



The Corporation of the City of Courtenay

Staff Report

To: Council
From: Director of Development Services
Subject: Sidewalk Patio Policy DS-01

File No.: 3030-00-01
Date: April 24, 2024

PURPOSE:

For Council to consider the proposed Sidewalk Patio Policy DS-01 to establish a permanent patio program.

BACKGROUND:

Sidewalk patios are located on public sidewalks, parking stalls, and streets for the purpose of serving food and beverages to seated patrons in conjunction with an existing restaurant directly adjacent to the patio. They are also licenced through Liquor and Cannabis Regulation Branch (LCRB) when liquor is served, and must meet Community Health regulations.

The Downtown Sidewalk Patio Program was first introduced in 2015 as a pilot project and continued to operate on a pilot seasonal basis starting on May 1st and ending on November 30th each year. It applies to the Downtown Courtenay Business Improvement Area (DCBIA).

The pilot program evolved during the COVID-19 restrictions to accommodate social distancing requirements. It has remained as a pilot project and seasonal. Current pilot program details are summarized below.

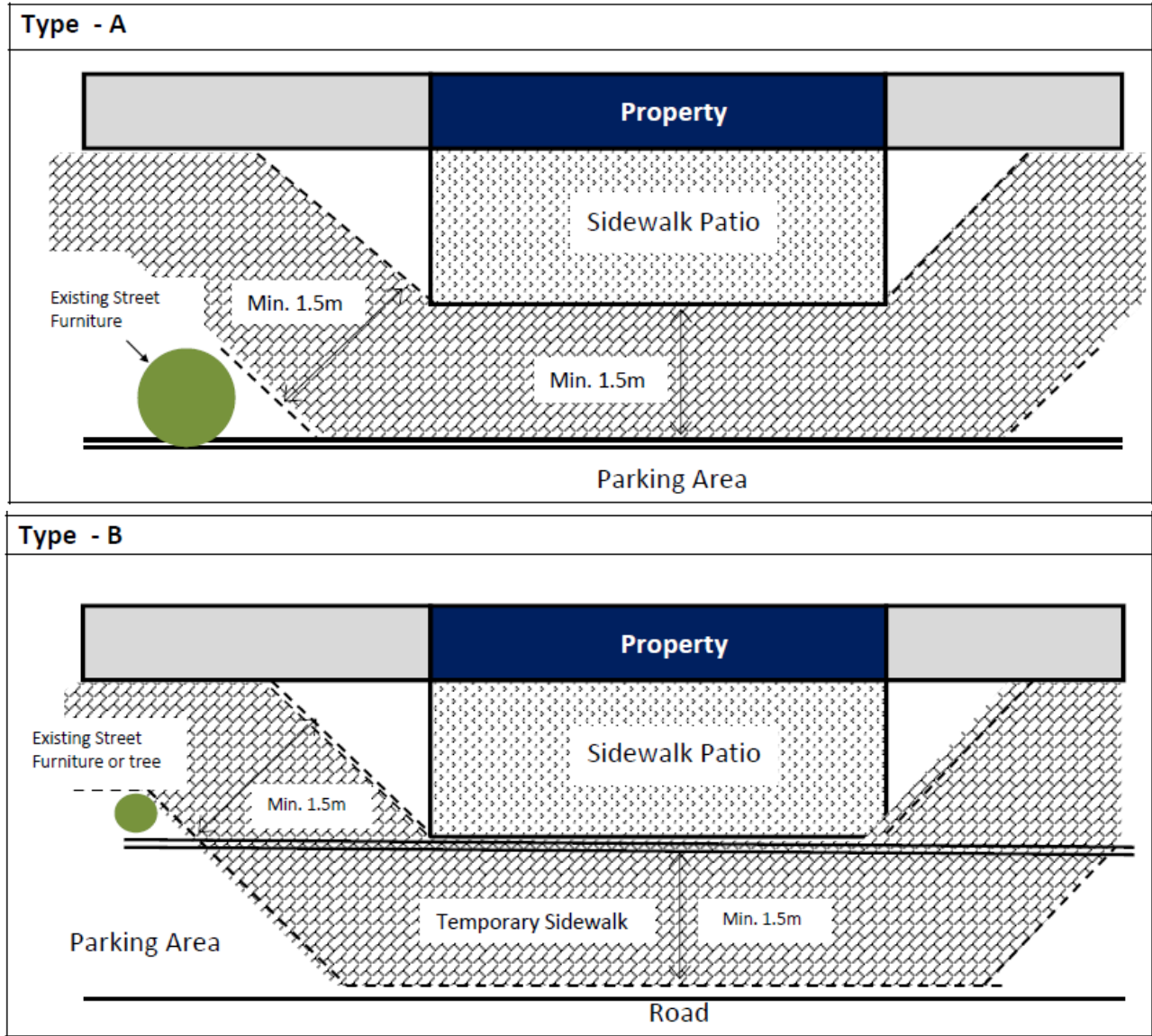
Three layout configurations are permitted as described as Type A, B or C shown in Figure 1 below:

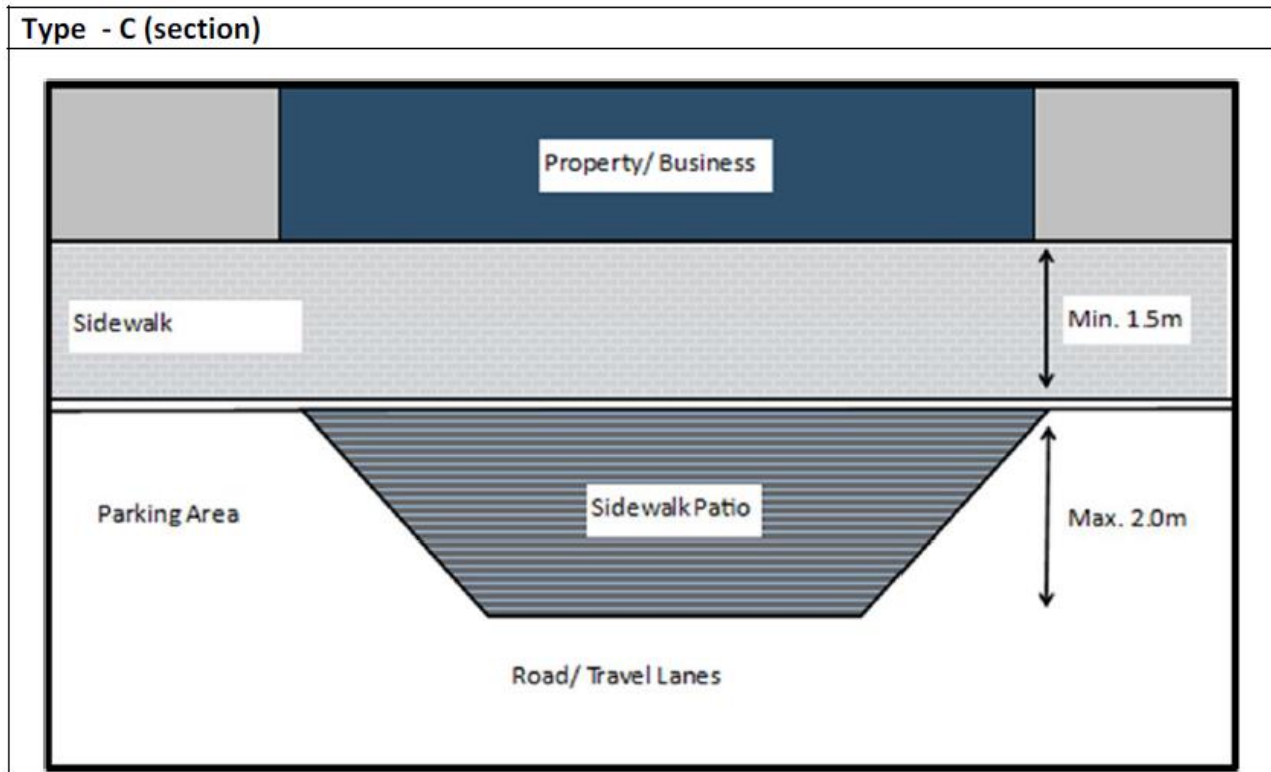
- Type A – the patio and 1.5m walkway are entirely within the sidewalk area.
- Type B – the patio is within the sidewalk area, and a temporary 1.5m sidewalk is constructed into the on-street parking area.
- Type C – the patio occupies up to three on-street parking stalls in front of business, while maintaining a minimum 1.5m wide sidewalk between the patio and business.

Existing program guidelines include:

- access for the public (including for wheelchairs), patrons and access to infrastructure;
- design requirements including the visual appearance of and distances of fencing and railing clearances to infrastructure, encouragement of landscaping in planters;
- requirements for a traffic plan during construction of the patio;
- owner maintenance responsibilities: garbage disposal and drainage maintenance;
- proof of liability insurance with City as co-insured, business licence and liquor licence (where applicable);
- letters of support where their patio encroaches onto or extends in front of adjacent property;
- installation and removal of infrastructure required to support the patios is the responsibility of the permit holder;
- ability for the City to provide 24 hrs notice to operators for servicing City infrastructure;
- a \$50 application processing fee.

Figure 1: Type A, B and C pilot Sidewalk Patio Program layout options.





The chronology of the pilot sidewalk patio program is listed below:

1. May 11, 2015 - Council adopts a resolution to direct staff to report on issues related to sidewalk patios and recommendations for permitting sidewalk patios in the DCBIA area of Courtenay.
2. June 15, 2015 – Council receives a staff report and adopts a resolution to direct staff to develop a sidewalk patio permitting process and amend necessary the bylaws to allow sidewalk patios in downtown Courtenay (DCBIA). The report provides a list of key considerations, examples from comparable communities, and introduces program elements. Two patio layout options (Types A and B) are presented, both of which are contiguous to the subject businesses in order to minimize potential conflicts between pedestrians and patio patrons/staff. Staff report available [here](#).
3. May 19, 2020 - In response to COVID-19 physical distancing requirements, staff present a report to Council proposing a third layout option (Type C) for patios to use parking stalls within the road right of way in order to accommodate physical distancing options for businesses. Council endorses the additional layout option. Staff report available [here](#).

The first sidewalk patio permits were issued in 2016. Since that time forty-two (42) applications for temporary sidewalk patios have been submitted to the City, most of them reoccurring seasonal applications.

DISCUSSION:

Staff have been reviewing neighbouring municipalities (Attachment 1) along with the reports previously provided to Council and have identified the follow policy items that need to be considered in the proposed Sidewalk Patio Policy (Attachment 2):

1. Layout flexibility and reducing maximum number of parking stalls that may be occupied by a patio from 3 to 2

The pilot program requires that an application meet one of the three types of layouts described above (A, B or C). Staff recommend keeping the type A, B and C layouts as guidelines, but allowing an applicant to exercise more creativity in design provided that key accessibility and safety interests are met. These would include at minimum:

- Limited to within sidewalk SRW and/or up to 2 parking stalls, with width to not exceed frontage of the business, unless with letter of support by adjacent business(es).
- Not be located within:
 - 1.5m of existing City infrastructure including light poles, bike racks, benches, driveways,
 - 0.6m of any building entrance and/or exit
 - 6.0m from intersections and 6.0m from fire hydrants.
- 1.5m unimpeded sidewalk be provided (either on public sidewalk, or a temporary diverted sidewalk).
- Non-slip materials and grade changes that support accessibility.
- Use of guardrails and/or fencing between patio area and both pedestrian and vehicular traffic, where applicable.
- All openings be oriented to and open directly along the property frontage or directly to the curb line.
- No part shall disturb traffic safety or traffic circulation.
- Fences, devices, and all other equipment able to be removed within twenty-four (24) hours of City notice.

The City is proposing to reduce the number of parking stalls from three (3) proposed in pilot program to permit a up to two (2) stalls, this aligns with current practices of neighboring municipalities (Cumberland, Comox) and limit the extent of private use of public land by any one business. This also addresses concerns heard from the DCBIA regarding parking needs for customers.

2. Clarifying maintenance expectations and operator requirements for patios

The pilot program states the responsibility for waste generated by the business is that of the owner, however, the program is limited in providing guidelines for the operator's maintenance and operation of patios. Most municipal sidewalk patio programs have specific requirements for operators to address operating hours, operation of the walkway and seating areas, the operation of fixtures (tables, chairs), shading devices (e.g. umbrellas) and fencing and railings (materials). The proposed Sidewalk patio Policy provides clarity and includes following topics:

- Portable tables and chairs are required to be removed at the end of each business day.
- Bicycles shall not be parked and dogs shall not be tied to any part of a sidewalk patio in any way that would impede pedestrian travel.
- At the licensee's own expense, the licensee shall keep and maintain the patio in a safe and good repair, and in a clean, sanitary, attractive condition at all times.
- The sidewalk and any road right-of-way shall be routinely swept and otherwise kept clean of debris and/or spills.

- All fixtures and amenities of a sidewalk patios including umbrellas, shade device and landscaping, shall be contained in the sidewalk patio area.

Some communities charge damage deposits in order to cover the costs of any damages as a result of the sidewalk patio. To date the pilot Sidewalk Patio Program has not resulted in damages to City infrastructure and therefore staff are not recommending this at this time. However, should damages to City infrastructure become an issue, the requirement for a damage deposit could be added subject to Council adoption of Sidewalk Patio Policy amendment.

3. Adjusted seasonal dates to align with other local programs.

The pilot program currently is available for the months of May 1st to November 30th each year. Some feedback has been provided from merchants that an earlier start date may be desirable. Cumberland's program for example is available from March 1st to October 31st. Staff recommend adjusting the seasonal dates to April 1st to October 31st. This can be reviewed and future adjustments made based upon feedback from DCBIA.

4. Legal occupation agreements and fees

When the pilot program was first introduced, a number of considerations for a permanent program were identified including access, loss of parking, safety, liability, design, maintenance and how sidewalk patio programs can be classified as assistance to business. Under Section 25 of the *Community Charter*, a local government is prohibited to provide assistance to business.

As described under the Charter, assistance includes: "*disposing of land or improvements, or any interest or right in or with respect to them, for less than market value*", as well as grants, benefit, advantage, or other form of assistance to a business, including exemptions from taxes or fees, unless authorized by bylaw (e.g. downtown Revitalization Tax Exemption program).

It is standard practice for municipalities to require a licence of occupation agreement to formalize the authorization of temporary occupation of public land or rights-of-way subject to conditions contained therein. It is also standard practice charge a fee for use of public lands for sidewalk patios or parklets. Until late last year the City did not have occupation and encroachment fees for the use of public land, and therefore amended the *City of Courtenay Fees and Charges Bylaw No. 1673, 1992* to include Licence of Occupation and encroachment agreements fees based upon review of other municipalities. Staff report available [here](#).

5. Sidewalk Patio Fees

The *City of Courtenay Fees and Charges Bylaw No. 1673, 1992* list Licence of Occupation fees. These fees are listed as \$5 per m² of sidewalk or statutory right of way occupied plus \$100 per parking space occupied *per month* and will be coming to Council for consideration of bylaw amended to *annual*. These fees are based upon the comparison table (Attachment 1) and these can be reviewed for any proposed changes for 2025. Staff recommend a flat fee for utilizing a parking stall given the stall will be lost for parking rather than a square metre rate, as is the practice in other municipalities like Revelstoke.

Summary of key recommended Sidewalk Patio Program changes:

- Seasonal dates to April 1 to October 31st.
- Reducing maximum number of parking stalls that may be occupied by a patio from 3 to 2.

- Increasing design flexibility using Type A, B and C as guidelines and have applicant provide design for approval.
- Enhanced clarity of operator responsibilities for maintenance to include removal of chair/tables at end of each day, sidewalk and road right of way sweeping as required, maintenance of the structures, and restrictions on bike parking and dog leashing that impacts traffic and pedestrians.
- Requirement for Licence of Occupation and associated fees.
- Increased annual application fee from \$50 to \$125 per season (7 months).

Future opportunities

The proposed sidewalk patio program policy provides an opportunity to formalize the pilot program and provide enhanced guidance and requirements based on local experience and best practices. Some communities integrate sidewalk patio programs with a wider set of street activation goals including enhanced opportunities for small public gathering spots, public furnishings, bike parking, and enhanced landscaping. Staff will monitor the opportunity to integrate more of these elements alongside the sidewalk patio policy so as to enhance downtown public amenities.

POLICY ANALYSIS:

OCP Policies Streets and Transportation 10 (pg. 99) and Local Economy-7 (pg. 176) support amenity creating space in roads right-of-way in Downtown by providing places for people to gather (patios, pop-up parks and parklet) and encourages working collaboratively with neighbouring jurisdictions and the DCBIA in the development of community economic development.

FINANCIAL IMPLICATIONS:

The City of Courtenay Fees and Charges Bylaw No. 1673, 1992 was recently updated to increase the Sidewalk Patio Program application fee and to add Licence of Occupation and encroachment agreements fees.

ADMINISTRATIVE IMPLICATIONS:

The Sidewalk Patio Program is administered by the Development Services Department with referral to Operations and Fire Departments. The pilot program has revealed that additional administrative implications such as coordination with and restrictions on snow clearing activities, can arise when patios are left year-round such as during the height of COVID-19 to accommodate social distancing. The proposed Sidewalk Patio Program recommends April 1-October 31 to avoid ice or snow clearing activities, and the proposed policy provides enhanced clarity of the operator's requirements for maintenance and accommodations for city operations.

STRATEGIC PRIORITIES REFERENCE:

This initiative addresses the following strategic priorities:

- Financial Sustainability - Review City Financial processes: Review fees, charges, and fines

PUBLIC ENGAGEMENT:

Staff met with the Downtown Courtenay Business Improvement Association (DCBIA) and provided a draft of the sidewalk patio policy. In the conversation the representatives supported an annual fee, requested review of patio designs for more flexibility, and use of parking stalls. An opportunity was provided to give feedback up to Friday April 12 and no further comments have been received. Staff will continue to work with the

DCBIA on this policy and future changes to this policy that would be considered by Council on an annual basis.

OPTIONS:

1. THAT Council adopt Sidewalk Patio Policy DS-01 to establish a permanent patio program; and THAT Council Direct Staff to prepare the required Bylaw amendments to the *City of Courtenay Fees and Charges Bylaw No. 1673, 1992*.
2. THAT Council provide alternative direction to staff.
3. THAT Council deny the Sidewalk Patio Policy

ATTACHMENTS:

1. Sidewalk Patio Policy DS-01
2. Comparison table of other community approaches to Sidewalk Patio regulation

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