

THE CORPORATION OF THE VILLAGE OF SALMO

BYLAW #730, 2021

BEING A BYLAW TO REGULATE OUTDOOR PATIOS & SIDEWALK TABLE AREAS IN THE VILLAGE OF SALMO

WHEREAS section 8 of the *Community Charter* allows Council to set regulations on the use of public places;

WHEREAS section 35 of the *Community Charter* states the right of possession of every highway in a municipality is vested in the municipality;

WHEREAS section 194 of the *Community Charter* allows Council to impose fees payable in respect of the use of municipal property;

AND WHEREAS the Council of the Corporation of the Village of Salmo deems it advisable to issue Permits, set fees, and regulate the operation of outdoor patios and sidewalk table areas within the Village of Salmo;

NOW THEREFORE the Council of the Corporation of the Village of Salmo in open meeting assembled enacts as follows:

1. INTREPRETATION

1.1. Definitions

In this Bylaw, the following terms have the following meanings:

“Applicant”	Means the person or business applying for a permit, and for the purposes of this bylaw, also means the holder of a permit, once issued.
“Application”	Means an application for a permit.
“Bistro Table”	Means small, typically round, table up to 63.5 cm (25”) in diameter.
“Building Code”	Means the current British Columbia Building Code as adopted by the province of British Columbia and as amended or re-enacted from time to time.
“Building Official”	Means a person appointed by the Village as the building official under the Officers bylaw and includes his or her lawful designate.
“Business”	Means the carrying on of a commercial or industrial undertaking of any kind or nature or the providing of professional, personal or other services for the purpose of gain or profit and for the purpose of this bylaw includes not-for-profit or other type of benevolent organization;

“Business License Bylaw”	Means the Corporation of the Village of Salmo’s Business License Bylaw #645, or any subsequent revisions.
“CAO”	Means the Chief Administrative Officer of the Village of Salmo
“Council”	Means the duly elected council for the Corporation of the Village of Salmo;
“Frontage”	Means common boundary shared by a property line and a street.
“OCP”	Means the Village of Salmo’s Official Community Plan Bylaw #687 2020, or any subsequent revisions.
“Outdoor Patio”	Means an outdoor patio, sidewalk patio, street patio or deck located on a sidewalk or other portion of a street, including parking stalls, permitted by obtaining an Outdoor Patio Permit for the purpose of serving food and/or beverages in an outdoor setting to seated patrons in conjunction with an existing business.
“Pergola”	Means a freestanding outdoor structure of any size that uses joists and rafters for shade.
“Permit”	Means a permit for an Outdoor patio issued under this bylaw.
“Sidewalk”	Means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines intended for the use of pedestrians.
“Sidewalk Table Area”	Means an area on a sidewalk at the front of a building containing no more than two (2) bistro-sized tables and four (4) chairs in total.
“Street”	Means a public street, road, highway or other public way which provides principal access to a lot.
“Village”	Means the Corporation of the Village of Salmo;

Symbols

‘	feet
“	inches
cm	centimetres
m or m ²	Metres or square metres

2. GENERAL GUIDELINES

2.1. Design Guidelines

- 2.1.1. In determining the proposed layout for an outdoor patio, consider all existing sidewalk obstructions such as signs, signal poles, bus zones, fire hydrants, Village garbage receptacles, sidewalk furniture, street trees, tree wells, etc.

- 2.1.2. Outdoor patios are permitted to locate on the sidewalk area of public property, adjacent to the place of business.
- 2.1.3. Outdoor patios are only permitted in the Village Centre, Service Commercial and Mixed-Use Commercial zones where the sidewalk is wide enough to accommodate the patio area and where a pedestrian clearance of 1.5m (4'11") wide can be provided. The required pedestrian pathway must be maintained at all times.
- 2.1.4. All patios and table areas must be non-smoking areas.
- 2.1.5. An applicant may be required to adjust the outdoor seating area's layout, dimensions, or distance from the property line to ensure that visibility and a clean path is maintained, or to meet any applicable provincial health mandates. Outdoor patio operators are required to maintain minimum distance and clearance requirements at all times.

3. APPLICATION AND PERMIT REQUIREMENTS

3.1. Permit Requirements

3.1.1. Outdoor Patio Permit

- a) The business has a valid Salmo business license.
- b) Unless otherwise exempted by this Bylaw, no person shall construct, erect, modify, convert, expand, reconstruct, relocate or replace any such Outdoor Patio without first having also obtained a valid Building Permit per the Building Bylaw Schedule A, section B (6) and an Outdoor Patio Permit.
- c) Section 3.1.1 (a) applies to any food and/or beverage business selling liquor regardless of the number of tables.

3.1.2. Sidewalk Table Area Permit

A business may place no more than two (2) bistro-sized tables and four (4) chairs in total on a sidewalk in front of a business with a Sidewalk Table Area Permit if:

- a) The business has a valid Salmo business license for items that include the sale of food and beverages, excluding alcohol.
- b) The tables and chairs are located on the sidewalk immediately adjoining the business and wholly located within 0.8m (2' 7") of the property line of which the business is located;
- c) Each table is no more than 63.5cm (25") in diameter;
- d) The sidewalk is unimpeded at a minimum width of 1.5m (4'11") for the length of the sidewalk for which the tables and chairs are placed;
- e) The tables and chairs are removed from the sidewalk at the close of business each day;
- f) There are no constructed or temporary fixtures, such as signage, on the sidewalk adjacent to the business;

- g) A proof of comprehensive general liability insurance in an amount not less than \$5 million and to the satisfaction of the Village is provided.

3.2. Use of Parking Spaces

- 3.2.1. No use of parking spaces is permitted on Railway Avenue/Hwy.#6 or Fourth Street.
- 3.2.2. The Village will consider an application for the use of on-street parking spaces being included as part of a planned Outdoor Patio if:
 - a) The patio is located on a side street.
 - b) The patio uses no more than up to five (5) angled or two (2) parallel parking spaces.
 - c) The parking spaces are directly in front of or beside the business applying.
 - d) The patio does not impede traffic flow or access by delivery vehicles to the applicant or neighbouring businesses.

3.3. Use of Privately Owned Sidewalk Areas

- 3.3.1. Business owners with a section of privately owned sidewalk between the front or side of their business and the property line/Village sidewalk may create a sidewalk table area in front or beside their business without a permit provided:
 - a) The tables and chairs do not at any time overlap onto the village-owned public sidewalk.
 - b) The tables and chairs do not in any way impede pedestrian or handicapped access along the Village sidewalk as per section 3.1.2 (d).
- 3.3.2. If the requirements of section 3.3.1 (a) and (b) are not met the business owner must apply for a permit.

3.4. Use of Space in Front of Another Business

- 3.4.1. The Village will consider allowing an outdoor patio or sidewalk table area to extend their space into the space of an adjoining property provided:
 - a) The Outdoor Patio does not utilise additional on-street parking stalls,
 - b) The application is accompanied by a letter of agreement from the adjacent property owner, and, if applicable, the tenants of the property. The letter(s) must include:
 - Legal description
 - Property address
 - Who is responsible for the insurance and proof of insurance as per section 3.5.1 (d)(e).
 - Who is responsible for maintenance and upkeep of the patio area.
- 3.4.2. The written agreement is granted yearly by the adjacent property owner and, if applicable, tenants.

3.5. Application Requirements

- 3.5.1. No Permit for erection of an Outdoor Patio shall be issued until:
- a) A full and complete Application, as determined by the Village, has been submitted. Applications must include:
 - Proof of property tax payment
 - Agreement letter/permission from property owner (if applicable)
 - Legal description
 - Property address
 - Site plan
 - Fence details including photos, height, and appearance information;
 - b) Per the Building Bylaw Schedule A, section B (6), the proposed work set out in the Building Permit Application conforms to this Bylaw and all other applicable bylaws of the Village;
 - c) The Applicant for the Permit has paid the prescribed fees as specified in Schedule A of the Business License Bylaw and Schedule A of the Building Bylaw;
 - d) Evidence of the Applicant's comprehensive general liability insurance in an amount not less than \$5 million, has been received; and
 - e) The Village is added as an additional insured in the comprehensive general liability insurance with respect to any loss, claims, actions, damages, costs (including solicitor costs), liability and expense in connection with loss of life, personal injury, damage to property or any other loss or injury whatsoever arising from the design, construction, maintenance, operation, or removal of an Outdoor Patio from a sidewalk or street remediation related thereto.
- 3.5.2. Every permit holder must:
- a) Comply with this Bylaw,
 - b) Ensure that all of the restrictions, requirements, specifications, terms and conditions of the Permit are met,
 - c) Comply with the plans and specifications forming part of the Building Permit, and complete the work required by the plans and specifications of the Building Permit,
 - d) Submit a request to the Building Inspector to inspect the construction of the Outdoor Patio before use/opening of the Outdoor Patio each year, and
 - e) Be bound by any waiver and indemnity which forms part of the Application and a Permit.

- 3.5.3. Where the Permit holder fails to keep the Outdoor Patio or Sidewalk Table area in accordance with the specifications and conditions of the Permit, the Village may cause any part of the Outdoor Patio to be removed and may charge the costs of the removal to the Applicant.

3.6. Permit Renewal

- 3.6.1. The CAO may renew an approved Permit annually if:
- a) The annual Application Fee is paid,
 - b) The annual Inspection Fee is paid per the Building Bylaw Schedule A, section B (8),
 - c) Proof of business license is provided,
 - d) Proof of insurance as outlined in subsection 3.5.1 (d)(e) is provided,
 - e) The Outdoor Patio or Sidewalk Table area was lawfully installed the previous year;
 - f) The approved Outdoor Patio has not substantially changed; and
 - g) The Outdoor Patio passes the annual inspection by the Building Inspector.

3.7. Existing Outdoor Patios and Sidewalk Table Areas

- 3.7.1. An Outdoor Patio or Sidewalk Table Area in existence prior to the coming into effect of this Bylaw will be permitted to continue if:
- a) A Permit was issued for the lawful installation of the Outdoor Patio and was inspected by the Building Inspector upon completion; and
 - b) It complies with, whichever is applicable, of section 3.1.1 or 3.1.2 of this Bylaw.

4. OUTDOOR PATIO SPECIFICATIONS

4.1. Validity Period

- 4.1.1. A Permit is valid from April 15th to October 15th in the year it is issued.
- 4.1.2. Despite 4.1.1, the Permit validity period may be extended subject to the approval of the CAO.
- 4.1.3. Upon expiry of a Permit, all fixtures and structures placed within a street or on a sidewalk must be completely removed by the owner within seven (7) days.

4.2. Location of Sidewalk Patios

- 4.2.1. An Outdoor Patio located on the sidewalk or on on-street parking stalls, shall be limited to the linear frontage of its parent business except in the case of a business located on a corner lot. The Outdoor Patio of a corner lot may be located either along the frontage or the side of the building provided it complies with other requirements of this Bylaw.

- 4.2.2. Combined usage of angled and parallel parking stalls is prohibited.
- 4.2.3. The area of the sidewalk between the business and the Outdoor Patio shall maintain a minimum width that is free and clear of any obstructions for pedestrians of 1.5m (4'11") along streets.
- 4.2.4. Despite Section 4.2.3, an Outdoor Patio may be permitted to be located directly against a building subject to the approval of the CAO and Council.
- 4.2.5. No Outdoor Patio shall be permitted within 6m (19'8") of a stop sign, or in a location where visibility or safety is deemed an issue by the CAO.

4.3. Design

- 4.3.1. All outdoor patios shall enhance the vitality of the street environment. All outdoor patios will be reviewed against the general design guidelines within the OCP Bylaw and the Design Guidelines Bylaw.
- 4.3.2. All outdoor patios must have a colour scheme and building material that are complimentary to the building containing the parent business.
- 4.3.3. When a Outdoor Patio includes a patio structure, it shall be as close to the elevation of the existing sidewalk grade as possible.
- 4.3.4. The design of the interior and immediate surroundings of an outdoor patio's overhead canopies or umbrellas shall ensure a clear, unobstructed height, from grade level, of 2.13m (6' 11").
- 4.3.5. All patios must be designed and installed in such a way so as to maintain barrier-free access for persons with disabilities and shall mitigate any possible harmful impacts on adjacent land uses.
- 4.3.6. Except for the point of entry, all outdoor patios shall be enclosed by a barrier. Partitions shall be installed to separate the Outdoor Patio from vehicular traffic along the road and pedestrian traffic along the sidewalk and shall:
 - a) be 1m (3'3") in height measured from the Outdoor Patio level;
 - b) have a bottom rail at maximum height 75cm (30") above grade;
 - c) unless a transparent glass or plastic type material is used, have vertical or horizontal members made of wood or metal and not exceed 5cm (2") in width to allow transparency; and
 - d) have a wheelchair accessible entrance,
- 4.3.7. Despite 4.3.6, the Building Code may take precedence over the partition requirements.
- 4.3.8. Outdoor Patio lighting shall not project onto the street or adjacent properties.
- 4.3.9. Except for a menu board and public health regulations, no signage shall be permitted on an Outdoor Patio.

- 4.3.10. Awnings or shading structures, such as pergolas, are permitted provided they are securely fastened to a frame that is either retractable or demountable. Such structures may require additional permits at the discretion of the CAO.
- 4.3.11. Planters are permitted (and encouraged) provided they are located within the area of the Outdoor Patio.

4.4. Hours of Operation

- 4.4.1. No Outdoor Patio shall be permitted to:
 - a) Play amplified music Sunday through Thursday after 8:00 p.m.;
 - b) play amplified music after 10:00 p.m. on Friday and Saturday nights;
 - c) operate later than 9:00 p.m. Sunday through Thursday or 11:00 p.m. on Friday and Saturday nights.

4.5. Maintenance & Security

- 4.5.1. The Applicant must keep and maintain the Outdoor Patio in a clean, sanitary, attractive condition satisfactory to the CAO and must keep the sidewalk surrounding or adjacent to the Outdoor Patio free from papers, rubbish and debris of any kind.
- 4.5.2. Outdoor patio furniture shall not be secured to sidewalks, lampposts, streetlights, trees, or other public street furniture.

5. AUTHORITY OF THE CAO

5.1. The CAO is Authorized to:

- a) determine the form of an Application for a Permit;
- b) prescribe the form of Permit;
- c) issue and renew a Permit for the operation of an Outdoor Patio in accordance with terms and specifications set out in this Bylaw, and impose additional terms, conditions, restrictions and requirements;
- d) refuse to issue or renew a Permit, if:
 - i. the information submitted is insufficient to determine compliance with the provisions of this bylaw or another enactment;
 - ii. the incorrect information is submitted;
 - iii. there was contravention of any specification or condition of the Permit being considered for renewal;
 - iv. it would be prohibited by any other bylaw or regulation; or
 - v. the CAO considers that the activities proposed or contemplated under the Permit cannot be carried out safely and with a minimum risk of injury to persons, damage or loss to property, inconvenience to others using the street, residents, or businesses in the vicinity, or to the public generally.

- e) suspend, amend, vary, revoke, or cancel any Permit, without compensation to the permit holder, if:
 - i. there is a contravention of any specification or condition of the Permit,
 - ii. the Permit was issued in error;
 - iii. the Permit was issued on the basis of incorrect information;
 - iv. in the opinion of the CAO, a portion of the Outdoor Patio area is required for the installation of municipal utilities or other municipal purposes; or
 - v. the CAO considers that the activities under the Permit are not being carried out safely and with a minimum risk of injury to persons, damage or loss to property, inconvenience to others using the street, residents, or businesses in the vicinity, or to the public generally.

6. APPEAL

An appeal lies to Council from the refusal, suspending, revoking or cancelling of a Permit by the CAO, and Council may uphold the decision, or may overturn the decision and may impose conditions on the issuance of the Permit.

7. ENFORCEMENT AND PENALTIES

7.1. Offences

A person who:

- a) contravenes or fails to comply with this Bylaw;
- b) permits, suffers, or allows any act or thing to be done in contravention of this Bylaw;
- c) fails to carry out an order made under this Bylaw; or
- d) fails or neglects to do anything required under a Permit;

commits an offence and each day such an offence continues or is permitted to continue will constitute a separate offence.

7.2. Penalties

7.2.1. Any person who contravenes any provision of this bylaw, or who suffers or permits any act or thing to be done in contravention of any of the provisions of this bylaw, or who neglects to do or refrains from doing anything required to be done by any of the provisions of this bylaw, shall be deemed to have committed an offence against this bylaw and shall be liable, upon summary conviction, to a fine or penalty not less than \$50.00 and not more than \$2,000.00 for each offence.

7.2.2. Any offence under this bylaw which continues for a period in excess of one calendar day shall be deemed to be and is punishable as a separate offence for each and every subsequent day until such infraction ceases.

9. SEVERABILITY

If any part, subsection, or phrase of this Bylaw is held to be invalid by a court of competent jurisdiction, the invalid portion shall be severed, and the remainder of the Bylaw shall be deemed to have been enacted without the invalid portion.

10. CITATION

This Bylaw may be cited as ***“The Corporation of the Village of Salmo Outdoor Patio Bylaw #730, 2021”***.

11. EFFECTIVE DATE

This Bylaw comes into force and effect upon its adoption.

READ A FIRST TIME	this 13 th day of April, 2021
READ A SECOND TIME	this 27 th day of April, 2021
READ A THIRD TIME	this 27 th day of April, 2021
RECONSIDERED AND FINALLY ADOPTED	this 27 th day of April, 2021

Originally Signed By:

Diana Lockwood
MAYOR

Anne Williams
CHIEF ADMINISTRATIVE OFFICER

I HEREBY CERTIFY THIS TO BE A TRUE COPY OF THE “VILLAGE OF SALMO OUTDOOR PATIO BYLAW #730, 2021”.

Anne Williams
CHIEF ADMINISTRATIVE OFFICER