

BACKGROUND

The City of Victoria owns and manages a wide variety of public spaces, including roads, sidewalks, parks, squares, and other green spaces. The stewardship of public spaces is a core responsibility of a municipality, as outlined in the Community Charter. As valuable public assets, these spaces must be managed in a manner that reflects their value to the public. Generally, these spaces are open to all citizens and commercial uses are not permitted. However, the City may allow short and long-term exclusive use to support priorities such as filming, special events, outdoor markets, and outdoor patios, under authority delegated to staff.

Commercial use programs, such as outdoor patios and café spaces, can help support streetscape vibrancy and animation while ensuring the City is also financially compensated for semi-private uses. In Victoria, outdoor patios support objectives such as placemaking and economic development and contribute to a dynamic urban environment. Patios can also support increased activity and “eyes on the street,” creating a greater sense of safety and community.

For several years, the City has managed a program to license the use of public space for outdoor cafes and patios. The Sidewalk Café Bylaw was first developed in the 1980s, revised in 1991, 2002 and then most recently updated in 2016 (Bylaw #16-038, Appendix A) along with associated design guidelines (Appendix B). Prior to 2020, a total of 78 businesses were approved for annual licenses to use public space. Typically, there were an average of four new patio applications each year between 2016 and 2020.

With the onset of the COVID-19 pandemic in 2020, the City launched the Build Back Victoria (BBV) program and the associated Business Recovery from Pandemic Bylaw (Appendix C). The BBV program was based upon existing bylaws, including the Sidewalk Café Bylaw, and supported a wide range of businesses to temporarily expand commercial activities into spaces such as parks, sidewalks, streets, and boulevards to respond to public health requirements and support recovery efforts.

In 2021, Council directed staff to update the Sidewalk Café Bylaw to integrate lessons learned from Build Back Victoria (including safety measures, updated accessibility requirements on / adjacent to patios, and inspection programs), re-name the bylaw, and consider changes which would help to modernize and streamline the application process for businesses.

ISSUES & ANALYSIS

The Business Recovery from Pandemic Bylaw is in effect until March 31, 2023. On that date, all associated BBV permits will expire, along with approvals by the Province of BC to serve alcohol under the Temporary Expanded Service Area program.

For outdoor patios, BBV provided a nimble, affordable, and flexible permitting process to support economic recovery and to support increased demand for outdoor dining. The BBV program was free to participate in and, while temporary in nature, also included mandatory safety and accessibility features. The associated application and permitting processes were expedited and the City relied heavily on a “stewardship” model for businesses to comply with permit terms and program guidelines (Appendix D). While this approach was successful, it also resulted in some inconsistencies with certain aspects such as design, aesthetics, and the amount of public space allocated to commercial use.

In the 2022 Financial Plan, the City allocated additional resources to support the increased demand for streetscape activities including patios. Council also directed staff to update the

Sidewalk Café Regulation Bylaw to integrate lessons learned from BBV. During summer 2022, staff conducted a scan of similar regulations and leading practices in municipal bylaws, fees, and patio programs. Technical input was also gathered from several departments involved in patio approval and permitting processes.

A comprehensive review was conducted of all remaining BBV permit holders in fall 2022. As of November 15, 2022, 18 temporary patios were removed, and 36 permits are anticipated to remain in effect until March 31, 2023. Of the 36 existing permits, 9 have submitted applications for consideration of annual licenses under the current Sidewalk Café Bylaw.

While feedback from residents, advocates and the business community over the past two years has been overwhelmingly positive, there are important lessons learned which may be integrated into an updated program. An effective and modernized program should deliver timely customer service and application reviews, as well as standards to ensure quality, equity, safety, and accessibility.

Prior to drafting the new bylaw, staff have prepared a set of goals and principles for Council's consideration. Staff have also compiled a list of potential bylaw and program components which are based on the existing Sidewalk Café Bylaw and lessons learned from BBV. To complete this work prior to the completion of the BBV program and ahead of the 2023 patio season, staff are completing the technical analysis while concurrently drafting language and program components.

Goals:

1. City streetscapes and public spaces are enhanced through the patio program.
2. Patios are safe, accessible and maintain functional access to public infrastructure and spaces.
3. Licence application and approval services are fair, flexible, and timely.

Principles:

1. ***Sense of Community:*** Patios should increase the vibrancy of the streetscape and strengthen community connections by facilitating social interaction among local businesses, patrons, neighbours, and visitors.
2. ***Ease of Movement:*** Locations and designs of patios should ensure that the mobility of people walking and rolling along sidewalks and surrounding pathways are not negatively impacted. Patios should not unduly disrupt transit, loading and other mobility needs on a streetscape.
3. ***Safety:*** Patio designs and operations should prioritize public safety and allow for emergency response.
4. ***Inclusion:*** Patio designs should support an open, accessible, and welcoming environment that encourages a diversity of people to use the space together.
5. ***Neighbourhood Character:*** Patios should enhance, respect, and celebrate the unique character of the surrounding buildings and neighbourhood.
6. ***Flexibility:*** Patios should be designed and implemented in such a way that they can be modified as required to respond to business needs along with changing mobility requirements and maintenance of the street right-of-way.

7. **Recognition of Value:** Licence fees should be applied in a fair, defensible, and balanced manner that encourages business development while compensating the City for private use of public lands. Private economic opportunities should be balanced with the protection of public space for the broader enjoyment of the public.

Bylaw & Program Components:

At a more granular level, the future Patio Bylaw and program will address topics such as the types and location of patios, fees, processes, as well as mandatory, recommended, and prohibited elements. Specific examples include:

- Types of Patios: options for seasonal, annual, or event-based patios.
- Locations of Patios: options for patios on sidewalks, curbside and within hardscaped boulevards, and select plazas, parks, and pathways.
- Processes: inclusion of pre-application meetings, site inspection processes, transitional provisions for existing licences, city-initiated removal requirements, fines and licence cancellation terms.
- Fee Structures: application fees and patio rates that reflect fair market value of patio spaces based on standard market factors (e.g., location, size, seasonality). Fees for more simple 'daily setup' patios could be different than semi-permanent patios, as well as higher fees for sites which support alcohol sales.
- Mandatory elements: requirements for comprehensive safety measures, accessibility accommodations, insurance, consistent design elements, service hours, fencing treatments, weather protection treatments, portable heater storage, and clearance / access to public infrastructure.
- Recommended elements: suggested aesthetic treatments and furnishings including prefabricated options referenced from other documents such as the City's Placemaking Tool Kit.
- Prohibitions: restrictions on enclosed patios, cooking / open fires, amplified music, and sound, third party advertising, overhead electrical connections, and changes to approved occupant loading.

The City has collected substantive feedback from existing sidewalk café license holders, BBV permit holders and community partners, such as the Downtown Victoria Business Association over the past two years. In spring 2021, more than 780 online surveys were completed with 80% of respondents indicating they were satisfied with the BBV program. Staff have also reviewed bylaws, fees, and programs in several other North American jurisdictions. Prior to returning to Council with a proposed bylaw, the City will invite any final comments and input on the goals, principles and components from community associations, the City's Accessibility Advisory Committee, Downtown Victoria Business Association, the Greater Victoria Chamber of Commerce, and the BC Food & Restaurant Association.

OPTIONS & IMPACTS

Option 1 – That Council approve the proposed goals, principles, and core components described within this report to inform the development of a new Patio Bylaw and associated program (Recommended).

Under this option, a new bylaw and associated program will be drafted and presented to Council in spring 2023. Several elements of the existing bylaw and design guidelines will be transferred into a new regulation with strengthened requirements on accessibility, fee equity and safety. Similar to Build Back Victoria, a user-friendly guide will be produced to help business participants understand options, required steps and documentation requirements. A modernized program and associated application process will be introduced to provide diverse participation options with streamlined elements wherever possible.

Option 2 – Do not pursue the development of a new Patio Bylaw.

Under this option, the Build Back Victoria Program will end on March 31, 2023, and any new patio application will be considered and regulated under the current Sidewalk Café Bylaw (#16-038) with existing fees and requirements. The existing limitations of the Sidewalk Café include lack of permit options, outdated fee structures, minimum patio accessibility requirements, and limited license cancellation terms.

Impacts to Financial Plan

Funding was allocated in 2022 to support the development of a new patio program along with other streetscape enhancement initiatives. Updated patio rates that are proposed as a part of a new bylaw will be incorporated into future projected revenues within the annual financial plan. The City will continue to review resource requirements which will support the on-going application, technical review, and enforcement processes.

Official Community Plan Consistency Statement

The proposed updates are consistent with Goals #7C, 8A, 11A, 14A, 15C, 15G in the Official Community Plan.

Accessibility Impact statement

Mandatory requirements to support access and prevent barriers for people with disabilities will be included in any new Patio Bylaw. Updates to the bylaw will achieve one of the actions identified in the City's Short-Term Action plan associated with the Accessibility Framework. Staff will also continue to recommend that businesses speak with their patrons and disability service organizations when planning a patio application to learn how best to create a welcoming and inclusive environment.

CONCLUSIONS

Outdoor patio spaces support streetscape vibrancy and animation in the downtown core and across the municipality. In 2021, Council directed staff to update the Sidewalk Café Bylaw to integrate lessons learned from Build Back Victoria (including safety measures, updated accessibility requirements on / adjacent to patios and associated inspection programs), re-name

the bylaw, and consider changes which would help to modernize and streamline the application process for businesses.

The proposed approach described within this report is intended to guide the creation of a new Patio Bylaw and program. If approved, these would be the subject of a future staff report for Council's consideration.

Respectfully submitted,

Sarah Webb
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Report accepted and recommended by the City Manager.

List of Attachments:

Appendix A: Sidewalk Café Bylaw No. 16-038

Appendix B: Sidewalk Café Guidelines

Appendix C: Business Recovery from the Pandemic Bylaw and Amendments No 1 and 2

Appendix D: Build Back Victoria Guidelines