

# Corporation of the Town of Newmarket

## By-law 2020-31

### OFFICE CONSOLIDATION

This is a consolidation of the Town's By-law to regulate and licence businesses to operate in the Town of Newmarket, being By-law 2020-31, as amended by the below listed by-laws and is prepared for reference and information purposes only. The following consolidation is an electronic reproduction made available for information only. It is not an official version of By-law 2020-31. Official versions of all by-laws can be obtained from Legislative Services by calling 905-953-5300. If there are any discrepancies between this consolidation and By-law 2020-31 and listed amending by-laws the official by-laws shall prevail.

2021-09 – March 1, 2021	Rooftop patios
2021-34 – June 21, 2021	Personal Wellness Establishments
2022-39 – June 6, 2022	
2023-36 – June 5, 2023	Regarding Hearing Officers

A By-law to regulate and licence businesses to operate in the Town of Newmarket.

**Whereas** Section 151 of the Municipal Act 2001, S.O. 2001, c25, as amended, establishes that a municipality may provide for a system of licences with respect to a business;

**And whereas** the Council of the Town of Newmarket deems it advisable to pass such by-law;

Therefore be it enacted by the Council of the Corporation of the Town of Newmarket as follows:

### 1. Title

This By-law may be known and cited for all purposes as the "Business Licence By-law 2020-31".

### 2. Definitions

In this By-law:

**"Animal"** means any member of the **Animal** kingdom other than a human;

**"Applicant"** means a **Person** applying for a **Business Licence** to carry on a **Business**, activity, or undertaking pursuant to this By-law;

**"Alternative Massage"** means any massages that is not provided by persons licensed, or registered as a regulated health professional under the laws of the Province of Ontario by the College of Massage Therapists as registered massage therapists or massage therapists to provide medical or therapeutic in nature, nor is it designed to appeal to erotic appetites or inclinations;

**"Attendant"** means any **Person** other than a licensed **Owner** or **Operator** who provides Services designed to appeal to the needs of a particular **Business**;

“**Bird**” means a warm-blooded egg-laying vertebrate distinguished by the possession of feathers, wings, and a beak and (typically) by being able to fly;

“**Bed and Breakfast**” means a dwelling or part of a dwelling in which not more than three (3) bedrooms are used or maintained for the accommodation of the travelling public, in which the **Owner**-occupant supplies lodgings with or without meals for hire or pay;

“**Business**” means the carrying on of a commercial or industrial undertaking of any kind or nature, or the providing of professional, personal, or other services as set out in Section 8 of this By-law, but does not include any activity carried on by the government, its agencies, or government owned corporations;

“**Business Licence**” or “**Licence**” means a **Licence** to operate a **Business** pursuant to this By-law;

“**Commercial Rooftop Patio**” means any portion of a rooftop dedicated as a serving area that is an accessory use to a restaurant or to a commercial use;

“**Council**” means **Council** for the Corporation of the **Town** of Newmarket;

“**Dwelling Unit**” means a room or group of rooms to be used by one family that functions as a single independent housekeeping unit in which cooking facilities, living quarters and sanitary facilities are provided for the exclusive use of those residing within the unit only, and with a private entrance from outside the building or from a common hallway or stairway inside;

“**Fees and Charges By-law**” means the **Town** of Newmarket **Fees and Charges By-law** 2019-52, as amended;

“**Hearing Officer**” means the Hearing Officer appointed by the Town;

“**Licensee**” means a Person licensed under this By-law;

“**Licensing Officer**” means an individual appointed by the **Town** as a **Municipal Enforcement Officer** or any other individual designated by the **Town** to enforce this By-Law;

“**Live Music**” means any live performance utilizing an instrument ones’ voice, a device or electronic equipment to amplify music, or any other form of live performance;

“**Lot**” means a parcel of land which is legally capable of being conveyed in accordance with the Planning Act R.S.O. 1990, Chapter 13 as amended, or is described in accordance with a registered Plan of Condominium.

“**Manager**” means the Town of Newmarket Manager of Regulatory Services or their designate;

“**Market**” means sell, offer for sale, promote, canvass, solicit, rent, advertise, book, arrange or facilitate sale or rental, and includes placing, posting, or erecting advertisements physically or online;

“**Municipal Enforcement Officer**” means an individual appointed by the **Town** as a Municipal Law Enforcement Officer or any other individual designated by the **Town** to enforce this By-law;

“**Opaque Barrier**” means a barrier which does not permit the transmission of light through its structure;

“**Operator**” or “**Owner**” means any **Person** that operates or owns a **Business** as identified in this By-law;

“**Outdoor Serving Area**” means any area on private or public 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;

“**Permanent Resident**” in respect of any dwelling or **Lot** means a **Person** who normally resides in a dwelling on the **Lot** and for these purposes a **Person** cannot normally reside at more than one location;

“**Permitted Animal**” means an **Animal** identified as a "Permitted **Animal**" as listed in the **Town's Animal Control By-law Schedule 'A'**, as amended;

“**Person**” includes a natural **Person**, corporation, partnership or party, and the **Personal** or other legal representatives or a **Person** to whom the context can apply according to law;

“**Personal Wellness Attendant**” means any **Person** who performs, offers, or solicits an **Alternative Massage** at a **Personal Wellness Establishment**;

“**Personal Wellness Establishment**” means any premises or part thereof where an **Alternative Massage** is performed, offered or solicited in exchange for payment;

“**Pet Store**” means a **Premises** in which the primary purpose of **Animals** or **Birds** for use as pets, or goods and merchandise associated with such **Animals** or **Birds**, are offered or kept for **Retail** sale or rental to the public;

“**Premises**” means the area of a building and/or **Lot** occupied or used by a **Business** or enterprise. In a multiple tenancy buildings occupied by more than one **Business**, each **Business** shall be considered a separate **Premises**;

“**Retail**” means the sale of products or goods to the ultimate consumer, usually in small quantities, in the ordinary course of **Business**;

“**Short Term Rental**” means all or part of a **Dwelling Unit** used to provide temporary sleeping accommodations for any rental period that is less than 28 consecutive days in exchange for payment. This includes a **Bed and Breakfast** but excludes hotels, motels and accommodations where there is no exchange for remuneration;

“**Short Term Rental Company**” means any **Person** who facilitates or brokers **Short Term Rental** reservations via the internet and who:

- (a) receives payment, compensation, or any financial benefit due to, as a result of, or in connection with a **Person** making or completing reservations of those **Short Term Rentals**; or
- (b) collects, accesses, or holds information on the number of nights that reservations of those **Short Term Rentals** are made or completed.

This definition does not apply to a **Person** who facilitates or brokers reservations for a **Short Term Rental** that is the principal residence of that person or their immediate family. In this definition, “**Person**” includes multiple **Persons** who, acting together, carry on the **Business** of a **Short Term Rental Company**, despite the fact that no single one of those **Persons** carries on the activity in its entirety, and such may be held jointly and severally responsible for each other’s actions;

“**Sign By-law**” means the **Town** of Newmarket **Sign By-law 2017-73**, as amended;

“**Town**” means the Corporation of the **Town** of Newmarket in the Regional Municipality of York;

“**Veterinarian**” means a **Person** qualified and authorized to practice veterinary medicine;

“**Zoning By-law**” means the **Town** of Newmarket **Zoning By-law** 2010-40, as amended.

### 3. General Regulations

- (1) A **Person** must not carry on any **Business** unless that **Person** holds a valid and subsisting **Business Licence** issued to that **Person** for that **Business** within the **Town**.
- (2) Every **Business** shall comply with all federal, provincial, and municipal by-laws and regulations applicable to the **Business** and the **Business Premises**.
- (3) If a **Person** operates a **Business** at more than one **Premises**, that **Person** shall apply for and maintain a separate **Business Licence** for each **Premises**.
- (4) If a **Person** operates more than one type of **Business** at the same **Premises**, that **Person** shall apply for and maintain a separate **Business Licence** for each **Business**.
- (5) Every holder of a **Business Licence** shall post or display the **Business Licence** at the place of **Business** in a location visible to customers and suppliers attending the **Business**.
- (6) Every **Business Licence** issued shall be deemed to be a personal **Business Licence** to the licensee therein named.
- (7) A valid **Licence** will permit a **Business** to conduct the specific activities to the stated extent described in the **Licence** application. If a **Business** entity makes any changes to the information contained in its **Business Licence** application or information, undertakes new **Business** activities or expands those activities, it is required to obtain a new **Business Licence** or a **Business Licence** amendment for those activities.
- (8) No **Person** operating a **Business** within the **Town** shall **Market** that **Business** or its products and services through any means of promotion unless:
  - (a) the **Person** operating that **Business** is the holder of a valid **Business Licence** issued pursuant to this By-law;
  - (b) the **Business** name being promoted or marketed matches the named endorsed on the **Business Licence**; and
  - (c) the marketing offers products and services that comply with **Town** by-laws and related enactments.
- (9) No **Person** shall carry on a **Business** of any kind, in any way or manner on **Town** owned property, parks, boulevards, highways or other public property unless specifically authorized to do so by a permit under this Bylaw or another enactment.

### 4. Administration and Enforcement

- (1) Through delegated authority, the **Manager** may:

- (a) grant, issue, or amend a **Business Licence** if the **Licensing Officer** is satisfied that the **Applicant** has complied with all of the by-laws of the **Town** and related enactments that apply to the **Applicant's Business**;
  - (b) suspend, cancel, or refuse to issue a **Business Licence** in accordance with Section 7 of this By-law;
  - (c) impose conditions on a **Licence** at the time of issuance, renewal, or suspension for the purposes of ensuring compliance with all applicable enactments pertaining to the **Business**;
  - (d) conduct inspections and investigations to ensure that all regulations and provisions prescribed in this By-law are carried out; and
  - (e) prepare, from time to time, forms to be used for the purpose of making applications under this By-law.
- (2) No **Person** shall Obstruct or attempt to Obstruct a **Licensing Officer** or other **Person** who is exercising a power or performing a duty under this By-law.

## 5. Licence Fees

- (1) **Business Licence** fees shall be in accordance with those specified in the **Town of Newmarket Fees and Charges By-law**.
- (2) An administrative penalty of 25% of the renewal fee shall be added to each unpaid **Business Licence** after 31 days from the renewal date. If unpaid by this time, the **Licence** shall be revoked and a new **Business Licence** application shall be required.
- (3) If an application for a **Licence** is withdrawn, in writing, prior to the issuance of the **Licence**, the **Licence** Fee shall be refunded to the **Applicant** if a **Licence** was pre-paid.
- (4) No **Licence** Fee shall be refunded after the issuance of a **Licence**.

## 6. Application and Renewal

- (1) The terms of a **Business Licence** issued under this By-law are for a period commencing January 1st and ending December 31st of the year for while the **Licence** is issued.
- (2) All new **Business Licence** applications shall be accompanied by a non-refundable \$50.00 application processing fee. If a **Business Licence** application is approved, the application processing fee shall be applied to the **Business Licence** fee identified under the Fees and Charges Bylaw.
- (3) Every **Applicant** for a new **Business Licence** or for the renewal of a **Business Licence** issued under this By-law shall:
  - (a) submit a completed application on the forms provided;
  - (b) file proof satisfactory to the **Licensing Officer** that they are eighteen (18) years of age or older, a citizen of Canada, or a landed immigrant or produce a valid work permit issued by the Government of Canada; to work in the occupation of the **Licence** type that they are applying for;
  - (c) provide a copy of the:

- (i) incorporating document and a copy of the last annual information return which has been filed with the appropriate government department, if the **Applicant** is a corporation; or
  - (ii) registered declaration of partnership, if the **Applicant** is a registered partnership;
- (d) provide any other document relating to the operation of the **Business** requested by the **Licensing Officer**, including but not limited to:
- (i) a provincial driver's **Licence**;
  - (ii) Vulnerable Sector Screening Search or Criminal Conviction Background Search issued by the Police Service in which the **Applicant** resides;
  - (iii) Harmonized Sales Tax (HST) number;
  - (iv) York Regional Health Department Inspection Certificate;
  - (v) Insurance Certificates;
- (e) pay any required fees pursuant to the **Town's Fees and Charges By-law**; and
- (f) pay any outstanding fine(s) owed to the **Town** prior to the issuance of a **Business Licence**.
- (4) If a **Person** submits a **Business Licence** application for which additional information or documentation is required by the **Licensing Officer**, the **Person** shall supply all required information and documentation within 30 days of the request made by the **Licensing Officer**, after which time the application may be refused and a new application for a **Business Licence** is required.

## 7. Suspension, Cancellation, and Refusal

- (1) The **Manager** may revoke, suspend, cancel or refuse to renew or issue a **Licence**:
- (a) where the past conduct of the **Applicant** or licensee affords reasonable grounds for belief that the **Applicant** or licensee will not carry on the activity for which the **Applicant** is applying for or the licensee is licensed for, in accordance with law and with integrity and honesty;
  - (b) where the **Applicant** or licensee has been found by the **Manager** or **Licensing Officer** to fail to comply with any provision of this By-law; or
  - (c) where the **Applicant** has been found by the **Manager** to provide false information in order to obtain a **Business Licence**.
- (2) Upon such revocation, suspension, cancellation, or refusal to issue or renew a **Business Licence**, the **Manager** shall provide a formal letter outlining the reason(s) for the refusal and shall be delivered to the **Applicant** or licensee within seven (7) business days. Such notice shall set out and give reasonable particulars of the ground(s) for the decision and options for an Appeal Hearing.
- (3) An **Applicant** or licensee of a **Business Licence** may request a hearing before the **Hearing Officer** for reconsideration of the

**Manager's** decisions to revoke, suspend, cancel, or refuse to issue or renew a **Business Licence** by delivering a written request to the **Manager** within fourteen (14) days of the **Manager's** decision being sent.

- (4) The **Applicant** or licensee of a **Business Licence** must pay a non refundable Appeal Fee in accordance with the Fees and Charges Bylaw.
- (5) Before the **Hearing Officer** makes any decision, a written notice to advise the **Applicant** or licensee of the recommendations being made by the **Manager** with respect to the **Licence** shall be provided to the **Applicant** or licensee.
- (6) The **Applicant** or licensee shall have the right to make a submission in support of an application or renewal or retention of a **Licence** before the **Hearing Officer**.
- (7) Failure for the **Applicant** or licensee to attend the scheduled hearing before the **Hearing Officer** shall result in the proceeding of the hearing.
- (8) The decision of the **Hearing Officer** is final and binding.
- (9) No **Person** shall conduct any **Business** pursuant to their **Business Licence** during a period of suspension of that **Business Licence**.
- (10) No **Person** shall **Market** a **Business** during a period of suspension of that **Business' Licence**.
- (11) If the **Manager** suspends, cancels or refuses to issue, amend or renew the **Business Licence** for a **Business**, the **Town** may post a notice of suspension, cancellation, or refusal on the **Premises** of the **Business**.
- (12) A posted notice of suspension, cancellation, or refusal of a **Business Licence** shall not be removed until the **Manager** has approved the issuance of a valid **Business Licence**.
- (13) If a **Business** is operating without a **Licence** required under this By-law, the **Town** may post a notice describing the failure to hold a valid **Business Licence** on the **Premises** of the **Business**.
- (14) A posted notice of operating without a **Business Licence** shall not be removed until the **Manager** has approved the issuance of a valid **Business Licence**.

## **8. Specific Regulations**

### **8.1 Pet Stores**

- (1) Every **Pet Store** shall be maintained at all times in a sanitary, well-ventilated, clean condition, and free from offensive odours.
- (2) Every **Animal** shall be kept in sanitary, well-bedded, well-lighted, clean quarters, kept at a temperature appropriate for the health requirements of the type or species of **Animal** housed therein.
- (3) Every cage or other container used for the keeping or housing of any **Animal** shall:
  - (a) be of adequate size to permit any such **Animal** to stand normally to its full height, to turn around, and to lie down in a fully extended position;

- (b) in the case of a cage or other container used to keep or house only **Birds**, have a removable metal or other impermeable bottom which shall be cleaned daily;
  - (c) in the case of all other cages or containers, have a floor of either solid or wire mesh construction or any combination thereof, provided that:
    - (i) all spaces in wire mesh shall be smaller than the pads of the foot of any **Animal** confined therein;
    - (ii) any such wire mesh shall be of a thickness and design adequate to prevent injury to any such **Animal**; and
    - (iii) such floor shall be of sufficient strength to support the weight of any such **Animal**;
  - (d) be equipped with receptacles for food and for water, so mounted or situated that they cannot be easily overturned or contaminated; and
  - (e) be located and enclosed in a manner as to prevent undue physical contact with the public.
- (4) Fresh water shall be provided daily to every **Animal** in sufficient quantity to maintain at all times a potable supply available to such **Animal**.
- (5) **Animals** shall be fed periodically each day in accordance with the particular food requirements of each type or species of **Animal** kept within the **Pet Store**.
- (6) Every **Applicant** licensed or required to be licensed with the **Town** under this By-law shall:
- (a) provide to every purchaser of a cat or dog a health assessment from a licensed **Veterinarian** to verify the **Animal** has received up to date veterinary care;
  - (b) only permit a cat or dog within the **Pet Store** for the purpose of sale, where facilitated through adoption, and where the cat or dog has been obtained from one (1) of the following sources:
    - (i) municipal **Animal** shelters;
    - (ii) registered humane societies;
    - (iii) registered shelters; or
    - (iv) a recognized **Animal** rescue group;
  - (c) provide all enclosed dogs or cats reasonable exercise;
  - (d) not keep or sell any sick, injured, or diseased **Animals** unless under the direction of a veterinarian;
  - (e) not display any **Animal** in an exterior display window;
  - (f) not permit to be sold, offer for sale, or give away any **Animal** before it has reached the normal weaning age, based on known requirements of that particular species; and
  - (g) give the purchaser on any sale all available information pertaining to the disposition of any dog or cat, a receipt showing the name and address of the vendor and the purchaser, the



date of sale, the sale price, the breed or crossbreed, sex, age, and description.

(7) Every **Pet Store** shall maintain a registry of each dog or cat purchased or otherwise obtained. Each entry shall be made at the time each dog or cat comes into the possession of any **Owner**, employee, or **Person** associated with the **Pet Store** and shall include:

- (a) the date of purchase;
- (b) a full description of the dog or cat;
- (c) the name, address, and contact information of the **Person** from whom the dog or cat was obtained; and

the **Pet Store** shall retain the register in respect of each transaction for the period of twelve (12) months thereafter and be made available to the **Manager** upon request.

(8) Every **Pet Store** shall ensure that an **Attendant** in charge of and responsible for the care and safe keeping of **Animals** within the **Pet Store** remains on site at all times during the **Business** hours of operation.

(9) Only **Permitted Animals**, as identified within the **Town's Animal Control By-law Schedule A**, shall be sold in any **Pet Store**.

(10) Every **Person** licensed under this By-law shall make every reasonable effort to obtain the name, address and description of anyone offering to sell or give to the licensee any **Animal** which the licensee has cause or reason to suspect has been stolen or otherwise unlawfully obtained and the licensee shall report the facts promptly to the nearest Police Division of the Region of York Police Services.

(11) Where the **Licensing Officer** or **Municipal Enforcement Officer** determines that an **Animal** appears to require medical attention, they may require the licensee to take the **Animal** to a qualified **Veterinarian** forthwith.

## 8.2 Short Term Rental Operators

(1) No more than one (1) **Short Term Rental** is permitted on a **Lot**.

(2) **Short Term Rentals** shall only be operated within one (1) **Dwelling Unit** on a **Lot**.

(3) **Short Term Rentals** shall provide one (1) off-street parking space for each bedroom identified as in use by the **Business**. In addition to this requirement, one (1) off-street parking space shall be provided for the **Permanent Resident** of the property.

(4) Each bedroom intended to be operated as part of a **Short Term Rental** shall be clearly identified at the time of a new or renewal **Business Licence** application process through the provision of a floor plan showing the location of each bedroom.

(5) Any changes to the number or location of bedrooms shall be provided to the **Municipal Enforcement Officer** through a **Licence** amendment application, prior to those bedrooms being used by the **Business**.

(6) An **Operator** of a **Short Term Rental** shall not:

- (a) rent out or provide any sleeping accommodations within any vehicle, tent, or any accessory building;

- (b) permit more than three (3) bedrooms to be made available for use;
  - (c) permit more than (6) overnight guests at one time; or
  - (d) permit beds or bedrooms to be used that are not identified on the **Business Licence** application for that **Premises**.
- (7) An **Operator** of a **Short Term Rental** shall post or display the **Business Licence** number on any **Marketing**, advertisements, or promotions for that **Business**.
- (8) An **Applicant** for a **Short Term Rental** shall provide:
- (a) proof that they are a **Permanent Resident** on the property; or
  - (b) the name of the **Permanent Resident(s)** on the property and a copy of a tenancy agreement, or other proof satisfactory to the **Licensing Officer**, of an existing and ongoing principal residential use, at the time of a new or renewal application.
- (9) An **Operator** of a **Short Term Rental** shall ensure that a **Permanent Resident** on the property is present and available within the **Town** at all times while guests are staying on the **Premises**, and is able to respond to concerns raised by guests, neighbours, or the **Licensing Officer** within two (2) hours.
- (10) An **Operator** of a **Short Term Rental** shall provide to each guest and the **Licensing Officer** the telephone number of the **Person** who is present or available to respond to concerns pursuant to **Town** by-laws or provincial regulations.
- (11) No **Person** shall **Market**, operate, or make available any **Dwelling Unit** or part of a **Dwelling Unit** for paid accommodation of less than 28 days unless that **Dwelling Unit** has a current **Short Term Rental Licence**.
- (12) Upon approval of a **Short Term Rental Business Licence**, the **Applicant** shall post a sign in conformity with the **Town's Sign By-law**, to identify the **Premises** as a licensed **Short Term Rental** within the **Town**.
- (13) Every **Short Term Rental** shall comply with Schedule A of this By-law as a condition of their **Business Licence** and shall comply with the demerit point system licensing requirements imposed.
- (14) Every **Short Term Rental Operator** shall only **Market**, list, or advertise their **Business** on a licensed **Short Term Rental Company** platform.

### 8.3 Short Term Rental Companies

- (1) No **Person** shall carry on the **Business** of a **Short Term Rental Company** unless they have obtained a **Licence** to do so from the **Town**.
- (2) No **Person** shall, **Market**, advertise, facilitate the advertising or rental of, or broker a **Short Term Rental** if its **Operator** is not licensed as such with the **Town**.
- (3) Every **Person** shall take down or remove a listing or advertisement related to an unlicensed **Operator** within 24 hours of being requested to do so by the **Town**.

- (4) An application for a **Short Term Rental Company Licence** shall be in a form approved by the **Manager** and require the **Applicant** to provide:
- (a) The **Short Term Rental Company's** registered **Business** address in Ontario;
  - (b) The name, phone number and e-mail address of a **Person** responsible for responding to all communications from the **Town**;
  - (c) Details of the process by which the **Short Term Rental Company** will remove advertisements for a **Short Term Rental** if its **Operator** has not obtained a **Licence** with the **Town**;
  - (d) Details of the **Short Term Rental Company's** procedure for dealing with problem **Operators** and responding to complaints; and
  - (e) Any other information or documentation required by the **Manager**.
- (5) A **Short Term Rental Company** shall comply with all applicable fees as identified within the **Town's Fees and Charges By-law**.
- (6) An **Applicant** for a **Short Term Rental Company Licence** shall, prior to being issued a **Licence**, execute an agreement with the **Town** governing the use, retention, and disclosure of **Operator** and guest information on terms satisfactory to the **Manager**.
- (7) Every **Short Term Rental Company** shall keep a record of each concluded transaction in relation to a **Short Term Rental** listed or advertised on its platform for three (3) years following the last day of the rental period. A transaction is concluded on the last day of the rental period. The records retained shall include the following:
- (a) The name, address, and **Licence** number of the **Operator**;
  - (b) The number of nights the **Short Term Rental** was rented;
  - (c) The nightly and total price charged for the **Short Term Rental**;
  - (d) Whether the rental was an entire-unit rental or room rental; and
  - (e) Any other information required by the **Manager**.
- (8) Every **Short Term Rental Company** shall keep a record of the number of **Short Term Rental** listings or advertisement it removed from its platform in accordance with Sections 8.3(1) and 8.3(2) of this By-law.
- (9) Every **Short Term Rental Company** shall provide the records referred to in this section to the **Town** upon the request of the **Manager**.
- (10) Every **Short Term Rental Company** shall create **Operator** and guest accounts on its platforms as requested by the **Manager**, to be used to investigate compliance with this By-law.
- (11) No **Short Term Rental Company** shall obstruct, in any manner, access to any accounts established for use by the **Manager** or **Licensing Officer** to investigate compliance with this By-law.

#### **8.4 Outdoor Serving Areas**

- (1) Prior to the submission of their business licence application, every **Owner** or **Operator** shall ensure that they are in compliance with all federal, provincial, and municipal requirements, including but not limited to the:
  - (a) Alcohol and Gaming Commission of Ontario;
  - (b) Central York Fire Services;
  - (c) Town's Planning Department;
  - (d) Town's Building Department; and
  - (e) York Region Public Health.
- (2) Every **Owner** or **Operator** who proposes to sell or offer for sale alcohol from the **Outdoor Serving Area** shall provide to the Manager, at the time of their application, a copy of the Liquor Licence issued by the Alcohol and Gaming Commission of Ontario.
- (3) Every **Owner** or **Operator** shall ensure the **Outdoor Serving Area** operated at all time in accordance with the Alcohol and Gaming Commission of Ontario.
- (4) No **Owner** or **Operator** shall operate or permit the occupancy of any **Outdoor Serving Area** between the hours of 1:00 a.m. and 11:00 a.m.
- (5) Every **Outdoor Serving Area** that is located within 40m of the property line of an adjacent residential property shall be required to install a solid, translucent, or Opaque Barrier that is a minimum of 1.8m in height along its perimeter for the purpose of noise reduction and security.
- (6) Every **Outdoor Serving Area** which is illuminated in an area adjacent to a residential use shall ensure all lighting fixtures and illumination are arranged, designed, and installed to deflect the light down and away from residential buildings, lots, and streets.
- (7) Any person that proposes to operate an **Outdoor Serving Area** on public property along Main Street and between Millard Avenue and Water Street must first obtain approval from the Town's Planning Department.
- (8) Notwithstanding Section 6(1) of this By-law, every **Outdoor Serving Area** located on public property shall only be permitted between April 1<sup>st</sup> and October 30<sup>th</sup> within the same calendar year,

## 8.5 Commercial Rooftop Patios

- (1) Prior to the submission of their business licence application, every **Owner** or **Operator** shall ensure that they are in compliance with all federal, provincial, and municipal requirements, including by not limited to the:
  - (a) Alcohol and Gaming Commission of Ontario;
  - (b) Central York Fire Services;
  - (c) Town's Planning Department;
  - (d) Town's Building Department; and
  - (e) York Region Public Health
- (2) Every **Owner** or **Operator** shall only operate or permit the occupancy of any **Commercial Rooftop Patio** between the hours of 9:00 a.m. and 11:00 p.m. within the same calendar day.

- (3) No **Live Music** shall be permitted on any **Commercial Rooftop Patio** at any time.
- (4) Notwithstanding Section 8.5(3) above, an **Owner** or **Operator** of a **Commercial Rooftop Patio** can apply for a noise exemption permit to allow **Live Music** for special event purposes.
- (5) Any other form of music permitted on a **Commercial Rooftop Patio** shall comply with the Town of Newmarket Noise Bylaw 2017-76, as amended.
- (6) Every **Commercial Rooftop Patio** shall be required to install a solid, translucent, or Opaque Barrier that is a minimum of 1.8m in height along its perimeter for the purpose of noise reduction and security, unless otherwise authorized by the Town.
- (7) Every **Commercial Rooftop Patio** which is illuminated in an area adjacent to a residential use shall ensure all lighting fixtures and illumination are arranged, designed, and installed to be dark sky compliant and to deflect the light down and away from residential buildings, lots, and streets.

## **8.6 Personal Wellness Establishments**

- (1) Every room intended to be operated as part of a **Personal Wellness Establishment** shall be clearly identified at the time of a new or renewal **Business Licence** application process through the provision of a floor plan showing the location of each room.
- (2) Every Owner or Operator of a Personal Wellness Establishment shall submit a copy of a signed declaration demonstrating that the property owner and lessor has been informed of the nature of the owner's business.
- (3) Every Owner or Operator of a Personal Wellness Establishment shall submit to the Town:
  - a. a list of all Personal Wellness Attendants affiliated with the Personal Wellness Establishment, where the list shall include the following:
    - i. proof satisfactory to the **Licensing Officer** that each Personal Wellness Attendant is eighteen (18) years of age or older, a citizen of Canada, or a landed immigrant or produce a valid work permit issued by the Government of Canada; to work in the occupation of Alternative Massage services or similar occupation category;
    - ii. government issued photo identification;
    - iii. complete contact information for each Personal Wellness Attendant, including full name, phone number, and address; and
    - iv. An itemized list of services each Personal Wellness Attendant is qualified to perform.
  - b. a certificate, diploma, or other documentation certifying that the Personal Wellness Attendant has, in respect to the Alternative Massage Services intended to be offered or provided, successfully completed a training program from an accredited

educational institution within or outside of Canada which establishes to the satisfaction of the Manager the appropriate requisite training;

- c. notwithstanding Section 8.6(3)(b), every Owner or Operator of a Personal Wellness Establishment offering or providing services where no accredited educational institution offers such training for Personal Wellness Attendants, the following shall be submitted:
  - i. the name and membership number (if applicable) of the Personal Wellness Attendant;
  - ii. the Alternative Massage modality or modalities practiced by the Personal Wellness Attendant;
  - iii. proof satisfactory to the Manager that the Personal Wellness Attendant is a member in good standing of the association; and
  - iv. any other relevant documentation upon the request of the Manager.

(4) Prior to the issuance of a Personal Wellness Establishment Licence, the Manager may require one or more of the following be completed:

- a. an interview with the Owner or any Personal Wellness Attendant employed by the Owner to ensure they are qualified to offer **Alternative Massage** services;
- b. an onsite inspection to verify the details of the application; and
- c. the application be referred to York Region Public Health, York Region Police, or any other Town department for the purpose of providing non-binding input.

(5) Every Personal Wellness Establishment shall ensure:

- a. the Town has been notified of any Personal Wellness Attendant employed by the business prior to the Personal Wellness Attendant beginning to offer services at the Personal Wellness Services Establishment and all information listed in Section 8.6(3) has been forwarded to the Town for approval;
- b. a record is kept of each Alternative Massage provided and every record shall:
  - i. include the name of the Person who provided the Alternative Massage and the time and date of the Alternative Massage;
  - ii. be kept for at least one year after the date of the Alternative Massage;
  - iii. be immediately produced upon demand to any Person assigned or appointed by the Manager to enforce this By-law; and
- c. a pre-screening form for each client of the Alternative Massage Business is completed to record the name, contact information, phone number and email address and medical conditions that assess the medical risk to an individual who receives an Alternative Massage;

- d. no Personal Wellness Attendant is nude in any portion of the Personal Wellness Establishment except for in any washrooms, showers, or change rooms; and
  - e. no services are offered, **Marketed**, or provided that appeal to erotic or sexual appetites.
- (6) No Personal Wellness Establishment shall **Market** its products or services through any means of promotion unless the Business name is clearly displayed.
- (7) Every **Personal Wellness Establishment** shall only operate between the hours of 8:00 a.m. and 10:00 p.m. within the same calendar day.
- (8) Every Owner or Operator of a Personal Wellness Establishment shall ensure that no Persons other than staff enter the Personal Wellness Establishment except through a principal entrance as identified in the floor plan.
- (9) No part of the **Personal Wellness Establishment** shall:
- a. be used for human habitation; or
  - b. contain any furniture commonly used for sleeping purposes.

## 9. Offences

- (1) Every **Person** who contravenes any provision of this By-law are liable to the fines and administrative fees set out under the Administrative Monetary Penalty System By-law 2019-62.
- (2) Every **Person** who is in contravention of the provisions of this By-law may request a review of the matter in accordance with the Administrative Monetary Penalty System By-law-2019- 62.
- (3) Any **Person** who contravenes a provision of this By-law is guilty of an offence and upon conviction is liable to a fine as provided for by the Provincial Offences Act, R.S.O. 1990, Chapter P.33, as amended.

## 10. Severability

- (1) Where a court of competent jurisdiction declares any section of this By-law to be invalid, or to be not in force, or without effect, it is the intention of **Council** in enacting this By-law that the remainder of this By-law shall continue in force and applied and enforced in accordance with its terms to the fullest extent possible according to law.

## 11. Repeal

- (1) Outdoor Serving Areas By-law 2016-29 is hereby repealed.

Enacted this 29<sup>th</sup> day of June, 2020.

John Taylor, Mayor

Lisa Lyons, Town Clerk

**Schedule A**  
**Demerit Point System for Short Term Rentals**

A Demerit Point System is hereby established to enforce this By-law, any other Town by-law, or Provincial Act or Regulation including, but not limited to, administrative penalties as set out in the Town's Administrative Monetary Penalty System By-law 2019-62, as amended, the Building Code Act, the Fire Protection and Prevention Act, and the Provincial Offences Act.

- (1) The number of demerit points referenced in Column 3 of Table 1 of this Schedule will be applied against a Short Term Rental business premises and licence in respect of the matter noted in Column 1 under the following conditions:
  - a. fifteen (15) days from the date of issue for an administrative penalty issued under the Town's AMPS By-law;
  - b. upon the issuance of a Part 1 or Part III ticket under the Provincial Offences Act; or
  - c. upon conviction in the Ontario Court of Justice;
  - d. the confirmation of an order; or
  - e. the confirmation of any contravention documented by Central York Fire Services.
- (2) A Short Term Rental shall be awarded fifteen (15) demerit points upon the approval of their initial business licence.
- (3) Contraventions to the business premises as identified within Table 1 of this Schedule will result in a loss of demerit points. Demerit points shall remain in place for a duration of one (1) year from the date on which the demerit points were assessed.
- (4) Upon the loss of fifteen (15) or more demerit points to any Short Term Rental Licence, the Manager shall suspend, revoke, or impose additional conditions on a Short Term Rental Licence. The Owner or Operator may dispute any actions taken by the Manager by making a request, in writing, to appear before the **Hearing Officer** for the Town.

**Hearing with the Hearing Officer**

- (5) Notice shall be delivered by e-mail or regular mail to the address provided for the Owner or Operator of the Short Term Rental or Bed and Breakfast business, as identified on the application forms provided for a business licence.
- (6) Notice shall be provided a minimum of two (2) weeks in advance of the Hearing with the **Hearing Officer** date.



- (7) Notice provided in accordance with Section 5 of this Schedule shall be deemed to be sufficient Notice with or without confirmation of receipt of the Notice.
- (8) The fee payable by the Owner or Operator for the Hearing with the **Hearing Officer** shall be as prescribed and in accordance with the Town's Fees and Charges By-law.
- (9) If the Owner or Operator fails to attend on the scheduled date, the Hearing with the **Hearing Officer** may proceed in absentia.
- (10) After hearing the matter, the **Hearing Officer** may:
- a. confirm the conditions imposed on, the suspension of, or the revocation of the business licence;
  - b. amend the conditions imposed on, the suspension of, or the revocation of the business licence; or
  - c. cancel the conditions imposed on, the suspension of, or the revocation of the business licence.
- (11) The decision of the **Hearing Officer** is final and binding.

<b>Table 1</b>		
<b>Column 1 Infraction</b>	<b>Column 2 Reference</b>	<b>Column 3 Demerit Points</b>
Fire Protection & Prevention Act/Fire Code	FPPA	15
Operate while business licence is suspended or revoked	Business Licence By-law 2020-31, as amended	7
Building Code Act	BCA	7
More than the number of bedrooms permitted	Business Licence By-law 2020-31, as amended	5
More than the number of guests permitted	Business Licence By-law 2020-31, as amended	5
Failure to respond to complaint by specified time	Business Licence By-law 2020-31, as amended	5
Contravention to Noise By-law	Noise By-law 2017-76	5
Contravention to Property Standards By-law	Property Standards By-law 2017-62, as amended	3
Contravention to Clean Yards By-law	Clean Yards By-law 2017-63	3
Failure to post business licence number on advertisements	Business Licence By-law 2020-31, as amended	3
Failure to post business licence on premises	Business Licence By-law 2020-31, as amended	3
Failure to post Sign	Business Licence By-law 2020-31	2
Contravention to Waste Collection By-law	Waste Collection By-law 2017-19	2