

Report to Planning and Environment Committee

To: Chair and Members
Planning & Environment Committee
From: Scott Mathers, MPA, P. Eng., Deputy City Manager,
Planning and Economic Development
Subject: Outdoor Patios Zoning By-law Amendment – Public Participation Meeting
Date: August 22, 2022

Recommendation

That on the Recommendation of the Deputy City Manager, Planning and Economic Development, with respect to the application of the Corporation of the City of London relating to outdoor patios:

- a) the proposed by-law attached hereto as Appendix "A" **BE INTRODUCED** at the Municipal Council meeting on September 6, 2022, to amend Section 4.18 of the Zoning By-law Z.-1 to add and delete regulations related outdoor patios;

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 regulations contained in Section 4.18 (Outdoor Patio Associated with a Restaurant or Tavern) of the Z.-1 Zoning By-law, to allow for greater operational flexibility for local businesses.

Summary of Request

The recommended amendment will remove the capacity limits for outdoor patios and amend the operational date range currently contained in Section 4.18 of the Z.-1 Zoning By-law.

Rationale of Recommended Action

The recommended amendment 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 amendment is consistent with The London Plan, which encourages economic revitalization and enhancing the business attraction potential of urban main streets.

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 the Climate Emergency Declaration

On April 23, 2019, Municipal Council declared a Climate Emergency. This Zoning-Bylaw amendment supports the City's commitment to reducing and mitigating climate change by encouraging the conversion of parking spaces into patio spaces thereby assisting intensification of existing urban areas, mitigating sprawl, and increasing the viability of existing economic activities and businesses. Finally, this amendment supports active transportation and place-making by establishing active, vibrant uses in the public realm which create a desirable walking environment.

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
- Community & Protective Services Committee - Zoning By-law Patio Review - June 21, 2022

Analysis

1.0 Key Considerations

The following outlines key considerations regarding this Zoning Bylaw amendment.

1.1 Date range of Patio operations

This amendment would allow for greater flexibility for patios. Civic Administration recommends that the Zoning By-law be amended to change the date range (adding 30 additional days) and remove the capacity limits of outdoor patios.

Although staff are recommending the amend of the operational date range, there might be some cases where patios will need to be removed due to winter operation matters (e.g., snow removal). Establishments with a patio located on private land that choose to remain open in the winter months should coordinate with the landowner regarding winter maintenance.

1.2 Capacity Limits

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. 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.

2.0 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.

2.1 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 to 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.

There is no formal application requirement nor application fees associated with temporary/seasonal outdoor patios if businesses comply with the above regulations.

2.2 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 businesses 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. All future City Boulevard Café applications will be required to be reviewed on a case-by-case basis with regards to the proposed amendments contained in this report. For example, depending on the exact location, patios located on City property may only be permitted to operate between March and October.

3.0 Policy Context

The following policy documents were considered in their entirety during the review of this amendment. The most relevant policies are outlined below.

3.1 Provincial Policy Statement, 2020

The *Provincial Policy Statement* (PPS) 2020, provides policy direction on matters of provincial interest related to land use planning and development. The PPS is intended to be read in its entirety and the relevant policies are to be applied to each situation. Section 3 of the *Planning Act* requires that decisions affecting planning matters “shall be consistent” with policy statements issued under the Act.

The proposed zoning by-law amendment is consistent with policy 1.3.1(b) that states, “planning authorities should promote economic development by providing opportunities for a diversified economic base, including maintaining a range and choice of suitable sites for employment uses which support a wide range of economic activities and ancillary uses, and take into account the needs of existing and future businesses.” Introducing seasonal outdoor patios is way to support the existing and future needs of businesses.

The zoning by-law amendment is also consistent with policy 1.7.1 of the PPS that states, “long term economic prosperity should be supported, among other things, by c) optimizing the long-term availability and use of land”. Allowing parking lots to be turned into street activating outdoor patio spaces is an example of optimizing availability and use of land.

3.2 The Official Plan, 1989

The zoning by-law amendment complies with the Vision Statement and the planning objectives of the Commercial Land Use Designation of the Official Plan, 1989. Section 2.2.1(i) states that the Vision Statement of the Plan is to, “manage growth and change so that efforts to foster economic development; protect and enhance nature within the City; provide for the efficient movement of people and goods; and promote attractive, cohesive neighbourhoods, are in balance and supportive of each other.” Section 4.2.1(iv) of the Plan states the planning objects for all Commercial Land Use Designations is to, “encourage intensification and redevelopment in existing commercial areas within the built-up area of the City to meet commercial needs, to make better use of existing City infrastructure and to strengthen the vitality of these areas”. Allowing business to temporarily expand their operation is a way to encourage a better use of land through adaptive re-use of underutilized parking areas while promoting active and attractive streets.

3.3 The London Plan

There are several policies in the London Plan that are supportive of the zoning by-law amendment. Key direction #8 policy 62(2) discusses making wise planning decisions to ensure the balance of the economy, environment, and social considerations. This zoning by-law amendment complies with the key direction as it will help support businesses while reducing the need for spaces to be dedicated to cars instead of people. Further, policy 154(8) states that urban regeneration efforts will, “encourage the economic revitalization and enhance the business attraction of urban main streets.” Allowing for seasonal outdoor patios increases the attractiveness of main streets and encourages economic activity with the increased operational space.

Finally, there are various policies in The London Plan that are supportive of reducing the minimum parking requirements. Policy 271 states that “[the] Zoning By-law will establish automobile parking standards, ensuring that excessive amounts of parking are not required”. In addition, policy 366(2) states that “parking strategies may be prepared to plan for initiatives to reduce parking demand.” The zoning by-law amendment complies with policy 271 and 366(2) for reducing parking requirements for seasonal outdoor patios. The Zoning By-law amendment is consistent with the Provincial Policy Statement 2020 and complies with the London Plan.

4.0 Community Engagement

Notification of the application to amend the Zoning By-law was provided in the Londoner, on the City of London website, and emailed to prescribed parties July 27th, 2022. The Notice of Application outlined a possible amendment to Section 4.18 of the Zoning By-Law # Z.1 to amend restrictions on the operational dates for seasonal patios and to remove the capacity limits for seasonal patios. One comment was received from Lower Thames Valley Conservation Authority, who had no objections and was in support of the zoning by-law amendment.

Recommended Zoning By-law Amendment

The recommended amendment is included in **Appendix A**, replacing and/or amending portions of Section 4.18 (Outdoor Patio Associated with a Restaurant or Tavern), contained in the Z.-1 Zoning By-law and in summary and includes:

1. **Removing:** *No outdoor patio shall accommodate more than 50 percent (50%) of the licenced capacity of the restaurant with which the patio is associated, or 50 persons, whichever is the greater*
2. **Adding:** Notwithstanding Sections 4.18(6)(a) and 4.18(6)(b), Seasonal Outdoor Patios and associated structures and appurtenances are permitted between November 16 and March 14 for thirty (30) days, but not for more than three (3) consecutive days.
3. **Adding:** No seasonal outdoor patio shall be located within an accessible parking space. Each accessible parking space shall be always clear for parking or removal of a vehicle and vehicular access to any such parking space shall not be impeded by any obstruction.

Conclusion

The recommended amendment to the Zoning By-law Z.-1 ensures that Civic Administration is assisting local business owners to provide additional outdoor seating at their establishments. The easing of restrictions on months of operation and capacity limits for seasonal outdoor patio patios helps to create a supportive environment for local businesses.

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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

Appendix "A"

DRAFT BY-LAW

Outdoor Patio Associated with a Restaurant or Tavern

Bill No.(number to be inserted by Clerk's Office)
2022

By-law No. Z.-1-##__

A by-law to amend the General Provisions of By-law No. Z.-1 to regulate Outdoor Patio Associated with a Restaurant or Tavern

WHEREAS The Corporation of the City of London has applied to amend the General Provisions of the Zoning By-law Z-1, as set out below;

AND WHEREAS this rezoning conforms to the Official Plan;

THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

Section 4.18 (Outdoor Patio Associated with a Restaurant or Tavern) of the General Provisions is amended by adding and/or deleting the following:

[DELETE]

~~__1) CAPACITY~~

~~No outdoor patio shall accommodate more than 50 percent (50%) of the licenced capacity of the restaurant with which the patio is associated, or 50 persons, whichever is the greater~~

~~__6) OUTDOOR PATIO, SEASONAL~~

- a. No Seasonal Outdoor Patio shall be permitted between November 16 and March 14, inclusive
- b. All structures and appurtenances associated with a seasonal outdoor patio must be removed between November 16 and March 14, inclusive
- c. Notwithstanding Section 4.18(2), seasonal outdoor patios shall be setback a minimum of 6.0 metres from any residential zone which is not in combination with another zone;
- d. Notwithstanding Section 4.18(5), there is no parking requirement for seasonal outdoor patios;
- e. Notwithstanding Section 4.19, seasonal outdoor patios are permitted within required parking spaces for commercial uses;
- f. No seasonal outdoor patio shall be located within required parking spaces for residential dwelling units;

[ADD]

g. Notwithstanding Sections 4.18(6)(a) and 4.18(6)(b), Seasonal Outdoor Patios and associated structures and appurtenances are permitted between November 16 and March 14 for thirty (30) days, but not for more then three (3) consecutive days.

[ADD]

h. No seasonal outdoor patio shall be located within an accessible parking space. Each accessible parking space shall be always clear for parking or removal of a vehicle and vehicular access to any such parking space shall not be impeded by any obstruction.

The inclusion in this By-law of imperial measure along with metric measure is for the purpose of convenience only and the metric measure governs in case of any discrepancy between the two measures.

This By-law shall come into force and be deemed to come into force in accordance with Section 34 of the *Planning Act, R.S.O. 1990, c. P13*, either upon the date of the passage of this by-law or as otherwise provided by the said section.

3) This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on Month, Day, 2022

Ed Holder
Mayor

Michael Schulthess
City Clerk