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## CITY OF KELOWNA

### MEMORANDUM

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**Date:** August 17, 2005  
**File No.:** 6530-18  
**To:** City Manager  
**From:** Director of Planning and Corporate Services  
**Subject:** OUTDOOR FOOD AND BEVERAGE PROGRAMS

Report Prepared By Patrick McCormick

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#### **RECOMMENDATION**

THAT Council endorse a provision for entertainment within outdoor seating areas as set out in the Planning and Corporate Services Department Report of August 17, 2005 and direct staff to make revisions as deemed appropriate, to the Terms of Reference for the Sidewalk Seating Program and the Sidewalk Café Extension Program;

AND THAT amendments to Traffic Bylaw No. 8120 to accommodate any revisions to the outdoor seating programs be subsequently forwarded for reading consideration.

#### **BACKGROUND**

On July 25, 2005, Council passed the following resolution:

THAT Council request City staff to review our present policies and report back to Council in two weeks with a recommendation as to how we can permit business owners to provide entertainment on their patios.

#### **DISCUSSION**

The current Terms of Reference of both the Sidewalk Seating Program and the Sidewalk Café Extension Program<sup>1</sup> make no mention of entertainment within the boundaries of an outdoor seating area.

Both programs however, were formulated to help create an animated and vital pedestrian-oriented environment to support retail businesses within Kelowna's Urban Centres. The provision of entertainment within outdoor seating areas is consistent with this aim.

#### **Bylaw Enforcement**

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<sup>1</sup> The Sidewalk Seating Program governs all outdoor seating areas that use only the sidewalk portion of the public right-of-way. The Sidewalk Café Extension Program governs all outdoor seating areas where some portion of the road surface is used either for patron seating or as a walkway to route pedestrians around a patron seating area.

The available options hinge on whether or not to allow amplification of voice and instruments. Bylaw Enforcement has voiced considerable concern regarding the provision of amplification. This concern comes from past experience which indicates that:

- Amplified music has a tendency to rise to sound levels that disturb others in the vicinity of the source.
- Loud music seems to encourage more alcohol consumption. When Bylaw Enforcement is summoned, Bylaw Officers find that patrons are more inclined to interfere with the execution of their duties. This interference has included shouting and swearing directed at the officers.
- Complaints under the Noise Bylaw are difficult to enforce and require large amounts of staff time.

As there is no definition in the current Bylaw of what constitutes an excessive volume of sound, any complaint is based on a subjective evaluation. As a result, the courts rely on testimonies of persons that claim to have been disturbed by the sound volume. The time required to respond to the initial complaint, to gather the supporting evidence, and to appear in court is time-consuming for Bylaw Enforcement, and because of the subjective nature of the process, alleged infractions are difficult to enforce.

Additionally, there is a concern that entertainment within outdoor seating areas could result in persons congregating beyond the boundaries of outdoor seating areas. Where such congregation restricts the movement of pedestrians, Bylaw Enforcement could be called upon to intervene.

As with issues related to sound volumes, it can be difficult to demonstrate to a court that individuals gathered on a street are loitering. Moreover, although Bylaw Enforcement has the ability to issue tickets to individuals for an alleged infraction, actual dispersement could require the resources of the RCMP.

### Conditions

In an attempt to assure more reasonable sound levels and to preclude or mitigate demands upon Bylaw Enforcement, staff recommend that conditions upon entertainment within outdoor seating areas be imposed.

- 1) Entertainment should be restricted to live music using unamplified instruments and/or voice. As this might still allow instruments that could project considerable volumes, e.g., percussion and brass instruments, instruments should be restricted to the stringed variety, i.e., guitars, mandolins, etc. Acknowledging that even these can project considerable volumes, there would still be an onus on permit holders to use discretion regarding sound volumes.
- 2) Additionally, hours of operation would be restricted from 7 AM to 10 PM, and all entertainment would be located within the permit area as designated in the permit application.

Although staff support restricting instruments to the non-amplified type, should a program be endorsed that would allow amplified entertainment, electricity would need to be delivered to

some outdoor seating areas from the premises to which such seating areas are operationally tied.

However, under the current terms of the outdoor seating programs, electrical cords cannot cross the public right-of-way from an outdoor seating area to an adjoining business premises. This provision was included because electrical cords across the pedestrian path of travel could have implications for aesthetics as well as public safety.

As some permit holders have a public-right-of-way between their seating area and the premises to which they are operationally tied, the inability to use an electrical extension from the building is an impediment to utilizing any provision for amplified music. However, not all permit holders are in this situation. Some have their seating areas immediately adjacent to the building and there is no provision in the Terms that would restrict them from using an electrical extension to the seating area as the extension would not need to cross a pedestrian path of travel. Restricting amplified instruments and voice would put all permit holders on an equal footing, unless the restriction on electrical cords was lifted.

Any direction to allow electrical cords should likely limit clearances to a height of at least 2.4 metres (8 feet) above the sidewalk surface. Discussions with the Risk Manager indicate that an evaluation of each application to carry an electrical extension across a pedestrian path of travel would best be handled on a case-by-case basis.

#### Infractions

Where a complaint was received regarding sound levels coming from an outdoor seating area, the City would have the right to revoke a permit if a permit holder were not cooperative in reducing sound levels. The City would also have the ability to remove an outdoor seating area and use the permit holder's security deposit to cover all related costs of removal.

#### Program Terms of Reference

The following text would be added to the Terms of Reference for the Sidewalk Café Program and the Sidewalk Cafe Extension Program to reflect the above recommendations:

#### ***Entertainment***

*Permit holders may provide entertainment within outdoor seating areas. Entertainment is restricted to live music using unamplified string instruments and/or voice. Hours of entertainment are 7 AM to 10 PM daily.*

*The onus is on permit holders to use discretion regarding sound volumes. If a complaint is received regarding sound levels originating within an outdoor seating area, the City has the right to revoke a permit if a permit holder is uncooperative in reducing sound levels. The City also has the right to remove an outdoor seating area and use the permit holder's security deposit to cover all related costs of removal in instances where there are repeated infractions.*

#### Traffic Bylaw Implications

Any provision to allow entertainment within outdoor seating areas could require a change or changes to the Traffic Bylaw. If so, any revisions to the Traffic Bylaw would be forwarded for reading consideration.

## **SUMMARY**

Council has expressed an interest in allowing outdoor entertainment as a provision in the Terms of Reference for the Sidewalk Café Program and the Sidewalk Cafe Extension Program. The above report outlines the issues and recommends entertainment be allowed within outdoor seating areas provided that entertainment satisfies the conditions set out in the above report:

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

PJM/pm

Approved for inclusion

R.L. (Ron) Mattiussi, ACP, MCIP