

THE CORPORATION OF THE TOWN OF SMITHS FALLS

BY-LAW NO. 8583-2013

A BY-LAW TO REGULATE OUTDOOR PATIOS

WHEREAS Section 8(1) of the Municipal Act 2001, C. 25, SO 2001, as amended, provides that the act shall be interpreted broadly 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;

WHEREAS Section 8(3) of the Municipal Act 2001, c. 25 SO 2001, as amended, provides that a municipality may establish by-laws respecting matters which regulate or prohibit respecting a matter;

WHEREAS the Town of Smiths Falls established Site Plan Control Bylaw 4532-79, as amended, to regulate the construction, erection, placement or addition of structures or building in the Town of Smiths Falls.

NOW THEREFORE BE IT RESOLVED THAT the Council of the Corporation of the Town of Smiths Falls enacts as follows:

1. THAT the Mayor and Clerk of the Corporation are hereby authorized and directed to do all things necessary to give effect to the said action of the Council.
2. THAT Schedules "A", "B" and "C" attached hereto shall be read with and form part of this by-law;
3. THAT this by-law shall take effect on the date of its passing.

Read a first and second time this 3rd day of June, 2013

Read a third time and passed this 3rd day of June, 2013

Mayor

Clerk

By-law 8583-2013
Schedule “A”

1.0 INTRODUCTION

It is the intent of the Council of the Town of Smiths Falls to establish regulations and guidelines for the consistent and compatible establishment of Outdoor Patios in the Town of Smiths Falls.

The design guidelines provided in this by-law shall apply to all outdoor patio spaces, on both public and private lands, and shall serve to provide uniformity and style for establishments.

The by-law will also establish easily computable expectations and required criteria for applicants interested in establishing Outdoor Patios.

1.1 Consistency with Municipal Plans

The *Town of Smiths Falls Official Plan* (1994) encourages the development of coordinated programs to improve townscape features of publicly and privately owned lands and establishment of a pedestrian-oriented shopping district.

The *Town of Smiths Falls Downtown Revitalization and Waterfront Integration Master Plan* (2013) provides that efforts should be made to establish exciting, people-friendly environments with amenities and social spaces, specifically in the area around the Beckwith Street Promenade. These efforts can be best accomplished by encouraging private investments in the improvement of the streetscape.

1.2 Private Commercial Patios

No person shall construct an Outdoor Patio for commercial or institutional exceeding 90m² without first obtaining permission in the form of Site Plan Control Approval from the Town.

1.3 Public Commercial Patios

No person shall use or occupy any sidewalk or road allowance under the jurisdiction of the Town for the purpose of an Outdoor Patio without first having obtained permission in the form of a “Sidewalk Lease Agreement” or the yearly renewal of such an Agreement.

2.0 DEFINITIONS

2.1 In this bylaw:

“Agreement”	means a Sidewalk Lease Agreement executed by the Owner and Town
“Director”	means the Director of Planning and Sustainable Growth of the Town of Smiths Falls or delegate
“Owner”	means the primary proponent of the establishment with legal signing authority to bind the business or corporation, who shall also be responsible for the regular operation of the patio
“Patio”	means an outdoor semi-enclosed area used on a seasonal basis in association with an eating establishment where seating accommodation is provided and where meals and/or refreshments are served to the public for consumption on the premise
“Private Patio”	means a patio located wholly on private property owned or leased by the Owner

“Season”	means the period between April 1 st and October 31 st in a calendar year
“Sidewalk Patio”	means a patio located wholly or partially on public lands or on the municipal road allowance immediately adjacent to the Owner’s establishment
“Town”	means the Corporation of the Town of Smiths Falls as represented by Council

3.0 SIDEWALK LEASE AGREEMENT REQUIREMENTS

3.1 Operating Season

- a) The leased area shall be used on a seasonal basis during the period commencing April 1st to October 31st, inclusive.
- b) The patio will be subject to an annual inspection at the beginning of the season by the Director and a “Certificate of Compliance” will be issued to the Owner.

3.2 Removal of Operations from Site

- a) At all times when the patio is not in operation between the period of November 1st to March 31st inclusive, the public lands are required to be cleared of all obstacles so that snow removal operations are not impeded in any way.
- b) Under no circumstance shall patio amenities be permitted to remain on site for storage during the times when the patio is not in operation.

3.3 Closing Time

- a) The establishment shall not be conducted in a noisy manner such as to interfere with other business or obstruct pedestrians.
- b) The establishment shall close daily at 11pm.
- c) The hours of operation may be subject to review and revision at the Town’s discretion.

3.4 Licensing

- a) At all times the regulations prescribed by the Alcohol and Gaming Commission of Ontario shall be adhered to.
- b) Breach of the liquor laws of Ontario will result in the immediate termination of the Agreement.

3.5 Smoking

- a) At all times the regulations prescribed in the Smoke Free Ontario Act shall be adhered to.
- b) The Owner shall abide by all provisions of the municipal bylaws regulating smoking in public places.
- c) Ash-trays will be provided at every table to encourage proper disposal.

3.6 Maintenance

- a) The Owner will be responsible for the regular maintenance and cleaning of the patio and adjacent sidewalks of litter.
- b) The Town may at any time during the season enter any portion of the patio for the purpose of installing, maintaining or repairing pipes, cables, sidewalks, wires, poles, and other installations.

3.7 Liability Insurance

- a) The Owner shall carry public liability insurance of \$5 million naming the Town as additional insured, to indemnify and save harmless the Town from any and all claims as a result of use of the public lands.
- b) Proof of insurance will be provided to the Town prior to the execution of the Agreement.
- c) Insurance must be in effect at all times during the use of the public lands.

3.8 Subletting

The Owner shall not assign or sublet the patio without the consent in writing of the Town.

3.9 Duration of Term

- a) The agreement will be affective for a term of three consecutive seasons.
- b) Not later than 30 days to the expiry of the Agreement, the Owner may make a request in writing for an extension of an additional three seasons.
- c) The terms and conditions of the original Agreement shall carry forward.

3.10 Termination of Agreement

- a) The Agreement shall automatically expire on October 31st of the third consecutive season.
- b) The Agreement shall automatically expire should the Owner fail to pay rent for the lease before April 1st each season.
- c) The Town may terminate the lease within 15 days written notice should:
 - i. The property be required for municipal purposes;
 - ii. The terms of the Agreement have been breached;
 - iii. The Owner fails to take action to rectify a default identified by the Town within 21 days of written notice served.

3.11 Agreement Fees

- a) A non-refundable administrative fee of \$100.00 is required at the time the application is filed.
- b) A non-refundable renewal fee of \$50.00 is required at the time the seasonal fee is paid.¹
- c) Seasonal rental rates shall be applied as follows:

Establishment Service	Fee
Unlicensed	\$100
Licensed	\$150

- d) An additional charge of \$10.00/m² of patio area will be included where the patio is covered by an awning.

3.12 Additional conditions as appropriate

The Town may impose additional requirements on an individual basis as determined by Council.

4.0 DESIGN STANDARDS

4.1 Location

- a) Sidewalk patios may be situated in the public right-of-way provided that there is no interference with the free and comfortable movement of pedestrian and vehicular traffic.
- b) Patios must maintain a 30m separation distance from a residential zone.
- c) Sidewalk patios must at all times maintain a clear passage of not less than 1.5m.
- d) Where the sidewalk patio is located within 9m of an intersection a clear passage of not less than 2m will be maintained.
- e) Where the sidewalk patio is located between the clear passage and the street curb, a clearance of 1m shall be maintained.
- f) Patios shall not encroach upon the frontage of neighbouring establishments.
- g) Patios will not encroach within 1m of public street elements, including but not limited to:
 - i. Parking Meters
 - ii. Garbage Cans
 - iii. Bike Racks
 - iv. Benches
- h) Patios will not encroach within 3m of fire hydrants.

4.2 Dimensions and Design

- a) The maximum area of the patio shall not exceed the interior licensed floor area of the establishment as established in the Liquor License.
- b) Where the patio is terraced, deck setbacks should be consistent with a 2:1 ratio with a height of 0.45m at the sidewalk.

¹ Note: this renewal charge covers the cost of inspection by municipal staff

- c) All patios will maintain universal accessibility and where required, provide ramp access not exceed a slope of 1:12.
- d) All exposed materials shall be painted or stained in co-ordination with streetscaping elements.
- e) No furniture or amenities shall be placed in any manner that will interfere with access by wheelchairs.

4.3 Fencing

- a) Patio perimeters should be fenced other otherwise visibly delineated.
- b) All licensed patios or large patios (10 tables or more) will be fenced.
- c) Where the patio is licensed the required height of the fence will be 1.06m in height measured from grade.
- d) Where the patio is located on public lands the fence shall not exceed 1.21m in height measured from grade.
- e) Where the patio is located on private property side screens and fencing may be constructed up to 2m in height measured from grade.
- f) Screens may not be entirely opaque, but may be formed by structures with lattice or grill work and climbing vines.
- g) Screens will not be permitted on the front of the patio.
- h) Supporting structural components will not project or obstruct the passage surface.
- i) All fences should be of sturdy design and construction and may be subject to inspection.
- j) The design, materials and colours used in the development of the patio shall be compatible with the streetscape.
- k) Fences may be constructed of wrought-iron, steel, pressure treated lumber stained or painted.
- l) Gates and openings in the fence will be no less than 1.2m to facilitate universal accessibility.

4.4 Awnings

All patios may be constructed with awnings or overhead sheltering in accordance with the following provisions:

- a) Awnings will be securely fastened to a frame which is either retractable or demountable.
- b) Awnings must be composed of flame resistant sheltering material approved by the Fire Department.
- c) Flame-proofing treatments shall be renewed as often as necessary to ensure that the material continue to pass the match flame test in NFPA 705”Recommended Practice for a

Field Flame Test for Textiles and Films”

- d) Awnings and umbrellas must be contained within the approved patio area.
- e) Awning and umbrella colours and materials should co-ordinate and contribute to the streetscape theme.
- f) Awnings will provide a minimum height clearance measured from grade of 2.4m.

4.5 Platforms

Private patios and sidewalk patios where deemed appropriate by the Town may include platforms in accordance with the following:

- a) All platforms or constructed works shall be in accordance with the Ontario Building Code and a Building Permit will be required.
- b) Where the patio is elevated on a platform, the height of the structures deck surface shall not exceed 2m.
- c) Where the patio is elevated, skirting shall be applied to screen structural elements.
- d) Platforms or decks should be constructed in sections to facilitate easy removal and storage while the patio is not in operation.
- e) Platforms or decks must not obstruct or alter the drainage of the property.

4.6 Furniture

- a) All furniture will be of outdoor furniture design and quality, constructed of weather resistant material. Picnic tables are prohibited.
- b) Furniture should be tasteful and complimentary to the streetscape.
- c) The number of patio tables and chairs will be limited to leave reasonable space for access.
- d) Furniture should be secured in a way which restricts opportunities for theft or vandalism. The Owner shall be responsible for ensuring that unsecured furniture is not removed from the approved patio area.
- e) Final approval of a selected furniture design will be at the sole discretion of the Town.

4.7 Lighting

- a) All exterior lighting will be task oriented and will not spill into abutting private property.
- b) Fixture choices should be coordinated with patio furniture and amenities.
- c) All patio entrances will be clearly illuminated.
- d) Electrical cords will be prohibited on Sidewalk Patios.

4.8 Vegetation

- a) All patios may feature planted annuals, vines or small potted shrubs.
- b) Plantings may be included in railing baskets, hanging baskets or pots.
- c) Plantings will be pruned and maintained as to not become unsightly or obstructing.
- d) Permanent planting of street trees will be approved as appropriate by the Town.
- e) Street trees will not be pruned or removed without prior approval by the Town.

4.9 Signage

- a) Banners and signage will be subject to approval by Sign Permit.
- b) Each patio may feature 1 (one) sandwich board located at the patio entrance which does not obstruct clear passage.

4.10 Heating Devices

- a) Devices may be permitted within patio areas where awnings, roof coverings or umbrellas are not present.
- b) The addition of devices to Sidewalk patios will require additional insurance.
- c) Devices will be subject to individual inspection and approval as deem appropriate by the Fire Department.
- d) Devices must be installed, maintained and continue to meet all manufacturer's instructions.
- e) Devices must be Underwriters Laboratories of Canada Listed.

**By-law 8583-2013
"Schedule B"**



Application for Sidewalk Lease Agreement

Corporation of the Town of Smiths Falls
PO Box 695, 77 Beckwith Street North, Smiths Falls Ontario
Phone: 613-283-4124 Fax: 613-283-0558

Location: _____ **Business Name:** _____
Applicant: _____ **Phone:** _____ **Email:** _____
Bus. Owner: _____ **Phone:** _____ **Email:** _____
Prop. Owner: _____ **Phone:** _____ **Email:** _____
Preferred Method of Contact: Phone ☐ Email ☐ Mail ☐

Description of lands to be leased:

Purpose of lands to be leased:

Number of tables and chairs: _____

Alcohol and Gaming Commission of Ontario Approval Received: Yes ☐ No ☐

Type: _____

License Term: _____

Please carefully review Bylaw 8583-2013 (Outdoor Patios) for compliance.

Applications that fail to meet all requirements of the Bylaw will be required to file a variance before a lease can be approved.

I, _____, am the owner/authorized agent for the owner named in the above application and I certify the truth of all statements made herein. I acknowledge that in the event a Lease Agreement is executed, any departure from the plans, specifications, or locations proposed in this application are prohibited and such could result in the termination of the Lease Agreement. I further acknowledge that in the event the permit is revoked for any cause of irregularity or nonconformity with the by-laws or regulations, there shall be no right of claim whatsoever against the Corporation or any official therefore and any such claim is expressly waived.

Date: _____ Signature: _____

Application for Sidewalk Lease Agreement

Patio Application Check List

Applicant: _____

Date: _____

Municipal Address: _____

Required Information:

1. Complete Official Application Form ☐
2. Provide colour photographs of the area, showing adjacent properties, capturing the context of the streetscape ☐
3. Provide a Plot Plan drawing, extending 30m beyond the patio limits at an appropriate scale depicting the following: ☐

a. Existing Site Conditions:

- | | |
|--|---|
| <input type="checkbox"/> Property Lines | <input type="checkbox"/> Fire Hydrants |
| <input type="checkbox"/> Buildings | <input type="checkbox"/> Fire Routes |
| <input type="checkbox"/> Sidewalks | <input type="checkbox"/> Manholes |
| <input type="checkbox"/> Sign Posts | <input type="checkbox"/> Catch Basins |
| <input type="checkbox"/> Parking Meters | <input type="checkbox"/> Utility Valves |
| <input type="checkbox"/> Light Standards | <input type="checkbox"/> Utility Poles |
| <input type="checkbox"/> Other: _____ | |

b. Existing Dimensions:

- ☐ Width of Existing Sidewalk
- ☐ Frontage of Establishment
- ☐ Width of Existing Asphalt
- ☐ Distance to Nearest Residential Use

c. Proposed Patio Area (with dimensions):

- | | | | |
|-----------------|--|--------------|--|
| <i>Area</i> | <input type="checkbox"/> Surface area | <i>Deck</i> | <input type="checkbox"/> Height |
| | <input type="checkbox"/> Licensed floor area | | <input type="checkbox"/> Terraced Setback Ratio |
| | | | <input type="checkbox"/> Type of Skirting |
| <i>Distance</i> | <input type="checkbox"/> Frontage of Restaurant | | <input type="checkbox"/> Finish (paint or stain) |
| | <input type="checkbox"/> Distance from Building Corner | | |
| | <input type="checkbox"/> Distance from Intersection Corner | | |
| <i>Sidewalk</i> | <input type="checkbox"/> Width | <i>Fence</i> | <input type="checkbox"/> Location |
| | | | <input type="checkbox"/> Material |
| <i>Drainage</i> | <input type="checkbox"/> Grade and Slope | | <input type="checkbox"/> Height |
| | <input type="checkbox"/> Proposed Catch Basin | | <input type="checkbox"/> Colour |
| | | | <input type="checkbox"/> Distance from Fixtures |



By-law 8583-2013
“Schedule C”

AGREEMENT FOR A SIDEWALK LEASE AGREEMENT
[Municipal Address]

This agreement made this ____ day of _____, 2013

Between [Name]
(hereinafter referred to as the ‘Lessee’)

And THE CORPORATION OF THE TOWN OF SMITHS FALLS
(hereinafter referred to as the ‘Town’)

WHEREAS the Municipal Act, as amended, provides that 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 the Municipal Act, as amended, provides that Section 8 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 WHEREAS the Lessee is the owner of lands identified as [Address], hereafter referred to as the ‘Owners Lands’, and more particularly described as:

[Legal Description]

AND WHEREAS the Town wishes to enter into a Sidewalk Lease Agreement with [Owner] respecting use of a portion of the sidewalk/road allowance/boulevard in proximity to [Address], Smiths Falls;

NOW THEREFORE the parties agree as follows:

1. The leased area shall be used on a seasonal basis during the period commencing April 1st to October 31st, inclusive.
2. At all times when the patio is not in operation during the period November 1st to March 31st, inclusive, the sidewalk is required to be cleared so that snow removal operations are not impeded in any way.
3. The fullest possible free and clear pedestrian movement shall be provided.
4. No tables or chairs shall be placed in any manner that will interfere with access by wheelchairs.
5. The establishment shall not be conducted in a noisy manner such as to interfere with other businesses or obstruct pedestrians, and shall be subject to closure daily at 11pm.
6. The lessee shall abide by all provisions of the Smoke Free Ontario Act, and that ash-trays are provided at each table to encourage proper disposal of cigarettes. The lessee shall also be responsible for the regular maintenance and cleaning of the patio and adjacent sidewalks of such litter.

7. Where the proposed use of the leased sidewalk is for a licensed patio café, the regulations prescribed by the Alcohol and Gaming Commission of Ontario shall be adhered to unless otherwise stipulated by Council. The revocation of any sidewalk patio lease agreement shall be enforced after any breach of the liquor laws of Ontario.
8. The lessee shall carry public liability insurance (\$5 million) naming the Town as additional insured, satisfactory to the Town, to indemnify and save harmless the Town of Smiths Falls from any and all claims as a result of the use of any Town property. Said insurance shall be provided and approved prior to use of the Town lands and shall remain in effect during the use of the leased sidewalk.
9. Any construction work that is undertaken shall be in accordance with the Ontario Building Code and a Building Permit shall be obtained when required. Any leasehold improvements permitted in the approved plan shall be done under the supervision and to the satisfaction of the Town and shall be maintained by the Lessee at the Owner's sole risk and expense to the satisfaction of the Corporation and in default the provisions of Clause 11 shall apply.
10. The Town shall be granted the power to terminate the lease within fifteen (15) days written notice should the property be required for municipal purposes upon reasonable grounds or if the lessee fails to comply with the terms of the lease.

In the event of a default by the Lessee or its assigns in the provision or maintenance of any of the matters and things required to be done by the Lessee pursuant to this Agreement, the Corporation may, at the expense of the Lessee, send a notice in writing to the Lessee which notice shall specify the default and the requirements to rectify such default. If the Lessee has not completed the rectification of any such default or has failed to take, in the opinion of the Corporation, sufficient action to do so within twenty-one (21) days of receiving such notice, then the Corporation may, at the expense of the Lessee, enter upon the lands and do all such matters and things as are in default. Any cost incurred by the Corporation plus twenty-five (25%) percent as a charge for overhead pursuant to this cause shall be paid by the Lessee to the Corporation within thirty (30) days of the mailing of an invoice by the Corporation addressed to the then current owner of the Lessee lands as shown in the last revised assessment roll of the Corporation. In default of payment, such an amount referred to in this clause may be recovered by the Corporation in a like manner as taxes charge to the Owner's Lands pursuant to the provision of Section 427 of the Municipal Act, RSO, 2001 as amended.

12. Current standards of Engineering requirements for public services shall be maintained, i.e., drainage, fire hydrants, etc.
13.
 - (a) The lessee agrees to pay rent for the leased space during the three (3) year term of this lease agreement.
 - (b) The lessee shall have the option to extend the term of this agreement for a period of three years upon delivery of written notice to the Town not later than the 30th day prior to the expiry of this agreement provided that the Town has not served notice on the lessee that the land will be required for municipal purposes. The terms and conditions of this agreement shall continue to apply during the extension.
14. The annual rental charge for lease of space, if the area is being used for the active selling of food, drink or merchandise, is \$150/season. Tables, chairs and decorative accessories on patios that are used for the active selling of food, drink or merchandise shall be placed a minimum distance of one meter from the curb line and ten centimeters from abutting properties. The annual rent shall

be paid prior to occupancy of the sidewalk and in default interest in accordance with municipal policy shall apply and the municipality may recover said amount in like manner of taxes against the Owner's Lands.

15. The use of rain screens/curtains shall be in accordance with the following conditions:
 - a) the material shall be clear plastic or mesh screening only; no rigid materials shall be permitted;
 - b) rain screens/curtains shall only be permitted during rainy periods;
 - c) an additional per square meter rental base of \$10.00 per square meter shall be charged;
 - d) the period of operation shall be April 1 to October 31 of each year;
 - e) in the case of designated or listed buildings, the design and guidelines of the front rain screens/curtains shall be subject to final approval by the Municipal Heritage Committee.
 - f) any other provisions as set out by the Town of Smiths Falls
 - g) umbrellas are excluded from this provision, but must be approved by the Town, said approval which may be withheld and/or subject other provisions as set out by the Town of Smiths Falls
16. The patio will be subject to an annual inspection by a representative of the Planning and Sustainable Growth Department of the Town of Smiths Falls, prior to the opening of the sidewalk patio. Following this inspection, and approval that such sidewalk patio conforms, a "Certificate of Compliance" shall be issued to the sidewalk patio operator.
17. The lessee agrees not to encumber the sidewalk surrounding the leased area in any way and specifically not to permit the placement of "sandwich board" signs, planters or extraneous advertising objects on the sidewalk or to allow bicycles to be affixed to or leaned against the sidewalk patio fence.
18. The planting of annuals, vines and container growth is encouraged and will be subject to Planning and Sustainable Growth Department approval/conditions. Containers shall be removed at the end of the approved seasonal use period.
19. The lessee agrees to maintain the patio in the manner of the approved plan attached hereto. The lessee agrees to maintain the patio fence, especially the top rail, as well as the top surface of the curb along the widened sidewalk around the patio so as to provide greater visibility. This is all to be done in a manner satisfactory to the Town's Planning and Sustainable Growth Department. The top rail of the fence shall be painted white and the remainder of the fence shall be painted in a contrasting colour for the benefit of visually impaired people or as otherwise approved by the Town.
20. No patio operator shall fail to maintain the sidewalk leased as a patio and it shall be an offence to fail to clean the sidewalk required for the patio.
21. No person shall deviate from the approved plans for the patio attached hereto as Schedule A. The approved plan may only be modified upon approval of the Director of Planning and Sustainable Growth.
22. These are standard lease agreement conditions; however, the Town may impose other requirements depending on the individual proposals.
23. This Agreement shall ensure to the benefit of and be binding upon the parties herein and their respective heirs, executors, successors, administrators and assigns except where specifically

excluded and all covenants and agreements herein contained, assumed by or imposed upon the Lessee are deemed to be covenants which run with and bind the Lessee's lands.

24. The Owner agrees to register this Agreement on title to the Owner's lands. The Owner shall be responsible for advising all affected mortgagees and encumbrancers. The Owner shall be responsible for all costs related to registration of this agreement.

If the Lessee does not proceed with a patio in the calendar year in which it is approved, the agreement will be void and the applicant shall be required to re-apply the following year.

Signature of Lessee
I/We have the authority to bind the Corporation

Signature of Lessee
I/We have the authority to bind the Corporation

Date

Date

Signature of Mayor

Signature of Clerk

Date

SCHEDULE 'A' – Approved Patio Plan

Plan prepared by [Name], [Date], [Title], [Address].

All schedules may be subject to red line amendment (modifications approved by the Director of Planning and Sustainable Growth) in accordance with this agreement. The Clerk of the Town of Smiths Falls shall keep a copy of any redline amendment on file with the original by-law.