



**Committee of the Whole Report
For the Meeting of September 22, 2022**

To: Committee of the Whole Date: September 9, 2022
From: Philip Bellefontaine, Director, Engineering and Public Works
Subject: Business Recovery from Pandemic Bylaw Extension

RECOMMENDATION

That Council direct the City Solicitor to bring forward amendments to the Business Recovery from Pandemic Bylaw (#21-095) to change the expiry date from October 31, 2022 to March 31, 2023.

EXECUTIVE SUMMARY

The Business Recovery from Pandemic Bylaw, and associated Build Back Victoria Program, is set to expire on October 31, 2022. Council's previous advocacy to the Province of BC was successful in having the Temporary Expanded Service Area (TESA) program continue until March 31, 2023. This report provides recommendations for an extension to the Business Recovery from Pandemic Bylaw to align with updated Provincial policy directions.

PURPOSE

The purpose of this report is to seek Council direction on the extension of the Business Recovery from Pandemic Bylaw.

BACKGROUND

The Build Back Victoria (BBV) program and associated Business Recovery from Pandemic Bylaw (#20-072) was introduced in June 2020. The program allowed businesses to temporarily expand their commercial activities into public spaces such as parks, sidewalks, streets, and boulevards to respond to public health requirements associated with COVID-19. The Bylaw also allowed staff to grant delegated development permits to expedite temporary outdoor commercial uses on private property.

In April 2021, staff provided Council with an update on the BBV program and shared outcomes of the public feedback process. More than 780 online surveys were completed and 80% of respondents indicated they were satisfied with the BBV program. Council directed staff to extend the Bylaw until October 31, 2021 in order to support continued economic recovery.

The goal of the BBV Program has been to provide a nimble, affordable, and flexible permitting process to support economic recovery for businesses by allowing them to operate in public spaces across the city. On October 14, 2021 Council approved a further extension of the Business Recovery from Pandemic Bylaw (#21-095) and associated BBV program until October 31, 2022,

with the caveat that no new applications associated with liquor applications would be considered beyond October 31, 2021.

Alongside this decision, Council also voted to:

- Write to the Province of BC requesting an extension of the Temporary Extended Service Area (TESA) program.
- Update the Sidewalk Café Regulation Bylaw, rename it to the Patio Bylaw and streamline the application process for patio applications while providing for proper consideration of accessibility.
- Direct staff to prepare resource considerations to introduce a pilot and establish an on-going Mobile Vending Business Licence and associated program as part of the 2023 Financial Planning Process.

In April 2022, the Province of BC announced the continuation of the TESA program until March 31, 2023 to support businesses through their continued recovery. On that date, the licence for the service of alcohol in all temporary expanded areas will expire. This final extension provides licensees time to wind down their expanded service areas or apply to LCRB to make the expansion area permanent through their regular channels.

In order to respond to Council's direction, resources were allocated in the 2022 Financial Plan to support the creation of a new position focused on streetscape activities and programs, including patios. In late summer 2022 a staff person was hired within the Transportation Division for this purpose. A review of best practices in other municipalities has been initiated and an inter-departmental assessment of the existing Sidewalk Café Regulation Bylaw has been completed.

A new Patio Bylaw, which would be subject of a future staff report, is proposed to incorporate lessons learned from Build Back Victoria including safety, accessibility and fee equity along with an associated streamlined application process. The goal would be to seek the appropriate balance between recognizing the commercial aspirations of private enterprises to operate in the public right of way while ensuring that the other core public uses of the highway are reflected and protected.

As a part of the 2023 Financial Planning process, Council will also consider resource requirements for introducing a pilot and establishing an on-going Mobile Vending Business Licence program.

ISSUES & ANALYSIS

Without an extension to the Business Recovery from Pandemic Bylaw, all permits under the BBV program will expire at the end of October 2022.

There are currently 69 permits under the BBV program. Of these, 53 are for outdoor patios on public land and 8 are for patios located on private land. There has been limited participation in the flex zones (4 permits) and mobile vending (4 permits) since October 2021. Temporary loading zones which were initiated and permitted under BBV to support take out / delivery needs have all been reviewed and staff have installed new 20-minute meter and commercial loading zones to respond to on-going demand where needed.

With the anticipated conclusion of the BBV patio program, some businesses have prepared applications for licences under the current Sidewalk Café Bylaw. Many of these existing patios have deficiencies or features which do not align with the Sidewalk Café bylaw and may also continue to be in a challenge under a future Patio Bylaw. Examples include patios which extend beyond the business frontage, presence of overhead structures / heating equipment, and patio materials which are not easily moveable for fire service or underground utility maintenance.

Staff plan to bring forward a new bylaw and associated program to replace the Sidewalk Café Bylaw early in 2023. It is anticipated that this will include recommendations on design guidance, the application process, and a mix of program options based on best practices and feedback from participants such as small “informal” patios, seasonal patios, and patios which do not serve alcohol. An extension to the Business Recovery from Pandemic Bylaw would enable those businesses with BBV permits for patios to continue to operate while staff prepare the new Bylaws and associated guidance. All BBV Patios which are not approved by the end of March 2023 through either the current Sidewalk Café Bylaw or future Patio Bylaw, would need to be removed at the business’s expense. There may also be situations whereby a patio is approved by the City however, approvals from the Province of BC related to liquor licences may be delayed.

While the Mobile Vending and Flex Zone elements of BBV now represent a very small fraction of permits an extension of the Business Recovery from Pandemic Bylaw would also allow permits to continue through to March 31, 2023. For mobile vending, should Council approve resources and direct staff to introduce a pilot project as part of the 2023 financial plan, a program could be in place for summer 2024.

OPTIONS AND IMPACTS

Option 1: Direct the City Solicitor to bring forward amendments to the Business Recovery from Pandemic Bylaw (#21-095) to change the expiry date from October 31, 2022 to March 31, 2023.

Under this option, BBV permit holders would be permitted to continue operating patios on public and private land until March 2023. This would allow participants to either apply to the Sidewalk Café Licencing Program or under a new Patio bylaw, anticipated to be brought forward for Council's consideration in January 2023. This would enable those businesses who registered prior to October 31, 2021 for a permanent extended liquor servicing area to remain in the que for Provincial review.

Under this proposed extension, all existing active patio permits on public and private space would be rolled over until March 31, 2023. The limited mobile vending and flex space programs under BBV would also continue until March 31, 2023.

Option 2: Do nothing and maintain the existing expiry date of October 31, 2022 within the Business Recovery from Pandemic Bylaw (#21-095).

Under this option, any permit holder who has not been granted a Sidewalk Café Licence by October 31, 2022 would be required to remove all materials from the public Right of Way. Similarly, any permits granted by the Director of Sustainable Planning and Community Development for outdoor space on private land will be required to restore the property to current conditions per existing Letters of Undertaking. A development permit or delegated development may be required for maintaining permanent patios on private land.

Accessibility Statement

The BBV Program includes required accessible design features, such as accessible ramps and patio widths, cane detectable physical barriers on sidewalk edge, contrasting colours of materials, and firm, stable and slip-resistant surfaces. Staff also continue to recommend that businesses speak with their patrons who have a disability and disability service organizations to see what other accommodations might be suitable for their specific location and business service. Any new patio program, per Council's previous direction, would incorporate mandatory accessibility requirements.

2019-2022 Strategic Plan

In July 2021, Council passed a motion to "extend and optimize the 'Build Back Victoria' patio program" as a 2021 Strategic Plan action item and "Make the Build Back Victoria patio program permanent" as a 2022 Strategic Plan action item.

Impacts to Financial Plan

The BBV program was designed, implemented and managed using existing staff and budget. In 2022 Council allocated new resources to support on-going delivery of programs which deliver streetscape animation and regulate the corporate use of public space. A new staff person was hired in late summer 2022 and work is underway to develop a new Patio Bylaw and associated program.

CONCLUSION

The BBV program and associated Business Recovery from Pandemic Bylaw were introduced in June 2020 and are set to expire on October 31, 2022. The program was created to allow businesses to expand their operating capacity quickly and temporarily into public spaces including streets and parks to respond to public health requirements associated with COVID-19.

The provincial Liquor and Cannabis Regulation Branch's Temporary Expanded Services Area (TESA) program which granted expedited approval for temporary expansions to licenced service areas during the pandemic has been extended until March 31, 2023. Staff are recommending extending the Business Recovery from Pandemic Bylaw to expire on March 31, 2023 to align with this decision.

Respectfully submitted,

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Report accepted and recommended by the City Manager.