

March 13, 2012



City Council Committee Report

To: Mayor & Council

Fr: Matt Meston, Planning Assistant

Re: Commercial Outdoor Patios on City owned Property

Recommendation:

That Council considers the following in the development of a policy for locating commercial outdoor patios on City owned lands:

- That the leased area be based on a year round basis regardless of what percentage of the year the patio is operated by the applicant.
- The applicant 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.
- All patio applications be subject to site plan control.
- That the queuing of patrons be kept inside the applicants own area and not spill over into neighbouring properties or impede pedestrian access.
- Outdoor patios must be accessible and no tables or chairs placed can interfere with access by wheelchairs.
- Accessibility committee would be providing input on this.
- That there be adequate space for pedestrian movement and that there will be the fullest possible buffer provided for pedestrian movement based on the size of the sidewalk that the patio is being constructed on.
- That all fire safety concerns be met.
- That any construction taking place being in compliance with the Ontario Building Code and be conducted only after a building permit is obtained.

- That the applicant provides, annually a certificate of insurance with a minimum liability coverage of \$5 million and naming the City of Kenora.
- That comment be received from the Northwestern Health Unit for all applications (to be provided by the applicant as part of the application).
- That all applications comply with the Sign By-law.
- Vegetation, plants, annuals etc. are encouraged to be a part of patio applications, however are not to impede pedestrian traffic.
- That all business owners and tenants within a determined radius be notified of any outdoor patio application. The applicant to provide documentation that this has been done, and include comments from abutting property owners.
- All applicants must submit a site plan and elevations showing exact dimensions of proposed patio and all surrounding uses and objects, as well as the total number of proposed tables and chairs.
- The patio area will not be used for storage space, commercial waste bins or for the preparation of food.
- The patio fencing must be removable and be sturdy enough to withstand actions such as patrons leaning or pressing on it as well as vandalism or other destructive actions.
- That an acknowledgment be provided by the applicant that all Provincial and Federal legislation will be adhered to.
- That the City of Kenora charge a nominal \$50.00 application fee for all outdoor patio applications.

And

- That a draft policy be the subject of public and internal consultation including the Municipal Solicitor, Accessibility Committee, the Ontario Provincial Police, Northwestern Health Unit, Fire Department, business owners and other similar interest groups; and
- That the City of Kenora develops an commercial outdoor patio design guideline/manual that establishes minimum standards for all outdoor patio applications
- That the proposed policy, together with a By-law regarding a policy commercial outdoor patios be drafted and presented at the May 15, 2012 Property and Planning Committee meeting for consideration.

Background:

This report recommendation addresses the use of City lands for commercial outdoor patios. The City of Kenora has several outdoor patios currently in existence (Hap's, Second Street Bakery, Loaf and Jug). More requests will be received in the future.

Kenora does not currently have an outdoor patio application system or outdoor patio guidelines and staff has identified the need to develop 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 City of Kenora desires to have outdoor patios as part of its downtown urban design form.

The issue of sidewalk sales is not part of this report and would be a separate issue.

There would be two categories for classification of outdoor commercial patios on City lands:

Unlicensed Outdoor Patio - Refers to an outdoor area where seating and tables are provided, and 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 along 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.

City of Kenora Official Plan and Zoning By-law

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

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".

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 livable, 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 the Harbourtown Centre area's objectives, as well as provide a foundation for other commercial uses.

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.

Other Policies:

Kenora Downtown Revitalization Report (2004):

-One of the project objectives of the Downtown Revitalization was 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.

Kenora BIZ has also expressed their support for outdoor patios. The members feel that as part of Kenora's re-branding that outdoor patios must be a bigger part of the future of Kenora.

Sale of Liquor

The Alcohol and Gaming Commission of Ontario is a Provincial body that is responsible for administering the Liquor License Act and managing liquor licenses for restaurants, bars and hotels etc. The alcohol and Gaming Commission of Ontario has jurisdiction on establishments that they have licensed and they are not subject to Municipal Conditions and will not issue licenses with Municipal conditions attached. Any outstanding issues the applicant may have must be resolved before a liquor license is issued. However site plan agreement conditions are not enforceable unless the City files a suit against the applicant, which may not be worthwhile time wise and financially.

Therefore a site plan agreement would not be effective in regulating them. If the City of Kenora wishes to regulate the hours of sale of alcohol on its property

a more effective method would be to enact an outdoor patio by-law dealing with patios that serve liquor. Applicants would need to obtain a license to operate an outdoor patio. This would allow the City of Kenora to regulate the hours that alcohol can be served through a license. Each patio could have different restriction placed on it based on proximity to different land uses.

Another tool to regulate noise would be the noise by-law. It could be amended to permit different hours of operation for outdoor patios, depending on the location of the property.

Insurance and Liability

The City of Kenora would require a certificate of insurance from the applicant operating any form of outdoor patio on Municipal property regardless of whether liquor is being consumed on the patio or not. This would typically be in the range of \$5 million dollars to save the City of Kenora from any claims resulting from the use of City Property.

Waste

Another issue which could arise from outdoor patios would be the potential increased amount of waste generated on City property as a result of outdoor patios. Applicants may be required as part of their application to submit a plan regarding how they will manage the waste generated from their outdoor patio. As well things such as spills, used packaging from food, cigarette butts, paper cups etc. will need to be managed and not accumulate on the City lands. The City of Kenora would not permit any commercial waste bins on the outdoor patio. The use of outdoor commercial patios for storage or food preparation would also be prohibited.

Smoking

The City of Kenora Smoking By-Law No. 145-2007 stipulates that smoking shall be prohibited in buildings and within 9 metres from the entrance or exit of any facility owned by the City of Kenora.

The Smoke-free Ontario Act enacted on May 31, 2006 prohibits smoking in all public places that are not enclosed and all workplaces across the Province.

The City of Kenora could allow smoking on outdoor patios so long as they are not enclosed or update the smoking by-law to not allow smoking on outdoor patios.

Options to consider:

- Require no smoking on Municipal property (this may be somewhat difficult to enforce).

-Permit smoking as per Provincial Legislation (leave it up to business owners discretion)

Noise

City of Kenora Noise By-Law No. 27-2007 contains two sections which would affect outdoor patios.

Schedule A part 10, that the operation of any electronic device or group of connected electronic devices incorporating one or more loud speakers or other electro-mechanical transducers, and intended for the production, reproduction or amplification of sound is prohibited at all times. As well, Schedule A part 11, that yelling, shouting, whistling, singing or playing or musical instruments is prohibited between the hours of 9:00pm and 7:00am.

Under section 4 of the Noise By-Law No. 145-2007 an applicant may file for an exemption permit for relief from any of the terms stipulated in schedule A. An option could be that upon application for an outdoor patio, the applicant may apply as part of the application for relief from the noise by law with regards to their outdoor patio.

Another zoning related, option would be to place provisions into the zoning by-law that stipulates where outdoor patios can be located based on proximity to different zones from the zoning by-law (residential, commercial, institutional zone, open space zones etc.). Buildings act as buffers to noise and can reduce noise generated from outdoor patios from affecting adjacent land uses. Proximity to arterial roads can also act as a buffer to patios. The City of Kenora may want to consider when a proposed outdoor patio abuts a residential or noise sensitive zone if buildings or roads exist to buffer the noise from the area.

Options to consider:

- Amend the current noise-by law specifically for outdoor commercial patios through zoning
- Provide opportunity to apply for an exception to the noise by-law as part of the outdoor commercial patio application

Leasing

The City of Kenora recognizes that in many cases outdoor patios may help improve the City's existing infrastructure. If this is the case then the City would not require any deposits or funds from the applicant. The patio owner would have to lease city property, annually for a minimum of three years, with a three percent increase over each calendar year, which can be paid in monthly increments, as well as a 60 day "out" clause.

Another option that the CAO had expressed was that applicants not be charged a lease fee at all (\$1 for the lease), so long as they have met all required

conditions. This option may be chosen under the objective of trying to promote outdoor patios in the commercial part of town with as few road blocks as possible for business owners.

The City of Kenora may deem it necessary to require a deposit or funds from the applicant if infrastructure associated with their proposed patio will have to be removed; a financial security may be required so that the City does not have to end up bearing the cost.

The City of Kenora may stipulate that patios may only be in operation on a seasonal basis, such as from April 1st to October 31st of the calendar year.

Economic Development and Tourism (J. Findlay)

The City of Kenora Economic Development Plan describes Kenora's transition from a pulp and paper mill town to a destination and lifestyle community. The Plan has three goals: 1) job creation 2) increased assessment and 3) population growth.

The City has also adopted a comprehensive, all season Tourism Strategy (2008), which is included in the Economic Development Plan.

The Economic Development Plan focuses on three key areas: business development & attraction; tourism & special events and education & training.

The creation of a patio policy impacts two of the three key areas of the Plan: business development & attraction and tourism & special events.

The patio policy and a streamlined, business-friendly patio application process will directly impact local business expansion and attract new businesses into the community. The Patio policy and process sends a message to business that Kenora is a business-friendly, proactive community interested in business growth and development.

Outdoor patios add a dynamic to the community which makes it more attractive for local residents, new residents and visitors to the community. Outdoor patios are a private sector contribution to the significant public sector investments made in Phases I & II Downtown Revitalization. Public sector-led streetscaping and beautification projects are measured by private sector response. In Kenora, the private sector has responded to the public sector investments with façade improvements, new signage and other upgrades. Furthermore, the community has seen new retail and restaurants locating into the downtown and the community.

Examples and research from other municipalities:

City of Barrie	<p>The City of Barrie has several documents with regards to outdoor patios, an application form for encroachment, a policy document for outdoor patios on city right of ways, an outdoor patio checklist and a restaurant/tavern patio extension form. Barrie's Policy for Outdoor patios on city right-of-ways outlines how outdoor patios are to be carried out in the City, with regards to license agreements, hours of operation and times of year permitted, definitions, applications, implementation information and safety concerns. The checklist outlines the specific site specifications that are required and fees/forms that need to be completed.</p> <p>http://www.barrie.ca/Doing%20Business/PlanningandDevelopment/Documents/Restaurant Tavern Patio Extension municipalproperty.pdf</p> <p>http://www.barrie.ca/Doing%20Business/PlanningandDevelopment/Pages/OutdoorPatios.aspx</p> <p>http://www.barrie.ca/Doing%20Business/PlanningandDevelopment/Documents/PolicyForOutdoorPatiosOnCityRight_revised_11-G-113.pdf</p> <p>http://www.barrie.ca/Doing%20Business/PlanningandDevelopment/Documents/OUTDOOR%20PATIO%20CHECKLIST.pdf</p> <p>http://www.barrie.ca/Doing%20Business/PlanningandDevelopment/Documents/Application_For_Encroachment.pdf</p>
City of Sault Ste. Marie	<p>Per planning staff Apart from zoning provisions that do not permit 'commercial patios' to be located adjacent to residential zones, we do not have any other regulations or by-law provisions. As for patios within the downtown, as I mentioned it's lot line to lot line development, so they are located upon City property. We require a License of Occupation which must be approved by Council. The application comes through our Legal Department, who then circulates to various city departments for comments. The end product is a site specific agreement between the city and patio owner. The agreement would always include things pertaining to insurance and liabilities. The agreement could also include site specific items such as physical limits to patio, max. area etc.."</p>

City of Hamilton	<p>The City of Hamilton with regard to outdoor patios has an urban design guidelines draft for outdoor patios as well as an application form for outdoor patio's that are encroaching onto public lands. The application form asks for information pertaining to any other existing encroachments affecting the subject property, details of any applications for minor variances for the property and application fee. The applicant must justify why the patio needs to be located on public property and a description of what the design will entail. There are also conditions dealing with live music, cost for maintaince, usage, seating capacity, fees, design details etc.</p> <p>The patio design guidelines give more specific design related details regarding outdoor patios with regards to enhancing civic and commercial areas, maintaining the primacy of public right of ways, maintaining an adequate pedestrian environment, respecting surrounding land uses and building design and not obstructing vehicle on-street parking.</p> <p>http://www.hamilton.ca/NR/rdonlyres/9221437D-B6C3-4E56-AC69-B2C01C4FD249/0/OutdoorBoulevardCafesGuidelines.pdf</p> <p>http://www.hamilton.ca/NR/rdonlyres/F5F91545-A31F-44AB-A93B-2175BB981421/0/Outdoor_Patio_Application_Final2012.pdf</p> <p>http://www.hamilton.ca/NR/rdonlyres/9F5CE2D5-FD21-4F8A-9B39-24F4B0C1A57E/0/SmokeFreeNewsFall2006.pdf</p> <p>http://www.hamilton.ca/NR/rdonlyres/D2831729-4286-455C-B16B-A4A207BCE8F6/0/Sep22PED09256.pdf</p>
Richmond Hill	<p>Richmond Hill has a section of its site plan application form that deals with outdoor patios. It covers basic requirements with regards to noise, parking, layout etc.</p> <p>http://www.richmondhill.ca/documents/site_plan_application_guide.pdf</p>
Collingwood	<p>The Town of Collingwood has an encroachment application form under which outdoor patios are covered as a type of encroachment. Outdoor patios have a \$200.00</p>

	<p>Encroachment Agreement Fee (April 1st – October 30th) and a \$40.00 annual fee.</p> <p>http://www.town.collingwood.on.ca/files/2011-030%20Patio_Merchandise%20Sch_v2_0.pdf</p> <p>http://www.collingwood.ca/files/2011-030%20Patio_Merchandise%20Encroachments.pdf</p> <p>http://www.collingwood.ca/files/2011-087%20Amending%20BL2011-030%20Regulating%20Patio%20and%20Merchandise%20Encroachments.pdf</p> <p>http://www.collingwood.ca/files/2011-030%20Patio_Merchandise%20Application.pdf</p>
City of Kingston	<p>The City of Kingston has a single application form for outdoor patios, which outlines the conditions of use for outdoor patios. The form covers design specifications, permitted uses, a non- smoking policy, liquor regulations and terms of use etc.</p> <p>http://www.cityofkingston.ca/pdf/engineering/App_NewPatio.pdf</p>
City of Owen Sound	<p>The City of Owen Sound has a sidewalk patio and street furniture design guidelines manual, as well as a Sidewalk patio application form. The application deals with specific details of the proposed patio, requirements are a scaled sketch, site photos and design details, as well as a proof of insurance requirement. As per the patio design guidelines manual outdoor patios must not impede pedestrian or vehicular traffic and be suited for accessibility. The manual also sets out all necessary design requirements and operation guidelines. The manual also contains some official plan excerpts that relate to sidewalk patios.</p> <p>http://www.owensound.ca/documents/Application_to_Install_1.pdf</p> <p>http://www.owensound.ca/citydocs/documentdownload.php?DocID=2236</p>
City of Ottawa	<p>The City of Ottawa has outdoor patio design guidelines which go over specific design principles related to outdoor patios.</p>

	<p>Store business owners who desire to have an outdoor patio encroach onto public property will need to obtain a temporary encroachment permit as well. The City of Ottawa Zoning by-law also addresses outdoor patios in section 85, outlining their relation to types of use, proximity to other land uses etc. Ottawa also has a smoking by law relating to outdoor patios.</p> <p>http://ottawa.ca/residents/parking/permits/encroachment_permit_en.html</p> <p>http://www.ottawa.ca/residents/planning/design_plan_guidelines/completed/patio/patio_en.pdf</p> <p>http://ottawa.ca/residents/bylaw/a_z/smoking_public_pl/patios_en.html</p> <p>http://ottawa.ca/residents/bylaw/a_z/zoning/parts/pt_03/index_en-06.html</p> <p>http://www.ottawa.ca/residents/planning/design_plan_guidelines/completed/patio/design_details/sidewalk_en.html</p> <p>http://www.ottawacitizen.com/health/smoking+Ottawa+outdoor+patios+parks+beaches+sports+fields+public+health+recommends/6072754/story.html</p> <p>http://www.obj.ca/Other/Archives/2006-01-27/article-2157256/Citys-vague-guidelines-for-outdoor-patios-raise-concerns/1</p>
Town of Markham	<p>The Town of Markham has a by-law that deal specifically with outdoor patios associated with restaurants. It works in conjunction with other existing by-laws and sets out basic rules such as maximum size, noise provisions and proximity to different land uses. It prohibits outdoor patios to present adjacent to residential zones and for musical instruments or other sound devices to be played adjacent to residential zones.</p> <p>http://www.markham.ca/wps/wcm/connect/5aa6298045aac8dc87059737ad237556/bylaw_7196.pdf?MOD=AJPERES&CA_CHEID=5aa6298045aac8dc87059737ad237556</p>

Town of Whitby	<p>The Town of Whitby has a by-law to license, regulate and control outdoor sidewalks patios. All persons who wish to have an outdoor sidewalk patio must pay a permit fee of \$100.00 and obtain a license from the Town of Whitby.</p> <p>http://www2.whitby.ca/asset/cs-bylaw_outdoorsidewalkpatiocafes.pdf</p>
Town of Ajax	<p>The Town of Ajax developed a research report in 2005, which was about the issue of outdoor commercial patios and they also have an outdoor patio by-law which came about as a result of that report.</p> <p>http://www.ajax.ca/en/insidetownhall/resources/OutdoorLicensedPatios.pdf</p> <p>http://www.ajax.ca/en/doingbusinessinajax/resources/AccessoryOutdoorPatios.pdf</p>

Budget:

\$300 operating budget for advertising of public consultation opportunity.

Communication Plan/Notice By-law Requirements:

Council and Property and Planning Agenda