

# THE CORPORATION OF MUNICIPALITY OF PORT HOPE

## BY-LAW NO. 111/2008

### *Being a By-Law to Authorize the Adoption of Regulations Established For The Purpose Of Dealing with Applications For Outdoor Restaurant and Sidewalk Restaurant Patios*

WHEREAS Section 150(1) of the *Municipal Act, 2001, c.25*, authorizes a local municipality to license, regulate and govern any business wholly or partly carried on within the municipality even if the business is being carried on from a location outside the municipality;

AND WHEREAS Section 150 (2) authorizes municipalities to exercise licensing powers, including imposing conditions, for one or more of the following purposes:

- i) Health and safety;
- ii) Nuisance control;
- iii) Consumer protection;

AND WHEREAS the Council of The Corporation of Municipality of Port Hope has determined that outdoor restaurant and sidewalk restaurant patios are, by their nature, a class of business that:

- a) Could present a potential risk to the health and safety of those persons who patronize the business due to the:
  - i) Design and layout of the patio;
  - ii) Lack of appropriate and sufficient parking;
- b) Has the potential to be carried on in a manner that can create a public nuisance to the neighbouring community by:
  - i) Operating in a manner that can be disruptive to the reasonable expectations and values of the community and its members;

AND WHEREAS for the purpose of addressing the foregoing concerns as they relate to health and safety and nuisance control, the Council of The Corporation of Municipality of Port Hope deems it desirable to license, regulate and govern the operation of outdoor restaurant and sidewalk restaurant patios in the manner hereinafter set out;

NOW THEREFORE the Council of The Corporation of Municipality of Port Hope enacts as follows:

### **Section 1: Definitions**

1. For the purpose of this By-law the following definitions shall apply:
  - (a) "**Applicant**" means the person who applies for a license under this bylaw.
  - (b) "**Council**" shall mean the Council of The Corporation of Municipality of Port Hope.
  - (c) "**Clerk**" shall mean the Clerk for The Corporation of Municipality of Port Hope.
  - (d) "**Chief Building Official**" means the Chief Building Official for the Municipality of Port Hope
  - (e) "**Designated area**" means an area designated for the operation of an outdoor patio or sidewalk patio.
  - (f) "**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.

- (g) **“Liquor Sales License Application”** shall mean an Alcohol and Gaming Commission of Ontario application to sell liquor;
- h) **“Medical Officer of Health”** shall mean the Medical Officer of Health for Kawartha Pine Ridge District Health Unit or his / her duly authorized delegate.
- (i) **“Municipality”** shall mean The Corporation of Municipality of Port Hope.
- (j) **“Outdoor Patio”** shall mean an outdoor area used only on a seasonal basis in conjunction with any type of food and/ or beverage service, including alcoholic and non-alcoholic beverages, and where seating accommodation is provided, and where food and/or beverages are served to the public and / or where seating is provided to consume food and / or beverage by the public on the premises;
- (k) **“Person”** shall include a corporation or partnership;
- (l) **“Premises”** shall mean a building together with its grounds or other appurtenances that shall be subject to the bylaw requirements for issuance of a sidewalk patio license
- (m) **“Provincial Offences Officer”** shall mean an individual appointed by by-law or other agencies designated by Council who are responsible for the administration of this by-law and shall include Police officers.
- (m) **“Restaurant”** means any retail / commercial operation where food and/ or beverages may be sold and consumed by the public and where alcoholic beverages may be served for public consumption on premises.
- (n) **“Sidewalk”** means a travelled way intended for pedestrian use, following an alignment generally parallel to that of the adjacent roadway
- (o) **“Sidewalk Patio”** shall mean an outdoor area used only on a seasonal basis in conjunction with any type of food and/ or beverage service, including alcoholic beverages, and where seating accommodation is provided and where alcoholic beverages may be served to the public for consumption on the premises, and which is located wholly or partially on the Municipality’s property;
- (p) **“Special Occasion Permit”** shall mean a Province of Ontario permit that is needed **any** time liquor is offered for sale **or** served **anywhere** other than in a licensed establishment or a private place. A private place is an **indoor** area usually not open to the public and not open to the public during the event; for example, a residence or private office and are for **occasional special** events only.

## **Section 2: Licensing**

1. Persons wishing to operate an outdoor patio or sidewalk patio, as defined in Section 1 of this by-law, within the boundaries of The Corporation of Municipality of Port Hope, shall make application to the Chief Building Official and said application shall be on the approved form attached as Schedule ‘A’ to this by-law.
  - 1.1 Where a person wishing to operate an outdoor patio or sidewalk patio as defined in Section 1 of this by-law where alcoholic beverages shall be served to the public, shall make application through the closest location of the Ontario Liquor Control Board of Ontario (LCBO) for the appropriate outdoor liquor sales license, and proof of a current approved outdoor liquor sales license shall be required by the

Municipal Chief Building Official as part of the Municipal outdoor patio or sidewalk patio license application process.

2. Persons who do not hold a valid Outdoor Patio or Sidewalk Patio License, issued by the Chief Building Official under the authority of this By-law, shall not 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 license:
  - (a) The applicant shall submit an application not less than sixty (60) days prior to obtaining or renewal of an Outdoor Patio or Sidewalk Patio license;
  - (b) 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;
  - (c) The applicant shall pay to the municipality a non-refundable application fee in the amount identified in Section 2 (7);
  - (d) The applicant shall complete an application for a license in the form attached as Schedule 'A' to this by-law;
  - (e) The applicant shall submit a site plan / drawing which clearly shows the designated area along with the location of parking, signage and refuse containers;
  - (f) the applicant shall submit a report from the Health Unit confirming that all health standards and regulations with respect to the Outdoor Patio or Sidewalk Patio and facilities and the operation thereof have been complied with; and
  - (g) Every person who operates an Outdoor Patio or Sidewalk Patio owned by the applicant shall have at least one person during regular hours of operation present and hired by the applicant to handle food and beverages on the premises and is required to complete and to maintain a valid, Food Handlers Certification; and have taken the Food Handlers Training course through the Health Unit or an equivalent course recognized by the Health Unit; and at all times while operating and/or handling food on the premises have in his or her possession a valid Food Handlers Certificate or proof of completion of an equivalent course recognized by the Health Unit, issued to him or her by the Health Unit, and to produce such certificate for inspection upon request of an officer of the Police Service, By-law Enforcement Officer, or representative of the Health Unit.
  - (h) The Chief Building Official shall circulate the application to all applicable municipal departments to determine if the application meets the municipality's standards.
  - (I) The Chief Building Official shall approve all applications for outdoor patios or sidewalk patios at his sole discretion upon the applicant satisfying all requirements to the satisfaction of the Chief Building Official.
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, or interfere with an entrance to or exit from a building;
  - (c) The designated area shall be located at a distance deemed appropriate by the Chief Building Official, in his sole discretion, of any intersection;
  - (d) the designated area shall be set back a distance deemed appropriate by the Chief Building Official, in his sole discretion, from a highway measured from the property line closest to the highway to ensure appropriate safety conditions;
  - (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) 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 the ingress / egress from any building;
  - (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 outside of business hours;
  - (l) All signage shall be in accordance with The Corporation of Municipality of Port Hope's sign by-law;
  - (m) Outdoor patios or sidewalk patios facing onto or adjacent to a residential street or area must be cleared and closed by 11:00 p.m. All other outdoor patios or sidewalk patios in retail / commercial areas 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 License, 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 license fee, and subject to compliance with all other sections of this By-law, the Chief Building Official may approve an Outdoor Patio or Sidewalk Patio License at his sole discretion subject to the compliance with all provisions of applicable Statutes and municipal by-laws.
  7. The fee for an Outdoor Patio or Sidewalk Patio License shall be included with the application for the License and will be the amount set in accordance with the Municipal Fees and Charges By-law.
  8. Every Outdoor Patio or Sidewalk Patio License issued under this by-law shall take effect on the day it is issued and expire on the 31st day of October in the year in which it was issued.

10. Although the requirements in Section 2 - *Licensing* are standard for all applications, the Chief Building Official may make other requirements as deemed appropriate.
11. Any person who is a rate payer, owning the property and remits business taxes to the Municipality and operates an outdoor patio on that property which is an integral part of the building structure shall comply with the provisions of this by-law and require a license to operate, but shall be exempt from the applicable license fee.

### **Section 3 - Regulations:**

1. The period of operation for licensed outdoor patios or sidewalk patios may be anytime between April 1st to October 31st of each year.
2. Any employee or agent of a person to whom an Outdoor Patio or Sidewalk Patio License has been issued shall, when required by any Provincial Offences Officer of the municipality, exhibit the license to operate the outdoor patio or sidewalk patio.
3. Upon demand by any Provincial Offences Officer of the municipality, any person who operates an Outdoor Patio or Sidewalk Patio where a License 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 license is accounted for satisfactorily.
4. 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 License under this By-law, supply the Chief Building Official with written confirmation of compliance in this regard, and applicants shall also be responsible to comply with all other applicable Provincial and Municipal regulations and by-laws.
5. The licensee shall at all times indemnify and save harmless The Corporation of Municipality of Port Hope from all loss, costs and damages which the municipality may suffer, directly or indirectly, by reason or on account of any matter or 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.
6. The licensee, for a sidewalk patio, shall provide and maintain at the business owner's 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 The Corporation of Municipality of Port Hope.

#### **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 License issued under the provisions of this By-law may be revoked by the Chief Building Official or 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. 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 other by-laws 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, SECOND and THIRD time and finally passed in Open Council this 18<sup>th</sup> day of November, 2008.

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Linda Thompson, Mayor

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S.C. Dawe, Municipal Clerk

Appendix "A"  
Sidewalk / Patio Application Form