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**CITY OF KELOWNA**

**MEMORANDUM**

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**Date:** November 8, 2005

**File No.:** Council Policy #329

**To:** City Manager

**From:** Planning & Corporate Services Department

**SUBJECT:** **COUNCIL POLICY NO. 329 – DOWNTOWN COMMERCIAL BUILDING ENCROACHMENT POLICY**

**PURPOSE:** TO ADD A NEW COUNCIL POLICY WHICH PROVIDES STAFF WITH DIRECTION REGARDING COMMERCIAL BUILDING ENCROACHMENTS IN DOWNTOWN KELOWNA

**PREPARED BY:** RYAN SMITH

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**1.0 RECOMMENDATION**

THAT Council Policy No. 329 (Downtown Commercial Building Encroachment Policy) be approved by Council to clarify the criteria that must be met for the City to consider allowing building encroachments onto City land for commercial buildings being renovated in the downtown urban centre.

**2.0 SUMMARY/ PLANNING AND CORPORATE SERVICES COMMENTS**

Staff has encountered several development applications for façade renovations in the downtown core which propose encroachment onto City property. At the present time no policy framework exists to deal with such proposals. In order to set up a framework in which each such proposal will be subject to the same scrutiny and process, staff are recommending that Council adopt a downtown commercial building encroachment policy. Planning staff have collaborated with the Risk Manager, and Land Department, Inspection Services Department and Works and Utilities Department in order to create a policy which satisfies the needs and concerns of each department. The attached policy is not only the result of internal collaboration but also research on how other municipalities have addressed the same issue.

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Andrew Bruce  
Manager of Development Services

Approved for inclusion

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

RM/AB/rs



# CITY OF KELOWNA

POLICY: 329  
PAGE: 1 of 3

## COUNCIL POLICY MANUAL

APPROVAL DATE:@  
RESOLUTION #:@  
REPLACING #:N/A  
DATE OF LAST REVIEW:N/A

SUBJECT: COMMERCIAL BUILDING ENCROACHMENT POLICY - (For Renovations to Commercial Buildings in the Downtown Urban Centre)

The City of Kelowna will consider allowing building encroachments onto City land if the following criteria are satisfied:

1. The encroachment is related to the renovation of an existing commercial building façade and the subject property is located in the Downtown Urban Centre as defined by the Official Community Plan map 6.2.
2. The proposed façade renovation is consistent with all applicable design guidelines for development in Urban Centers as defined in Chapter 6 of the Official Community Plan.
3. The proposed façade renovation is generally consistent with design guidelines for the C7 – Downtown Urban Centre zone.
4. The proposed renovation meets all the restrictions of Zoning Bylaw No.8000 other than the encroachment in question.
5. The proposed encroachment must be no greater than 0.20m and must not adversely impact pedestrian flow on City sidewalks nor present a hazard for the pedestrian in the opinion of the City of Kelowna.
6. The proposed encroachment must not decrease the width of the sidewalk to less than 2.20m on any portion of the sidewalk adjacent to the subject property.
7. The owner of the subject property must enter into a License of Occupation Agreement with the City of Kelowna to formally recognize the encroachment. In the License of Occupation Agreement the owner of the property with the encroachment shall,
  - a) complete and provide to the City a survey of the encroachment area at the owners expense.
  - b) agree to pay compensation to the City in an amount equal to market value for the encroachment area for the term of the License of Occupation Agreement.

# CITY OF KELOWNA

POLICY: 329

## COUNCIL POLICY MANUAL

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 RESOLUTION #: @  
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 DATE OF LAST REVIEW: October 2005

SUBJECT: COMMERCIAL BUILDING ENCROACHMENT POLICY - (For Renovations to Commercial Buildings in the Downtown Urban Centre)

- c) indemnify and hold the City of Kelowna harmless from any and all liabilities, actions, claims, damages, costs, losses, and expenses, including reasonable legal costs on a solicitor-client basis, suffered or incurred by the City of Kelowna as a result of the use of City Property under the License of Occupation Agreement by the subject Property Owner, its contractors, agents, employees, licensees and invitees or arising out of or connected with the works or structure encroaching upon City of Kelowna property under the License of Occupation Agreement.
- d) Provide evidence that at all times during the installation of the Works and until the date at which the owner of the subject property provides written confirmation that it is no longer exercising any rights granted to it under the License of Occupation Agreement, the Property Owner, at its expense, shall maintain with one or more companies duly authorized to carry on business in the Province of British Columbia comprehensive general liability insurance in a form acceptable to the City of Kelowna, and naming the City of Kelowna as an *Additional Named Insured*. The insurance maintained by the owner of the subject property shall provide for, but not be limited to:
- (i) providing for an inclusive limit of not less than \$2,000,000 for each occurrence or accident;
  - (ii) providing for all sums which the Property Owner shall become legally obligated to pay for damages because of bodily injury (including death at any time resulting therefrom) sustained by any person or persons or because of damage to or destruction of property caused by an occurrence or accident arising out of or related to the License of Occupation Agreement or any operations carried on in connection with the License of Occupation Agreement;
  - (iii) including a Cross Liability clause providing that the inclusion of more than one Insured shall not in any way affect the rights of any other Insured hereunder, in respect to any claim, demand, suit or judgment made against any other Insured;
  - (iv) include a severability of interest clause;
- e) The Property Owner agrees to submit Certificates of Insurance, in a form acceptable to the City prior commencing any Work related to the License of Occupation Agreement. Such Certificates shall provide that 30 days' written notice shall be given to the Risk Management Department of the City of Kelowna, prior to any material changes or cancellations of any such policy or policies.
- f) If the Property Owner fails to do all or anything which is required of it with regard to insurance, the City may do all that is necessary to effect and maintain such insurance, and any monies expended by the City shall be repayable by and recovered from the Property Owner. The Property Owner expressly authorizes the City to deduct from any monies owing the Property Owner, any monies owing by the Property Owner to the City.

## CITY OF KELOWNA

POLICY: **329**  
 PAGE: 3 of 3

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8. The applicant must apply for a development permit and building permit to the Planning and Corporate Services Department of the City of Kelowna. Staff will not approve a building permit application which involves an encroachment unless all the conditions above are met to the satisfaction of the Director of Planning and Corporate Services.

REASON FOR POLICY: To Facilitate Façade Renovations in Kelowna's Downtown Urban Centre

LEGISLATIVE AUTHORITY: Council Resolution

PROCEDURE FOR IMPLEMENTATION: As Outlined in Policy.