

# COUNCIL REPORT



REPORT DATE: January 7, 2015

MEETING DATE: January 12, 2015

TO: Mayor and Councillors

FROM: Judith Walker, Senior Planner

SUBJECT: Sidewalk Café Report

## RECOMMENDATION

- i) THAT Council receive the Sidewalk Café Report for information;
- ii) THAT Council direct staff to develop a policy to permit sidewalk cafés including application, permit and conditions based on this report and to proceed with public consultation of the policy;
- iii) THAT Council refer the report to the Advisory Planning Commission and the Heritage Commission;
- iv) THAT Council direct staff to bring back the policy for consideration with a summary of feedback, incorporating any proposed changes deemed necessary.

## SUMMARY

At the regular meeting on September 29, 2014, Council made a motion for staff to report back on sidewalk cafés, including examples of other municipalities, parking issues, liability concerns, etc. This report provides that background and recommendations to be considered for permitting sidewalk cafes in the Village of Cumberland.

## BACKGROUND

### Sidewalk Cafés

A sidewalk café is an extension of an existing restaurant business into the public right-of way (ROW). All over the world, people enjoy eating and drinking outdoors in fine weather, to appreciate the fresh air and to participate in creating an active street. It is this kind of street activity that builds the “third place” importance. Ray Oldenburg, an urban sociologist developed the theory of “the third place” - we have homes and work places, but it is the “third place” where we socialize, relax and engage that makes communities thrive. Sidewalk cafes can play an important role in creating vibrant communities.

### Design & Regulation Considerations

A sidewalk café can be as simple as the placement of a couple of chairs and a small table outside, against the building, or as large scale as taking over the parking spaces in front of the business and constructing a formalized and controlled outdoor seating area. For establishments wishing to

serve alcohol, there must be a controlled seating area which limits access. This is required by the Liquor Control Board (LCB) and is not within the Village of Cumberland's jurisdiction.

However there are Village bylaws (Streets & Traffic Bylaw No. 353) which provides restrictions on use of public rights of way for private uses. For signs that extend into the ROW, a Highway Encroachment Agreement is required. Whatever the form of encroachment is proposed (signs, building ramp, seating etc.), there must be an unobstructed travel lane for the use of pedestrians. This can be built out over the parking spaces on the street, or a portion of the existing sidewalk can be kept open for pedestrians.

Staff does not consider that the elimination of a parking space to create a sidewalk café is a significant issue. A staff report on parking in the Village is a separate report to Council that will be on the January 26<sup>th</sup> Council agenda.

### Other Municipalities

Several other municipalities were examined for how their sidewalk cafés were regulated and how those regulations are enforced. Regulations varied, from simple permits through to sidewalk café bylaws. It is prudent to consider that the presence of sidewalk cafés greatly enhances street life and the economic viability of the area, so a balance should be struck that recognizes a municipality's responsibility for public health and safety while encouraging successful and vibrant communities. The municipalities vary in their conditions required, such as minimum unobstructed pedestrian corridor width, distance to the curb, liability protection, fixtures permitted (i.e. planters, umbrellas), fees etc.

#### *City of Victoria*

Victoria has updated a bylaw for Sidewalk Café Regulations so that the City may authorize the placement of temporary and semi-permanent structure on sidewalks with the City. The City includes *temporary* (included heated areas) and *enclosed* sidewalk cafés. An application is made to the Director of Engineering for a permit that contains conditions under which the applicant may operate. These conditions include:

- commercial liability insurance
- valid business permit, maintenance of sidewalk
- removal of all fixtures upon cancellation of the permit.

The City requires an unimpeded 2 metres of sidewalk. An application fee of \$50 is non-refundable and the annual permit fee is set out in the bylaw with rates varying from \$2.30-\$8.20 per square foot of sidewalk occupied (annually), depending on the area of the City and the type of sidewalk café.

#### *Town of Sidney*

Sidney has a bylaw to authorize the placement of temporary fixtures on sidewalks by permit within the Town. Conditions include:

- 2 metres unimpeded sidewalk be maintained on exterior section of sidewalk (on most streets)
- Sidewalk café removed when business is closed
- Owner responsible for disposal of all garbage generated by their business

A permit is required, for a \$50 fee, and requires that conditions be met for the operation of the temporary sidewalk café.

### *Town of Qualicum Beach*

Qualicum has a bylaw (since 1993) to provide for sidewalk cafes in the Town. Conditions include:

- 1.5m unimpeded sidewalk
- Annual permit is for April 1- last Sunday in October
- Ability for the Town to request removal with 48 hours notification (utility service, emergency etc.)
- Liability insurance
- Maintenance of the sidewalk area

The initial application fee is \$10 and an occupancy fee of \$2.00 per square foot of sidewalk occupied is required annually. Upon yearly renewal, only the occupancy fee is required. The permit has conditions attached for the operation of a sidewalk café.

### *City of Duncan*

Duncan permits sidewalk cafes in their Streets Bylaw (since 1976), in accordance with several conditions, including:

- Only permits tables and chairs, and only when the business is open
- Must be immediately adjacent to the business requesting a café permit
- Minimum width of 1.4metres of unimpeded sidewalk
- Must have liability insurance

There is no permit or permit fee and enforcement of the conditions occurs through the bylaw.

### *City of Penticton*

The City regulates sidewalk cafés through their Traffic Bylaw which includes the requirement for permits and permit agreements. The application which must be submitted includes design specifications with dimensioned drawings. The application fee is \$300 and includes both Type 1 (café utilizing sidewalk) and Type 2 (utilizing sidewalk and parking stall). Type 2 requires an additional payment of \$105 per parking stall utilized. The site is inspected by the Building Inspector prior to issuing the permit and the installation is reviewed following installation of the sidewalk café to ensure compliance with the City's regulations. Conditions include:

- Design and colour scheme to complement the building containing the business premises
- Any repairs to fences or barriers attached to the city sidewalk or roadway must be repaired
- Minimum width of 1.5 metres of unimpeded sidewalk

### Proposed Sidewalk Café Policy

It is recommended that a policy would require an application, with a fee to cover staff time to review and process the application. An annual permit fee to operate the sidewalk café is proposed to be based on whether the café utilizes public parking space(s) or sidewalk area:

**a). Type 1:** A sidewalk café that does not occupy more than one half of the width of the sidewalk, or leaves a minimum of 1.5m. of clear, unobstructed sidewalk for pedestrian use. Annual fee for sidewalk use based on square metres utilized.

**b). Type 2** A sidewalk café that requires the use of the parking area to either: a) provide an area for the sidewalk café or b) provide the pedestrian sidewalk area around the

sidewalk café. Sidewalk constructed in the parking stalls must consist of removable sidewalk sections with a non-slip finish and flush with the existing curb and sidewalk. Parking stall fee required.

The permit would require conditions to be met, similar to other jurisdictions. Staff would approve the permit based on meeting the requirements. Following are conditions that staff could include:

1. Annual permit fee- if renewal then no application fee
2. Limits of seasonal operation: April 1-October 31. All fixtures etc. must be removed in off-season.
3. Applicant must have a valid business permit for the adjacent restaurant or café;
4. Where a sidewalk café encroaches on an adjacent business, written permission from the adjacent business for the encroachment must be received.
5. Addition of an structure, decks, awning of any size may require a Development Permit or Heritage Alteration Permit and may also require a building permit.
6. The applicant must provide a copy of the applicant's comprehensive general liability insurance in the amount of \$5,000,000 with the Village of Cumberland named as an additional insured.
7. Unless otherwise defined by the CAO, sidewalk cafes are only allowed in commercially zoned areas.
8. A minimum of 1.5 metres of sidewalk must be unimpeded (width to be confirmed for wheelchair/ double strollers etc.)
9. The design of sidewalk café should have a colour scheme and building material that complements that of the building containing the business premises and should utilize sturdy chairs and tables.
10. All umbrellas, shade devices and signage must be securely fastened down and located entirely within the approved area.
11. Landscaping and plant material must be of a temporary nature and contained within the café area.
12. Railings required between café area and vehicular traffic, as in Type 2 sidewalk café, must meet necessary safety concerns (safety barriers height, attachment and materials etc.).
13. Fencing placed around the café shall not, without written permission of the CAO, exceed 1.0 metre is height.
14. Installation of Type 2 sidewalk cafes must allow for the free flow of rainwater along the gutter.
15. The designated portion of the sidewalk for which a permit is issued, shall be a minimum of .6metre from the curb where the traffic lane adjacent to the curb is used for parking (to allow the opening of parked car doors).
16. Café area and sidewalk must be maintained and free of all garbage.
17. Café must comply with all municipal, provincial and federal bylaws and regulations.
18. Shall not be located in an area of other fixed structures such as bike racks, hydro poles, planters, benches, trees.
19. Must meet accessibility standards.

### Staff Recommendations

Staff suggests the following application fee (nonrefundable) and permit fee with conditions considered, as above. The proposed fees are based on fees in other municipalities.

<b>Sidewalk Café Requirement</b>	<b>Fee</b>	<b>Note</b>
Application	\$50	Nonrefundable
Sidewalk Use Permit	\$21.50/square metre of sidewalk utilized	Annual fee
Parking stall use Permit	\$105 per space or portion of a space	Annual fee

Council's motion of September 29<sup>th</sup>, 2014 directed staff to proceed with a public process following this report. Staff will post the proposed policy for sidewalk cafés on the website, distribute posters around the Village regarding the proposed policy and will contact business owners for their feedback. Staff would request comments on the draft policy in order to forward the feedback to Council.

### Heritage Conservation Area

Applications for sidewalk cafes on properties within the Heritage Conservation Area (as designated in the OCP) would not require a Heritage Alteration Permit (HAP) unless a building permit is required. Since a platform in a parking stall is less than 45.7cm. (18" tall), it does not constitute a structure in the BC Building Code, and a building permit is not required. A handrail is required on the traffic side of the platform area of the café due to public health and safety concerns, but would not be considered a structure.

### **FINANCIAL IMPLICATIONS**

There is additional staff time required to receive and process applications for sidewalk cafes. Depending on the complexity of the application and the degree of regulation, there is the potential to involve the building inspector, Manager of Operations, public works, planning staff and bylaw enforcement.

### **STRATEGIC OBJECTIVE**

*Under Corporate Strategic Priorities: Vision: Priorities: Village centre rejuvenation; Promotion of the village for local and regional businesses; and Recreation and tourism.*

### **ATTACHMENTS**


Photos of types of sidewalk cafés in other jurisdictions.

## REFERRALS

1. Further to Section 5 of the *Advisory Planning Commission Bylaw No. 999, 2014*, Council may wish to refer this application to the APC for their comments.
2. Further to Section 8 of the *Corporation of the Village of Cumberland Heritage Commission Bylaw No. 824, 2006*, Council may wish to refer this application to the Heritage Commission for their comments.

## CONCURRENCE

Rachel Parker, Deputy Corporate Officer. 

Rob Crisfield; Manager of Operations 

## OPTIONS

- i) THAT Council receive the Sidewalk Café Report for information;
- ii) THAT Council direct staff to develop a policy to permit sidewalk cafés including application, permit and conditions based on this report and to proceed with public consultation of the policy;
- iii) THAT Council refer the report to the Advisory Planning Commission and the Heritage Commission;
- iv) THAT Council direct staff to bring back the policy for consideration with a summary of feedback, incorporating any proposed changes deemed necessary; or
- v) Any other action deemed appropriate by Council.
- vi)

Respectfully submitted,



Judith Walker  
Senior Planner



Sundance Topham  
Chief Administrative Officer

## Images of Sidewalk Cafes

### Sidewalk café in parking space

(City of Quesnel)



### Sidewalk café adjacent to business

(City of San Diego)



**Sidewalk café with sidewalk extended into parking space**

(City of Halifax)

