

THE CORPORATION OF THE TOWN OF MIDLAND

BY-LAW 2024-23

A By-law regulating the Use of Municipal Sidewalks and the Establishment of Temporary Outdoor Patios within the Town of Midland.

WHEREAS pursuant to section 9 of the *Municipal Act*, 2001 S.O. 2001, c. 25 a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS pursuant to section 10(2) of the *Municipal Act*, S.O. 2001, c.25 a municipality may pass by-laws pertaining to the health, safety and well-being of persons;

AND WHEREAS pursuant to section 10(2) of the *Municipal Act*, S.O. 2001, c.25 a municipality may pass by-laws pertaining to the protection of persons and property, including consumer protections;

AND WHEREAS pursuant to section 23.1 of the *Municipal Act*, S.O. 2001, c.25 a municipality may designate its powers and duties;

AND WHEREAS section 128 of the *Municipal Act*, 2001 S.O. 2001, c. 25 provides that a municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of Council are or could become public nuisances;

AND WHEREAS sections 425, 426 and 429 of the *Municipal Act*, 2001 S.O. 2001, c. 25, states a municipality may pass By-laws providing that a person who contravenes a By-law of the municipality passed under this Act is guilty of an offence, no person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty under this Act or under a By-law passed under this Act and a municipality may establish a system of fines for offences under a By-law of the municipality passed under this Act;

AND WHEREAS Section 391 of the *Municipal Act*, 2001, S.O. 2001, c. 25, provides that a municipality and a local board may pass by-laws imposing fees or charges for services or activities provided or done by or on behalf of it, or for costs payable by it for services or activities provided or done by or on behalf of any other municipality or local board;

AND WHEREAS Section 425 of the *Municipal Act*, 2001, S.O. 2001, c. 25, provides by-laws may be passed by all municipalities for providing that any person who contravenes any by-law of the municipality, passed under this Act, is guilty of an offence;

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

AND WHEREAS as at January 1, 2023 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 now deems it appropriate to enact a by-law for regulating the use of municipal sidewalks;

AND WHEREAS Council deems it appropriate to permit the Owner/Operator 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 property or private as an accessory use to the commercial establishment provided the commercial establishment has obtained municipal approval and meets all other applicable requirements;

AND WHEREAS Council considers it to be in the municipality's best interests to delegate authority to the Manager of Municipal Law Enforcement, or designate, to administer and achieve compliance with the guidelines.

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

1. DEFINITIONS

- 1.1 **"AGCO"** means the Alcohol and Gaming Commission of Ontario.
- 1.2 **"Application"** means an application submitted pursuant to section 2 of this by-law.
- 1.3 **"Authorized Time Period"** means a temporary patio authorization period of up to 7 months total in a calendar year for liquor sales licensees and by the glass endorsement holders.
- 1.4 **"Clerk"** means the Municipal Clerk of The Corporation of the Town of Midland and shall include a Deputy Clerk or anyone designated by the Clerk to carry out duties of the Municipal Clerk.
- 1.5 **"Council"** means the Council of the Corporation of the Town of Midland.
- 1.6 **"Approval Manager"** means as and where appropriate, the Manager of Municipal Law Enforcement or their designate of the Corporation of the Town of Midland.
- 1.7 **"Highway"** means a public improved road, designated and intended for, or used by, the general public for the passage of vehicles and located within the Town of Midland.
- 1.8 **"Roadway"** means the part of the highway that is improved, designated or ordinarily used for vehicular traffic, and includes the shoulder.

- 1.9 “**Sidewalk**” means that portion of the highway between the curb line of the roadway or lateral line of the roadway, and the adjacent property line, which is set apart for and intended for the use of pedestrians.
- 1.10 “**Town**” means the Town of Midland.
- 1.11 “**Officer**” means any person authorized by the Town of Midland to enforce by-laws.
- 1.12 “**Owner**” means Owner and/or operator of an Eligible Business.
- 1.13 “**Patio**” means a permanent patio, or a temporary patio as defined by this by-law.
- 1.14 “**Permanent Patio**” means a clearly delineated area upon private lands that is a permanent physical extension of a premises which is designated 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 Midland.
- 1.15 “**Temporary Patio**” means a clearly delineated area upon private lands or municipal lands that is designated 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 Midland and includes a temporary extension of an existing patio or a permanent patio that is not required to be an AGCO licensed premises, all for which an annual approval from the Approval Manage is required under this by-law for the authorized time period of a particular year.
- 1.16 “**Pedestrian**” means any person afoot, including persons facing accessibility challenges, children in strollers, and muscular powered or motorized wheelchairs.

2. TEMPORARY USE OF MUNICIPAL SIDEWALKS

- 2.1 No Owner shall cause any object to be placed, constructed or installed or remain in, on, under or over any sidewalk in any manner unless a Permit has been issued by the Town as set out in the Outdoor Patio and Municipal Property Usage Program Guidelines, as may be amended from time to time.
- 2.2 No Owner shall occupy or obstruct or close any sidewalk on a temporary basis unless a Permit has been obtained from the Town as set out in the Standing Operating Procedures for Outdoor Patio and Municipal Property Usage, as may be amended from time to time.
- 2.3 No Owner shall, block, interfere, with or otherwise impede the passage of any pedestrian on any municipal sidewalk or portion there of unless a Permit has been

issued as set out in the Standard Operating Procedures for Outdoor Patio and Municipal Property Usage, as may be amended from time to time.

3. TEMPORARY PATIOS

- 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 Approval Manager and all attached conditions, and all other municipal by-laws and provincial and federal legislation. The patio requirements are set out in the Standard Operating Procedures for Outdoor Patio and Municipal Property Usage, as may be amended from time to time and shall apply and form an integral part of this by-law. For any renewal of the Annual Approval Application, the Approval Manager shall have the discretion to dispense with some and/or all of the requirements outlines 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 Approval Manager 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 the Standard Operating Procedures for Outdoor Patio and Municipal Property Usage, as may be amended from time to time.
- 3.4 The Owner shall submit with the Annual Approval Application an application fee as set out in the Fees & Charges By-Law, as amended, to cover administration application processing and inspection time in connection with the Application. This Application may be subject to amendment from time to time.
- 3.5 The Applicant may be subject to payment of other fees if and when applicable and as set out in the Standard Operating Procedures for Outdoor Patio and Municipal Property Usage, as may be amended from time to time, as a condition of the Approval Application.
- 3.6 The Approval Manager shall have the authority to approve an Application in writing on behalf of the Town and the decision shall be based on the guidelines set out in the Standard Operating Procedures for Outdoor Patio and Municipal Property Usage, as may be amended from time to time.

- 3.7 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.
- 3.8 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.

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 the Standard Operating Procedures for Outdoor Patio and Municipal Property Usage, as may be amended from time to time and provide a Certificate of Insurance naming the Town of Midland as an addition insured under such insurance.
- 4.3 The Owner shall compensate the Town for all costs incurred by it and set out in the Standard Operating Procedures for Outdoor Patio and Municipal Property Usage, as may be amended from time to time for the Application, Approval and construction process including those costs incurred by the Town.

5. REVOCATION

- 5.1 The Approval Manager may revoke the approval granted to the 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 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. 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 Owners, 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 for in section 446(1) to (5).

- 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 encroachment and restore the said roadway to the condition in which it was immediately prior to installation at their expense upon receipt of fourteen (14) days notice to do so from the Manager of Municipal Enforcement or their designate. If the Owner fails to remove the encroachment and restore the lands encroached within the time period required or to the satisfaction of the Manager of Municipal Law Enforcement 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 446(1) to (5).
- 6.3 Where notice is required to be given by the Town pursuant to this By-law, the notice is deemed complete if:
- 6.3.1 Written notice is left with an adult person at any address provided on the application or at any address subsequently provided by the Owner;
- 6.3.2 Three (3) days 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,
- 6.3.3 Sent by e-mail address provided by the Owner on the application.

7. INSPECTION

- 7.1 In accordance with Section 436 of the Municipal 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 out 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. 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 is discontinued.

8.2 Any Person who contravenes an Order under this By-law is guilty of an offence.

9. OFFENCES

9.1 Every person who contravenes any provision of this By-law, including failing to comply with an Order made under the 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 A of 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.

9.2 In accordance with Section 398(2) of the Municipal 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. SHORT FORM TITLE

10.1 This by-law shall be referred to as the Outdoor Patio and Municipal Property Usage By-law.

11. EFFECTIVE DATE

11.1 This by-law shall come into force and effect on March 20, 2024.

BY-LAW PASSED AND ENACTED THIS 20th DAY OF MARCH 2024.

THE CORPORATION OF THE TOWN OF MIDLAND

BILL GORDON - MAYOR

SHERRI EDGAR - CLERK

SCHEDULE A**THE CORPORATION OF THE TOWN OF MIDLAND****Part 1 Provincial Offences Act**

By-law 2024-23 being a by-law regulating municipal sidewalk use and temporary and permanent patios in the Town of Midland.

Set Fines under Part 1 – Provincial Offences Act

Item	Column 1 Short Form Wording	Column 2 Provision Creating or Defining Offence	Column 3 Set Fine
1.	Place, construct or install object on sidewalk	Section 2.1	\$150
2.	Obstruct sidewalk without permit	Section 2.2	\$150
3.	Block, interfere or impeded pedestrian on sidewalk without permit	Section 2.3	\$150
4.	Construct or operate temporary patio not in compliance	Section 3.1	\$150
5.	Construct, operate or extend temporary patio without application submission	Section 3.2	\$150
6.	Failure to operate temporary patio in safe manner	Section 3.8	\$150
7.	Failure to provide satisfactory insurance	Section 4.1	\$150
8.	Obstruct entry for inspection	Section 7.2	\$150
9.	Fail to comply with an Order	Section 8.2	\$200

Note: the penalty provision(s) for the offences indicated above is Section 9.1 of By-law 2024-23 a certified copy of which has been filed and Section 61 of the *Provincial Offences Act*, R.S.O. 1990, c.P.33.