

The Corporation of the Town of Shelburne

By-Law Number 31-2017

A By-Law to Permit the Creation of Outdoor Cafés and Patios on the Municipal Boulevard within the Central Business District

WHEREAS the *Municipal Act, 2001, S.O. 2001, c.25, S.8* provides a Municipality natural person powers for the purposes of exercising capacity, rights and powers of the *Act*;

AND WHEREAS the *Municipal Act, 2001, S.O. 2001, c.25, S.130* authorizes a municipality to regulate matters for purposes related to the health, safety and well-being of its inhabitants;

AND WHEREAS the Council of the Town of Shelburne wishes to permit the establishment of boulevard cafés in the Central Business District while ensuring the safe and accessible passage over sidewalks;

NOW THEREFORE the council of The Corporation of the Town of Shelburne hereby enacts as follows:

1 Definitions

In this by-law:

- 1.1 “Central Business District” means the area that is designated Central Business District (CBD) within Schedule “A” to the Official Plan of the Town of Shelburne as amended.
- 1.2 “eating establishment” means a building or place where food and beverages are prepared and/or are offered for sale for consumption on or off the premises.
- 1.3 “Officer” means a municipal by-law enforcement officer, provincial offences officer, police officer or a public health inspector.
- 1.4 “Licensing Officer” means the CAO/Clerk or the Deputy Clerk.
- 1.5 “outdoor boulevard café” means a designated outdoor area on the sidewalk associated with an eating establishment where food and drink are offered for sale, served and/or consumed, no wider than the width of the eating establishment’s storefront, excluding the width of the entrance.
- 1.6 “sidewalk” means the hard surface provided for use of pedestrians on the municipal road allowance and situated between any building and the curb of the street.
- 1.7 “summer season” means the period of time between May 1 and September 30 of any given year.
- 1.8 “Town” means The Corporation of the Town of Shelburne.

2 REQUIREMENT FOR PERMIT

- 2.1 No person shall create an outdoor boulevard café in the Central Business District of the Town of Shelburne unless a permit has been obtained in accordance with the requirements of this By-law.

3 EXCEPTION

- 3.1 The regulations in this by-law do not apply to events organized by Committees or Boards or authorized by the Town, which events involve the closing of Main Street to vehicular traffic.

4 APPLICATION

- 4.1 Every person applying for a permit, as required by this by-law, shall file with the CAO/Clerk, or their designate, as the licensing officer(s), a completed application in the form prescribed by the CAO/Clerk. The application will be accompanied by a scaled plan showing the extent of the outdoor boulevard café onto the sidewalk and illustrations of all associated structures and the required insurance certificate. The application will also indicate how the proposal complies with the conditions of this by-law. The application will be circulated to Public Works Departments and the Planning Department for comment prior to approval.

- 4.2 Upon the submission of an application the applicant will be circulate to the Business Improvement Association's as a proposed use.
- 4.3 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.
- 4.4 The surface area of an outdoor boulevard café shall not exceed the interior licensed floor area of the restaurant (as licensed under the Alcohol and Gaming Commission of Ontario).
- 4.5 Where the patio is elevated above grade on a structure, the height of the deck surface should be no greater than one (1) metre.
- 4.6 The patio shall not be used or furniture positioned in such a manner as to obstruct exits from the restaurant.
- 4.7 The chairs and table shall be kept clear from all existing doorways and sidewalks adjacent to the patio in the interest of public safety.
- 4.8 All signage shall be in accordance with the Municipality's sign by-law.
- 4.9 Outdoor patios and cafes must adhere to the Town's Noise By-law.
- 4.10 The fee for a permit required by this by-law is \$100.

5 COMMENCEMENT AND EXPIRY

- 5.1 Any permit issued under the provisions of this by-law shall be limited to the summer season only of the year in which it is issued or at the discretion of the licensing officer.

6 GENERAL CONDITIONS

- 6.1 An outdoor boulevard café may be located partially or entirely on the sidewalk adjacent to an eating establishment – details to be provided in the site plan Schedule "A".
- 6.2 An outdoor boulevard café must be associated and accessory to an eating establishment or restaurant use that is permitted by the Town's Zoning By-law and all other applicable Town by-laws.
- 6.3 The playing of music is prohibited at an outdoor boulevard café.
- 6.4 The right of access for the Town will be maintained should repairs or maintenance be required on the boulevard on which the outdoor boulevard café is located.
- 6.5 Any and all emergency accesses and exits as marked on the approved plan will be maintained.
- 6.6 A liability insurance policy in an amount of no less than \$2,000,000 with a cross liability clause naming the Town as an additional insured will be obtained.
- 6.7 An outdoor boulevard café shall not impede the flow of pedestrian traffic. A minimum 1.5-metre-wide free and clear pathway must be maintained on the sidewalk at all times.
- 6.8 An outdoor boulevard café must be enclosed by a fence that is 0.9 metres in height. If alcoholic beverages are to be served, the fencing requirements of the Alcohol and Gaming Commission of Ontario will supersede this requirement.
- 6.9 A fence associated with an outdoor boulevard café shall not obstruct the sight lines of an intersection.
- 6.10 No permanent structures shall be permitted.
- 6.11 All elements of an outdoor boulevard café (i.e. fencing, tables, chairs, heaters, etc.) must be removed from the sidewalk at the termination of the permit.

6.12 Any and all lighting associated with an outdoor boulevard café must be directed away from residential areas, other properties and streets.

7 INSPECTION

7.1 Any person to whom a permit has been issued pursuant to this by-law shall permit any Officer to inspect the premises for which the permit was issued at any time.

8 REVOCATION, SUSPENSION

8.1 The Town reserves the right to terminate permission at any time for any or no reason upon direction from the licensing officer, mailed or delivered to the applicant's last known address.

9 OFFENCE AND PENALTY

9.1 Any person who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to a fine and/or penalty as provided for in the *Provincial Offences Act, R.S.O. 1990, Chapter P.33 as amended*, for each offence and such penalty and/or fine shall be recoverable under the *Provincial Offences Act*

10 SEVERABILITY

10.1 Should any section or subsection of this by-law or any part or parts thereof be found by law to be illegal or beyond the power of Council to enact, such section or subsection or part or parts thereof shall be deemed to be severable so that the remainder of this by-law is separate and therefore enacted as such.

11 CONFLICT WITH ANY OTHER BY-LAW

11.1 In the event of any conflict between any provisions of this by-law and any other by-law previously passed, the provisions of this by-law shall prevail.

12 SHORT TITLE

12.1 This by-law shall be known as the "Outdoor Boulevard Café and Patio By-law."

13 EFFECTIVE DATE

13.1 This by-law shall come into force and take effect on the date of passing.

Read a First and Second Time in Open Council this the 15th day of May, 2017.

Read a Third Time in Open Council, and finally passed this the 15th day May, 2017.

Ken Bennington, Mayor

John Telfer, CAO/Clerk

Schedule “A” – Outdoor Patio Site Plan – Required Information

To assist with the Outdoor Café and Patio Site Plan Design, the applicant is requested to provide a site plan, preferably on 11 x 17 ledger size paper to scale and properly labelled with the following information:

- 1) The location and dimension of the building establishment, the entrances, exits and washrooms
- 2) The location and use of the adjacent buildings, the entrances and exits
- 3) The location and dimension of the patio/café, the entrances and exits
- 4) The area of the patio/café, in square metres
- 5) Location and dimension of any enclosures, umbrellas, tents, awnings, etc.
- 6) The location, height and construction material to be use for the boundary fence, gate location and width of gate(s)
- 7) Location of all fire extinguishers
- 8) Location of tables, chairs, bars, stools, etc.
- 9) Expected occupant load
- 10) Temporary sidewalk design, location and dimensions, construction material
- 11) Location of ALL municipal services and/or assets within the patio/café or close proximity (i.e. location of curbs, municipal parking spaces, parking metres, sidewalks, hydrants, storm sewer grates, manholes, trees, benches, garbage receptacles), all below grade and above grade utilities, distances between the patio/café services/fixtures. Also identify whether any public street fixtures/furniture is required to be removed or relocated to accommodate the design. Additional fees may apply for removal or relocation
- 12) The construction and design shall consider the following matters to be addressed on the site plan:
 - a) Locations of services such as hydro, water and gas
 - b) Railing installation, height and construction
 - c) Effect on public sidewalk
 - d) Accessibility
 - e) Installation of any other fixtures to premises or lands (if permissible)
 - f) Maintenance of town trees
 - g) Liquor license requirements
 - h) Road right-of-way requirements