

Outdoor Patio Policy

Section 1: Intent

The intent of the City of Fernie Sidewalk Patio Policy is to support the development of seasonal outdoor seating areas adjacent to eating and drinking establishments in Downtown Fernie.

Section 2: Application, Permits, Notification

Applicants shall provide the following material as part of their application:

- 2.1 Dimensioned floor plan and elevations at 1:100 scale indicating the placement and quantity of tables, chairs, umbrellas, busing stations and any other objects that are part of the application, including any platforms and railings, as well as the location of the clear sidewalk, the parent business, the curb, parking spaces, street furniture (lamp posts, signage, bike racks, benches, landscaping, etc.) and the adjacent buildings, with door and window locations identified.
- 2.2 A \$50.00 application fee.
- 2.3 Written support from the adjacent property owners or their authorized agents where the applicant wishes to extend the sidewalk patio beyond the frontage of the parent business.
- 2.4 Certificate of insurance.

Applications are due no later than March 15 of every year and are evaluated on a first-come, first-served basis. Permits will continue to be awarded in a single block face until the applications totaling 28.0 metres of curb length on that block face in the case of an Avenue or 14.0 metres of curb length in the case of a Street have been received.

Permits are non-transferable and are renewable provided the existing permit is in good standing, and a completed application for the same permit area, on the same terms and conditions is received by the City of Fernie by March 15.

Permits are revocable for non-compliance with the conditions set out in this policy; permits shall not be awarded, or existing permits shall be revoked, if the structure is not approved by the City of Fernie Building Inspector by May 15. 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. Permits do not give permit holders exclusive use of the space occupied by a sidewalk patio.

The permit fee is \$10.00 per square meter of area occupied by the patio, excluding any area designated as clear sidewalk for public use on the floor plan provided as part of the application. Permit fees shall be payable by May 15.

Where a fee has not been paid within 30 days of the date upon which it is due, the City reserves the right to cancel the operator's permit and to remove the outdoor facility, including confiscation of any

objects that are part of the application, at the operator's expense (to be deducted from the damage deposit) and to hold such properties until the fees in arrear are paid.

Applicants shall notify adjacent property owners or their authorized agents of their application and authorize the City to distribute the dimensioned floor plan and elevation required as part of this policy to adjacent property owners or their authorized agents.

City will review applications on a case-by-case basis. All outdoor patio applications will be reviewed by the Advisory Planning Commission for recommendations towards approval based on the Official Community Plan's Design Guidelines and the Outdoor Patio Policy.

Section 3: Security, Insurance, and Indemnification

- 3.1 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. Security shall be refunded upon expiry of the permit.
- ~~3.2 The City's standard Certificate of Insurance, available from the City Clerk, must be completed by the applicant with the signed original being returned to the City as part of the application package. N/A~~
- 3.3 The applicant shall, without limiting its obligations or liabilities under this permit, procure and maintain, at its own expense and cost, comprehensive general liability insurance, including host liquor insurance if liquor is served, in the amount of \$5,000,000.00 indemnifying the City of Fernie against any and all damages, injuries or claims. The insurance policy will name the City as an additional named insured and shall be maintained continuously as long as the permit is in effect.
- 3.4 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.
- 3.5 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.

Section 4: Operating Conditions

Sidewalk patios shall be permitted as follows:

- 4.1 In the area bounded by Third Street, the Canadian Pacific Railway right-of-way, Third Avenue, and Eighth Street, excluding Fourth Street (Appendix A: Patio Boundary Map).
- 4.2 City will review applications on a case-by-case basis.
- 4.3 Pedestrian flow and safety on the sidewalk will be given priority in City review of outdoor patio applications.
- 4.4 An outdoor patio shall not be located within 6 metres (19.69 feet) of a stop sign or in a location where visibility or pedestrian or vehicular safety is deemed to be an issue by the City of Fernie Operation Services Department.
- 4.5 Sidewalk patio structures shall be permitted from May 1 to October 15 each year. The outdoor patio areas must be free and clear of all tables, chairs and other temporary patio structures after the daily hours of operations of the parent business and must be fully dismantled and removed during the off season period from October 15 to May 1 each year.
- 4.6 The active use of sidewalk patios for business purposes shall not be operated between 10:00 p.m. and 7:00 a.m.
- 4.7 No additional business license shall be required to operate the sidewalk patio.
- 4.8 Sidewalk patios are only applicable to food / beverage establishments.
- 4.9 Patio occupancy shall be deducted from the interior occupancy of the parent business.
- 4.10 Once a permit is approved, the City shall require proof of all provincial licensing approvals, if the premise is licensed, and health authority approvals, if necessary, prior to the outdoor patio being established.
- 4.11 The City retains the right to revoke any outdoor patio permit at any time if it is determined that the use is creating problems or conflicts deemed unacceptable to the City.
- 4.12 Patios are to be constructed off-site.
- 4.13 No sound reproduction or amplification devices are permitted.
- 4.14 Employees must conduct all activities within the applicant business or on the sidewalk patio platform, and not in the sidewalk clear zone nor on the street clear zone.
- 4.15 Sidewalk patios shall be maintained in a clean, neat appearance and in a sanitary condition and shall not accumulate dirt, refuse, or debris on or around the structure.
- 4.16 Securing dogs to the fencing or railing of outdoor patios shall be prohibited.
- 4.17 The outdoor patio operator shall conduct regular inspections of the finish and structural components. The City shall withhold the issuance of a renewal permit if the sidewalk patio is not maintained in an attractive and safe condition. The City reserves the right to remove poorly maintained outdoor patio structures at the operators' expense.
- 4.18 Patio furniture to be taken inside at night / after hours due to night time activity in the downtown, possible theft and vandalism.

Section 5: Design Standards

Applications are subject to review by the Advisory Planning Commission in relation to the Historic Downtown Core Development Permit Area (Section 4.0 Historic Downtown Core of the Official Community Plan's Schedule R: Building Design Guidelines). Applicants should take the heritage style into account when submitting their proposals.

All sidewalk patios shall:

- 5.1 include a platform that is level with the curb and sidewalk with no more than a half inch change of elevation;
- 5.2 not extend more than 2.5m [parking stall width is 2.9m] into the street (perpendicular to the curb) nor beyond the frontage of the parent business (parallel with the curb) without written support provided as part of the application; where such written support has been provided, sidewalk patios may extend up to 9.0m beyond the frontage of the parent business (parallel with the curb);
- 5.3 include railings on all sides that are exposed to the street that are 1.07m (42 inches) in height from curb elevation;
- 5.4 include spacing between railing pickets that be no more than 4 inches (102mm) apart;
- 5.5 include a railing constructed of wood, aluminum and/or wrought iron;
- 5.6 provide a clear sidewalk width (pedestrian thoroughfare) of 2.5m when the patio is allowed to encroach into the sidewalk area from the curb;
- 5.7 not include any projections more than 0.2m (8 inches) beyond the edge of the platform. All proposed outdoor structures such as but not limited to tables, chairs, flower baskets / boxes and umbrellas shall be contained within the outdoor patio permit area and the 0.2m projection allowance;
- 5.8 not include any umbrellas extending above the clear sidewalk width, less than 2.0m above sidewalk level;
- 5.9 not include any permanent furnishings;
- 5.10 not include benches (fixed or non-fixed) along the railing;
- 5.11 include signage only as permitted per the City of Fernie Sign Bylaw No. 1888;
- 5.12 be accessible to persons with disabilities;
- 5.13 not obstruct any life safety equipment or the means of egress from any portion of any building;
- 5.14 not include any outdoor storage of refuse;
- 5.15 prevent food debris and the accumulation of garbage beneath the patio area;
- 5.16 not alter the sidewalk or street surface, such that all materials in the public realm must remain intact and unharmed; no anchoring to the sidewalk or street surface shall be permitted; no point load designs shall be permitted;
- 5.17 roadway and curb drainage to be maintained;

- 5.18 not include any electrical, gas, propane or water extensions, either at grade or overhead across the sidewalk;
- 5.19 no cooking shall be allowed in the outdoor patio area;
- 5.20 lighting that creates a hazard related to glare and light trespass that has detrimental effect on the visibility of motorists or pedestrians as well as the effectiveness of any traffic control device is not allowed;
- 5.21 include reflectors on the railings for visibility in traffic;
- 5.22 include stand alone solar lights if lighting is preferred; and
- 5.23 include landscaped planters, planting boxes or baskets around the perimeter of any sidewalk patio. The applicant is responsible for the purchasing and maintenance of the plant material.