

**THE CORPORATION OF THE TOWN OF GREATER NAPANEE**

**BY-LAW NO. 04-38**

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**BY-LAW TO REGULATE OUTDOOR RESTAURANT PATIOS**

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**WHEREAS** Section 150(1) of the *Municipal Act, 2001*, R.S.O. 2001, c.25 authorizes a municipality to pass by-laws for licensing, regulating and governing any business carried on within the municipality;

**AND WHEREAS** the Council of the Corporation of The Town of Greater Napanee deems it expedient to pass a by-law to regulate outdoor restaurant patios for the purposes of health and safety, nuisance control and consumer protection;

**NOW THEREFORE** the Council of the Corporation of the Town of Greater Napanee hereby enacts as follows:

Section 1: Definitions

1. For the purpose of the By-law the following definitions shall apply:
  - (a) "Applicant" means the person who applies for a licence under this by-law;
  - (b) "Council" shall mean the Council of the Corporation of the Town of Greater Napanee;
  - (c) "Clerk" shall mean the Clerk for The Corporation of the Town of Greater Napanee;
  - (d) "Designated area" means an area designated for the operation of an outdoor patio or sidewalk patio;
  - (e) "Highway" includes the entire right-of-way of a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle designed and intended for or used by the general public for the passage of vehicles, and shall include pedestrian access and areas adjacent to road right of ways;
  - (f) "Medical Officer of Health" shall mean the Medical Officer of Health for Kingston Frontenac Lennox and Addington Health Unit or his duly authorized delegate;
  - (g) "Municipality" shall mean The Corporation of the Town of Greater

Napanee;

- (h) "Outdoor Patio" shall mean an outdoor area used only on a seasonal basis in conjunction with any restaurant type where seating accommodation is provided and where alcoholic beverages are served to the public for consumption on the premises;
- (i) "Person" shall include a corporation or partnership;
- (j) "Provincial Offences Officer" shall mean an individual appointed by by-law or other agencies designated by Council who are responsible for the administration of the by-law;
- (k) "Sidewalk Patio" shall mean an outdoor area used only on a seasonal basis in conjunction with any restaurant type where seating accommodation is provided and where alcoholic beverages are served to the public for consumption on the premises and which is located wholly or partially on the municipality's property pursuant to a valid and subsisting encroachment agreement or lease as the municipality shall deem appropriate.

## Section 2: Licensing

1. Persons wishing to operate an outdoor patio or sidewalk patio, as defined in Section 1 of the by-law, within the boundaries of the Municipality, shall make application to the Clerk and said application shall be on the approved form attached as Schedule 'A' to this by-law.
2. No person who does not hold a valid Outdoor Patio or Sidewalk Patio Licence, issued by the Clerk under the authority of this By-law, shall operate an Outdoor Patio or Sidewalk Patio within the Municipality.
3. The following procedure shall be applicable in respect to the granting of an Outdoor Patio or Sidewalk Patio licence:
  - (a) the applicant shall determine the proposed location for the designated area and shall, if located on private property, provide a letter from the property owner or property manager permitting the use of his/her land for the proposed use;
  - (b) the applicant shall pay to the Municipality a non-refundable application fee in the amount identified in Section 2 (7);
  - (c) the applicant shall complete an application for a licence in the form attached as Schedule 'A' to this by-law;

- (d) the applicant shall submit a site plan which clearly shows the designated area along with the location of parking, signage and refuse containers;
  - (e) the Clerk shall be responsible for circulating the application to all municipal departments to determine if the application meets the Municipality's standards. The Clerk shall prepare a report to Council summarizing the comments received. The Council will have final approval for all applications for Outdoor Patios or Sidewalk Patios.
4. In addition to the application form, fee and other matters required by Section 2, the proposed location for the designated area shall comply with the following criteria:
- (a) no portion of the designated area shall be located on a highway or any part thereof;
  - (b) no portion of the designated area shall be located directly in front of an entrance to or exit from a building;
  - (c) the designated area shall not be located within 50 metres of a signalized intersection as measured from the property line closest to the signalized intersection;
  - (d) the designated area shall be set back at least twelve metres from a highway measured from the property line closest to the highway;
  - (e) the parking, signage and refuse requirements indicated in the site plan shall be within the designated area;
  - (f) the surface area of an Outdoor Patio or Sidewalk Patio shall not exceed the interior licensed floor area of the restaurant (as licensed under the Alcohol and Gaming Commission of Ontario);
  - (g) where the patio is elevated above grade on a structure, the height of the deck surface should be no greater than one (1) metre;
  - (h) platforms should be supported by posts or ground beams which meet the requirements of the *Ontario Building Code*;
  - (i) the premises shall not be used, or furniture positioned in such a manner as to obstruct exits from the restaurant;
  - (j) the chairs and tables shall be kept clear from all existing doorways and sidewalks adjacent to the patio in the interests of public safety;
  - (k) all outdoor patio and sidewalk patio objects, structures and other materials shall be stored off-site outside of the permit period;

- (l) all signage shall be in accordance with Municipality's sign by-law;
  - (m) outdoor patios or sidewalk patios facing onto a residential street must be cleared and closed by 11:00 p.m. All other outdoor patios or sidewalk patios must be cleared and closed by 12:00 midnight;
  - (n) all other applicable municipal by-laws and agreements, Provincial Codes and Acts.
5. The operator of the outdoor patio or sidewalk patio shall be responsible for maintaining the area and keeping it free of dust, papers and rubbish of any kind on a daily basis.
  6. Upon receipt of a written application to the Municipality for an Outdoor Patio or Sidewalk Patio Licence, which application shall include a statement containing full description of the purpose for which the area is to be used, and upon payment of the prescribed licence fee, and subject to compliance with all other sections of this by-law, Council shall approve an Outdoor Patio or Sidewalk Patio Licence.
  7. The fee for an Outdoor Patio or Sidewalk Patio Licence shall be included with the application for the Licence and will be the sum of one hundred dollars (\$100.00).
  8. Any fee paid for an Outdoor Patio or Sidewalk Patio Licence shall be credited to the person paying it, or to any "bona fide" purchaser of the business who carries on the business, during the year in which the Licence is issued.
  9. Every Outdoor Patio or Sidewalk Patio Licence issued under this by-law shall take effect on the day it is issued and expire on the 30<sup>th</sup> day of September in the year in which it was issued.
  10. Although the requirements in Section 2 - Licensing are standard for all applications, other requirements, depending on the individual proposals, may be recommended by the Clerk.
  11. Any person who operates an outdoor patio which is an integral part of the building structure or has received approval, through the site plan approval process, shall be exempt from this by-law.

### Section 3 - Regulations:

1. All regulations prescribed by the Alcohol and Gaming Commission of Ontario must be adhered to by the licensee. Any breach of the regulations of the Alcohol and Gaming Commission of Ontario be cause for the revocation of any Outdoor Patio or Sidewalk Patio Licence issued by the Municipality.
2. The period of operation for Outdoor Patios or Sidewalk Patios shall be May 1st to September 30<sup>th</sup> of each year.
3. Any employee or agent of a person to whom an Outdoor Patio or Sidewalk Patio Licence has been issued shall, when required by any Provincial Offences Officer of the Municipality, exhibit the licence to operate the Outdoor Patio or Sidewalk Patio.
4. Upon demand by any Provincial Offences Officer of the Municipality, any person to whom an Outdoor Patio or Sidewalk Patio Licence has been issued, or the employee or agent of such person, shall exhibit it, failing which such person, employee or agent shall be guilty of an offence unless such licence is accounted for satisfactorily.
5. The operator of every Outdoor Patio or Sidewalk Patio shall at all times comply with the requirements of the Medical Officer of Health and prior to the issuance of an Outdoor Patio or Sidewalk Patio Licence under this by-law, supply the Clerk with written confirmation of compliance in this regard.
6. The licensee shall at all times indemnify and save harmless the Municipality from all loss, costs and damages which the Municipality may suffer, be at or be put to for or by reason or on account of any matter of thing which may occur, be done or arise by reason of the use of the premises to gain access to or egress from the premises or anything which may be done thereon or which may be neglected to be done thereof by the licensee, his/her/its agents, servants or others.
7. The licensee, for a Sidewalk Patio, shall provide and maintain at his/her/its sole expense, liability and property damage insurance in the minimum amount of two million dollars (\$2,000,000.00) to protect the Municipality against all liability and shall complete an insurance certificate, all to the satisfaction of the Treasurer for Municipality.

### Section 4: Grant of Exemption of Council

1. Notwithstanding anything contained in this by-law, any person may make application to Council to be granted an exemption from any of the provisions of this by-law.

### Section 5: Revocation and Contravention

1. An Outdoor Patio or Sidewalk Patio Licence issued under the provisions of this by-law may be revoked by the Provincial Offences Officer when:
  - (a) Written notice has been received from the Medical Officer of Health or the Fire Chief stating that the Outdoor Patio or Sidewalk Patio is operating contrary to required standards; or
  - (b) The licensee has been served notice of non-compliance with the terms of this by-law, by a Provincial Offences Officer.
2. Revocation of an Outdoor Patio and Sidewalk Patio Licence shall be subject to a hearing with provisions, as provided by the *Statutory Powers Procedures Act*.
3. Any person who contravenes the provisions of the by-law shall be guilty of an offence and liable to a penalty not exceeding \$5,000.00, exclusive of costs, recoverable under the *Provincial Offences Act*, R.S.O. 1990, Chapter P.33.

### Section 6: Effective Date

1. That any by-laws of the former Town of Napanee, Townships of Richmond, Adolphustown, South Fredericksburgh or North Fredericksburgh or portions thereof conflicting with this by-law are hereby repealed.
2. This by-law shall come into force and take effect upon the date of its passing.

Read a first and second time and finally passed this 14<sup>th</sup> day of June 2004.

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Gordon Schermerhorn, Mayor

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Rebecca Murphy, Clerk

**THE TOWN OF GREATER NAPANEE**

**SCHEDULE 'A' to BY-LAW NO. \_\_\_\_**

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**APPLICATION FOR OUTDOOR PATIO OR SIDEWALK PATIO LICENSE**

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APPLICANT'S NAME: \_\_\_\_\_

BUSINESS NAME: \_\_\_\_\_

BUSINESS ADDRESS: \_\_\_\_\_

\_\_\_\_\_ TELEPHONE NUMBER

IF APPLICATION IS MADE ON BEHALF OF A CORPORATION, STATE ADDRESS  
OF HEAD OFFICE: \_\_\_\_\_

TELEPHONE NUMBER \_\_\_\_\_

PURPOSE FOR WHICH AREA IS TO BE USED: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NUMBER OF TABLES AND CHAIRS: \_\_\_\_\_

ALCOHOL & GAMING COMMISSION APPROVAL RECEIVED: \_\_\_\_\_

LICENCE TERM: \_\_\_\_\_

