

## **REPORT**

### ***Office of the Chief Administrative Officer***

**To:** Mayor Cote and Members of Regular Council  
**Date:** March 7, 2022

**From:** Lisa Spitale  
Chief Administrative Officer  
**File:** Doc 2031949

**Item #:** 2022-168

**Subject: Patio Program Update**

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#### **RECOMMENDATION**

THAT Council consider *Zoning Amendment Bylaw No. 8317, 2022* for Two Readings and waive the holding of a Public Hearing as the Bylaw is consistent with the City's Official Community Plan;

THAT Council repeal Sidewalk Cafe Encroachment Bylaw No. 6370, 1997;

THAT Council give Three Readings to *Street and Sidewalk Patio Bylaw No. 8318, 2022*

#### **PURPOSE**

To provide an update on changes to various regulations to support an updated approach to patios for use by private businesses and seek endorsement on the fee structure for the various types of patios.

#### **SUMMARY**

Since May 2020, the City has acted responsively to business and consumer demand for temporary patios, allowing for temporary seating structures to be placed on City property, waiving associated fees, and relaxing certain bylaw and design guidelines. Based on the positive response by businesses and patio users, staff are recommending a new bylaw for regulating patios that would allow for seasonal and curbside patios on City property, as well a provision in the Zoning Bylaw for patio space using parking or loading stalls on private property. The proposed patio bylaw also incorporates a new fee structure for patios on City property.

## **BACKGROUND**

In May 2020, in response to public health orders requiring reduced occupancy and the need for social distancing, Council endorsed a series of bylaw and policy changes that permitted local businesses to expand their operations onto sidewalks and other public rights of way, including on-street parking spaces and other road space. The program has enabled participating businesses to meet physical distancing requirements and adhere to public health guidelines, which reduced their operating capacity and required new ways to address occupancy shortfall, and consumer preferences, while remaining in operation.

In May 2020, the Liquor and Cannabis Regulation Branch (LCRB) introduced Temporary Expanded Service Areas (TESAs) to allow for licensed establishments to extend their service areas to patios, and in reports to Council in September and November 2020, staff recommended further refinements to the interim patio program to continue to support businesses as winter approached, including allowing heating, waived fees and relaxed design guidelines.

In July 2021, the Province once again extended the TESA program and staff brought forward a report to support the City extending the program again with the same measures. At that time, based on feedback and learnings of the program from 2020-2021, staff also indicated they would work to refine the existing sidewalk café bylaw on a more permanent basis.

## **EXISTING POLICY AND PRACTICE**

*Sidewalk Cafe Encroachment Bylaw No. 6370, 1997:* This bylaw sets out the restrictions and regulations of private outdoor seating space (referred to as “sidewalk cafés”) in relation to traffic management, safety, proximity, and operating regulations. Attachment 1 includes Sidewalk Café Bylaw No. 6370, 1997.

*Patio Design Guidelines:* A document that outlined the design guidelines for the temporary program was developed in 2020 and updated in 2021 to allow for winterization methods. These guidelines were developed with input from staff in various City divisions including Engineering, Planning, Fire, Bylaws, and Economic Development. These guidelines will be reconsidered each year, to allow for shifting technologies or advancements in furnishings or heating devices, other City bylaws that may have an impact, and feedback from patio users and businesses.

## **ANALYSIS**

As the pandemic continues into 2022, Public Health Orders continue to be in place for businesses. Businesses have indicated their desire to make temporary patios permanent and patrons continue to indicate a preference for outdoor space.

### *Other Municipalities*

Several other municipalities are currently reviewing their temporary patio programs and staff between the various municipalities are in correspondence. To date, Vancouver has endorsed a new seasonal and annual patio program, however its guidelines are yet to be released. The City of Port Coquitlam has also moved to make its outdoor spaces program permanent.

### *Provincial Temporary Expanded Service Areas (TESAs)*

On May 22, 2020, the Province's Liquor and Cannabis Regulation Branch (LCRB) announced a new policy directive (known as Temporary Expanded Service Areas (TESAs)) that permitted food primary, liquor primary and manufacturing licensees to temporarily expand their service area footprint. This helped licensees increase their service area by allowing them to decrease the density of patrons in their establishments and to continue to serve patrons while complying with Provincial Health Officer orders and guidelines regarding physical distancing.

On June 15, 2021, the Province extended the TESA program until June 1, 2022. After this date, businesses will need to have approval (both municipal and Provincial) for continuing to operate their patio. In a recent meeting with Provincial staff, it was relayed that the Province has received few applications from businesses to continue their patios. Staff from various municipalities communicated that additional time was required to implement changes to, or to develop, patio programs. In follow up, a letter from UBCM is being drafted to the Province requesting an extension of the June 1, 2022 deadline.

### *Program Feedback*

Since temporary patios have been permitted, staff have monitored feedback from both residents and businesses. In general, comments have been positive, with some users citing an overall improvement to commercial districts and a general feeling that they add to the vibrancy of an area. Some users mentioned that the patio program allowed them to feel safe during the pandemic, and provided an opportunity to try a new business they may not have otherwise visited. Business owners have felt the program allowed them to continue operations by allowing them to expand and also attract customers. Only one establishment received complaints and that establishment was not permitted to continue its patio past October 31, 2021.

### *Proposed Patio Program Framework*

Staff have developed a framework that updates the City's pre-pandemic patio program, which includes year-round, seasonal, curbside and small patios (table and chairs with no liquor service). The introduction of a seasonal patio program (April 1 – October 31) expands the pre-pandemic patio approach while incorporating the successes of the temporary patio program, allowing for simplified design requirements to encourage timely installation for summer patios while meeting key safety and accessibility requirements. Given Metro Vancouver's climate, the summer months have a higher demand for patio use as we saw most patios were not used during the winter months.

Additionally, some businesses may wish to use a seasonal patio as a test case before committing to a more permanent year-round patio. Should operators desire a patio that is longer in duration than the seasonal term, or more complex design, they may apply for an annual patio permit, which will have a more detailed level of review reflecting the complexity of adding a permanent structure or additional capacity to public property.

A summary of the proposed program framework is included as Attachment 2.

Other Program Considerations:

- Seasonal patios: Seasonal patios would have a term from April 1 to October 31 and would be required to remove any structures or furniture for the winter months. Patios could be located along the sidewalk or on-street.
- Year-round patios: Year-round patios address patios on public property that are more complex in design, have more durable materials and are intended to be in place 365 days a year, whether or not they are operational. Patios could be located on the sidewalk or on-street. Curbside would be required to have a platform that brings the floor of the patio in line with surrounding curb height. Patios would be subject to annual review/inspection for compliance.
- Small patios: A new category for small sidewalk patios (e.g. table and chairs) not providing liquor service would allow businesses wanting to provide very simple outdoor space for their customers an option. As no liquor service would be provided, delineation (railing, etc.) is not required.
- Curbside patios: Curbside patios would be permitted as either a seasonal or year-round patio. Applicants proposing taking over parking would be required to provide a letter to adjacent businesses with intent and reasonable period to respond to City staff.
- Accessibility: Accessible patio design, including curb ramps, cane-detectable boundaries and accessible seating, would be required for all patios. Seasonal curbside patios would be encouraged to provide a deck platform, however may provide a ramp.
- Traffic management costs: During the pandemic the City paid for and installed any necessary traffic diversion or safety measures for curbside patios. The re-establishment of the patio program would see this cost become the responsibility of the applicant, estimated at \$250 for basic installations to \$500 if signage is required.
- Patio Design Guidelines: An information package with easy to follow instructions and illustrations will be developed to assist applicants through the application process. A centralized staff lead will accept applications.
- Liquor Services: Business approval for extending liquor service areas to outdoor patios requires Provincial approval from the Province's Liquor and Cannabis Regulation Branch. City staff are engaged with the Province on this process. For those patios that are a Liquor Primary (e.g. pub) or manufacturer with a lounge endorsement (e.g. brewery that also has on-site liquor service) community

comment would be required as part of Provincial liquor approval process. The City's patio bylaw includes a closing time of 10pm for liquor primaries, which are located in commercial areas, and 11pm for manufacturer's lounge endorsements, which are located in industrial areas.

- Fees: Fees for the year-round, seasonal and small patio options have been allocated in the proposed *Street and Sidewalk Patio Bylaw No. 8318, 2022*, as well as the addition of an application fee. The fees are intended to offset direct costs associated with delivering the program. In 2020/2021 Council directed staff to waive these fees in light of the pandemic and strain placed on local business. This fee waiver expires June 1, 2022 and staff recommend reinstating fees January 1, 2023. Moving forward, staff recommend an annual adjustment of fees with a review every five years.
  - *Application fee*: \$50
  - *Year round patio*: annual fee of \$2.50 for each square foot of sidewalk or street encroached upon
  - *Seasonal patio (April 1- October 31)*, based on the pro-rated annual fee rate
  - *Small patio* (table and chairs without liquor service), based on past fees for similar sized patios: \$30 per table and two chairs

#### *Privatization of Public Spaces*

Concerns about turning public spaces into private spaces that can only be accessed by those able to pay was raised during Vancouver's review of their patio program.

Through a balance of the use of public space – loading zones, parking, sufficient sidewalk space, and the (semi)temporary nature and design of the patios so they can be easily removed – staff will continue to review and monitor the program to balance demands on public space and benefits related to vibrancy and livability of commercial districts.

#### *Street and Sidewalk Patio Bylaw No. 8318, 2022*

Based on the framework of the proposed revised patio program, staff recommend repealing the City's existing Sidewalk Cafe Encroachment Bylaw No. 6370, 1997 and replacing it with Street and Sidewalk Patio Bylaw No. 8318, 2022. The new bylaw would allow for:

- modernization of some gendered phrases
- provide specificity in vocabulary (e.g.: replace "sidewalk café" with "patio")
- reference the proposed new patio typologies (seasonal, small and curbside patios) on City property
- incorporate fees for the new patio typologies

*Attachment 3* includes the proposed Street and Sidewalk Patio Bylaw No. 8318, 2022.

#### *Patios on Private Property*

During the temporary patio program an amendment to the Zoning Bylaw permitted the temporary conversion of two non-accessible parking stalls or a loading space, for patio use on private property. This temporary amendment expired January 31, 2022.

At the November 30, 2020 meeting Council raised the idea of permanently allowing parking stalls to patio use. Staff from Transportation and Planning support making this provision permanent, which aligns with the City's Climate Action goals and supporting vibrant, active streets and open space.

*Attachment 4* includes the proposed Zoning Amendment Bylaw No. 8317, 2022, which is recommended for First and Second Reading. It is also recommended the Public Hearing be waived as the Bylaw is consistent with the City's Official Community Plan. If approved, applicants would be able to use up to two parking spaces, provided they are not for accessible vehicles, or use a loading space, provided it can easily be disassembled to continue to provide loading access as required.

As with standard process, applicants would continue to be required to apply for a minor Development Permit, and Building Permit if necessary, for a patio on private property. For those patios that are a Liquor Primary (e.g. pub) or manufacturer with a lounge endorsement (e.g. brewery that also has on-site liquor service) community comment would be required as part of Provincial liquor approval process. Depending on the particular liquor license additional City fees may be required to cover the community comments costs, as well as any corresponding Provincial liquor license fees.

## **FINANCIAL IMPLICATIONS**

During the pandemic, demand for public space increased to support residents and businesses with social distancing requirements. In particular, the demand for on-street patio space required coordination between departments to understand potential transportation, safety, and sidewalk use impacts in addition to continued street use and construction coordination.

With the general success of the patio program, it is estimated that incremental City costs (additional staff time to review new patio applications) of \$17,630 may result in 2022. It is proposed that these incremental costs would be recovered in part through 2022 patio fee revenues, estimated at \$11,500. It is noted that staffing costs are largely incurred in the first year of a patio application and installation, and subsequent years have reduced staffing costs due to any patio review being already completed.

	<b>2022 Patio Program Incremental Impact</b>
<b>Direct Costs –</b> staffing	Assuming 10 of the 20 temporary patios wish to continue on, staffing costs to review new patio applications = \$17,630
<b>Revenues –</b> patio fees	\$11,500

It is also noted that it is difficult to accurately predict the generated revenue/potential loss across the City in the various commercial areas, given that a parker who finds a temporary patio occupying a street parking space can avail themselves of other available parking spaces in the area, both on-street or in public parking lots. As well,

any potential revenue loss from metered parking stalls should also be considered against the street activation benefits and commercial vibrancy that patios can provide.

A comparison of other municipalities' patio programs and their fees is included as Attachment 5.

## **CONSULTATION**

Members of the Economic Development Advisory Committee, the Culture and Economic Development Task Force, and the COVID-19 Business & Local Economy working group have been presented with a summary of the temporary patio program and have provided input on the evolution of the patio program, prior to the fee structure being set. All were supportive of the work.

## **INTERDEPARTMENTAL LIAISON**

Multiple departments have been consulted to implement these initiatives including the Office of the CAO; Engineering Services; Climate Action, Planning and Development; and Parks & Recreation, as well as the City's solicitor.

## **OPTIONS**

Four options are presented for Council's consideration:

1. THAT Council consider *Zoning Amendment Bylaw No. 8317, 2022* for Two Readings and waive the holding of a Public Hearing as the Bylaw is consistent with the City's Official Community Plan;
2. THAT Council repeal *Sidewalk Cafe Encroachment Bylaw No. 6370, 1997*;
3. THAT Council give Three Readings to *Street and Sidewalk Patio Bylaw No. 8318, 2022*;
4. THAT Council provide staff with alternate direction.

Staff recommend Option 1.

## **ATTACHMENTS**

Attachment 1: Sidewalk Café Bylaw No. 6370, 1997

Attachment 2: Proposed Patio Program Framework

Attachment 3: Street and Sidewalk Patio Bylaw No. 8318, 2022

Attachment 4: Zoning Amendment Bylaw No. 8317, 2022

Attachment 5: Municipal Comparison of Patio Fees

## **APPROVALS**

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