

Sidewalk Seating Program

Terms of Reference

January, 2007

Permitted Use and Areas to be Designated

Use is limited to businesses anywhere within Kelowna that occupy interior space and are engaged in food and beverage service.

An applicant may be allowed to utilize space on the public sidewalk directly in front of the place of business, with the stipulation that a minimum of 2 metres clear sidewalk width must be maintained for pedestrian movement.

Permit Area

The permit area will be marked on the sidewalk by the City of Kelowna. Fencing can be provided by the permit holder to coincide with the area marked by the City of Kelowna. However, no structure may be anchored to the public right-of-way and any fencing provided must be freestanding and of a temporary nature.

No portion of the sidewalk may be occupied outside the designated permit area for any reason.

Changes to Permit Area

Any permit holder proposing physical changes to an existing outdoor seating area must re-apply to the City. The application must include plans and any elevations describing the proposed changes. A \$50.00 application fee must also be submitted. An updated Certificate of Insurance may be required as deemed necessary by City staff. The existing deposit of \$500.00 held by the City as part of the initial application will continue to apply. Additionally, a new risk assessment of the facility may be carried out if deemed necessary by staff.

Permit Fee

The permit fee is \$8.00 per square metre per month of the area utilized by the permit holder. The permit fee will be invoiced by the City. Billable use of an outdoor seating area will begin on the date a permit is granted. The permit fee for permit areas that commence operation after the first day of a calendar month will be pro-rated, based on the total days remaining in the month.

Where an invoiced fee has not been paid within 30 days of the invoice date, interest will be charged to the permit holder on the outstanding balance. Accounts that remain unpaid after 60 days from the invoice date will potentially have their outdoor seating permit revoked according to the provisions set out herein.

Permit Period

Permit fees are due on a monthly basis for the period May 1 to August 30 inclusive. There is no cost for the remainder of the year.

Maintenance

Permit holders are required to keep all surfaces associated with the permit area free of snow and ice, and must provide secure footing in all weather conditions. Permit holders are required to keep sidewalk areas immediately 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 must not obstruct movement of vehicles or pedestrians. Snow removed for such purposes can be piled along the nearest length of curb where the deposit of snow will not obstruct vehicle or pedestrian traffic.

Signage

No signage is allowed within the permit area.

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 on the curb side of the sidewalk. Written agreement from such businesses must be submitted to the City as a condition of approval for a permit.

Application Requirements

Applicants are required to submit:

- a completed application form
- a non-refundable \$50.00 application fee for each permit period
- A \$500.00 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.

- An original of the insurance certificate attached herein, and completed according to the terms set out below
- Drawings required in conjunction with any proposed structure.

Applicants are cautioned that applications will not be considered complete without the required information.

Merchants adjacent to proposed outdoor seating areas will be notified by the City that an application has been received. This notification is intended to give such businesses the option of communicating any concerns to the City related to a proposed seating area, so that these concerns might be considered in the siting and design of the proposed seating facility.

Certificate of Insurance

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 \$2,000,000.00 not including the automobile liability insurance requirement under Section 2 of the City of Kelowna Traffic Bylaw (www.city.kelowna.bc.ca / Bylaws / Traffic Bylaw No. 8120).

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.

Risk

Each proposed seating area will be reviewed by staff to assess the risk due to proximity to moving vehicles. Where a proposed seating area is deemed to have an elevated risk, 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.

Additionally, a permit application 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 it within a range of acceptance.

Enforcement

With the exception of a breach of the terms related to insurance coverage (see below), where a permit holder is in breach of the Terms of Reference of the program, the permit holder will be notified in writing and given ten business days from the date of postmark, to comply with the terms of the program.

If compliance is not forthcoming within this time, cancellation of the permit will be effective immediately, and the business will be notified in writing and given three business days from the date of postmark, to remove tables and chairs and any associated structures.

If the facility is still in place at the end of the specified time period, the business's damage deposit will be forfeited and the City will remove chairs, tables, and any other items within the confines of the seating area belonging to the business, as

well as remove any structures assembled in conjunction with the seating area. These items will be stored at the owner's expense and the City will follow its standard procedure for dealing with seized goods and business owners will be billed for any amount that the costs of seizure, teardown, removal and storage exceed the value of the damage deposit. Where the costs of seizure do not exceed the value of the damage deposit, there will be no refund of the balance.

It is critical that sufficient insurance be provided at all times by permit holders and the City will require proof of insurance upon permit approval and upon renewal of a permit, and reserves the right to request proof of coverage from time to time.

Upon becoming aware that insurance on an outdoor seating area has lapsed or that the insurance provided does not meet the terms of the program, the subject business will be notified in writing that it has ten working days from the postmarked date to provide proof of adequate insurance. It will be allowed to leave any structure in place until such proof is provided. However, tables and chairs must be taken out of use. Failure to adhere to this requirement could trigger the enforcement procedure outlined above.

If proof of adequate insurance is not forthcoming within the specified time, the business in question will be notified in writing that cancellation of its permit is effective immediately, and that it has three business days from the date of postmark to remove tables and chairs. If the outdoor seating facility is still in place at the end of three business days, the business's damage deposit will be forfeited and the City will remove chairs, tables, and any other items within the confines of the seating area belonging to the business, as well as remove any structures assembled in conjunction with the seating area. The City will follow its standard procedure for dealing with seized goods and business owners will be billed for any amount that the costs of seizure, teardown, removal and storage exceed the value of the damage deposit. Where the costs of seizure do not exceed the value of the damage deposit, there will be no refund of the balance.

A business losing its permit will not be allowed to re-apply for an outdoor seating permit for a period of one year starting from the date the permit is revoked. This restriction will apply to any subsequent application by the subject business owner, at any location within Kelowna. Any subsequent application will require the mandatory application fee and damage deposit.

Additionally, where an unpaid amount is outstanding with respect to the seizure and storage of seats, tables, or structure, a new permit will not be granted to the former permit holder until the outstanding balance has been paid.

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.

Structures

Any 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 conforming to the B.C. Building Code must be provided around any elevated area.

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.

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.

Entertainment Within Outdoor Seating Areas.

Outdoor entertainment must be non-amplified.

Entertainment within outdoor seating areas is allowed from 8:00 A.M. until 10:00 P.M. with the exception that it is allowed:

- 1) from 8 A.M. until 12:00 A.M. on Fridays and Saturdays, and
- 2) from 8:00 A.M. until 12:00 A.M. on Sundays followed by a statutory holiday.

Cooking Within Permit Areas

Permit holders are allowed to cook¹ 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.

In situations where a cooking appliance is located within the permit area, 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 ([www.city.kelowna.bc.ca / Bylaws / Traffic Bylaw No. 8120](http://www.city.kelowna.bc.ca/Bylaws/Traffic%20Bylaw%20No.%208120)).

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.

¹ The term "cook" includes any food preparation process as well as maintaining food at a temperature appropriate for serving.

Additional Considerations

- Overhead electrical extensions or electrical extensions placed across the public sidewalk are not allowed.
- 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.
- 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.**

City of Kelowna
Sidewalk Seating Program
Permit Application

Applicant's Name:

Name of Business:

Address at Which Seating Area Will be Located:

I/we have read the Terms of Reference for the Sidewalk Seating Program and if granted a permit, agree to abide by the terms and conditions set out therein.

Applicant's Signature: _____

Note: If a permit is granted, payment is required at the first of each month.

Personal information on this form is collected under the authority of the Freedom of Information and Protection of Privacy Act R.S.B.C. 1996, c. 165 and is necessary for the administration and operation of this program. Questions about the collection of this information to be directed to the Director of Planning and Corporate Services City Hall 1435 Water Street Kelowna BC V1Y 1J4 (250) 862-3304.

For Office Use:

Application Number: _____

Application Fee

Security Deposit

Certificate of Insurance

Drawings

Post-dated cheques

CERTIFICATE OF INSURANCE

This Certificate is issued to:

The City of Kelowna
1435 Water Street
Kelowna, BC V1Y 1 J4

Insured

Name:	
Address:	

Broker

Name:	
Address:	

Location and nature of operation or contract to which this Certificate applies:

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Type of Insurance	Company & Policy Number	Policy Dates		Limits of Liability/Amounts
		Effective	Expiry	
Section 1 Commercial General Liability including: <ul style="list-style-type: none"> • Products/Completed Operations; • Blanket Contractual; • Contractor's Protective; • Personal Injury; • Contingent Employer's Liability; • Non-Owned Automobile; • Cross Liability Clause. 				Bodily Injury and Property Damage \$ 5,000,000 Inclusive \$ 5,000,000 Aggregate \$ 5000 Deductible
Section 2 Automobile Liability				Bodily Injury and Property Damage \$ <u>As required</u> Inclusive

It is understood and agreed that the policy/policies noted above shall contain amendments to reflect the following:

1. **Any Deductible or Reimbursement Clause contained in the policy shall not apply to the City of Kelowna and shall be the sole responsibility of the Insured named above.**
2. **The City of Kelowna is named as an Additional Insured.**
3. **30 days prior written notice of material change and/or cancellation will be given to the City of Kelowna.**

Print Name

Authorized Signatory

Date

Appendix A – Insurance Requirements, Sidewalk Café Extension Program

1. Permit Holder To Provide

The Permit Holder shall procure and maintain, at its own expense and cost, the insurance policies listed in section 2, with limits no less than those shown in the respective items. The insurance policy or policies shall be maintained continuously from commencement of the Permit or such longer period as may be specified by the City.

2. Insurance

As a minimum, the Permit Holder shall, without limiting its obligations or liabilities under any other contract with the City, procure and maintain, at its own expense and cost, the following insurance policies:

- 2.1 Workers' Compensation Insurance covering all employees of Permit Holder engaged in the Work or Services in accordance with the statutory requirements of the province or territory having jurisdiction over such employees.
- 2.2 Comprehensive General Liability Insurance
 - (i) providing for an inclusive limit of not less than \$5,000,000 for each occurrence or accident;
 - (ii) providing for all sums which the Permit Holder 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 Permit or any operations carried on in connection with the Permit;
 - (iii) including coverage for Products/Completed Operations, Blanket Contractual, Permit Holder's Protective, Personal Injury, Contingent Employer's Liability, Broad Form Property Damage, and Non-Owned Automobile Liability.
 - (iv) providing for Completed Operations Liability to continue for a period of 24 months after total completion of any work or operations or any part of the any work or operations related in any way to the Permit or the Outdoor Seating area and activities or operations related in any way to the area.
 - (v) 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 judgement made against any other Insured.
 - (vi) The deductible related to property damage and/or bodily injury shall not exceed \$5,000.
- 2.3 Automobile Liability Insurance covering all motor vehicles, owned, operated and used or to be used by the Permit Holder directly or indirectly in the performance of the use of the Permit. The Limit of Liability shall not be less than \$2,000,000 inclusive, for loss or damage including personal injuries and death resulting from any one accident or occurrence.

3. The City Named As Additional Insured

The policies required by sections 2.2 above shall provide that the City is named as an Additional Insured thereunder and that said policies are primary without any right of contribution from any insurance otherwise maintained by the City.

4. Permit Holder's Agents or Contractors

The Permit Holder shall require each of its agents or contractors that perform work or operations in connection with the Permit to provide comparable insurance to that set forth under section 2. Without limiting the liabilities of the Permit Holder or their agents or contractors, entertainers and performers may be excluded from this requirement.

5. Certificates of Insurance

The Permit Holder agrees to submit Certificates of Insurance, in the form of Appendix A, attached hereto and made a part hereof, to the Risk Management Department of the City prior to commencing operations in relation to the Permit. Such Certificates shall provide that 30 days' written notice shall be given to the Risk Management Department of the City, prior to any material changes or cancellations of any such policy or policies.

6. Other Insurance

After reviewing the Permit Holder's Certificates of Insurance, the City may require other insurance or alterations to any applicable insurance policies in force during the period of this Permit and will give notifications of such

requirement. Where other insurances or alterations to any insurance policies in force are required by the City and result in increased insurance premium, such increased premium shall be at the Permit Holder's expense.

7. **Additional Insurance**

The Permit Holder may take out such additional insurance, as it may consider necessary and desirable. All such additional insurance shall be at no expense to the City.

8. **Insurance Companies**

All insurance, which the Permit Holder is required to obtain with respect to this contract, shall be with insurance companies registered in and licensed to underwrite such insurance in the province of British Columbia.

9. **Failure to Provide**

If the Permit Holder 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 Permit Holder. The Permit Holder expressly authorizes the City to deduct from any monies owing the Permit Holder, any monies owing by the Permit Holder to the City.

10. **Nonpayment of Losses**

The failure or refusal to pay losses by any insurance company providing insurance on behalf of the Permit Holder or any agent of the Permit Holder shall not be held to waive or release the Permit Holder from any of the provisions of the Insurance Requirements or the Permit, with respect to the liability of the Permit Holder otherwise. Any insurance deductible maintained by the Permit Holder or any agent of the Permit Holder under any of the insurance policies is solely for their account and any such amount incurred by the City will be recovered from the Permit Holder as stated in section 9.