

Commission's Role in Approving Private Use of Oak Bay Parks

Updated Report to Oak Bay Parks and Recreation Commission – January 7, 2015

Issues:

What is the role of the Parks and Recreation Commission in approving private use of public parks?
What authority and limitations are there for Commission's discretion in such approvals?

What authority and conditions are there for commercial use to be permitted in Oak Bay parks?

How may the Commission consistently exercise its discretion in considering requests for parks use, either for approval within its authority or for recommendation to Council, when authority rests with Council?

Background:

Oak Bay **Council has authority** to approve requests to occupy (use) public property, including roads. Council recently approved guidelines and procedures for review and consideration of such requests, as set out in a memorandum (Jan. 15, 2014, see attached) from the Municipal Clerk to Council. These include: complete information required in applications; referral of requests for review by municipal departments (e.g., police, public works), as appropriate; and cost recovery for any municipal expenses incurred in relation to approved use.

Applications for private use of parks are to be considered first by the Parks and Recreation Commission and then by Council, as may be necessary pursuant to the *Zoning Bylaw* or *Streets and Traffic Bylaw*, in respect of any related commercial activity or road closures.

The use of public parks in Oak Bay is regulated by the *Parks & Beaches Bylaw, 1996* and the *Zoning Bylaw (Part 5)*.

The *Parks and Beaches Bylaw* gives the Parks and Recreation **Commission** (which includes the Director of Parks and Recreation) **authority** to permit, upon application by "any individual, club, school, association or society" the use of parks as a "playing ground" and specifically **requires permits for:**

- "any procession, march, drill, demonstration, play, ceremony, concert, gathering, meeting or similar thing in or on any park", or
- "amplifying system or loudspeaker", or
- "private instruction", or
- "recreational program", or
- "tournament", or to
- "erect a tent, building, structure or shelter in or on any park".

The *Zoning Bylaw* specifies **prohibited uses**, including the use of a park "for commercial purposes" or for "carrying on a business". The *Zoning Bylaw* permits **exceptions** to these prohibitions for "**display and sale of goods or refreshments, or for paid amusements**", where **either:**

- (a) "Council has approved a licence of occupation...for a not-for-profit community event which Council has determined to be for the benefit of the Municipality at large, and which does not detract from the purpose of the land as a public place for recreation, ornamentation or preservation of the natural environment, in respect of which such use is ancillary"; or

(b) “such use is ancillary to a not-for-profit community event under the auspices and control of the [District of Oak Bay] which Council has determined to be for the benefit of the Municipality at large, and which does not detract from the purpose of the land as a place for recreation, ornamentation or preservation of the natural environment”.

Further, it states, “in application to a municipal park, ‘**commercial purposes**’ does not include the sale of refreshments where such sale: occurs within a building; is ancillary to a recreational use of a park allowed by this Bylaw and approved by: (a) permit issued pursuant to the Parks and Beaches Bylaw; or (b) licence of occupation issued by...Council for a purpose other than a specific event...”

Discussion:

Some terms:

“**ancillary**” means providing necessary support to a primary activity; in addition to an activity, but not as important;

“**commercial activity**” means buying and selling, carrying on a business with reasonable expectation of profit;

“**not-for-profit**” means an organization, other than a charity, organized and operated exclusively for social welfare, civic improvement, pleasure, or recreation or for any other purpose except profit, no part of the income of which [is] payable to, or otherwise available for the personal benefit of, any proprietor, member or shareholder....(*Income Tax Act*, s. 149)

Questions to address in Commission’s review of applications:

- is the proposed use in Oak Bay park property?
- is the application from an “individual, club, school, association or society”?
- is the use one Commission has authority to permit under the *Parks and Beaches Bylaw*?

In the case of **proposed commercial use** of a park, the application is **to be referred to Council**;

Commission and staff may be asked to provide pertinent advice:

- is the proposed activity “commercial” (“carrying on of a business”)?
- is it for “display and sale of goods or refreshments, or for paid amusements”?
- is sale of refreshments ancillary to an allowed or permitted use? (i.e., by *Zoning Bylaw* definition, **not** a “commercial purpose”)?
- is the use for a “not for profit community event...”?
- is the event for the “benefit of the Municipality at large”?
- does the event “detract from the purpose of the land as a public place for recreation, ornamentation or preservation of the natural environment”?
- is the event “under the auspices and control of [the municipality]”?

Recommendations:

1. That Commission should routinely consider the questions above in reviewing applications for private use of parks. A proposed decision guide is attached.
2. That Commission consider further means to mitigate any negative impact of permitted private use of parks on public use and enjoyment of parks. (e.g., parking, congestion, noise, waste, etc.)

Proposed Decision guide for Commission:

1. Non-commercial use by an “individual, club, school, association or society”: (see *Parks and Beaches Bylaw* above):

- if no conduct of a business (buying or selling) with reasonable expectation of profit;
- listed uses require permit at Commission’s discretion.

2. Commercial use: (**only Council may approve**; Commission may advise)

- is the commercial use only sale of refreshments “within a building” or “ancillary to a recreational use of a park” permitted by Commission or licensed by Council?
 - *(If so, then OK, Commission may recommend Council approval.)*

- is the commercial use “display and sale of goods or refreshments, or for paid amusements”?
 - *(If so, see questions below.)*

- *(If not, then not OK, Commission should not recommend Council approval.)*

- Is that use part of an event that Council has approved [or that Commission recommends Council approve] a licence of occupation for:

- a “not-for-profit community event”;
- that is “for the benefit of the Municipality at large”; and
- that “does not detract from the purpose of the land as a public place for recreation, ornamentation or preservation of the natural environment.?”

(If yes to all three, Commission may recommend Council approval.)

- is that use (i.e., sale of goods or refreshments, or amusements):

- “ancillary”
- to a “not-for-profit community event”;
- “under the auspices and control of the [District of Oak Bay]”;
- “for the benefit of the Municipality at large”; and
- “which does not detract from the purpose of the land as a place for recreation, ornamentation or preservation of the natural environment”.

(If yes to all 5, the Commission may recommend Council approval.)

Examples for Discussion:

Food truck at Henderson Rec Centre selling hot dogs during charity tennis tournament

Private film production company filming a movie at Windsor Park

Goatsbeard Nature Lovers charging for tours of Uplands Park flora and fauna to celebrate Canada Nature Appreciation Week

Fun for Kids Private Camp charging for group activities taking place at Willows Park

Appendix:

Memo to Council from Municipal Clerk (Jan 15, 2014)



Event Guideline
Report to CoW.pdf

2014-33

TO: Committee of the Whole
FROM: Municipal Clerk
DATE: January 15, 2014
SUBJECT: Road Event/Public Property Occupancy Request
Guidelines and Procedures

BACKGROUND:

The number of road events or events that occupy public property has increased over the past several years. Please refer to the attached listing of previously approved events, and new events requested so far for 2014.

The usual process when a request is received is to place it before Council for consideration, and in the case of a new event, Police Department input in respect to any potential issues or concerns would be sought first. There are, however, a number of municipal departments that are affected by such events.

There is a significant amount of staff time required to process these applications. Over 2013, a number of new events were introduced. With the increased number of events, and with additional staff becoming involved in processing road event and public property occupancy applications, staff propose to streamline the application process to ensure consistency and organization.

DISCUSSION:

The implementation of a set of application process guidelines is proposed to assist with the goals outlined above. Several discussions have been held at the staff level in respect to streamlining this process, and are reflected in this memorandum. The various components of the proposed guidelines are anticipated to be those listed below:

Full Application Details/Requirements:

The guidelines would provide necessary information on the approval process and on what is required before an application will be considered at the Council or staff level. For example:

- A requirement for liability insurance of \$3,000,000;
- Payment of any related municipal costs;
- Minimum amount of time applications must be submitted in advance of an event;
- An appropriate route map;
- Detailed logistical information;
- Anticipated municipal resources;

- Notification to area residents;
- Police Department approved traffic plan, including marshalling information.

Advising Event Organizers of all of the requirements ahead of time will contribute to a smoother application process for event organizers and staff alike.

Departmental Referrals:

As mentioned, there are potential impacts to various departments in respect to road events/public property occupancy requests. A formal referral process to the potentially affected departments is proposed to ensure that any impacts of an event are known prior to Council's consideration of the application. For example, referrals to other departments would identify any conflicts with already issued parks permits, or scheduled road and/or underground services work.

Where an application is slated to occur within a park, as with past practice, the proposed event would first be considered by the Parks and Recreation Commission. Then it would be considered by Council where that is necessary pursuant to the Zoning Bylaw and/or Streets and Traffic Bylaw in respect to any related commercial activity or road closures.

The Parks and Recreation Commission is cognizant of the number of events that include occupancy of Willows Park and Willows Beach and takes this into consideration when reviewing applications for use.

Costs

Approvals for events have always been subject to, among other things, the payment of any expenses incurred by the District of Oak Bay (such as for placing signage, cleanup, Police personnel attendance). In practice, the fees have not been applied to applicants consistently. Implementing guidelines is an opportunity to ensure that all involved in the event planning process are aware of what their costs will be ahead of time, as the referral to affected departments will include an estimate of costs that might be incurred. This will also provide a coordinated billing process through the Administration Department to ensure consistency.

The Police Board has discussed the issue in respect to policing costs, and has endorsed billing for events that generate a profit and are not strictly for charity.

OPTIONS:

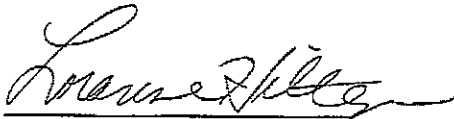
1. If the Committee is in alignment with the proposed implementation of guidelines as laid out in the memorandum, a resolution endorsing this should be adopted.
2. If there are some components of the proposed guidelines for which the Committee wishes to take a different approach, provide specific direction to staff.

3. Receive this report for information.

RECOMMENDATION:


That the implementation of road event and public property occupancy request guidelines and procedures, as laid out in the memorandum from the Municipal Clerk dated January 15, 2014, be endorsed.

Respectfully submitted,



Lorraine Hilton
Municipal Clerk

I concur with the recommendation of the Municipal Clerk.



Helen Koning
Chief Administrative Officer

Attach.

MOVED by Councillor Kirby
Seconded by Councillor Copley, That a resolution authorizing the issuance of a development variance permit, as outlined in the January 2, 2014 report of the Director of Building and Planning, correspondence no. 2014-30, be prepared and brought forward to a meeting of Council for consideration.

CARRIED

(Councillor Murdoch against the motion)

11. 2014-31 DIRECTOR OF BUILDING AND PLANNING, Jan 17, 2014
Re Development Variance Permit Application – 754 Oliver Street

Councillor Copley provided an overview of the application.

Archie Willie, Designer, was present to answer any questions.

MOVED by Councillor Copley
Seconded by Councillor Murdoch, That a resolution authorizing the issuance of a development variance permit, as outlined in the January 17, 2014 report of the Director of Building and Planning, correspondence no. 2014-31, be prepared and brought forward to a meeting of Council for consideration.

CARRIED

12. 2014-32 DIRECTOR OF BUILDING AND PLANNING, Jan 16, 2014
Re Heritage Alteration Permit and Development Variance Permit – Native Plant Park, 1180 Beach Drive

The Director of Building and Planning provided an overview of the item, drawing attention to the latest proposed design that incorporates comments from the Heritage Commission. Mr. Thomassen further noted that the variance would be different from that in the report and it was agreed that the new details could be included in the resolution that would be considered by Council should the process move forward.

MOVED by Councillor Murdoch
Seconded by Councillor Herbert, That a resolution authorizing the issuance of a development variance permit, spending approval, and issuance of a Heritage Alteration Permit, all in respect to the proposed fence for the Native Plant Park, be prepared and brought forward to a meeting of Council for consideration.

CARRIED

REGULATORY SECTION: (Section Councillor Murdoch)

13. 2014-33 MUNICIPAL CLERK, January 15, 2014
Re Road Event/Public Property Occupancy Request Guidelines and Procedures

There was discussion regarding the proposed guidelines and the Municipal Clerk answered questions from the Committee in this regard.

MOVED by Councillor Copley
Seconded by Councillor Kirby, That the implementation of road event and public property occupancy request guidelines and procedures, as laid out in the memorandum from the Municipal Clerk dated January 15, 2014, correspondence no. 2014-33, be endorsed.

CARRIED

Programs

Aquatics

- On Thursday, December 11th, Recreation Oak Bay paired up with four BC Ambulance employees and seventeen Paramedic students from the Justice Institute of BC to run through several emergency simulations in the pool and arena area. Eight senior lifeguards participated as the patients in the simulations. This is the third such joint training afternoon and they continue to be well received and an excellent learning opportunity for the new paramedics and the Recreation Oak Bay staff alike.
- Christmas day a team of six lifeguards spent Christmas afternoon keeping a pool full of swimmers safe and entertained from 1:00 to 3:30pm. Swimmers brought donations of non-perishable food items to take a dip on Christmas Day.

Fitness

- The 35th Annual Merrython Fun Run was held on Sunday, December 7th at Henderson Recreation Centre with 165 participants running and walking. The event, sponsored by Rotary Club of Oak Bay, included an 8km run, a 4km walk and a 1km children's event.
- Due to demand, Indoor Cycle Classes expanded this winter with three additional classes, along with fusion classes including Yoga Cycle, and Mom and Babe Cycle Circuit.
- The new program "Yoga Grrls" has been popular this fall. The class is for girls aged 14 to 18 and is designed to cultivate and build inner strength, flexibility and community by blending Hatha, Flow and Yin yoga with great music to beat stress, feel strong and have fun!

Community Recreation

- December was a busy month for the After School Program as two extended days of care were offered to accommodate Willows Elementary early dismissal. The children were able to attend the program at 11:45am and the afternoons were filled with picnic lunches, playground time, holiday crafts, out trips and activities.
- This week marks the completion of the first set of swim lessons and skate lessons. The children and families all enjoyed the many lesson and activity opportunities the Fun Factories offered this fall. In the New Year the After School Program will be launching the Good Life Fitness Multi Sport program for a second year which will consist of a sample sport program, dance lessons, tennis lessons and more.
- The Paddington Station children had a fun excursion downtown to visit the Empress Hotel and Parliament buildings. The children loved the lights and vast array of Christmas trees.
- The daycare Christmas concert on Dec 11th was a huge success with singing, crafts and a special visit from Santa. Parents and children had a great time. The children have been busy making presents for the parents along with all the fun Christmas crafts.
- Santa's Kindergym Surprise was a huge success on Saturday December 20th with over 50 families enjoying crafts, games, Christmas themed circle time and a special treat from Santa.
- The Preschool Playhouse afternoon class has received four new applications and the new friends will be starting class in January.
- Drop-in Sports have been very busy this month with the additional Tuesday Pickleball drop in proving to be very popular.

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- Christmas Skidaddle camps were popular once again with the first week of camps at capacity. Children were kept entertained with scavenger hunts, crafts, movies, swimming, skating, games and special out trips to Craigdarroch Castle, Laurel Point gingerbread display and Butchart Gardens.

Monterey Centre

- Monterey volunteers kicked off the Christmas season with a Decorating Day event on November 28th. Members appreciate the Christmas décor and lights throughout the centre.
- The Oak Bay Seniors' Activity Association participated in C-Fax's Santa's Anonymous Tree of Wishes campaign to support local children in need. Paper bears were selected off a Christmas tree in the lobby that contained a gift request from a child. Monterey members supported the campaign wholeheartedly and purchased unwrapped gifts for local children. By December 12th all of the bears had been removed from the tree.
- December outings included three Night of Lights tours to see the beautiful Christmas lighting displays throughout Victoria, and an outing to the Saint Luke Player's pantomime play "Snow White and the Magnificent Seven Dwarfs".
- The annual Members Dinner on December 10th was enjoyed by 153 members and guests. Attendees enjoyed the special meal service by Mayor and Council. Everyone enjoyed the delicious stuffed turkey breast dinner and cheese cake dessert. Music was provided by the talented Bob Morrison Orchestra group.
- The annual Christmas Carol Sing -a -long hosted by Ena Cooke on the morning of December 18th was well attended and a nostalgic and uplifting musical experience for members of all ages.
- Upcoming events include the Burns Dinner on January 13th, the New Years Classic Tennis Tournament Dinner and Dance featuring the local band Rukus in January and "UJam" – An Evening of Jazz on January 31st. This multi generational evening of jazz music includes a local teen jazz band called the UJam All Stars, the Monterey Concert Band and Lounge Lizards.

Arena / Teens / Indoor Sports Field

- The Indoor Sports field was busy in December especially over the Christmas break period when Bays Juniors hosted their two annual soccer tournaments. Tournaments ran December 19th-21st and December 26th-28th. The Bays Seniors hosted their tournament starting December 29th it will go until January 4th.
- The Fall Hockey League wrapped up December 17th with Blue taking the finals. Winter Hockey League starts up again January 3rd and will run until the end of March.
- Learn to skate numbers continued to be strong for November and December. January will mark the 3rd lesson set and will run until the end of February.
- Victoria Minor Hockey offered tournaments over the holidays December 20th-22nd and December 26th-28th.
- Five extra public skating sessions were added over the holidays in addition to the regular public skates that are offered.
- The Teen Centre will be closed for the December holidays from December 19th to January 5th.

Tennis

- The first December Rookie Round Robin took place December 6th with 27 players participating. The next event scheduled for the end of spring lessons on May 6th.
- The 35th New Year's Classic Tournament is under way. The Junior and Teen matches were held December 26th - 28th. The adult matches start on Monday, January 5th. The tournament has 242 players registered this year

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which is the 3rd highest participation (2011 - 242 and 2010 - 256). This year's additions are two new age groups, 35+ and 75+ and the dinner/dance on Saturday, January 10th featuring the band Rukus to be held at the Monterey Centre.

- The Junior finals were held on Sunday, December 28th, mixed doubles finals Sunday, January 11th and all other finals will be Sunday, January 18th.

Past Events

- The Christmas Solstice Concert on December 21 was successfully moved indoors to the Sports View Lounge due to the saturation of the fields at Windsor. The Soundings Choir and Maureen Washington Ensemble performed. Children were kept busy decorating cookies and making buttons.
- Maureen Washington played in the Sports View to a sell out crowd. Many patrons are now coming earlier and having dinner.

Upcoming Events

- Healthy, Happy New Year's Day!
January 1st join the Mayor and Council for a Community Walk leaving from the Oak Bay Recreation Centre lobby at 12:30pm (4km)
Meet and Greet the Mayor and Council in the Sports View – coffee and tea provided 1:30-2:30pm
Also enjoy these FREE sessions:
 - Jazzercise class in the Indoor Sports Field • noon-1pm
 - Fitness Studio Orientations 1:00-3:00 pm
 - Everyone Welcome Skate • 1:30-3pm
 - Tennis organized fun activities (not court bookings) • 1-3:30pm
 - Everyone Welcome Swim • 3-5pm
 - Children's movies in the Upstairs Lounge • 3:15 & 5:15pm
- New Years' Classic Tennis Tournament Adult component - January 5-18th.
- Double bill in the Upstairs Lounge January 16th, Niels Petersen with Connie Lebeau and Norm MacPherson and Terry Brennan and Roger Plant. Doors open at 6:00 pm for dinner music at 7:30 pm.

Physical Plant

Parks

- Parks added a few new features to the Christmas light display this year as well as hanging Christmas lights up at the Recreation Center.
- Tree planting is underway throughout the Municipality.
- Cyclical tree pruning will start the third week of January.
- The Horticultural crew is busy with garden maintenance.
- The new irrigation system at Fireman's Park is coming along well.
- New golf course tee signs are being made for Henderson golf course.
- The detailed 2014 Tree Summary will be included in the February Commission package.