

Report to Planning and Environment Committee

To: Chair and Members
Community and Protective Services Committee
From: Scott Mathers, MPA, P. Eng., Deputy City Manager,
Planning and Economic Development
Subject: Zoning By-law Patio Review
Date: June 21, 2022

Recommendation

That on the Recommendation of the Deputy City Manager, Planning and Economic Development, the following actions be taken with respect to regulations for outdoor seasonal patios:

- a) the following report **BE RECEIVED** for information purposes,
- b) a Public Participation Meeting **BE HELD** to amend regulations contained in Section 4.18(6) - Seasonal Outdoor Patios in the Z.-1 Zoning By-law, to allow for greater operational flexibility for local businesses.

Executive Summary

This report is in response to the **April 12, 2022**, and **June 14, 2022**, Municipal Council resolutions, directing staff to report back with options to amend the capacity restrictions for outdoor patios and to review the temporary pandemic related outdoor patio regulations.

Civic Administration recommends that the Zoning By-law be amended to remove the date range and capacity limits of seasonal patios; no changes are recommended to permanent patios. This amendment would allow for greater flexibility for seasonal / temporary patios, which in many cases are tables and chairs safely placed onto parking spaces. Civic Administration will give this amendment a priority to allow for businesses to make necessary longer term financial decisions.

Linkage to the Corporate Strategic Plan

The options contained in this report supports the Growing Our Economy area of focus of the Corporate Strategic Plan, by increasing the efficiency and consistency of administrative and regulatory processes. It also enhances London's competitiveness by creating an innovative and supportive environment for local businesses.

Linkage to Provincial Policy and London Plan

The recommended action is consistent with the Provincial Policy Statement, 2020, which encourages the vitality and regeneration of settlement areas as critical to the long-term economic prosperity of communities. The recommended action is consistent with The London Plan, which encourages economic revitalization and enhancing the business attraction potential of urban main streets.

Background

On April 12, 2022, Municipal Council resolved that the following actions be taken:

The Civic Administration **BE DIRECTED** to investigate options to amend the current capacity restrictions for outdoor patios associated with a restaurant or tavern to allow greater flexibility for restaurateurs in meeting their AGCO capacity limits and report back with options for Council's consideration.

On June 14, 2022, Municipal Council resolved that the following actions be taken:

The Civic Administration **BE DIRECTED** to review the temporary pandemic-related flexibility in business by-law regulations and report back to the appropriate standing committee on which provisions Municipal Council could consider making permanent; it being noted that the Civic Administration already has direction from Council to review zoning regulations on outdoor patio capacity and that this could be achieved by a single comprehensive report back

Previous Reports Related to this Matter

- London Community Recovery Network – Immediate Ideas for Action to Support London’s COVID-19 Community Recovery – December 16th, 2020
- London Community Recovery Network – Ideas for Action by Municipal Council - February 8th, 2021
- City-Wide Seasonal Outdoor Patios Zoning By-law Amendment– Report to the Planning and Environment Committee – March 29th, 2021
- Community & Protective Services Committee: B2B By-Law Extension - November 2, 2021

Analysis

1.0 What have been some general impacts of COVID-19 and Provincial Health Measures?

Throughout the COVID-19 pandemic, Provincial Health orders greatly reduced the capacity for indoor restaurants to ensure adequate space for social distancing and public health measures. The pandemic has disproportionately impacted restaurants and taverns whose businesses rely on the number of patrons they can service.

1.2 What have been some City of London initiatives that have emerged to support local businesses during the pandemic?

Throughout the last two years, a variety of By-laws were provided delegated authority in regulations related to business supportive actions including business application and permit processing procedures until January 15, 2023, including the following By-laws: Business Licence By-law, Streets By-law, Traffic and Parking By-law, Sign By-law, Parks and Recreation By-law, Sound By-law, Building By-law, and Council Policy By-law. The Zoning By-law (patios regulations) was not included in this recommendation as there is no delegated authority for staff to exempt zoning regulations.

As part of the pandemic recovery, businesses were allowed to set up a temporary patio to provide for extra seating, as most were restricted in offering indoor dining services. Often, this included an expansion beyond the existing permanent patio configuration and commonly onto parking spaces. Administrative reviews included matters such as fire routes, locations of fire extinguishers and accessible parking. At this time, temporary patios were not permitted by way of Zoning (occupying parking spaces for example) and without appropriate permits. Throughout the 2020 patio season, there were limited issues reported with this approach of approving temporary outdoor patios without a resource intensive review process.

1.3 What are the existing Permanent Outdoor Patio Regulations requirements?

The existing zoning requirements for outdoor patios (permanent) include:

- a) No outdoor patio can accommodate more than 50% of the licensed capacity of the restaurant, or 50 persons, whichever is greater;
- b) Parking spaces are required for the gross floor area of the outdoor patio at the same ratio as the restaurant or tavern, except in the downtown where no parking spaces are required; and,
- c) No outdoor patio is permitted adjacent to a residential zone class that is not in combination with another zone, unless it is separated from the residential properties by a lane or located in front of the building.

Approval of a new outdoor patio (permanent) typically requires an amendment to the Site Plan, and associated review for zoning, capacity limits, location, parking requirements, and fire safety, among other things. Further, restaurants and taverns are required to obtain business licences from the City and liquor licences from the Alcohol and Gaming Commission of Ontario (AGCO).

Occupancy is determined by the Ontario Building Code and not assigned by the AGCO. In London, neither the Building nor Fire department assign the licensed capacity. An applicant must submit floor plans that show occupancy and capacity that are stamped and signed by an architect or professional engineer. Building Division staff check these submissions against the Building Code.

1.3 What are the existing Seasonal Outdoor Patios Regulation requirements?

In March 2021, staff initiated a Citywide Zoning By-law Amendment, ensuring that the following regulations guiding the operations and allowance of seasonal outdoor patios be permanently added the Zoning By-law Section 4.18(6):

- Seasonal outdoor patios as a permitted use associated with a restaurant or tavern;
- Seasonal outdoor patios are only permitted between March 15 and November 15 each year;
- Seasonal outdoor patios are to be setback at least 6 metres from any residential zone;
- Seasonal outdoor patios will not require additional parking spaces and can be located within existing required commercial parking spaces, and;
- No seasonal outdoor patios will be permitted within required residential parking spaces.

This amendment was intended to provide flexibility for businesses to choose whether the additional patio capacity is in keeping with their business goals compared to the provision of more commercial parking spaces, while protecting required residential parking. There is no formal application requirement nor application fees associated with temporary/seasonal outdoor patios if businesses comply with the above regulations.

1.4 What are the existing City Boulevard Café requirements?

Owners of food establishments with a valid business licence can apply to the City of London Realty Services Department for a Boulevard Cafe Permit. Typically, applications are received from restaurants that desire an outdoor cafe, but do not have sufficient room on their own property. Applications are reviewed by staff to ensure they are compatible with City requirements, such as not interfering with the public use of the road allowance, or not interfering with City operations. Patios located on City property are permitted to operate between March and October.

1.5 How are Patios Licenced?

A Site Plan or sketch of a patio location is required as part of a business license from the City of London and a liquor licence from the AGCO. Typically, obtaining a business or liquor licence will trigger a review of the Site Plan, capacity limits, the location of the patio space, and assurance that no accessible parking spaces are removed. A review of fire safety will occur annually to ensure seasonal outdoor patios remain safe.

In 2020, the AGCO allowed the expansion of licensed areas outside to help assist licensed establishments to allow more space for servicing patrons. By early 2023, the AGCO will defer the approvals for temporary outdoor extensions to municipalities.

1.6 What has changed regarding Liquor Licences for Temporary Seasonal Patios?

Both the City of London and the AGCO continue to require restaurants and taverns to apply for a liquor licence should they choose to serve alcohol. Currently, the approval of all temporary outdoor extensions is under the authority of the AGCO Registrar.

In effort to support businesses as part of the COVID-19 recovery, the Government of Ontario made strides to gradually loosen restrictions seasonal outdoor patio spaces.

On June 8th, 2020, the AGCO allowed the expansion of licensed areas outside, and adjacent to, licensed establishments to allow more space for servicing patrons. Similarly, in April 2022 the Province announced that municipalities (and First Nation band councils) will approve temporary outdoor extensions of licensed premises (patios). This approval system will come into effect January 1, 2023; after this date, the AGCO will no longer be accepting applications/approving temporary outdoor extensions for licensees located in municipalities.

1.7 How are Patio Capacities Set?

Section 4.18(1) of the Zoning By-law regulates the capacity for outdoor patios based on the indoor capacity of the licensed establishment where the indoor capacity is greater than 100 persons. If the indoor capacity is 100 or less, the maximum patio size is up to 50 people. The Ontario Building Code (OBC) provides regulation for the indoor capacity of all buildings based on a complex formula including material properties, floor area, exiting options, and a minimum number of washrooms/people. However, the washroom regulations do not apply to outdoor settings, such as patios.

This is the reason the OBC requires an architect or professional engineer to calculate the capacity of a "Group 'A' Assembly Occupancy" indoors, and the AGCO has followed that regulation where building and fire departments do not assign licensed capacity:

"...you must submit floor plans that show capacity calculations completed by an architect or professional engineer in accordance with the Liquor Licence and Control Act, 2019 and its regulations. These floor plans must be stamped and signed by the architect or professional engineer." (AGCO, 2022)

Furthermore, the AGCO requirement for stamped and signed approval applies to both the indoor AND outdoor licensed capacities. That is not to say that the OBC does not regulate outdoor assembly occupancies, such as patios, but it does not control the size by washroom requirements.

Other municipalities do not restrict maximum patio capacity in their by-laws because they rely on the complex OBC formulas and the AGCO's requirement for stamped and signed floor plans to regulate capacity.

Options for Consideration

Municipal Council has directed Staff to report back on options related to capacity restrictions and pandemic-related outdoor patio regulations. Staff are suggesting evaluation of Section to 4.18(6) *Seasonal Outdoor Patios*, contained in the Z.-1 Zoning By-law by:

1. **Removing:** Section 4.18(6a) No seasonal outdoor patio shall be permitted between November 16 and March 14, inclusive;
2. **Removing:** Section 4.18(6b) All structures and appurtenances associated with a seasonal outdoor patio must be removed between November 16 and March 14, inclusive. Although staff are recommending the removal of the operational date range, there might be some cases where seasonal/ temporary patios will need to be removed due to winter operation matters (example: snow removal).
3. **Adding:** Notwithstanding Section 4.18(1), seasonal outdoor patios shall have no capacity limits.
4. **Adding:** No seasonal outdoor patio shall be located within accessible parking spaces.
5. **Adding:** Patios located on City property will be subject to further review and regulations.

Staff Recommendation

The pandemic forced us to create an impromptu patio pilot project over the past few patio seasons. There needs to be a reasonable amount of flexibility provided to businesses striving to recover and move forward to provide a valued service to Londoners and visitors alike. Therefore, assessment of these options should be done with an eye to creating an innovative and supportive environment for local businesses, while ensuring public safety is upheld and the potential for nuisances limited.

Staff are of the opinion that the proposed options for consideration would allow for the greatest flexibility for those businesses looking to operate an outdoor seasonal/temporary patio where space permits. In many cases this includes extra tables and chairs safety placed onto commercial parking spaces.

Conclusion

Many business owners have expressed the value of allowing more outdoor seating. The patio season in London is short and an important destination for the food, beverage, and entertainment sector. Prior to COVID, many of these businesses had made inquiries about the potential easing of patio restrictions.

By exploring options to provide greater flexibility on patios, Civic Administration is assisting local businesses as part of the pandemic recovery; an easing of regulations which creates an innovative and supportive environment for local businesses is the goal. The lessening of restrictions on capacity for patios could also be supportive of small-scale, outdoor music performances, thereby supporting London's new UNESCO City of Music designation.

Prepared by: Mark Hefferton, MURP, RPP, MCIP
Development Policy Coordinator, Municipal Compliance

Submitted by: Nicole Musicco
Coordinator, Municipal Compliance

**Reviewed and
Concurred by:** Orest Katolyk, MLEO (C)
Director, Municipal Compliance

Recommended by: Scott Mathers, MPA, P. Eng., Deputy City Manager,
Planning and Economic Development