
CITY OF KELOWNA
MEMORANDUM

Date: April 12, 2001
File No.: 6530-12
To: City Manager
From: Director of Planning and Development Services
Subject: PROGRAM FOR SEASONAL EXTENSION FOR SIDEWALK CAFES
Report Prepared by Patrick McCormick

RECOMMENDATION

THAT Council endorse Terms of Reference for a Program for Seasonal Extension for Sidewalk Cafes, to allow use of portions of the road right-of-way for the purpose of outdoor seating within the Downtown, as set out in Attachment 1 of the Planning and Development Services Department Report of April 12, 2001,

AND THAT the Program for Seasonal Extension for Sidewalk Cafes become a permanent, on-going Program based on the Terms of Reference set out in Attachment 1 of the Planning and Development Services Department Report of April 12, 2001,

AND FURTHER THAT the Program continue to be reviewed annually by staff in conjunction with the Downtown Kelowna Association, with the intention of refining and enhancing the Program to meet the needs of Downtown restaurateurs and the community-at-large.

BACKGROUND

The Program for Seasonal Extension for Sidewalk Cafes was initiated in 2000 as a means to contribute visual interest to, and help diversify activity on Downtown streets. The Program was intended to help attract greater numbers of visitors to the Downtown and contribute to a greater sense of safety and surveillance in the city's Central Business District. Additionally, the Program was aimed at Downtown restaurateurs by allowing them to take advantage of Kelowna's exceptional climate and to accommodate patrons who would like the option of sitting outdoors. The Program was in conjunction with an established Program allowing summer use of portions of the sidewalks in the Downtown under the City's Traffic Bylaw.

DISCUSSION

Three applications were received under last year's Program, of which only one was operational when the permit period ended on October 15, 2000. One application was revoked by the City due to non-compliance with the Terms of the Program, and one permit was cancelled by the applicant.

Subsequent to the expiry of the permit period last year, an evaluation was conducted through informal discussions with the Downtown Kelowna Association and with two of the applicants who had participated in the Program. One operator (Fat Daddy's Pizza) was very positive about the Program and expressed an intention to participate in 2001. One other operator (Voodoo Lounge) is no longer in business, and could not be contacted to obtain feedback. The third (Cecil's Perogies), said the Program was "a terrific idea" and should be continued.

Basically, the Terms of the Program are unchanged from last year. The Program is being proposed to continue to allow businesses engaged in food and beverage service to use the space on the road right-of-way (i.e., parking spaces and controlled no-parking spaces) immediately in front of their places of business, for the purpose of constructing a patio.

Other conditions that will continue to apply include:

- The right to use the space will be granted through a permit (permit fees remain unchanged).
- Applicants will have to meet specific requirements to address the City's potential liability (liability limits remain unchanged),
- Applicants will be encouraged to meet performance standards to address aesthetics and other aspects of each project,
- Limited assistance in the form of the provision of pre-cast concrete planters will be provided by the City on a first-come, first-served basis. These planters will help provide protection from moving vehicles as well as facilitate landscaping of the outdoor areas.

The implementation period is unchanged and will again be from May 15 to October 15, 2001. It will be evaluated after October 15, 2001, in conjunction with the Downtown Kelowna Association, with the aim of improving the details and logistics of the Program, as necessary.

Continuation of the Program has been endorsed by the Downtown Kelowna Association with the recommendation to reduce the number of patios allowed on any given block. As a result of this recommendation, only one patio will be allowed on any one block to a maximum of 2 parallel parking stalls, or 3 angle parking stalls, on a first-come, first-served basis, until the maximum is reached. This is a reduction from last year's allowance of 3 parallel stalls or 5 angle parking stalls on any *block face*, allocated on a first come, first served basis.

Other revisions to the program include:

- stipulation of a maximum deck height of .3 metres (1 foot) above the height of the adjacent sidewalk,
- stipulation that business operators may utilize stalls that overlap an adjoining place of business if written consent from the adjoining business owner(s), or a representative of the adjoining business owner(s) is received by the City of Kelowna,
- disallowance of activity on any deck after 1:30 AM, regardless of the hours of operation of the permit holder's hours of business,
- provision for the City to remove, at the operator's expense, any facility not dismantled by midnight on October 16th, and

- administration of the program by the Bylaw Enforcement Division of the Planning and Development Services Department. This is a change from the previous administration by the Works and Utilities Department.

All other terms and provisions remain in effect from the year 2000.

SUMMARY

It is recommended Council endorse a Program for Seasonal Extension for Sidewalk Cafes and direct Planning & Development Services staff to finalize all necessary steps to commence the Program as a permanent, on-going program governed by the Terms of Reference outlined in the Planning and Development Services Report of April 12th, 2001.

Signe Bagh, MCIP
Long Range Planning Manager

PJM/pm

Approved for inclusion	
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R.L. (Ron) Mattiussi, ACP, MCIP
Director of Planning & Development Services

Attachment

ATTACHMENT 1: TERMS OF REFERENCE: PROGRAM FOR SEASONAL EXTENSION FOR SIDEWALK CAFES

Boundaries of Program

The Program is limited to the area described on the attached map.

Permitted Use and Areas to be Designated

Use is limited to businesses occupying interior space at street level, and engaged in food and beverage service.

Where parking stalls do not exist in front of the subject place of business, the applicant may be allowed to utilize space on the road right-of-way directly in front of the place of business, according to the terms set out herein.

If parallel parking typically exists along the block face on which the place of business is located, the maximum depth of the subject space will be no more than 2.5 metres from the face of the curb (the depth of a parallel parking space). The maximum depth of this space if angle parking typically exists anywhere along the block face on which the place of business is located, will be no more than 4.0 metres from the face of the curb (the average depth of a 45- degree- angle parking space).

The above provisions do not apply where the subject space is a dedicated loading zone, handicap stall, turning lane, or in the opinion of the City Engineer, use of the space will compromise the safe and/or efficient movement of pedestrian and/or vehicular traffic.

Where parking stalls currently exist in front of a business, each business will be allowed to:

- utilize stalls, the full width of which front onto the place of business, to a maximum of 3 angle parking stalls or 2 parallel parking stalls on any one block frontage.
- utilize stalls that overlap an adjoining place of business if written permission from the adjoining business owner(s), or a representative of the adjoining business owner(s) is received by the City of Kelowna.
- utilize a minimum of 2 angled stalls or 1 parallel parking stall, regardless of the business frontage. In this instance the stall(s) will be assigned by the City of Kelowna.
- Only one patio will be allowed per city block to the maximum limit identified, and will be allocated on a first-come, first-served basis, pending conformance with the Terms of Reference.

Removal of Parking Meters

The removal of parking meters is not mandatory, i.e., the meter can be bagged or the meter heads removed. Where the removal of meters is requested by the applicant, the meters will be removed by the City. In this instance, the applicant will be charged for the cost of the removal of the decommissioned meters as well as the replacement of those meters at the end of the permit period.

Permit Fee

A permit fee of \$8.00 per square metre per month will be charged. This amount will be charged regardless of whether or not the proposed application involves the decommissioning of parking stalls.

Permit Period

The permit period is May 15 to October 15. The facility must be removed by 12 o'clock midnight on October 16. Days beyond this date for which the facility is not removed will result in additional charges levied on a pro-rated basis and can result in the City removing the facility at the operator's expense.

Application Requirements

Applicants are required to submit a non-refundable \$50.00 application fee and a 1: 100 site plan. The applicant is also required to provide a cash deposit, letter of credit, or bond in the amount of \$500.00 as security the obligations imposed by the permit are fulfilled and to reimburse the City for the cost of removing the structure, and/ or for any damage to the sidewalk, roadway, or any other City facility as a result of the temporary occupancy.

Issuance of Permit

Applications will be reviewed by City staff. Pending approval by staff that the application conforms with the Terms of Reference, a permit will be issued upon receipt of the security deposit and the permit fee.

Design and Construction Guidelines

The following guidelines are intended to assure the safety of patrons and the public, encourage accessibility for all individuals, and provide a facility that enhances the visual qualities of the Downtown:

The seating area must not result in the placement of chairs and tables directly on the road surface. A new surface must be provided and can be comprised of more than one level with the top of deck not more than .3 metres (1 foot) above the top of the adjoining sidewalk. All elements of the facility must be free-standing. Anchorage of structure or furniture to the sidewalk or roadway will not be allowed.

Additionally, the seating area must be cordoned from the roadway. This shall be done with concrete planters that meet specifications supplied by the City. The planters shall be placed in a manner that protects patrons from vehicular traffic on the road right-of-way, including vehicles entering and exiting adjacent parking or loading stalls.

The City will supply a limited number of planters on a first-come, first-served basis. The City will also remove any planters provided by the City, at the end of the permit period. Planting material must be supplied and maintained by the applicant.

The proposed facility will also be assessed on the degree to which it meets the following criteria:

- 1) Quality of materials and degree of visual amenities, including the extent of landscaping and decorative lighting.

The applicant is encouraged to strive for a facility consistent with the goals of the Downtown Plan. Consideration should be given to all angles from which the facility will be viewed at ground level.

- 2) Ability to maintain a clean appearance and sanitary environment including the prevention of the accumulation of debris around and under the structure.
- 3) Provision for access by individuals with physical disabilities.
- 4) Provision for the uninterrupted flow of storm water run-off.
- 5) Extent and quality of signage.

Advertising and identification signage should be limited to the name of the business and/ or a discrete menu board and must comply with the provisions of the *City of Kelowna Zoning, Sign, Heritage, and Procedures Bylaw (Bylaw No. 8235)*. Proposed signage should be submitted as part of the application package. All subsequent additions and changes in signage after issuance of a permit, must be approved by the City Engineer.

The City may ask for revisions to the design of a proposed facility where it is deemed by the City to not conform to the above criteria. Furthermore, the City, may deny a permit where those changes are not made, or to dismantle any facility, at the owner's expense, not built to the design standard indicated in the application, or to any terms and conditions pertaining to design, set out by the City as a condition of approval.

Additional Considerations

- The use of the facility must not compromise the use of the public sidewalk or present a safety hazard to patrons of the facility, or to pedestrians on the public right-of-way.
- Planters placed on the roadway around the perimeter of the facility, whether supplied by the City or the permit holder, must be planted by the permit holder prior to use of the facility. Failure to do so could result in cancellation of the permit by the City, without compensation to the permit holder.
- The structure of the facility must not restrict convenient entry to, and exit from, vehicles occupying adjacent parking spaces.
- Electricity for outdoor lighting should utilize existing on-street outlets where possible. If such an outlet is not available, additional lighting applied to the façade of the place of business is recommended. Overhead electrical extensions or electrical extensions places across the public sidewalk will not be allowed.
- All lighting in conjunction with the outdoor seating facility shall be located and arranged so no direct rays of light are directed onto the road right-of-way that would impede the visibility of motorists or would in any way interfere with the effectiveness of any traffic control device.
- All aspects of any proposed facility must meet the provisions of the *Consolidated Traffic Regulation Bylaw (Bylaw 4495-78)* and any other applicable bylaws.
- An application will be denied or a permit revoked where, in the estimation of the City, the facility compromises the public good or does not meet the terms originally agreed upon under the permit.
- Should the City require the use of the permit area for any reason, the permit may be cancelled by giving the permit holder 24 hours written notice. In the case of an emergency, the City may order the permit area to be vacated immediately.

The City will refund the applicable portion of the permit fee, on a pro-rated basis, for any temporary or permanent cancellation of a permit area. Where a permit is cancelled to allow

the City to use a permit area, the City also reserves the right to remove the facility upon 24 hours notice, and at no cost to the permit holder.

- A permit issued under this Program will authorize only the business named in the permit to occupy the area described in the permit and will not be transferable to another business, nor will it be transferable to another roadway area other than the one specified in the permit.
- The applicant shall obtain and maintain comprehensive general liability insurance in the amount of \$5,000,000.00 which names the City as an additional insured. The applicant shall submit a Certificate of Insurance (attached) to the Risk Management Department of the City prior to commencing operations of the sidewalk café. The applicant shall defend, indemnify and save harmless the City, its elected officials, officers, employees and agents against claims, demands, actions, proceedings and liabilities whatsoever and all costs and expenses incurred in connection therewith and resulting from the temporary occupancy of the road right-of-way.
- Permit holders will not be allowed to carry on any activity, or allow any activity to be carried on that would constitute a public nuisance.
- No activity will be allowed on any deck after 1:30 AM, regardless of the hours of operation of a permit holder's liquor license or hours of business.
- Permit recipients are advised they are not entitled to exclusive use of the space designated in the permit.

ATTACHMENT 2: LETTER OF ENDORSEMENT FROM THE DOWNTOWN KELOWNA ASSOCIATION.