



Committee of the Whole Report For the Meeting of July 18, 2024

To: Committee of the Whole **Date:** July 2, 2024
From: Derrick Newman, Director – Parks, Recreation & Facilities
Peter Rantucci, Director – Strategic Real Estate
Subject: Amendment to Patio Regulation Bylaw No. 23-035

RECOMMENDATION

That Council:

1. direct staff to bring forward an amendment to the Patio Regulation Bylaw No. 23-035, that will add a portion of Mary Street Park to the class of public lands that may be licenced as a patio under that Bylaw, and address minor housekeeping issues; and
2. forward this motion to the July 18, 2024 daytime meeting of Council for consideration.

EXECUTIVE SUMMARY

The owner of Spinnaker’s Brewpub Inc. (“Spinnaker’s”) is seeking permission from the City to establish an outdoor patio in Mary Street Park, similar to the one they operated as part of the temporary Build Back Victoria program during the years 2020-2023.

Mary Street Park was designated parkland by bylaw in 1991 and as such, uses of this land are regulated by the Parks Regulation Bylaw. For the City to consider the Spinnaker’s patio request as part of the City’s Outdoor Patio license program, the Patio Regulation Bylaw No. 23-035 (the “Patio Regulation Bylaw”) must be amended to include the portion of Mary Street Park at 280 Catherine Street. Staff are also using this opportunity to make housekeeping updates to the Patio Regulation Bylaw, such as correcting formatting and punctuation.

Amending the Patio Regulation Bylaw for this request would support a small business and its post-pandemic recovery, an objective of the Build Back Victoria program. The proposal aligns with the Outdoor Patio license program’s guiding principles, including continued activation of nearby sidewalks, patios, and public space. The proposal would also expand food and beverage opportunities for those using the West Songhees walkway and increase the activation in this area of the park. Staff are not aware of any complaints or issues, either internal or from the public, stemming from the previous outdoor patio use at this location.

PURPOSE

The purpose of this report is to seek Council approval to amend the Patio Regulation Bylaw to include part of Mary Street Park for an outdoor patio operated by an adjacent business.

BACKGROUND

The Patio Regulation Bylaw was established in 2023 to replace the Sidewalk Cafes Regulation Bylaw as well as transition licenses for patios established under the Business Recovery for Pandemic Bylaw into a consistent program. The Patio Regulation Bylaw allows temporary outdoor patio opportunities on City-owned sidewalks, plazas, roadways, and parks. The Patio Regulation Bylaw only permits patios in select parks and plazas including Centennial Square, Bastion Square, Fernwood Square, part of Millie's Lane and West Songhees Walkway.

As part of the Build Back Victoria program, Spinnaker's obtained a patio license in 2020 for approximately 200m² of City-owned parkland within Mary Street Park at 280 Catherine Street (See Figure 1 in Schedule A). The Spinnaker's patio included six picnic tables, a server staging table, and a temporary split rail fence that was erected as per provincial liquor licensing requirements. With the program's conclusion in December 2023, Spinnaker's was required to remove their patio improvements as the Patio Regulation Bylaw did not include Mary Street Park as a permitted location. The owner of Spinnaker's has approached the City with a request to re-establishing a patio area.

ISSUES & ANALYSIS

Mary Street Park, located at 250-280 Catherine Street, was reserved as parkland under Section 30 of the *Community Charter* by Park Reservation (Lime Bay and Foot of Mary Street) Bylaw 91-8 in 1991, for pleasure and recreation of the public.

The Parks Regulation Bylaw (under Section 14(7)) restricts the placement of any property or thing that will occupy the park, which includes the chattels proposed by Spinnaker's for their patio. This restriction prevents the City from issuing Spinnaker's a license of occupation within Mary Street Park as they intend to install temporary improvements. Section 14(8) states that Section 14(7) does not apply if a person is authorized to occupy part of a park pursuant to the Parks Regulation Bylaw or another bylaw. In this instance, an amendment to the Patio Regulation Bylaw to include the 280 Catherine Street component of Mary Street Park would allow Spinnaker's to apply for a license under the existing Outdoor Patio Program. Spinnaker's would then be required to adhere to the same requirements (including fee structure, and design guidelines) as other patio licenses under that program.

The proposed Patio Regulation Bylaw amendment would also update the fee schedule to extend the 'Fee Area 3' zone that lies just north of Mary Street Park. This zone currently only extends to the parking lot in front of the Spinnaker's building. Extending the zone area into Mary Street Park would make the fee rate for this patio license consistent with the nearby license for Boom & Batten restaurant. Boom & Batten is the only other commercial patio operating within a park and is located along the West Songhees Walkway.

The patio area requested by Spinnaker's is contained solely within parcel 280 Catherine Street (See Figure 2 in Schedule A) and as there are no other similar establishments fronting onto Mary Street Park, this parcel is solely being proposed for inclusion in the Patio Regulation Bylaw. City staff are not aware of any other formal requests at this time for further commercial outdoor patios within designated parklands.

Beyond the inclusion of 280 Catherine Street into the Patio Regulation Bylaw, the City Solicitor is requesting minor housekeeping amendments, to correct formatting and punctuation.

OPTIONS & IMPACTS

Option 1 – Direct staff to bring forward an amendment to the Patio Regulation Bylaw 23-035 (RECOMMENDED)

This option would direct staff to bring forward an amendment to the Patio Regulation Bylaw No. 23-035 generally in accordance with the amendment drafted in Schedule B. If the amendment is adopted at a subsequent Council meeting, Spinnaker's would be requested to submit an application to the Outdoor Patio Program for review and approval.

Option 2 – Deny the proposed amendment to the Patio Regulation Bylaw

This option would maintain the Patio Regulation Bylaw as currently drafted and Spinnaker's would be unable to establish a patio in Mary Street Park.

ALIGNMENT WITH CITY OBJECTIVES

Accessibility Impact Statement

If the Patio Regulation Bylaw is amended, Spinnaker's would be required to adhere to the accessibility guidelines present in the Outdoor Patio Program. Part of the Outdoor Patio Program requirements will involve the City working with Spinnaker's to explore options to allow for acceptable wheelchair accessibility, including reviewing travelled surfaces, and seating options.

2023 – 2026 Strategic Plan

The recommendation is consistent with:

- Support small businesses and the visitor economy, and work to strengthen and add vitality to the downtown core.
- Activate streets, sidewalks, patios and public space, and support business initiatives and ideas.

Impacts to Financial Plan

No financial impact is anticipated directly from amending the Patio Regulation Bylaw; however, if Spinnaker's obtains a patio license, additional revenue would be generated by the City based on the fee schedule for the proposed patio type. Assuming Spinnaker's previous patio size is applied for, estimates of the annual revenue from issuing a patio licence in this location range between \$4,863 to \$9,727 depending on whether a semi-annual or annual patio licence is applied for.

Official Community Plan Consistency Statement

No changes in land use are contemplated.

CONCLUSIONS

Amending the Patio Regulation Bylaw 23-035 would enable Spinnaker's to apply for a patio license next to the restaurant, in Mary Street Park. The amendment also provides an opportunity to address, at the same time, minor housekeeping edits to the existing Patio Regulation Bylaw.

Respectfully submitted,

Peter Rantucci
Director, Strategic Real Estate

Derrick Newman
Director, Parks, Recreation & Facilities

Report accepted and recommended by the City Manager

List of Attachments:

Schedule A – Aerial Imagery
Schedule B – Draft Patio Regulation Bylaw Amendment