

Report to Planning and Environment Committee

To: Chair and Members
Planning & Environment Committee

From: Gregg Barrett
Director, Planning and City Planner

Subject: Application by the Corporation of the City of London City-Wide Seasonal Outdoor Patios Zoning By-law Regulations

Date: March 29th, 2021

Recommendation

That, on the recommendation of the Director, Planning and City Planner, with respect to the application of the Corporation of the City of London relating to Seasonal Outdoor Patios, the proposed by-law attached hereto as Appendix "A" **BE INTRODUCED** at the Municipal Council meeting on April 13, 2021 to amend the Zoning By-law Z.-1 to add regulations related to Seasonal Outdoor Patios.

Executive Summary

Summary of Request

The recommended amendment will allow restaurants and taverns to set up seasonal outdoor patios on their properties.

Purpose and Effect of Recommended Action

The purpose and effect of the recommended action will allow licensed restaurants and taverns to establish seasonal outdoor patios, by implementing necessary changes to the Zoning By-law Z-1. The proposed changes are as follows:

- Establishing 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;
- 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.

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 1989 Official Plan, which encourages the management of land and resources to promote economic development.

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

This zoning by-law amendment 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 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 in the summer months. The amendment supports the regeneration and intensification of existing urban areas by increasing the viability of existing economic activities and businesses, which helps to mitigate sprawl. Finally, this amendment supports active transportation and place-making by establishing active, vibrant uses in the public realm which create a desirable walking environment.

Analysis

1.0 Background Information

1.1 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

1.2 Covid-19 and Provincial Health Measures

The Covid-19 Provincial Health orders greatly reduced the capacity for indoor restaurants to ensure adequate space for social distancing and public health measures. Not surprisingly, the pandemic has disproportionately impacted restaurants and taverns whose businesses rely on the number of patrons they can service. Space is a key consideration for restaurants to maintain social distancing, even as the Province starts to gradually loosen restrictions. Allowing for temporary outdoor patios is a solution to help restaurants maintain social distancing health protocols. As a result, on June 8th, 2020 the Alcohol and Gaming Commission of Ontario (AGCO) allowed the expansion of licensed areas outside and adjacent to licensed establishments to allow more space for servicing patrons. This order has been extended to the end of 2021.

Further, the City of London established the London Community Recovery Network (LCRN) and the Back2Business (B2B) group to support businesses through the challenges imposed by Covid-19 restrictions. One of the ideas from the B2B and LCRN groups was to allow private patio expansions as a short-term measure to support businesses as part of the Covid-19 recovery. This idea has seen a lot of support from the business community and has allowed many businesses to continue to operate. Many business owners have expressed a desire to continue allowing seasonal patios on their properties longer term.

1.3 Existing Outdoor Patio Regulations

The existing zoning requirements for permanent outdoor patios 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 permanent outdoor patio 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 AGCO. Temporary or seasonal outdoor patios are not currently permitted in the Zoning By-law Z-1.

2.0 Key Considerations

The following outlines key considerations regarding this Zoning Bylaw amendment.

2.1 Seasonality

In the local climate, patios are most popular in the warmer months. Most businesses choose not to operate their patios year-around. However, some do and that is permitted and considered a permanent outdoor patio. The parking, location and other design criteria are reviewed through a site plan approval process and/or building permit that reflects the more robust structure being in place year-around.

To allow for a more tactical approach to outdoor patios, this zoning by-law amendment would allow for businesses without a dedicated permanent patio, to set up patio furniture, enclosures, and other associated materials on their private property and within parking spaces. The intent is that all patios can be easily removed, and the site turned back to its original condition for the winter months. The seasonal timeframe of March 15 to November 15 is based on a generous patio season, when there is little to no snow on the ground, and therefore less space required to accommodate snow storage.

2.2 Parking Regulations

Permanent outdoor patio space, other than in the Downtown zone, is included in the gross floor area (GFA) of the establishment and parking requirements are calculated at the same rate as indoor GFA (Section 4.18(5) of Zoning By-law Z-1). Parking requirements set are based on highest use of property at peak seasons in addition to accounting for practical matters such as snow storage that is not needed outside the winter months.

Through the Back2Business (B2B) team, a number of patio operators expressed their preference for additional patio space over parking spaces, noting their clientele often walk or cycle. Similarly, in the summer, people tend to use more active forms of transportation (walking and cycling) as a means of travel. Therefore, staff is recommending that seasonal outdoor patios not be considered in the calculation of the GFA, as is the requirement for permanent patios, and that seasonal outdoor patios not require additional parking spaces regardless of the zone. Further, due to the greater capacity of parking lots outside the winter season, staff is recommending that a seasonal patio can be located within some of the required commercial parking spaces.

An additional parking consideration is the many mixed-use areas throughout the city included parking areas to accommodate both commercial and residential tenants. It is important to ensure adequate year-round parking for residential uses. Therefore, staff is also recommending that seasonal outdoor patios not be permitted within required residential parking spaces.

This approach will provide greater flexibility for businesses to choose whether the additional patio capacity is better aligned with their business goals compared to the provision of more commercial parking spaces, while protecting required residential parking.

2.3 Capacity Regulations

Capacity is another key consideration in the zoning by-law amendment. Section 4.18(1) of the Zoning By-law allows for permanent outdoor patios to accommodate up to 50

percent (50%) of the indoor capacity of the establishment, or 50 persons, whichever is the greater.

The Ontario Building Code requires the number of bathroom stalls for establishments to increase by each additional 50-persons increment (Section 3.7.4.3 of the Ontario Building Code). For example, a restaurant that is licenced to service 100 patrons would be permitted to expand their outdoor patios space to accommodate 50 additional patrons before requiring additional washroom stalls. Staff do not recommend any changes to the current outdoor patio regulations regarding capacity for seasonal outdoor patios.

2.4 Business and Liquor Licences

A Site Plan or sketch of a patio location is required as part of a business license and AGCO liquor license. 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. The licencing department also circulates the proposed layout to the Fire department who conduct a site inspection to ensure that no fire routes are blocked, there are clear exits from the patio, that the heaters are not close to anything combustible, and there is a fire extinguisher on site. Once the business has approval from the City, they can apply for a liquor licence with the AGCO if the establishment will serve alcohol.

City business licences expire within a year and AGCO liquor licenses expire within 2 to 4 years, after such time a business is to reapply. Therefore, to ensure a seasonal patio is included within the liquor licensed area during the time it is open, staff recommends that restaurant owners apply for the maximum licensed space (including the seasonal outdoor patio space) for their business and liquor licences and simply reduce or remove the space during the off-season. This approach provides flexibility and certainty to restaurants for their business operations. A review of fire safety will occur annually to ensure seasonal outdoor patios remain safe.

2.5 Location Criteria

The Zoning By-law Z-1 regulates the location of permanent outdoor patios associated with restaurants and taverns. In the current zoning provisions, patios are not permitted adjacent to residential zones unless the residential zone is in combination with another zone, there is a separation from the residential zones by a lane, or where the patio is provided in the front yard. The size and width of laneways varies greatly throughout the city, and a conservative width to accommodate 2-way traffic is approximately 6.0m. To accommodate the intent of the laneway separation from residential zones in Section 4.18.2(a) of the Zoning By-law, while providing a flexible approach for non-permanent patios, staff is recommending that seasonal outdoor patios are setback at least 6 metres from a residential zone, where it is not in combination with another zone. All other provisions of Section 4.18.2 regarding the location of outdoor patios would apply to seasonal outdoor patios. It should be noted that even though both permanent and seasonal outdoor patios may be permitted, businesses are still regulated by the Sound By-law that requires a permit for music and outdoor entertainment.

2.6 Monitoring and Evaluation

City staff will monitor the impacts and outcomes of this Zoning By-law amendment for a period of two (2) years, including tracking complaints, and overall compliance. At that point staff will make recommendations on any potential amendments to the regulations, if required.

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 Official Plan 1989 and the London Plan.

4.0 Community Engagement (see more detail in Appendix B)

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 February 4th, 2021.

The Notice of Application outlined a possible amendment to Section 4.18 of the Zoning By-Law # Z.1 to address parking requirements, capacity limitations, and the location and design of temporary outdoor patios.

One comment was received from a business owner that had no objections and was in support of the zoning by-law amendment as it will provide certainty seasonal patios will be permitted. Comments provided can be found in Appendix 'B'.

5.0 Financial Impact/Considerations

Review of seasonal outdoor patios on private property will be completed through the existing business licence and/or AGCO liquor license process. No additional staff resources or funding will be required.

Conclusion

Introducing the new use of seasonal outdoor patios will allow restaurants and taverns the opportunity to service more patrons. In addition, the new use has positive urban planning implications of activating city streets and encouraging alternate forms of transportation (active and public) that helps transform the City to one that is less dependent on cars. Further, seasonal outdoor patios allow the use of underutilized parking areas. The recommended zoning by-law amendment considers the capacity, location, and parking requirements for seasonal outdoor patios.

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Planner II, Urban Regeneration

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Manager of City Building and Design

Recommended by: Gregg Barrett, AICP
Director, Planning and City Planner

Appendix "A"

Bill No.(number to be inserted by Clerk's Office)
2021

By-law No. Z.-1-18_____

A by-law to amend the General Provisions of By-law No. Z.-1 to regulate Seasonal Outdoor Patios.

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:

- 1) Section 2 (Definitions) is amended by adding the following:

“OUTDOOR PATIO, SEASONAL” means a temporary area set aside out of doors, for the use of patrons as a licensed restaurant or tavern in connection with, and in addition to, the operation of an adjacent restaurant or tavern.

- 2) Section 4.18 (Outdoor Patios) of the General Provisions is amended by adding the following:

__6) SEASONAL OUTDOOR PATIOS

- a. No seasonal outdoor patio shall be permitted between November 16th and March 14th, inclusive;
- b. All structures and appurtenances associated with a seasonal outdoor patio must be removed between November 16th and March 14th, 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; and,
- f. No seasonal outdoor patio shall be located within required parking spaces for residential dwelling units.

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.

PASSED in Open Council on April 13, 2021.

Ed Holder
Mayor

Catharine Saunders
City Clerk

First Reading – April 13, 2021
Second Reading – April 13, 2021
Third Reading – April 13, 2021

Appendix B – Public Comments

Appendix “B”

From: Mark Serre
Sent: Thursday, February 11, 2021 2:36 PM
To: B2B [Back2Business] City of London <B2B@london.ca>; Hall, Jasmine <jahall@london.ca>
Subject: [EXTERNAL] Restaurant Patios

Good afternoon.

I began reaching out to city staff and council in July of 2020. I thought it was important that the conversation started about the 2021 patio season, and now that we have an idea as to where we are in mid-February, for the 2022 patio season as well. I had two main concerns, one, that we would be allowed to extend restaurant patios again this summer as even in July, we knew that industry recovery would require expanded patios, and two, the timing of the city's decision.

I know we saw how successful the program was last year. Speaking on behalf of my restaurant, I applaud the AGCO and the city for making the decisions quickly so that we could benefit from as much of the summer as we could. As a restaurant owner, I have also had to make those kinds of quick decisions as we did not have a lot of notice to all of the ongoing changes that the government has levelled upon us in the past 11 months. This was why I reached out 6 weeks after we were allowed to open after the first 2.5-month lockdown.

I had the impression that my message was well received but that it would require a zoning change. I also had the impression that it was being brought up at that time (at a planning and development meeting slated for the following day). In October, I followed up and was told that I needed to fill out a questionnaire for the LCRN. That timeline was put forth as a report going forth to SPPC in mid-December. On February 1, I followed up once again as the timing is becoming extremely important.

The restaurant industry has been devastated by the lockdowns. I do believe that if we can get vaccines into people by the end of the summer, with all else remaining equal, that we will not be back to 2019 sales until the fall of 2022- with all else being equal, ie, the variants not causing us more harm. Part of my reasoning for this is that government actions have crushed consumer confidence in our industry and it will take that long for the masses to feel comfortable indoors, for parties to come back, and even for lunch business to return to the core.

While I appreciate that it takes time for changes to be made at the civic level I want to impress upon you that timing is crucial to our industry at the moment. While you might think that April is 'in time for patio season' and gives us the time we need to be able to make it all happen, the realities of the business do not support this. Yes, prior to COVID, our busiest months are traditionally May and June, but also traditionally, mid-March usually signals the beginning of patio season for us. Once we have that first day of 10 degrees plus (10 feels very different in March than it does in October!) we have people clamoring for the patio- which will be even more prevalent of a feeling this year. As soon as the snow is gone in March, the patio furniture is moved out so that we can accommodate those people. Last year, for example, we had already moved furniture out in anticipation only to close on March 16.

The AGCO has let us know that they are allowing municipalities to once again make the decision of expanded patios. Now is the time we need to start planning- not in April. If we knew for example that even if temporary, that you were allowing patios for the next two summers, then it is worth our while to purchase furniture. I have been in touch with my two suppliers- both are on waitlists as the moment (as an aside, I am still waiting on patio heaters that were purchased in August last year). Along with furniture, if we are doing this again this summer, we need to book contractors, make sure something as

simple as wood is in stock, book entertainment, find and train staff, speak with landlords and neighbours, apply for HASCAP loans or find the money in the budget to pay for this patio...so much that cannot wait until April for a decision. I do not think we want to operate the slapdash patio of last summer and I know that due to this most recent lockdown, that as much as we have 'pivoted' already, we have a lot of work to do between now and patio season.

I understand one of the issues is parking. I would like to make it clear, and hopefully help the argument for change, that as a downtown establishment, I myself, am not concerned with parking. You are at the moment developing a climate emergency action plan- which would seem to be at odds with asking people to drive to their favourite parking spot. Also, as you might have heard, it is getting increasingly difficult to find insurance for establishments that serve alcohol...in part due to alcohol-related motor vehicle accidents. (today was the sentencing of Danielle Leis). I truly do not want people driving to our restaurant- with an expanded patio, we would also be adding more bike parking to our establishment. Parking minimums are an outdated concept.

I have also asked about the bylaw(?) with respect to patio capacity. When we applied for our patio almost 12 years ago, the bylaw in place allowed patios to be sized at only half of the interior capacity. I am not sure if this is still on the books but I think, regulation-wise, that this is bigger than parking variances- and yet, I have not heard any feedback about this from anyone that I have heard back from. I know I would be seeking a permanent addition to my patio (all on our property) through thr AGCO- once they are accepting applications again- if this bylaw(?) was not on the books.

I am not concerned with the city paying for patio furniture, nor are most restaurateurs concerned with allowing year-round patios (although a great thing if indoor dining is allowed next winter and people are able to winterize their patios keeping health and safety laws in mind of course). I think we might just be overthinking this. It is simple, we just need to know as soon as possible (and not April) so we can plan and start ordering and building.

Once again, I appreciate all of the help that we have received (we as an industry, not we as in The Morrissey) from everyone that we have reached out to. After the last response though, I felt that perhaps the timing aspect of your decisions did not suit our needs and that we needed action.