

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 City Council of The Corporation of the City of Victoria, in an open meeting assembled, enacts the following provisions:

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**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) Building and Plumbing Regulation Bylaw;
- ~~(a)(b)~~ Business Licence Bylaw;
- ~~(b)(c)~~ Land Use Procedure Bylaw;
- ~~(c)(d)~~ Parks and Recreation Fees Bylaw;
- ~~(d)(e)~~ Parks Regulation Bylaw,
- ~~(e)(f)~~ Sidewalk Cafés Regulation Bylaw,
- ~~(f)(g)~~ Streets and Traffic Bylaw, and
- ~~(g)(h)~~ 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 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-

and may require an applicant for a permit to provide confirmation, in a form acceptable to the Director of Engineering, from an appropriate professional that the portion of the street and all structures and objects to be placed on the street

under the proposed permit would be safe and suitable for their intended use as described in the application for the permit.

- (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~~5 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 that 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 Director of Engineering may, at any time, extend the duration of a permit issued under subsection (3) and, subject to subsection (10), such extended permit shall continue to be valid on the terms and conditions as originally issued.
- (10) The Director of Engineering may, as a condition of issuing a permit under subsection (3) or extension of a permit under subsection (9), require that the permit holder
- (a) within a time provided in the permit or extension, make the necessary additions or alterations to ensure that the portion of the street that is subject to the permit and all the structures or objects placed on a street pursuant to the permit to are fully accessible to all persons, and
  - (b) provide confirmation, in the form acceptable to the Director of Engineering, from an appropriate professional that the portion of the street that is subject to the permit and all structures or objects placed on a street pursuant to the permit are safe and suitable for their intended use as authorized under the permit.

- (11) Unless a permit holder, within 14 days of receiving a request from the Director of Engineering, provides confirmation, in a form acceptable to the Director of Engineering, from an appropriate professional that the portion of the street that is subject to the permit and all structures or objects placed on a street pursuant to the permit are safe and suitable for their intended use as authorized under the permit, the permit is deemed to be cancelled and of no force and effect.

### **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 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-
- and may require an applicant for a permit to provide confirmation, in a form acceptable to the Director of Parks, from an appropriate professional that the portion of the park and all structures and objects to be placed in the park under the proposed permit would be safe and suitable for their intended use as described in the application for the permit.
- (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~~5 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 Director of Parks may, at any time, extend the duration of a permit issued under subsection (2) and, subject to subsection (9), such extended permit shall continue to be valid on the terms and conditions as originally issued.

(9) The Director of Parks may, as a condition of issuing a permit under subsection (2) or extension of a permit under subsection (8), require that the permit holder

(a) within a time provided in the permit or extension, make the necessary additions or alterations to ensure that the portion of the park that is subject to the permit and all the structures or objects placed in a park pursuant to the permit to are fully accessible to all persons, and

(b) provide confirmation, in the form acceptable to the Director of Parks, from an appropriate professional that the portion of the park that is subject to the permit and all structures or objects placed in a park pursuant to the permit are safe and suitable for their intended use as authorized under the permit.

(10) Unless a permit holder, within 14 days of receiving a request from the Director of Parks, provides confirmation, in a form acceptable to the Director of Parks, from an appropriate professional that the portion of the park that is subject to the permit and all structures or objects placed in a park pursuant to the permit are safe and suitable for their intended use as authorized under the permit, the permit is deemed to be cancelled and of no force and effect.

### **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) and the property owner must provide the City with an irrevocable undertaking to remove any construction or alteration authorized by the permit within six months such time as the Director of Planning considers appropriate in the circumstances and to restore the property to its current conditions.
- (4) The Director of Planning may, at any time, extend the time in the undertaking provided under subsection (3) if
  - (a) the date in section 13(2) is amended, and
  - (a)(b) the holder of the permit and the property owner provide a replacement irrevocable undertaking as required under subsection (3) with a new date acceptable to the Director of Planning.

#### **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

