
CITY OF KELOWNA

MEMORANDUM

Date: March 11, 2002
File No.: 6530-12
To: City Manager
From: Director of Planning and Development Services
Subject: PROGRAM FOR SEASONAL EXTENSION FOR SIDEWALK CAFES

RECOMMENDATION

THAT Council endorse revisions to the 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 the Planning and Development Services Department Report of March 11, 2002, subject to Traffic Bylaw revisions;

AND FURTHER THAT the Program continue to be reviewed annually by the City in conjunction with the Downtown Kelowna Association (DKA), 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 for Seasonal Extension for Sidewalk Cafes was in conjunction with an established program allowing summer use of portions of the sidewalks in the Downtown under provisions of the City's Traffic Bylaw.

In May of 2001, Council endorsed revisions to the Terms of Reference for the Program for Seasonal Extension for Sidewalk Cafes to:

- 1) make provision to allow more than one facility per block where circumstances warrant,
- 2) reduce the number of parking stalls that can be taken out of operation on a block from 5 angle or 3 parallel stalls on any block frontage, to 3 angle or 2 parallel stalls on any block (inclusive of both sides of the street),
- 3) grant a right of first refusal for subsequent years for existing permit holders, and
- 4) provide for shared facilities by two or more food and beverage operators.

The Program has been in operation for two seasons. Three permits were let for the 2000 permit period. Of the three permits granted, only one was in effect at the conclusion of the permit period, with one permit cancelled by the applicant, and the other cancelled by the City for non-compliance on the part of the applicant. For the 2001 permit period, two permits were granted which were still in effect at the end of the permit period.

In September, 2001, the Planning and Development Services Department received a request from a downtown food and beverage operator for changes to the existing Program for Seasonal Extension for Sidewalk Cafes.

This change was requested to allow outdoor seating areas immediately adjacent to business frontages, as illustrated in Figure A, Attachment 1. With the proposed concept, pedestrian traffic is re-routed around the seating area, along a sidewalk extension (referred to herein as a "walkway"), projecting onto the road surface.

With the proposed changes to the Program, food and beverage servers would not have to cross the pedestrian path of travel; an advantageous arrangement where the outdoor seating area is busy and/or where the adjacent sidewalk has high volumes of pedestrian traffic. Additionally, the arrangement would allow businesses to exercise a higher degree of surveillance and control over the outdoor area where the operator feels greater surveillance is warranted.

Review Process

Planning and Development Services staff subsequently reviewed the request and solicited stakeholder input.

On-going discussions were held with the Canadian National Institute for the Blind (CNIB) and the CNIB was kept apprised of discussions with other stakeholders as the concept went through several iterations. As a result of discussions with the CNIB, a set of recommendations (Attachment 2) were received, the majority of which have been incorporated into, or addressed by the proposed revisions to the existing Terms.

Planning and Development Services staff also attended Access Awareness Committee meetings in September and December, 2001 and January, 2002 to present the concept and receive comments. A scheme proposing a walkway with two 45 degree angles and a minimum clear width of six feet was given general approval at the January, 2002 meeting of the Committee.

Additionally, proposed changes were presented to the January 9, 2002 meeting of the Town Centre Implementation Committee where the concept was supported on condition that the walkway be the same width as the displaced sidewalk (in some instances up to 2.4 metres or 8 feet) (Attachment 3). The walkway concept has been formally endorsed by the Downtown Plan Committee (Attachment 4), and by the Downtown Kelowna Association (Attachment 5).

DISCUSSION

Relationship to Existing Policy Directions

The Downtown Plan suggests an emphasis on providing more amenities for pedestrians including seating and wider sidewalks to accommodate outdoor cafes that would promote social interaction and contribute to a dynamic public realm. Eventually, it is envisioned that such cafes

could be facilitated with wider sidewalks. Until it is possible to widen sidewalks, sidewalk cafes can be created by allowing limited use of parking stalls. Such was the purpose of the Program for Seasonal Extension of Sidewalk Cafes which was initiated in 2000.

The changes that are being proposed in this report would have parking impacts just as would cafes under the initial program. In addition to these impacts, there would also be an impact on pedestrian movement. Pedestrians would be diverted from using the sidewalk to using a walkway around the café. Some pedestrians would likely view such a detour with disdain while others would likely find the pedestrian environment enhanced by the streetside café activity. There is no adopted policy that either directly supports or deters a sidewalk café such as that now being proposed.

Access Issues

The boardwalk scheme would require the public to deviate from the path of travel to go around the seating area. For individuals with any degree of visual impairment, this would make the path of travel less predictable and would present added risk.

The CNIB has indicated its preference is to maintain the status quo but has indicated it will not oppose proposed changes to the Program. In the event the proposed changes go forward, it has requested that the Terms of Reference reflect the needs of the blind and the visually-impaired. To this end, proposed changes intended to address the mobility needs of this user group are being recommended by Planning and Development Services as additions to the current Terms of Reference (the proposed additions are outlined in Attachment 1 to this report; the existing Terms are outlined in Attachment 7).

Specifically, the CNIB is requesting provision for i) a continuous solid vertical plane rising at least 100 mm (4 inches) from the top of the walking surface to help white cane users maintain direction and orientation, and for ii) a high degree of visual contrast between the walkway and adjacent surfaces. Provision for a tactile warning strip were considered by staff but research did not find suitable outdoor applications of a temporary nature.

To meet the needs of individuals in wheelchairs, additions to the current Terms of Reference would restrict maximum slopes, both parallel and perpendicular to the direction of travel (6% and 2% respectively). Where a walkway exceeds a slope of 5%, a walkway is typically considered to be a ramp, e.g., the *British Columbia Building Code*. Moreover, guidelines with respect to ramps typically make provision for handrails. Consistent with this direction, the recommended additions to the Terms of Reference would require handrails where the slope of the walkway exceeds 5%.

With respect to minimum walkway widths, both the CNIB and the Access Awareness Committee support a width of 1.8 metres (6 feet). This width would allow 2 wheelchairs to pass in opposite directions. It is noted however, that the Transportation Division wants a minimum width of 2.0 metres (6 feet 6 inches), consistent with the current minimum width required by the City's permit program for sidewalk seating.

The CNIB's preference is for turns in direction to be restricted to 90 degrees. From discussions with the CNIB, it is the understanding of Planning staff that the 90 degree angle is a standard meant to provide a high level of predictability within the built environment, for blind and visually impaired persons.

The Access Awareness Committee on the other hand, feels a 45 degree turn better suits the needs of individuals in wheelchairs because it results in a more manoeuvrable path of travel, creates less congestion at the entrance/ exit to the walkway, and because it allows greater visibility of on-coming traffic.

Subsequent to discussions with the Access Awareness Committee, Planning and Development Services learned that parking angles within the subject area are not consistently 45 degrees, but rather vary around this standard. A follow-up discussion with Ms. Sherri Newcomen of the BC Paraplegic Association and member of the Access Awareness Committee, indicated general support for changes to the program even though the exact angle might vary from the 45 degrees discussed at the Access Awareness Committee meeting.

Vehicle-related Issues

The existing Terms of the Program limit the number of angled parking stalls that can be used for outdoor seating, to a maximum of three. Where a walkway is proposed to displace angled parking stalls in front of a place of business, the proposed changes could require the use of a portion of a fourth parking stall as shown on Figures A and B, Attachment 1.

The use of a fourth angled parking stall is supported by the Transportation Division with the following conditions:

- 1) That any structure where a walkway intrudes into a fourth parking stall be allowed on a trial basis for the permit period;

Such installations would be assessed at the end of the permit period with regard to their impact on pedestrian mobility, the supply of on-street parking, and vehicular traffic safety. This assessment would be carried out as part of the annual review set out in the current Terms of Reference.

Where it is deemed by the City that a walkway has not negatively impacted any of the above issues, the business owner would be granted right-of-first- refusal for the ensuing permit period, consistent with provisions set out in the existing Terms of Reference.

- 2) Where a walkway occupies some portion of a fourth stall, and where it is deemed by the City that in such instance the stall can continue to be used for parking without compromising the safety of pedestrians or motorists, the stall would continue to be metered and used by vehicles.

Where the remaining depth of the stall would only allow occupancy by a small vehicle, the stall would be posted as a “small car only” stall. The meter for the stall would be monitored by the City, and any shortfall in revenue, measured against the income for that stall for the year 2001, would be billed to the permit holder upon completion of the permit period.

However, if in the estimation of the City a “small car only” stall is being used by over-size vehicles that create a safety hazard, the City would reserve the right to remove the stall from use. In this instance the permit holder would be billed for the loss of revenue associated with de-commissioning of the stall, commencing with the date the stall is removed from service.

- 3) That a minimum 2.0 meter walkway width be maintained and that this width not be reduced by the overhang of any vehicle in an adjacent parking stall.

To preclude any vehicle overhang, or damage to a walkway structure, the City would provide appropriately-placed wheel stops, as deemed necessary by the City. In the case of parallel parking, such wheel stops would be contained within the de-commissioned parking stall(s) and not reduce the available length of any adjacent stalls.

Where a walkway is proposed to displace parallel parking stalls in front of a place of business (Figure C, Attachment 1), existing provisions respecting parallel parking stalls will continue to apply.

Liability of the City of Kelowna

The proposed changes have been reviewed by the City's Risk Manager. No changes are deemed necessary with respect to the City's exposure to risk or the applicant's coverage limits.

Permit Fee

The permit fee for outdoor seating areas that incorporate walkways would be based on an area comprising the total square footage measured from the exterior dimensions.

Where a walkway occupies a portion of a fourth angled parking stall from which parking revenue is collected, it is proposed that this portion of the permit fee be deducted from any shortfall in parking revenues.

The permit fee for all outdoor seating areas is proposed to remain the same as 2001 (\$8.00 per square meter).

Staff Review of Permit Applications

Because of the highly variable relationship of parking spaces to building frontages within the permit area, as well as variations in on-site conditions associated with streetlight and hydrant locations, each application will be reviewed by the City's Urban Design Planner for compliance with the proposed Terms.

Where an issue arises that is not addressed by the Terms of Reference, other staff could be consulted. Additionally, comment could be solicited from appropriate stakeholders on issues that might arise with respect to a specific permit application.

Traffic Bylaw Amendments

The proposed changes necessitate minor changes to the City of Kelowna Traffic Bylaw. The proposed changes to the Traffic Bylaw are being put forth by the City Clerk in conjunction with the proposed changes to the Program for Seasonal Extension for Sidewalk Cafes.

Annual review

Consistent with Council's earlier direction, Planning staff have, in conjunction with the DKA, reviewed the existing Terms of the Program. As part of this review, a survey was sent by the DKA to its members in December 2001, requesting feedback on the Program (Attachment 6). Planning staff, after reviewing the returned surveys and discussing them with the Executive Director of the DKA, feel the existing program was generally well-received in 2001 and that no specific aspects of the program need to be addressed as a result of the survey comments.

Revisions to Existing Terms

Proposed minor revisions to the Existing Terms of Reference are set out in Attachment 7. These changes are intended to clarify the wording, eliminate redundancies, and generally create a more concise and consistent document. Proposed deletions have a line through the text. Proposed additions are underlined.

One of the proposed changes is to label the existing Terms as “Part One”. These Terms would apply to all outdoor café facilities that involve projection of a structure into an area occupied by parking stalls. The proposed changes that would allow a walkway, would be labelled Part Two, and would apply exclusively, in addition to Part One, to walkways built in conjunction with outdoor café areas.

Moreover, a revision is proposed to the existing Terms of Reference that would require all applicants to consult other business owners along the adjoining block frontage, regarding the intention to build an outdoor seating area. This provision is felt necessary to help staff assess the cumulative impacts of parking-related issues and to address special circumstances.

One such special circumstance is the temporary loss of off-street parking as a result of the re-development of the Chapman Parkade. This situation is deemed to have resulted in vehicles that otherwise would be using the parkade, using on-street spaces. The use of on-street stalls by vehicles displaced from the Chapman Parkade in turn decreases the availability of these stalls for short-term customer parking and potentially results in a sensitivity of business owners to the loss of on-street spaces associated with construction of outdoor café facilities.

SUMMARY

Planning and Development Services feels the proposed changes to the Terms of Reference best address the competing needs of the stakeholders.

It is therefore recommended Council endorse revisions to the Terms of Reference for a Program for Seasonal Extension for Sidewalk Cafes, to allow a public walkway to project into the roadway in conjunction with outdoor seating areas immediately adjacent to business frontages, and direct Planning & Development Services staff to finalize all necessary steps to make provision for such walkways, on a one-year trial basis, commencing May 15, 2002, and governed by additions to the existing Terms of Reference outlined in the Planning and Development Services Report of March 11, 2002.

Signe K. 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

Attachments

ATTACHMENT 1: PROPOSED ADDITIONS TO EXISTING TERMS OF REFERENCE

Part Two:

Additional Requirements and Recommendations For Walkways

In Conjunction With the Program For Seasonal Extension For Sidewalk Cafes

- 1) a structure capable of carrying pedestrians on the public right-of-way, around an intervening seating area (referred to herein as a "walkway"), can project onto the road surface. The projecting distance, measured perpendicular to the curb, cannot exceed 4 metres;
- 2) the walkway must have a minimum 2.0 meter width throughout its length and this width must not be reduced by the overhang of any vehicle in an adjacent parking stall, or by any element structural or otherwise, forming part of, or provided in conjunction with the adjoining seating area; the 2.0 metre dimension could be reduced by on-street elements such as light standards, fire hydrants, etc. to a clearance of no less than 6 feet, 0 inches; such exemptions will be at the discretion of City staff;
- 3) where a walkway projects into an area currently occupied by angled parking stalls, turns in direction along the walkway must be at an angle consistent with that of the adjoining parking spaces (approximately 45 degrees- see Figures A);
- 4) there must be no changes in elevation between the top of the sidewalk/ curb and the top of the walkway; there can be no stairs or steps along the length of the walkway;
- 5) the maximum slope of the walkway, in the direction of pedestrian travel, should not exceed 1 in 20 (5%);
- 6) the maximum crossfall of the walkway cannot exceed 1 in 50 (2%);
- 7) where any portion of the walkway exceeds 1 in 20 slope (5%), that portion will be considered a ramp;
- 8) the portion of the walkway running parallel to the curb cannot be a ramp.
- 9) no ramp can exceed a 1 in 16 slope (6%);
- 10) no ramp can have a change in slope without an intervening landing with a depth at least equal to the width of the ramp;
- 11) where a ramp forms part of a walkway, handrails meeting the provisions of guidelines 20) to 22) must be provided;
- 12) the walkway surface must provide a non-slip, all-weather surface; use of carpeting is prohibited;
- 13) a fence must separate the walkway and the seating area;
- 14) a fence must separate the walkway from the roadway and any adjoining parking stalls;
- 15) fence structures must incorporate a continuous solid vertical plane rising at least 100 mm (4 inches) from the top of the walking surface to help white cane users maintain direction and orientation;
- 16) a high degree of visual contrast is encouraged to increase the visibility of all fences;

17) the entrance to the seating area must be clearly marked;

18) tables and chairs within the seating area should have a high degree of colour contrast to their surroundings;

19) handrails must have a continuous gripping surface, without interruption, on both sides of the walkway; clearance between a handrail and the structure to which it is fastened must not be less than 40 mm;

20) handrails must be free of any sharp or abrasive elements;

21) handrails must be not less than 815 mm and not greater than 915 mm in height, above the finished walking surface;

22) where a walkway projects into an area occupied by parallel parking stalls, 3 full parking stalls can be used for the purposes of constructing a walkway and outdoor seating area. A portion of a fourth stall can further be utilized as necessary;

23) where a walkway occupies some portion of a fourth stall, and where it is deemed by the City that the stall can continue to be used for parking without compromising the safety of pedestrians or motorists, the stall will continue to be metered and used by vehicles;

Where the remaining depth of the stall would only allow occupancy by a small vehicle, the stall will be posted as a "small car only" stall. The meter for the stall will be monitored by the City, and any shortfall in revenue, based on the income for that stall for the previous year, will be billed to the permit holder upon completion of the permit period;

However, if in the estimation of the City a "small car only" stall is persistently being used by over-size vehicles so as to create a safety hazard, the City reserves the right to remove the stall from use. In this instance the permit holder will be billed for the loss of revenue associated with de-commissioning of the stall, commencing with the date that the stall is removed from service;

21) where a meter obstructs the use of a walkway, it will be relocated to an appropriate location, by the City, at the permit holders expense;

22) to preclude vehicle overhang in any adjacent parking stall, the City will provide appropriately-placed wheel stops in such stalls, as deemed necessary by the City;

23) intrusion of any walkway into a fourth parking stall will be on a trial basis for any permit period;

Installations will be assessed at the end of each permit period with regard to their impact on pedestrian mobility, the supply of on-street parking, and vehicular traffic safety. Where it is deemed by the City that a walkway has not negatively impacted any of these issues, the business owner will be given the right-of-first- refusal for the ensuing permit period;

24) the walkway must be completed according the terms set out herein prior to the sidewalk being closed for construction of the seating area. Approval of the walkway construction must be granted by the City prior to closing of the sidewalk for construction of the seating area;

24) all permit applications will be reviewed by the City for compliance with the Terms of Reference. Where an issue arises that is not addressed by these guidelines, applicants are cautioned that comment could be solicited by the City, from the appropriate agency or agencies, prior to award of a permit.

ATTACHMENT 2: RECOMMENDED GUIDELINES FROM THE CANADIAN NATIONAL
INSTITUTE FOR THE BLIND.

Electronic copy not available.

ATTACHMENT 3: MOTION OF THE TOWN CENTRE IMPLEMENTATION COMMITTEE RE;
PROPOSED CHANGES TO THE PROGRAM FOR SEASONAL
EXTENSION FOR SIDEWALK CAFES

That the Town Centre Implementation Committee support the idea of allowing businesses to apply for permission to use a portion of immediately fronting public sidewalk for restaurant/ pub outdoor seating provided that the width of the replacement sidewalk is equivalent to the width of the sidewalk being removed for use as outdoor seating (in some cases up to 8 feet wide).

ATTACHMENT 4: MOTION OF THE DOWNTOWN PLAN COMMITTEE RE: PROPOSED
CHANGES TO THE PROGRAM FOR SEASONAL EXTENSION FOR
SIDEWALK CAFES

Downtown Plan Committee Meeting
November 15, 2001

Motion:

That the Downtown Plan Committee approve in principle, the concept of boardwalks around outdoor seating areas as proposed by the owners of Doc Willoughby's Downtown Grill, provided such facilities meet universal access guidelines.

Moved: Jamie

Seconded: Wayne

For: Jamie, Michael, David, Sharon, Wayne.

Opposed: Colin Day.

Carried.

ATTACHMENT 5: LETTER FROM DOWNTOWN KELOWNA ASSOCIATION

Electronic copy not available.

ATTACHMENT 6: DKA SURVEY

Electronic copy not available.

ATTACHMENT 7: PROPOSED REVISIONS TO EXISTING TERMS OF REFERENCE

Part One:

Program For Seasonal Extension For Sidewalk Cafes

Terms of Reference

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~~ An 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 an ~~a 45-degree~~ angled 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. This provision is to provide food and beverage businesses with narrow frontages, access to a minimum dimension for the purpose of constructing an outdoor seating area.

Only one outdoor seating area will be allowed per city block (inclusive of both sides of the street) 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.~~

The removal of parking meters is not mandatory. Meters can be fitted with hoods by the City for the duration of the permit period, at no charge to the permit holder. However, where the removal of meter heads, supporting stem to remain in place, or of the entire meter assembly complete with stems, is desired by the permit holder, the work will be carried out by the City and charged to the permit holder. This work will include the replacement of the meters or meter heads upon termination of the permit.

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 de-commissioning 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~~

A 1: 100 site plan, a 1:100 section, and one 1:100 elevation must also be submitted. In lieu of an elevation, applicants can submit an axonometric or perspective rendering, not to scale. All materials and dimensions must be identified and applicants are cautioned that applications will not proceed without the required information.

The applicant is also required to provide a cash deposit, letter of credit, or bond in the amount of \$500.00 as security that the obligations imposed by the permit ~~are~~ will be fulfilled and to reimburse the City for the cost of removing the structure, if necessary, and/ or for any damage to the sidewalk, roadway, or any other City facility as a result of the temporary occupancy.

The applicant is required to inform other business owners along the adjoining block frontage, of the applicant's intention to build a sidewalk seating area. A written submission must summarize the position of each of the pertinent businesses with regard to the proposed seating area, i.e., in favour or not in favour. This information will be considered by staff in the evaluation of the application.

Issuance of Permit

Applications will be reviewed by the City. Pending approval that the application conforms with the Terms of Reference, and all application requirements have been received, a permit will be issued. ~~upon receipt of the security deposit, permit fee, and Certificate of Insurance.~~

Where an application is received for a patio on a block where a permit is already pending or in effect, such application will be referred to the Downtown Kelowna Association. Where the second application is deemed by the Downtown Kelowna Association to not negatively impact businesses on the block, and where the application is deemed by the Planning and Development Services Department to comply with the Terms of Reference for the Program, and where all application requirements have been received, a permit will be granted. ~~let upon receipt of the security deposit, permit fee, and Certificate of Insurance. In such instances, the number of permissible stalls can exceed the maximum specified in the Terms of Reference.~~

Right of First Refusal

Businesses issued a permit will be given a right of first refusal for each of the two years subsequent to the initial year of operation, after which time the right of first refusal will expire. Right of first refusal will also expire if a permit is cancelled by the permit holder prior to September 1st or if the permit is revoked at any time.

The City of Kelowna reserves the right to cancel a right of first refusal upon the recommendation of the Downtown Kelowna Association or where the City deems circumstances have changed to warrant cancellation of the right of first refusal.

Design and Construction Guidelines

Construction must conform to recognized construction industry practise and to the provisions of the B.C. Building Code.

Additionally, the following ~~guidelines~~ requirements 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:

a) 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.

b) The seating area surface must provide a non-slip, all-weather surface; use of carpeting is prohibited.

c) A fence must separate the seating area from the roadway and any adjoining parking stalls.

d) ~~Additionally, the structure 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. Concrete planters provided by the applicant must meet City specifications.

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 may 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.