

PART 7 – SIDEWALK/ROADWAY OCCUPANCY PERMITS

BL10814 and BL12045 amended title:

7.1 Sidewalk/Roadway Occupancy Permits

BL9587 amended sub-section 7.1.1:

7.1.1 **Permit Required.** No person may occupy a portion of **lane, sidewalk, walkway, boulevard, or roadway**, hereinafter referred to in this Part as the 'permit area', for the purposes of temporary tables or seating, or both, or the vending of products from a licensed portable food service vending cart or **vehicle** located on a designated mobile store space as identified in the Business License and Regulation Bylaw No. 7878, without first obtaining a **sidewalk/roadway occupancy permit** from the **City** in accordance with the conditions outlined in this Bylaw.

Any **permit** holder who is required to forfeit a security deposit shall be prohibited from applying for a future permit, and no application for a permit will be accepted from any other person for any establishment to which such a **permit** holder is connected, for a period of one year from the date of the forfeiture, and not until any outstanding amount has been reimbursed to the City with respect to the seizure and storage of property or equipment seized pursuant to this Bylaw.

7.1.2 **Application Fee.** Applicants for a **sidewalk/roadway occupancy permit** shall submit a non-refundable application fee as outlined on Schedule "A", at the time of application.

BL9012 and BL9129 amended sub-section 7.1.3:

7.1.3 **Plan of 'Permit area'.** Applicants for a **sidewalk/roadway occupancy permit** shall submit:

- (a) a plan at 1:100 scale of the proposed facility, including:
 - (i) entrances to all buildings;
 - (ii) landscaping;
 - (iii) parking zones and bus stop locations; and
 - (iv) all existing and proposed street furniture and/or appurtenances in front of, and 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.

BL9446 added sub-section 7.1.3A:

7.1.3A **Risk Assessment.** All existing or proposed outdoor seating areas must meet identified performance criteria and undergo a risk assessment evaluation provided by the City of Kelowna. Where an existing or proposed facility does not meet the minimum standards of the evaluation the applicant shall be required to take appropriate measures to mitigate these risks, otherwise the permit shall be denied or cancelled as applicable.

BL9129 amended sub-section 7.1.4:

7.1.4 **'Permit areas - sidewalks'**. **Sidewalk/roadway occupancy permits** to occupy a portion of **sidewalk** shall only be issued to occupy that portion of **sidewalk** which is more than two metres from the property line of the abutting property and at least 0.5 metres from an adjacent curb where there is no on-street parking, 0.8 metres from an adjacent curb where there is on-street parallel parking, and 0.6 metres from an adjacent curb where there is angle on-street parking. In all cases, the occupancy of the permit area must conform to the sight lines established in Section 2.2 of this Bylaw.

BL9012, BL9129, BL9446 & BL11167 amended sub-section 7.1.5:

7.1.5 **'Permit areas – roadways'**. **Sidewalk/roadway occupancy permits** to occupy a portion of **roadway** for temporary dining or seating shall only be issued in conjunction with the Sidewalk Café Extension program administered by the **City**. These **permits** 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. A **permit** may be issued to occupy a minimum of 2 and a maximum of 3 angle parking stalls, or a minimum of 1 and a maximum of 2 parallel parking stalls, except that the maximum number of stalls that may be occupied 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 regular parking stalls (excluding accessible parking stalls and loading zone stalls). When a **permit** area requires **sidewalk traffic** to be rerouted onto the **roadway**, an additional parking stall may be used to accommodate the rerouting only. Notwithstanding the above, a permit may be considered if it would result in more than 20% of the total regular parking stalls (excluding accessible parking stalls and loading zone stalls) on a block being taken out of use. In this instance, the City's Parking Coordinator will conduct an evaluation that will take into account traffic flows on the street in question; as well as parking usage. Where the parking Coordinator determines, based on that evaluation, that an additional seating area, as proposed by the applicant, does not negatively impact the availability of on-street parking, a permit will be granted, provided all other requirements for a permit are met. In all cases the occupancy of the **permit** area must conform to the sight lines established in section 2.2 of this bylaw.

BL9587 added a new sub-section 7.1.5A:

7.1.5A **'Permit areas – lanes'**. **Permits** for outdoor seating areas within a **lane** shall only be issued if use of the **lane** for such purpose does not restrict access by pedestrians along the **lane** to less than a 2.0 metre wide path, nor compromise access by delivery or emergency service vehicles to establishments along the **lane**. In all cases, the occupancy of the **permit** area must conform to the sight lines established in Section 2.2 of this Bylaw.

BL12045 added a new sub-section 7.1.5B:

7.1.5B **Temporary Bernard Roadway Patio**. The permit area is measured from the back of the curb separating the furnishing zone and the parking space, into the roadway up to 7.5m for a business on the south side of Bernard Avenue or 2.6m for a business on the north side of Bernard Avenue provided a 6m emergency Right-of-Way is maintained.

BL9012, BL9129, BL9446 and BL10501 amended paragraph 7.1.6:

7.1.6 **Permit Expiration**. **Sidewalk/roadway occupancy permits** may be issued for up to one year and shall expire on December 31st of each year. Should the **City** require the use of the **permit** area for any reason, the **City** may cancel the **permit**. The **City** shall

notify the Permittee of such cancellation and shall give at least 24 hours written notice to vacate the **permit** area. In the case of an emergency, the **City** shall order that the area be vacated immediately, and may suspend or cancel the **permit** depending on the circumstances of the emergency.

BL9587 amended sub-section 7.1.7:

7.1.7 **Permit Fee.** An applicant for a **sidewalk/roadway occupancy permit** shall submit the required **permit** fee outlined on Schedule "A", prior to issuance of the **permit** or in accordance with an invoice received from the **City**.

BL9446 amended sub-section 7.1.7A:

7.1.7A **Appeal** An applicant may appeal a decision made under this part to the Kelowna Parking Committee by delivering a written request to the Parking Coordinator.

7.1.8 **Non-Transferable.** A **sidewalk/roadway occupancy permit** issued pursuant to this Bylaw authorizes only the person named in the permit to occupy the area described in the **sidewalk/roadway occupancy permit** and is not transferable.

BL9129 deleted sub-section 7.1.9 in its entirety:

BL9012, BL9129, BL9446 amended sub-section 7.1.10:

7.1.10 **Conduct of Business within 'Permit area'.** Permittees are required to ensure that the 'permit area' and immediate vicinity is kept clean and tidy and free of all garbage, and shall remove, or otherwise secure, all furniture, **vehicles** or goods for a minimum of 6 hours in any 24 hour period. Permittees are required to remove all furniture, **vehicles** or goods from the permit area during October 1st to April 30th unless it is being used by patrons each day that the establishment is open for business.

BL9012 and **BL9129** amended sub-section 7.1.11:

Sidewalk/roadway occupancy permits for temporary seating and tables will only be issued where the **permit** are in front of the establishment to which it is operationally tied (whether that establishment is ordinarily on the ground floor or first storey of the building), and may only assign a space as wide as the establishment frontage unless consent to the contrary is granted in writing by affected adjoining occupying tenant or subtenant, or if there are none, the **owners**. Where the application is in relation to an establishment on the first storey of a building, consent must be granted by the establishment(s) located on the ground floor whose street frontage coincides with the proposed **permit** area.

In addition to any consents required pursuant to the foregoing, **Sidewalk/roadway occupancy permits** for an operation that will include outdoor cooking will only be issued where the written consent of the adjoining or below occupying tenant or subtenant, or if there are none, the **owners** has been obtained by the applicant and submitted to the **City**, and where all requirements of the Interior Health Authority have been met, and where all necessary **permits** for operation of cooking appliances have been obtained

BL9129 deleted sub-section 7.1.12 in its entirety.

BL9129 amended sub-section 7.1.13:

7.1.13 Nuisance. Permittees shall do nothing 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'.

BL9587 added a new sub-section 7.1.13A and BL11658 amended:

7.1.13A Entertainment within Permit Areas: A **patio** may operate from 8am until 11pm daily and must:

- a) adhere to the provisions of the City of Kelowna *Good Neighbor Bylaw*; and
- b) ensure all patrons have vacated the patio by 12am.

BL9587 amended sub-section 7.1.14:

7.1.14 Security Deposit. Prior to the issuance of a **sidewalk/roadway occupancy permit**, the applicant shall deposit with the **City**, a cash deposit or unconditional irrevocable letter or credit issued by a Canadian chartered bank or credit union in the amount listed on Schedule "A" of this Bylaw as security that the obligations imposed pursuant to the **permit** will be fulfilled and to reimburse the **City** for the cost of any damage to the **permit** area, or other **City** facilities as a result of the temporary occupancy. Failure to meet the obligations of the **permit**, any actions that result in cancellation of the **permit**, or damage as a result of the temporary occupancy, shall result in forfeit of the security deposit.

BL9587 added a new sub-section 7.1.14A:

7.1.14A Cancellation of Permit. A **permit** may be cancelled for any breach of the provisions of this bylaw or of the Terms of Reference of the Sidewalk Seating Program or Sidewalk Café Extension Program, as approved by **Council** from time to time, including but not limited to non-payment of required fees. Prior to cancellation, the **permit** holder shall be notified in writing of the pending cancellation and given a specified period of time to comply with the bylaw or Terms of Reference. In the instance where the breach is related to insurance requirements, the subject seating area must immediately be taken out of use until the breach has been remedied to the satisfaction of the City's Risk Manager or designate. Upon expiration of the notification period, if the **permit** is still not in compliance, it shall be cancelled and the **permit** holder shall have three further business days to remove any tables and chairs and any associated structure(s). The **City** shall remove, at the permit holder's cost, any property or equipment left in the **permit** area thereafter.

BL9012 and BL9129 amended sub-section 7.1.15:

7.1.15 Insurance. The permittee shall, without limiting its obligations or liabilities under this permit, procure and maintain, at its own expense and cost, the insurance policies listed in Schedule "L" not including the automobile liability insurance requirement under Section 2 of the Schedule. Further a sidewalk/roadway occupancy permit issued for temporary seating and tables on a sidewalk or walkway where there is no outdoor cooking facilities shall only require \$2,000,000.00 Comprehensive General Liability coverage. The insurance policies shall be maintained continuously from the date of commencement of the **permit** until the date that the **permit** expires or is cancelled, or such further period as may be specified in Schedule "L" to the bylaw."

BL9129 amended sub-section 7.1.16:

7.1.16 Hold Harmless/Indemnification. The permittee shall 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 applicant shall 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.

BL9012, BL9129 and BL9446 amended sub-section 7.1.17:

7.1.17 Design and Construction

(a) All **permit** areas for **sidewalk/roadway occupancy permits** must meet minimum design criteria established by the **City** including the construction must be safe and meet all applicable bylaw or other requirements whether municipal, provincial or federal. A **structure** constructed for the **permit** area, or constructed in order to reroute **sidewalk traffic** around the **permit** area must:

- (i) be free-standing and not anchored to the **sidewalk** or **roadway**;
- (ii) remain open to the street and to the sky; and
- (iii) not restrict views in and out of the seating area in any direction; and

a fence must be constructed to separate any **permit** area which extends into a **roadway** from the remainder of the **roadway**.

(b) Where any portion of a structure constructed for the **permit** area or constructed in order to reroute sidewalk traffic around the **permit** area is attached to a building, the applicant must obtain a building permit as required by bylaw, and meet current building standards.

(c) Where **sidewalk traffic** is rerouted around a **permit** area such that a **walkway** projects into the usual **roadway**, it must be constructed as follows:

- (i) with a minimum width of 2.0 metres except as provided in this subsection;
- (ii) the width of the **walkway** must not be able to be encroached upon by any vehicle or any element of the operations or **structures** within the **permit** area;
- (iii) the width of the **walkway** may be encroached upon and reduced to a width of 1.8 metres by existing street appurtenances including, but not limited to, light standards, fire hydrants, parking meters and the like;
- (iv) no angle along the horizontal plane of a **walkway** can be less than 90 degrees; and
- (v) There can be no change in elevation between a **walkway** and the point at which it joins the existing **sidewalk**.

BL9587 added a new sub-section 7.1.18 and BL11658 amended:

7.1.18 Physical Changes to Existing Outdoor Seating Area. Any **permit** holder proposing physical changes to an existing outdoor seating area must re-apply to the **City**. The re-application must include submission of those items noted in subsection 7.1.3 of this bylaw describing the proposed changes, as well as the **permit** change fee set out in Schedule A. An updated risk assessment, pursuant to subsection 7.1.3A of this bylaw, and updated proof of insurance pursuant to subsection 7.1.15 of this bylaw, shall be required unless the proposed changes are inconsequential.

7.2 Bernard Avenue, Downtown, Pandosy Village and Uptown Rutland Consolidated Sidewalk Program

7.2 Bernard Avenue, Downtown, Pandosy Village and Uptown Rutland Consolidated Sidewalk Program Fees:

- 7.2.1 **Permit Required.** No person may occupy a portion of **lane, sidewalk, walkway, boulevard, or roadway**, hereinafter referred to in this Part as the 'Bernard Avenue, Downtown, Pandosy Village and Uptown Rutland Consolidated Sidewalk Program Area', for the purposes of temporary tables or seating, or both, without first obtaining a Bernard Avenue Sidewalk Program **permit** from the **City** in accordance with the conditions outlined in this Bylaw and the Bernard Avenue Sidewalk Program as approved by Council.

Any **permit** holder who is required to forfeit a security deposit shall be prohibited from applying for a future permit, and no application for a permit will be accepted from any other person for any establishment to which such a **permit** holder is connected, for a period of one year from the date of the forfeiture, and not until any outstanding amount has been reimbursed to the City with respect to the seizure and storage of property or equipment seized pursuant to this Bylaw.

- 7.2.2 **Application Fee.** Applicants for a Bernard Avenue, Downtown, Pandosy Village and Uptown Rutland Consolidated Sidewalk Program **permit** shall submit a non-refundable application fee as outlined on Schedule "A", at the time of application.

- 7.2.3 **Permit Expiration.** Bernard Avenue, Downtown, Pandosy Village and Uptown Rutland Consolidated Sidewalk Program **permits** are as follows:

Seasonal **Permits** for the use of frontage zone: issued from May 1st to September 30th.

Annual **Permits** for the use of frontage zone: issued from January 1st to December 31st.

Permit Holders are required to remove all furniture, goods and improvements from the **permit area** during the period it is not being actively used."

- 7.2.4 **Permit Fee.** An applicant for a Bernard Avenue, Downtown, Pandosy Village and Uptown Rutland Consolidated Sidewalk Program **permit** shall submit the required **permit** fee outlined on Schedule "A" of this bylaw, prior to issuance of the **permit** or in accordance with an invoice received from the **City**."

- a) **Permit Fee Credit** - An applicant for a Bernard Avenue, Downtown, Pandosy Village and Uptown Rutland Consolidated Sidewalk Program **permit** may submit a summary of the costs of patio construction and/or improvements to receive a one time credit towards the permit fee. The credit may be carried over one or more years if the amount exceeds the annual permit fee. The credit will be determined as follows:

Construction/Improvement costs x (0.50) = Permit Fee Credit

BL11804 added Section 7.3:

7.3 Bikeshare Program Permit

- 7.3.1 Permit Required. No person may operate a **bikeshare service**, without first obtaining a Bikeshare Permit from the **City** in accordance with the conditions outlined in this Bylaw and the Bikeshare Permit Program.
- 7.3.2 Security Deposit. Successful applicants for the bikeshare permit must submit a security deposit as outlined on Schedule "A" prior to being issued a permit. The security deposit fee is refundable, less any deductions.
- 7.3.3 Penalty Fee. Permit holders pay any penalty fees outlined on Schedule "A" of this bylaw, in accordance with an invoice, received from the **City**. Penalty fees will be deducted from the security deposit.

Penalty fees will be issued for contravention of the requirements and conditions of the Permit.