

## License of Occupation



<b>Section</b>	<b>Date</b>	<b>By-Law Number</b>	<b>Page</b>	<b>Of</b>
Development Services	February 20, 2024	<b>14-2024</b>	<b>1</b>	<b>9</b>
<b>Subsection</b>	<b>Repeals By-Law Number</b>		<b>Policy No.</b>	
License of Occupation	96-2015 & 101-2020		<b>DS-6-1</b>	

### **Purpose:**

The City of Kenora recognizes that the development of commercial outdoor patios can create spaces that are interesting and stimulating, and accessible for residents and visitors. The City of Kenora Official Plan, the Downtown Revitalization Plan (2004) and the Economic Development Plan all contain policies and recommendations in support of this type of development. To promote private investment, the City has developed a system that includes minimum standards for all outdoor patios and establishes an application system that streamlines the process and creates an efficient and consistent method of doing so.

The intent of the City of Kenora License of Occupation is to ensure improvements placed on sidewalks, streets, and other municipal property are established in a safe and orderly manner and to promote pedestrian uses and increase street-level activity from May 15th to October 15th annually, and as otherwise deemed necessary.

As the City of Kenora continues to revitalize its Downtown; renewal focuses on economic development opportunities, culture, arts, entertainment, and lifestyle. The City of Kenora recognizes the development of commercial outdoor greatly contribute to the character of a street, patios; actively promote the Downtown, creating a vibrant and healthy environment to attract residents, tourists and new business.

This Policy requires businesses and community organizations wishing to extend their premises onto City Property obtain a License of Occupation, which is a mechanism of authorization for the legal establishment of temporary occupation on City sidewalks with outdoor patios, cafes and/or merchandise displays.

The provision of safe and hazard-reduced environments is paramount in the creation and enforcement of this policy. Constructing, erecting, or placing an outdoor patio, tables, chairs, benches or merchandise on public (City-owned) property requires approval from the City of Kenora through the issuance of a License of Occupation. Licenses of Occupation are only valid for the dates indicated on each permit and must be renewed on an annual basis.

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**License of Occupation:**

The City of Kenora License of Occupations shall be limited to:

**A. Outdoor Commercial Patio**

- **Sidewalk Café:** Intended but not limited to use by Coffee Shops, Bakeries, Delis, and confectionary stores. Sidewalk Café Licences of Occupation will be restricted to establishments located on the ground floor, with the use of single row, tables, chairs and/or benches up against the building face.
- **Licensed Outdoor Patio:** Refers to an outdoor area where tables and seating are provided together with serving meals and refreshments in proximity to a restaurant or bar. The serving and consumption of alcohol will be permitted on the outdoor patio as the establishment will be licensed by the Alcohol and Gaming Commission of Ontario (AGCO). Fencing or some type of wall or partition is required by the AGCO for patio areas that will be associated with liquor.
- **Unlicensed Outdoor Patio:** refers to a less formal outdoor area where seating and tables are provided; with refreshments and meals being served near a restaurant. The serving and consumption of alcohol would not be permitted on these types of patios.
- **Small Patio Application:** sidewalk café, licensed outdoor patio, or unlicensed outdoor patio with occupancy of twenty (20) people or less (used in determination of fees, if any).
- **Large Patio Application:** sidewalk café, licensed outdoor patio, or unlicensed outdoor patio with occupancy of twenty-one (21) people or more (used in determination of fees, if any).

**B. Merchandise Display**

- A Merchandise Display Permit allows business owners to display their products on a portion of the sidewalk in front of their business. Merchandise Displays help to create a vibrant community, liven the sidewalk and support businesses. All displays and decorative components on City sidewalks must be reviewed and approved by the City of Kenora staff to ensure safety and accessibility for all street users.

**C. Placement of Temporary Display or Monument**

- A permit for placement of a temporary display or monument allows business owners or community organizations to place a temporary, seasonal display or monument on a municipal property or right of way.

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Factors which will decide which patio type will be authorized:

1. Design Guidelines
2. Location and width of sidewalk to accessibility standard
3. Street furniture (trees, light poles, benches)
4. Public safety
  - (CPTED - Crime Prevention through Environmental Design)

### **Application Process**

1. Complete the application (attached).
2. Sketch of the proposed outdoor sidewalk patio, or sidewalk café to be approved
  - Area of patio in square metres and width and length of sidewalk occupied
  - Location of all chairs, tables and fencing
  - Location of all surrounding objects, parking metres, fire extinguishers, light fixtures
  - Proposed patio must not be in front of any private property, other than that of the applicant
3. Valid Insurance certificate (\$5,000,000.00 per occurrence) naming "The Corporation of the City of Kenora" as an additional insured. Exceptions for insurance of \$2,000,000.00 per occurrence may be considered subject to approval from the Risk Management and Loss Prevention Officer.
4. Copy of Article of Incorporation or Master Business Licence
5. Enclose the application fee, payable to the City of Kenora

City of Kenora Planning Department  
2nd floor, 60 Fourteenth Street North  
Kenora, ON P9N 4M9  
Tel: 807-467-2292

The complete application will be circulated internally and to Kenora Hydro for comment and conditions of approval, with approved permits generally being issued within ten (10) working days. Applications that are unchanged from the previous year's application will generally be approved within five (5) working days.

### **General Terms and Conditions**

- The area contained within a Licence of Occupation may be used solely for the purpose for which it is approved and may not be used for any other use.
- The distance and orientation of the sidewalk patio in relation to the surrounding development shall be considered to mitigate negative effects on surrounding development, land uses, or pedestrian right-of-way.
- Not all sidewalk or locations are suitable for licences of Occupation permits, the City of Kenora maintains the right to refuse issuance of a permit in instances where it is felt that a patio or display may impact public welfare or safety and/or cause a nuisance
- All Applicants must hold a valid City of Kenora Business License

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- All applications must be associated with an existing business or community organization and cannot be a stand-alone establishment.
- Hours of operation are restricted to the same hours of operation as the parent business or community organization.
- Must comply with the City of Kenora Sign By-Law.
- Signs, advertisements, promotional banners, or the like are prohibited in the approved License of Occupation, including on any non-permanent barrier or railing enclosing the space.
- Must comply with the City of Kenora Noise By-Law.
- Must comply with the current Provincial smoking legislation as well as any existing municipal bylaw which pertains to smoking.
- Must comply with the Accessibility for Ontarians with Disabilities Act.
- Use of the patio, display, or monument must comply with all the Federal, Provincial and Municipal laws.
- It is the responsibility of the applicant/owner/constructor to "Call Before you Dig".
- The City of Kenora, Synergy North, and other utilities such as Enbridge and cable companies reserve the right to conduct maintenance on services at any time and will not be responsible for any disturbance and/or loss of business that they may incur, as well as any rehabilitation work to the area after.
- All municipal property must be returned to its original condition at the termination of the license period.

### **Term and Renewal**

- Seasonal terms for patios begin on May 15th to October 15th and all structures must be removed by October 31<sup>st</sup>, annually.
- Annual Applications will be available on the City of Kenora website and will be accepted after April 1st through the Planning Department and online at kenora.ca.
- Patio terms may vary annually to ensure street cleaning can be accomplished.
- Applications for off-season usage will be considered on a case-by-case basis and will be accepted year-round.

### **Liability and Indemnity**

- The Licence of Occupation shall require the applicant to indemnify and save the City, its elected officials, officers, employees and agents, harmless with respect to any actions, third party claims, costs, losses, injuries or damages (including legal costs) whatsoever arising directly or indirectly from the applicant's (or the applicants employees, contractors, subcontractors, agents, directors or officers) placement of an outdoor patio on or within sidewalks, boulevards, right-of-way, and street parking spaces.

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- The applicant covenants and agrees to further hold the town and any other agencies, having in utilities or services on or in the sidewalks, boulevards, right-of-way, and street parking spaces, harmless from any claims, suits, actions or demands whatsoever which may in any manner be affected in a work of constructing, altering, relocating or repairing and public service or utility rendered necessary or desirable by or on account of any maintenance work required to be carried out with respect to the outdoor patio, display, or monument, including, but not limited to, the temporary fencing, landscaping, furniture and other patio amenities.

### **Insurance**

- Every applicant shall carry public liability and property damage insurance in which policy the Corporation of the City of Kenora shall be an additional insured and the policy shall include a cross-liability endorsement. Initially the amount of insurance coverage shall be at least Five Million (\$5,000,000.00) Dollars and this amount shall be reviewed on an annual basis and be increased to keep the amount appropriate for inflation, current liability awards, and potential replacement of City property.

### **Seizure and Disposal**

- The City retains the right to:
  - i. Suspend or revoke the license of Occupation if, at any time, it is found that violations of the regulations have occurred or if the patio is creating conflicts that the City of Kenora deems unacceptable.
  - ii. Require dismantling of the patio, at the applicant's expense, to gain access to the sidewalk. Twenty-four-hour (24 hours) notice will be given to the applicant, unless the situation is deemed an emergency by the City of Kenora.

### **Maintenance**

- The Responsibility of maintenance and upkeep of the patio is solely that of the applicant.
- The Patio is not to be used as a storage area of any kind at any time.
- All furniture and fixtures must be maintained in good visual appearance, without visible fading, dents, tears, rust, corrosion, and chipping or peeling paint.
- All furniture and fixtures must be always maintained in a clean condition.

### **Additional terms and conditions of Sidewalk Cafés and Sidewalk Patios**

- The Sidewalk Café or Sidewalk Patio must be associated with contiguous use.
- Patio setup must be removable and:
  - i. Constructed of sturdy material;
  - ii. Designed for stability;
  - iii. Accessible

- iv. If fencing is used, securely anchored to the sidewalk at corners and possibly fastened to the building.
- v. Perimeter fences if used, shall not exceed 1 metre in height.
- The Sidewalk Café or Sidewalk Patio must provide a minimum of 1.5 metres of unobstructed sidewalk width for pedestrian movement along the abutting Sidewalk and/or along any physical obstruction such as utility poles, fire hydrants, bus shelters, parking meters, trees, benches or garbage receptacles. If 1.5 metres of unobstructed pedestrian thoroughfare area cannot be achieved and maintained, the outdoor patio area must be adjusted to ensure that this minimum distance is achieved. Unfortunately, some areas of the City sidewalks have insufficient right-of-way area or width to accommodate a patio or café.
- Should two or more eligible neighbouring businesses and/or community organizations apply to establish sidewalk patios, patios and sidewalks shall be designed to provide one continuous path of travel for pedestrians.
- Sidewalk Cafes shall be considered an accessory use and shall be operated for no longer than the operating hours of the principle use to which it is an accessory.
- The area of any Sidewalk café or patio should not extend onto the neighbouring frontage, unless supported by the property owner.
- Portable signs as per the City of Kenora Sign Bylaw (A-Frame signs, sandwich board signs and temporary signs) must maintain a minimum of 1.5 metres distance of unobstructed sidewalk width for pedestrian movement.
- Alternative pedestrian sidewalks (In-street temporary sidewalk) will be approved at the discretion of the City of Kenora.
- The distance and orientation of the temporary sidewalk in relation to surrounding development shall be considered to ensure negative effects do not occur with the existing surrounding developments and land uses.
- All temporary sidewalks must:
  - Maintain a separation of 1.5 metres between the nearest edge of the temporary sidewalk and the nearest edge of any intersection, crosswalk, bus shelter or bus stop;
  - Be designed and constructed so that there is no change in grade between the sidewalk and the temporary walkway;
  - Feature fencing or another vertical barrier which separates the walkway from vehicle traffic;
  - Accommodate stormwater drainage;

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- Not be located where there are accessible parking spaces or loading zones, or where access to those spaces may be impacted, unless arrangements are made for the relocation of the impacted accessible parking space or loading zone;
  - Not be affixed to City property; and
  - Not create any visibility or sightline issues. Corner lot applications must not present any sight line / visibility issues or traffic issues.
- No structures shall be erected within the licensed area of a Licensed Outdoor Patio except for a non-permanent barrier or railing, to meet the requirements of the AGCO.
  - Approved outdoor patio heaters may be located with the approval of the City of Kenora Fire and Emergency Services Department.
  - Planters and decorations used as part of a patio design must be moveable and not negatively affect pedestrian safety.
  - Applicants may be required to submit a waste management plan.
  - Food preparation, and storage of merchandise or containers are not allowed on municipal property.
  - Any queuing of patrons must be contained within the patio area, or the interior of an adjacent building, and be shown on the site plan submitted with the application.
  - Bicycles or any other items shall not be affixed or otherwise lean against any outdoor railings or barriers.
  - All costs for traffic control devices are borne by the Applicant.

**Additional terms and conditions of Merchandise Display:**

- Entrances/Exits and utility connections for any building may not be blocked by merchandise displays.
- Displays must be placed against the building.
- Merchandise displays are only allowed on sidewalks within the hours of operation of the Business.
- A minimum distance of 1.5 metres from any sidewalk obstruction must be maintained. Obstructions include trees, poles, bike racks, bus stops, news boxes and parking meters
- Only approved merchandise may be displayed.
- The permit area may only be used for displaying merchandise. Payments from customers, food and flower preparations, and storage of merchandise or containers are not allowed on municipal property.
- All surrounding areas must be kept in a neat, clean and orderly manner.
- Umbrellas are not permitted on the sidewalk or within merchandise displays, unless a minimum of 2.5 metres of unobstructed pathway is maintained.

- Portable signs as per the City of Kenora Sign Bylaw (A-Frame signs, sandwich board signs and temporary signs) must maintain a minimum of 1.5 metres distance of unobstructed sidewalk width for pedestrian movement.

**Additional terms and conditions for Temporary Display or Monument:**

- Entrances/Exits and utility connections for any building may not be blocked by any temporary display or monument.
- The temporary display or monument must provide a minimum of 1.5 metres of unobstructed sidewalk width for pedestrian movement along the abutting sidewalk and/or along any physical obstruction such as utility poles, fire hydrants, bus shelters, parking meters, trees, benches or garbage receptacles. If 1.5 metres of unobstructed pedestrian thoroughfare area cannot be achieved and maintained, the temporary display or monument must be adjusted to ensure that this minimum distance is achieved. Unfortunately, some areas of the City sidewalks have insufficient right-of-way area or width to accommodate a temporary display or monument.

**Applications**

- All applications for Licenses of Occupation must be accompanied by a site plan indicating the location of the proposed use and all associated structures and furnishings. Plans must be to scale and show dimensions and indicate the following:
  - Proposed licensed area, for licensed outdoor patios.
  - Proposed locations and dimensions, including the area of the proposed use in relation to contiguous buildings,
  - The location of any fences, barriers, railings, and gates that enclose any portion of the license area.
  - The location of any City infrastructure and private utilities.
- Applications will be circulated to the following for comment:
  - Fire & Emergency Services
  - Roads Division Lead
  - General Manger of Engineering
  - Director of Engineering and Infrastructure Services
  - City Clerk
  - City Planner
  - Chief Building Official
  - Synergy North
  - Risk Management & Loss Prevention Officer

**Fees**

- Application fees are to be as set out in the most recent Tariff of Fees and Charges By-law.



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### **Approving Authority**

- Applications may be approved through the authorized personnel in the Planning Department.
- The signed application, including conditions if any, will form the approved License of Occupation.