

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: Seasonal Outdoor Patios Zoning By-law Amendment
Date: October 3, 2022

Recommendation

That on the Recommendation of the Deputy City Manager, Planning and Economic Development, with respect zoning regulations related to seasonal outdoor patios, the proposed by-law attached hereto as Appendix "A" **BE INTRODUCED** at the Municipal Council meeting on October 17, 2022, to amend Section 4.18 of the Zoning By-law Z.-1.

Executive Summary

This report is in response to September 6, 2022, Municipal Council resolution, directing staff to report back on revised Zoning By-law regulations to remove seasonal patio operational date range restrictions and provide information regarding how the Alcohol and Gaming Commission of Ontario (AGCO) regulates capacity for outdoor patios.

Linkage to the Corporate Strategic Plan

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.

Background

On September 6, 2022, Municipal Council resolved that the following actions be taken:

The application by The Corporation of the City of London, relating to outdoor patios **BE REFERRED** to Civic Administration to report back at a future meeting of the Planning and Environment Committee with a revised by-law removing the seasonal patio restrictions time in section 4.18 of not more than three consecutive days and the thirty-day limit, and to examine the mechanisms by which the Alcohol and Gaming Commission of Ontario regulates capacity.

Previous Reports Related to this Matter

- PEC: Patio Zoning By-law Amendment – March 29, 2021
- CPSC: B2B By-Law Extension - November 2, 2021
- CPSC: Zoning By-law Patio Review - June 21, 2022
- PEC: PPM Zoning patio regulations – August 22, 2022

Analysis

1.0 Key Considerations

The following outlines key considerations regarding this Zoning Bylaw amendment.

1.1 Date range of seasonal patio operations

Currently, the date range permitting outdoor seasonal patios includes allowances between *March 14 to November 16*. The August 22, 2022, staff recommendation included removing references to date ranges and was subsequently referred back to staff. Civic Administration is now recommending removing any reference to specific dates and to mimic the language outlined in the Liquor Licence and Control Act (2019),

which states that “no Seasonal Outdoor Patio or physical extension of a licensed premises shall be permitted for more than a **total of eight months** in a calendar year”.

1.2 Occupant load for the Interior of Buildings is determined by the OBC

The Ontario Building Code (OBC) provides the means for calculating the indoor capacity of all buildings. The OBC sets the ‘Occupant Load’ based on the type of use (occupancy) and how the interior space is arranged (fixed seats, standing, etc.).

1.3 Capacity Limits for Exterior settings such as patios

In London, neither the Building Division nor Fire Department assign the licensed capacity. As the AGCO indicates, where the municipal building department and fire department do not set the 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 Assembly Use and Water Closets for Assembly Occupancies. 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.

Staff’s recommendation includes keeping the current capacity provision for permanent patios *[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]*. The recommendation also includes adding *that seasonal outdoor patios follow a ratio of 1.11 square metres per person*, which is directly in line with the Liquor Licence and Control Act (2019). Staff are of the opinion that this provides for a little more flexibility for those businesses wanting to set up extra tables and chairs, while implementing a maximum ratio of how many people would be able to expand into the seasonal outdoor space (1.11 square metres per person).

1.4 The AGCO – Licensing and Capacity for new or extended seasonal patios

The AGCO require restaurants and taverns to apply for a liquor licence should they choose to serve alcohol. The approval of any new licenced temporary outdoor patios and patio extensions are under the authority of the AGCO and based on the following criteria:

1. The physical extension of the premises is adjacent to the premises to which the licence to sell liquor applies;
2. The municipality in which the premises is situated has indicated it does not object to an extension;
3. The licensee is able to demonstrate sufficient control over the physical extension of the premises;
4. There is no condition on the liquor sales licence prohibiting a patio; and,
5. The capacity of any new patio, or extended patio space where the licensee has an existing licensed patio, does not exceed 1.11 square meters per person.

1.5 Policy Context

The following policy documents were considered during the review of this amendment. The most relevant policies are the Provincial Policy Statement (PPS) 2020, the Official Plan, 1989, and the London Plan.

Recommended Zoning By-law Amendment

On September 6, 2022, Municipal Council resolved that the Civic Administration report back at a future meeting of the Planning and Environment Committee with a revised by-law removing the seasonal patio restrictions time in section 4.18 of not more than three

consecutive days and the thirty-day limit, and to examine the mechanisms by which the Alcohol and Gaming Commission of Ontario regulates capacity.

The recommended amendments are in accordance with the most recent Council direction and are included in 'Appendix A'. These amendments replace and/or amend portions of Section 4.18 Outdoor Patio Associated with a Restaurant or Tavern, contained in the Z.-1 Zoning By-law. The following is a summary of the amendment:

1. **Remove** references to specific months of operation for seasonal outdoor patios and align with the eight-month regulation based on the Liquor Licence and Control Act.
2. **Add capacity limits** for seasonal outdoor patios based on the Liquor Licence and Control Act at a ratio of 1.11 square metres per person.
3. **Add restrictions to** seasonal outdoor patios to protect accessible parking spaces.

Conclusion

The recommended amendment to the Zoning By-law Z.-1 is intended to assist local restaurant owners by providing additional outdoor seating at their establishments. The months of operation and capacity limits for seasonal outdoor patios are in keeping with the Liquor Licence and Control Act.

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

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.-1-18____

A by-law to amend the Zoning By-law Z.-1 for the City of London, 1993, relating to the regulation of Seasonal Outdoor Patios 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:

__6) OUTDOOR PATIO, SEASONAL

[DELETE]

~~a. No seasonal outdoor patio shall be permitted between November 16 and March 14, inclusive;~~

[ADD]

a. No seasonal outdoor patio shall be permitted for more than a total of eight months in a calendar year;

[DELETE]

~~b. All structures and appurtenances associated with a seasonal outdoor patio must be removed between November 16 and March 14, inclusive;~~

[ADD]

b. All structures, appurtenances or physical extensions associated with a seasonal outdoor patio are not permitted for more than a total of eight months in a calendar year;

[ADD]

c. Notwithstanding Sections 4.18(1), any seasonal outdoor patio shall not exceed a CAPACITY of 1.11 square metres per person;

d. 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;

e. Notwithstanding Section 4.18(5), there is no parking requirement for seasonal outdoor patios;

f. Notwithstanding Section 4.19, seasonal outdoor patios are permitted within required parking spaces for commercial uses; and,

g. No seasonal outdoor patio shall be located within required parking spaces for residential dwelling units.

[ADD]

h. No seasonal outdoor patio shall be located within an accessible parking space. Vehicular access to any such parking space shall not be impeded by any obstruction associated with a seasonal outdoor patio.

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 October __, 2022,

Ed Holder
Mayor

Michael Schulthess
City Clerk

First Reading – October __, 2022
Second Reading – October __, 2022
Third Reading – October __, 2022