

# The Corporation of the Town of Essex

## By-Law Number 2160

### Being a by-law to permit the Sidewalk Patios in the Town of Essex

**WHEREAS** Section 11 of the Municipal Act, 2001, S.O. 2001, Chapter 25, as amended, (herein, the Act) authorizes a municipality to pass by-laws regulating matters on lands within its jurisdiction;

**AND WHEREAS** Essex Council deems it appropriate to permit the owner of a commercial establishment that serves food and beverages to apply to operate a patio on the municipally owned sidewalks as an accessory use to the commercial establishment,

**AND WHEREAS** section 446 and section 446.3 of the Act authorizes a municipality to take certain remedial actions including the recovery of certain costs incurred therein by adding the costs to the tax roll and collecting them in the same manner as property taxes.

**NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF ESSEX HEREBY ENACTS AS FOLLOWS:**

#### 1.0 Definitions

**"Application"** means an application submitted pursuant to section 2 of this by-law;

**"Clerk"** means the Municipal Clerk of The Corporation of the Town of Essex and shall include a Deputy Clerk or anyone designated by the clerk to carry out duties of the Municipal Clerk;

**"Council"** means the Council of the Corporation of the Town of Essex.

**"Eligible Business"** means a commercial operation that serves food and beverages;

**"Approval Manager"** means the Assistant Manager, Legal and Licensing of the Corporation of the Town of Essex;

**"Mayor"** means the Mayor of the Corporation of the Town of Essex;

**"Town"** means The Corporation of the Town of Essex;

**"Town Solicitor"** means the person appointed as Town Solicitor by Council;

**"Officer"** means any Person authorized by the Corporation of the Town of Essex to enforce by-laws.

**"Owner"** means the Owner of an Eligible Business;

**"Sidewalk Patio"** means a clearly delineated area upon a municipally owned sidewalk, designed for a group of tables and chairs and other accessories for the use and consumption of food and beverages sold to the public from, or in, an Eligible Business;

## **2.0 APPROVAL**

- 2.1 An owner shall not be permitted to construct and/or operate a sidewalk patio unless the owner complies with and remains in compliance with all of the provisions contained in this by-law and all of its schedules, the approval(s) granted by the Approval Manager and all attached conditions, all other municipal by-laws and provincial and federal legislation. For greater certainty the Sidewalk Patio Guidelines attached hereto in Schedule "A" to this By-law shall apply and form an integral part of this By-law.
- 2.2 An owner shall not construct and/or operate a sidewalk patio unless the Owner has firstly made application to construct and operate a sidewalk patio in the form and manner required by the Approval Manager and such application has been approved.
- 2.3 The Approval Manager shall have the authority to approve an application on behalf of the Town which decision shall be based upon the guidelines included in Schedule "A" of this by-law.
- 2.4 The Approval Manager may make the approval subject to any additional conditions the Approval Manager deems advisable for the protection of municipal property or to help ensure the safety of the public.
- 2.5 The owner shall construct the sidewalk patio in compliance with the Town approved application and shall at all times operate and maintain the sidewalk

patio in a safe manner and shall if requested provide securities satisfactory to the Town to ensure compliance with the terms of the approved application and/or this By-law.

### **3.0 APPEAL**

3.1 An owner, within ten (10) calendar days thereof, may appeal to Council if the owner's application is denied, or may appeal a condition of the application approval. The owner may also appeal to obtain approval if the Approval Manager has not issued a decision to the Owner within ten (10) days of the Town receiving the application.

3.2 The owner may not proceed with construction of the sidewalk patio until the appeal period has expired unless the Owner consents in writing to all of the conditions of approval and provides a written waiver or the owner's right to appeal.

3.3 An appeal shall be in writing and shall be:

- a. in a form satisfactory to the Clerk;
- b. clearly state the basis for the appeal, and
- c. if the appeal is to a denial of application or to a condition of approval, submitted to the Clerk within Ten (10) days of the date the decision has been served upon the owner.

3.4 Council shall permit the owner to present the appeal at an open session of Council within thirty (30) days of the date the Town receives the appeal and Council shall provide a decision as soon as practicable and such decision shall be final.

3.5

### **4.0 INDEMNIFICATION**

4.2 The owner shall indemnify and save harmless the Town, Council and municipal employees from all claims of any kind, including, but not limited to, personal injury or property damage suffered by any person which the Town may suffer, incur or be held liable for resulting directly or indirectly from the issuance of Application approval under this by-law or from the actions or performance of the owner, or that of his or her

employees, directors or agents, under this by-law whether with or without negligence on the part of the owner or their employees, directors and agents.

4.2 The owner shall provide satisfactory proof of insurance in accordance with Schedule A of this by-law.

4.3 The owner shall compensate the Town for all costs incurred by the Town related to the construction, operation, maintenance or removal of the sidewalk patio and all such costs form a lien upon the real property of the owner and can be collected in any lawful manner including authority provided by section 446 of the Act.

## **5.0 REVOCATION**

5.1 The Approval Manager may revoke the approval given to an owner at any time but shall not revoke the approval without giving the owner at least 48 hours notice that the owner has the right to appear before Council and make representations why the approval should not be revoked. The Town shall not be liable to pay any compensation for any loss, costs or damages which may be incurred by the Owner or any person claiming under the Owner by reason of such revocation.

## **6.0 NOTICE**

6.1 In the event of an emergency or if a situation arises that the Approval Manager deems dangerous or unsafe, then the Approval Manager may without notice to the owner take whatever steps the Approval Manager deems necessary to respond to the emergency or to eliminate the dangerous or unsafe situation and recover costs incurred by the Town from the owner as provided in section 4.

6.2 In the event that the Town requires a portion of the roadway or right-of way encroached upon at any time for its purposes, the Owner shall remove the Sidewalk Patio and restore the said roadway to the condition of the surrounding area at their expense on Fourteen (14) days notice from the Town to do so, provided that if the Owner fails to remove the Sidewalk Patio and restore the lands encroached upon the expense of such removal and restoration shall be paid by the Owner forthwith upon demand or, at

the option of the Town, and recover costs incurred by the Town from the owner as provided in section 4.

- 6.3 Where notice is required to be given by the Town pursuant to this by-law, the notice is deemed complete if:
- a. written notice is left with an adult person at any address provided on the application or at any address subsequently provided by the owner;
  - b. three (3) days after written notice is mailed by first class regular mail to the owner at any address provided on the application or to any address subsequently provided by the owner; or
  - c. sent by email to any email address provided by the owner on the application.

## **7.0 INSPECTION**

- 7.1 In accordance with Section 436 of the Act, an Officer may at any reasonable time enter upon land to inspect any Premises or place where a business which is subject to this By-Law is carried on or where there are reasonable or probable grounds to believe a business subject and pursuant to this By-Law was or is being carried on for the purposes of ensuring compliance with this By-law
- 7.2 It shall be an offence to obstruct or permit the obstruction of the entry upon land and the inspection of the Officer.

## **8.0 ORDER**

- 8.1 Where an Officer has reasonable grounds to believe that a contravention of this By-Law has occurred, the Officer may serve an order on the Owner setting out the reasonable particulars of the contravention and directing:
- a. compliance within a specified time frame;
  - b. any work that is required to be done, and in default of such work being done, the work may be done at the Owner's expense and the Town may recover the expense by in the same manner as municipal taxes; or
  - c. the activity be discontinued.
- 8.2 Any Person who contravenes an order under this By-Law is guilty of an offence.

## 9.0 OFFENCES

- 9.1 Every Person who contravenes any provision of this By-Law, including failing to comply with an order made under this By-Law, is guilty of an offence and upon conviction is liable to a fine, and other such penalties, as provided for in the in *Provincial Offences Act, R.S.O. 1990, c. P.33*, as amended.
- 9.2 In accordance with Section 398(2) of the Act, the Town may add unpaid fees, charges, and fines under this By-Law to the tax roll and collect them in the same manner as property taxes.

## 10.0 Effective Date

- 10.1 This by-law shall come into force and take effect upon its enactment.

**Read a first, a second and a third time and finally passed on June 20, 2022.**

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Mayor

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Clerk

**Schedule "A"**  
**The Corporation of the Town of Essex**  
**SIDEWALK PATIO GUIDELINES**

**Approval Requirements:** The Approval Manager will circulate Sidewalk Patio applications to the appropriate Town Departments and/or agencies to determine whether the sidewalk patio design and location is acceptable. As a result of such circulation the Approval Manager may refuse to grant approval or impose such terms and conditions as are consistent with the guidelines contained herein.

**Other Approvals:** Approval for a sidewalk patio must comply with other approvals as may be applicable such as the Health Unit, the Alcohol and Gaming Commission of Ontario (AGCO) and any other regulatory bodies governing the sale of food and/or beverages or the public health. Approval by the property owner is also required by written consent.

**Security Deposit:** Prior to the application being approved and if requested, the Owner shall pay to the Town a security fee in the amount of \$1,000.00 cash to ensure the Owner completes the Owner's obligations imposed by this By-law and any conditions attached to the application approval. If the Owner fails to comply with said obligations, the Town may use all or part of the security deposit toward correcting the non-compliance. If the Owner completes all of the Owner's obligations in a manner satisfactory to the Approval Manager, then the Town shall refund all or part of the security deposit, as applicable, to the Owner.

**Indemnity and Liability:** The Owner will covenant and agree in writing that the Town shall not be liable for any damage or injury to any property or person at any time arising from any cause whatsoever in relation to the Sidewalk Patio. The Owner covenants and agrees to indemnify and save harmless the Town of Essex, its agents, employees and Council members from and against any and all liabilities, suits, claims, demands, fines, actions, costs, losses, expenses, or proceedings of any kind (including legal costs of a solicitor and his own client basis), including without limitation claims to property damage, personal injury or death, suffered or incurred by the Town of Essex arising out of or in any way connected, directly or indirectly to the Sidewalk patio.

**Information Requirements:** The Owner shall submit a site plan sketch, drawn to a minimum scale of 1:250, which shows the delineated **area** of the proposed sidewalk patio and proposed location and placement of planters, awnings, tables, chairs, doorways, fences and all other accessories in relation to the public sidewalk and to the indoor restaurant associated with it. The site plan shall show (within 6 metres of the development) the location of utility poles, light posts, utility pedestals, utility valves, parking spaces, parking markings, hydrants, parking metres, shelters, manholes, traffic signs, catch basins, awnings, planters, benches, curbs, wheelchair ramps, easements and any other physical or drainage feature of the street or beyond 6 metres of any public utility that may be affected by the development. Number of washrooms provided by the establishment is required.

**Conditions of Approval:**

**1. Insurance:** The Owner shall purchase and maintain in force, at their own expense (including the payment of all deductibles) and for the term of the permit, the following policies of insurance underwritten by insurers licensed to conduct business in the Province of Ontario and shall be considered primary coverage of any existing Town insurance coverage:

- a) Commercial General Liability Insurance, including coverage for bodily injury, personal injury, property damage, products and completed operations coverage, and cross liability with a minimum amount of \$2,000,000.00 for each occurrence, and including:
  - i. An endorsement certifying that the Town is included as an additional insured,
  - ii. Liquor Liability for premises licensed by the Owner to serve alcohol.

The policies shall be endorsed to the effect that such insurance policies shall not be altered, cancelled or allowed to expire without thirty (30) days advance written notice to the Town. Prior to the exercise of the rights in this permit, the Owner shall deliver to the Town of Essex a certificate of insurance to evidence the foregoing insurance.

- b) **Accessory Use:** Sidewalk patios shall be located adjacent to an existing food and beverage establishment and shall be considered an accessory use. Sidewalk patios shall not extend beyond the frontage of the property containing the primary food or beverage establishment that the sidewalk patio is accessory to unless written permission is obtained from the

abutting property owners whose frontage is to be affected by the development. This permission should be provided to the Town, in writing.

## **2. Operation Criteria**

### **i. Design Criteria**

- a) All work shall conform to the approved standards and specifications of the Town of Essex and Ontario Provincial Standards shall apply in the absence of applicable Town of Essex standards.

### **ii. Installation and Operation Criteria**

#### **A temporary patio on Town Lands shall:**

- a) Be permitted seasonally for the period of April 1st to October 1st;
- b) All works to be removed from right-of-way by October 15th.
- c) Be restricted to operational hours between 7am to 2am subject to compliance with Liquor License regulations for licensed premises and other applicable laws, including but not limited to the applicable Noise Control By-laws, as amended;
- d) Be setback a minimum of 2m from a fire hydrant;
- e) Provide for a minimum of 1.5m from the curb to the enclosure, to allow for wheelchair passage when a vehicle door is opened;
- f) Be no wider than the frontage (width) of business to which it is related;
- g) Be located outside the daylight triangle where adjacent to an intersection, as determined by the Town;
- h) Be setback a minimum of 0.3m from the sidewalk. Where the patio is permitted to encroach across the main sidewalk it shall be setback a minimum of 0.3m from the alternative sidewalk route;

- i) Be setback a minimum of 0.3m from streetlight, street trees and or other street furniture;
- j) Be enclosed by a fence, which shall have a minimum height of 0.9m and maximum height of 1.2m high above grade, If alcohol is being served the enclosed fence shall have a minimum height of 1.06m;
- k) Have a fence that shall be secure and is not fixed to the sidewalk or boulevard surface, subject to review and approval by the Town;
- l) Have a fence that is easily removable for emergency or operational needs;
- m) Have an opening in the fence to provide access to the patio and access to the main entrance of the business, which shall be a minimum of 1.2m wide;
- n) Be completely removed and stored off-site before the permit is issued and immediately following the expiration of the permit;
- o) Not have any heating or cooling device(s);
- p) Not permit smoking and/or vaping;
- q) All sidewalk patio and sidewalk should be barrier free. Per Accessibility for Ontarians with Disabilities Act and Municipal requirements;
- r) Be permitted to have temporary lighting subject review and approval of the method of wiring / source of power. Where permitted, lighting shall be installed to avoid glare and light spill to adjacent properties, roads and public areas;
- s) be prohibited from displaying third party advertising signs, hoardings or other advertising material on the fence or on umbrellas. Any signage shall be subject to the Town's Sign By-law;
- t) Be permitted to include umbrellas or awnings provided a minimum vertical clearance of 2.4m above grade is provided and maintained without interfering with other street furniture;
- u) Be prohibited from causing removal of or damage to any municipal street tree. No

person shall use a municipal street tree for the purpose of securing patio fencing or attaching cables, awnings or other paraphernalia associated with a temporary patio; and

v) Comply with all other applicable laws.

**3. Repairing Utilities:** The Owner covenants and agrees to further hold the Town and any other agencies, having utilities or services on or in the Town Lands, harmless from any claims, suits, actions or demands whatsoever which may in any manner be affected in any work of constructing, altering, relocating or repairing any public service or utility rendered necessary or desirable by or on account of any maintenance work required to be carried out on the Town Lands, including, but not limited to, temporary fencing, traffic devices, landscaping, furniture, and other patio amenities.

**4. Utility Access:** The Town and all public utility agencies retain the right of access to the approved sidewalk patio **area** for the installation, maintenance and repair of infrastructure such as but not limited to pipes, cables, wires, poles, hydrants, etc. as necessary. In case of emergency, no notice may be given. For scheduled work, a minimum notice of forty-eight (48) hours will be given. Sidewalk patio improvements shall be removed and reinstalled at the sidewalk patio operators expense.

**5. Emergency Vehicle Access:** The Town retains the right of access to the approved sidewalk patio for emergency vehicle access.

**6. Health and Safety:** All works shall be carried out in conformity with the Occupational Health & Safety Act. The Owner shall be solely responsible for any fines or charges laid under the Occupational Health and Safety Act.

**7. Enforcement:** In the event that a patio has been placed, installed or maintained on Town Lands in a manner that is not in compliance or if the patio presents an immediate risk to public safety, the matter shall be referred to By-law Enforcement.

**8. Maintenance Criteria**

a) Every person who owns or controls a temporary patio on Town Lands shall for the duration of the permit period:

- i. Ensure that all patio furniture is neatly stacked and/or safely secured each night;
- ii. Maintain the patio in a safe, tidy and clean condition at all times, including the removal of any graffiti, posters and third party advertising however affixed to the

- patio furniture or fencing, within twenty-four (24) hours of becoming aware of the condition;
- iii. Immediately remove any spill, garbage or litter accumulation in and around the patio;
  - iv. Regularly monitor the condition and arrange for maintenance and repair of any damaged sections of Town Lands, sidewalk, fence, broken patio furniture, umbrellas or awnings; and
  - v. Maintain and replace, when required, any floral displays or plantings within the area of the patio or mounted on the fence.
- b) In the event that an Owner abandons a patio, the Owner is responsible for the total removal of all components associated with the patio, including but not limited to the fence, furniture, lighting, waste receptacles, umbrellas or awnings and restoration of the site back to its original condition to the satisfaction of the Director, Infrastructure Services. The Town may undertake the removal work by whatever means deemed necessary. The Owner agrees to reimburse the Town of Essex for all costs involved.
- c) The Town or any public utility may enter the area occupied by a patio for the purpose of doing any work within the road and/or highway.