

THE CORPORATION OF THE VILLAGE OF CUMBERLAND

BYLAW NO. 1019

A bylaw to regulate sidewalk cafés.

The Council of the Corporation of the Village of Cumberland in open meeting assembled enacts as follows:

1. This Bylaw may be cited as "Sidewalk Café Bylaw No. 1019, 2015."

2. In this bylaw,

"boardwalk" means any temporary structure constructed on a highway providing a pedestrian route around an area used for a sidewalk café permitted by a sidewalk café permit,

"manager of operations" means the manager of operations for the Corporation of the Village of Cumberland, and includes the chief administrative officer,

"parking stall" means the area marked for parking along a highway adjacent to the sidewalk,

"sidewalk" means the area between the curb lines or lateral lines of a road and the adjacent property lines improved for the use of pedestrians,

"sidewalk café" means a temporary outdoor patio, sidewalk patio, street patio or deck located on a sidewalk or other portion of a highway, including parking stalls, permitted by a sidewalk café permit for the purpose of serving food and beverages in an outdoor setting to seated patrons in conjunction with an existing business directly adjacent to the sidewalk café.

Application

3. Except as specifically authorized by a permit, or under this bylaw or other enactment, as applicable, a person must not

(a) occupy a sidewalk, boulevard or other portion of a highway for the purpose of a sidewalk café or boardwalk,

(b) place furniture, including tables and chairs, on a sidewalk or other part of a highway in a commercial zone.

4. A person may place tables and chairs on a sidewalk for a business in a commercial zone without a sidewalk café permit if
 - (a) the tables and chairs are located on the sidewalk immediately adjoining the existing business and wholly located within 1.0 metre of the property line of the parcel on which the business is located,
 - (b) the sidewalk is unimpeded at a minimum width of 1.5 metre for the length of the sidewalk for which tables and chairs are placed,
 - (c) the tables and chairs are removed at the close of business each day,
 - (d) there is no area demarcated for the business's own use on the sidewalk,
 - (e) there are no constructed items or fixtures on the sidewalk adjacent to the business, including a patio, fencing, planters, tables or chairs, and
 - (f) liquor is not served to patrons sitting at the tables and chairs.

Authority of the Manager of Operations

5. The manager of operations is authorized to
 - (a) determine the form of an application for a sidewalk café permit,
 - (b) prescribe the form of a sidewalk café permit, which may include a licence of occupation agreement,
 - (c) issue and renew a permit for the operation of a sidewalk café in accordance with terms and specifications set out in this bylaw, and impose additional terms, conditions, restrictions and requirements,
 - (d) refuse to issue or renew a permit
 - (i) when information submitted is insufficient to determine compliance with the provisions the this bylaw or another enactment,
 - (ii) when incorrect information is submitted,
 - (iii) when there was contravention of any specification or condition of the permit being considered for renewal,
 - (iv) that would authorize any building, structure or occupancy that would not be permitted by this bylaw,
 - (v) that would be prohibited by any other bylaw or regulation, or

- (vi) if the manager of operations considers that the activities proposed or contemplated under the permit cannot be carried out safely and with a minimum risk of injury to persons, damage or loss to property, inconvenience to others using the highway, residents or businesses in the vicinity, or to the public generally.
- (e) suspend, amend, vary, revoke, or cancel any permit, without compensation to the permit holder, if
 - (i) there is a contravention of any specification or condition of the permit,
 - (ii) the permit was issued in error,
 - (iv) the permit was issued on the basis of incorrect information,
 - (v) in the opinion of the manager of operations, a portion of the sidewalk café area is required for the installation of municipal utilities or other municipal purposes, or
 - (vi) the manager of operations considers that the activities under the permit are not being carried out safely and with a minimum risk of injury to persons, damage or loss to property, inconvenience to others using the highway, residents or businesses in the vicinity, or to the public generally.

Sidewalk Café Application and Permit

6. Before constructing and operating a sidewalk café or boardwalk, a person must
 - (a) obtain and hold a valid sidewalk café permit from the manager of operations, and
 - (b) pay the applicable annual sidewalk café permit fees set out in this bylaw.
7. To apply for a sidewalk café permit, a person must
 - (a) submit a completed application for a permit on the applicable form provided by the Village, and
 - (b) pay a non-refundable application fee in the amount set out in Schedule A to this bylaw.
8. An application must include
 - (a) the endorsement of the registered owner of the building,

- (b) a scaled site plan showing the proposed sidewalk café area and boardwalk, including
 - (i) all existing buildings and structures on private property,
 - (ii) all fixtures located within 3 metres of the proposed sidewalk café area and any boardwalk,
 - (iii) existing ground levels and levels of the proposed sidewalk café and any boardwalk,
 - (iv) location of all fixtures, fencing, improvements, furniture, equipment, chattels, personal property and materials, landscaping, umbrellas, shading devices, signage and any other amenities, and
 - (c) any additional information required by the manager of operations.
- 9. An expired permit may be renewed, without payment of an application fee, in the following year if any of the following has not changed:
 - (a) the ownership of the business;
 - (b) the ownership of the building in which the business operates;
 - (c) the type of business;
 - (d) the layout and design of the sidewalk café and any boardwalk.
- 10. Before a permit is issued or renewed, a person must
 - (a) submit evidence of the applicant's comprehensive general liability insurance in the amount set out in Schedule A to this bylaw per occurrence with the Village of Cumberland named as an additional insured,
 - (b) indemnify and save harmless the Village of Cumberland and its elected officials, officers, employees and agents from and against all actions, proceedings, claims and demands of any kind by any person arising out of or in any way connected with the permission to occupy or the existence of a sidewalk café and/or boardwalk, or construction, maintenance, use of fixtures and amenities,
 - (c) pay the annual sidewalk café permit fee in the amount set out in Schedule A to this bylaw, and
 - (d) pay to the Village a security deposit in the amount set out in Schedule A to this bylaw.

11. (1) The annual sidewalk café permit fee must be paid
 - (a) for a sidewalk café located on a sidewalk, for the area of sidewalk identified as the permit area in the sidewalk café permit, and
 - (b) for a sidewalk café located in a parking stall, for the complete parking stall area.
- (2) The sidewalk cafe permit fee is not payable on the area of a parking stall used for a boardwalk.
12. Every permit holder must
 - (a) comply with this bylaw,
 - (b) ensure that all of the restrictions, requirements, specifications, terms and conditions of the sidewalk café permit are met,
 - (c) comply with the plans and specifications forming part of a permit, and complete the work required by the plans and specifications of a permit,
 - (d) submit a request to the manager of operations to inspect the sidewalk café before use of the sidewalk café and any boardwalk, and
 - (e) be bound by any waiver and indemnity which forms part of a permit application and a permit.
13. Where the permit holder fails to keep the sidewalk café and any boardwalk in accordance with the specifications and conditions of a permit, the Village may draw on the security deposit to pay the costs of the Village maintaining or removing the amenities and restoring the highway and shall return any unused balance to the permit holder. If the Village's costs exceed the amount of the security deposit, the permit holder must pay the Village the shortfall immediately upon receipt of the Village's invoice.

Sidewalk Café Permit Specifications

14. The following specifications apply to all sidewalk cafés and boardwalks as conditions and requirements of a sidewalk café permit:
 - (a) A sidewalk café permit is valid from March 1 to October 31 in the year it is issued;

- (b) Upon expiry of a permit, all fixtures and structures placed within a highway must be completely removed within two days;
- (c) Sidewalk cafés are permitted in commercial zones only;
- (d) A sidewalk café must be an extension of, and an appurtenance to, the business directly adjacent to the sidewalk café area;
- (e) A sidewalk café must not extend beyond the length of the frontage of the associated business premises or lot without
 - (i) specific written permission from the owner of the affected property and affected business submitted to the Village of Cumberland,
 - (ii) specific written permission from the manager of operations, and
 - (ii) complying with any conditions the manager of operations considers to be reasonable and necessary in the circumstances;
- (f) All fixtures and amenities of a sidewalk café, including umbrellas, shade devices, signage, landscaping and plant material, must be wholly contained within the permitted sidewalk café area;
- (g) Structures, decks, awnings of any size may require a development permit, heritage alteration permit, and/or building permit;
- (h) A sidewalk café must comply with all municipal, provincial and federal bylaws and regulations;
- (i) The design of a sidewalk café must have a colour scheme and building material that complements the building containing the existing business;
- (j) A sidewalk café must utilize sturdy chairs and tables;
- (k) Umbrellas, shade devices and signage must be securely fastened;
- (l) Landscaping and plant material must be temporary and located in portable containers;
- (m) Fencing separating a sidewalk café from the sidewalk must not exceed 1.0 metre in height;
- (n) Guardrails a minimum of 1.0 metre height are required to separate a sidewalk café from vehicular traffic.

- (o) The permit holder must keep a sidewalk café, any adjacent sidewalk and boardwalk entirely clear of
 - (i) ice and snow, and
 - (ii) garbage;
- (p) A sidewalk café and any boardwalk must be relocated or removed at the sole expense of the permit holder if required by a suspended, amended, varied, revoked or cancelled sidewalk café permit.
- (q) All constructed areas and fixtures must be wheelchair accessible unless it is shown to the satisfaction of the manager of operations to be impractical.
- (r) Surfaces accessed from the sidewalk must be flush and level with the sidewalk unless it can be shown to be impractical in which case steps or a ramp may be permitted by the manager of operations.
- (s) Surfaces accessed from inside a building must be flush and level with the floor of the building.
- (t) The point of entry of surfaces situated on a sloped grade must be flush and level with the sidewalk unless it is shown to be impractical in which case steps or a ramp may be permitted.
- (u) Design and construction of the sidewalk café seating area must take into account the crossfall from the sidewalk and street and must accommodate the free flow of water along the gutter/curb line.
- (v) Seating area surfaces must allow for the free flow of water through the surface or must be sloped to drain to a location acceptable to the manager of operations.
- (w) Surfaces must be non-slip.
- (x) The use of carpet is prohibited.
- (y) Amenities must be of good quality materials and must retain their visual appeal through regular maintenance or replacement.
- (z) Preferred materials are those that have durability and will retain a high visual quality from year to year. Structural materials must be repaired or replaced at the direction of the manager of operations.
- (aa) Any ramp must conform to the requirements of the BC Building Code.

- (bb) A sidewalk café and any boardwalk must be inspected, or caused to be inspected, by the manager of operations before use and operation.
 - (cc) Bikes must not be parked and dogs must not be tied to any part of a sidewalk cafe in any way that impedes pedestrian travel.
[Bylaw 1032]
15. A sidewalk café located on a sidewalk
- (a) must provide at least one clear pedestrian travel lane 1.5m wide at all times through an area with fixed structures, such as, but not limited to, benches, bike racks, lamp standards and planters; and
 - (b) must not be located within 0.5 metre of the sidewalk curb where the adjacent lane is used for parking.
[Bylaw 1032]
16. To meet the specifications set out in this bylaw, a sidewalk cafe
- (a) may be located in one or two complete parking stalls, or
 - (b) may utilize a boardwalk located in one or two complete parking stalls.
[Bylaw 1032]
17. *Repealed*
[Bylaw 1032]
18. A boardwalk must meet the following specifications:
- (a) Surfaces must be stable and firm;
 - (b) Surfaces must be flush at the point at which it joins the existing sidewalk;
 - (b.1) Boardwalks must not have any gaps over ¼" in the surface to limit problems with pedestrians and scooters;
[Bylaw 1032]
 - (c) Surfaces must be regular and even, with planks or seams perpendicular to the direction of travel, and have adequate drainage to avoid the accumulation of water satisfactory to the manager of operations;
 - (d) All obstructions and protruding obstructions should be minimized or non-existent; obstructions that protrude (such as signs or planters) more than 10cm into the walkway and are placed higher than 60 cm from the ground are prohibited;

- (e) Boardwalks must be a minimum of 1.8m wide on the section parallel to the roadway and must be a minimum of 2.0m wide on the angled portions connecting to the sidewalk; angled turns of 45° or less are recommended to maintain pedestrian traffic flow;

[Bylaw 1032]

- (f) Boardwalks must be installed, inspected and completed before the sidewalk is closed for construction of a sidewalk café;

- (g) Boardwalks must have bi-directional reflectors every 30cm along the roadway face.

[Bylaw 1032]

Offence

- 19. Every person who violates this bylaw commits an offence and is liable upon conviction to a penalty not exceeding \$5,000 and the cost of prosecution.

Severability

- 20. If any section, paragraph or phrase of this bylaw is for any reason held to be invalid by a decision of a court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this bylaw.

READ A FIRST TIME THIS	27TH	DAY OF	APRIL	2015.
READ A SECOND TIME THIS	27TH	DAY OF	APRIL	2015.
READ A THIRD TIME THIS	27TH	DAY OF	APRIL	2015.
ADOPTED THIS	11TH	DAY OF	MAY	2015.

Mayor

Corporate Officer

Schedule A

Sidewalk Café Permit

Fees, Damage Deposit and Insurance Requirements

1. Non-refundable application fee: \$100
[Bylaw 1032]
2. Annual permit fee: \$11 per square meter of sidewalk café area
or parking stall area, as applicable
3. General liability insurance: \$3,000,000
4. Required damage deposit: \$500