

Appendix E – H.1.b Open Air Recovery – Support for Restaurants and Cafes in Public Spaces

Committee of the Whole Report Back – COVID-19 Recovery For the Meeting of June 4, 2020

RECOMMENDATION:

That Council endorse the proposed program described below.

COUNCIL MOTION:

That Council direct staff to report back with options for flexible, innovative, and expedited permitting of patios in public spaces for restaurants and other establishments in order to promote economic recovery, taking into consideration accessibility impacts, needs for appropriate physical distancing, and ample room for pedestrians in high-traffic areas and livability for residents.

BACKGROUND

The use of the public highway for patio space is already permitted by the city through an established program. Approval for these areas is undertaken within the context a formal application process and assessment of other uses and demands including pedestrians, cyclists, loading and buses, street trees, fire hydrants, streetlights, and furniture such as benches, bike racks and garbage receptacles. This sometimes very congested use of this space means that an expansion of the patio program will require the supply of additional space by repurposing other areas of the highway.

ISSUES, ANALYSIS, OPTIONS

The demand for space within the public highway is anticipated to come from both restaurants and cafes but also from other businesses to support recovery needs. Staff have therefore developed several new programs to support these diverse needs.

1. Flex Spaces
2. Temporary Patios
3. Curbside Loading Zones
4. Plazas and Squares
5. Business in Parks
6. Street & Lane Closures
7. Government Street Pedestrian Priority
8. Mobile Vendors

Temporary Patios

Staff have developed a temporary patio program to allow restaurants and cafes to apply for designated space within sidewalks or public highway for seated patios. The program will allow a cafe or restaurant to apply to have a designated area of public highway temporarily used for the purposes of tables and chairs with appropriate physical delineation.

Flex Spaces

Staff have developed a temporary flex space program to allow a business to apply to the city to have a designated area of sidewalks or public highway temporarily used for the purposes of supporting different daily activities such as tables and chairs, display of goods, queuing or business services. At the end of each business day the space reverts to parking.

Curbside Loading Zones:

Staff have developed a temporary loading zone program to allow a business to apply to the city to have a designated area of public highway temporarily used for the purposes of customer loading, pick-up or drop-off. These stalls would be open to any non-commercial vehicle.

Mobile Vendors

Staff have developed a temporary program to allow Food Trucks or Bicycle Vendors to apply to the City to operate in designated areas of the public highway. Locations have been pre-selected based on available capacity and distance away from other like businesses in order to avoid real or perceived competition.

The permits for all of the above programs will include provisions for:

- hours of operation
- length of permit
- noise
- keeping the area clean and free of garbage
- not damaging or interfering with the use of the public highway
- the specific uses of the space
- the exact location and extents of the approved area
- provisions for removal of any permit due to failure to comply

All applications will identify the appropriate regulations intended to maintain public safety, accessibility and protection of the livability of the neighborhood. Review of applications and notification to the business will be undertaken within a few of days of receipt.

OPERATIONAL IMPLICATIONS, DEPENDENCIES AND RISKS

An expedited process greatly reduces the typical review and assessment undertaken by staff from different departments. These applications are ordinarily carefully reviewed to ensure the safety and accessibility of all road users and respect the interests of the local community. The proposed new, temporary programs, although quick to apply for and implement, will still require the same safety, accessibility and livability scrutiny.

To support applications, staff will assess expansion within the boulevard, but this space is already constrained with risks of impacting accessibility and not achieving recommendations on physical distancing. The focus for these programs will therefore largely be on the removal of parking stalls to provide additional space. Similarly, the Mobile Vending program will only be for designated spaces in pre-determined locations.

Given the anticipated high level of demand, and what will sometimes be competing interest, staff anticipate an elevated level pressure to review all applications favourably and some applicants

perceiving inequity and lack of fairness by staff when an application cannot be supported for public safety or accessibility reasons.

PUBLIC IMPACTS

Use of public spaces such as streets for business use will, no doubt, have some impacts on the public. However, temporary provision of this space to facilitate physical distancing in accordance with public health advisories is critical to allow re-opening of many businesses. Staff believe that the expedited process proposed provides the right balance of review and controls while maintaining an efficient and timely turnaround time for approvals. Staff will keep the programs under review and make adjustments as required.

The success of these programs will be heavily reliant on the cooperation of businesses to respect and apply the permit regulations and conditions and the local neighborhood.

IMPACTS TO FINANCIAL PLAN

Staff are seeing the first increases in parking revenues in alignment with the gradual reopening of the economy. Given the constrained amount of space within the boulevard, staff expect these programs will require removal of on-street parking for additional space. Parking is an important revenue source for the city and the re-purposing of paid, on-street parking stalls with no cost recovery from individual businesses will reduce the revenue generating potential of these spaces and extend the time period for parking revenues to fully return to pre COVID-19 levels.

**Committee of the Whole Report Back – COVID-19 Recovery
For the Meeting of June 4, 2020**

RECOMMENDATION

That council endorse the proposed programs to provide additional space for physical distancing for pedestrians.

COUNCIL MOTION

1. That Council direct staff to keep the physical distancing measures in place in village centres and other locations and report back to council with to further opportunities to allocate additional spaces for people to walk and roll safely in village centres and downtown in order to proactively prepare for increased pedestrian traffic as people begin to leave their homes.
2. Direct staff to pedestrianize Beacon Hill Park while opening parking lots at Heywood Rd, Circle Drive, and Nursery Rd. and the roads that serve as their closest access points for the duration of summer. Further that Council direct staff to seek input from accessibility organizations including the AWG if that body is available, and report back with that advice, and all other input received so council can consider whether to further extend the pedestrianized approach to the park.

BACKGROUND

Each year, Engineering & Public Works delivers growing programs of new sidewalk construction, widening of existing sidewalks, new and upgraded crosswalks, traffic calming and cycling infrastructure projects developed around increasing the amount road space and priority for cyclists and pedestrians. The recently adopted GO Victoria Sustainable Mobility Plan identifies the need to continue to accelerate the implementation of projects to support accessibility and active transportation to move the city to a safer, healthier and reduced carbon community.

ISSUES, ANALYSIS, OPTIONS

Physical Distancing Zones

Engineering & Public Works have implemented temporary physical distancing zones in several Village centres including Hillside/Quadra, Fairfield, James Bay, and North Park. Other planned locations include the Jubilee and Fernwood neighbourhoods. These projects have been complemented by the introduction of 45 traffic signal retrofits within village centres or on main pedestrian corridors so that people do not have to press the pushbutton.

Given the potential for a large number of locations for such measures and the constrained resources to implement them all, locations have been prioritized at locations where there are limited sidewalk widths and a concentration of people walking to access local services such as supermarkets and pharmacies. These projects have largely been achieved though the suspension of on-street parking.

Staff will continue to identify locations that meet these criteria and implement further projects proactively and through assessment of any emerging community requests, prioritizing based on available resources and level of Covid-19 social distancing benefit.

Temporary Street & Travel Lane Closures

Interest has been expressed within the downtown core and in at least one of the village centres for full or partial closure of city roads to support areas for placemaking, business operations or community-led activities. There is existing provision within the city's bylaws to allow businesses or residents to request the closure of a road to support events and festivals. Staff have developed a streamlined program to allow temporary multi-day road closures with expedited assessment and approvals. Support from adjacent residents and businesses (80% or greater) will be required with all applications.

OPERATIONAL IMPLICATIONS, DEPENDENCIES AND RISKS

Although temporary in nature, the design approach adopted by staff allows physical distancing zones to remain in place for the longer term. In order to be as responsive as possible to changing needs and priorities during the Covid-19 pandemic, staff have undertaken limited engagement for these initiatives and have been restricting information sharing with fronting properties and community associations only. As such, the level of public engagement ordinarily undertaken for similar projects has not been undertaken. There will be opportunities for a number of these projects to be made permanent either in their current form or with some adjustments based on further community feedback.

Temporary street and travel lane closures will be assessed using criteria already established within existing programs.

IMPACTS TO FINANCIAL PLAN

Physical Distancing Zones

The number of zones implemented is estimated to be approximately four times the length of the city's 2020 sidewalk capital program (budgeted at \$500,000), so staff will be obliged to bring forward candidate projects for conversion to permanent, wider sidewalks on a priority basis in conjunction with other existing priorities as part of future annual budget deliberations. The supply of materials and implementation of the physical distancing zones has been funded through E&PW operating budgets.

Temporary Street and travel Lane Closures

The closure materials and implementation will be funded through E&PW operating budgets.

Creation of Government Street as a Pedestrian Priority Street

Initiating the planning work for the creation of a pedestrian priority Government Street was approved in the 2020 Financial Plan deliberations. Within the context of the COVID-19 pandemic, both in terms of creating additional physical distancing space plus providing a supportive environment for increased use of public space for cafes, restaurants and recovery for business (Motions H.1.b and

H.1.g), staff are recommending bringing forward measures to establish a pedestrian priority Government Street between Humboldt Street and Yates Street based on 3 broad principles:

- Removing any motor vehicle traffic not intending to access properties within Government Street (eliminating through-traffic).
- Enabling reasonable access for vehicles needing to deliver to or service businesses within the pedestrian priority zone and providing alternatives where this is impacted
- Any remaining motor vehicles within Government Street will be required to travel at a very reduced speed and yield to pedestrians

Any measures introduced can be adjusted or added to based on operational, public and business experience.

Staff are recommending the following measures:

- The “road dieting” of Government Street from two travel lanes down to one supplemented by “chicanes” and in doing so, creating large amounts of additional space for businesses who are seeking outdoor patio space or for other business needs.
- The closure of Government Street between Fort Street and View Street
- The introduction of new signage identifying Government Street as a pedestrian priority space
- The introduction of new “Gateway” treatments at intersections along the corridor reinforcing the special, pedestrian priority character of Government Street.
- The decommissioning of the traffic signal at Government Street and View Street intersection to further reduce the “highway” character of the road and give pedestrians priority.
- Arts and culture can animate the space with performers or musicians in numerous areas along the corridor

This initiative will deliver a large step change in the amount of additional space for pedestrians within the downtown. Staff have sought feedback from the business community along Government Street through the DVBA and support has been indicated for measures to be implemented. Feedback from the businesses has been that it is critical to maintain access for service vehicles and that any measures are temporary. The package of changes being recommended by staff are believed to meet these objectives.

The approach taken by staff delivers far more than the “minimum” to achieve the objectives of Motion H.1.d and, when combined with the increased space provided for businesses, will result in a transformation of Government Street. The design approach taken by staff has also allowed the flexibility to build on the measures initially introduced with further changes and interventions once businesses and the public have adjusted to the new environment.

This initiative is a significant and ambitious response to the current Covid-19 crisis and represents one of the largest changes in the downtown for many years. Staff will be taking the opportunity to liaise with stakeholders including the DVBA during the coming months to help inform future planning around a permanent Government Street pedestrian priority initiative. Given the desire to support rapid recovery, staff have not been able to undertake fulsome consultation with stakeholders or the wider public. There will be changes in traffic circulation and the displacement of some traffic and transit service onto neighboring parts of the downtown road network.

Should Council support staff recommendations, implementation of the measures would commence on Monday June 8th, 2020.

BEACON HILL PARK

Staff will report to Council in the fall with information regarding the temporary traffic adjustments in Beacon Hill Park (motion #2) over the spring and summer, as well as recommendations for the future.

Appendix E - H.1.f Commercial Loading Zones to Free Time Limited Zones

Committee of the Whole Report Back – COVID-19 Recovery For the Meeting of June 4, 2020

RECOMMENDATION

That Council endorse the approach to commercial loading zones described below within the context of broader demands for these zones plus potential for use to support Covid19 recovery efforts.

COUNCIL MOTION

That Council request staff to change some the Commercial Loading Zones in the City to be free time limited zones after 4pm and on Sundays while leaving some spots for 3 minute passenger zones **or** for use of seating areas for businesses if it can be achieved in a safe and accessible manner.

BACKGROUND

The GO Victoria Strategy identifies the importance of having a well-managed curbside environment in order to support and balance the large number and sometimes conflicting demands on this valuable space. Commercial loading zones are an important means of maintaining the safe and optimized operation of the curbside space particularly within the downtown. These zones are in high demand from a range of service and delivery vehicles and their use is anticipated to increase.

ISSUES, ANALYSIS, OPTIONS

Over the last few months, staff have rationalized and standardized these much-valued loading zones and will continue to look at their future operation on a case by case basis in collaboration with adjacent businesses.

These spaces have value and trends are showing increased use over time with, for example, more demand for home delivery services as well as the potential arrival of one-way car share services in Victoria later this year. In addition, the absence of these zones in the past has led to delivery vehicles loading and unloading in a manner that is unsafe and obstructs the movement of other traffic.

Staff will look for opportunities for some of these to be adjusted to time limited parking, passenger drop off zones or for other uses such as for flexible space (in support of Motion H.1.b) on a case by case basis.

OPERATIONAL IMPLICATIONS, DEPENDENCIES AND RISKS

The assessment of these zones will be undertaken as part of on-going day to day operational decision making on optimizing curbside management and specifically within the context of the proposed program described in response to motion H.1.b.

IMPACTS TO FINANCIAL PLAN

None

Appendix E – H.1.g Assistance with Recovery Phase for Business and H.1.n Hospitality Industry

Committee of the Whole Report Back – COVID-19 Recovery For the Meeting of June 4, 2020

RECOMMENDATION:

That Council adopt the proposed *Business Recovery from Pandemic Bylaw* that would:

- Temporarily delegate all Development Permits and Heritage Alteration Permits proposing outdoor commercial use, with or without parking variances, to staff subject to the applicant providing the City with an irrevocable undertaking to remove any construction or alteration authorized by the Permit within six months and to restore the property to its current conditions.
- Waive fees for all delegated Development Permits and Heritage Alteration Permits proposing outdoor commercial use, with or without parking variances.

COUNCIL MOTION:

H.1.g Assistance with Recovery Phase for Business

That Council request that staff create temporary bylaw amendments that would:

1. Allow businesses to display and sell their merchandise in front of their business
2. Allow tables and chairs outside restaurants, coffee shops, bakeries
3. Allow businesses to use areas of public spaces or squares adjacent to a business
4. Consider how larger City spaces could be shared by businesses

H1.n Hospitality Industry

Respond quickly to requests by the hospitality industry to changes in zoning, occupancy, etc. To allow for physical distancing

ISSUES, ANALYSIS, OPTIONS

Recommendation for Moving Forward

The most common barrier to new or expanded outdoor commercial activities on private property, such as outdoor cafes, relates to parking. An efficient system is already established which delegates authority to staff to consider and potentially approve parking variances associated with commercial activities of up to five motor vehicle stalls and/or up to six bicycle stalls. Temporarily expanding the scope of delegation to include all parking variances associated with temporary outdoor commercial use, and waiving the fees associated with these applications, will ease the process for businesses looking to expand outside. Staff will also be examining ways to minimize submission requirements to further expedite the process for such proposals.

The proposed Bylaw defines outdoor commercial use as follows:

“outdoor commercial use” means any space or temporary structure used for business activity outside of a permanent building or other structure and includes restaurant patios, outdoor displays, and customer service or wait areas.

Under the provisions of the Bylaw, DPs and HAP’s proposing the use described above would be delegated to staff, including those proposing a parking variance.

Regulatory Considerations

If the required parking cannot be accommodated on-site then a variance is required. In the past, a variance required Council approval following an Opportunity for Public Comment. However, to support businesses and streamline the approval process, in 2018, Council approved an amendment to the *Land Use Procedures Bylaw* (LUPB) to delegate minor parking variances (up to five motor vehicle parking stalls and/or up to six bicycle parking stalls) for commercial, industrial and institutional uses on the condition that staff were satisfied that the proposed parking shortfall would not adversely impact the neighbourhood by unduly contributing to on-street parking issues. Since then staff have approved several applications proposing minor parking variances under the scope of delegated authority.

To date, in most instances, a motor vehicle parking variance of up to five stalls has been adequate to accommodate the needs of the business in a manner that has not had negative consequences for neighbourhoods. However, to further support business during the COVID pandemic and remove a potential barrier to outdoor commercial use staff recommend that all parking variances, associated with a business expanding outdoors, be delegated to staff on a temporary basis. Staff would continue to review each application on its own merits and assess the potential impacts of each proposal upon the public realm, immediate neighbours and the wider community as well as consistency with relevant guidelines.

It should be noted that there is no provision in Provincial Legislation to delegate a variance that is not associated with a Development Permit (change to a building and/or landscaping.) However, it is anticipated that outdoor commercial activities will include some associated structures (railings etc.) and landscaping planters, which will mean that these proposals would likely require a Development Permit (DP) with Variance which can be delegated to staff.

Ensuring Outdoor Commercial Use is Temporary

The proposed Bylaw includes a provision requiring that an applicant making a delegated application for outdoor commercial use on private property must provide the City with an irrevocable undertaking to remove any construction or alteration authorized by the permit within six months and to restore the property to its current conditions. This provision has been included to ensure that the landowner does not have any legal entitlement to carry on with approved operations indefinitely. For example, if staff approved the use of a private parking lot for outdoor commercial use during the COVID pandemic and the above provision was not included in the Bylaw then, once the pandemic was over and the temporary Bylaw rescinded, the landowner would be entitled to continue using the parking spaces for commercial activities.

Waiving Fees

As a result of the pandemic, many businesses may look to expand their commercial activities outside and waiving fees and minimizing submission requirements will be a useful way to support businesses during these challenging times. The fee for such applications varies between \$200

(base fee for a delegated application) and \$450 (fee for a delegated application that is also proposing a parking variance).

Application Processing

It is possible to process delegated approvals, that are minor in nature, within a timeframe that ranges from a few days to two weeks. Staff will be looking at the possibility of prioritizing applications for outdoor commercial operations and relaxing submission requirements to expedite the review and approval while the COVID-19 pandemic is ongoing. However, staff would also be reviewing proposals to ensure that they meet the intent of any applicable Design Guidelines and do not have negative impacts on the public realm, immediate neighbours or the wider community.

Temporary Period for Delegation & Ongoing Monitoring

If adopted by Council, the Bylaw would come into effect immediately and it is recommended that the temporary increased scope of delegation would be in place for a period of six months.

The purpose of the Bylaw amendment is to assist businesses wishing to operate outdoor commercial activities on private property while the COVID pandemic results in restrictions and economic pressures on businesses, therefore, staff will monitor the situation and will propose an extension of time to the Bylaw if it is prudent to do so or if directed to do so by Council.

Community Consultation

The proposed Bylaw is intended to support businesses during the COVID pandemic and, given the temporary nature of these changes and the urgent need to proceed in a timely manner, staff recommend that the proposed Bylaw proceed without community consultation.

Other Options

Staff did carefully consider other options to expand opportunities for outdoor commercial use on private property, however, with each one there are a number of barriers to achieving immediate implementation and streamlined processing of applications in a manner that is not likely to result in unintended consequences. Other options considered and associated challenges are summarized below:

Delegation of Temporary Use Permits (TUPs) relating to Outdoor Commercial Use

TUPs can authorize a particular use to occur, temporarily, in a zone where it is not usually permitted. The permit is issued for a specified period of time not exceeding three years, which may be renewed once only for a further period not exceeding three years and establishes the conditions under which the temporary use may be carried out. TUPs can also address any structures or variances associated with the proposed temporary use.

The LUPB requires that TUPs are processed in a way similar to Rezoning Applications and that they require approval by Council, following an Opportunity for Public Comment. Staff reviewed the potential for amending the LUPB, on a temporary basis, to delegate the approval of TUPs to staff. While it was established that this is allowed under the Provincial Legislation, notice posting (for a minimum of 10 days) and mail out to neighbours would need to occur for each application, adding at least two to three weeks to application processing timelines. In addition, to support such an approach, it was determined that an amendment to the City Zoning Bylaws (*Zoning Regulation Bylaw 80-159* and *Zoning Bylaw 2018*) would be required to create a

new use definition for outdoor commercial use. A Zoning Bylaw amendment requires Council approval following a Public Hearing which would delay implementation.

In light of the above, staff determined that it would take at least two months to be in a position to approve a delegated TUP for outdoor commercial operations and, therefore, this approach would not respond to the Council objectives, relating to support for business during the COVID pandemic, in a timely manner.

Amending City Zoning Bylaws

Staff have reviewed the potential for amending the City's Zoning Bylaws to support outdoor commercial use. For example, the parking requirements for outdoor patios associated with bars and restaurants could be deleted from the Bylaws. However, this option has not been pursued for several reasons including:

- Zoning Bylaw amendments require Council approval following a Public Hearing, therefore, there is additional time needed to implement this approach;
- The Zoning Bylaw amendments would be permanent, requiring a further Bylaw amendment and approval process (including a Public Hearing) to address any changes which were intended to be temporary in nature;
- Businesses that took advantage of the reduced parking regulations would be entitled to legal non-conforming status if the Bylaw was repealed at a later date; and,
- These parking requirements should be reviewed comprehensively as part of a review of the off-street parking regulations (it should be noted that Council has directed staff to review these requirements and return with recommendations in 2023). In addition, parking requirements and associated issues can be quite contentious in nature and staff would recommend that appropriate consultation be undertaken before amending parking regulations.

While staff are not recommending the above options, Council may wish to direct staff to further pursue one or more of the aforementioned options, noting the associated risks, timelines and potential legislative issues.

OPERATIONAL IMPLICATIONS, DEPENDENCIES AND RISKS

The key risk associated with the proposed change to the scope of delegation relates to the potential permanency of any approvals granted by staff. This risk is discussed above and is addressed by the requirement that an applicant provide the City with an irrevocable undertaking to remove any construction or alteration authorized by the permit within six months and to restore the property to its current conditions.

PUBLIC IMPACTS

Potential Parking Impacts

In the event that parking variances are granted to support outdoor commercial use on private property then, potentially, some parking demand may be displaced to the adjacent streets, albeit on a temporary basis. When reviewing delegated applications proposing parking variances, staff will continue to assess whether the variance adversely impacts the neighbourhood by unduly contributing to on-street parking issues, consistent with the provisions of the LUPB.

Noise Impacts

New outdoor commercial uses, or the expansion of existing outdoor commercial activities, may potentially generate additional noise impacts in a neighbourhood. The provisions of the Noise Bylaw will continue to apply to such activities.

Community Consultation

In light of the need to implement changes in a timely manner in order to support business during the COVID pandemic, staff are not recommending consultation on the proposed changes. It is also worth noting that i) there are unlikely to be significant numbers of applications proposing large parking variances, ii) any approvals granted will be for a temporary six month period only and iii) staff will continue to assess whether the variance adversely impacts the neighbourhood by unduly contributing to on-street parking issues.

IMPACTS TO FINANCIAL PLAN

The Bylaw provisions discussed in this report will not impact the Financial Plan, although it should be noted that there will potentially be a small loss of income from forgone application fees for the specific delegated applications discussed in this report.

CONCLUSION

The proposed *Business Recovery for Pandemic Bylaw* would delegate DP and HAP applications proposing outdoor commercial use, and any associated parking variances, and would waive the fee for such applications. The proposed Bylaw removes a cost and potential barrier to business owners who wish to carry out or expand outdoor commercial activities, on their property, during the COVID pandemic.

Committee of the Whole Report Back – COVID-19 Recovery

For the Meeting of June 4, 2020

RECOMMENDATION

That Council direct staff to inform the General Manager of the Liquor and Cannabis Regulation Branch in writing that Council pre-approves all liquor primary and manufacturer establishments in the City of Victoria who may apply for expanded liquor service area before October 31, 2020.

ISSUES, ANALYSIS, OPTIONS

The Liquor and Cannabis Regulation Branch (LCRB) announced Policy Directive 20-13, that permits food primary, liquor primary and manufacturing licensees to temporarily expand their service area footprint until October 31, 2020. This directive allows establishments to decrease the density of patrons in their establishments and to continue to serve patrons in compliance with Public Health orders and guidelines regarding physical distancing.

To support this directive, LCRB has implemented an expedited process for the authorization of temporary expansions to service areas only. Licensees will still be subject to any Public Health orders requiring reduced occupancy loads and must also comply with all local bylaws and health and fire regulations. To further expedite the application process, LCRB have provided local governments with two options for expansion requests from liquor primaries and manufacturers: pre-approval or case-by-case review.

There are a number of considerations in assessing the two options put forward by LCRB to address requests to expand service areas. These are discussed below.

1. Provide one pre-approval to cover all liquor primary and manufacturer establishments who may apply for an expanded service area (Recommended)

This option differs from current City practice which is based on a review process leading to a recommendation to the Province. In this option, the City foregoes its process to review and provide input on applications. This review is undertaken by staff and does not require a Council resolution. When applying to the LCRB for an expanded service area, applicants will self-declare to the Province that they meet all local by-laws and regulations. City staff will receive notice when the expanded service area is authorized by the LCRB.

These temporary authorizations:

- will allow for expansion of licensee service areas only and will not increase currently approved person/patron capacities or occupant loads or any other aspects of the existing liquor license
- apply to service area expansions indoors or outdoors, on private or public land, subject to compliance with all local bylaws and health and fire regulations
- do not require site inspections prior to approval but are subject to compliance checks by provincial inspectors.

Benefits:

- this approach enables the fastest processing of applications
- supports businesses in expanding their footprint to enable post-COVID recovery.

Risks:

- this approach does not provide local governments with the opportunity to see individual requests, or to comment on operators with a history of non-compliance with City's bylaws, before they are approved by the LCRB
- the applicant may not know if they are compliant with all local bylaws and regulations, or may choose not to be, resulting in expanded service areas that do not comply with fire or building code requirements, or safe access/egress.

2. Review and approve all individual requests for liquor primary and manufacturer expansions prior to licensees submitting their applications to the LCRB (Default process)

Under this option, the City follows its standard process of reviewing and approving all individual requests for liquor primary and manufacturer expansions prior to licensees submitting their applications to the LCRB. City staff will receive notice when an expanded service area is authorized by the LCRB. This is the default process and local governments do not need to contact LCRB if they wish to follow this process.

Benefits:

- Staff and applicants follow existing process, minimizing confusion and adhoc inquires.
- Staff retain authority to withhold approval for known problem operators, and where there are community impact concerns.

Risks:

- Review of individual applications and issuing approvals will increase the time required for businesses to begin operating their expanded areas.

Expansions of liquor service areas in licensed restaurants (Food Primary liquor licences) generally do not require input from local government and the LCRB will continue to process these requests for expanded service areas without requiring such approval. Food primary licensees are responsible for following all local by-laws and for obtaining any permits as required by their local government. City staff will receive notice when an expanded food primary liquor service area is approved by the LCRB.

OPERATIONAL IMPLICATIONS, DEPENDENCIES AND RISKS

To expedite the process, the recommended approach of pre-approval for expanded service areas eliminates the municipal review and opportunity for comment by staff particularly with regard to operators with a history of non-compliance with City's by-laws or situations where there may be community impact.

PUBLIC IMPACTS

The recommended approach allows for the fastest processing of applications for service area expansions and encourages a positive applicant experience.

The expansion of service areas will not increase the currently approved person/patron capacities or occupant loads but could result in more outdoor areas being utilized, with impacts such as increased noise impacts in a neighbourhood, while requirements for physical distancing are in

place. The provisions of the Noise Bylaw and other City bylaws will continue to apply to such activities.

IMPACTS TO FINANCIAL PLAN

There are no financial implications, although it should be noted that there will potentially be a small loss of income from forgone application fees.

CONCLUSION

The Provincial Liquor and Cannabis Regulation Branch (LCRB) has enabled an expedited approach to issue Temporary Expanded Service Area Authorizations to food primary, liquor primary, and manufacturer licensees, expiring on October 31, 2020. Staff recommend that Council approve a resolution to enable a one-time approval of all liquor primary and manufacturer applications for temporary expansions to liquor service areas.

Appendix E - H.1.g Assistance with Recovery Phase for Business – Business Recovery from Pandemic Bylaw No. 20-72

**Committee of the Whole Report Back – COVID-19 Recovery
For the Meeting of June 4, 2020**

RECOMMENDATION

That the following be forwarded to the daytime special council meeting:

1. That Council give first second and third readings to Business Recovery from Pandemic Bylaw 20-072.
2. That Council reconsider and adopt Business Recovery from Pandemic Bylaw No. 20-072.

COUNCIL MOTION:

Assistance with Recovery Phase for Business

That Council request that staff create temporary bylaw amendments that would:

- 1.Allow businesses to display and sell their merchandise in front of their business
- 2.Allow tables and chairs outside restaurants, coffee shops, bakeries
- 3.Allow businesses to use areas of public spaces (i.e. sidewalks, on-street parking) or squares adjacent to a business
- 4.Consider how larger City spaces could be shared by businesses

BACKGROUND

The proposed bylaw responds to Council’s direction and would create a system of permits to allow for outdoor commercial uses of public spaces by:

- providing the Director of Engineering with temporary authorization to:
 - restrict or prohibit some or all traffic on some streets
 - issue permits for outdoor commercial uses of streets
 - issue permits for outdoor commercial use of a portion of a street by a mobile vendor
 - Issue permits for signs, markings, and other installations as a part of outdoor commercial use
- providing the Director of Parks with temporary authorization to:
 - issue permits for outdoor commercial uses in a park or a portion of a park
 - issue permits for outdoor commercial use of a portion of a park or a portion of a park by a mobile vendor
 - Issue permits for signs, markings, and other installations as a part of outdoor commercial use
- delegating authority to the Director of Planning to:
 - issue required development or heritage alteration permits in relevant areas if related to the construction of, addition to, or alteration of a building or other structure to facilitate an outdoor commercial use, and
 - authorize a parking variance

This is a temporary Bylaw with a termination date established for October 31st, 2020 which is consistent with the provincial authorizations in connection with Liquor Licensing changes resulting from the Pandemic. If necessary, the bylaw can be re-established to go beyond October 31st, 2020.

ISSUES, ANALYSIS, OPTIONS

The action that could be permitted through the authorities granted in the proposed Bylaw would:

- Enable businesses to set up outdoor commercial space,
- Enable businesses and customers to comply with physical distancing requirements,
- Repurpose use of on-street parking when there is a lower volume of motor vehicle traffic downtown due to the pandemic
- Forego some processes that balance competing interests in public spaces and defer that authority to staff to balance.
- Cause some disruption to traffic on streets with traffic restrictions,
- may further reduce parking revenues by taking up space in on-street parking or conversely may attract more vehicles into commercial areas that can park in alternative parking spots (e.g. parkades)

This type of initiative has not been undertaken in the City, although other municipalities in North America and Europe are implementing these types of initiatives in response to the pandemic.

OPERATIONAL IMPLICATIONS, DEPENDENCIES AND RISKS

The permit system proposed will result in the creation of an interdepartmental staff team to manage the requests and expedite the processing in order that the community can benefit from expanded service options for a wide range of service and commercial opportunities that help re-start the local economy.

In order to do this quickly given the relatively small window of opportunity between June and the winter the City has not followed its more conventional consultative approaches as noted in the report.

PUBLIC IMPACTS

Businesses adjacent to public spaces available for outdoor commercial uses which will enable physical distancing that is necessary. This is of benefit to the community at large as it opens opportunities for service establishments to serve the public to a higher degree that could be achieved within existing spaces.

Streets, parking and sidewalks will be impacted to some degree, but the Permits issued in order to utilize the space will have to balance the impacts in order to effectively share the space.

IMPACTS TO FINANCIAL PLAN

The intended action does not cost the City any actual funds but has and will re-direct staff resources to manage the system of permits established in the Bylaw, noting that these would be processed on a priority basis.

CONCLUSION

This has been an expedited process to meet the timelines and activate alternatives for businesses to use public space, foregoing more typical consultative processes. Adjustments can be made should circumstances warrant. It is anticipated that there will be a significant uptake to use the space and an interdepartmental team is established to manage the competing interests and balance decisions to the fullest extent possible.

List of Attachments:

Business Recovery from Pandemic Bylaw No. 20-072

NO. 20-072

BUSINESS RECOVERY FROM PANDEMIC BYLAW

A BYLAW OF THE CITY OF VICTORIA

The purpose of this bylaw is to facilitate the economic recovery of the City while protecting the community's health and well-being by enabling businesses to operate in accordance with public health advisories regarding physical distancing by temporarily utilizing streets and other private or public outdoor spaces for commercial purposes.

Under its statutory powers, including sections 8(3), 35(11), 36, 38, 154(1) of the *Community Charter* and sections 488-491 of the *Local Government Act*, the Council of The Corporation of the City of Victoria, in an open meeting assembled, enacts the following provisions:

Contents

1	Title
2	Definitions
3	Application and paramountcy
4	Outdoor commercial use on a street
5	Outdoor commercial use in a park
6	Permit cancellation
7	Delegation to expedite outdoor commercial use on private property
8	No fee for outdoor commercial use
9	Council reconsideration
10	Noise
11	No City representation and an indemnity by permit holder
12	Repeal
13	Commencement and repeal dates

Title

- 1 This Bylaw may be cited as "BUSINESS RECOVERY FROM PANDEMIC BYLAW NO, 20-072'.

Definitions

- 2 In this Bylaw,

"business"

means any person holding a valid licence under the Business Licence Bylaw;

"City"

means the Corporation of the City of Victoria;

“culturally sensitive area”

has the same meaning as in the Parks Regulation Bylaw;

“Director of Engineering”

means the person employed by the City as the Director of Engineering and Public Works and includes a person acting in their absence;

“Director of Parks”

means the person employed by the City as the Director of Parks, Recreation and Facilities and includes a person acting in their absence;

“Director of Planning”

means the person employed by the City as the Director of Sustainable Planning and Community Development and includes a person acting in their absence;

“environmentally sensitive area”

has the same meaning as in the Parks Regulation Bylaw;

“mobile vendor”

has the same meaning as in the Street Vendors Bylaw;

“outdoor commercial use”

means any space or temporary structure used for business activity outside of a permanent building or other structure and includes restaurant patios, outdoor displays, and customer service or wait areas;

“park”

has the same meaning as in the Parks Regulation Bylaw;

“public health authority”

includes a health officer as defined in the Public Health Act;

“street”

has the same meaning as in the Streets and Traffic Bylaw;

“zoning bylaw”

means the Zoning Regulation Bylaw or the Zoning Bylaw 2018 as applicable.

Application and paramountcy

- 3 (1) This Bylaw applies notwithstanding any provision of the following:
 - (a) Business Licence Bylaw;
 - (b) Land Use Procedure Bylaw;
 - (c) Parks and Recreation Fees Bylaw;
 - (d) Parks Regulation Bylaw,
 - (e) Sidewalk Cafés Regulation Bylaw,
 - (f) Streets and Traffic Bylaw, and
 - (g) Street Vendors Bylaw.
- (2) For certainty, if a provision of this Bylaw conflicts with any other City bylaw except a zoning bylaw, this Bylaw prevails.

Outdoor commercial use on a street

- 4 (1) The Director of Engineering is authorized to temporarily restrict or prohibit all or some types of traffic on a street or portion of a street to facilitate outdoor commercial use and may cause temporary barriers, structures, or other installations to be constructed for that purpose.
- (2) A business shall not use a street for outdoor commercial use without first obtaining a permit from the Director of Engineering.
- (3) The Director of Engineering may issue a permit for an outdoor commercial use by a business of a street or a portion of a street if, in their opinion, the proposed outdoor commercial use would
 - (a) facilitate physical distancing as recommended by a public health authority;
 - (b) relate to a commercial operation in a property adjoining the street or portion of the street; and
 - (c) not unduly obstruct or interfere with a fire hydrant, fire lane or exit, or another safety feature or requirement of an adjoining property.
- (4) The Director of Engineering must not issue a permit for an outdoor commercial use on a street unless the proposed use is authorized under the applicable zoning bylaw.
- (5) The permit shall identify the street or portion of the street subject to it and may include conditions, as determined by the Director of Engineering, regarding:
 - (a) temporary structures or other objects that may be placed or otherwise constructed on the street or portion of the street by the permit holder;

- (b) temporary signs, stickers, or other markings that may be placed on the street by the permit holder;
 - (c) times when the street or portion of the street may be occupied for an outdoor commercial use;
 - (d) the duration of the permit; and
 - (e) uses or activities that are allowed under the permit.
- (6) A holder of a permit issued under this section (the “licensee”) obtains a licence of occupation for the portion of the street identified in the permit on the following terms and conditions:
- (a) the licensee
 - (i) assumes all risks, known and unknown, in relation to the outdoor commercial use and the portion of the street occupied by them and agrees to release and forever discharge the City, its elected and appointed officials, employees, servants, contractors and agents from any and all claims, causes of action, suits, costs and expenses whatsoever, which it or its directors, officers, employees or agents may now or at any time have with respect to, related to, or arising out of the outdoor commercial use on the street;
 - (ii) agrees to indemnify and save harmless the City, its elected and appointed officials, employees, servants, contractors and agents from and against any and all claims, causes of action, suits, damages, losses (including pure economic loss), costs and expenses which the City, its elected or appointed officials, employees, servants, contractors and agents may suffer or sustain as a result of, connected to, or arising out of the grant of this licence or by reason of or arising out of, failure of the licensee to comply with the terms and conditions of the permit or this Bylaw;
 - (iii) must not cause or permit water, or refuse, garbage or other material that is noxious, offensive or unwholesome to collect or accumulate within the licence area;
 - (iv) must not allow the licenced area to become or remain unsightly;
 - (b) all structures or objects placed in the licenced area by the licensee must be removed on the expiry of the licence;
 - (c) the outdoor commercial use of the licenced area must cease on the expiry of the licence;
 - (d) during the term of the licence, the licensee must, at their own expense, obtain and maintain in force commercial general liability insurance, in the minimum amount of \$2 million per occurrence with the City added as an additional insured, together with a cross liability clause, and the City must be provided with proof of such coverage at the request of the Director of Engineering;

- (e) the licensee must not damage or permanently encumber or alter the street;
 - (f) the licence expires on the earlier of:
 - (i) the expiry or cancellation of the permit, or
 - (ii) the repeal of this Bylaw.
- (7) Notwithstanding subsections (3)(b) and (4), the Director of Engineering may issue a permit for outdoor commercial use of a portion of a street by a mobile vendor provided that the perimeter of the licence area is more than 200 metres from any business that provides the same or similar services or products as the mobile vendor.
- (8) Subsection (2) does not apply to an outdoor commercial use that was in existence at the time this section came into force and was authorized under another City bylaw.
- (9) The permit holder must display the permit in a conspicuous place at, or near to, the outdoor commercial use authorized by the permit.

Outdoor commercial use in a park

- 5 (1) A business shall not use a park for outdoor commercial use without first obtaining a permit from the Director of Parks.
- (2) The Director of Parks may issue a permit for an outdoor commercial use by a business in a park or a portion of a park if, in their opinion, the proposed outdoor commercial use would
- (a) facilitate physical distancing as recommended by a public health authority;
 - (b) relate to a commercial use in a property adjoining the park or portion of the park;
 - (c) not unduly obstruct or interfere with a playground or an outdoor sports facility; and
 - (d) not be located in an environmentally or culturally sensitive area.
- (3) The Director of Parks must not issue a permit for an outdoor commercial use in Beacon Hill Park or any other park where such use would be contrary to the terms of a trust or condition of a land grant.
- (4) The permit shall identify the park or portion of the park subject to it and may include conditions, as determined by the Director of Parks, regarding:
- (a) temporary structures that may be placed or otherwise constructed in the park or portion of the park by the permit holder;
 - (b) temporary signs, stickers, or other markings that may be placed in the park by the permit holder;

- (c) times when the park or portion of the park may be occupied for an outdoor commercial use;
 - (d) the duration of the permit; and
 - (e) uses or activities that are allowed under the permit.
- (5) A holder of a permit issued under this section (the “licensee”) obtains a licence of occupation for the portion of the park identified in the permit on the following terms and conditions:
- (a) the licensee
 - (i) assumes all risks, known and unknown, in relation to the outdoor commercial use and the portion of the park occupied by them and agrees to release and forever discharge the City, its elected and appointed officials, employees, servants, contractors and agents from any and all claims, causes of action, suits, costs and expenses whatsoever, which it or its directors, officers, employees or agents may now or at any time have with respect to, related to, or arising out of the outdoor commercial use in the park;
 - (ii) agrees to indemnify and save harmless the City, its elected and appointed officials, employees, servants, contractors and agents from and against any and all claims, causes of action, suits, damages, losses (including pure economic loss), costs and expenses which the City, its elected or appointed officials, employees, servants, contractors and agents may suffer or sustain as a result of, connected to, or arising out of the grant of this licence or by reason of or arising out of, failure of the licensee to comply with the terms and conditions of the permit or this Bylaw;
 - (iii) must not cause or permit water, or refuse, garbage or other material that is noxious, offensive or unwholesome to collect or accumulate within the licence area;
 - (iv) must not allow the licenced area to become or remain unsightly;
 - (b) all structures or objects placed in the licenced area by the licensee must be removed on the expiry of the licence;
 - (c) the outdoor commercial use of the licenced area must cease on the expiry of the licence;
 - (d) during the term of the licence, the licensee must, at their own expense, obtain and maintain in force commercial general liability insurance, in the minimum amount of \$2 million per occurrence with the City added as an additional insured, together with a cross liability clause, and the City must be provided with proof of such coverage at the request of the Director of Parks;
 - (e) the licensee must not damage any tree or shrub, or permanently encumber or alter the park;

- (f) the licence expires on the earlier of:
 - (i) the expiry or cancellation of the permit, or
 - (ii) the repeal of this Bylaw.
- (6) Notwithstanding subsection (2)(b) the Director of Parks may issue a permit for outdoor commercial use of a portion of a park by a mobile vendor.
- (7) Subsection (1) does not apply to an outdoor commercial use that was in existence at the time this section came into force and was authorized under another City bylaw.
- (8) The permit holder must display the permit in a conspicuous place at, or near to, the outdoor commercial use authorized by the permit.

Permit cancellation

- 6 Section 13 of the Sidewalk Cafés Regulation Bylaw applies, with all the necessary changes, to a permit issued under section 4 or 5 as if the outdoor commercial use was a sidewalk café or a parklet.

Noise

- 7 The holder of a permit for an outdoor commercial use must comply with the provisions of the Noise Bylaw.

Delegation to expedite outdoor commercial uses on private property

- 8 (1) Subject to subsection (3), the Director of Planning is delegated the power to issue a development permit or a heritage alteration permit in all development permit areas and heritage conservation areas if the permit relates to the construction of, addition to, or alteration of a building or other structure to facilitate an outdoor commercial use.
- (2) As part of a permit issued under subsection (1), the Director of Planning may authorize a parking variance.
- (3) An applicant for a permit referred to in subsection (1) must provide the City with an irrevocable undertaking to remove any construction or alteration authorized by the permit within six months and to restore the property to its current conditions.

No fee for outdoor commercial use

- 9 (1) No fee is payable for a permit issued under section 4 or 5.
- (2) No fee is payable for an application to which section 8 applies.

Council reconsideration

10 If an application for a permit under section 4, 5, or 8 is refused, or if the applicant objects to a proposed condition of the permit or approval, the applicant may request that Council reconsider the decision by submitting a written request for reconsideration to the City Clerk within 14 days of the delegate’s decision.

No City representation and an indemnity by permit holder

11 (1) The issuance of a permit under this Bylaw does not constitute in any way a representation, warranty, or assurance that the area covered by the permit is suitable for the outdoor commercial use or the intended purpose of the business applying for the permit.

(2) The holder of a permit issued under this Bylaw shall be solely responsible for the outdoor commercial use authorized by the permit and shall indemnify and hold harmless the City and its elected and appointed officials, employees, contractors and agents from any claim of loss or damages, including personal injury and pure economic loss, by any person for any reason connected with the issuance of the permit or the outdoor commercial use authorized by the permit.

Repeal

12 This Bylaw is repealed.

Commencement and Repeal Dates

13 (1) This Bylaw, except section 12, comes into force on adoption.

(2) Section 12 comes into force on October 31, 2020.

READ A FIRST TIME the day of 2020.

READ A SECOND TIME the day of 2020.

READ A THIRD TIME the day of 2020.

ADOPTED on the day of 2020.

CITY CLERK

MAYOR