

CITY OF KELOWNA

MEMORANDUM

Date: April 29, 2003
File No.: 6530-12
To: City Manager
From: Director of Planning and Development Services
Subject: OUTDOOR FOOD AND BEVERAGE PROGRAMS

RECOMMENDATION

THAT Council receive the Planning and Development Services Department report of April 29, 2003, entitled Outdoor Food and Beverage Programs;

AND THAT Council endorse revisions to the Terms of Reference for a Program for Seasonal Extension for Sidewalk Cafes (referred to below as "the Program"), as set out in the noted Report;

AND THAT Council forward the related amendments to Traffic Bylaw No. 8120, as outlined in the noted Report, for reading consideration.

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.

Each year the Program has been reviewed by staff. As a result of these reviews, changes have been endorsed by Council to refine and enhance the Program. Consistent with this direction, the Program was recently reviewed by staff and the Downtown Kelowna Association. As part of the review of the Outdoor Seating Program, it was noted that for the sake of consistency, it would be helpful if the provisions for the mobile vending program and sidewalk occupancy program were also updated. This report therefore addresses all three of the City's outdoor food and beverage programs and recommends changes to two of them.

DISCUSSION

Attachment 1 to this report incorporates staff's recommendations regarding the Terms of Reference for the Program for Seasonal Extension of Sidewalk Cafes. Proposed additions to text are underlined; proposed deletions are highlighted with a strikethrough. The specifics and rationale for those recommendations are discussed below.

1. PROGRAM FOR SEASONAL EXTENSION OF OUTDOOR CAFES

Year-Round Use

In October 2002, Council endorsed year-round use of portions of the road right-of-way for outdoor seating, on a trial basis. This was granted on condition that the impact of year-round use on the ability of City crews to keep the adjoining road and sidewalk free of snow and ice be evaluated after the first winter of use.

Because of the abnormally warm winter, it was not possible to carry out the evaluation in 2003. Staff therefore recommend that the Program continue on a trial basis for one more winter, during which it is expected an evaluation can be completed under more normal conditions.

Fees

Council also directed in October 2002, that staff conduct a review to consider fees charged for use of the public roadway. The current permit fee approximately equals the amount of revenue lost from decommissioning any parking spaces associated with a seating facility. However, the question has arisen regarding possible lost tax revenues and fair compensation for use of a tax-free commercial space.

Staff feel demand for permits under the program has been limited. Additionally, staff have been cautioned by the DKA about the cost to permit holders of providing \$5,000,000.00 insurance. This amount can be onerous for some businesses and can limit the ability to participate in the Program, especially if permit fees were to be increased. Staff recommend the current fee remain in place but that it be monitored to reflect the true cost/benefit to the City, at such time as the program is more generally in demand.

Provision for Walkways

In October 2002, the Terms of Reference were expanded to allow outdoor seating areas immediately adjacent to business frontages. With this concept, pedestrian traffic is re-routed around the seating area, along a sidewalk extension (walkway) projecting onto the road surface. One permit was subsequently granted under the expanded terms. Several issues associated with this facility have come to staff's attention:

- 1) The walkway extends into a fourth stall, leaving only enough room to accommodate a small car. Staff have expressed concern that the stall, although posted as small car only, is being used by vehicles too large for the space. Use of the space is currently being monitored by staff. If it is deemed that the safety of motorists is being compromised, staff will consider removing the stall from service. The permit holder would then be required to pay an additional permit fee based on the decommissioned area.

2) Staff have also observed that the boards used for the surface of the walkway have cupped. The permit holder planed the boards in response to a request from City staff and has also done so on the permit holder's own initiative. The situation is being monitored and could result in the permit holder being asked to replace the boards with materials sufficiently thick to preclude cupping. Wording to the Terms of Reference for the program has been added to underline the need for lumber of a sufficient dimension.

The existing permit application fee and security deposit are also recommended to remain the same.

Provision to Locate Cooking Facilities Within Seating Areas.

Staff recently received a request from a permit holder to cook within the seating area. Staff suggest that the location of cooking facilities and/or facilities to heat and serve food within a seating area is reasonable. However, it is recommended certain limitations should apply. Because the Terms of the Program preclude temporary electrical extensions from being placed across or over a sidewalk, cooking/heating facilities should be limited to those operated by gas. As well, hot oil required for deep frying may create a hazard, and staff recommend deep frying not be allowed.

Because the scent of cooking food could be a nuisance for some individuals, particularly over extended periods, staff also recommend that written agreement to locate cooking equipment and/or equipment to heat food within a seating area be obtained from any business owners immediately adjacent to the seating area.

Extension of Program Boundaries

Staff also recently received an inquiry regarding a possible seating area in the South Pandosy commercial area. Staff suggest there is no reason to limit the program to Downtown and recommend that seating areas meeting the Terms of the Program be allowed anywhere within the city limits.

In recommending the Program boundaries be expanded, staff advise there has been no discussion with business interests outside the existing Program boundaries. Staff note further that the absence of an organization similar to the DKA, particularly within the other Urban Town Centres, makes it difficult to engage the business community in a discussion that would allow the Program to be adapted to the specific needs of other parts of the community. In the absence of a formal business organization with which to discuss program parameters, staff suggest that applicants be required to inform adjoining business owners of the intention to construct a facility. This requirement should encourage dialogue prior to facility construction.

Maximum Number of Parking Stalls Taken Out of Use Per Block

The Terms of Reference currently allow a maximum of 3 angle parking stalls or 2 parallel parking stalls, per permit, to be removed from use for the purpose of constructing an outdoor seating area on a road surface with the possibility that a portion of a fourth stall can be removed where the facility incorporates a walkway. The Terms also limit the number of facilities to one per block (inclusive of both sides of the street).

The Terms say that permits will be granted on a first-come, first-served basis. However, the Terms also acknowledge the possibility there could be subsequent requests for one or more permits on the same block. In this situation, the Terms stipulate that the subsequent_application(s) will be referred to the DKA for comment, particularly with respect to parking implications, prior to a permit being granted.

Because of the sensitive nature of the parking issue, and in order to recognize that the supply of parking varies from block to block within commercial areas, staff recommend the maximum number of stalls that could be decommissioned, inclusive of all permit holders, on a block containing 30 or more angle parking stalls, or 20 or more parallel parking stalls, be limited to 10% of the total number of stalls on that block. The maximum number would be based on the stalls on both sides of the street calculated from intersection to intersection, and not include stalls for the disabled or commercial loading stalls.

On blocks that contain 29 or fewer angle parking stalls, both sides of the street from intersection to intersection, the maximum number of stalls that could be decommissioned, inclusive of all permit holders, both sides of the street, calculated from intersection to intersection would be 3 angle stalls and 2 parallel parking stalls.

Where a permit is for the construction of a walkway, the provision to allow use of a portion of a fourth stall, as set out in Part Two of the Terms of Reference for the Program, would continue in effect.

Right of First Refusal

The current Terms of the program give permit holders 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 expires. It is recommended the right of first refusal be extended indefinitely provided an existing permit is in good standing, and a completed application for the same permit area is received by the City by December 31st. This change would give applicants the security of knowing that their facility could be amortized over a longer period. The opportunity of spreading cost recovery over a longer period also hopefully, encourages a high calibre of design.

Annual Review

Staff propose that the annual review of the Program continue in effect.

2. SIDEWALK OCCUPANCY PROGRAM

This program allows café seating exclusively on sidewalks. This program is available to food and beverage operators throughout Kelowna.

Maximum Distance of Seating Area From Business Frontage

The question of maximum distance was raised last year in conjunction with an inquiry from a downtown food and beverage operator who wanted to locate a seating area somewhat removed from his business frontage. The location would have involved use of a portion of the sidewalk located principally in front of an adjacent business.

The existing terms say permits for “temporary seating and tables will only be issued where the permit area is in front of the establishment to which it is operationally tied, and may only occupy a space as wide as the establishment frontage unless approvals to the contrary are granted by affected adjoining tenants and property owners”.

Staff felt sidewalk seating areas should continue to be located close to the frontage of the permit holder’s place of business. As such, the existing terms were felt to be sufficient in this regard and no changes to the existing terms are recommended.

Provision To Allow Seating Immediately Next To A Building

There have been inquiries from business owners about placing seating immediately next to the property line where there is ample sidewalk width to divert traffic. No changes to the existing terms are recommended as it was felt this scenario would compromise the mobility of individuals with sight impairments.

3. MOBILE VENDORS PROGRAM

This program is also operated by the Planning & Development Services Department. Locations are site specific with the terms set out in the vendor contract.

The program currently requires a minimum insurance of \$2,000,000.00. However, the City’s former Risk Manager recommended that the minimum be increased to \$5,000,000.00. This increase is intended to cover the risk associated with the storing and handling of food.

4. TRANSPORTATION BYLAW AMENDMENTS

Several amendments to *Traffic Bylaw No. 8120* are recommended to incorporate the following provisions currently not addressed by the Bylaw:

- a) the maximum and minimum number of parking stalls that can be decommissioned under the Program for Seasonal Extension of Outdoor Cafes;
- b) the authority of the City to grant permits under the Program for Seasonal Extension of Outdoor Cafes, to establishments with untypical narrow frontages;
- c) minimum design criteria under the Program for Seasonal Extension of Outdoor Cafes, to help assure the safety of patrons and the public, encourage accessibility for all individuals, and enhance the visual qualities of the built environment;
- d) the right of first refusal for permit holders under the Program for Seasonal Extension of Outdoor Cafes and the mobile vendor program;
- e) the requirement for approval of adjacent business owners for a permit holder to locate apparatus for cooking or for the heating of food within a permit area .
- f) Additionally, a change to *Traffic Bylaw No. 8120* is recommended to increase the insurance requirement for mobile vendors from \$2,000,000.00 to \$5,000,000.00.

The above changes have been forwarded to Council for reading consideration.

Changes to the Terms of Reference, as outlined in Attachment 1 of this report, have been made to delete Program Terms of Reference that will be covered by the Traffic

Bylaw. The changes have been made to preclude possible contradictions that could occur over time, between the Traffic Bylaw and the Terms of Reference.

SUMMARY

Staff suggest that the proposed changes outlined in the Planning and Development Services Report of April 29, 2003 will help refine and enhance the Program for Seasonal Extension of Outdoor Cafes. The Terms of Reference incorporate staff's recommendations and have been attached for Council's consideration. Additionally, staff recommend that the Program continue on a trial basis for another year. Moreover, staff recommend changes to the Traffic Bylaw and to the mobile vending program as set out in the report.

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

Attachment

ATTACHMENT 1: Terms of Reference

Part One

Program For Seasonal Extension For Sidewalk Cafes

Terms of Reference

Revised April, 2003

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 anywhere within the city boundaries.

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.

Only one outdoor seating area will be allowed per block (inclusive of both sides of the street), and will be allocated on a first-come, first-served basis, pending conformance with the Terms of Reference.

Application Requirements

In addition to the requirements set out in Traffic Bylaw No. 8120, applicants are required to submit:

- a non-refundable \$50.00 application fee for each permit period.
- A written submission that summarizes the position of each of the business owners on either side of the applicant's business, 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.

Applicants are cautioned that applications will not be considered complete without the required information.

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 can be comprised of more than one level with the top of deck not more than .3 metres above the top of the adjoining sidewalk. The seating area must provide a non-slip, all-weather surface; use of carpeting is prohibited. Where wood planking is used, applicants are cautioned to assure that cupping and flexing of wood members under the weight of pedestrian traffic does not create a tripping hazard. Planking must conform, at minimum, to the provisions of the B.C. Building Code.

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

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.

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 and approved by the City, or is required by the City for safety or operational reasons, the work will be carried out by the City. The cost of the work will be charged to the permit holder. This

work will include the replacement of the meters or meter heads upon termination of the permit.

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.

Cooking Within Seating Areas

- Permit holders are allowed to cook and/or serve food from facilities located within a seating area provided written agreement is obtained from adjacent businesses and submitted to the City as evidence of such agreement. Cooking facilities are limited to gas barbecues. Deep frying is not allowed.

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.

- 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 adjacent businesses or 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.
- Permit recipients are advised they are not entitled to exclusive use of the space designated in the permit.
- All aspects of any proposed facility must meet the provisions of the *Traffic Bylaw No. 8120* as attached, and any other applicable bylaws.

Part Two

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

Revised April, 2003

- 1) 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 1.8 metres; such exemptions will be at the discretion of City staff;
- 2) 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;
- 3) 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;
- 4) the maximum slope of the walkway, in the direction of pedestrian travel, should not exceed 1 in 20 (5%);
- 5) the maximum crossfall of the walkway cannot exceed 1 in 50 (2%);
- 6) where any portion of the walkway exceeds 1 in 20 slope (5%), that portion will be considered a ramp;
- 7) the portion of the walkway running parallel to the curb cannot be a ramp.
- 8) no ramp can exceed a 1 in 16 slope (6%);
- 9) no ramp can have a change in slope without an intervening landing with a depth at least equal to the width of the ramp;
- 10) 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; . Where wood planking is used, applicants are cautioned to assure that cupping and flexing of wood members under the weight of pedestrian traffic does not create a tripping hazard. Planking must conform, at minimum, to the provisions of the B.C. Building Code.
- 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 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 used provided the fourth stall can still be safely used for small car parking assuming the total number of stalls doesn't exceed the maximum stalls per block set out in Part One of the Terms of Reference;

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. If in the estimation of the City the stall is subsequently under-utilized because of the parking restriction, the City reserves the right to estimate the short-fall in revenue and to bill 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;

24) 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;

25) 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;

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

27) 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;

28) 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.