considered in the design parameters. Consideration will also be required for sightlines when temporary structures are proposed next to intersections, crosswalks, transit stops or loading zones.

- Liability – A typical concern with the private use of public space is liability resulting from injuries on public land. Most municipalities require the applicant to have liability insurance with the municipality named as an additional insured. The current Traffic Regulation Bylaw for the City has a minimum insurance requirement of \$5,000,000.
- Assistance to Business - Pursuant to Section 25 of the *Community Charter* Council is prohibited from providing assistance to business including “disposing of land or improvements, or any interest or right in or with respect to them, for less than market value”. As a result of this restriction most municipalities charge an annual fee for use of the public space whether it is sidewalk or road. For example Cumberland charges an annual fee of \$21.50 per sq. m of sidewalk area used and a parking stall fee is charged for sidewalk extensions in the amount of \$105 per stall used.
- Design – The design of sidewalk cafes is important to regulate, particularly in the downtown area. Design guidelines generally include the use of planters, decorative fencing and coordination with the principal business façade. From a location perspective the design must consider existing sidewalk obstructions such as signs, poles, street furniture, utilities, street trees & landscaping.
- Maintenance – Sidewalk cafe permits generally contain provisions around the maintenance of the area used for the sidewalk cafe. In this regard the business operator agrees to maintain the area during the term of the permit and provide a maintenance bond for potential damage to city infrastructure.

### Municipal Approaches

The following is a point form outline of select municipal approaches to sidewalk cafes.

- Cumberland
  - sidewalk cafe bylaw & permit
  - cafe cannot occupy more than half the width of sidewalk and must leave 1.5 m of unobstructed pathway
  - annual fee charged on area (\$21.50 per sq. m) used for on sidewalk and parking stall fee charged for sidewalk extension (\$105 per stall)
  - \$5 million comprehensive liability insurance with village named as an additional insured
  - specific criteria/permit conditions
- Penticton
  - type 1 (occupy up to one half width of sidewalk leaving at least 1.5 m unobstructed path) and type 2 cafes (seasonal installations comprising entire sidewalk and constructs temporary extension over parking area to provide pedestrian access)
  - administration (business licence, sidewalk cafe permit, licence agreement)
  - \$2 million comprehensive liability insurance with city named as an additional insured
  - specified design guidelines
  - permit for sidewalk (type 1) is \$300, permit for parking stall (type 2) is \$105 per stall

- Kamloops
  - uses road permit application to administer sidewalk cafes
  - seasonal from April 1 to October 31
  - \$80 application fee for new applications and \$40 application fee in subsequent years
  - patio operators responsible for maintenance
  - all patio areas require removable fencing
  - lists specific design criteria
  - require 1.5 m unobstructed pedestrian space
  
- Township of Langley
  - permitted where sidewalks are at least 3 m wide provided at least 1.5 m is unobstructed, non-undulating space for pedestrians
  - do not allow alcohol to be served within patio area
  - \$25 application fee and \$75 annual permit
  - administered as policy and permit
  - \$2 million third party liability insurance naming Township required
  
- Vernon
  - requires 1.8 m of unobstructed sidewalk for pedestrian circulation
  - allows limited amounts of advertising (umbrellas, fencing)
  - design must tie into building design and City Centre Neighbourhood Plan
  - \$100 application fee, \$50 renewal fee each year plus \$3.00/sq.ft of space used
  - \$3 million liability insurance naming City as an additionally insured
  - indemnify and save harmless clause protecting City from claims, actions for injury, damage, loss or death arising out of or resulting from the temporary occupancy of the public right-of-way
  - sidewalk cafe require delineation with self-supporting and easily movable barriers
  
- Nelson
  - licence to occupy municipal road allowance
  - \$300 application fee valid for up to three years plus annual fee of \$300 or \$48.50 per square metre, whichever is greater
  - has design guidelines including materials and aesthetics and specifications for patios on sloped grades
  - require building permit for all constructed patios
  
- Pemberton
  - policy and permit
  - \$2 mill comprehensive liability insurance with village named as an additional insured
  - use of public parking limited to 2 stalls or width of business for sidewalk
  - seasonal April 1 to October 31
  - maintenance by applicant/adjacent property owner
  - annual fee of \$4.00 per sq. m, \$50 application fee
  - specific design criteria required
  
- Peachland (updated 2014)
  - bylaw permitting sidewalk cafe, merchant display and mobile vending encroachment; 3 year encroachment agreement and annual renewal form; and policy establishing guidelines for the operation of these uses

- \$2 million liability insurance for non-liquor establishments, \$3 million for liquor establishments
- 1.8 m unobstructed walkway for pedestrians
- restrictions on signage
- \$50 application fee for license and encroachment agreement
- annual fee is a tiered rental rate from \$225 to \$700 based on size of license area and whether or not there is a liquor licence
  
- Qualicum
  - seasonal, first Sunday in April to last Sunday in October
  - reserves right for town to enter license area for installing, maintaining or repairing municipal infrastructure and the right to require removal of the cafe in order to perform these activities
  - requires general liability insurance naming town as additional insured and indemnification clause against all liabilities which may in any way arise from the use of the sidewalk cafe
  - \$10 application fee and annual occupancy fee of \$2.00 per sq. ft of sidewalk cafe area
  - require minimum of 1.5 m pedestrian corridor, more on busy streets or near bus stops
  - applicant responsible for maintaining sidewalk cafe area in a clean, sanitary and attractive condition and responsible for keeping adjacent sidewalk clean and tidy

**FINANCIAL IMPLICATIONS:**

There are no current financial implications resulting from this report. Should council proceed with bylaw preparation and program uptake there will be a small amount of revenue from sidewalk cafe permits.

**ADMINISTRATIVE IMPLICATIONS:**

Staff have spent approximately 15 hours researching and writing this report. Additional time (approximately 25 hours) will be required to conduct public consultation and draft the necessary amending bylaws and prepare policy and application forms.

Following the adoption of a sidewalk cafe program staff time will be required to administer applications.

**ASSET MANAGEMENT IMPLICATIONS:**

There are no asset management implications resulting from this report. Installation, removal and maintenance of future sidewalk cafes will be the responsibility of the operator.

**STRATEGIC PRIORITIES REFERENCE:**

The presence of sidewalk cafes contributes to the activity and vibrancy of downtown areas which is consistent with Council's strategic priority of revitalizing downtown.

**OFFICIAL COMMUNITY PLAN REFERENCE:**

It is a goal of the OCP to preserve and protect downtown Courtenay as an integral part of the community's social and cultural life, its identity and its economy.

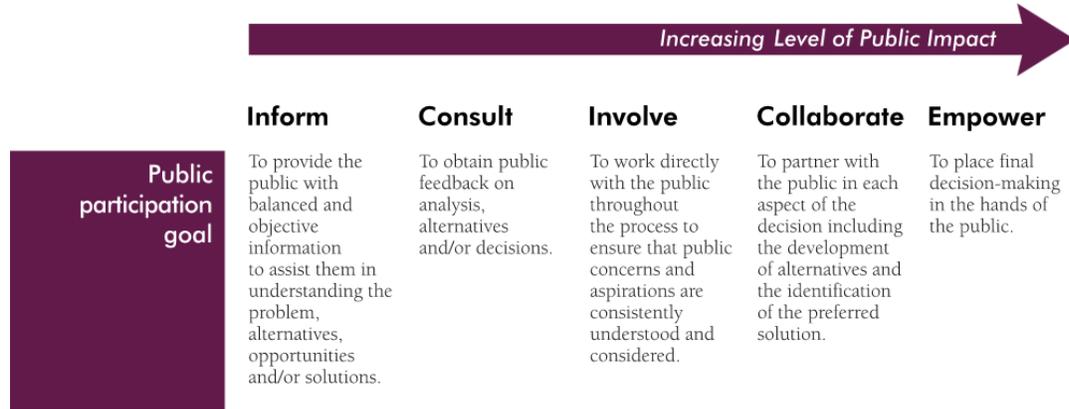
**REGIONAL GROWTH STRATEGY REFERENCE:**

Not referenced.

**CITIZEN/PUBLIC ENGAGEMENT:**

Staff would involve the DCBIA based on the IAP2 Spectrum of Public Participation:

[http://c.ymcdn.com/sites/www.iap2.org/resource/resmgr/imported/IAP2%20Spectrum\\_vertical.pdf](http://c.ymcdn.com/sites/www.iap2.org/resource/resmgr/imported/IAP2%20Spectrum_vertical.pdf)



**OPTIONS:**

- OPTION 1: Direct staff to prepare a sidewalk cafe permitting process.
- OPTION 2: Defer consideration of a sidewalk cafe permitting process pending receipt of additional information.
- OPTION 3: Do not proceed with a sidewalk cafe permitting process.

Prepared by:



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