
CITY OF KELOWNA

MEMORANDUM

Date: January 26, 2004
File No.: 6530-12
To: City Manager
From: Director of Planning and Corporate Services
Subject: OUTDOOR FOOD AND BEVERAGE PROGRAMS

Report Prepared By Patrick McCormick

RECOMMENDATION

THAT Council endorse revisions to the City's outdoor food and beverage programs including revisions to the Terms of Reference for a Program for Seasonal Extension for Sidewalk Cafes, as set out in the Planning and Development Services Department Report of January 26, 2004;

AND THAT the necessary amendments to Traffic Bylaw No. 8120 to accommodate the revisions be forwarded for reading consideration.

BACKGROUND

At the time the Program for Seasonal Extension for Sidewalk Cafes began in 2000, two outdoor food and beverage programs were being administered by the City under provisions of the City's Traffic Bylaw. One program allowed food and beverage operators to use portions of the sidewalk in front of their places of business for patron seating. Certain provisions, such as minimum clearances between the seating areas and the building face applied. The other program, again with specific provisions, allowed mobile food carts to operate at designated locations within Downtown. These two programs continue to be administered by the City.

The Program for Seasonal Extension for Sidewalk Cafes allows food and beverage operators to use portions of the road surface, principally decommissioned parking stalls, for the purpose of patron seating. It was initiated as a means to contribute visual interest to, and help diversify activity on Downtown streets. Additionally, the program is intended to help attract greater numbers of visitors to Downtown and to contribute to a greater sense of safety and surveillance in Kelowna's central business district.

The program was aimed at Downtown restaurateurs to allow them to take advantage of Kelowna's climate and to accommodate patrons who would like the option of sitting outdoors. The boundaries of the Program have since been expanded to include all food and beverage

operators within Kelowna. Like the other two programs, the Program for Seasonal Extension for Sidewalk Cafes operates under provisions of the City's Traffic Bylaw.

The three programs are reviewed annually by the City in conjunction with the DKA with the intention of refining and enhancing the programs to meet the needs of restaurateurs and the community-at-large. Recent meetings to review issues arising during the past year included staff from the Interior Health Authority.

PROGRAM FOR SEASONAL EXTENSION FOR SIDEWALK CAFES

Cooking Within Patron Seating Areas

The Traffic Bylaw currently allows food and beverage operators to cook, (the term "cook" includes maintaining food at a temperature for serving) with certain provisions, within outdoor seating areas. Although no operators have taken advantage of this option, it could result in a range of outcomes with varying degrees of risk from a food handling point of view. To preclude any situations which might compromise public health and safety, Interior Health Authority staff recommend there needs to be a process that would initiate a review of an operator's proposal before it is implemented.

The permit holders would be required to include specifications and the location of any proposed appliance(s), as well as information on the location of existing staff hand-washing facilities within the premises. The information would then be forwarded to IHA for its review, and would be based generally on the following criteria:

- Distance from the outdoor seating facility to convenient hand washing facilities for staff,
- Type of equipment and ability to maintain appropriate temperature control of cooked and/or uncooked food, and
- Public safety as it relates to protection from operation of equipment and appliances.

Whether or not the applicant would be allowed to have a cooking operation would be based on the merits of each situation. There would be no cost associated with the review. An additional fee is not considered necessary by either IHA staff or City staff.

It is proposed that wording be added to the Terms of Reference to outline the procedure for approval to cook within permit areas.

The current Terms of Reference restrict cooking appliances to those that use gas. As all applications to cook would be reviewed by IHA, including issues related to safe operation of any appliances, staff suggest that as long as a permit holder can otherwise meet the requirements set out in the Terms of Reference, appliances utilizing other fuel sources should be allowed. These sources would include electricity and barbeque briquettes.

Food and Beverage Businesses Located Above Street Level

The current Terms of Reference for the Program for Seasonal Extension for Sidewalk Cafes restricts the program to food and beverage businesses located at street level. The decision to restrict the Program to businesses located at street level was made on the assumption that operations above street level were atypical, that a high degree of inconvenience would be

involved to serve patrons, and that surveillance of the facility by operators would be compromised such that they would not likely have an interest in providing such facilities for their patrons.

However, this past season a Downtown restaurant located above street level expressed interest in operating a facility under the Program. Although a permit application was not made, this inquiry led staff to reconsider the Terms of Reference as they apply to such operations.

For the Interior Health Authority, the principal concern with second-floor food and beverage operations is the distance between an outdoor serving area at street level, and hand washing facilities located within the restaurant proper. Specifically, the concern is that lack of convenience could cause staff to compromise an activity critical to public health.

IHA staff recommend again, that each request should be evaluated on its merits or lack thereof. In some instances, an outdoor facility at street level might be permissible but conditional upon stationing a portable hand-washing facility within a patron seating area. City staff recommend that an outdoor seating area at street level in conjunction with an above-grade base of operations need not compromise public health and safety where the particulars have been reviewed and approved by IHA.

It is recommended that the Program for Seasonal Extension of Sidewalk Cafes be available to food and beverage businesses located above street level. Further, it is recommended that food and beverage businesses located above street level must have the consent of any business(es) located at street level in the same building whose street frontage coincides with the proposed outdoor seating area. Written agreement from such businesses would have to be submitted to the City as a condition of approval for a permit.

Changes are proposed to the Terms of Reference to incorporate these revisions.

Permit Fees

City staff met to discuss the manner in which permit fees are calculated under the Program for Seasonal Extension for Sidewalk Cafes. This discussion was in response to concerns raised by Doc Willoughby's Downtown Pub.

For seating areas that involve the loss of parking, and where the patron seating area coincides with the area that was formerly parking stalls, the per unit permit fee is multiplied by the area of the decommissioned parking stalls. That fee is currently \$8.00 per square metre. This is referred to as Scenario A.

Scenario B is where the patron seating area involves a walkway that re-routes the public path of travel around the seating area, e.g., Doc Willoughby's. In this situation, the permit fee is currently calculated by multiplying the patron seating area, plus the area of the decommissioned parking stalls, by \$8.00 per square meter. The re-routed path of pedestrian travel lies within the area of the decommissioned parking stalls and to date has been included in the calculation.

The method of calculation vis a vis Scenarios A and B resulted in a situation deemed to be inequitable by Doc Willoughby's Downtown Pub. That business feels it should not have to pay for the patron seating area as well as the area of the decommissioned parking stalls.

Staff agreed the permit fee in Scenario B should be based on the patron seating area with the proviso that the total fee at minimum, equal the lost parking revenue. The lost parking revenue would continue to be based on the assumption the parking stalls would be occupied at all times that a parking fee is required, i.e., nine hours per day, 6 days per week, 24 days on average, per month. All calculations would be made on an application-by-application basis to ensure the fee recovers the lost parking as per the above assumptions. Revisions to the Program's Terms of Reference are proposed to reflect these changes.

Relationship of Permit Fee to Commercial Lease Rates

Staff discussed the demand for outdoor seating space relative to the demand for indoor space, i.e., does the provision of outdoor space lessen the demand/lease rates for indoor space? Staff feel the provision of outdoor space does not likely affect the demand for indoor space; that the outdoor space is provided because patrons desire outdoor space, not because restaurateurs see such space as an inexpensive alternative to indoor space. Staff recommend that the permit fee not be gauged by current lease rates for indoor space.

Impact on Assessed Values

Outdoor seating areas under the Program for Seasonal Extension for Sidewalk Cafes, because they typically involve construction of a physical facility, and could be of a permanent nature, i.e., intended to be year-round, could be deemed an improvement to a property. As such, the improvement could be expected to cause the property's assessed value to increase. However, discussion with BC Assessment Authority indicated that an outdoor seating facility, to be included in the property assessment, must meet certain criteria:

- 1) The facility must be in use as of Dec. 31,
- 2) the terms under which a right is granted to the business must meet the definition of a "lease", and
- 3) the lessee must have exclusive use of the space, i.e., have authority to deny access to members of the public.

Because the Traffic Bylaw does not give the City the right to confer exclusive use of the space, any outdoor seating facility does not qualify for assessment, i.e., is not considered an improvement to the property. An increase in tax revenue does not result therefore because there is no impact of an outdoor seating facility created under the Program, on a property's assessed value.

Permit Period

Although the current permit period is January 1 to December 31, the permit fee has to date been only collected for the period May 1 to September 30. As the permit fee is intended to recover the parking revenues lost as a result of the decommissioning of parking stalls, staff feel it appropriate that a fee be charged for each month a facility occupies parking space..

Reducing the permit fee for the period October to April inclusive, seemed to make sense, on the assumption that average parking revenues would not be as great in the months on either side of the peak period. However, when Transportation staff reviewed the average revenue per stall for Downtown, it was found revenues during the off-season months declined only slightly.

Staff recommend this slight decline in parking revenue does not warrant a change in the permit fee for the months October to April inclusive.

Changes are proposed to the Terms of Reference to indicate that the permit fee would be \$8.00 per square metre of patron seating area, per month, for each month a facility is in operation.

Continuation of Permit Period

When staff last reported to Council on the Program for Seasonal Extension of Outdoor Cafes, it was recommended that a decision to make the program year-round wait until a thorough assessment of the impact of such structures on winter road maintenance could be carried out. As the winter of 2002-2003 was characterized by below-normal precipitation levels, it was not considered to have provided conditions for an accurate assessment.

Staff therefore recommend that the permit period for the Program continue to be January 1st to December 31st until the implications of outdoor seating facilities on winter road maintenance can be fully assessed.

Incentive for New Facilities

Staff are proposing an incentive for the creation of outdoor seating facilities on Lawrence and Leon Avenues. This is considered appropriate as a means to entice restaurants along these streets to participate in the Program and to in turn promote more pedestrian activity consistent with the goals of the Program. Staff recommend that the permit fee for any seating facility along these two streets, operating under the program, be reduced by fifty per cent (50%) in the first year of operation.

Any proposal by a Liquor Primary establishment for an outdoor seating area within the zone identified by the Mayor's Entertainment Zone Task Force as the area in which an expansion of seating capacity should not be allowed, would require Council's endorsement. As such, Council would be able to review the application in light of policies put forward by the Mayor's Entertainment Zone Task Force.

Revisions to the Program's Terms of Reference are proposed to reflect the above discussion.

OTHER OUTDOOR FOOD AND BEVERAGE PROGRAMS

Mobile Vendors

The City's Traffic Bylaw currently requires mobile vendors to move their facilities between the hours of 3 AM and 6 AM. However, because some vendors serve customers in the early hours of the day, the hours set out in the Bylaw might be restrictive.

Staff recommend the terms of the program be revised to require mobile facilities to move once in a 24-hour period, for a minimum of six hours. No time for when this move would take place would be specified.

Sidewalk Seating

It is conceivable that a business with a permit for sidewalk patron seating could request to cook within the permit boundaries, although the smaller areas generally dedicated to these uses makes such a scenario unlikely. Nevertheless, staff propose that provision to cook within these

areas be supported according to the conditions proposed for seating areas under the Program for Seasonal Extension of Sidewalk Cafes, i.e., each proposal would be forwarded to IHA and assessed on its merits.

Staff also recommend that the incentives for new seating areas on Lawrence and Leon Avenues, as set out in the Terms of Reference for the Program for Seasonal Extension of Sidewalk Cafes, also apply to facilities under the sidewalk program. It is acknowledged that it is unlikely such seating areas would be implemented given the existing sidewalk widths on Lawrence and Leon Avenues.

OTHER DISCUSSION

Risk Management

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 applicants' coverage limits.

Additional wording to the Terms of Reference is proposed to require applicable permits and compliance with all applicable regulations regarding installation and operation of any appliance.

Traffic Bylaw Amendments

Changes are proposed to the Traffic Bylaw to provide consistency between the Traffic Bylaw and the terms for the food and beverage programs. These changes would:

- 1) Under the Program for Seasonal Extension for Sidewalk Cafes, base the permit fee calculation on the area used for patron seating;
- 2) Under the Program for Seasonal Extension for Sidewalk Cafes, extend the permit period to each month a facility is in operation, with the fee for periods of less than a month applied on a pro rata basis.
- 3) Institute a 50% reduction in the permit fee in the first year of operation for food and beverage facilities located on Lawrence and Leon Avenues;
- 4) require food and beverage businesses located above street level to obtain the consent of any business(es) located at street level in the same building whose street frontage coincides with the proposed outdoor seating area;
- 5) require permittees wishing to cook within a permit area to submit specifications and the location of any proposed appliance(s), as well as information on the location of existing staff hand-washing facilities within the premises, to the Interior Health Authority for that agency's review;
- 6) require permittees wishing to cook within a permit area to obtain any permits necessary to operate an appliance within a permit area;
- 7) require permittees under the mobile vending program to remove mobile food carts for a minimum of 6 hours in any 24-hour period;

- 8) eliminate the restriction on a maximum of two sidewalk/roadway occupancy permits for portable food service vending carts, to any individual, company or related person in a calendar year.

Other minor additions and deletions of text are proposed for clarification purposes.

Revisions to Existing Terms of Reference

In addition to changes set out above, other proposed revisions to the Terms of Reference are proposed. These changes are intended to clarify wording, eliminate redundancies, and generally create a more concise and consistent document.

SUMMARY

Staff recommend Council endorse the following:

- 1) that the City forward to the Interior Health Authority for that authority's review, all requests to operate an appliance to cook or control food temperatures within the boundaries of an outdoor seating facility,
- 2) that the Program for Seasonal Extension of Sidewalk Cafes be available to food and beverage businesses located above street level,
- 3) that the permit fee for outdoor seating areas under the Program for Seasonal Extension of Sidewalk Cafes apply solely to that portion of the facility dedicated to patron seating, but that the fee at minimum, equal the lost parking revenue from decommissioned parking stalls,
- 4) that the permit fee for outdoor seating areas under the Program for Seasonal Extension of Sidewalk Cafes apply every month a facility is in operation with portions of less than a month applied on a *pro rata* basis,
- 5) that the per unit permit fee for outdoor seating areas remain at \$8.00 per square metre per month,
- 6) that the provision to allow only cooking with gas be removed to allow any method that is otherwise consistent with the Terms of Reference,
- 7) That permit holders obtain all applicable permits to operate an appliance within an outdoor seating area,
- 8) that the permit period for the Program continue to be January 1st to December 31st until the implications of outdoor seating facilities on winter road maintenance can be fully assessed,
- 9) that the permit fee for new outdoor seating facilities located on Lawrence or Leon Avenues be reduced by 50% in the first year of operation,
- 10) that mobile vendors be required to move mobile food carts once in a 24-hour period, for a minimum of six hours,

11) that changes in addition to any set out in 1) to 8) above, be made to the Terms of Reference for the Program for Seasonal Extension of Sidewalk Cafes, as per Attachment 1, and that

12) that necessary amendments to Traffic Bylaw No. 8120 to accommodate revisions to the City's food and beverage programs be forwarded for reading consideration.

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PJM/pm

Approved for inclusion	
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Director of Planning & Development Services

Attachments