

# City of Calistoga

## Staff Report

**TO:** Honorable Mayor and City Council  
**FROM:** Dan Takasugi, Public Works Director / City Engineer  
**DATE:** December 15, 2009  
**SUBJECT:** Discussion Regarding Options for Use of Caltrans Right-of-Way over Lincoln Avenue (Highway 29) Sidewalks

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**APPROVAL FOR FORWARDING:**

*James C. McCann (Signed by S Sheldon)*  
James C. McCann, City Manager

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**ISSUE:**

Discussion regarding options for use of Caltrans right-of-way over Lincoln Avenue (Highway 29) sidewalks.

**RECOMMENDATION:**

Discuss and provide direction to staff.

**BACKGROUND/DISCUSSION:**

Calistoga merchants along State Highway 29 / Lincoln Avenue have long desired to conduct commercial activities on the sidewalk fronting the highway, including outdoor dining, displays of merchandise, and advertising. However, the State Streets and Highways Code, Section 721 prohibits advertising signs of any description, and Section 731 prohibits the use of State right-of-way (ROW) for commercial business activity. This conflicting scenario has precluded authorized regular use of the sidewalk area and has resulted in mild confrontations between Caltrans code enforcement and downtown merchants with commercial activities encroaching into the State's sidewalk ROW.

The business community along with staff and the Planning Commission has explored regulatory mechanisms to govern use of the public sidewalk for desirable commercial activities in recent years. As you know, we have the ability to authorize outdoor/sidewalk dining on ROW's, which the City controls through our own adopted

27 local Municipal Code provisions. There is desire to extend this type of use to the  
28 Lincoln Avenue ROW that Caltrans controls.

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30 City staff, along with City of St. Helena staff and Councilmembers, met with Caltrans  
31 District 4 Director of Operations, Sean Nozzari on November 10<sup>th</sup> to discuss options  
32 that could permit the use of Caltrans sidewalks for commercial activities. Two  
33 primary options emerged from that discussion. One is to change the legislation that  
34 governs the use of State ROW. It is less than clear on whether Caltrans would  
35 support such a legislative initiative. It is clear however that such an approach would  
36 take much effort and would take many months, if not years, to work its way through  
37 the Caltrans bureaucracy and the State legislature. The other option is for the City  
38 to accept ownership of the sidewalks. This would be accomplished with a  
39 "Cooperative Agreement" with Caltrans, which leads to a Resolution of  
40 Relinquishment by the California Transportation Commission whereby the State  
41 (Caltrans) would release its ROW ownership to the City. Should this occur, then the  
42 use of the Lincoln Avenue sidewalks would have the same ROW abilities (and  
43 limitations) as other public sidewalks throughout the community.

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45 Here are some primary concerns with taking ownership of the Highway 29 / Lincoln  
46 Avenue sidewalks from Caltrans.

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- 48 a. The City would be taking on shared liability for any damage claims  
49 resulting from injuries on the sidewalks. The Lincoln Avenue sidewalks  
50 have far more pedestrian usage than other sidewalks in the City and are  
51 generally in a poor state of repair. Past experience has shown that even  
52 shared liability with the abutting property owner can lead to enormous  
53 legal and administrative expenditures.
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55 b. The City would be taking on the responsibility of enforcing sidewalk  
56 encroachments and sidewalk repairs. As City staff has observed with  
57 Caltrans enforcement and with a recently permitted sidewalk dining  
58 establishment on Washington St., the level of effort to provide adequate  
59 code enforcement exceeds staff resources. The City's limited experience  
60 with sidewalk dining appears to indicate a natural business incentive to  
61 encroach further than permitted. Enforcement of sidewalk repairs on  
62 abutting property owners (per CMC 12.10.020 and State Streets and  
63 Highway Code) has been difficult, as most abutting property owners view  
64 sidewalk maintenance as City responsibility.
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66 c. The condition of the curb ramps is poor at the intersections of Fair Way,  
67 Washington, Cedar, and Myrtle. By taking ownership of the sidewalks, the  
68 City would be taking on financial responsibility for bringing the curb ramps  
69 up to current ADA standards. Most curb ramp improvements trigger  
70 improvements to the street grade and abutting sidewalks. Improving all

71 the curb ramps along Lincoln Avenue intersections will likely exceed  
72 \$200K in cost.

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74 d. If an adequate path of accessibility is not maintained on the sidewalks, the  
75 City could incur liability for lack of enforcement or lack of accessibility.  
76 The Lincoln Avenue sidewalks are typically 13-feet in width from face of  
77 buildings to curb. But with street tree wells (approximately 4-feet from  
78 curb), parking overhangs, parallel parking door opening clearance, bike  
79 racks, newspaper dispensers, trash receptacles, planters, benches,  
80 awning support posts, and lamp posts, the usable sidewalk width is very  
81 constrained in most areas. Fire and building codes may impose further  
82 restrictions. Adding tables, chairs, merchandise racks, etc., will create a  
83 challenge to maintain a minimum 4-foot clear path; the ability to establish  
84 such a use is clearly not available to many properties.

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86 e. The serving of alcoholic beverages, as desired for most sidewalk dining,  
87 will require physical segregation of the serving area, using a fenced-in  
88 area for patrons (this is a requirement by the State Department of Alcohol  
89 Beverage Control). The recent outdoor dining improvements at Pacifico  
90 Restaurant on Cedar St. were constructed with appropriate fencing, using  
91 an 11-foot wide area for outdoor dining. This width is clearly not available  
92 on Lincoln Avenue.

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94 Discussion regarding the Council's interest in pursuing the option of assuming the  
95 control of the Lincoln Avenue sidewalk ROW is desired so that direction can be  
96 provided to staff for action.

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98 **FISCAL IMPACT:**

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100 The fiscal impacts resulting from taking ownership of Caltrans sidewalks along  
101 Lincoln Avenue are difficult to assess. There are many City costs, risks, and  
102 liabilities that would be incurred with such a Caltrans relinquishment. It is possible  
103 that some costs would be partially offset by added sales tax revenue generated from  
104 commercial activities on the sidewalk. However, legal costs from one damage claim  
105 may overshadow any potential benefit to the City or abutting property owners.

