

Sidewalk Seating & Retail Display Program Guidelines

PROPERTY MANAGEMENT
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Contents

Introduction	2
Definitions	3
Sidewalk Seating & Retail Display Programs	4
Application Requirements	4
Permit Areas	6
Conditions of Use	9
Changes to Permit Area	12
Permit Fee	12
Permit Period	13
Reduced Fee for New Facilities on Lawrence and Leon Avenue	13
Obligation to Maintain Permit Area	13
Hold Harmless /Indemnification	14
Risk	14
Enforcement	14
Non-transferability of Permit	15
Cancellation of Permit by City of Kelowna	15
Entertainment and Hours of Operation within Approved Patios	15
Signage	16
Additional Considerations	16
Permits for Outdoor Seating Areas in Laneways	16
Sidewalk Café Extension Program Guidelines	16
Schedule A	18
Schedule B	26
.....	26
Schedule C	27
Schedule D	28

Introduction

This document is intended to unify and simplify the Bernard Avenue Patio Guidelines and the Sidewalk Seating and Sidewalk Café Extension Programs, taking inspiration from program experience together with community and commercial owner feedback.

During 2012 and 2013, Bernard Avenue underwent an extensive revitalization reducing the number of vehicle travel lanes from four to three and changed on-street parking from angle to parallel. This resulted in a revitalized and much wider sidewalk.



The sidewalk has been divided up into three zones: Business Frontage zone (adjacent to the building), the Pedestrian Right-of-Way (in the middle), and the Furnishing Zone (adjacent to the curb).

The Bernard Avenue Sidewalk Patio Program was designed to address the specific needs of Kelowna's "Main Street" to attract residents and visitors and to promote activity in the downtown core. The program provides a guide in applying for and utilizing the Business Frontage zone and was authorized by *Bylaw 10814 Amendment No 22 to Traffic Bylaw 8120*.

The Bernard guidelines applies to all patio space on public property within the City of Kelowna, with businesses that occupy interior space and are engaged in food and beverage or retail sales.

A Permit Holder may be allowed to utilize space on the public sidewalk directly in front their Business Frontage, while maintaining the requirement of a clear minimum 2.0 meters Pedestrian Right-of-Way on the sidewalk. Consultation of neighboring business owners is required prior to construction any sidewalk patio structure, although they do not hold veto on patios outside of their own Business Frontage.

A Sidewalk Café Extension can also be proposed in areas without extra sidewalk such as the Furnishing Zone to expand into a parallel or angled parking stall(s) located in front the place of business. The main section of this document and appendices provide all details relating to size, usages, quantities of stalls that may be removed, components and various other details that must be followed for the construction and use of a public patio on the roadway.

In addition to enabling food and beverage businesses to utilize sidewalk space for patio seating, this program also provides opportunities for retailers to create temporary or seasonal outdoor Retail Display.

Definitions

- a. **Active Use** – the days when the business is actively using the patio to serve customers
- b. **Annual Patio (permanent patio structure)** – a patio that is in use January 1st to December 31st
- c. **Applicant** – the registered business owner applying for a patio or retail display permit
- d. **Sidewalk Seating & Retail Display Program Guidelines** – sidewalk program for all patios and retail displays on City-owned public property
- e. **Liquor and Cannabis Regulation Branch** – responsible for issuing liquor licenses in the Province and for enforcing the provisions of the Liquor Control and Licensing Act
- f. **Business Frontage** – the exterior area running the width of the business
- g. **Building Owner** – the owner of the building that houses a business run by a Business Owner
- h. **Business Owner** – the owner of a business
- i. **Furnishings and Equipment** – all objects other than the Perimeter Structure, Sandwich Board Signs, and Planters used in the operation of the Permit Area, including but not limited to tables, chairs, umbrellas, serving carts, portable heaters, etc.
- j. **Furnishing Zone** – the sidewalk area hosting benches, lamp posts, garbage bins and flowerbeds running adjacent to the curb and Pedestrian Right-of-Way as seen on Bernard Avenue
- k. **General Use Patio** – a patio for any use except the consumption of alcohol and cannabis
- l. **Good Neighbor Bylaw** – means *Good Neighbor Bylaw 11500* and any amendments thereto
- m. **Large Patio – No Liquor / Large Retail Display** – a patio that exceeds 2 small tables or 6 chairs total and does not serve alcohol; a retail display that occupies more than 6 feet of building frontage
- n. **Large Patio - Liquor** – any patio that allows alcohol to be consumed; a patio that must have a Perimeter Structure as required by the Liquor Control Licensing Branch
- o. **Menu Board** – any single-sided sign, attached to a building or freestanding, for the purpose of identifying food and/or beverages for sale. May not be attached to the Perimeter Structure, nor lean unattached to any patio or building component
- p. **Pedestrian Right-of-Way** – The “Sidewalk” portion area intended for pedestrian use only and extending from the adjoining property line to a point allowing no less than 2 meters of unobstructed pedestrian flow. No sandwich boards or other materials may enter this area
- q. **Perimeter Structure** – any structure erected within the Business Frontage to enclose a Permit Area for the use of the adjoining business (see page 9)
- r. **Permit Area** – the portion of the Business Frontage that an adjoining business is entitled to use under the provisions of the Permit Program
- s. **Permit Holder** – the registered owner of the business that been approved and continuously maintains a sidewalk patio permit with the City of Kelowna
- t. **Planter** – any freestanding container used for the purpose of displaying vegetation (see page 9)
- u. **Retail Display - small** – a frontage zone used for retail purposes occupying less than 6 feet of building frontage
- v. **Sandwich Board Sign** – a freestanding, self-supporting structure with two boards hinged together, for the purpose of advertising a business or its products and/or services

- w. **Seasonal Patio** – a patio that is in use from May 1st to September 30th
- x. **Sidewalk Café Extension /Roadway Occupancy Permit** – a patio using parallel or angled parking stalls where the total loss of parking is equal or less than 20% of the total parking allocated
- y. **Sidewalk Café Extension Program Guidelines** – guidelines for the construction and use of parallel or angled parking stalls and contained in Part 19
- z. **Sign Bylaw** – means *Sign Bylaw 11530* and any amendments thereto
- aa. **Small Patio** – a frontage zone that is used for food serving purposes (no liquor) that does not exceed 2 small tables and 6 chairs total
- bb. **Stanchion** – a portable, freestanding vertical element supported by a flange or base.
- cc. **Temporary Use Permit** – a permit to use the Business Frontage for a single community based one-off event. Limited to two (2) events, consisting of a maximum of two (2) days each, per year
- dd. **Temporary Bernard Roadway Program** – a temporary patio or retail display located on the Bernard roadway that is in use from July 1st up to the Monday of the September long weekend.
- ee. **The City** – the municipal corporation of the City of Kelowna and registered owner of the sidewalk premises that are to be occupied by the Applicant
- ff. **Traffic Bylaw** – means *Traffic Bylaw 8120* and any amendments thereto

Sidewalk Seating & Retail Display Programs

Three programs are available to businesses wishing to use the public sidewalk for temporary, seasonal, annual usage. All space utilized must meet with the City of Kelowna Sidewalk Seating & Retail Display Program Guidelines:

- a. **Sidewalk Seating & Retail Display (seasonal)** – a sidewalk patio operated by a food/beverage or retail business utilizing the designated frontage zone directly fronting their business.
- b. **Sidewalk Café Extension/Roadway Occupancy Permit (annual)** – a sidewalk extension can be proposed in such cases where a food and beverage businesses (doesn't apply to retail) wishes to provide a sidewalk patio using parallel or angled parking stalls. The Sidewalk Café Extension Program outlines additional requirements and processes for developing these patios.
- c. **Temporary Bernard Roadway Patio & Retail Display** – a patio on the Bernard Avenue roadway by a food/beverage or retail business utilizing the designated roadway fronting their business

Application Requirements

Application Form and Fee:

Applicants shall submit a complete Application Form (Schedule B) and a non-refundable application fee (Schedule A) for new applications. 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 has not been significantly altered. Any change in business ownership or scope of an existing patio permit will be charged a fee (Schedule A). An application fee is not required for a Sandwich Board Sign, but all signage must be approved by Property Management.

Applicants are cautioned that applications will not be considered complete without the following documents:

- a) **Drawing:** Applicants shall submit:
- i. A plan at 1:100 scale of the proposed patio and surrounding area, including entrances to all buildings, any landscaping, parking zones, 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;
 - ii. A list of materials and supplies to be installed in the Permit Area; and
 - iii. A description of signage intended for use on the patio (see Section 16)

Dimensions and area of the patio area must be indicated on the drawing.

- b) **Consultation Process (Schedule C):** Not required for Temporary Use Permit or Retail Display unless intended to expand into an adjacent Business Frontage. Each business using solely their own frontage for a patio will consult neighboring businesses but will not have their application vetoed in the absence of a neighbour's consent. The City reserves the right to not approve an application if there is significant lack of consent:
- i. **Within the establishment frontage:** Building Owners and Permit Holders adjacent to a proposed outdoor seating area will be notified by the Applicant that an application for a patio is being submitted to the City for approval. This notification is intended to give businesses the opportunity to communicate any concerns to the City related to a proposed seating area, so that these concerns might be considered in the design of the proposed seating facility.
 - ii. **Food and Beverage Business 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. Where a conflict exists between a business above street level and a business at street level who share the same Building Owner, the Building Owner will determine which business will occupy the 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.
 - iii. **Other Businesses Located Above Street Level:** Other businesses located above street level in the same building whose street frontage coincides with the proposed outdoor seating area must be consulted as a part of the permit process. Where there is a conflict between the businesses in the building, the majority, either in favor or against, will rule. Where there is only one (1) other business in the building and it is against, the Building Owner will determine if the outdoor patio application will be approved. Written approval from the Building Owner must be submitted to the City as a condition of approval for a permit.
 - iv. **Application to Use Vacant Neighboring Frontage:** A business may apply for vacant neighboring frontage by completing and submitting Schedule C to the City. The permission granted in this form may be rescinded by the Business and/or Building Owner at any time.

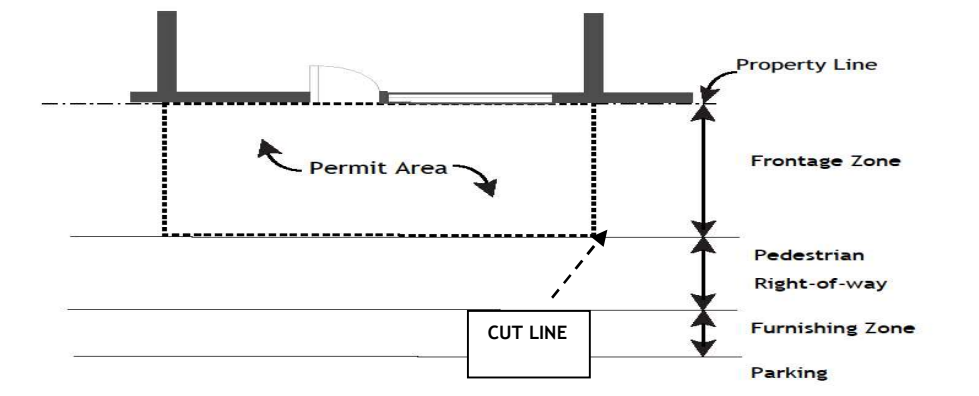
c) **Other considerations:**

- A. No portion of the Pedestrian Right-of-Way or Furnishing Zone may be occupied for any reason;
- B. Patio use must be directly related to the use of the interior space; and
- C. All space utilized must meet with the City of Kelowna guidelines. Consultation with neighboring business owners, as per the Schedule C attachment, is required prior to construction of any patio structure.

Permit Areas

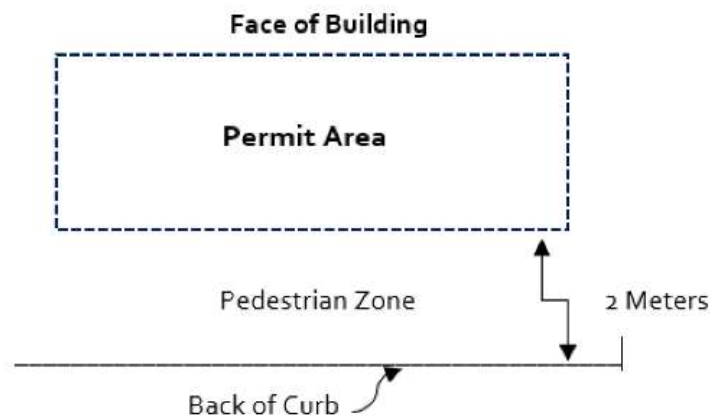
i) **Bernard Avenue Patios**

The Permit Area is measured from the Business Frontage to the cut line.



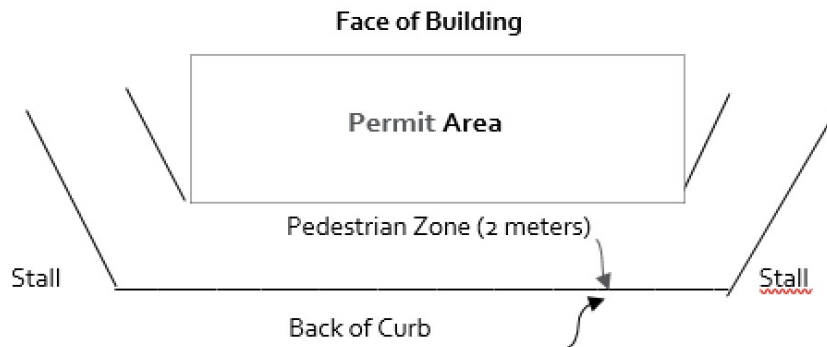
ii) **Sidewalk Seating & Retail Display - All City Areas**

The Permit Area is measured by the width of the Business Frontage and the remainder of the sidewalk less the maintained 2.0 meter straight Pedestrian Right-of-Way from the curb or any structure which could restrict the Pedestrian Right-of-Way to less than 2.0 meters.



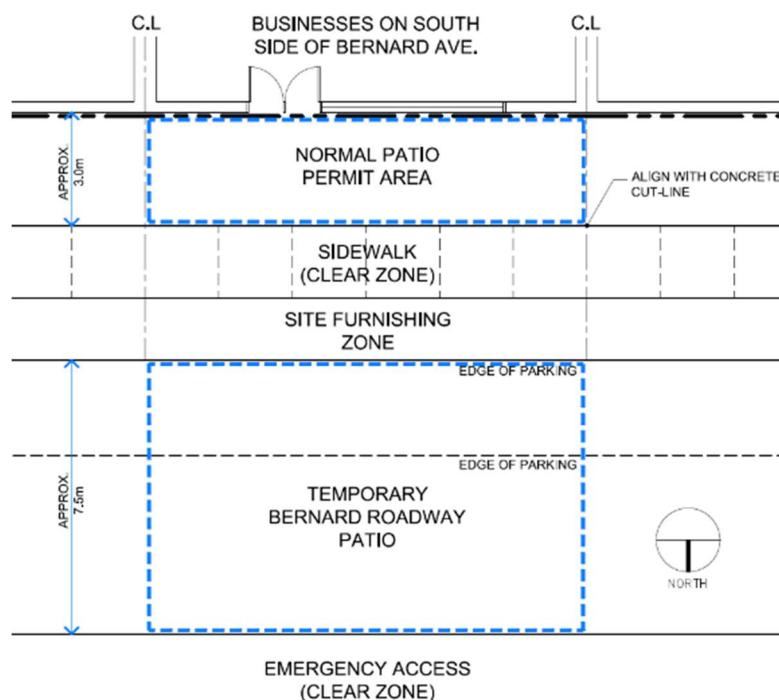
iii) **Sidewalk Café Extension – All City Areas**

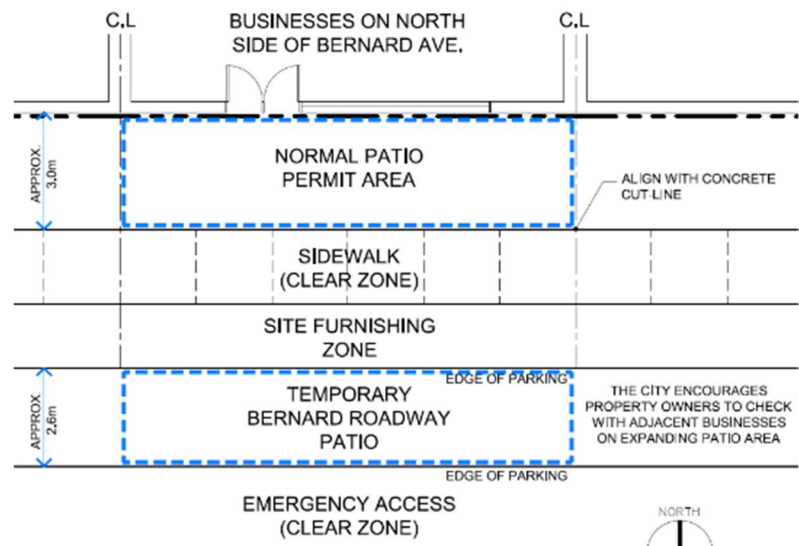
The Permit Area is measured using the exact space taken from on-street parallel or angled parking stalls as the Permit Area, which must be fenced along with the Pedestrian Right-of-Way. A 2.0 meter straight Pedestrian Right-of-Way must be maintained, and the walkway must have gradual “bends” not a sharp 90-degree bend around the Permitted Area.



iv) **Bernard Roadway Patio & Retail Display**

The Permit Area is measured from the back of the curb onto the roadway up to 7.5 meters for businesses on the south side of Bernard or 2.6 meters for businesses on the north side of Bernard. If the furnishing area is wider than normal, such as at intersections, the permit area would be reduced to maintain the 6.0-meter Emergency Access ROW.





Conditions of Use

The following conditions apply to use of the Permit Area:

- a) **Permit Area Surface** – No underfoot surface other than the existing concrete surface is allowed on a sidewalk patio, while the underfoot material for café extensions will be approved on a case-by-case basis. Painting of the surface is prohibited as is an overlay with any material or structure. The surface must always be kept free of debris and materials that could stain or corrode the concrete. Permit Holders are responsible for cleaning and/or repairing any damage to the Permit Area surface.
- b) **Extension of Permit Area** – the Permit Area may extend into an adjacent vacant Business Frontage with written consent from the neighboring Business Owner. Approval must be submitted on Schedule C and submitted with the application. At any time, the neighboring business may terminate the use of the extended Permit Area within their designated Permit Area. Termination is required to be submitted in writing to Property Management and Permit Holder.
- c) **Sandwich Board Sign** – All sandwich board signs must be approved by the City and can only be placed within the Business Frontage keeping the Pedestrian Right-of-Way clear. The maximum dimensions of any Sandwich Board Sign are 760 mm (30 in.) wide x 915 mm (36 in.) high, and the maximum height is 950 mm. (37 in.) above the Permit Area surface. There are no restrictions on sign messages, fonts, or colors. Sandwich Boards Signs must be removed from the Permit Area when not in active use, e.g. when the business is closed. Only one Sandwich Board Sign is permitted per Business Frontage and must be placed no further than 18" from the Business Owner's property line. All sandwich boards require a Certificate of Insurance to be completed and submitted to the City.
- d) **Planters** – must contain living, healthy plant materials; plants and planters must be maintained in a presentable condition and any debris that falls onto the Permit Area or Pedestrian Right-of-Way surface must be collected and disposed of by the Permit Holder. Planters with seasonal vegetation must be removed from the Permit Area when the vegetation has passed its period of prime growth. There are no restrictions on planter materials, colors, shapes, or sizes. However, Permit Holders are encouraged to use discretion in the selection of plant materials. Plants that have thorns or brambles or that otherwise could inadvertently cause injury to patrons or pedestrians should be avoided. Planters must be installed in a way that minimizes any negative impact to the underfoot surface. Maximum height of planter 0.9m, maximum length 1.0 m. Height of planter and plant material not to exceed 1.5 m in height. All plant material must be kept under the maximum height at all times. The City reserves the right to remove plant materials and planters deemed to be a risk to public safety.
- e) **Perimeter Structures** – Permit Holders who are Food and Liquor Primary licensees must encompass the outdoor seating area with a Perimeter Structure as per the terms set out by the Liquor and Cannabis Regulation Branch. Any structure within a Permit Area must be approved by the City and meet the standards set out in the B.C. Building Code, if applicable. The Permit Area extends vertically upward, therefore no overhang shade structures, plant material, or signage is permitted.



- i. **Securing in place** – Perimeter Structures must be stable and securely fastened into place. Only Perimeter Structures are allowed to be secured to the Permit Area surface. Any holes in the Permit Area surface must be repaired at such time as the structure is removed.



- ii. **Height** – the height of any Perimeter Structure must be between 850 and 950 mm. (33 to 37 in.) above the Permit Area surface.

- iii. **Materials** – acceptable Perimeter Structure materials are wrought iron, galvanized steel, stainless steel, aluminum, tempered glass, glass block, wood S4S, and natural and coated fabrics. Lexan and equivalent polycarbonate plastics, tightly woven metal mesh, and stamped, etched, or perforated metal panels are also acceptable. Plastic composite materials are acceptable only as structural/framing components. Natural and cultured stone can be used for piers and plinths but not as wall applications. Planters and stanchions can also be used to enclose or demarcate Permit Areas.

Precast concrete, bamboo, masonry block, ceramic tiles, pressure-treated wood, plywood and other sheathing materials, and stucco, brick, and other residential exterior siding materials are not allowed.

The above is not intended as a complete list of materials. Other materials could be allowed or denied at the discretion of City staff. Any material proposed must provide for the safety of patrons, the business's staff, and passing pedestrians and must not damage or cause deterioration of the Permit Area or the adjoining Pedestrian Right-of-Way.

No advertising may be etched, painted, hung or otherwise added to the Perimeter Structure.

- iv. **Visual Permeability** – materials that allow a high degree of Visual Permeability are preferred (e.g., glass or wrought iron).
 - v. **Visual Interest** – detailing of the Perimeter Structure is encouraged to provide visual interest and to help animate the street. Vegetation incorporated as part of a Perimeter Structure is considered a means of adding visual interest.
 - vi. **Temporary Bernard Roadway Patios** - Permit Holders may utilize rented metal fencing approved by the City's Property Management department. When utilizing temporary metal fencing, plastic safety ramps must be used for the base footing of the fencing on the Pedestrian Right-of-Way side to ensure there are no trip hazards. For all Permit Holders who are not Food and Liquor Primary licensees, enclosure of the Permit Area with a Perimeter Structure or demarcation with Planters, Stanchions, or other free-standing elements is optional.
- f) **Drinkware** – Permit Holders, who are Food and Liquor Primary Licensees, must serve beverages in plastic drinkware when it is to be consumed within a Temporary Bernard Roadway Patio. Glass drinkware will continue to be allowed within a normal patio Permit Area adjacent to the business frontage. Other Permit Areas may be allowed or denied use of glass drinkware at the discretion of City staff.

- g) **Liquor Service** – Permit Holders who are Food and Liquor Primary Licensees shall not allow any person other than employees to transfer liquor between the establishment and the Temporary Bernard Roadway Patio.
- h) **Shoplifting Prevention** – Permit Holders are advised to implement appropriate security measures to deter and prevent shoplifting, such as: managing adequate staffing levels to monitor merchandise, use of security cables and maintaining clear sight lines to merchandise displayed within Permit Areas.
- i) **Furnishings and Equipment** – other than portable outdoor heaters, all Furnishings and Equipment must be removed from the Permit Area when not in Active Use, e.g. when the Permit Holder's business is closed. When not in Active Use, Furnishings and Equipment of a seasonal nature must also be removed from the Permit Area. Furnishings must be of high quality and durability and approved by the City.
- j) **Projections into the Pedestrian Right-of-Way Not Permitted** – Perimeter Structures as well as any Furnishings and Equipment, e.g. awnings and umbrellas must maintain a minimum 75 mm (3 in.) clearance from the adjoining Pedestrian Right-of-Way. This provision does not apply to any Stanchion, pier, or other vertical structural or framing member provided such components do not project into the Pedestrian Right-of-Way. Planters and Sandwich Board Signs must maintain a minimum 300 mm (12 in.) clearance from the adjoining Pedestrian Right-of-Way.
- k) **Access/Egress from Permit Area** – Permit Holders must provide and maintain wheelchair access to and within the Permit Area. Access through the Permit Area to the building interior for emergency services must also be maintained. Gates or other components of a Perimeter Structure that restrict access to, or egress from the Permit Area are not allowed, unless specified by the Permit Holder's liquor license.
- l) **Overhead Structures Not Permitted** – overhead structures, e.g., trellises, canopies, etc., whether freestanding or attached to a building or Perimeter Structure, are not allowed. Slender, metal poles to hold decorative lights is the only exception and must be approved by the City of Kelowna – see requirements for lighting support under Outdoor Lighting, page 12. This provision does not apply to awnings that come under the jurisdiction of *Sign Bylaw No. 8235*, and Building Bylaw No. 7245. For the purpose of projection dimension, an awning over a Permit Area must not be less than one meter (1m) from the Permit Area boundary.
- m) **Menu Boards** - Signs/signage within the Permit Area is restricted to Menu Boards. The maximum size of Menu Boards is 760 mm (30 in.) wide x 915 mm (36 in.) high. Menu Boards can project to a height of 1,525 mm (60 in.) above the Permit Area surface when supported by a freestanding structure such as an easel. Menu Boards may not lean against a Perimeter Structure, Equipment and Furnishings, or a Planter:
 - i. Menu Boards may be electrically illuminated, e.g. backlit or with pendant lighting. Electrical connections for such purposes cannot be served by extension cords or other temporary connections and must not be visually obvious.



- ii. The above stipulations are in addition to any provisions of *Sign Bylaw No. 8235*.
- n) **Colours** – there are no restrictions on the colours that may be used with regard to any component of a Perimeter Structure, Furnishings or Equipment, Planters, Sandwich Boards or menu boards within the Permit Area.
- o) **Outdoor Heating** – Portable heaters for seasonal use are acceptable provided they meet the terms and conditions of any agency having jurisdiction over their use. Outdoor heaters are considered to be Furnishings and Equipment. Outdoor heaters are not allowed under a tree canopy.
- p) **Outdoor Lighting** – Outdoor decorative lighting may be electrical or solar-powered and installed on a non-flammable vertical support, securely fastened to the patio Perimeter Structure and must be approved by the City of Kelowna. Outdoor lighting to be supported only by a frame assembly, no solid panel or trellis components permitted. Lighting should not spill over to the adjacent Pedestrian Right-of-Way or adjacent patios. Electrical source is to be an outlet, meeting BC Electrical Code, located on the exterior of the building façade.
- q) **Special Events** – in conjunction with a single Special Event, flags, pennants, banners, bunting, and other decorative features and elements are allowed as per the terms of *Sign Bylaw No. 8235*.
- r) **Maintenance** – Perimeter Structures, Equipment or Furnishings, Planters, and Sandwich Board Signs must be inspected regularly and maintained in a safe and presentable condition. Any loose or protruding parts, peeling or bubbling paint or stain, and splinters, burrs, and sharp or jagged edges must be removed.
- s) **Cleaning** – The Permit Holder shall remove all trash from the Permit Area on a regular basis during business hours, and shall keep the Permit Area in a clean, orderly, litter-free and hazard-free condition:
 - i. The Permit Holder shall remove litter from the abutting properties which may have come from the Permit Area.
 - ii. The Permit Holder shall not place any solid waste in the City solid waste containers.
 - iii. The Permit Holder will regularly power wash the Permit Area to remove soil and grease.

Changes to Permit Area

Any Permit Holder proposing physical changes to an existing outdoor seating area must re-apply. The application must include plans and any elevations describing the proposed changes. An application fee (Schedule A) must be submitted along with an updated Certificate of Insurance, and the existing security deposit held by the City as part of the initial application will continue to apply.

Permit Fee

The permit fee has been informed by an independent appraisal and considers the market value of the occupied City-owned real estate. The appraisal recommends that an Adjustment Factor be applied. Patios closer to the lake are most valuable. As the patios move further from waterfront, they become less valuable and therefore should be charged less for their use. Future increases will be at the rate of inflation as determined by the BC All Items Consumer Price Index or a five (5) year rent review at the discretion of the City. Monthly and annual permit fees will be paid through the City's Pre-Authorized Debit program. The City may, at their discretion,

revoke permits where accounts are outstanding in excess of 30 days. Refer to Schedule A1 – A4 for the applicable fees.

- a) **Sidewalk Seating & Retail Display (seasonal)** will be invoiced July 1st of each year for a period of 5 months. All new seasonal patios must be prepaid before a permit is issued. Seasonal Patios used one month prior to May 1st or one month after September 30th will be at the Permit Holder's discretion and will not be charged. Patio use beyond these times will be assessed as an Annual Patio. There are no refunds for patios used less than the 5-month season.
- b) **Sidewalk Café Extension/Roadway Occupancy Permit (annual)** rates are determined on a monthly basis and will be invoiced every quarter.
- c) **Pro-rated Patio Permits** will begin invoicing on the date a permit is granted.
- d) **Application Fees** are be applicable as per Schedule A
- e) **Discount** for the first-year rent is due, the following discounts may apply:
 - Patios that are constructed for less than \$2,500 receive \$0 credit
 - Patios that are constructed for more than \$2,500 but less than \$5,000 receive a 50% credit
 - Patios that are constructed for more than \$5,000 receive a 100% credit

Note that if there is a discrepancy between the above fees and those fees in *Traffic Bylaw 8120*, the fees in the Bylaw will prevail. The City may, at their discretion, revoke permits on accounts which are outstanding in excess of 30 days.

New patio application permit fees will be payable upon application. Once approved the permit fee will be invoiced and must be paid within 30 days of the invoice date.

Permit Period

The permit period will depend on the type of permit issued:

- i) **Seasonal Permits** are effective from May 1 to September 30th each year.
- ii) **Annual Permits** for the use of approved parking stalls are effective from January 1 to December 31 each year.
- iii) **The Temporary Bernard Roadway Permit** is effective from July 1 to the Monday of the September long weekend. There is no option to renew this permit after the expiry date.

Permit Holders are required to remove all Furnishings and Equipment from the Permit Area during the period the patio is not actively used.

Reduced Fee for New Facilities on Lawrence and Leon Avenue

The permit fee will be reduced by 50% for all seating areas located on Lawrence and Leon Avenue. The reduced fee will apply to the first year of operation. If the Permit Holder received the full discount due the cost of construction, this 50% discount would apply in the second year of operation.

Obligation to Maintain Permit Area

Permit Holders are required to keep all surfaces associated with the Permit Area free of debris and snow and must provide secure footing in all weather conditions. Permit Holders are still required to keep the Business

Frontage and Pedestrian Right-of-Way in front of their business, free and clear of snow and ice regardless of their use of the Business Frontage for patio purposes as per *Traffic Bylaw No. 8120*, Part 2, Section 2.5.1.

Patios must be power washed regularly, and the Permit Holder may also be asked to power wash their patios at more frequent intervals if the area becomes unsightly, at the discretion of the City.

Smoking and cooking is not permitted in the Permit Area.

Hold Harmless /Indemnification

- a) 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.
- b) 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. Where a proposed seating area is deemed to have an elevated risk, the City may require modifications to the design of the proposed structure. The cost of any modifications would be the responsibility of the Applicant or the Applicant may choose to revise and resubmit their application.

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. In addition, the City reserves the right to deny or revoke a permit for any reason.

Enforcement

Year-round enforcement with increased emphasis on enforcement during the summer months. It is expected that all guidelines will be followed without instruction, and that any corrective action be taken immediately upon request.

- a) 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 the program, the Permit Holder will be notified in writing and given ten (10) business days from the date of postmark, or five (5) days from the date of hand delivery, to comply with the terms of the program.
- b) 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 (3) business days from the date of postmark, or one (1) day from the date of hand delivery, to remove tables and chairs and all associated structures.

- c) 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 all other items within the confines of the Permit Area belonging to the business, as well as remove any structures assembled in conjunction with the Permit Area. These items will be stored at the owner's expense and the City will follow its standard procedure for dealing with seized goods. The Permit Holder will be billed for the costs of seizure, teardown, removal and storage that exceeds the value of the damage deposit. Where the costs of seizure do not exceed the value of the damage deposit, the balance will be refunded.
- d) The Permit Holder will be required annually to submit a Certificate of Insurance showing proof of insurance. Failure to submit the required documentation may result in cancellation of the permit and trigger the enforcement procedure outlined above.
- e) Where an unpaid amount is outstanding with respect to the seizure and storage of seats, tables, or structure and the security deposit has been forfeited, the former Permit Holder shall be prohibited from applying for a new permit for a period of one (1) year and until the outstanding balance has been paid. Any assets seized will be sold and the proceeds will be used to offset outstanding balances.

Non-transferability of Permit

The permit is not transferable. A permit must be taken out by the Business Owner will authorize them to occupy the Permit Area. Only the Business Owner named in the permit is allowed to occupy the area described in the permit.

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.

At any time, the City Manager, Superintendent of the RCMP, City of Kelowna's Property Manager or designee without notice may order that the outdoor seating facility be vacated, and any structure(s) removed, until further notice if the health, safety, welfare or good order of the City is threatened.

Patio code violations will be responded with timed amelioration notices, and those not compliant will have their patios deactivated by Bylaw Services and the Real Estate department. In such a case, failure to remove patio equipment will result in seizure and storage at the Permit Holder's expense, first using the security deposit and then billing additional costs to the owner.

Entertainment and Hours of Operation within Approved Patios

- a) A Permit Holder may not permit, make or cause any noise within the Permit Area that is liable to disturb the quiet, peace, rest, enjoyment comfort or convenience of individuals or the public. The City of Kelowna *Good Neighbor Bylaw No. 11500, Part 7* will apply at all times.
- b) A Permit Holder may operate the patio from 8:00 am until 11:00 pm, 7 days per week. All patrons must leave the Permit Area by 12:00 am. A patio will not be occupied past midnight for any reason. Last call for alcoholic beverages is 10:30 pm. All alcoholic beverages must be removed from the Permit Area by 11:00 pm.

Signage

Advertising and identification signage must 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 *Sign Bylaw No. 8235*. Tabletop umbrellas with the Permit Holder's business name printed thereon or name(s) of products sold at the premises are allowed. No advertising is permitted on the Perimeter Structure. 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.

Additional Considerations

- a) Overhead electrical extensions or electrical extensions placed across the public sidewalk are not allowed.
- b) 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.
- c) Permit Holders are advised they are not entitled to exclusive use of the space designated in the permit.
- d) 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.

Permits for Outdoor Seating Areas in Laneways

Permits for outdoor seating areas in lanes may be allowed, staff will evaluate the use of the lane for purposes that do not restrict access for pedestrians or restrict or compromise access for deliveries or emergency services vehicles. If a lane is closed to vehicles, a minimum 2.0-meter-wide access route must be maintained for pedestrians.



Sidewalk Café Extension Program Guidelines

A permit may be issued for a sidewalk patio to occupy a portion of roadway by absorbing the parking stalls of a maximum depth of two and a half (2.5) meters from the face of the curb in areas with on-street parallel parking or to a maximum depth of four (4) meters from the face of the curb in areas with on-street angle parking. Use is limited to businesses engaged in food and beverage service.

In all cases the occupancy of the Permit Area must conform to the sight lines established in Section 2.2, and Part 7 of the City of Kelowna *Traffic Bylaw 8120*.

a) **Decommissioning of Parking Stalls:**

A permit may be issued to occupy a minimum of one (1) and a maximum of two (2) parallel parking stalls or a minimum of two (2) and a maximum of three (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.

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

b) Additional Requirements for Sidewalk Café Extensions

In addition to the application requirements outlined, the following requirements must be included with the application and drawing submission:

- i. A section through any proposed ramps; and
- ii. Details showing a minimum 4" drainage system at the curb.

Applicants are cautioned that applications will not be considered complete without the required information under parts i and ii above.

c) Design and Construction Guidelines for Sidewalk Café Extensions

In addition to the requirements for a standard sidewalk patio, 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 streetscape:

- i. The Permit Area can be comprised of more than one level with the top of deck not more than 0.3 meters above the top of the adjoining sidewalk. The Permit Area must provide a non-slip, all-weather surface; use of carpeting is prohibited. Where wood planking is used, the Applicant is 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;
- ii. Details showing a minimum 4" drainage system at the curb
- iii. A fence must separate the Permit Area from the roadway and adjacent parking stalls, be free-standing and not anchored to the sidewalk or roadway;
- iv. The fence must be 42" high, compliment the interior fence separating the Permit Area from the Pedestrian Area, which must be a minimum of 2.0 Meters wide.

Schedule A

Sidewalk Seating & Retail Display Program Fee Schedule

Application Fees Until 2023:

New Applications	\$300
Change in Scope	\$180
Security Deposit	\$500
Temporary Use Permits / Sandwich Boards	N/C
One-time discount for new patios based on construction value – (Refer to Permit Fee, page 12	
Lawrence/Leon One-time reduction for 1 st or 2 nd year's fees = 50% reduction – (Refer to Reduced Fee, page 13)	

Application Fees 2020 & 2021 only:

New Applications	\$100
Change in Scope	\$100
Security Deposit	\$500
Temporary Use Permits / Sandwich Boards	n/a
Temporary Bernard Roadway Patios using Modu-Loc premium black VIP fencing, approved by Property Management will receive a \$500 credit	

Downtown – Schedule A-1

- Excludes Bernard Avenue
- Abbott to Water
- Water to Ellis
- Ellis to St. Paul
- St. Paul to Richter

Bernard Avenue – Schedule A-2

- 200-300 Block
- 400 Block
- 500-550 Block
- 560-600 Block

Pandosy Village – Schedule A-3

- Cadder Avenue to Lakeshore Road
- Okanagan Lake to Richter Street

Rutland Town Centre – Schedule A-4

- Hwy 97 N to Prior Rd. North & South
- McIntosh Road to Jerome Road

Schedule A-1

Downtown Area Patio Fees (excluding Bernard Avenue)

The following fees will be reduced by 50% for 2020 and 2021.

Abbott to Water	2019 - 2023	
	Seasonal	Annual
Small Patio / Limited Scope Retail	\$535.50	n/a
*Large Patio / Food only or Large Scope Retail (per square foot)	\$4.20/sf	\$10.08/sf
*Large Patio - Food and Liquor (per square foot)	\$8.40/sf	\$20.16/sf

Water to Ellis	2019 - 2023	
	Seasonal	Annual
Small Patio / Limited Scope Retail	\$382.50	n/a
*Large Patio / Food only or Large Scope Retail (per square foot)	\$3.00/sf	\$7.20/sf
*Large Patio - Food and Liquor (per square foot)	\$6.00/sf	\$14.40/sf

Ellis to St. Paul	2019 - 2023	
	Seasonal	Annual
Small Patio / Limited Scope Retail	\$325.50	n/a
*Large Patio / Food only or Large Scope Retail (per square foot)	\$2.55/sf	\$6.12/sf
*Large Patio - Food and Liquor (per square foot)	\$5.10/sf	\$12.24

St. Paul to Richter	2019 - 2023	
	Seasonal	Annual
Small Patio / Limited Scope Retail	\$249	n/a
*Large Patio / Food only or Large Scope Retail (per square foot)	\$1.95/sf	\$4.68/sf
*Large Patio - Food and Liquor (per square foot)	\$3.90/sf	\$9.36/sf

*The minimum fee will be the Small Patio seasonal fee or the cost per square foot per year whichever is greater.

Schedule A-2

Bernard Avenue Patio Fees

The following fees will be reduced by 50% for 2020 and 2021.

200 Block	2019 - 2023
Small Patio / Limited Scope Retail	\$714
*Large Patio / Food only or Large Scope Retail (per square foot)	\$5.60/sf
*Large Patio - Food and Liquor (per square foot)	\$11.20/sf

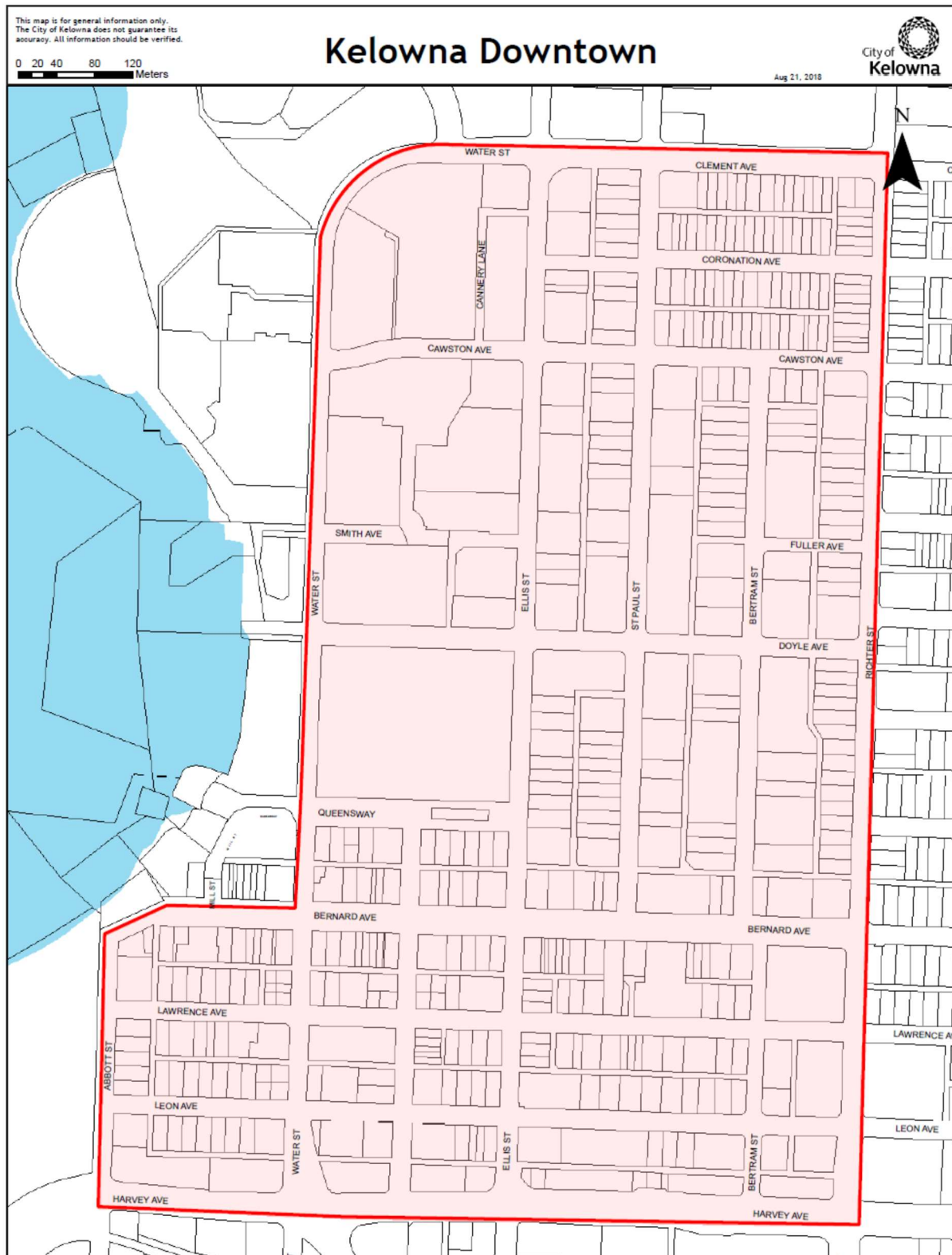
300 – 400 Block	2019 – 2023
Small Patio / Limited Scope Retail	\$510
*Large Patio / Food only or Large Scope Retail (per square foot)	\$4.00/sf
*Large Patio - Food and Liquor (per square foot)	\$8.00/sf

500 Block	2019 – 2023
Small Patio / Limited Scope Retail	\$434
*Large Patio / Food only or Large Scope Retail (per square foot)	\$3.40/sf
*Large Patio - Food and Liquor (per square foot)	\$6.80/sf

560 Block	2019 - 2023
Small Patio / Limited Scope Retail	\$332
*Large Patio / Food only or Large Scope Retail (per square foot)	\$2.60/sf
*Large Patio - Food and Liquor (per square foot)	\$5.20/sf

*The minimum fee will be the Small Patio fee or the cost per square foot per year whichever is greater.

Kelowna Downtown



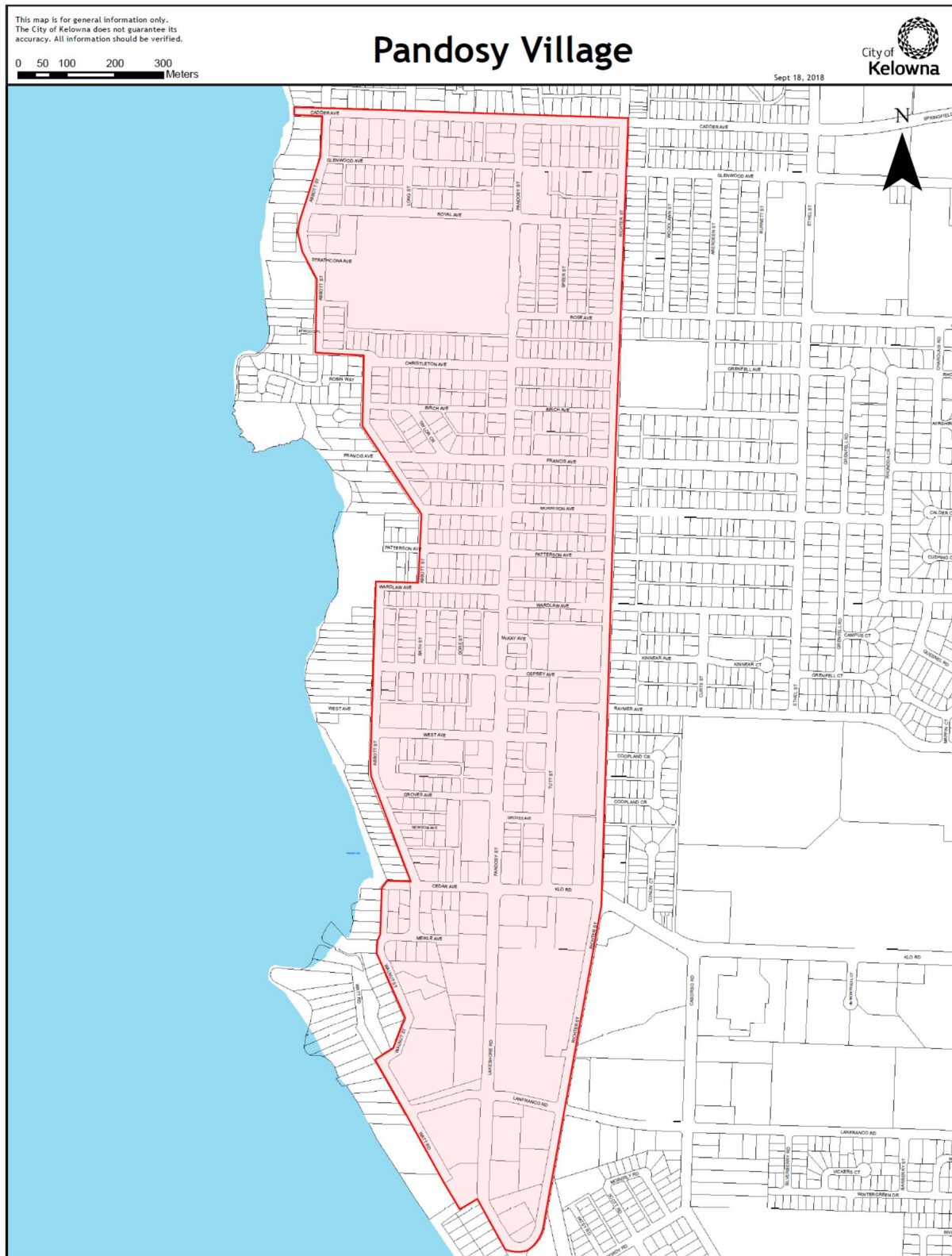
Schedule A-3**Pandosy Village Patio Fees**

The following fees will be reduced by 50% for 2020 and 2021.

Pandosy Village - All Areas	2019 - 2023	
	Seasonal	Annual
Small Patio / Limited Scope Retail (Annual Fee)	\$510	n/a
*Large Patio / Food only or Large Scope Retail (per square foot)	\$4.00/sf	\$9.60/sf
*Large Patio - Food and Liquor (per square foot)	\$8.00/sf	\$19.20/sf

* The minimum fee will be the Small Patio fee or the cost per square foot per year whichever is greater.

Map of Pandosy Village Patio Zone



Schedule A-4

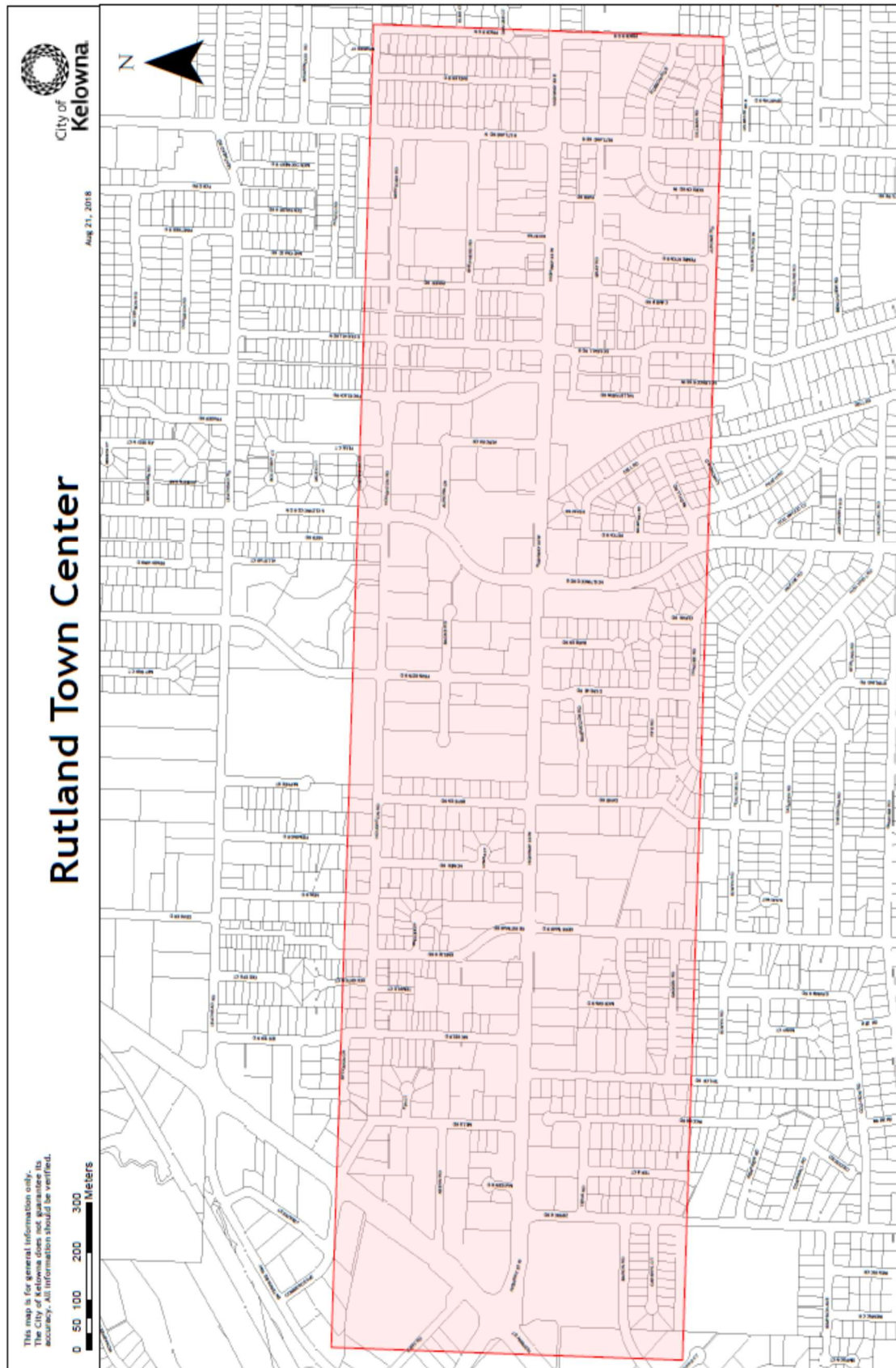
Rutland Town Center Patio Fees

The following fees will be reduced by 50% for 2020 and 2021.

Rutland Town Center - All Areas	2019 - 2023	
	Seasonal	Annual
Small Patio / Limited Scope Retail (Annual Fee)	\$255.00	n/a
*Large Patio / Food only or Large Scope Retail (per square foot)	\$2.00/sf	\$4.80/sf
*Large Patio - Food and Liquor (per square foot)	\$4.00/sf	\$9.60/sf

* The minimum fee will be the Small Patio fee or the cost per square foot per year whichever is greater.

Map of Rutland Town Center Patio Zone



Schedule B



Property Management
1435 Water Street
Kelowna, BC V1Y 1J4
250 862 8610
kelowna.ca

Sidewalk Patio Program Application

APPLICATION FORM

Business Operating Name:	
Legal Business Name:	
Applicant's Name:	
Nature of Business (restaurant, café, clothing store, etc.):	
Business Address:	
Billing Address:	
Phone Number:	Email:
Is the business currently participating in the Sidewalk Patio Program?	YES <input type="checkbox"/> NO <input type="checkbox"/>
Will the patio be licenced?	YES <input type="checkbox"/> NO <input type="checkbox"/>
What is the timing of the desired patio?	
Is the patio temporary for the summer 2021 or is this request for a permanent patio?	Temporary <input type="checkbox"/> Permanent <input type="checkbox"/>
Will you only be requesting the use of the frontage in front of your business?	YES <input type="checkbox"/> NO <input type="checkbox"/>
If no, have you consulted with your neighbour to use some frontage in front of their business? Please explain:	

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

Applicants Signature:	Date:

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:
Manager, Property Management, City Hall, 1435 Water Street Kelowna BC V1Y 1J4 (250) 862-8610.

Schedule C

Adjacent Building and/or Business Owner - Consultation of Sidewalk Patio:

Name: _____

Business Name: _____

Own ☐

Operate ☐

Address: _____

Telephone: _____

Email: _____

I/We understand that _____ is proposing to use the public sidewalk adjacent to My/Our Business and/or Building for a patio as part of the City of Kelowna's Patio Program. I/We have seen the proposed plans that are attached and understand that the seating will utilize the sidewalk identified in the application on a seasonal or annual basis.

I/We ☐ do not object ☐ object

Date: _____ Signature: _____

Comments: _____

Adjacent Building and/or Business Owner - Permission to Use Their Vacant Patio Area:

Building/Business Owner: _____

Address: _____

Telephone: _____

Email: _____

I/We understand that _____ is requesting to use My/Our vacant patio as part of the City of Kelowna's Patio Program. I/We have seen the proposed plans that are attached and understand that the seating will utilize the sidewalk identified in the application on a seasonal or annual basis. I/We acknowledge that I/we may rescind this permission at any time to the City of Kelowna with immediate effect.

Date: _____ Signature: _____

Comments: _____

Schedule D



CERTIFICATE OF INSURANCE

City staff to complete prior to circulation

City Dept.: _____
Dept. Contact: _____
Project/Contract/Event: _____

Insured

Name:
Address:

Broker

Name:
Address:

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

--

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

Title

Company (Insurer or Broker)

Signature of Authorized Signatory

Date

Schedule D-1

Insurance Requirements

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. Worker's 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
 - 2.2.1. Providing for an inclusive limit of not less than \$2,000,000 for each occurrence or accident;
 - 2.2.2. 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 with the Permit;
 - 2.2.3. 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;
 - 2.2.4. 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 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;
 - 2.2.5. Including a Cross Liability clause providing that the inclusion of more than one Insured shall in no way affect the rights of any other Insured hereunder, in respect to any claim, demand, suit or judgement made against any other Insured;
 - 2.2.6. 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 the \$2,000,000 inclusive, for loss or damage including personal injuries and death resulting from any one 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 Schedule D 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 day's 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 requirements. 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, and any monies owing by the Permit Holder to the City.

10. **Non-payment 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 of 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.