

**Zoning By-law Amendment – Outdoor Commercial Patios**

**Modification du règlement de Zonage – Terrasses Commerciales**

**Committee recommendation, as amended**

That Council approve an amendment to Section 85 of Zoning By-law 2008-250 as detailed in Document 1 as amended.

**Recommandation du Comité, telle que modifiée**

Que le Conseil approuve une modification à l'article 85 du Règlement de zonage 2008-250, comme l'expose en détail le document 1 tel que modifié.

**For the information of Council**

The following direction to staff was given by the Planning Committee.

**Pour l'information du Conseil municipal**

La directive suivante a été adressée au personnel de la Ville par le Comité de l'urbanisme.

**Motion N° PLC 2021-54/01**

Moved by Councillor J. Leiper, on behalf of Councillor M. Fleury

[...]

**BE IT FURTHER RESOLVED THAT that Staff be directed to develop a “good neighbour” information document for outdoor commercial patios located in both the right-of-way and/or private lands, to cover issues related to the screening, noise, and other related operational matters for the 2022 patio season.**

Documentation/Documentation

1. Report from the Director, Economic Development and Long-Range Planning, Planning, Infrastructure and Economic Development Department, dated November 19, 2021 (ACS2021-PIE-EDP-0042)

Rapport du directeur, Développement économique et planification à long-terme, Direction générale de la planification, de l'infrastructure et du développement économique, daté le 19 novembre 2021 (ACS2021-PIE-EDP-0042)

2. Extract of draft Minutes, Planning Committee, December 6, 2021

Extrait de l'ébauche du procès-verbal du Comité de l'urbanisme, le 6 décembre 2021

**Planning Committee  
Report 54  
December 8, 2021**

**3**

**Comité de l'urbanisme  
Rapport 54  
Le 8 décembre 2021**

**Report to  
Rapport au:**

**Agriculture and Rural Affairs Committee  
Comité de l'agriculture et des affaires rurales  
2 December 2021 / 2 décembre 2021**

**and / et**

**Planning Committee  
Comité de l'urbanisme  
6 December 2021 / 6 décembre 2021**

**and Council  
et au Conseil  
8 December 2021 / 8 décembre 2021**

**Submitted on 19 November 2021  
Soumis le 19 novembre 2021**

**Submitted by  
Soumis par:  
Don Herweyer,  
Director / Directeur**

**Economic Development and Long-Range Planning / Développement économique et  
planification à long-terme**

**Planning, Infrastructure and Economic Development Department / Direction  
générale de la planification, de l'infrastructure et du développement économique**

**Contact Person / Personne ressource:**

**Robert Sandercott, Planner / Urbaniste, Policy Planning / Politiques de la  
planification**

**613-580-2424, 14270, [Robert.Sandercott@ottawa.ca](mailto:Robert.Sandercott@ottawa.ca)**

Ward: CITY WIDE / À L'ÉCHELLE DE  
LA VILLE

File Number: ACS2021-PIE-EDP-0042

**SUBJECT: Zoning By-law Amendment – Outdoor Commercial Patios**

**OBJET: Modification du règlement de Zonage – Terrasses Commerciales**

#### **REPORT RECOMMENDATIONS**

1. That Agricultural and Rural Affairs Committee and Planning Committee recommend Council approve an amendment to Section 85 of Zoning By-law 2008-250 as detailed in Document 1.
2. That Planning Committee and Agricultural and Rural Affairs Committee approve the Consultation Details Section of this report be included as part of the 'brief explanation' in the Summary of Written and Oral Public Submissions, to be prepared by the Office of the City Clerk and submitted to Council in the report titled, "Summary of Oral and Written Public Submissions for Items Subject to *the Planning Act* 'Explanation Requirements' at the City Council Meeting of December 8, 2021, subject to submissions received between the publication of this report and the time of Council's decision.

#### **RECOMMANDATIONS DU RAPPORT**

1. Que le Comité de l'agriculture et des affaires rurales et le Comité de l'urbanisme recommandent au Conseil d'approuver une modification à l'article 85 du Règlement de zonage 2008-250, comme l'expose en détail le document 1.
2. Que Comité de l'agriculture et des affaires rurales et le Comité de l'urbanisme donne son approbation à ce que la section du présent rapport consacrée aux détails de la consultation soit incluse en tant que « brève explication » dans le résumé des observations écrites et orales du public, qui sera rédigé par le Bureau du greffier municipal et soumis au Conseil dans le rapport intitulé « Résumé des observations orales et écrites du public sur les questions assujetties aux 'exigences d'explication' aux termes de la *Loi sur l'aménagement du territoire*, à la réunion du Conseil municipal

**prévue le 8 décembre 2021 », à la condition que les observations aient été reçues entre le moment de la publication du présent rapport et le moment de la décision du Conseil.**

## **EXECUTIVE SUMMARY**

In 2020, as part of the City's COVID-19 business recovery efforts, the City adopted a temporary Zoning By-law Amendment, By-law 2020-223, which relaxed certain regulations around the establishment and placement of outdoor commercial patios and outdoor retail "pop-up" spaces. This By-law was further extended until January 1, 2022. The relaxed regulations included the following:

- No requirement for separation between a patio and a residential zone, whereas the current By-law requires any outdoor commercial patio not separated by a building to be located at least 30 metres away from a residential zone where screened, or 75 metres away from a residential zone where not screened.
- Patios located within 30 metres of a residential zone are not permitted to contain an amplified sound system for music or entertainment purposes.
- Patios are permitted to encroach on parking spaces, except "accessible" spaces as defined under the Traffic and Parking By-law.

Given the influx of new patios in accordance with these new rules, and that these have allowed for potential improvements to the pedestrian realm, it is proposed to change the Zoning By-law to make these changes permanent. This will permanently eliminate the requirement for separation of patios from residential zones, subject to no amplified sound being provided on patios within the current By-law's 30 metre minimum distance requirement.

It should be noted that this proposed amendment does not modify the zoning regulations respecting patios in any way in which they are not already affected by the current temporary By-law.

## **Staff Recommendation**

Planning staff recommend that the proposed zoning amendment to the outdoor commercial patio provisions be approved, as they will create additional flexibility for the placement of patios on private property including on parking spaces, improving pedestrian interaction in a manner that does not cause undue adverse impact on abutting properties.

## **RÉSUMÉ**

En 2020, dans le cadre des efforts de relance économique de la Ville dans le contexte de la COVID-19, le Conseil a adopté une modification temporaire du Règlement de zonage, le Règlement 2020-223, qui a assoupli certaines règles relatives à l'aménagement et à l'emplacement des terrasses commerciales extérieures et d'espaces temporaires de vente au détail à l'extérieur. L'application de ce règlement a été prolongée jusqu'au 1<sup>er</sup> janvier 2022. La réglementation assouplie comprenait les éléments suivants :

- Aucune séparation n'est requise entre une terrasse et une zone résidentielle, alors que la réglementation actuelle exige que les terrasses commerciales extérieures non séparées par un bâtiment soient situées au moins à 30 m d'une zone résidentielle lorsqu'elles sont dissimulées ou à 75 m d'une zone résidentielle lorsqu'elles ne sont pas dissimulées.
- Les terrasses situées à moins de 30 m d'une zone résidentielle ne peuvent être dotées d'un système de sonorisation amplifié pour diffuser de la musique ou à des fins de divertissement.
- Les terrasses peuvent empiéter sur les places de stationnement, à l'exception des places « accessibles » telles que définies dans le Règlement sur la circulation et le stationnement.

Compte tenu de l'afflux de nouvelles terrasses conformes à ces nouvelles règles et du fait que ces règles ont permis des améliorations éventuelles au domaine public, il est proposé de modifier le Règlement de zonage pour rendre ces changements permanents. Cette mesure éliminera de façon permanente l'obligation de séparer les terrasses des zones résidentielles, à condition qu'aucun son amplifié ne soit émis sur

les terrasses situées dans la limite minimale de 30 mètres exigée par la réglementation actuelle.

Il convient de noter que la modification proposée ne modifie pas le Règlement de zonage concernant les terrasses d'une manière qui n'est pas déjà prévue par le Règlement temporaire actuel.

### **Recommandation du personnel**

Le personnel des Services de planification recommande l'approbation de la modification de zonage touchant les dispositions sur les terrasses commerciales, car ces dispositions apporteront plus de souplesse en matière d'aménagement de terrasses sur les biens-fonds privés, notamment sur les places de stationnement, améliorant ainsi l'interaction avec les piétons sans entraîner de répercussions indésirables sur les propriétés contiguës.

### **BACKGROUND**

Learn more about [link to Development Application process - Zoning Amendment](#)

For all the supporting documents related to this application visit the [link to Development Application Search Tool](#).

On July 15, 2020, Council adopted By-law 2020-223, a temporary Zoning By-law amendment to allow increased flexibility for outdoor commercial patios associated with restaurants and similar commercial uses during the COVID-19 pandemic. This amendment allows patios to be located in closer proximity to residential zones, provided that no amplified sound system is permitted for patios within 30 metres of said zones. This amendment also permits patios to occupy parking spaces other than accessible parking spaces while in operation. This By-law was extended to January 1, 2022 via By-laws 2020-269 and 2020-338.

Staff note that these regulations have allowed for an increased use of patio space by an increasing number of establishments and have allowed for additional outdoor interaction in a manner that allows for effective physical distancing. In particular, this has opened opportunities for businesses located along Main Streets, where patios were otherwise prohibited by nature of the lot fabric and adjacent residential zoning in these areas. Patio spaces can contribute to a pedestrian-friendly environment and vibrant

commercial areas and have contributed to the economic viability of these businesses. Therefore, staff propose to amend the Zoning By-law to permit these new patio regulations on a permanent basis.

The proposed amendments are as follows:

### **Permit Patios Near Residential Zones**

Where a property abuts or faces a residential zone, a patio must be at least 30 metres away from said zone. Where a patio is less than 75 metres from a residential zone, an opaque screen facing the residential zone must also be provided. In many cases, the 30-metre distance has restricted or eliminated the possibility of providing on-site outdoor patios, such as on sites along main streets which often are directly adjacent to residential zones.

The proposed amendment will remove these restrictions, such that there is no requirement to distance a patio from an abutting or facing residential zone. However, where a patio is within 30 metres of an abutting residential zone, the requirement to provide a visual screen will continue to apply.

### **Restrictions on Amplified Sound Systems**

As the proposed regulations will allow patios in close proximity to residential zones, it is necessary to ensure that potential noise does not result in nuisance or undue adverse impact on adjacent residential areas.

With this in mind, patios proposed to be permitted within 30 metres of residential zones will not be permitted to contain an amplified sound system for entertainment purposes.

In terms of other potential noise sources, the Noise By-law will continue to apply to outdoor commercial patios.

### **Permit Patios to Occupy Parking Spaces**

The current requirements state that outdoor commercial patios are not permitted to occupy required parking spaces or aisles. The amendment will permit patios to occupy any parking space, regardless of whether or not it is required under the Zoning By-law,



while the patio is in operation. The only exception to this is in the case of accessible parking spaces, which a patio will not be permitted to occupy.

## **DISCUSSION**

### **Public consultation**

Public consultation was undertaken in accordance with the *Planning Act* and the Official Plan.

For this proposal's consultation details, see Document 2 of this report.

### **Official Plan**

In general, neither the 2003 Official Plan nor the Council-adopted 2021 Official Plan speak in detail to policies specific to outdoor commercial patios, leaving the regulations and direction for such features to the Zoning By-law. Staff note Policy 2.5.1 from the 2003 Plan with respect to "compatible design", which states in part that "compatible development means development that, although it is not necessarily the same as or similar to existing buildings in the vicinity, can enhance an established community through good design and innovation and coexists with existing development without causing undue adverse impact on surrounding properties." With this in mind, the proposed direction in this report is to allow additional flexibility for the design and location of outdoor commercial patios accessory to permitted uses, while addressing the possibility for common nuisances such as noise via the restriction of amplified sound systems.

From the Council-adopted 2021 Plan, staff note that the promotion of "15-minute neighbourhoods" is a key element of this plan. For example, Policy 2.2.4.1 cites the design and development of "healthy, walkable, 15-minute neighbourhoods" as a key policy component for ensuring healthy communities and cites "neighbourhood retail and commercial services in order to reduce travel time for daily needs" as one such component for such neighbourhoods. To this end, allowing increased flexibility for the provision of patios can help support the creation and retention of some such services, such that this amendment helps achieve the intent of this policy of the new Official Plan.

Staff are of the opinion that the proposed zoning will meet the policies of the Official Plan.

## **Planning rationale**

The proposed patio rules allow for additional flexibility to provide outdoor seating associated with restaurants and a variety of similar non-residential uses in a manner that does not result in undue adverse impacts on abutting properties. This is particularly true in the case of properties on major streets that also abut residential zones, where the ability to provide an outdoor patio is severely limited in locations where not directly screened by a building.

Similarly, the ability for patios to occupy parking spaces allows for potential improvements to the pedestrian realm, by allowing establishments to reduce the emphasis of parking on a site when a patio is in operation. The permission for patios to occupy parking spaces is not intended to extend to accessible parking spaces, to ensure that any such permission does not have a negative impact on accessibility.

Overall, the proposed zoning amendment will allow additional space for outdoor seating in an appropriate manner, and thus represents good land use planning.

## **Provincial Policy Statement**

Staff have reviewed this proposal and have determined that it is consistent with the 2020 Provincial Policy Statement.

## **By-law Complaints During Implementation of the Temporary Zoning Regulations**

As previously noted, the proposal will implement permanent regulations that were originally permitted on a temporary basis via By-law 2020-223.

Since the implementation of this amendment, staff are aware of 13 By-law enforcement complaints involving 10 patios that have occurred during this time period (from June 2020 to present). Of these complaints:

- Four sites were the subject of noise complaints. Of these, only two sites were in direct proximity to residentially-zoned areas;
- Six complaints related to structures constructed on the patio area, such as temporary tents or shelters, and concerns over whether or not said structures were constructed legally;

- Two complaints related to accessibility issues with patios blocking sidewalks. It should be noted that where a patio is occurring on the public right of way, it is subject to the Encroachment By-law and not the Zoning By-law;
- One complaint related to concerns that a restaurant was “not following proper COVID-19 procedures”. Such procedures would be under the purview of Ottawa Public Health, and not under the purview of zoning.

Overall, the majority of the aforementioned complaints, in staff’s opinion, do not directly relate to the regulations proposed to be modified via this Zoning By-law amendment. Notably, none of the complaints cite the lack of parking or obstruction of parking as a concern at the affected sites. Noise complaints directly relating to patios were also rare, with only two such complaints in the time period of the temporary zoning relating to patios that directly face residential properties.

### **Implementation**

As part of Council's previous direction with respect to outdoor commercial patios, business practices were adopted pertaining to the licensing and intended enforcement of these features, particularly where located near a residential zone, which are implemented by staff within the Public Realm and Urban Design Branch. Some of these practices are not within the purview of zoning.

In particular, in the case of patios in the public right-of-way within 30 metres of a residential zone, a business is required to notify abutting residents, as well as the Ward Councillor, of their proposal. In this regard, staff would note that should this amendment be approved, a patio on private property associated with a permitted use would be fully permitted as-of-right under zoning, even where abutting residents or the local Councillor would be in opposition. Any concerns associated with how the patio is managed would be subject to enforcement through existing nuisance By-laws.

The restriction on amplified sound systems for patios can be implemented and enforced through the Zoning By-law, and forms part of the details of recommended zoning set out in Document 1.

## **RURAL IMPLICATIONS**

The proposed By-law is City-wide and will therefore apply to zones within the rural area, including all villages, where restaurants or other uses that may be associated with an outdoor commercial patio are permitted.

## **COMMENTS BY THE WARD COUNCILLORS**

This is a city-wide report – not applicable.

## **LEGAL IMPLICATIONS**

Should the by-law be adopted and an appeal is filed, the length of such hearing will be dependent upon the number of appeals filed and the nature of such appeals. As this is a City-initiated amendment, should the recommendation be refused and no by-law enacted, an appeal cannot be filed with respect to Council's decision.

## **RISK MANAGEMENT IMPLICATIONS**

There are no risk management implications associated with this report.

## **ASSET MANAGEMENT IMPLICATIONS**

There are no asset management implications associated with this report.

## **FINANCIAL IMPLICATIONS**

There are no direct financial implications.

## **ACCESSIBILITY IMPACTS**

The content of this report does not negatively impact people with disabilities or seniors.

## **TERM OF COUNCIL PRIORITIES**

This project addresses the following Term of Council Priorities:

- Economic Growth and Diversification
- Thriving Communities

## **SUPPORTING DOCUMENTATION**

Document 1 Details of Recommended Zoning

Document 2 Details of Public Consultation

## **CONCLUSION**

The proposed zoning changes for outdoor commercial patios represent changes that have previously been introduced on a temporary basis to increase flexibility for outdoor seating in a manner that complements non-residential and mixed-use sites and contributes to a more pedestrian-friendly use of these sites. These changes will not result in patios that cause undue adverse impact on abutting properties. On this basis, the department recommends that this amendment be approved as it represents good land use planning.

## **DISPOSITION**

Zoning and Interpretations Unit, Policy Planning Branch, Economic Development and Long Range Planning Services to prepare the implementing by-law and forward to Legal Services.

Legal Services, Innovative Client Services Department to forward the implementing by-law to City Council.

Planning Operations Branch, Planning Services to undertake the statutory notification.

## Document 1 as amended – Details of Recommended Zoning

The proposed changes to the City of Ottawa Zoning By-law No. 2008-250 are as follows:

### 1. **Modify Section 85 as follows:**

#### **a) Delete subsection 85(1) and replace it with provisions similar in intent to the following:**

“a) An outdoor commercial patio is permitted in any zone other than a residential zone, where associated with a permitted use.

b) An outdoor commercial patio is not required to be on the same lot as its associated primary use but must be located within the same city block as or directly across the street from the associated use.”

#### **b) Delete subsection 85(3) and replace it with provisions similar in intent to the following:**

“a) Where an outdoor commercial patio is within 30 metres of a residential zone, it is not permitted to be served by an amplified sound system, directly or indirectly, for music or entertainment purposes.

b) Where an outdoor commercial patio abuts a residential zone, is within 30 metres of that zone and is not physically separated by a building, it must be screened from that zone by a structure, screen or wall that is at least 2 metres in height.”

#### **c) Delete subsection 85(4) and replace it with provisions similar in intent to the following:**

“a) Outdoor commercial patios must not encroach on or eliminate an accessible parking space as defined under the Traffic and Parking By-law.

b) An outdoor commercial patio is deemed not to be in non-compliance with the requirements of Section 101 as a result of any encroachment on required parking spaces, except as per subsection (4)(a).”

**2. Modify Section 100 as follows:**

**a) Add the following as subsection 100(11) with wording similar in effect to the following:**

“Outdoor commercial patios and outdoor retail spaces in association with a permitted retail use may locate on the same lot or on a lot within the same city block as or across the street from the permitted use and may locate on required or provided parking spaces or aisles, except in the case of an accessible parking space as defined under the Traffic and Parking By-law.”

## **Document 2 – Details of Public Consultation**

### **Notification and Consultation Process**

Notification and public consultation were undertaken in accordance with the Public Notification and Public Consultation Policy approved by City Council for Zoning By-law amendments.

### **Public Comments and Responses**

Comment:

If restaurants are allowed to have patios abutting residential homes, this will greatly affect their privacy and ability to safely travel. The patios should not be able to view the homes on residential streets.

Response:

Staff acknowledge that there can remain potential concerns with respect to privacy that may occur from patios in close proximity to residential zones, and with this in mind it is proposed as part of this amendment to retain requirements for opaque screening to be provided for patios located within 30 metres of an abutting or facing residential zone.

Comment:

As a temporary measure until things get back to “normal” this is an acceptable compromise, but as a permanent bylaw, this puts commercial interests ahead of the well being of residents. Patio patrons can, and often do, get very loud. In turn, business owners cannot be expected to police their patrons (for obvious reasons) and bylaw officers are both busy and in my experience, reluctant to impose penalties in all but the most flagrant situations. Bottom line, this proposal will have a significant deleterious effect on residents and owners of properties abutting affected areas. This is a bad idea and a complete sell out to commercial interests. I cannot support this measure.

Response:

While Staff acknowledge that patios can represent a potential source of nuisance, Staff also note that during the temporary By-law period, noise was rarely the subject of By-law complaints respecting patios on private property. As noted in the “Discussion”



section of this report, there have been a total of four noise-related complaints City-wide since June 2020. Where noise or other nuisances are a concern, By-laws such as the Noise By-law can be enforced to address potential nuisances that may arise from the individual operation of patios on private property. Overall, Staff are satisfied that the proposed amendment, including the prohibition of amplified sound and requirement for screening within 30 metres of an abutting residential zone, will adequately address the potential for undue adverse impacts.

Comment:

I fully and completely support this initiative. As the city approves more higher density living arrangements it must also consider the quality of life of the occupants. While people living in ground level accommodations have options for dining outside on a summer evening, those in apartment complexes do not. The street animation and dining options we have been enjoying for the last couple years has been wonderful.

Response:

Staff acknowledge this comment.

## **Community Organization Comments and Responses**

### **Lowertown Community Association**

*"The Lowertown Community Association is opposed to the City's proposal to make permanent the relaxed regulations during COVID regarding the placement of outdoor commercial patios and outdoor retail "pop-up" retail spaces. This would permanently eliminate the 30-metre zoning by-law distance requirement of any outdoor commercial patio to a residential zone and permanently allow patios to encroach on street parking spaces.*

*The reason for the 30-metre zoning by-law distance requirement is to protect the livability of residents. Outdoor patios are an important source of noise and can interfere with the right of residents to enjoy their living space without undue noise they cannot control. COVID does not justify giving rights to business owners that affect negatively the rights of residents. Since the city has big plans to increase residential densities inside the greenbelt, it is primordial to ensure that the livability of current and future*

*residents be protected and enhanced. This proposal, if adopted, will interfere with residents' enjoyment of their private residential space.*

*Once again, the city is proposing a "one size fits all" regulation that does not take into account the multiple problems related to the over concentration of restaurants and bars in the ByWard Market and the heritage character of the Market area and Lowertown West which are both currently the object of heritage plans which will also deal with the location, look and feel of outdoor patios. The city's proposed by-law amendment should not apply to these areas so they do not restrict the community's ability to recommend guidelines for outdoor patios in the ongoing ByWard and Lowertown West HCD studies.*

*The City's COVID-19 business recovery efforts included not only reducing all regulations for outdoor patios but it also included closing streets, blocking sidewalks and eliminating all municipal rental fees for patios on public land. This give-away of public land for private profit has unduly favored restaurant and bar owners to the detriment of other businesses, residents and pedestrians. The elimination of the distance separation requirement and other regulatory flexibility should end as intended next January."*

Response:

Staff would first note that many of the concerns cited in the comments from the Lowertown Community Association pertain to patios on City rights-of-way. The proposed change covered in this report is strictly specific to the Zoning By-law, and thus only covers patios located on private property. This report does not propose any permanent regulatory changes affecting patios on City land or rights-of-way.

While staff recognize that patios can be a potential source of nuisance, staff would also note that other By-laws, most notably the Noise By-law, can be enforced to regulate undue adverse impacts to abutting properties. Staff are satisfied that the prohibition of amplified sound (a potentially significant noise source) as well as continued requirements for visual screening will address the most likely sources of undue adverse impact.

### **Dalhousie Community Association**

*"Most private patios are, or are potentially, detrimental to a peaceful environment on nearby residential neighbourhoods. Physical and regulatory mitigation measures are therefore required. Regulating private patio usage through complaints and by-law*

*enforcement is seldom timely or enduring, and puts the burden of enforcement on residents and on City staff.*

*1. Outdoor patios within 30m of a Residential zone:*

*a) Need to be separated by a substantial fence or building, and*

*b) Should not be permitted to have any amplified sound system for music or entertainment.*

*2. We have no objection to the use of existing parking spaces (except 'accessible' spaces) for patios or supplementary retail usage, where the current zoning would no longer require such parking spaces.*

*Residents in our community have been very forgiving and almost universally reluctant to complain during the Covid pandemic. But the pandemic is all but over, and folks are no longer willing to endure so much patio noise in residential neighbourhoods."*

Response:

Staff acknowledge that screening can help address the potential impacts of patios in proximity to a residential zone, and thus it is proposed to require a structure or screen to be provided for patios within 30 metres of adjacent residential zones. Patios within 30 metres of said zones will not be permitted to provide amplified sound systems. Parking spaces designated as "accessible" spaces will not be permitted to be occupied by patios.

Staff are satisfied that with these requirements, the main potential for undue adverse impact from patios in close proximity to adjacent residential zones will be adequately addressed.