

---

## CITY OF KELOWNA

### MEMORANDUM

---

**Date:** June 1, 2005  
**File No.:** 6530-18  
**To:** City Manager  
**From:** Director of Planning and Corporate Services  
**Subject:** OUTDOOR FOOD AND BEVERAGE PROGRAM

Report Prepared By Patrick McCormick

---

#### **RECOMMENDATION**

THAT Council endorse 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 June 1, 2005;

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

#### **BACKGROUND**

The Program for Seasonal Extension for Sidewalk Cafes allows food and beverage operators to use portions of the road surface, including 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.

Periodically since the Program was initiated, recommended changes have been brought to Council for consideration. The purpose of the recommendations, and ultimately the changes that have been endorsed, has been to address issues and concerns that have arisen in the intervening months, and to incorporate them into the Terms of Reference of the Program.

#### **DISCUSSION**

##### **Provision to Operate Outdoor Seating Areas Year-Round**

In 2002, staff recommended to Council that the permit period for the Program for Seasonal Extension of Sidewalk Cafes be from January 1<sup>st</sup> to December 31<sup>st</sup>. This was an extension from the existing permit period at the time which was May 1<sup>st</sup> to October 31<sup>st</sup>. However, the proviso endorsed by Council was to extend the permit period on a temporary basis, until the impact of outdoor seating structures on winter road maintenance could be assessed, with the assessment to be carried out the following winter.

As the winter of 2002-2003 was characterized by below-normal precipitation levels, it did not provide conditions for an accurate assessment. Staff subsequently recommended that the permit period for the Program continue to be January 1<sup>st</sup> to December 31<sup>st</sup>, until the implications of outdoor seating facilities on winter road maintenance could be assessed during the winter of 2003-2004<sup>1</sup>.

With respect to winter conditions, it is not large snowfall events which are the major concern. The graders and sidewalk snowplows are quite maneuverable and get into relatively tight spaces. The machines 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.

Rather, staff have expressed 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 was snow removal from the surface of any walkway projecting onto the roadway. In September of 2004, staff observed the City's sidewalk snow plough maneuver through the walkways constructed in conjunction with the seating areas at Sturgeon Hall and Doc Willoughby's Downtown Pub. Both the walkway widths and angles of direction, and the location of on-sidewalk elements such as light standards and parking meters posed challenges for the driver.

The Terms of Reference for the Program currently state that permit holders are required to keep all pedestrian surfaces associated with the permit area free of snow and ice, and that they must provide a secure footing in all weather conditions. As well, permit holders are required to keep roadway areas, including parking stalls, adjacent to any outdoor seating structure free of snow and ice, where such areas cannot be accessed by City crews for snow removal. The Terms further stipulate that snow can not be piled in parking stalls and must not obstruct traffic movement. These provisions would remain in the Terms of Reference as they are felt to adequately deal with any situations by placing the onus on permit holders to remove snow not removed by City crews<sup>2</sup>.

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

---

<sup>1</sup> The assessment was carried out during the winter of 2004-2005 but other outstanding issues kept a report from coming to Council until now.

<sup>2</sup> On streets with angle parking, it is anticipated there would be spaces adjacent to walkways that could be used for temporary snow storage. These spaces are a result of the typical configurations that leave unused triangular spaces at one end of a structure.

Additionally, it is anticipated there would be room to pile snow along the outside edge of some structures, parallel to the roadway. This space is intended as a buffer 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.

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 to the City's satisfaction.

As a result of the above assessment, staff recommend that the Program for Seasonal Extension of Sidewalk Cafes allow outdoor seating areas on a year-round basis. No revisions to the Program's Terms of Reference would be necessary to reflect this change in policy.

### Risk Assessment

Patrons at any sidewalk seating area, and pedestrians along any pathway around a sidewalk seating area, are exposed to risk due to the proximity of moving vehicles. Staff felt there was a need for more information related to this risk. With this outcome in mind, Hamilton Associates were hired to develop performance-based, risk-assessment criteria and to develop a formal process to evaluate the risk associated with outdoor seating areas.

As set out in Attachment 2, Hamilton Associates created an evaluation matrix that can easily be applied to any candidate location. The matrix will be referred to as the 'Outdoor Seating Program Risk Assessment Matrix'. The matrix allows City staff to determine whether a candidate seating area presents a minimal, low, moderate, or high traffic safety risk. Mitigation measures described in the report can then be implemented to reduce the risk where deemed necessary.

A risk assessment would also be done on all seating areas that currently hold a permit. Mitigation measures would be applied to any seating area not meeting the minimum performance standard to bring the seating area's rating up to the standard. The consultant further recommends that the City use the evaluation matrix for the next 12 months and that after gaining one year of practical experience, the matrix be fine-tuned as necessary, to ensure it fully meets the City's requirements.

It is therefore recommended by staff that the performance criteria and performance evaluation matrix established by Hamilton Associates be adopted with the proviso that the matrix be reviewed after 12 months to assess its effectiveness. Further, it is recommended that all existing and proposed outdoor seating areas be evaluated according to the procedure set out by Hamilton Associates. Where an existing or proposed facility does not meet the minimum performance standard, it is recommended that appropriate measures as identified in the Hamilton Associates report, be taken to reduce that risk with the recognition that in some instances, a permit could be denied where it is deemed that it is not possible through any means, to mitigate the risk and to otherwise bring that risk within a range of acceptability.

### Decommissioning of Parking Stalls

The Terms of Reference for the Program for Seasonal Extension of Sidewalk Cafes states:

*The maximum number of stalls that may be occupied by all permit holders in a block that contains 10 or more parallel parking stalls, or 20 or more angle parking stalls, on both sides of the street from intersection to intersection, is 10% of the total number of parking stalls, excluding handicapped parking stalls and loading zone stalls.*

Due to the success and support of the Program, and because demand for on-street parking has been reduced due to enforcement of time restrictions as well as an increased supply of off-street parking<sup>3</sup>, staff feel a further decommissioning of on-street parking stalls is warranted.

It is therefore recommended that the maximum number of stalls that may be occupied by all permit holders in a block that contains 10 or more parallel parking stalls, or 20 or more angle parking stalls, be increased to 20% of the total number of parking stalls on both sides of the street from intersection to intersection, excluding handicapped parking stalls and loading zone stalls.

### Right to Renew

The Terms of Reference currently state:

*An existing permit holder will be given first consideration for a permit in each of the three years following the initial permit year, provided the existing permit is in good standing, and a completed application for the same permit area, on the same terms and conditions, is received by the City of Kelowna by December 1<sup>st</sup> of the current permit period.*

The intention of this provision was to allow other food and beverage operators on any particular street an opportunity to have an outdoor seating area in the longer term if all available parking spaces on a block are used up. Under this scenario, a permit holder could be required to dismantle a seating area upon expiration of the time limit on its right of first refusal, where another food and beverage operator is waiting for a permit for a seating area.

As a result of the above recommendation to increase the percentage of parking available for sidewalk café use, it is additionally recommended that the time limit on the numbers of years that a patio can be in place be removed and replaced by a provision to allow operation of a seating area for an unlimited number of years as long as the permit is in good standing. In addition, a provision would be added to allow staff to review situations where an application would result in more than the prescribed number of parking spaces on a block, being taken out of use.

In these situations, staff would make a recommendation based on a review of the parking demand for the block in question, and may allow the permit where the addition of another seating area was not deemed to significantly impact the availability of short-term parking and/or where the anticipated benefits of an additional seating area was deemed to outweigh any loss of parking.

Where a permit was denied, the applicant would have the option of making an appeal to the Parking Committee.

---

<sup>3</sup> Reconstruction of the Chapman Parkade took place subsequent to initiation of the Program for Seasonal Extension of Sidewalk Cafes. Not only did the reconstruction of the Parkade add to the total number of available short- and long-term parking spaces available within Downtown, information gathered by staff indicates that the Parkade is being well-used. The parkade and its acceptance by Downtown motorists has taken some of the pressure off the demand for on-street parking.

### Furniture Storage During Off-Season

Some permit holders have chosen not to remove their outdoor seating areas during the winter months. Although these areas are in some instances used by smoking patrons, they are nevertheless not utilized to the degree that they are used in the peak season. In some instances however, the furniture used in the peak season is stored within the seating area.

Staff feel permit holders should not store outdoor furniture within seating areas over the winter if not actively used by patrons, due to the unsightliness of this practice. It is therefore proposed that storage of outdoor furniture within outdoor seating areas not be allowed during the off-season unless it is being actively used by patrons.

### Enclosure of Outdoor Seating Areas

The Program allows year-round use of the roadway, and in this regard there is a degree of permanence associated with construction of outdoor seating areas. Nevertheless, staff feel that from an urban design perspective, outdoor seating areas should not appear to be additions to buildings, but rather maintain their character as additions or enhancements to the streetscape.

In this regard, it is recommended that such structures remain open to the street and to the sky. That is, any construction that precludes or significantly restricts views in and out of the seating area in any direction, be disallowed by the Terms of Reference.

### Attachment of Structures to Buildings

The BC Building Code considers any attachment to a building to be part of the permanent structure and to thereby fall within the jurisdiction of the Building Code. It is therefore recommended that applicants/permit holders wishing to attach any portion of a sidewalk seating structure to an adjoining building face be required to obtain a building permit.

Wording to indicate that a Building Permit could be required for any portion of an outdoor seating structure attached to an adjoining building face would be added to the Terms of Reference as indicated in Attachment 1.

### Change of Name

If the Program is approved as year-round, the continued use of the formal name could be misleading. It is therefore recommended that the name of the Program be changed from Program for Seasonal Extension of Sidewalk Cafes, to Sidewalk Café Extension Program.

### Terms of Reference

All other provisions as set out in the Terms of Reference would remain in place (see Attachment 1 showing existing provisions and proposed changes in italics).

### Traffic Bylaw Amendments

Changes are proposed to the Traffic Bylaw to provide consistency between the Traffic Bylaw and the terms of the outdoor seating program.

## SUMMARY

Staff recommend Council endorse the following:

1. That the temporary provision to give permit holders the option to leave seating areas in place year-round be made a permanent provision of the Program;
2. That the performance criteria and performance evaluation matrix established by Hamilton Associates be adopted with the proviso that the matrix be reviewed after 12 months to assess its effectiveness. Further, it is recommended that all existing and proposed outdoor seating areas be reviewed according to the procedure established by Hamilton Associates to assess the risk associated with any outdoor seating area. Additionally, where an existing or proposed facility does not meet the minimum performance standard, it is recommended that appropriate measures as recommended in the Hamilton Associates report be taken to reduce that risk, with the recognition that in some instances, a permit could be denied where it is deemed that it is not possible through any cost-effective means to mitigate the risk and to otherwise bring that risk within a range of acceptability;
3. That the maximum number of stalls that may be occupied by all permit holders in a block that contains 10 or more parallel parking stalls, or 20 or more angle parking stalls, be increased to 20% of the total number of parking stalls on both sides of the street from intersection to intersection, excluding handicapped parking stalls and loading zone stalls.
4. That the time limit on the numbers of years that a patio can be in place be removed and replaced by a provision to allow operation of a seating area for an unlimited number of years as long as the permit is in good standing. In addition, it is recommended a provision be added to allow staff to review situations where an application would result in more than 20% of parking spaces on a block being taken out of use. A further provision would allow an applicant to make an appeal to the Parking Committee where a permit was denied;
5. That permit holders be restricted from storing furniture within any outdoor seating area during the off-season, unless it is being actively used on a regular basis;
6. that structures in conjunction with outdoor seating areas remain open to the street and to the sky and not restricts views in and out of the seating area in any direction;
7. That where any portion of an existing outdoor seating structure is attached to the adjoining building, the applicant be required to provide a letter of assurance from a qualified professional or a contractor indicating that the structure has been installed according to good building practice. Further it is recommended that applicants/permit holders wishing to attach any portion of a sidewalk seating structure to an adjoining building face be required to obtain a building permit.
8. That the Program for Seasonal Extension of Sidewalk Cafes be renamed the Sidewalk Café Extension Program; and
9. That necessary revisions to reflect these changes be made to the Terms of Reference for the Program, and to the City of Kelowna Traffic Bylaw.

Gary Stephen, Acting Manager  
Policy, Research, and Strategic Planning

PJM/pm

Approved for inclusion

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

Attachments

## ATTACHMENT 1: Revised Terms of Reference

### Part One

#### ***Sidewalk Café Extension Program***

##### **Terms of Reference**

##### **Permitted Use and Areas to be Designated**

Use is limited to businesses engaged in food and beverage service anywhere within the city boundaries. A permit 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 in writing by affected adjoining tenants or their agents. This provision also applies to food and beverage businesses located above street level (see Food and Beverage Businesses Located Above Street Level).

A permit shall only be issued to occupy a portion of roadway to a maximum depth of 2.5 metres from the face of the curb in areas of on-street parallel parking or to a maximum depth of 4.0 metres from the face of the curb in areas of on-street angle parking.

In all cases the occupancy of the permit area must conform to the sight lines established in Section 2.2 of the City of Kelowna Traffic Bylaw.

##### **Decommissioning of Parking Stalls**

A permit may be issued to occupy a minimum of 1 and a maximum of 2 parallel parking stalls or a minimum of 2 and a maximum of 3 angle parking stalls.

The maximum number of stalls that may be occupied by all permit holders in a block, that contains 10 or more parallel parking stalls, or 20 or more angle parking stalls, on both sides of the street from intersection to intersection, is 20% of the total number of parking stalls, excluding handicapped parking stalls and loading zone stalls.

##### **Permit Period**

Permits can be issued for up to one year and expire on December 31<sup>st</sup> each year.

*An outdoor seating area will be allowed to continue indefinitely provided the existing permit is in good standing, and a completed application for the same permit area, on the same terms and conditions, is received by the City of Kelowna by December 1<sup>st</sup> of the current permit period.*

*Where an application would result in more than 20% of parking spaces on a block being taken out of use, i.e., where existing outdoor seating areas have used up the available parking spaces, staff will review the parking demand for the block in question. A permit may be allowed where the addition of another seating area is not deemed to significantly impact the availability of short-term parking and/or where the anticipated benefit of an additional seating area is deemed to outweigh any loss of on-street parking.*

*Where a permit is denied, the applicant has the option of making an appeal to the Parking Committee.*



## Application Requirements

### 1) Application Fee

Applicants shall submit a non-refundable \$50.00 application fee.

An application fee is not required in subsequent years where a seating facility has been in continuous operation and where the layout and/or design of the facility, in the estimation of staff, has not been significantly altered.

### 2) Drawings

Applicants shall submit:

- (a) a plan at 1:100 scale of the proposed facility, including entrances to all buildings, any landscaping, parking zones and bus stop locations, and any existing street furniture and/or appurtenances within a distance measured from 3 meters on either side of the business frontage;
- (b) elevations of the permit area including any ramps, fences, and overhead structures; and
- (c) a section through any proposed ramps (see Part 2 of Terms of Reference)

### 3) Security Deposit

Prior to the issuance of a permit, the applicant shall place with the City, a cash deposit or unconditional irrevocable letter of credit issued by a Canadian chartered bank or credit union in the amount of \$500.00 as security that the obligations imposed by the permit are fulfilled and to reimburse the City for the cost of any damage to the sidewalk, walkway, roadway, or other City facilities as a result of occupancy.

### 4) Certificate of Insurance

The City's standard Certificate of Insurance is included in the permit package, and must be completed by the applicant with the signed original being returned to the City as part of the application package.

The applicant shall, without limiting its obligations or liabilities under this permit, procure and maintain, at its own expense and cost, insurance in the amount of \$5,000,000.00 not including the automobile liability insurance requirement under Section 2 of the City of Kelowna Traffic Bylaw.

The insurance policy(ies) shall be maintained continuously as long as a permit is in effect.

### **Hold Harmless/Indemnification.**

The permit holder will be liable for all loss, costs, damages, and expenses whatsoever incurred or suffered by the City, its elected officials, officers, employees and agents (the Indemnitees) including but not limited to damage to or loss of property and loss of use thereof, and injury to or death of a person or persons resulting from or in connection with the performance, purported performance, or non-performance of this permit, excepting only where such loss, costs, damages and expenses are as a result of the sole negligence of the Indemnitees.

The permit holder will defend, indemnify and hold harmless the Indemnitees from and against all claims, demands, actions, proceedings, and liabilities whatsoever and all costs and expenses incurred in connection therewith and resulting from the performance, purported performance, or

non-performance of this permit, excepting only where such claim, demand, action, proceeding or liability is based on the sole negligence of the Indemnitees.

**Applicants are cautioned that applications will not be considered complete without the required information under parts 1), 2), 3), and 4) above.**

### ***Risk Ranking & Eligibility***

*Each proposed seating area will be reviewed by staff to assess the risk due to proximity to moving vehicles using the Outdoor Seating Program Risk Assessment Matrix. The matrix allows City staff to determine whether a candidate seating area presents a minimal, low, moderate, or high traffic safety risk. Where a proposed seating area is deemed to have a moderate risk rating, the City may require modifications to the design of the proposed structure. Additionally, the City may require modifications within the public right-of-way in the vicinity of the proposed seating area. The cost of any modifications could be the responsibility of the applicant.*

*Where a proposed seating area is deemed to have a high risk rating, the City will require modifications to the design of the proposed structure and/or public right-of-way to occur or be agreed upon prior to further consideration of the proposed seating area. Additionally, the City may require modifications within the public right-of-way in the vicinity of the proposed seating area. The cost of any modifications could be the responsibility of the applicant.*

*The City will work with applicants to establish a plan to reduce all locations to a low risk ranking where reasonably achievable. The cost of any modifications could be the responsibility of the applicant. Additionally, a permit application could be denied where it is deemed that it is not possible through reasonable means to mitigate the risk, and to otherwise bring it within a range of acceptability.*

### **Permit Fee**

The permit fee is \$8.00 per square metre of the area utilized by the permit holder. The area excludes walkways as described in Part Two of the Terms of Reference.

The permit fee, at minimum, must equal the amount of any revenue foregone as a result of parking spaces de-commissioned in conjunction with construction of any seating facility.

The permit fee will be invoiced by the City and will be due upon issuance of a permit, and at the beginning of any subsequent permit periods. Where outdoor seating operations are discontinued during a permit period, the permit fee will be refunded by the City on a pro rata basis. Where a fee has not been paid with 30 days of commencement of the permit period, the City reserves the right to cancel the operator's permit and if deemed necessary, to remove the outdoor facility at the operator's expense.

### **Reduced Fee for New Facilities on Lawrence and Leon Avenues**

The permit fee will be reduced by 50% for all seating areas located on Lawrence and Leon Avenues. The reduced fee will apply only in the first year of operation.

### **Food and Beverage Businesses Located Above Street Level**

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. This provision applies regardless of whether the proposed

facility would be located immediately adjacent to the building or within the parking area located next to the sidewalk. Written agreement from such businesses must be submitted to the City as a condition of approval for a permit.

### **Design and Construction Guidelines**

Structures within a permit area must be free standing. Anchorage to the sidewalk or roadway is not permitted.

Construction must conform 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 ensure 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 be approved by the City and planter dimensions must be included as part of the permit application.

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.  
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.  
Applicants are strongly encouraged to make seating areas accessible and traversable by all members of the public.
- 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.

*Outdoor seating areas should not appear to be additions to buildings, but rather maintain their character as additions or enhancements to the streetscape. In this regard, it is recommended that such structures remain open to the street and to the sky. That is, any construction that restricts views in and out of the seating area in any direction, are not allowed.*

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.

**Non-transferability of Permit**

A permit authorizes only the person named in the permit to occupy the area described in the permit and is not transferable.

**Cancellation of Permit by City of Kelowna**

Should the City require the use of the permit area for any reason, the City may cancel the permit. The City shall give the permit holder at least 24 hours written notice of such cancellation, except in the case of an emergency, when the City may order that the outdoor seating facility be vacated, and if deemed necessary by the City, any structure(s) removed, until further notice.

**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.

***The City requires a minimum of 30 days advance notice to remove parking meters.***

**Obligation to Maintain Permit Area**

Permit holders are required to ensure that the permit area and immediate vicinity are kept tidy and free of all garbage.

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, 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 Permit Areas**

Permit holders are allowed to cook<sup>4</sup> on or from appliances located within a patron seating area provided written agreement is obtained from adjacent businesses and submitted to the City as evidence of such agreement. Deep frying is not allowed.

Regardless of whether a food and beverage operator 1) indicates an intention to cook within an outdoor seating area concurrent with application for a permit for that seating facility, or 2) indicates an intention to cook within an outdoor seating area subsequent to obtaining a permit, a review will be required.

The request to cook must 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 will be forwarded to the Interior Health Authority for review, and will be based generally on the following criteria:

- Distance from the outdoor seating facility to convenient hand washing facilities for staff,
- Type of appliance 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 an applicant will be allowed to have a cooking operation will be based on the merits of each situation. No additional cost will be associated with review of a request to cook within a seating area. By granting a permit and/or performing any review, the City does not accept any responsibility or liability for the cook or operation of the permit holder. Cooking and operation of any appliance is entirely at the permit holder's risk.

### **Permits to Operate an Appliance**

Applicants/permit holders wishing to operate any appliance must ensure that all required permits are in place. Permits must be evidenced to the City upon request.

#### **Additional Considerations**

- Planters placed on the roadway around the perimeter of a facility, whether supplied by the City or the permit holder, must be planted by the permit holder prior to use of the facility and must be maintained May to September inclusive.
- Electrical extensions, either at grade or overhead across the public sidewalk, will not be allowed.
- All lighting in conjunction with the outdoor seating facility shall be located and arranged so no 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.

---

<sup>4</sup> The term "cook" includes any food preparation process as well as maintaining food at a temperature appropriate for serving.

- Permit holders shall not carry out, or allow any activity within the permit area which would constitute an annoyance or nuisance to others or obstruct or interfere with the free and unrestricted use of areas adjacent to the permit area.
- Permit recipients are advised they are not entitled to exclusive use of the space designated in the permit.
- *Permit holders must remove any furniture in the off-season that is not being actively used by patrons on a regular basis.*
- All aspects of any proposed facility must meet the provisions of the *Traffic Bylaw No. 8120*, and any other applicable bylaws. **Where there is a discrepancy between the Terms of Reference and any applicable Bylaws, the provisions set out in the Bylaws will apply.**

Part Two  
**Additional Requirements For Walkways  
In Conjunction With the *Sidewalk Café Extension Program***

The provisions set out below are in addition to those set out in Part One.

Any structure providing a route around an area used by a permit holder for the purpose of serving its patrons, herein termed a “walkway”, must have a minimum 2.0 meter width throughout its length. The 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 although the 2.0 metre dimension could be reduced by on-street elements such as light standards, fire hydrants, parking meters, etc. to a clearance of no less than 1.8 metres. Such exemptions will be at the discretion of City staff.

No angle along the horizontal plane of a walkway can be less than 90 degrees.

There can be no change in elevation between a walkway and the adjoining sidewalk surface.

The walkway surface must provide a non-slip surface. Consistent with the City of Kelowna Guidelines for Accessibility in Outdoor Areas, the surface should be as regular and even as possible. The number of joints or seams should be minimized. Use of carpeting is prohibited.

Where a walkway includes a ramp or ramps, such ramp or ramps must conform to the requirements of the BC Building Code, including any provision for handrails and the requirements for construction of such handrails.

Other requirements:

- 1) a fence must separate the walkway and the seating area.
- 2) a fence must separate the walkway from the roadway and any adjoining parking stalls.
- 3) 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.
- 4) a high degree of visual contrast is encouraged to increase the visibility of all fences.
- 5) the entrance to the seating area must be clearly marked.
- 6) tables and chairs within the seating area should have a high degree of colour contrast to their surroundings.
- 7) where a walkway projects into an area occupied by angle 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 or bicycle 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.

- 8) 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. Where the remaining depth of the stall is deemed by staff to be more appropriate for bicycle parking, the stall will be posted as bicycle parking. 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 include the shortfall within the minimum amount that must be recovered by the permit fee.

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 City will estimate the short-fall in revenue and include the shortfall within the minimum amount that must be recovered by the permit fee commencing with the date that the stall is removed from service.

- 9) 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.
- 10) 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.
- 11) the walkway must be completed according to 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.
- 12) 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: Hamilton Associates Report