



REPORT

Report Date: September 8, 2021
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Meeting Date: September 22, 2021
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TO: Standing Committee on Policy and Strategic Priorities
FROM: General Manager, Engineering Services
SUBJECT: Making Patios a Part of Every Summer in Vancouver

RECOMMENDATION

- A. THAT Council approve, in principle, an amendment to the Street Vending By-law to include a definition of curbside patio and other related amendments as generally set out in Appendix "B";

FURTHER THAT the Director of Legal Services bring forward for enactment such by-law amendments as are necessary to implement the above.
- B. THAT Council direct staff to undertake a review of the patio program (annual and summer), including design guidelines and a fee review, and report back following a review of the summer permit season.
- C. THAT Council support in principle an incremental patio program budget of \$682,000 for additional operating costs associated with the summer patio program to be funded from patio fees and brought forward for consideration in the 2022 budget process.

REPORT SUMMARY

This report responds to Section E of the September 16, 2020, Motion of Council regarding Extending Pop-Up Patios This Fall and Winter and Making Pop-Up Patios a Part of Every Summer in Vancouver, which directed staff as follows:

E. THAT Council direct staff to report back on the results and learnings from the summer's Temporary Expedited Patio Program by the end of 2020 (including but not limited to info such as number and type of permits issued, response, challenges, the use of public and private space, accessibility considerations, etc.) as well as options for continuing a Pop-Up Summer Seasonal Patio Program annually.

COUNCIL AUTHORITY/PREVIOUS DECISIONS

Council has the authority to allow the private use of street space pursuant to section 289A of the *Vancouver Charter*. Council has exercised that authority through the *Street Vending By-law* and in particular Section 5 and Schedule A: Fees to allow for patios on public spaces.

On May 27, 2020, Council approved by-law amendments to temporarily waive all permit and application fees associated with temporary expansion and creation of patio spaces until October 31, 2020 and directed staff to bring forward for enactment such by-law amendments as were necessary to implement this approval.

On June 11, 2020, Council enacted the Temporary Patio and Street Vending Fees By-law to implement Council's resolution of May 27, 2020, to temporarily waive all permit and application fees associated with temporary expansion of patio spaces until October 31, 2020.

On September 16, 2020, Council passed a Motion entitled "Extending Pop-Up Patios This Fall and Winter and Making Pop-Up Patios a Part of Every Summer in Vancouver," which directed the City staff to build on the innovation of the Temporary Expedited Patio Program and move toward a more vibrant, people-focused City through continuing an annual summer patio program.

On October 20, 2020, Council enacted an extension of the Temporary Patio and Street Vending Fees By-law according to Option 2 as outlined in the Report dated September 28, 2020, entitled "Extension to the Temporary Patio Program Through COVID-19 Recovery," to temporarily waive all permit and application fees associated with temporary expansion of patio spaces until October 31, 2021.

On March 30, 2021, Council passed a Motion entitled Additional Emergency COVID-19 Measures that responded to provincial health orders announced March 29, 2021, to support the business community through a number of actions including waiving annual fees for regular patios in 2021 and on May 18, 2021, Council approved waiving annual fees of \$1.2 million for regular patios for 2021.

CITY MANAGER'S/GENERAL MANAGER'S COMMENTS

The City Manager recommends approval of the foregoing.

REPORT

Background/Context

In response to the pandemic, the City of Vancouver launched several programs to assist Vancouver residents and businesses with new physical distancing and capacity requirements. The programs used additional space on both private and public property to provide more room

for public seating through creation of plazas and parklets, extended outdoor dining areas, room for queuing, and quick opportunities for vehicle loading and pickup.

One program was the Temporary Expedited Patio Program (TEPP) — a flexible, innovative, and expedited permitting process for temporary patios, which included enabling patios for breweries and distilleries (liquor manufacturers), who were previously required to be wholly contained within an enclosed building. Through a large cross-departmental effort, staff created and launched TEPP in June 2020. TEPP provided a simple patio typology for businesses to allow for expedited review with no application or permit fees and no additional program costs, such as lost meter revenue or traffic management costs. The program provided flexibility for patios on private parking spaces, on street right-of-way and on streets typically prioritized for transit, goods and vehicle movement, and extension of liquor service areas in coordination with the Province.

In summer 2020, the TEPP program saw more than 400 temporary patios permits issued with nearly 700 temporary patios permits issued for summer 2021. This report provides details on TEPP, including activities in 2020, 2021 and proposed permanent programming.

TEPP Operations: Enabled by the Pandemic Context

For TEPP, the City created a clear framework for businesses to follow to expedite approvals and patio setup. The process included an easy-to-understand application process with excellent customer service while ensuring adherence to key public safety regulations and accessible design. The resulting program allowed staff to approve most patios on public property in two business days and on private property within five business days.

Key elements of TEPP included:

- A central application website and easy-to-understand application materials that guided applicants through the process
- Simplified patio typologies, which provided patio templates for applicants to use as the basis of their applications to enable an expedited review.
- Allowing use of a neighbouring business's frontage for a patio on a short-term basis
- Enabling of the curbside patio type which allowed applicants to put their patios in the road or in an on-street parking space. It included the use of the major road network and arterial streets, in which curbside uses are typically prioritized for transit, loading, goods and vehicle movements.
- Allowing patios on private parking spaces, when typically businesses are required to maintain a certain number of parking spots due to the Parking By-Law
- Allowing temporary patios for breweries and distilleries through Zoning and Development By-law amendments.
- Allowing extension of liquor service areas to outdoor patios due to Provincial liquor service relaxations, including temporarily allowing patios for liquor manufacturers until October 31, 2021 through Zoning and Development By-law amendments.
- Prioritization of TEPP implementation work by all affected departments.

Results and Lessons Learned

As described, TEPP uptake from local businesses has been very high, with over 400 patios enabled in summer 2020 and nearly 700 in summer 2021.

Season	Number of approved TEPP applications
2020 Summer (June 1 – Oct 31)	421 total 336 on public property 85 on private property
2020 Winter (Nov 1 – March 31)	212 total 108 on public property 104 (19 new) on private property
2021 Summer (April 1 – Oct 31)	692 total 516 on public property 176 (72 new) on private property

Perhaps not surprisingly with Vancouver's climate, the summer months have a much higher demand for patio applications. During the winter months many businesses choose not to renew their patio permit or use the patio. With the return of better weather, summer 2021 saw a 226% increase in permits issued. The addition of curbside patios has been quite a popular choice with businesses, and represent over 56% of TEPP permits issued this past summer.

Business Improvement Associations, the hospitality industry, and individual businesses played an instrumental role in the successful implementation of the program including providing feedback to staff and working with staff on some non-compliances.

Strategic Analysis

A framework for a permanent summer patio program

Staff have received feedback during the 2020 and 2021 implementation of TEPP, recognizing that further consultation would be required in 2022 with key internal and external stakeholders. In response to Council direction, City staff are proposing a summer patio program that adjusts its pre-pandemic patio approaches to incorporate the successes of TEPP, allowing for simplified patio typology to encourage quick application and installation for summer patios while meeting key safety, health, and accessibility requirements. Staff are proposing a summer patio program on private and public property that allows for:

- A recurring summer patio season from April 1 to October 31
- Flexibility for increased occupancy for this summer period
- The continued use of patios in roads or on-street parking spaces
- Outdoor patios for breweries and distilleries

In the proposed program, a central application website will continue to be used, with easy to understand application materials that guides applicants through the process. It is expected that application reviews by the City can be completed within weeks and can meet the summer season start on April 1, 2022¹, provided they conform to City designated simplified patio typologies and limit their occupancy numbers to the permitted summer expansion described below.

A key difference between TEPP and the proposed ongoing patio program is the need to review applications in the context of code requirements such as occupancy, access and egress. TEPP

¹ The permits enabled by this program are only those within the City jurisdiction regarding structural safety and accessibility. Permits required for business operation that are outside the City's jurisdiction will have an approval timeline dictated by their governing agency, such as liquor licenses from the Province's Liquor and Cannabis Regulation Branch.

patios were intended to enable more space to help with physical distancing during the pandemic—as a result permits were issued within existing restaurant occupant load limits and therefore did not require a building permit or fire occupancy review. However, outside of a pandemic context, restaurants may wish to increase their total number of patrons in the summer months, which creates an additional demand on washrooms, kitchens and exit facilities and requires additional review by Development, Buildings, and Licensing and Vancouver Fire and Rescue Service as well as provincial liquor licensing and health inspectors.

The summer patio program proposes a framework to enable a streamlined review and permitting for temporary changes to occupant load. Flexibility can be provided for summer patios on their occupant loads, with up to 20% of their interior occupant load, as calculated per the Building By-law, to be allowed to move from the indoor seating to the patio in this summer term. As well, in keeping with a 2017 Council motion, businesses who already have two compliant washrooms in their establishment can add up to 12 additional patio seats during the summer term without providing additional washroom facilities. The time limit of April 1 to October 31 enables staff to allow occupant load changes on a temporary basis.

There are some areas where flexibility was offered in the context of the pandemic that is no longer considered advisable to extend. There are some limited food establishments that may not have public washrooms and may be constrained given their occupancy capacity in obtaining summer patios in the future. Other eligibility examples include the provision of allowing patios on Major Road Network and arterial streets, which will need to be reviewed on a case by case basis given the potential impacts to transit, goods and vehicle movements return to pre-pandemic levels.

With the transition to annual and summer patio programs, greater program compliance will also be sought. City staff conducted an audit in 2020 that showed many patios were not built to the approved TEPP design requirements, causing issues such as blocking access to critical utilities or reducing mobility space for others. Design modifications are also expected as occupancy limits will need to be accounted for and patios will no longer be able to use a neighbouring businesses frontage in alignment with the regular patio program (pre-pandemic).

To enable the summer patio program, Council approval is required to permanently include the curbside patio type within the Street Vending By-law and the associated fee framework. Changes are also required to enable private property patios for breweries and distilleries on an ongoing basis, which is discussed in a separate report from Planning, Urban Design, and Sustainability titled "Zoning and Development By-law Amendments to Allow Patios for Liquor Manufacturers". If approved, staff will continue to work with businesses, BIAs and the hospitality industry to ensure smooth transition.

Other Program Considerations

- **Liquor Services:** Business approval for extending liquor service areas to outdoor patios requires Provincial approval from the Province's Liquor and Cannabis Review Branch. City staff are engaged with the Province on this process and understand that the Province is planning timely approval of these licenses to ensure continuity for businesses.
- **Design Guidelines:** Through engagement with businesses and BIAs, staff heard interest from the hospitality industry to pursue more complex patios designs: for example, building structures on their patios, such as permanent roof coverings, plastic

walls, or windbreaks. This complexity could not be accommodated in the context of the pandemic and through an expedited review process. Further design guideline enhancements need to be balanced with initial feedback from advisory committees regarding accessibility, streetscape design and use of space. Staff are therefore recommending that further public and stakeholder consultation be conducted and report back after the summer patio season.

- **Staff and Resourcing:** In order to enable the service levels consistent with a summer and annual program additional resources of 5 full time staff have been identified within Development Building and Licensing and Engineering Services, to increase permit processing capacity and compliance. Additionally, an allocation for traffic management equipment such as concrete barriers is required to ensure that curbside patios are safely installed on arterial roads.
- **Permit fees:** The permits and associated fees for the annual and summer patio program are described in Appendix A. These fees offset direct costs associated with delivering the program and also contribute to corporate revenue. While in 2021, Council directed staff to waive these fees, this waiver expires in 2022 and therefore these fees would be reinstated.
- **Annual Patio Program and Review:** The summer patio program addresses simple patios that can achieve approval in a short amount of time and are temporary in nature. Should operators desire a patio that is longer in duration than the summer term, or more complex than outlined by the City's designated simplified typologies, they may apply through the City's existing approval programs for annual patio permit, which have a more detailed level of review reflecting the complexity of adding a permanent structure or additional people to public or private property.
- **Transition from TEPP to the Annual Patio Program:** Staff expect that some TEPP permit holders will want to transition from TEPP to an annual patio program that will allow them to operate for Winter 2021. To enable this transition, an amendment to the Zoning and Development By-law No. 3575 to extend temporary patios on private property until March 31, 2022 is recommended. This by-law amendment will be brought forward in a separate report from Planning, Urban Design, and Sustainability. No new TEPP applications would be accepted after October 31, 2021.

Public/Civic Agency Input

Recognizing that further consultation is planned for 2022 staff engaged and invited preliminary feedback on TEPP with the following groups:

- Business Improvement Areas (BIAs)
- The hospitality industry, including representatives from Restaurants Canada, the BC Restaurants and Foodservices Association, and the Hospitality Vancouver Association
- Seniors Advisory Committee
- Persons with Disabilities Advisory Committee
- Vancouver City Planning Commission
- Vancouver Coastal Health
- The provincial Liquor and Cannabis Regulation Branch

3-1-1 feedback on the patio program and a 2020 public City survey that asked for public response to the patios was also reviewed for insights into program guidelines.

Overall, the program received positive feedback. Discussion with BIAs and the hospitality industry indicated that TEPP helped the restaurant industry survive at a critical time, and many residents felt a vibrant patio culture was created on many streets. With such a positive business response, a key challenge for the City is how to continue its rapid response patio approval program within City resources in a non-pandemic context, including ensuring the quality of submissions and that implementation meets City requirements.

Staff discussion with the Vancouver City Planning Commission and the City's advisory committees for seniors and persons with disabilities also highlighted several issues that the City needs to address going forward. Issues include accessibility concerns for patios, and their displacement of sidewalk space, parking and bus services, as well as concerns regarding the privatization of public space, which can make streets less welcoming for those who are not patronizing restaurant patios. Further consultation on these issues will be required as new design guidelines and amenities for patios are explored.

Financial

The patio program is structured as a fee-based program, funded by fees paid by businesses participating in the patio program. Revenues for 2019, being the last full year of regular (non-pandemic) operations of the program, totalled \$1.2 million. Direct costs of staffing and materials for the patio program have historically totalled \$468,000 annually.

In 2020 and 2021, Council directed staff to waive the associated application and permit fees associated with TEPP and existing patio programs. In waiving the program fees, the unfunded costs of the program were paid for by drawing on funds from the Revenue Stabilization Reserve during 2021.

During the pandemic, demand for space for various programs increased to support residents and businesses with social distancing requirements. The demand for public space required coordination to understand the potential impacts of the patio placement on other emerging public space programs in addition to continued street use and construction coordination. The volume of public space use requests, particularly on-street requests on major roads required dedicated staff to conduct business outreach, audits, more complex reviews, and coordination and installation of traffic control to ensure safe use of the public realm.

With the success of TEPP, along with the general increase in demand for patios, it is estimated that incremental costs of \$682,000 may result in 2022. These incremental costs are proposed to be funded in 2022 via fee revenues under the existing fee structure, which are estimated to be \$641,000. This information is summarized in the table below:

	Existing Patio Programs	Summer Patio Program Incremental impact	Total
Direct Costs	\$468,000	\$682,000	\$1,150,000
Revenues	\$1,200,000	\$641,000	\$1,841,000

If Council directs staff to waive or reduce the fees in 2022, additional pressure would be placed on general tax revenues. As reference, roughly for every ten percent reduction in fees, the

impact to general tax revenues is \$120,000 to \$150,000, depending on the number of businesses that elect to join the expansion of the program.

Legal

The Vancouver Charter authorizes Council to grant commercial property owners and tenants access to the streets for patio uses. The City has created such a system under the Street Vending By-law and the Temporary Patio and Street Vending Fees By-law.

CONCLUSION

Staff recommendations would enable a smooth transition for businesses with TEPP permits to an ongoing summer or annual patio program. Through the pandemic, patios have been shown to support economic recovery and a vibrant public life. With Council approval, staff can inform businesses and discuss new patio options. The recommendations also support continued evaluation of the program including a review of the design guidelines and fees, which will inform a report back to Council.

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Permit fees for patios

Item	Detail
FOR PATIOS ON PUBLIC PROPERTY	
Street Activities Permit Fees	<p>This permit is needed to license public space for private use. A typical permit fee for a patio in public street right of way ranges from about \$450 for a small patio to an average of \$2800 for a large patio varying according to size and duration. Specific fees are outlined below.</p> <p><i>Small patio</i> \$129.97 per year for one table and two chairs, subject to a minimum fee of \$389.91 per year.</p> <p><i>Large patio</i> Permit fees are charged by geographic area as follows:</p> <p>Downtown</p> <ul style="list-style-type: none"> • Summer Term (April 1 – October 31) = \$90.02 /m2 • Winter Term (November 1 – March 31) = \$64.07 /m2 <p>Outside of Downtown</p> <ul style="list-style-type: none"> • Summer Term (April 1 – October 31) = \$63.79 /m2 • Winter Term (November 1 – March 31) = \$45.50 /m2
FOR PATIOS ON PRIVATE PROPERTY	
Development Permit Fee	The permit is needed to formally change the use of private space and is charged to all patios on private property. The cost is \$1130 for a permanent patio and upon renewal it is approximately \$713.
Building Permit Fee	This permit is needed to ensure the patio meets the life safety, health, and accessibility requirements of the building code and is charged to all patios on private property. The fee is based on the value of the cost of the work submitted. It is charged for every renewal. The fee is \$168 for simple permits with value up to \$5,000.
Combined Development Building Permit Fee	A Development Building permit combines the Development Permit and Building Permit into one permit, and is an alternative to issuing these permits separately for a patio on private property. Its cost is \$1298, the total of the two permit fees.
FOR LIQUOR PRIMARY PATIOS ON PUBLIC OR PRIVATE PROPERTY	
Licensing Fee	<p>Applications for permanent changes to a liquor primary license have a base fee of \$991 and a sliding scale of up to \$5000, dependant the amount of public engagement required.</p> <p>When reviewing operations that are low impact, the Chief Licence Inspector has the ability to opt out of providing comment to the province. There are no fees charged, when the City is able to opt out.</p>

**A By-law to amend
Street Vending By-law No. 10868
regarding curbside patios and other related matters**

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

1. This By-law amends the indicated provisions of the Street Vending By-law.
2. Council strikes the definition of “patio” in section 1.2 and replaces it as follows:
““patio” means “curbside patio”, “small patio” and “large patio”;”.
3. Council strikes the definition of “small patio” in section 1.2 and replaces it as follows:
““small patio” means moveable furniture placed on a street, which supports or accommodates business activity or customer seating as an extension of and adjacent to the business address of an existing establishment that does not extend into an area perpendicular to the frontage of a neighbouring business;”.
4. Council adds a new definition of “curbside patio” to section 1.2, in correct alphabetical order, as follows:
““curbside patio” means a semi-permanent structure constructed or placed in the parking lane of a street in front of an existing food vending establishment which is the subject of a licence agreement with the city;”.
5. Council adds a new section 5.4 as follows:
“Curbside patio

5.4 The holder of a permit for a curbside patio must comply with the provisions of section 3 of this By-law and the conditions of any licence agreement applicable to the curbside patio.”
6. Council adds the words “and curbside patio” after “large patio” from the section entitled “Application Fees” in Schedule “A”.
7. Council strikes subsection (e) from the section entitled “Permit Fees” in Schedule A, and replaces it as follows:
“(e) large patio and curbside patio
Downtown (see Schedule B)
Summer Term (April 1 to October 31) = \$90.02/m²
Annual Term (April 1 to March 31) = \$79.21/m²

Outside of Downton

Summer Term (April 1 to October 31) = \$63.79/m²
Annual Term (April 1 to March 31) = \$56.17/m²”

