

**LICENSING BY-LAW
BY-LAW NUMBER 2002-151**

SCHEDULE 16

OUTDOOR SERVING AREAS

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SCHEDULE 16

TO LICENSE AND REGULATE OUTDOOR SERVING AREAS

DEFINITIONS

16.1 In this By-law:

- a) **“amplified”** noise shall mean any sound which is enhanced electronically or by other means;
- b) **“Town Clerk”** means the Clerk of the Town of Newmarket or his/her designate;
- c) **“license”** means authorization under this By-law to carry on the trade or business specified therein;
- d) **“outdoor serving area”** means any area on private property which is licensed to serve alcohol and is used by a business for the serving or consumption of food, beverages or refreshments which is not enclosed within a building structure or is exposed to the outdoors;
- e) **“opaque barrier”** shall mean a barrier which does not permit the transmission of light through its structure;
- f) **“owner”** means a person who alone or with others has the right to possess or occupy an outdoor serving area and includes a lessee of an outdoor serving area or a premises on which an outdoor serving area is located;
- g) **“operator”** means a person who alone or with others operates, manages, supervises, runs or controls an outdoor serving area;
- h) **“person”** includes a corporation and the heirs, executors, administrators or other legal representatives of a person to whom the context can apply according to law;
- i) **“translucent”** barrier shall mean a barrier which will permit the transmission of light through its structure.
- j) **“Town”** means the Town of Newmarket in the Regional Municipality of York.

GENERAL

16.2 No person shall own or operate an outdoor serving area in the Town without obtaining a license each year in accordance with the provisions of this By-law.

16.3 Any license issued under this By-law shall expire on December 31 in the year it is issued.

- 16.4 No person shall enjoy a vested right in the continuance of a license and the value of a license shall be the property of the Town and shall remain so irrespective of the issue, renewal or evocation thereof.
- 16.5 No license shall be transferred and if an owner sells, leases or otherwise disposes of his outdoor serving area or the premises or part thereof upon or in which the outdoor serving area is operated, to any person, his license in respect of such outdoor serving area shall, notwithstanding any other provision of this By-law, be revoked.

APPLICATION

- 16.6 Every applicant for a license to operate an outdoor serving area shall complete the application prescribed and shall furnish such information as the Council may direct;
- 16.7 Prior to obtaining a license for an outdoor serving area, every applicant shall submit the application fee outlined in Schedule 'A' of this By-law;
- 16.8 Without limiting the generality of any other provisions of the By-law, every application for a license for an outdoor serving area may be submitted to York Regional Police, the Medical Officer of Health, the Alcohol and Gaming Control Commission, the Fire Department, the Planning Department, the Building Department, the Operations Department and any other government official or functionary for a report and where any such report is negative or unfavourable to the applicant and, in the opinion of the Town Clerk, shows adequate reason why a license should not be granted, the applicant shall be furnished with a copy of such report and shall have the right to appear before the Committee of the Whole to show cause why his application should be granted.
- 16.9 Every person applying for a outdoor serving area license shall file with the Town Clerk, documentation satisfactory to the Town Clerk demonstrating the applicant's right to possess or occupy the premises to be used by him as an outdoor serving area, and if such person is not the registered owner of the property on which the outdoor serving area is to be located, the applicant shall file with the Town Clerk a copy of his lease, if any, and a copy of any other document constituting or affecting the legal relationship between said applicant and the registered owner and a letter from the registered owner granting permission for the application for an outdoor serving area license.
- 16.10 Without limiting the generality of any other provision of this By-law and the general authority of the Council to have regard for the well being of the Town and its residents in determining whether to issue a license, the Council shall be entitled to refuse and/or revoke a license where:
- a) the conduct of the applicant affords reasonable grounds for belief that he/she will not carry on his trade, calling, business or occupation in accordance with law and with integrity and honesty; or
 - b) there are reasonable grounds for belief that the carrying on of the trade, calling, business or occupation by the applicant will result in a breach of this By-law or any other law;

- c) the applicant is a corporation and its conduct or the conduct of its officers, directors, employees or agents affords reasonable grounds for belief that its trade, calling, business or occupation will not be carried on in accordance with law and with integrity and honesty; or
- d) there are reasonable grounds for belief that the premises, accommodation, equipment or facilities in respect of which the license is required do not comply with the provisions of this By-law or any other law; or
- e) the conduct of the applicant or other circumstances afford reasonable grounds for belief that the carrying on by the applicant of the business in respect of which the license is sought would infringe the rights, or endanger the health or safety of other members of the public.

OPERATING REGULATIONS

- 16.11 No person who is the owner or operator of an outdoor serving area shall permit the outdoor serving area to operate without a license.
- 16.12 No owner or operator shall operate or permit the occupancy of any outdoor serving area on any property, which is located within 200 feet of any lands zoned to permit residential use between the hours of 1:00 am and 11:00 am on the following day.
- 16.13 Every owner and operator shall at all times post in all outdoor serving areas in a location which is visible to all patrons a notice provided by the Town outlining all the municipal regulations with respect to the operation of outdoor serving areas and notifying the patrons of the provisions of the noise By-law which come into effect at 11:00 pm.

OUTDOOR SERVING AREA REQUIREMENTS

- 16.14 No person shall operate an outdoor serving area which is located within 40 feet of the property line of an adjacent residential property or road allowance unless the outdoor serving area is separated from the adjacent residential property or road allowance by a solid translucent or opaque barrier of a minimum of six feet in height along its perimeter for the purpose of noise reduction and security.
- 16.15 Any person who owns or operates an outdoor serving area which is illuminated and is in an area adjacent to a residential or multi-residential (RM) zone or a residential use, shall arrange, design and install the lighting fixtures to deflect the light down and away from adjacent residential buildings, lots and streets.

REVOCAION OF LICENSE

- 16.16 Council may revoke or terminate any license issued under this By-law for any violation by an owner or an operator of any of the provisions of this By-law or for any breach of criminal statute committed on the premises or in any way, directly or indirectly arising from the operation carried out on the premises, but before revoking or terminating any such license, the operator or owner shall be given at least fourteen (14) days notice, mailed or delivered to his last known address of the time and place where Council will be considering the matter and he/she shall be permitted either personally or by his representative to appear before the Appeals Committee of Council to show cause why such license should not be revoked or terminated.
- 16.17 Notice of revocation of or termination of any license may be given by Council by letter signed by the Town Clerk and mailed by prepaid registered mail or delivered to the last known address of the owner or operator, as the case may be, and upon such notice being given, the license shall then be revoked and terminated.

ENFORCEMENT

- 16.18 Every owner and every operator shall at all times permit the entry by and the inspection of an outdoor serving area by the Town Clerk, a Peace Officer, a Medical Officer of Health, a Provincial Offenses Officer, or a By-law Enforcement Officer.
- 16.19 No person shall obstruct or hinder the entry or the inspection of an outdoor serving area by the Town Clerk, a Peace Officer, a Medical Officer of Health, a Provincial Offenses Officer, or a By-law Enforcement Officer.
- 16.20 Any person who contravenes any of the provisions of this By-law is guilty of an offense and upon conviction is liable to a fine as provided for under the *Provincial Offenses Act*.