

March 30, 1999

ACS1999-PW-LTB-0002

(File: EW-182-23

EW-182-27)

Department of Urban Planning and Public
Works

Ward/Quartier

OT5 - Bruyère-Strathcona

OT6 - Somerset

OT9 - Capital

- Community Services and Operations
Committee / Comité des services
communautaires et des opérations
- City Council / Conseil municipal

Action/Exécution

Licenses - Street Vending - Designated Space Programme

Permis - Vendeurs sur les rues - Désignation d'emplacements

Recommendations

1. That the tendering of designated vending spaces, prescribed by Designated Space Programme By-law 300-96 as the method of allocation to assign spaces for the street vending season beginning on May 15, 1999, be deferred for two years.
2. That, for the 1999 and 2000 vending seasons, designated space permit holders be invited to apply annually for the permits associated with the spaces they lawfully occupied in the year preceding the application subject to compliance with Licensing By-law L-6 and the Designated Space Programme By-law.
3. That designated vending spaces not renewed in the previous year because of construction be offered to the vendors who lawfully occupied the spaces in the year preceding the construction subject to compliance with Licensing By-law L-6 and the Designated Space Programme By-law.
4. That, except as provided for in Recommendation 3, designated vending spaces not renewed in 1997 or 1998 be deleted from the Designated Space Programme.
5. That applicants for public property vending licenses or designated space permits be required to:
 - (i) attend in person to apply for and be issued the license or permit;
 - (ii) submit one full-faced photograph of themselves of a size one and one-half inches square, taken not more than 30 days before the date of application.
6. That the annual designated space permit fee be established at:
 - (i) \$1,230 for each sidewalk space, representing no increase;
 - (ii) \$2,900 for each roadway space, representing an increase of \$350.

7. That, in relation to roadway spaces only, vendors be entitled to pay the permit fee in two equal installments, the first installment being due on June 1 of the current permit year, and the second installment being due on September 1 of the current permit year.
8. That the Department review the license fees associated with all Itinerant and Refreshment Vehicle licenses to ensure an accurate and equitable distribution of costs across license types, with adjustments if any reported to City Council for consideration before the year 2000 license renewal period.
9. That Licensing By-law Number L-6 and Designated Space Programme By-law 300-96 be amended as required to give effect to the foregoing recommendations.
10. That City Council request Regional Council to approve the by-law amending Designated Space Programme By-law 300-96 for application on Regional roads within the City of Ottawa.



April 1, 1999 (7:54a)

Edward Robinson
Commissioner of Urban Planning and Public
Works

MMB:mmb

Contact: Martha Boyle - 244-5300 ext. 1-3204

Financial Comment

Subject to City Council approval of Recommendation 6, additional revenue in the estimated amount of \$5,600 will be credited to the Department of Urban Planning and Public Works, Licensing Account 085822 Revenue Licenses and Permits.

The financial implications associated with Recommendation 8 will be reported to City Council in a future submission.

There are no direct financial implications associated with the other recommendations.



March 31, 1999 (2:27p)

for Mona Monkman
City Treasurer

CP:cds



April 1, 1999 (9:14a)

Approved by
John S. Burke
Chief Administrative Officer

Executive Report

Reasons Behind Recommendations

Background

The Designated Space Programme, introduced in 1994, assigns to specific vendors a finite number of predetermined vending spaces on public property (roadway and sidewalk) downtown and south to the Rideau River. Street vending outside those spaces or by persons who are not Designated Space Programme participants is prohibited. Spaces that are not renewed annually revert to metered parking spaces or unencumbered sidewalk space. Of the 105 vending spaces established in 1994, 52 continued to be occupied in 1998. No new spaces have ever been added to the inventory.

In the introductory year of the Designated Space Programme, vending locations were assigned for a three-year term by way of historical incumbency, more commonly referred to as “seniority by location”. The tendering of spaces, which was to have been the method of allocation for the second three-year term beginning in 1997, was deferred for two years. City Council approved deferral because attrition of spaces, which is one important goal of the programme, had not yet run its course and some amount of desired reduction in the number of spaces was still to be achieved. The Department was to report back at the end of 1998 with details of the proposal call (tender) to proceed in 1999 or with other changes to the Designated Space Programme warranted at that time.

Recommendation 1

By virtue of the Designated Space Programme, the downtown vending environment has changed significantly over the last five years: there has been a 50% reduction in the number of vending spaces; fighting among vendors, and between vendors and fixed businesses has been virtually eliminated; complaints to the City by downtown businesses about unfair competition have all but disappeared; and enforcement costs have stabilized. In light of those significant positive changes and within the context of today’s peaceable vending environment, the tendering of spaces would be more disruptive than beneficial.

The two principal advantages that a tender offers as a method of allocation - getting market value for the spaces and deterring their unlawful transfer - are not sufficiently compelling to cause the Department to recommend tendering this year. On the issue of market value first, it is the case that, without tendering, it is very difficult to accurately estimate the market value of the vending spaces. However, over the course of the last five years, downtown vending fees - which are a combination of license fee and designated space permit fee - have more than doubled in relation to roadway spaces (from \$2,735 in 1994 to \$5,745 in 1998), and have almost quadrupled in relation to sidewalk spaces (from \$496 to \$1,764). Those are reasonable fees to pay for the privilege conferred, and their considerable increase has contributed significantly to a more equitable playing field among businesses.

On the second issue of unlawful transfers, by providing for the periodic reassignment of spaces, tendering reduces the likelihood that spaces will be unlawfully transferred or sold by one vendor to another. Five years into the programme though, the Department is generally satisfied that the permit holders of record are also the vendors actually occupying the designated spaces, and therefore does not perceive a need to initiate a tender at this time to correct for unlawful sales of public property.

It is the possibility of unlawful transfers though that prevents the Department from recommending the indefinite setting aside of tendering. If vendors are assigned spaces “for life”, there is a much greater likelihood that the spaces will be sold without the Department’s knowledge and with the original permit holder continuing to be the vendor of record. Although the unlawful buyer will have no standing with the Corporation, it is in the best interests of the City to establish as many barriers as are available and necessary to prevent the unlawful transfer of public property. As has proven to be the case thus far, a short permit term and no right of renewal combine to make spaces less attractive to potential purchasers.

The two-year deferral of tendering proposed by this report coincides with the remaining term of this Council. In 2001, the Department will recommend to the Council of that day the preferred method of allocation for that term of Council as well as any other changes to street vending regulations that may be warranted at that time.

Recommendation 2

For 1999 and 2000, it is proposed that vendors be invited to renew their spaces annually subject to compliance with applicable by-laws. In the absence of a tender, it is reasonable to allow vendors who have lawfully occupied particular vending spaces for many years to carry on at their present locations provided there is continued compliance with regulations.

Recommendation 3

The Designated Space Programme By-law currently provides that spaces not renewed in a given year are to be retired (deleted) from the programme. Approval of Recommendation 3 will provide that spaces not renewed in the previous year because of disruptive construction activities will not be retired without first offering them again to the most recent permit holder.

In 1996, a sidewalk vendor elected not to renew his two designated vending spaces on Elgin Street because he anticipated that construction in the area all that summer would impact negatively on customer traffic and sales, making renewal of the spaces a losing proposition for him. In 1997, on the recommendation of the Community Services and Operations Committee, and with the support of the Department, City Council resolved that those two spaces would not be retired but would instead be offered to the vendor again for the 1997-1998 permit term.

The same circumstance has arisen for one other vendor this year; he chose not to renew his two sidewalk spaces in 1998 because of construction but he has expressed interest in occupying both spaces again in 1999. The amendment proposed will accommodate not only that vendor but any other who does not renew a space in future because of downtown construction.

Recommendation 4

A “housekeeping” amendment to the Designated Space Programme By-law is proposed to remove from the list of active spaces those that were not renewed in 1997 or 1998. The most recent “clean-up” of the by-law was in 1996. If City Council approves Recommendation 3, the amendment will not include deletion of the two sidewalk spaces that were not renewed in 1998 because of construction.

Recommendation 5

It is important that the Corporation take steps to ensure that no opportunity exists for persons to transfer public property vending licenses or designated space permits in violation of Licensing By-law L-6 or the Designated Space Programme By-law. In-person renewals and the filing of a recent photograph by all applicants will assist in ensuring that licenses and permits are not issued to absentee vendors or to anyone who is not the original licensee or permit holder. Both those requirements were permit renewal prerequisites in 1997 and 1998 with which no legitimate vendor had quarrel.

Recommendation 6

Designated space permit fees are calculated to wholly recover the costs of programme management (enforcement, administration, maintenance and material) and to include a reasonable consideration (rent) to the City for use of the public road allowance. Permit fees were established for the first time in 1994, and were increased once in 1997.

Cost Component: Sidewalk and On-street

The costs associated with managing the Designated Space Programme on a per-space basis have neither increased nor decreased since the most recent fee increase. Therefore, no adjustment to the cost component of the permit fees is proposed.

Consideration Component: Sidewalk

The consideration paid by designated space sidewalk vendors is based on the Council-approved encroachment fee, an average six-month vending season, and a seven-day-a-week operation. The encroachment fee has not changed since the most recent permit fee increase, and the measure of occupancy remains a reasonable one. As a result, it is not proposed to increase the sidewalk permit fee but to establish it instead at what were the 1997 and 1998 annual fees of \$1,230.

Consideration Component: On-Street

Before they were designated vending spaces, all but one of the on-street locations were metered parking spaces. To reserve the spaces for vending, parking meters are hooded year-round and locations are signed as tow-away zones. In consideration of foregone parking meter revenue, the annual on-street vending permit fee includes an amount equal to the maximum revenue one downtown parking meter can generate in a year at a rate of \$1.00 an hour.

In 1998, City Council approved an increase in the on-street metered parking rate from \$1.00 an hour to \$1.50 an hour. In light of that increase, it is reasonable to adjust the consideration paid by on-street vendors for spaces that would otherwise generate parking revenue. The \$350 increase proposed does not pass on to the vendor the whole of the 50% increase in the parking rate (that would result in an \$840 adjustment) but it does provide that the consideration component of the permit fee will rise to equal the average (instead of the maximum) annual revenue generated by one downtown parking meter at a rate of \$1.50 an hour.

Recommendation 7

Recommendation 7 has been added to the final report in consideration of comments received from and consultation with the Ottawa Refreshment Vehicle Association (ORVA) representing on-street vendors (chipwagon operators) throughout the City. On the draft report, ORVA commented that the proposed roadway permit fee increase is considerable and would pose a hardship for most chipwagon operators. ORVA asks that there be no increase in fees.

For reasons already noted under Recommendation 6, the Department is satisfied that the permit fee increase is a defensible one. However, it also acknowledges that the increases to which the roadway permit holders have been subject over the last few years have been significant, and that it is with difficulty to some of them that payment in full is made in advance of each permit year as the by-laws require. With approval of the increase proposed by this report, fees payable to the City by roadway permit holders will amount to \$6,095 per vending space (\$3,195 for the vending license and \$2,900 for the designated space permit). Their sidewalk counterparts will pay considerably less at \$1,764 per space (\$534 for the vending license and \$1,230 for the designated space permit).

To mitigate the impact of the proposed fee increase, it is recommended that roadway permit holders be entitled to pay their permit fees in two equal installments, the first payment being due on June 1 (which has been the historic full-payment date), and the second and final payment being due three months later. That deferred payment plan may provide some relief to vendors who have difficulty making full payment at the beginning of the vending year. With only 18 roadway spaces in inventory, the Department does not anticipate any administrative difficulty in offering the deferred payment option. (ORVA would prefer that its members be offered the opportunity to pay in three installments; that becomes more onerous for the Department to manage and so is not the recommendation.)

The deferred permit payment plan would not apply to license fees; those would be payable in full in advance of the license term, exactly as they are payable by all other businesses licensed by the City. It would also not apply to sidewalk permit holders, who are not subject to a fee increase this year and who pay less than one-third the fees that the roadway vendors pay.

Recommendation 8

The proposed review of license fees has been added to the Department's report as a result of consultation with ORVA and in response to a suggestion from the Sparks Street Mall Management Board (SSMB): ORVA seeks confirmation that on-street vendors, who currently

pay six times the license fee of their sidewalk counterparts (\$3,195 to sidewalk's \$534), are not covering more than their fair share of the City's vending administration and enforcement costs; and the SSMB suggests that the sidewalk space permit fee be increased by an unspecified amount to cover the cost to the City of clean-up of litter and grease to which the vendors themselves do not conscientiously attend.

As has already been documented in this report, the street vending environment has changed considerably over the last five years, with the number of both vendors and designated spaces much reduced, with complaints all but eliminated, and with enforcement costs stabilized. Vending license fees, which are set to recover the costs of administering and enforcing the related licensing regulation, have not been revisited since those changes have occurred. It is appropriate to undertake a review to ensure accurate and equitable distribution of costs among vendor types.

Both ORVA's request and the SSMB's suggestion (which is better considered in relation to all public property vendors rather than just in relation to the downtown sidewalk vendors) will be addressed in the review.

Recommendation 9

By-law amendments will be necessary to give effect to the foregoing recommendations. Those will be prepared by the Office of the City Solicitor for enactment by City Council.

Recommendation 10

Regional Council approval of the amendments to the Designated Space Programme By-law is required to give effect to the changed regulations on Regional roads where a good deal of the vending occurs.

Options and Analysis of Options

Optional Recommendations to Recommendations 1, 2 and 3

If City Council prefers to proceed with the tendering of designated vending spaces as soon as possible, the following three recommendations should replace the Department's first three recommendations:

That the tendering of designated vending spaces proceed as the method of allocation to assign spaces for a three-year permit term beginning on May 15, 2000.

That, for the 1999 vending year (May 15, 1999 to May 14, 2000) only, designated space permit holders be invited to apply for the permits associated with the spaces they lawfully occupied in 1998 subject to compliance with Licensing By-law L-6 and the Designated Space Programme By-law.

That, for the 1999 vending year (May 15, 1999 to May 14, 2000) only, designated vending spaces not renewed in 1998 because of construction be offered to the vendors who lawfully occupied the spaces in 1997 subject to compliance with Licensing By-law L-6 and the Designated Space Programme By-law.

Inasmuch as the 1999 vending year begins in one month, it is not possible now for the Corporation to tender spaces and assign them before the beginning of the vending season; a mid-season disruption would impose significant hardship on established vendors and would be of dubious merit in any event. If City Council is desirous of proceeding with the tendering of spaces, the year 2000 is the earliest possibility in fairness to vendors. For this year, incumbents would be invited to apply for their spaces for a one-year permit term.

If City Council approves the optional recommendations, the Department will report in the Fall of this year with the details of the tender to proceed over the winter months.

The Department does not recommend the tendering of vending spaces for reasons already outlined in the report. As the Consultation Section below identifies, the majority of stakeholders who commented on the Department's draft report oppose tendering and support the Department's recommended action plan.

Consultation

The Department distributed over 200 copies of the draft report to stakeholders including vending licensees, pedestrian associations, Business Improvement Areas, merchant groups and the Region of Ottawa-Carleton. One month was provided for comment. Thirteen responses were received. All acknowledged the success of the Designated Space Programme to date, and few suggested significant changes to either the programme or the draft report.

General Observations and Comments

The tendering of spaces remains the most controversial element of the Designated Space Programme. At the outset of the programme in 1994, later in 1996 when the spaces were to have been tendered for the first time, and again in recent months as the prospect of a 1999 tender loomed, vendors made their opposition known to the Department with the comments set out below constituting the most frequently expressed observations and opinions:

- the tendering of vending spaces will unnecessarily disrupt a peaceful vending environment;
- vendors who have worked for years to develop clientele at particular locations, long before the Designated Space Programme was introduced, should not be subject to a process which may result in the loss of their spaces;
- tender will result in an increase in vendors City-wide as new vendors successful in the tender displace existing permit holders to more suburban areas of the City. That outcome is contrary to the reduction objectives of the City's moratorium on public property vending licenses;

- vendors displaced from downtown will encroach on the vending locations of their counterparts operating outside the Designated Space Programme area with territorial fighting ensuing;
- excessive bids will be made by inexperienced persons overestimating the revenue potential of a space or by fixed businesses wanting to “buy out” their competition, in either case unfairly forcing the incumbent to pay more than the value of the space or to give up the space to someone who may use it only briefly or not at all.

The business communities within which the Designated Space Programme operates have expressed to the Department over the years their views that, whatever the method of allocation or regulation, the following goals or principles ought to guide the City in its approach to street vending:

- * the streets and sidewalks are public property, not to be treated as a piece of real estate to which an individual has ownership rights or claims;
- * the market value of a vending space ought to be reflected in its fee;
- * there must be fair competition with fixed business;
- * regulation ought to have the effect of improving the product offered the consumer.

Specific Comments on the Draft Report

Individual Vendors

Five sidewalk vendors with designated spaces concurred with the draft report as presented. Three vendors without designated spaces expressed interest in securing a downtown vending space but not at the expense of existing vendors. One vendor without a designated space reported his support for tendering.

Department's Response

The Designated Space Programme restricts vending on the streets and sidewalks only of downtown. A number of licensed vendors operate successful businesses from private properties abutting busy downtown streets. Vendors without designated space permits are not prevented from working downtown if they can secure a private property location.

The one vendor who wrote in support of tendering is alone in expressing that position to the Department.

Vendor Associations

The Ottawa Refreshment Vehicle Association (ORVA), representing on-street vehicles inside and outside the Designated Space Programme area, wrote in support of postponing the tender but asked for a five-year deferral to provide stability in the industry. ORVA also expressed

significant concern about the proposed roadway permit fee increase, suggesting that the attrition in chipwagon numbers over the years has been largely due to the increased costs imposed by the City. ORVA requests that there be no permit fee increase.

Department's Response

The Department is satisfied that the \$350 increase in the roadway permit fee is warranted and defensible. However, in response to concerns expressed by ORVA about current street vending costs, Recommendations 7 and 8 have been added to the final report.

A five-year deferral of tendering is not supported by the Department which prefers at least one review during each term of City Council. The two-year deferral proposed by this report coincides with the remaining term of this Council. In 2001, the Department will recommend to the Council of that day the preferred method of allocation for that term of Council as well as any other changes to street vending regulations that may be warranted at that time.

Fixed Business Associations

The Sparks Street Mall Management Board supported the draft report while also suggesting the addition of a recommendation to increase sidewalk permit fees to offset the City's cost of sidewalk cleaning and maintenance. The Bank Street BIA supported the draft report except that it would prefer that tendering of spaces be deferred for one year instead of two.

Department's Response

Recommendation 8 has been added to the final report in response to the SSMB's fee increase proposal.

A one-year deferral of tendering is not supported by the Department: every review is quite time-consuming for staff; changes in the vending environment these days are neither sufficiently numerous nor dramatic to warrant such frequent reviews; a year-to-year programme offers little stability and no incentive to vendors to invest in improved operations. The two-year deferral notwithstanding, the Department can report to City Council at any time if problems arise unexpectedly in the industry that cannot be addressed administratively.

Pedestrian Associations

The Ottawa Pedestrian Advisory Group (OPAG) wrote in support of the draft report, noting in its letter that vending provides "lifespace for our streets resulting in a good tourist attraction for downtown". OPAG did suggest that the proposed roadway permit fee increase was "steep" and that tying it to parking rate increases was "a stretch".

Department's Response

The rationale for the proposed fee increase is sound. However, Recommendations 7 and 8 have been added to the final report in response to concerns expressed about the cost of on-street vending licenses and permits.

Disposition

Office of the City Solicitor to prepare amending by-laws and to process them to City Council for enactment, and to forward Council's request to the Regional Municipality of Ottawa-Carleton for action.

Department of Urban Planning and Public Works, Licensing, Transportation and Buildings Branch to implement.