

The Corporation of the Town of Amherstburg

By-Law 2024-026

Being a by-law to adopt Requirements for Patios and Authority for Temporary Patios and Temporary Patio Extensions in the Town of Amherstburg

WHEREAS sections 8, 9, and 11 of *the Municipal Act, 2001*, S.O. 2001, c.25, as amended, provides that the powers of a municipality shall be interpreted broadly so as to confer broad authority on municipalities to enable them to govern their affairs as they consider appropriate, and to enhance their ability to respond to municipal issues and to provide any service or thing that the municipality considers necessary or desirable for the public;

AND WHEREAS the Alcohol and Gaming Commission of Ontario (AGCO) as of January 1, 2023, no longer accepts applications or provides the authorization for Temporary Patios and extensions of Temporary Patios for AGCO licensees located in municipalities;

AND WHEREAS as of January 1, 2023 AGCO-licensed establishments, as a condition of being permitted to create a licensed Temporary Patio adjacent to their premises and/or to extend the size of their Licensed Temporary Patio must ensure that they have municipal approval and meet all other applicable requirements;

AND WHEREAS Council deems it appropriate to permit the Owner of a commercial establishment that serves food and beverages to apply to establish and use a Temporary Patio or create a Temporary extension of an existing Patio whether on municipal or private property (if zoning compliant) as an accessory use to the commercial establishment provided the commercial establishment has obtained municipal approval and meets all other applicable requirements;

AND WHEREAS section 40 of the Planning Act, R.S.O. 1990 c. P. 13 permits a municipality to exempt an owner or occupier of property from the requirement to provide parking to the extent required by agreement with a municipality;

AND WHEREAS the Province has amended Reg. 746/21 under the *Liquor Licence and Control Act*, R.S.O. 1990 allowing municipalities to regulate temporary outdoor patios;

NOW THEREFORE the Council of the Corporation of the Town of Amherstburg
ENACTS AS FOLLOWS:

1. This By-law shall be referred to as the "Temporary Outdoor Patio Extension By-law"
2. For the purpose of this By-law the following definitions shall apply:

"AGCO" means the Alcohol and Gaming Commission of Ontario.

"APPLICATION" means an application submitted pursuant to Section 2 of this bylaw.

"AUTHORIZED TIME PERIOD" means a temporary outdoor patio extension authorization period of up to eight months total in a calendar year (does not need to be eight consecutive months) for liquor sales licensees and by-the-glass endorsement holders.

"Clerk" means the Municipal Clerk or designate.

"COUNCIL" means the Council of the Corporation of the Town of Amherstburg.

"Eating Establishment" means a building or part of a building where food is offered for sale or sold to the public for immediate consumption and includes such uses as an eat-in restaurant, take-out restaurant, drive-in restaurant, drive-thru restaurant, cafe, cafeteria, ice cream parlour, tea or lunch room, dairy bar, coffee shop, snack bar or refreshment room or stand, but does not include a boarding or lodging house.

"ELIGIBLE BUSINESS" means a commercial operation that is legally authorized to sell and/or serve food and beverages.

"LICENSING COMMITTEE" means a licensing committee established under the authority of the *Municipal Act* having the powers to licence any trade, calling, business or occupation authorized by a by-law;

"LIQUOR LICENCE ACT" means the Liquor Licence Act, R.S.O. 199 c. L. 19;

"OFFICER" means a person employed by the Town and appointed as a Municipal Law Enforcement Officer or a Police Officer

"OWNER" means the owner and/or operator of an Eligible Business.

"Municipal Act, 2001" means the *Municipal Act*, 2001, S.O. 2001, as amended;

"PATIO" means a hard surfaced area beyond a building designed, established and/or installed to provide for outdoor living, cooking and recreation, some sides of which are open and which may or may not have a permanent overhead covering.

"PERMIT" means a permission or authorizations given in writing by the Manager of Licensing and Enforcement for a Temporary Patio Extension issued under this By-law;

"PERSON" includes an individual, corporation, partnership or limited partnership;

"PERMANENT PATIO" means a clearly delineated area upon private lands that is a permanent physical extension of an AGCO licensed premises which is 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 in the Town of Amherstburg and for which approval from the AGCO has been obtained.

“PLANNING ACT” means the Planning Act, R.S.O. 1990, c.24, as amended;

“TEMPORARY PATIO” means a clearly delineated area upon private lands (if zoning compliant) or municipal lands that is 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 in the Town of Amherstburg and includes a temporary extension of a AGCO licensed premises, a temporary extension of an existing patio or a permanent patio that is not and is not required to be a AGCO licensed premises, all for which an annual approval from the Approval Manager is required under this by-law for the Authorized Time Period of a particular year.

“TOWN” mean the Corporation of the Town of Amherstburg.

3. APPROVAL

3.1 An Owner shall not be permitted to construct and/or operate a Temporary Patio, create a Temporary extension of an existing Patio, or obtain an annual renewal of approval of such a Patio whether on municipal or private property (if zoning compliant) 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 Manger of Licensing and Enforcement and all attached conditions, and all other municipal by-laws and provincial and federal legislation. For greater certainty the Patio Requirements attached hereto in Schedule “A” to this By-law shall apply and form an integral part of this By-law. For any renewal of the Annual Approval Application, the Manger of Licensing and Enforcement shall have the discretion to dispense with some and/or all of the requirements outlined in this By-law if, and when, deemed appropriate to do so.

3.2 An Owner shall not construct and/or operate and/or extend a Temporary Patio unless the Owner has firstly made an Annual Approval Application to construct and/or operate and/or extend a Temporary Patio in the form and manner required by the Manger of Licensing and Enforcement and as may be further amended from time to time.

3.3 An Owner of a Permanent Patio shall not be required to submit an Annual Approval Application nor pay the Application fee if such Owner has obtained the requisite approval for a Permanent Patio from the AGCO, remains in good standing with the requirements of such AGCO approval and is otherwise in compliance with the Patio Requirements as applicable in Schedule ‘A’ to this By-law.

3.4 The Applicant may be subject to payment of other fees if and when applicable as a condition of the Approval Application.

3.5 The Manger of Licensing and Enforcement shall have the authority to approve an application in writing on behalf of the Town which decision shall be based upon the guidelines included in Schedule "A" of this by-law.

3.6 The Manger of Licensing and Enforcement may make the approval subject to any additional conditions the Manger of Licensing and Enforcement deems advisable for the protection of municipal property or to help ensure the safety of the public.

3.7 The Owner shall construct and/or maintain the Temporary Patio in compliance with the conditions of the Town-approved application and shall operate the Temporary 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.

4. INDEMNIFICATION

4.1 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 their 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 Temporary Patio and all such costs may 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. REVOCATION

5.1 The Manger of Licensing and Enforcement 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 Licensing Committee and make representations as to 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 Manger of Licensing and Enforcement deems dangerous or unsafe, then the Manger of Licensing and Enforcement may, without notice to the Owner, take whatever steps the Manger of Licensing and Enforcement 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.

6.1.1 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 Temporary Patio and restore the said roadway to the condition of the surrounding area at their expense upon receipt of fourteen (14) days' notice to do so from the Manager Roads and Fleet or their designate. If the Owner fails to remove the Temporary Patio and restore the lands encroached within the time period required or to the satisfaction of the Manager Roads and Fleet or their designate, then such removal and restoration shall be completed by the Town and the Town shall recover all costs incurred by the Town from the Owner as provided in Section 4.

6.2 Where notice is required to be given by the Town pursuant to this by-law, the notice is deemed complete if:

6.2.1 Written notice is left with an adult person at any address provided on the application or at any address subsequently provided by the Owner;

6.2.2 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,

6.2.3 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 premise 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:

8.1.1 Compliance within a specified time frame.

8.1.2 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 in the same manner as municipal taxes; or,

8.1.3 The activity be discontinued.

8.2 Any Person who contravenes an order under this by-law is guilty of an offence.

9.0 Establishment of a Licensing Appeal Committee

9.1 The Licensing Appeal Committee and shall hear and render decisions regarding the refusal, revocation of a temporary patio extension.

9.2 The decision of the Licensing Appeal Committee shall be final and binding.

10. Hearing Process

10.1 The provisions of the Statutory Powers and Procedures Act, R.S.O. 1990, c. S. 22, as amended, shall apply to all hearings conducted under this By-law, and the Licensing Appeal Committee may pass rules for the practice and procedure of the Committee.

10.2 A hearing shall be held in public, unless determined otherwise in accordance with the Statutory Powers and Procedures Act, R.S.O. 1990, c. S. 22, as amended, and the Licensing Committee shall hear the Applicant or Licensee and every other Person who desires to be heard, and the Licensing Committee may adjourn the hearing or reserve its decision.

10.3 No decision of the Licensing Committee is valid unless it is concurred in by the majority of the members of the Licensing Committee that heard the matter, and the decision of the Licensing Committee, shall be in writing and shall set out the reasons for the decision, and shall be signed by the members who concur in the decision.

10.4 Any authority or permission granted by the Licensing Committee may be for such time and subject to such terms and conditions as the Licensing Committee considers advisable and as are set out in the decision.

10.5 When a Person who has been given written notice of a hearing does not attend at the appointed time and place, the Licensing Committee may proceed with the hearing in his absence, and the Person shall not be entitled to any further notice of the proceedings.

10.6 The Clerk shall not later than ten (10) days from the making of the decision send one (1) copy of the decision to:

(a) the Applicant or Licensee; and

(b) each person who appeared in person or by Counsel or by Agent at the hearing and who filed with the Clerk a written request for notice of the decision.

11.0 OFFENCES

11.1 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 or fines including any Part 1 offences/set-fines thereof that may be assessed and approved pursuant to Schedule B to this By-law as may be amended from time to time all as provided for in the Provincial Offences Act, R.S.O. 1990, c. P.33, as amended.

11.2 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.

12. Effective Date

This by-law shall come into force and take effect on the day of the final passing thereof.

MICHAEL PRUE, MAYOR

KEVIN FOX, CLERK

First Reading – May 27, 2024
Second Reading – May 27, 2024
Third Reading – May 27, 2024

Schedule "A"

The Corporation of the Town of Amherstburg

Patio Requirements

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

Other Approvals: Approval for a Temporary 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. The business owner is responsible for obtaining all relevant permissions, including but not limited to the Alcohol and Gaming Commission of Ontario and their landlord. Owners shall provide their liquor license for confirmation, if requested by the Town.

Security Deposit: Prior to the Temporary Patio application being approved and if requested, the Owner shall pay to the Town a security fee in the amount of \$2,500.00 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 Manger of Licensing and Enforcement, then the Town shall refund all or part of the security deposit, as applicable, to the Owner.

Indemnity and Liability: As part of the Temporary Patio application process 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 Temporary Patio. The Owner covenants and agrees to indemnify and save harmless the Town of Amherstburg, 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 Amherstburg arising out of or in any way connected, directly or indirectly to the Temporary Patio.

Information Requirements: Business owners desiring to expand their outdoor patios are to submit a site plan drawn to scale illustrating the location, limits and dimensions of the Temporary patio, and all associated features (i.e. barricades, fencing, tables, and chairs) for the Town Administration to review and ensure compliance with these guidelines, as well as track for ongoing compliance purposes. An inspection may be required prior to opening the Temporary patio for use. The required number of designated Accessible Parking Spaces must remain available for parking use and designated fire routes and sight triangles must be maintained. A reasonable number of standard parking spaces should be maintained to serve patrons and the use of legal on-street parking may be taken into account as part of this consideration.

Further 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)** As it relates to Temporary Patios an endorsement certifying that the Town is included as an additional insured (if applicable);

- (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. As it relates to Temporary Patios, the Owner shall deliver to the Town of Amherstburg a certificate of insurance to evidence the foregoing insurance.

Accessory Use: Temporary Patios shall be located adjacent to an existing food and beverage establishment and shall be considered an accessory use. Temporary Patios shall not extend beyond the in front of adjacent tenant spaces, exits, or beyond business frontage without written permission from affected adjacent property owners

and tenants; this includes any overhanging elements. This permission shall be provided to the Town in writing.

(iii) The Owner is responsible for obtaining all relevant permissions, including but not limited to the Alcohol and Gaming Commission of Ontario and their landlord. Owners shall provide their liquor license for confirmation, if so requested by the Town.

2. Operation Criteria

(1) Design Criteria

(a) For patios on municipal or Town land all work shall conform to the approved standards and specifications of the Town of Amherstburg.

(2) Installation and Operation Criteria

A Patio on Municipal or Private lands shall:

(a) For Temporary patios, be permitted temporarily for operation during the Authorized Time Period.

(b) Unless otherwise authorized all works in relation to Temporary Patios that are on Municipal Lands are to be removed from the right-of-way by November 7th of each year.

(c) Be restricted to operational hours between 7am to 11pm subject to further compliance with Liquor License regulations for licensed premises and other applicable laws, including but not limited to the applicable municipal Noise Control By-laws, as amended;

(d) Be setback a minimum of 2m from a fire hydrant or fire department connection and shall not obstruct the use of the hydrant or fire department connection in any way;

A fire extinguisher (minimum 2A-10BC) must be available within 15.2 m (50 ft.) of any part of the patio.

(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 located outside the daylight triangle where adjacent to an intersection, as determined by the Town;

(g) The perimeter of the patio shall be delineated with any combination of fencing, landscape planters, roping or other decorative methods (the “fencing”) as approved by the Town provided they are secured without endangering any underground utilities. However, the patio shall not be enclosed by any structure other than the fence unless otherwise approved by the Town.

(h) The fencing shall be secure and not fixed to a Town sidewalk or boulevard surface, and may be subject to review and approval by the Town;

(i) The fence shall not enclose nor impede any portion of a required fire access route and shall be easily removable for emergency or operational needs;

(j) The fence shall have an opening to provide access to the patio and access to the main entrance of the business, which shall be a minimum of 1.2m wide. The fence shall not impede emergency access to any building and a clear path shall be maintained between the area outside of the fence and the exit from the building. Where the posted capacity of the patio is greater than 60 persons, the enclosed area shall have at least two exits.

(k) Have signage at designated exit points to ensure alcohol does not travel outside of designated spaces.

(l) If the Temporary Patio is on municipal lands, the patio to be completely removed and stored off-site before the permit is issued and immediately following the expiration of the permit;

(m) CSA-certified electric or propane patio heaters (with max 20 lb. tank) are permitted where located at least 3 m (10 ft.) away from tree branches and other combustibles, operated per the manufacturer’s directions and not stored on the road right-of-way when not in use. Solid-, gel- or liquid fuel fire features, open flames (ie candles, barbeques, fire pits etc.) of any kind are not permitted.

(n) Not permit smoking and/or vaping.

(o) All Patios should be barrier free and in compliance with the Accessibility for Ontarians with Disabilities Act and any and all other Municipal and provincial regulatory requirements as may be applicable including compliance with zoning, Fire Code and Building Code requirements;

(p) Be permitted to have lighting subject to 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;

(q) Any signage, whether on town or private property shall further be subject to and in compliance with the Town's Zoning and/or Sign By-laws as applicable;

(r) 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;

(s) 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 patio; and

(t) Where a fire safety plan is required, said plan shall address requirements for inclement weather.

(u) The use of live music or a sound system are subject to the Town's Noise By-Law

(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, 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 Temporary Patio area that is on Town property 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. Temporary Patio improvements shall be removed and reinstalled at the Temporary Patio operator's expense.
5. **Emergency Vehicle Access:** The Town retains the right of access to the approved Temporary Patio for emergency vehicle access.
6. **Health and Safety:** All works shall be carried out and all patios 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 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 patio shall:

- 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 Temporary 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 Town. The Town may undertake the removal work by whatever means deemed necessary. The Owner agrees to reimburse the Town of Amherstburg for all costs involved.

c) If applicable The Town or any public utility may enter the area occupied by a Temporary Patio for the purpose of doing any work within the road and/or highway.

d) The Manager of Licensing and Enforcement, the Fire Chief and the Chief Building Official and/or his or her designates is authorized to inspect all patios as and when determined to be necessary and require adjustments to the patio in order to address compliance issues if applicable.

Schedule “B”

The Corporation of the Town of Amherstburg

By-law 2024-026

Being a by-law to adopt Requirements for Patios and Authority for Temporary Patios and Temporary Patio Extensions in the Town of Amherstburg

Set Fines under Part 1 – Provincial Offences Act

Item	Short Form Wording	Offence Creating Provision	Set Fine
1			\$300.00
2			\$300.00
3			\$300.00
4			\$300.00
5			\$300.00
6			\$300.00
7			\$300.00