

May 28, 2012



**REVISED**  
**City Council**  
**Committee Report**

**To: Mayor & Council**

**Fr: Tara Rickaby, Planning Administrator**

**Re: Commercial Outdoor Patios on Municipal Property**

**Recommendation:**

That Council approves an Outdoor Commercial Patio policy and application form to regulate the use of City owned property for outdoor commercial patios and that a By-law be adopted for this purpose; and

That the City of Kenora Licensing By-law be amended by addition of the prescribed application fee for a license to locate an outdoor commercial patio on municipal lands.

**Background:**

This report and the attached policy address the use of City lands for commercial outdoor patios. The City of Kenora has several outdoor patios currently in existence and it is expected that more could be developed in the future.

Kenora does not currently have a system to permit outdoor patios on municipal property. Staff has also identified the need to develop a system that includes minimum standards for certain outdoor patios and establishes an application system that streamlines the process and creates an efficient and consistent method of doing so. Outdoor patios on municipal property currently go through the site plan approval process.

The issue of sidewalk retail sales is not part of this report and should be considered separately.

Based upon input from staff and from the public, especially in the Harbourtown Centre where parking is already at a premium, it is recommended that parking stalls not be used to provide temporary sidewalks in order to accommodate patios over the full width of a sidewalk. If a proponent wishes to make use of parking stalls, the development will be reviewed on a case by case basis and site plan control will be used.

There are two categories for classification of outdoor commercial patios on City lands: **Unlicensed Outdoor Patio** - Refers to a less formal outdoor area where seating and tables are provided; with refreshments and meals being served in close proximity to a restaurant. The serving and consumption of alcohol would not be permitted on these types of patios.

**Licensed Outdoor Patio** - Refers to an outdoor area where tables and seating is 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 Ontario Alcohol and Gaming Commission. Fencing or some type of wall or partition is required by the OAGC for patio areas that will be associated with liquor.

There are several sections of the City of Kenora's **Official Plan** which relate to the development of outdoor patios.

The Official Plan has several guiding principles that relate to this matter:

-Principle 1 (Section 2.2.1) Sustainable development. Outdoor patios meet this principles objective of promoting compact development by using land efficiently and existing infrastructure, as development will be on existing sidewalks etc.

-Principle 4 (Section 2.2.4.) Diversified economy. Outdoor patios support existing businesses and attract a diverse range of new employment opportunities for new and existing residents, as well as attracting visitors.

-Principle 6 (Section 2.2.6) Complete Communities. Outdoor patios support the use of mixed-use neighbourhoods and enhance quality of life for citizens and visitors.

-Principle 7 (Section 2.2.7) Neighbourhood Design. Outdoor patios contribute to everyday living in a positive manner.

Section 3.4 Land Use Compatibility. Outdoor Patios could enhance the character of their surrounding neighbourhood.

Section 3.19 Urban Design. Community and Neighbourhood design is intended to help contribute to the creation of liveable, complete communities and to uses in all designations as well as establish connection between people and the built environment. Outdoor patios could help contribute to providing a higher standard of urban design.

Section 4.3 of the Official Plan, which deals with the Harbourtown Centre designation relates to the use of outdoor patios; but could be related to other, commercial areas of the City.

a) to recognize and support commercial activities and functions of the Harbourtown Centre area by providing a wide range of goods and services within the overall commercial land use hierarchy established by this Plan;

b) to promote the Harbourtown Centre as a regional commercial, cultural, recreational, entertainment, business and tourism centre;

d) to promote the continued development and growth of the Harbourtown Centre as the primary office, business, cultural, entertainment, tourism and administrative area for the City of Kenora;

e) to reinforce the Harbourtown Centre as a vibrant and vigorous commercial area offering a full, balanced and diversified commercial land use mix;

f) to maintain the unique sense of place and human scale derived from the heritage streetscapes and pedestrian orientated characteristics of the Harbourtown Centre;

Section 4.3.3 under Harbourtown Centre polices speaks to carrying out public works programs such as the creation of pedestrian linkages, sidewalk improvements, off-street transit terminals, implementation of streetscape themes and designs, installing street furniture and fixtures, landscaping and providing parking areas;

Overall, the development of outdoor commercial patios on City lands will help to enhance these objectives, as well as provide a foundation for other commercial uses.

From an economic development perspective, the City of Kenora per section 1.3 of the Official Plan, is moving away from an industry based economy towards a tourism based

economy. The establishment of outdoor patios is one way to promote a tourist friendly City and to help enhance Kenora's "natural attraction".

Zoning By-Law No. 160-2010 currently has a definition for Patio as a platform or surfaced area without a roof that is accessory to a dwelling or commercial use at grade, as well as requirements regarding required amenity space but nothing specifically addressing outdoor patios on City owned property. Outdoor patios would qualify as an ancillary use to an existing structure.

The **Downtown Revitalization Plan (2004)** included several objectives which pertain to this policy:

- To analyze and recommend potential partnerships with private property owners. The use of outdoor patios on City land creates a partnership between the City and private owners.
- Outdoor patios could help contribute to the Downtown Revitalizations overall goals in terms of urban design and streetscaping.
- Section 3.1 which covers design principles has several goals such as to be interesting and stimulating, accessibility and being a good place to invest in a business such that more investment will yield more interesting destinations. Outdoor patios provide a method help these objectives.

There were several potential issues associated with patio design which were identified as a result of two opportunities for public consultation and internal circulation:

- **Plants/vegetation/decorations:** Plant materials are encouraged in designated patio areas as a way of enhancing the patio area and the surrounding landscape
- **Waste:** The City of Kenora should not permit any commercial waste bins on the outdoor patio. The use of outdoor commercial patios for storage or food preparation should also be prohibited. Small waste receptacles such as garbage bins may be allowed on the patio. Food preparation and storage would not be permitted on patios.
- Spills, used packaging from food, cigarette butts, paper cups etc. will need to be managed by the applicant and not accumulate on the City lands.
- **Liquor:** Legislated by Province and a decision to be made by the owner. City is involved in provincial process.
- **Smoking:** That the issue of smoking on outdoor commercial patios should be left to the business owners` discretion. All patios must comply with the City of Kenora Smoking By-law No. 145-2007 and with Provincial smoking legislation
- **Loss of business:** The applicant should be required to acknowledge that the City of Kenora, Kenora Hydro and other utilities such as Union Gas 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 any rehabilitation work to the patio area after.
- **Noise:** Noise from outdoor patios could be an issue in or around residential areas. It is suggested that outdoor commercial patios abutting a residential zone be subject to the provisions of Noise By-law 27-2007 and that applicants who choose could apply for an exception to Noise By-law 27-2007 may apply for as part of the application. If noise issues are identified on a consistent basis, the exemption could be revoked.

- **Insurance:** It is recommended that all applicants (licensed and non-licensed patios) provide a certificate of liability insurance (\$5,000,000 per occurrence) for the operation the sidewalk patio, which identifies the City as the owner of the property where the patio is being constructed.
- **Use of existing parking stalls for temporary sidewalks:** Based upon input from staff and from the public, especially in the Harbourtown Centre where parking is already at a premium, it is recommended that parking stalls not be used to provide temporary sidewalks in order to accommodate patios over the full width of a sidewalk.

**Comments from Municipal Solicitor:** The Municipal Solicitor was provided a copy of the proposed application form and requirements below. His comments are:

Please see Bernd Richardt's May 30 letter outlining his comments posted separately on SharePoint.

As a follow-up to that information being received, the Clerk met with Mr. Richardt on June 1 to discuss his concerns, in addition to his letter, those comments can be summarized as follows:-

- If not already done (an analysis as to where this policy will be applied) the City should conduct an inventory of eligible sidewalks that would fall into this policy and for what potential businesses to determine how great the need is for the policy versus a lease if there are only a few this policy would apply to
- Is it possible that a patio can actually be established on a sidewalk when the requirement is that 1.5 metres must remain open for pedestrian traffic
- \$350 is the administration fee; what about an annual fee for the patio
- Suggests obtaining a written opinion from a Commercial Real Estate Appraiser to provide a fair market value in addition to the administration fee, and charge that fee on a per lineal foot basis. Is it fair and equitable to charge each applicant the same \$350 fee only as one request may be to utilize 10 ft. of sidewalk while the next might be to utilize 40 ft.
- City should be cognizant of potential 'bonusing' of land; it could be argued the subject land(s) are being offered at less than fair market value for which we could be criticised for contravention of Section 106 of the Municipal Act
- By-law approval is required to close part of any street which a sidewalk forms (though this likely covered by our Temporary Street Closures By-law)

#### **Comments from City Clerk**

Procedurally, since the May 22 motion deferred the matter to the June 18 Council Meeting, the Property & Planning Committee at its June 12 meeting should request the matter go forward to the June 18 meeting so that it can either a) be approved in some sort of 'revised' format given Mr. Richardt's comments and those amendments made by Planning, or b) defer the motion on June 18 to either another meeting or indefinitely in order to provide time to thoroughly review the concerns raised by the Municipal Solicitor. Regardless, the matter must go forward to Council for disposition on June 18.

### **Requirements for policy and approval process:**

Recommended requirements which form the policy that will establish minimum standards for the use of Municipal property for outdoor commercial patios and to form part of the application/approval process:

#### Outdoor Patio Minimum Standards:

- a) Patio setup must be removable and sturdy enough to withstand actions such as patrons leaning on fencing or movement by wind.
- b) The patio setup must not create any visibility or sightline issues. Corner lot applications must not present any sight line/visibility issues or traffic issues.
- c) Applicant must submit a waste management plan
- d) It is the responsibility of the applicant for maintenance and upkeep of the patio.
- e) Applications may be subject to site plan control.
- f) All applications must indicate that proper width (a minimum of 1.5 metres) for pedestrian traffic is maintained between the patio and the curb or utility strip.
- g) All applicants must provide a certificate of insurance (\$5,000,000 per occurrence) to save the City of Kenora from liability relating to the use of municipal property for an outdoor commercial patio.
- h) The property owner or business may not use any part of the outdoor patio area for any other use (eg. parking).
- i) That all outdoor patios be accessible.
- j) All applications must comply with the Sign By-law, if signage is to be part of the patio design.
- k) All patios must be connected to an existing business and shall not be stand alone businesses.
- l) That all patios abutting a residential zone must comply with Noise By-law 27-2007.
- m) All applicants must obtain a Business License through the City of Kenora licensing.
- n) That the queuing of patrons be contained within the patio area (or the interior of the restaurant establishment) and be shown on the site plan.
- o) All applicants must submit a site plan elevations of proposed patio.
- p) Patios may not be used for storage or food preparation, with the exception of table-side food preparation.
- q) All patios must comply with City of Kenora Smoking By-law No. 145-2007 and all Provincial smoking legislation.
- r) Use of the patio must comply with all other Federal, Provincial and Municipal laws.
- s) Planters/decorations used as part of a patio design must be moveable and not negatively affect pedestrian traffic (see (f)).
- t) The applicant, by signing this application, acknowledges that the City of Kenora, Kenora Hydro and other utilities such as Union Gas 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 any rehabilitation work to the patio area after.

### **Administration:**

In order to provide an easy application process, it is recommended that the Licensing Clerk facilitates intake of the application. The application should be circulated internally, in a manner similar to that used for comments regarding business licenses and sign licenses (and with the exception of Council, per communications list, below).

As long as all of the requirements are met, the Licensing Clerk could issue the approved application. If there is an accompanying request for exemption to the noise by-law this would also be considered during the internal circulation. It is recommended that an annual administration fee of \$350 apply to each application. The term of the license shall be a maximum of 3 years.

**Budget:** Revenues to be allocated as licensing revenue.

**Communication:** Council Agenda, Clerk, Licensing, By-law, Building, Planning, Risk Management, Operations, Kenora Hydro

### Appendix A

Public comments and feedback from public consultation held April 3<sup>rd</sup> and April 12<sup>th</sup>. Please note that the individuals(s) names will not be revealed.

Comments
<p>-Do it, patios are good. Does it have to be connected to an existing business and not a vendor setting up in front of another solicitor.</p> <p>-Food and Restaurant only, not retail.</p>
<p>-Is this for food businesses and eating only</p> <p>-Whole City or Main street only</p> <p>-How are taxes determined, people still taxed for using city property</p> <p>-Other business should be pro-rated</p> <p>-\$1 nominal fee seems unfair if property taxes and sizes are involved</p> <p>-Taking up parking spaces is bad due to already being a lack of parking downtown</p>
<p>-Please make the process as easy as possible.</p> <p>-\$1 fee is good idea. The more patios the better.</p>
<p>-Happy to have patios available</p> <p>-Would enhance our business</p>

-Concerned about City Fees to do this

-Street people may be a concern

-Hope to see more policing

May 21, 2012 - Letter from Randy Nickle, Chair of the Brand Leadership Committee requesting that consideration be given to explore options to permit development of patios within parking stalls and to consider a provision in the new policy for such expansion.