

The Corporation of the Town of Ajax
By-Law 35-2017

Being a by-law to licence, regulate, and govern outdoor patios within the Town of Ajax.

Whereas the Municipal Act, 2001, S.O. 2001, c. 25, as amended (the "Act"), authorizes a Municipal Council to pass by-laws for licensing, regulating, governing, classifying and inspecting 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 Council deems it advisable to pass a By-law to minimize the potential of matters relating to public nuisances by regulating the hours of operation and the use of amplified devices in outdoor patio areas;

And whereas a public information meeting was held in Council Chambers of the Town of Ajax to discuss the proposed By-law on May 1, 2017;

Now therefore, the Corporation of the Town of Ajax hereby enacts as follows:

1. Short Title

1.1. This By-law may be cited as the Outdoor Patio By-law.

2. Definitions

2.1. In this By-law,

- (a) "accessory use" means a use customarily incidental to, subordinate to and exclusively devoted to the principal use and which operates together with the principal use on the same lot.
- (b) "amplified" shall mean any sound which is enhanced electronically or by other means;
- (c) "Committee" means the Committee of Council to which Council has delegated the responsibility of handling licensing matters;
- (d) "licence" means authorization under this By-Law to carry on the trade or business specified therein;
- (e) "Licencee" means any person licensed under this By-law;
- (f) "Licensing Officer" means a person appointed by the Town to issue licences, and includes a person appointed by Council for the express purpose of issuing licences under this By-law, and includes a Municipal Law Enforcement Officer;
- (g) "outdoor patio area" means any area on private property that is exposed to the outdoors and is an accessory use to a restaurant that is licensed to serve alcohol and is used by the restaurant for the serving or consumption of food, beverages or refreshments or the gathering of patrons and which is not enclosed within a building structure;
- (h) "owner" means the person who holds the outdoor patio area licence under this By-Law or the person who alone or with others, manages, supervises, runs or controls an outdoor patio area;
- (i) "operator" means a person who alone or with others, manages, supervises, runs or controls an outdoor patio area;
- (j) "person" includes an individual, a sole proprietorship, a partnership, an unincorporated association, a trust, and a body corporate;
- (k) "Town" means The Corporation of the Town of Ajax.

3. General

- 3.1.
 - (a) No person shall own or operate, or permit to be operated, an outdoor patio area in the Town without making application for, obtaining and maintaining a licence, pursuant to the terms of this By-law.
 - (b) No person shall own or operate, or permit to be operated, an outdoor patio except in conformity with the terms and provisions of the licence and this By-law, including any conditions imposed on the licence.
- 3.2. No licence shall be issued for an outdoor patio area on premises where the Town's Zoning By-laws do not permit the use of those premises for such purposes.
- 3.3. Where the application is for a new outdoor patio area licence, a Letter of Compliance from the Town's Planning and Development Services is required.
- 3.4. All outdoor patio areas licensed under this by-law shall comply with all Provincial Legislation.
- 3.5. The Town may impose any conditions to a licence, deemed appropriate, including, but not limited to;
 - (a) regulating hours of operation of an outdoor patio area;
 - (b) regulating the use of amplified devices used on an outdoor patio area;
 - (c) regulating hours in which alcohol can be served and consumed on an outdoor patio area.
- 3.6. Every owner and operator shall at all times ensure that the licence as issued is posted and visible to all patrons in the interior of the main building at the exit door leading to the outdoor patio area.

4. Nature of Licence

- 4.1. No person shall enjoy a vested right in the continuance of a licence and the value of a licence shall be the property of the Town and shall remain so irrespective of the issue, renewal or revocation thereof.
- 4.2. The licence required by this By-law shall, unless it is expressed to be for a shorter or longer time, be for the period up to and including the 31st day of December in the year of issuance, unless it is sooner forfeited or revoked.
- 4.3. No licence shall be transferred and if an owner sells, or otherwise disposes of control of the outdoor patio area or the business associated with the use of the outdoor patio area to any person, the licence in respect of such outdoor patio area shall, notwithstanding any other provision of this By-Law, be revoked.
- 4.4. A duplicate licence may be issued by the Licencing Officer to replace any licence previously issued which has been lost, stolen or destroyed, upon written application by the Licencee and payment of \$10.00.

5. Application, Renewal and Revocation of Licence

- 5.1. Every applicant shall appear in person before a Licencing Officer and shall complete such licence application forms as may be provided from time to time by the Licencing Officer in accordance with the requirements of this By-law and shall provide all information requested thereon.
- 5.2. In the case of an applicant that is a partnership such appearance shall be made by one of the partners, provided the application shall be signed by all of the partners and in the case of an applicant that is a corporation, such appearance shall be made by an Officer of the corporation and not by an agent thereof.

- 5.3. At the time of submission of an application, every applicant shall pay to the Town the fee of twenty five dollars (\$25.00) provided such fee shall not be reduced in the event that the period for which the licence is granted is less than one year.
- 5.4. For the purposes of consumer protection in the event of personal injury and/or property damage every person who holds an outdoor patio licence shall:
- (a) provide and maintain Commercial General Liability insurance, by a licensed insurer within the Province of Ontario, subject to limits not less than \$2,000,000.00 inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof arising from such activity;
 - (b) ensure that the insurance be in the name of the owner and shall name the Town as an additional insured thereunder;
 - (c) deliver a Certificate of Insurance listing the requirements as set out in (a) and (b) above which insurance shall remain in effect for the term of the licence and shall not be cancellable except on thirty days prior notice to the Town; and
 - (d) indemnify and save harmless the Town for all losses, costs, damages, charges and expenses whatsoever that may be incurred, sustained or paid by the Town resulting from the negligent acts, omissions, and/or breach of contract in the performance of the owner's obligations under this By-law.
- 5.5. Receipt of the application and/or the licence fee by the Town shall not represent approval of the application for the issuance of a licence nor shall it obligate the Town to issue such licence.
- 5.6. Without limiting the generality of any other provision in this By-law, persons associated in a partnership applying for a licence under this By-law shall file with their application a statutory declaration, in writing, signed by all members of the partnership, which declaration shall state:
- (a) the full name of every partner and the address of his/her ordinary residence;
 - (b) the name or names under which they carry on or intend to carry on business;
 - (c) that the persons therein named are the only members of the partnership;
 - (d) the mailing address for the partnership; and
 - (e) the date the statutory declaration was entered into by each member;
- The statutory declaration shall be dated within 30 days of the date of the application.
- 5.7. If any member of a partnership applying for a licence is a corporation, such corporation shall be deemed to be applying for a licence as appropriate in place and stead of the partnership.
- 5.8. Without limiting the generality of any other provision in this By-law, every corporation applying for a licence shall file with the Licensing Officer, at the time of making its application, a copy of its articles of incorporation or other incorporating documents and shall file a statutory declaration, in writing signed by an Officer of the corporation, which declaration shall state:
- (a) the full name of every shareholder and the address of his/her ordinary residence;
 - (b) the name or names under which it carries on or intends to carry on business;
 - (c) that the persons therein named are the only shareholders of the corporation; and
 - (d) the mailing address for the corporation.

- 5.9. The Licensing Officer shall:
- (a) receive and process all applications for licences and renewal of licences to be issued under this By-law;
 - (b) co-ordinate the enforcement of this By-law;
 - (c) generally perform all the administrative functions conferred upon him/her by this By-law;
 - (d) make or cause to be made all investigations and inspections which he/she deems necessary to determine whether an applicant meets the requirements of this By-law and all applicable laws;
 - (e) issue licences to persons who meet the requirements of this By-law and revoke licences pursuant to the requirements of this By-law; and,
 - (f) where a licence has been issued pursuant to this By-law and otherwise remains in full force and effect, renew the licences of persons who meet the requirements of this By-law;
- 5.10. The Licencing Officer shall issue or renew the licence only where,
- (a) all the information which the applicant is required to provide under this By-law has been provided, and verified;
 - (b) all the documents which the applicant is required to provide under this By-law have been provided;
 - (c) the licence fee is paid;
 - (d) the investigations do not disclose that the issuing of such licence may be adverse to the public interest;
 - (e) the Licencing Officer has no grounds to believe the applicant will not conduct himself/herself in accordance with the law or with honesty and integrity.
- 5.11. Where the Licencing Officer determines that a Licence should not be issued as a result of any matter in Section 5.10 of this By-law he/she shall notify the applicant.
- 5.12. Where an applicant advises the Licencing Officer in writing, and within 14 days of the applicant's notification, that he/she disputes the determination made by the Licencing Officer under Section 5.11 of this By-law or submits that the Licence applied for should be issued despite that determination, the matter shall be referred forthwith by the Licencing Officer to the Committee which shall hear representations from the Licencing Officer and the applicant.
- 5.13. The Committee may authorize the Licensing Officer to issue the licence where it determines that the determination in Section 5.11 of this By-law is not sufficient to justify refusing to issue the licence.
- 5.14. Where the Committee determines that a licence should not be issued, the licensing Officer shall advise the applicant of such determination.
- 5.15. The Licensing Officer shall notify a Licencee, by registered mail, at his/her last known address or business address on record when;
- (a) he/she has cause to believe, on reasonable grounds, that any of the information which the Licencee, as an applicant or a Licencee, is required to provide, including any verification thereof, is inaccurate;
 - (b) the Licencee has been convicted of an offence which is a contravention of this By-law; that unless the inaccuracy, conviction, revocation, cancellation, or contravention is corrected, overturned, or reinstated within thirty days, the licence shall be revoked.

- 5.16. Where a Licencee advises the Licencing Officer, in writing and within thirty days, that he/she disputes the revocation of the licence, the matter shall be referred forthwith to the Committee, which shall hear representations from the Licencee and either confirm the revocation of the licence or reinstate the licence as it sees fit.
- 5.17. Unless the matter giving rise to the notice issued under section 5.15 of this By-law has been corrected, overturned or reinstated within the time allotted, the Licensing Officer shall forthwith revoke the licence and notify the licensee by registered mail at his/her last known address or business address on record.
- 5.18. Any licence that has not been renewed as of December 31st in the year of its issuance or renewal shall expire on January 1st in the year following its issuance or renewal.

6. Change of Status

- 6.1. Where there is any change in any of the particulars relating to a person licensed under this By-law, which particulars are required to be filed with the Town on applying for a licence under this By-law, such person shall report the change, in writing, to the Licensing Officer within seven (7) days of the change.
- 6.2. Where there is to be a change in the composition or the controlling interest of a partnership licensed under this By-law, the persons licensed hereunder in partnership shall obtain the approval of the licensing Officer to such change prior thereto. Where there has been any change in the controlling interest of the partnership by virtue of a number of transactions, the license may be suspended despite the Licensing Officer's prior approval of any one or more such transactions.
- 6.3. Where there is to be a change in the composition or the controlling interest of the shareholders of a corporation licensed under this By-law, the corporation shall obtain the approval of the Licensing Officer to such change prior thereto. Where there has been any change in the controlling interest of the corporation by virtue of a number of transactions, the licence may be suspended, despite the Licensing Officer's prior approval of any one or more such transactions.

7. Offence, Penalty and Enforcement

- 7.1. Every person who contravenes any provision of this By-law is guilty of an offence and upon conviction is liable to a fine or penalty for each offence exclusive of costs as prescribed by the Act.
- 7.2. The making of a false or intentionally misleading recital of fact, statement or representation in any agreement, statutory declaration or application form required by this By-law shall be deemed to be a violation of the provisions of this By-law.
- 7.3. Every person shall comply with the provisions of this By-law applicable to him/her whether or not he/she is licensed under this By-law.
- 7.4. Every owner shall, at all times during the hours of operation, permit the entry by and the inspection of the outdoor patio area by the Licensing Officer, a Municipal Law Enforcement Officer, or Police Officer.
- 7.5. No Person shall obstruct or hinder the entry or the inspection of an outdoor patio area by the Licensing Officer, a Municipal Law Enforcement Officer, or Police Officer.

8. Validity

- 8.1. The provisions of this By-law shall apply to all lands and premises within the Town.
- 8.2. Should any section of this By-law be declared invalid by a court of competent jurisdiction, such section shall be construed as being severed here from and the remainder of the By-law shall continue in full force and effect.

8.3. Wherever notice or materials are required to be provided to any person pursuant to this By-law, such notice shall be deemed effective two (2) days after mailing of the materials by registered mail to the last known address of that person as indicated upon the licence application or upon other material filed with the Town.

9. Repeal

9.1. That By-law # 76-2005, as amended, be hereby repealed.

Read a first and second time this
Fifteenth day of May, 2017

Read a third time and passed this
Fifteenth day of May, 2017.

Steve Parish
Mayor

Alexander Harras
D-Clerk