
CITY OF KELOWNA

MEMORANDUM

Date: October 9, 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 the changes to the Program for Seasonal Extension for Sidewalk Cafes outlined in the report from the Planning and Development Services Department dated October 9, 2002 that will allow the year-round use of portions of the road right-of-way for outdoor seating on a trial basis until the 2003 review of the Program.

BACKGROUND

The Program for Seasonal Extension for Sidewalk Cafes ("The Program") was initiated in 2000 as a means to contribute visual interest to, and help diversify activity on Downtown streets. The permit period was set as May 15 to October 15. In March, 2002, Council endorsed changes to the Terms of Reference to allow a public walkway to project into the roadway in conjunction with outdoor seating areas immediately adjacent to business frontages. As well, the permit period was extended to May 1 to October 31.

An outdoor seating area and walkway was subsequently constructed by Doc Willoughby's Downtown Pub according to the changes approved in March, 2002. In August, 2002, Long Range Planning received a letter from Doc Willoughby's Downtown Pub requesting a one-time extension of the permit period to allow for winter use of the outdoor seating area as the restaurant believes there will be continued interest in outdoor seating even during the winter. As well, Doc Willoughby's is a no-smoking establishment and although it has an area behind the pub where smokers can congregate, the owners feel that in the absence of a formal patio, smokers would instead congregate on the sidewalk in front of the establishment, thus creating congestion. Moreover, Doc Willoughby's owners feel an outdoor seating area introduces an interesting dimension to the streetscape that could be continued year-round.

It should be noted Doc Willoughby's also requested that it be granted a semi-continuous lease (as opposed to a three-year period based upon the initial permit period and two subsequent permit periods in which the permit holder has the right-of-first refusal). In further discussions, the applicant agreed to hold off on this issue until the Program can be fully reviewed as part of the annual Program evaluation expected early in 2003.

DISCUSSION

Staff from Long Range Planning and the Works and Utilities Department met with the co-owner of Doc Willoughby's Downtown Pub in September, 2002 to identify and discuss concerns related to year-round operation of outdoor seating areas. These concerns related primarily to snow removal on roadways and projecting walkways.

Snow and Ice Removal

With respect to winter conditions, it is ironically not the large snowfall events which are the major concern. The graders and sidewalk snowplows used in such instances are quite maneuverable and can get into relatively tight spaces. The machines are used to move the snow from the curb to the centre of the road where the snow is then picked up by City crews. The configuration of any outdoor seating structure would therefore not hinder snow removal after major snowfalls.

Staff did express concern for the small to moderate snowfall events. For these situations, City trucks with fixed blades are used to move the snow. The snow is moved to the curbs where it is allowed to melt into the storm drainage system. The trucks used for this operation can not turn as sharply as the angles on a typical walkway structure. Also, because the snow blades are attached at a fixed angle, the result could be a windrow of snow through parking stalls adjacent to any walkway. This would preclude use of those stalls, possibly for significant periods of time, depending upon weather conditions.

The other concern identified by staff is snow removal from the surface of any walkway projecting onto the roadway. A City sidewalk plow could be used for this task. Although sidewalk plows are quite maneuverable, their movements could be restricted by the limited width of any walkway as set out in the Terms of Reference (minimum two metres). Relying on City sidewalk plows could mean walkways might not be as thoroughly cleaned as necessary to keep them safely passable. There would therefore need to be at least some shoveling by hand.

Doc Willoughby's Downtown Pub has agreed that if allowed a year-round permit, it would keep the walkway and the adjacent roadway, free of snow and ice. Staff feel this approach, i.e., making snow and ice removal the responsibility of the permit holder, is the best way to ensure that the issue of snow removal is satisfactorily resolved. This is consistent with the City of Kelowna Traffic Bylaw which requires owners or occupiers of real property to remove snow and ice from sidewalks bordering their properties¹. To reinforce this message, keeping adjacent curb areas on the roadway clear of snow and ice could also be an additional requirement added under the Terms of Reference to the Program for Seasonal Extension for Sidewalk Cafes.

Permit holders are restricted by the Traffic Bylaw from depositing snow on any travelled portion of any highway or sidewalk.² It is anticipated there would be spaces adjacent to walkways projecting onto roadways, which would not be travelled and which could therefore be used for

¹ The City of Kelowna Traffic Bylaw states "Owners or occupiers of real property shall remove snow, ice, or rubbish from the sidewalk and walkways bordering on the real property owned or occupied by them within 24 hours of the accumulation of such snow, ice, or rubbish on such sidewalk".

² The Traffic Bylaw also states, "No owner or occupier of real property shall place snow or ice from their property or a sidewalk or walkway on any travelled portion of any highway or sidewalk.

temporary snow storage. These spaces are a result of the typical configurations of these structures that leave unused triangular spaces at each end of the structure.

It is anticipated there would be spaces, adjacent to any seating structures that project onto a roadway, where snow can be piled until it melts. In these situations, it is expected there would be room to pile snow along the outside edge of the structure, parallel to the roadway. This space is intended as a buffer space between seating structures and moving vehicles. The concrete planters required by the Terms of Reference are placed within this zone and it is anticipated snow could be piled between the planters that would remain in place throughout the extended permit period.

Staff would monitor permit areas to ensure that snow removal is being carried out according to the Traffic Bylaw and the Terms of Reference for the program. If snow were to be piled in a manner that compromises traffic movement, the permit holder would be notified. The City would reserve the right to cancel a permit where snow and ice removal, or any other requirement under the Terms of Reference, is not met to the City's satisfaction.

Program Review

The Program is reviewed annually by staff, 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. A review of the program is scheduled to take place before the starting date of the next permit period (May 1, 2003).

The temporary revisions to allow for year-round operation are being put forth for Council's consideration, because the operator of the only roadway seating area has requested such consideration in advance of the more comprehensive review expected early in 2003. Consideration of a one-time extension, independent of a comprehensive review, would allow a decision regarding the permit period prior to the termination of the current permit period, and the extension, if approved, would preclude the need for the existing permit holder³ to remove the structure currently in place.

If Council were to endorse temporary year-round use, it is suggested that the existing permit allowing Doc Willoughby's to operate an outdoor cafe be extended until April 30, 2003. An April 30, 2003 extension deadline would ensure that Doc Willoughby's would not have to remove the outdoor patio and walkway during the winter months and would allow continuity of the operation through to next spring/summer (assuming Doc Willoughby's exercises its right of first refusal for 2003). Any change to the permit period resulting from a comprehensive staff review could then take effect on May 1, 2003.

It is recommended that other food and beverage business eligible under the program also be allowed to take advantage of the extension to the permit period. That is, food and beverage businesses within the permit area, that currently do not have a permit, would be allowed to apply for a permit at any time up until April 30, 2003, and a permit could be granted pending compliance with the Terms of Reference.

Other Changes to Terms of Reference

³ Doc Willoughby's Downtown Pub is currently the only permit holder under the program.

Temporary revisions to allow for year-round operation do not preclude the need for a more comprehensive review. When that review takes place early in 2003, it will be important to assess how well outdoor seating areas operate during winter months. At that time, there will also be an opportunity to evaluate any other issues that have arisen during and subsequent to the 2002 permit period. [This review would include a review of the fees charged for use of the public roadway. This concern, as well as a concern about parking impacts has recently been raised by at least one downtown merchant, as noted in a letter submitted on October 15, 2002 (see Attachment 4)]. Any changes resulting from the early 2003 program review, if approved by Council, would then take effect on May 1, 2003.

Changes to Existing Permit

Staff recommend that no changes be allowed to the existing permit for Doc Willoughby's Downtown Pub other than that the outdoor seating area be allowed to operate until April 30, 2003. Any changes to the configuration of the outdoor seating area or to the walkway would require a new application complete with drawings and payment of a permit application fee.

SUMMARY

Staff recommend that the permit period for the operation of outdoor seating facilities be extended to include the winter months until such time as a comprehensive review of the program is completed, and on condition that permit holders choosing to extend the permit period keep any walkway and adjacent roadway free of snow and ice. Additionally, staff recommend that as a condition of use, permit holders be responsible for maintaining a secure footing in all weather conditions, on any pedestrian surface used in conjunction with an outdoor seating area.

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 REVISIONS TO TERMS OF REFERENCE

Proposed deletions are indicated with a strikethrough. Proposed additions are underlined.

Part One

Program For Seasonal Extension For Sidewalk Cafes

Terms of Reference

October, 2002

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.

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 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.
- 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. 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 1 to October 31. The facility must be removed by 12 o'clock midnight on November 1. 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.~~

The permit period is January 1 to December 31. Outdoor seating areas can operate for any lesser period of time. A facility must be removed by 12 o'clock midnight on the third day following termination of the permit. 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 for each permit period.

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 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 the immediate business owners on either side of the applicant's business, of the applicant's intention to build a sidewalk seating area. A written submission must summarize the position of each of these business owners 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.

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.

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 right of first refusal must be exercised for the following year by permit holders, no later than the close of business, December 31.

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 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) Concrete 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 upon termination of the permit. 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.

Maintenance During Winter Operations

- Permit holders are required to keep all pedestrian surfaces associated with the permit area free of snow and ice, and must provide a secure footing in all weather conditions.
- Permit holders are required to keep roadway areas, including parking stalls, that are adjacent to any outdoor seating structure free of snow and ice, where such areas cannot be accessed by City crews for the purpose of snow removal. Snow piled as a result of such action can not be piled in parking stalls and must not obstruct traffic movement.
- Where the above conditions are not met to the City's satisfaction, the City can cancel the permit.

Additional Considerations

- 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.

It is recommended that seasonal vegetation be maintained in the planters.

- 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 placed 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.

Part Two

Additional Requirements and Recommendations For Walkways In Conjunction With the Program For Seasonal Extension For Sidewalk Cafes

April, 2002

- 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 19) to 21) 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;

24) 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;

25) 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: LETTER FROM DOC WILLOUGHBY'S DOWNTOWN PUB

ATTACHMENT 3: LETTER OF ENDORSEMENT FROM BOARD OF THE DKA

ATTACHMENT 4: LETTER FROM SALLOUM DIRK LAW OFFICES

