

The Corporation of the District of Peachland Policy
SIDEWALK AND RIGHT OF WAY OCCUPANCY POLICY

Effective Date: February 23, 2016	Authorized By: Council – Regular Meeting	Replaces: May 28, 2013 June 24, 2014 June 23, 2015
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PURPOSE:

To establish guidelines for the orderly establishment and use of public sidewalks, parking spaces, property and right of way for sidewalk cafes, and merchant displays.

AUTHORITY TO ACT

Delegated to the Building Inspector and the Director of Planning and Development Services by District of Peachland Bylaw Number 1983.

PROCEDURES FOR IMPLEMENTATION

The use of public sidewalks, parking spaces and road right of way in the Beach Avenue corridor may be permitted for restaurants, bakeries, delicatessens, and merchant displays at the discretion of the District of Peachland.

A. DEFINITIONS

Sidewalk Café:

A sidewalk café is an outdoor seating area located within *Public Space* directly adjacent to a restaurant or licensed establishment located on the main floor of a building used seasonally for the purpose of serving food and/or beverages to patrons; may be referred to as a sidewalk patio.

Public Space

In the context of this policy, any portion of a highway, including sidewalks and parking spaces, or other public place under the jurisdiction of the District of Peachland is defined as public space.

Merchant Display:

(Racks, Displays, Outdoor Tables, etc.) An outdoor display area located within *public space* directly adjacent to a business located on the main floor of a building.

B. LICENSE AREA GENERAL PROVISIONS

The following policies apply to all License and Encroachment Area Licensees:

1. License Agreement

All sidewalk cafes, and merchant displays located on public sidewalks or road right-of-ways, including parking stalls, are required to enter into a License and Encroachment Agreement

with the municipality which will be valid for a 3-year term unless a shorter term is specified within the agreement.

2. Seasonal Operation

Regardless of the purpose of the Sidewalk and Right-of-Way Occupancy under this policy and pursuant to District of Peachland Bylaw No. 1983, Licenses granted are effective between the dates of April 1st (with the approval of the Director of Operations) and November 1st each year unless otherwise specified.

3. Obligations, Performance and Enforcement

- i. The District retains the right to limit the number of License and Encroachment Agreements issued per city block and the number of parking stalls used for a license area. No license area may interfere with District of Peachland utilities, infrastructure or services.
- ii. The District retains the right to revoke any permission granted to use the sidewalk for such purposes at any time where it is found that the use and operation taking place is deemed unacceptable to the District.
- iii. Every license area shall be temporary in nature and designed so that any and all works, structures or appurtenances including but not limited to chairs, tables, fencing, bollards and planters can be easily removed during periods of non use.
- iv. The District reserves the right to require the user to remove clear the license area if any when it is determined necessary within 48 hours, or immediately in the event of an emergency, for regular scheduled utility or service installation, maintenance or repair.
- v. All Licensees are required to pay an established annual fee for the use of the public space as set by Council in Schedule 'A' of this policy.
- vi. All Licensees are required to provide a site plan similar to that shown in Schedule 'B' of this policy.
- vii. Licensees are required to obtain the necessary permits and licenses from the District, the Regional Health Authority and other relevant or applicable licensing or regulatory agencies.

4. Security Deposit

As security for the due and property performance by the Licensee of all of its obligations under the License and Encroachment Agreement and for the removal of the Works, the Licensee must deposit with the District a bank draft or certified cheque in the amount of \$200.00. The agreement allows the District to use the Deposit to pay any costs incurred by the District in making repairs or removing the Works or remedying any default of the Licensee pursuant to the agreement. If the need arises for the District to use any portion of the Deposit, the Licensee shall replenish the deposit by the amount used to avoid being in default under the agreement.

Upon expiry of the agreement, it is the responsibility of the Licensee to request the return of the security deposit from the District.

5. Liability Insurance

Licensees must provide proof of insurance to the satisfaction of the District of Peachland in the amount of \$2,000,000.00 for establishments that do not have a liquor license and \$3,000,000.00 for establishments that have a valid liquor license. Licensees must indemnify, save harmless, release and forever discharge the municipality from any and all damages, injuries or claims arising from the use of the public space.

6. Maintenance

The License Area and the immediately surrounding area will be cleaned each day, before and after closure of the business, and any waste, discarded debris, food stains and refuse container that belongs to the business shall be removed.

7. Safety

A license will not be permitted where it may interfere with safe vehicle and pedestrian movement including within 6m (20 ft) of a stop sign or a location where visibility or safety is a

deciding issue. Unless appropriate traffic control measurements and 3rd party approvals are in place.

8. Sustainability

Sustainable and 'green' practices are encouraged in the operation of all businesses.

C. SIDEWALK CAFES

In addition to the License Area General provisions, the following apply to all Sidewalk Café Licensees:

1. Location

- i. All sidewalk cafes proposed by a business to be located on the public sidewalk or in the area containing public parking stalls must be located directly adjacent to the existing business.
- ii. Sidewalk cafes shall not extend onto the sidewalk or onto parking spaces which are within the frontage of adjacent businesses without the written consent and the agreement of those adjacent businesses. This information is to be considered by the Licensing Inspector in the evaluation of the application.
- iii. No table or chairs shall be placed within 1.2m (4 ft) of a bus stop, taxi stand, fire hydrant, or counter service window or within .6m (2 ft) of any building entrance and exit.

2. Area

- i. Sidewalk cafes are limited to the use of a portion of a sidewalk or parking stall or both to a maximum sidewalk seating area of 350 ft² (excluding sidewalk and access areas).
- ii. A maximum of 3 parking stalls may be used.
- iii. Where the remaining depth of the stall permits the stall will be posted for use as "small car parking only". The size of the small parking stalls will be in accordance with the minimum size requirements in the zoning bylaw.
- iv. No post barricades will be placed at the head of each of the parking stalls used. The placement of the no post barricades will be done by the District of Peachland Public Works Department at the cost of the applicant.

3. Occupancy Load

The occupancy load of a sidewalk café must not exceed regulation requirements of the Provincial Liquor Licensing, Regional Health Authority or the BC Building Code (e.g. 12.9 ft² per person).

4. Pedestrian Circulation and Access

- i. A sidewalk café must leave a minimum of 1.8m (6 ft) of public walkway which shall remain unobstructed, unused and clear for pedestrian traffic.
- ii. The sidewalk cafe must provide an unobstructed access of a minimum .6m (2 ft) on either side of the entrance of the building for the width of the cafe.

5. Public Walkway

- i. All sidewalk cafes that utilize public parking stalls shall utilize a wooden platform that conforms to the Districts specifications outlined in Schedule 'C'.
- ii. The applicant will bear all costs of construction and maintenance and must have all required permits required for working in the District of Peachland Right of Way prior to construction beginning.
- iii. The walkway must be constructed of pressure treated Spruce, Pine or Fir that is of No. 1 or No. 2 Grade as per Canadian Standards and the spacing of the boards must not exceed 0.6 cm (0.25").
- iv. Where the sidewalk café projects into an area currently occupied by parking stalls, turns in direction along the walkway must be at an angle consistent with that of the adjoining parking spaces (e.g. 45 degrees).
- v. There must be no changes in elevation between the top of the sidewalk/curb and the top of a constructed walkway; no stairs or steps along the length of the walkway shall be permitted.

- vi. The walkway surface must provide a non-slip surface.
- vii. Either a fence or concrete planters must separate the public walkway from the roadway and any adjoining parking stalls (See Schedule “E” Design Drawings).
- viii. Concrete planters must be a minimum of 1.2m (4 ft) in length and 0.6m (2 ft.) in height.

6. Fencing

- i. Fencing enclosures will be a minimum height of .92m (36”) and a maximum height of 1.02m (40”) to allow visibility to the street patrons.
- ii. Enclosures will be discreet in colour, design, material and finishes to reduce visual clutter. Dark painted ornamental iron, steel, stainless steel and aluminum fencing is preferred.
- iii. The width of access opening in the perimeter fence accessing the sidewalk cafe will not be less than 1.5m (5ft) and no greater than 2m (6.5 ft).
- iv. A sidewalk café fenced enclosure will have post spacing between 1.2m (48”) to 1.5m (60”) to provide structural stability.
- v. A top rail should allow planter boxes to be mounted on the enclosure, as encouraged in the Beach Avenue Neighbourhood Plan. Planter boxes shall not protrude into the width of the walkway and any planter boxes bought or constructed shall not exceed 3.5m (12”) in width by 3.5m (12”) in depth.
- vi. Pickets above the top railing are not permitted.
- vii. A kick rail should be positioned .15 m (6”) from the finished grade of the sidewalk to guide the visually impaired.

7. Awnings and Pergolas

Retractable awnings and pergolas will be considered by the District on a case by case basis and subject to review and approval of the Licensing Inspector.

8. Supporting Posts for Fences or Pergolas

Supporting Posts should be anchored to generate significant strength yet allow easy removal. The preferred attachment method is to employ connectors, which retain a stable shape when anchored to base, railing and/or buildings. Pinning, or drilling screws or lag bolts into the sidewalk is not permitted. However, flush inserts that are capped annually may be considered by the licensing inspector at the application stage and may be given approval.

9. Furniture, Equipment and Supplies

- i. No cooking, storage, cooling or refrigeration or other equipment is to be located in the sidewalk café area without written consent of the District.
- ii. A sidewalk café will not use paper or plastic plates or cups in providing food services in the café area unless such plates or cups are used for the sole purpose of takeout orders not to be consumed on the café site.

10. Signage

- i. No signage will be permitted in sidewalk cafes to display any commercial advertisements for goods, products or companies other than the name of the business, unless otherwise permitted by the Municipality’s sign bylaw. Third party advertising is not permitted except upon pre-printed umbrellas.
- ii. A “No food, beverages allowed beyond railing” sign must be posted.

11. Menu Board

One menu board no larger than 0.7m² (7.6 ft²) with a maximum height of 1.09m (3.6ft.) and a maximum width of 0.64m (2.1ft) will be allowed within the café site.

12. Application Details

Applications for sidewalk cafes must include the following information:

- i. Letter of intent that includes the hours of operation
- ii. A photograph of the existing building
- iii. Plot plan drawn to scale, which includes the number of tables and chairs, location of flower planter’s, umbrellas and other furniture, etc.

- iv. The scale plan submitted must include public walkways, parking stalls, existing municipal features such as trees, fire hydrants, benches, garbage receptacles, bike racks.
- v. Plans submitted must extend 5m (16 ft) on either side of proposed area and clearly indicate location of front and side property and entrances.
- vi. Colour photos or drawings of all accessories to be located within the License area should be included in the submission package.
- vii. Materials and colours proposed to be used for fence enclosures, decking, and additional structural details.

D. MERCHANT DISPLAYS

In addition to the License Area General provisions, the following apply to all Merchant Display Licensees:

1. Location

Merchant Displays located on public sidewalk must be located directly adjacent to the existing business that has applied for such use.

2. Area

Merchants Displays must ensure that a minimum of 2m (6 ft) of sidewalk remains unused and clear for pedestrian traffic.

3. Signage

No signage will be permitted to display any commercial advertisements for goods, products or companies other than the name of the business, unless otherwise permitted by the Municipality's sign bylaw. Third party advertising is not permitted.

4. Hours of Use

All equipment must be removed from the site by 11:00 p.m. daily.

5. Application Details

Applications for merchant displays must include the following information:

- i. Letter of intent that includes the hours of operation
- ii. A photograph of the existing building
- iii. Plot plan to scale, which includes the number of displays, tables etc.
- iv. Plan submitted must include public walkways, parking stalls, existing municipal features such as trees, fire hydrants, benches, garbage receptacles, bike racks.
- v. Plans submitted must extend 5m (16 ft) on either side of proposed area; clearly indicate location of front and side property and entrances. Colour photos or drawings of all accessories to be located within the permit area.

SCHEDULE 'A'

Fees for the use of public space in accordance with the Sidewalk and Right-of-Way Occupancy Policy are as follows:

1. Application fee for License and Encroachment Agreement: \$50.00

1. Sidewalk Cafes and Merchant Display Space Rental:

i. During Seasonal Use Period (April 1st to November 1st)

Availability subject to the completion of line painting and street sweeping as may be required; the Occupancy date shall be approved by the Director of Operations on an annual basis.

Use of Public Space for Sidewalk Cafes:

Size of License Area	Annual Fee With Liquor License	Annual Fee No Liquor License
Up to 116 ft ²	\$300.00	\$225.00
117 ft ² to 233 ft ²	\$500.00	\$375.00
234 ft ² to 350 ft ² (Max.)	\$700.00	\$525.00
+ All applicable taxes		

The size of the License Area will be calculated based on square footage used for the seasonal sidewalk café area operation only; the area used for pedestrian access or egress to or from the establishment or any space used for the public walkway will not be included in the calculation (see drawing below).

ii. Outside of Seasonal Use Period (November 2nd to March 31st)

Licensees that have a signed Licensing and Encroachment agreement with the District who wish to have a temporary Sidewalk Café for a special event or dates outside of the defined Seasonal Use Period will be required to pay the \$50.00 Application Fee and receive approval to use the public space identified in the License and Encroachment Agreement for that time period from the Licensing Inspector; no other fees or charges will be required.

3. Merchant Displays (Year Round): Application Fee Only

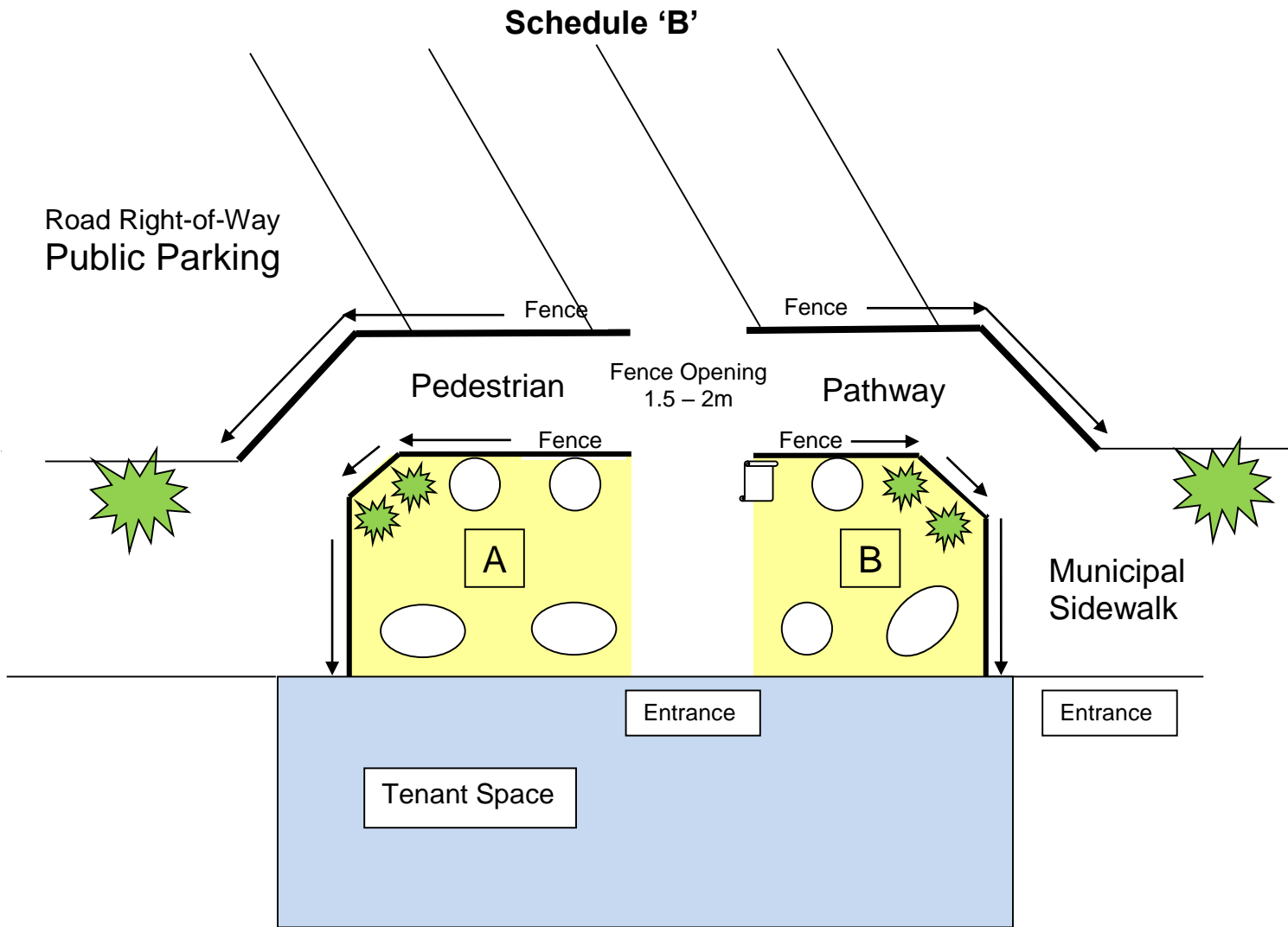
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5. License Area Security Deposit for the use of municipal property \$200.00

NOTE: Post-dated cheques must be submitted to the District at the beginning of each season for each payment due during that year.

EXEMPTIONS:

1. The semi-permanent food concession located at Swim Bay will be tendered at the end of each term as described in the lease documents.



 = Menu Board

Scale: 1 cm = 1m

Sidewalk Café Area: Means the area calculated by multiplying the length and the width of the areas used for sidewalk café.

Maximum Seating for Sidewalk Café Area: The total sidewalk café area divided by 12.9 ft² per person as per the BC Building Code will determine the occupancy to be approved within a sidewalk café.

The following is an example of how total square footage for the seasonal sidewalk café and occupancy would be calculated for this illustration:

A – 12' X 12' = 144ft²
 B – 12' X 15' = 168ft²
 Total ft² = 312 ft² divided by 12.9 ft² = **24** people maximum occupancy

SCHEDULE 'C'

Pedestrian Pathway - Wooden Platform Specifications

1. The minimum width of the travelled portion of the wooden platform is to be a minimum of 1.8m (6 ft.).
2. There must be no change in elevation from the top of the sidewalk or curb and the constructed public walkway (wooden platform).
3. The walkway surface must provide a non-slip surface and be constructed from pressure treated Spruce, Pine or Fir that is of No. 1 or No. 2 Grade as per Canadian Standards.
4. The spacing of any boards used to construct the walkway must not exceed 0.6 cm (.25").

Schedule 'D'

Design Drawings of Fences, Railings and Concrete Planters

For reference and information only

