

PATIO REGULATION BYLAW, AMENDMENT BYLAW (NO. 2)

A BYLAW OF THE CITY OF VICTORIA

The purpose of this Bylaw is to amend the *Patio Regulation Bylaw* to:

1. Amend the regulations regarding allowable height of patio fencing, overhead coverings, security gates, location of patio areas and the circumstances in which patio areas may temporarily change;
2. Insert reference to and language that is consistent with the new *Administration of Property in City Custody Bylaw*;
3. Make housekeeping amendments; and
4. Make consequential amendments to each of the *Ticket Bylaw* and the *Bylaw Notice Adjudication Bylaw*.

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Under its statutory powers, including section 14 of the *Victoria City Act, 1919* and sections 8(3), 15, 19, 35, 36, 38, 46, 154 and 194 of the *Community Charter*, the Council of the Corporation of the City of Victoria in an open meeting assembled enacts the following provisions:

Title

- 1 This Bylaw may be cited as the “Patio Regulation Bylaw, Amendment Bylaw (No. 2)”.

Amendments

- 2 Bylaw No. 25-035, the *Patio Regulation Bylaw*, is amended in section 2 as follows:
 - (a) in the definition of “accessibility feature” by replacing the upper case “D” with a lower case “d” in the word “Design”,
 - (b) in the definition of “application” by inserting the phrase “an application to amend a licence,” immediately after the phrase “means an application for a licence,”,
 - (c) in the definition of “complex patio” by striking out “or “objects” and substituting “,other property or things”,
 - (d) by inserting the following new definition directly below the definition of “enclosed patio”:

“expanded footprint” means a patio area or portion of a patio area that is licenced to a nearby food vending establishment, but which is not adjacent to or in front of that food vending establishment;”,

- (e) in the definition of “licensee” by inserting the following immediately after “issued under this Bylaw”

“or the former holder of a licence issued under this Bylaw as the context requires”,

- (f) in the definition of “sidewalk” by replacing the paragraph identifiers “(c)” through “(h)” with paragraph identifiers “(a)” through “(f)”,

- (g) in the definition of “simple patio” by striking out “and objects” and substituting “, other moveable property or things”,

- (h) by repealing the definition of “zoning bylaw”.

- 3 The Patio Regulation Bylaw is further amended in section 3, by inserting the following directly after “keep”:

“or cause or permit to be placed, constructed or kept”.

- 4 The Patio Regulation Bylaw is further amended in section 4 by repealing subsection (1)(a) and substituting the following:

“(a) that owner or occupant is lawfully operating a food vending establishment at the property that is adjacent to and in front of the patio area, or has obtained the approval of the Director under 6(5) to operate an expanded footprint;” .

- 5 The Patio Regulation Bylaw is further amended at section 5 by striking out “and licences” and adding “, licences, and renewal applications.”.

- 6 The Patio Regulation Bylaw is further amended at section 6 as follows:

- (a) in paragraph (1)(a)(i) by inserting “required” directly after “fees”,

- (b) in paragraph (1)(a)(iv) by striking out “section 6(3)” and substituting “subsection (3)”,

- (c) in paragraph 1(a)(vi) by striking out “9(1)(p)” and substituting “9(1)(s)”,

- (d) in paragraph (1)(a)(vi) by inserting “any or” immediately before “all structures, furniture and objects”,

- (e) paragraph (1)(b)(x) is repealed and the following substituted:

“contain a roof or any form of overhead covering other than those described in subsection (7);”,

- (f) paragraph (1)(b)(xii) is repealed and the following substituted:
- “contain a fence other than a fence described in subsection (6);”,
- (g) by inserting a new paragraph (1)(b)(xiii) as follows:
- “(xiii) contain a security gate that is higher than the highest point of the fence or that is not, in the opinion of the Director, integrated with the fence design and materials;”,
- (h) by re-numbering current paragraphs (1)(b)(xiii) through (1)(b)(xvi) as (1)(b)(xiv) through (1)(b)(xvii),
- (i) by inserting the following new subsections (5) through (7) immediately below subsection (4) as follows:
- “(5) The Director may issue a licence for a patio area that includes an expanded footprint in the following locations if, in the Director’s opinion, the expanded footprint would encourage street or other public place animation, support seasonal activities, or otherwise be in the public interest:
- (a) Centennial Square;
- (b) Bastion Square;
- (c) Fernwood Square, shown on Schedule A;
- (d) Millie’s Lane, outlined on Schedule A;
- (e) West Song Walkway, shown Schedule A; and
- (f) a portion of a street subject to an order under section 9(r) or 9(s) of the Streets and Traffic Bylaw.
- (6) Fencing at a patio area may be:
- (a) Constructed of transparent material up to a maximum height of 1.6 meters;
- (b) Constructed of a solid or opaque material up to a maximum height of:
- (i) 1.6 metres for up to 25% of its length, and
- (ii) 1.0 metres for at least 75% of its length.
- (7) Allowable overhead covering for a patio is limited to the following:
- (a) structures that are the subject of a separate authorization from the City, which authorization must be produced by the

applicant if it is not registered under the *Land Title Act*, R.S.B.C. 1996, c. 250;

- (b) free standing weather protection units which:
 - (i) are pre-fabricated;
 - (ii) conform with CAN/ULC – S109-03 “Flame Tests of Flame-Resistant Fabrics and Films”;
 - (iii) can be immediately removed in the event of an emergency; and
 - (iv) can be closed or removed when the patio is not in operation.”.

7 The Patio Regulation Bylaw is further amended at section 7 as follows:

- (a) in subsection (1) by inserting the following directly after “section 14(2)”:
 - “or section 14(3)” ,
- (b) in subsection (2) by striking out “subsections” and substituting “sections”.

8 The Patio Regulation Bylaw is further amended at section 8(3) as follows:

- (a) in subsection (3)(a) by deleting the phrase “16(1)(f)(iii) to (vi) or 16(1)(g)” and replacing it with the phrase “16(1)(h)(iii) to (vi) or 16(1)(i)”,
- (b) in subsection (3)(b) by striking out “section” and substituting “subsection”.

9 The Patio Regulation Bylaw is further amended at section 9 as follows:

- (a) in subsection (1) by inserting a new subsection (1)(f) directly after subsection (1)(e) as follows:
 - “(f) the licensee must ,when notified in writing sent by the Director to the licensee at least 28 days in advance of an identified public event approved by the City through a special event permit, remove the whole or part of the patio identified by the Director for the duration specified by the Director as required to accommodate that public event;”,
- (b) by re-lettering current subsections (1)(f) through (1)(k) as subsections (1)(g) through (1)(l),
- (c) in subsection 1(g) by adding “or (f)” directly after “subsection (1)(e)”,
- (d) in subsection (1)(i) by deleting “(1)(g)” and replacing it with “(1)(h)”,

- (e) in subsection (l) by inserting the following directly after “or other heating appliances, then the”:
- “lighting, propane tanks portable heaters or other heating appliances must be certified by the Canadian Standards Association, and the” ,
- (f) by inserting new subsections (1)(m) and (1)(n) directly after subsection (1)(l) as follows:
- “(m) if the licence permits the use of a free standing weather protection unit or units, then the free standing weather protection unit or units:
- (i) must be closed or removed when the patio is not in operation;
- (ii) must remain entirely within the patio area;
- (iii) must be stored, installed and operated in accordance with the manufacturer’s instructions, all Provincial safety regulations, and any applicable standards; and
- (iv) must not present a risk of harm to the health or safety of the public;
- (n) if the licence permits the use of a security gate, then the security gate must not prevent egress from the patio when the patio is in operation;” ,
- (g) by re-lettering current subsections (1)(l) through (1)(t) as subsections (1)(o) through (1)(w),
- (h) in subsection (1)(o) by striking out “objects, furnishings and personal property” and substituting “other property or things” ,
- (i) subsections (1)(p) and 1(q) are repealed and the following substituted:
- “(p) where a licensee or former licensee neglects, refuses or fails to cease occupation of the sidewalk or roadside or to restore the sidewalk or roadside as required pursuant to this Bylaw, or fails to do so within the time specified, section 24 applies and the Director may additionally cause the sidewalk or roadside to be restored to a safe and proper condition and may charge the costs of such restoration to the licensee;
- (q) where the City has incurred costs as specified in paragraphs (h),(i) or (p), an invoice of the City setting out those costs shall be final and shall be due and payable within five days of the City sending the invoice to the licensee, and the City may recover any such costs from the licensee in any Court of competent jurisdiction as a debt owing by the licensee to the City;” ,

- (j) in subsection (1)(u) by deleting the phrase “entity or”.
- 10 The Patio Regulation Bylaw is further amended at section 10(1) as follows:
- (a) in subsection (1)(n) by deleting the word “and”,
- (b) in subsection (1)(m) by inserting the word “and” directly after the semi-colon,
- (c) inserting a new subsection (1)(p) directly after subsection (1)(o) as follows:
- “(p) temporary removal or alteration of patio area during a regularly scheduled public event authorized by the City through a special event permit.”.
- 11 The Patio Regulation Bylaw is further amended at section 12 as follows:
- (a) in subsection (1) by striking out “contains” and replacing it with “permits”,
- (b) in subsection (2) by striking out “semi-permanent” and striking out “furnishings and personal property” and inserting the following directly after the word ‘structures’:
- “other property and things”,
- 12 The Patio Regulation Bylaw is further amended at section 14 as follows:
- (a) in subsection (2)(a) by striking out “section 14(1)” and substituting “subsection (1)”,
- (b) in subsection (2)(c) by striking out “subsections 14(2)” and substituting “paragraphs”.
- 13 The Patio Regulation Bylaw is further amended at section 15 as follows:
- (a) in subsection (1) by striking out “15(2)” and substituting “(2)”,
- (b) in subsection (1) by striking out “former”,
- (c) in subsection (2) by striking out “subsection” wherever it appears and substituting “section”,
- (d) in subsection (2) by striking out “16(1)(f)(i)” and substituting “16(1)(h)(i)”,
- (e) in subsection (2) by striking out “license” and substituting “licence”.
- 14 The Patio Regulation Bylaw is further amended at section 16 as follows:
- (a) in subsection (1)(a) by striking out “license” and substituting “licence”,

- (b) in subsection (1)(c) by inserting the following directly after “licence”:
 - “is issued”,
 - (c) in subsection(1)(d) by striking out “*Local Government Act*” and substituting “*Community Charter*”,
 - (d) by inserting the following new subsections (1)(e) and (1)(f) directly after subsection (1)(d):
 - “(e) the licensee has received a bylaw notice, within the preceding two years, for a contravention under a City bylaw in respect of the patio for which the licence was issued and for which an amount was due and payable to the City under the *Local Government Bylaw Notice Enforcement Act*;
 - (f) the licensee has received a bylaw notice, within the preceding two years, for a contravention under a City bylaw in respect of the patio for which the licence was issued and is deemed to have accepted liability for the contravention under the *Local Government Bylaw Notice Enforcement Act*,”
 - (e) by relettering current subsections (1)(e) through (1)(g) as subsections (1)(g) through (1)(i),
 - (f) in paragraph (1)(h)(iv) by striking out the semi-colon and replacing it with a comma,
 - (g) in subsection 16(7) by striking out “sections 16” and substituting “subsections”,
 - (h) in subsection 16(7) by striking out “section 16” and substituting “subsection”,
 - (i) in subsection 16(8) by striking out “section 16” and substituting “subsection”.
- 15 The Patio Regulation Bylaw is further amended in subsection 17(c) by striking out “upon renewal of a licence” and substituting “for any application for a renewal of an annual licence”.
- 16 The Patio Regulation Bylaw is further amended in subsection 18 by striking out “subsection” and replacing it with “section”.
- 17 Sections 19 and 20 are repealed and the following substituted:
- “19 If a provision of this Bylaw conflicts with the Parks Regulation Bylaw, this Bylaw prevails.
 - 20 If a provision of this Bylaw conflicts with the Streets and Traffic Bylaw, this Bylaw prevails.” .
- 18 Section 24 is repealed and the following substituted:

- “24 (1) Subject to subsection (2), the Director, a person authorized by the Director, or a bylaw officer may remove, seize, impound, dispose of or cause the removal, seizure, impoundment or disposal of any property or thing placed or left on a sidewalk or street in contravention of the provisions of this Bylaw or the terms and conditions of a licence, and any such property or thing will be dealt with in accordance with the Administration of Property in City Custody Bylaw.
- (2) Except in circumstances where, in the opinion of the Director, the property or thing presents a safety hazard or obstructs accessibility, the Director must provide written notice of an intended seizure, impoundment, removal or disposal of the property or thing under subsection (1) at least 48 hours in advance of the seizure, impoundment, removal or disposal of the property or thing:
- (a) to the owner of or the person responsible for placing or leaving the property or thing unlawfully on a sidewalk or street; or
 - (b) if the identity of the owner of or the person responsible for placing or leaving the property or thing unlawfully on a sidewalk or street is unknown to the Director, by posting on or adjacent to the property or thing a notice of the intended seizure, impoundment, removal, or disposal.
- (3) An action taken under this section does not preclude:
- (a) the prosecution of a person who contravenes a provision of this Bylaw; or
 - (b) the issuance of a bylaw notice or bylaw notices to a person who contravenes a provision of this Bylaw.” .

19 The Patio Regulation Bylaw is further amended in section 32 by striking out “license” and substituting “licence”.

20 The Patio Regulation Bylaw is further amended in section 33(3) by striking out “semi-permanent structures, furnishings, objects and personal property” and substituting “structures, other property, and things”.

21 The Patio Regulation Bylaw is further amended in Schedule B, section 4 by striking out “license” and substituting “licence”.

22 The Patio Regulation Bylaw is further amended by:

- (a) striking out “object” wherever it appears and substituting “thing”; and
- (b) striking out “objects” wherever it appears and substituting “things”.

Consequential Amendments

23 The Ticket Bylaw is amended at Schedule X.1 Patio Regulation Bylaw Offences and Fines:

(a) in Column 2 - Section by:

1. Striking out “9(1)(g)” and substituting “9(1)(h)”,
2. Striking out “9(1)(i)” and substituting “9(1)(j)”,
3. Striking out “9(1)(k)” and substituting “9(1)(l)”,

(b) by adding the following rows directly beneath the row that includes the following text at Column 1 – Offence “Unauthorized portable heater, heating appliance or propane tank”:

Unauthorized operation of free standing weather protection unit	9(1)(m)	\$500	\$400
Unauthorized free standing weather protection unit	9(1)(m)	\$500	\$400
Unauthorized operation of security gate	9(1)(n)	\$500	\$400

24 The Bylaw Notice Adjudication Bylaw is amended at Schedule X Patio Regulation Bylaw Contraventions and Penalties:

(a) in the column titled “Bylaw Section” by:

1. Striking “9(1)(g)” and substituting “9(1)(h)”,
2. Striking “9(1)(i)” and substituting “9(1)(j)”,
3. Striking “9(1)(k)” and substituting “9(1)(l)”,

(b) by adding the following rows directly beneath the row with “9(1)(l)” in the column titled “Bylaw Section”:

9(1)(m)	Unauthorized freestanding weather protection unit	500	125	125
9(1)(m)	Unauthorized operation of freestanding weather protection unit	500	125	125
9(1)(n)	Unauthorized operation of security gate	500	125	125

Commencement

25 This Bylaw comes into force on adoption.

READ A FIRST TIME the	7 th	day of	December	2023
READ A SECOND TIME the	7 th	day of	December	2023
READ A THIRD TIME the	7 th	day of	December	2023
ADOPTED on the		day of		2023

CITY CLERK

MAYOR