

License of Occupation



Section Development Services	Date June 23, 2015	By-Law Number 96-2015	Page 1	Of 6
Subsection License of Occupation	Repeals By-Law Number 78-2012		Policy No. DS-6-1	

Purpose:

The intent of the City of Kenora License of Occupation is to ensure sidewalk improvements 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;

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 all food and beverage businesses 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.

License of Occupation:

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

A. Sidewalk Café- \$75.00 annually

- Intended but not limits 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 and seating up against the building face. Fencing may be required by the Alcohol and Gaming Commission of Ontario (AGCO) for areas that will be associated with the serving and consumption of alcohol
- Promote the use in conjunction with active storefronts. Encourage greater interaction between pedestrians, consumers and retailers.
- There are numerous forms that active storefronts can take, which include approved 'garage-door' façades, french doors, and patio doors to link the inside with the outdoor patio
- Façade improvement may be eligible for funding through the Harbourn Community Improvement Plan, municipal financial incentives to encourage the rehabilitation and improvement to private lands. The intent of the plan is to target improvements to existing

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buildings and properties, and is not directed towards future new developments in the Harbourtown Centre

B. Sidewalk Patio

- Small Patio Applications- \$200.00 Annually

- with occupancy of twenty (20) people or less

- Large Patio Application- \$350.00 annually

- with occupancy of twenty-one (21) people or more
 - Currently restricted to Bernier Drive where installed patios offers unobstructed sidewalk width for pedestrian movement along the abutting Sidewalk. Perimeter fencing is required regardless of sales and or consumption of alcohol

C. Merchandise Display- \$50.00

- 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

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

Application Process

The provision of safe and hazard-reduced environments is paramount in the creation and enforcement of these guidelines. 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 (application form attached). License of Occupation are only valid for the dates indicated on each permit and must be renewed on an annual basis.

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 located in front of any business, other than that of the applicant.

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3. Valid Insurance certificate (\$5,000,000.00) naming "The Corporation of the City of Kenora" as an additional insured
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
Fax: 807-467-2246

The complete application will be circulated internally and to Kenora Hydro for comment and conditions to approval within five (5) working days.

General Terms and Conditions

- The area contained within a licence of Occupation may be used solely for that of a Patio
- The distance and orientation of the sidewalk patio in relation to the surrounding development shall be considered to ensure negative effects of no occur with existing 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 may impact public welfare or safety and/or cause a nuisance
- All Applicants must hold a valid City of Kenora Business License
 - i. All applications must be in conjunction with an associated business and cannot be a stand-alone establishment
- Hours of operation are restricted to the same hours of operation as the parent business
- Application must comply with the Sign By-Law 115-2010
- Must comply with the Noise By-Law 27-2007
- Must comply with the Smoking By-law No. 145-2007 and Provincial smoking legislation
- Must comply with the Accessibility for Ontarians with Disabilities Act, 2005 O. Reg. 413/12
- Use of the patio must comply with all of the Federal, Provincial and Municipal laws
- It is the responsibility of the applicant/owner/constructor to "Call Before you Dig"

Term and Renewal

- Seasonal terms for patios begin on May 15th to October 15th and all structures must be removed by October 31st annually

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- Annual Applications will be available after April 1st annually through the Planning Department and online at kenora.ca
- Off-season usage will be considered on a case-by-case basis

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.
- The applicant covenant 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, 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, in order to gain access to the sidewalk. Twenty-four hour (24 hour) 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

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- 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 maintained in a clean condition at all times

Additional terms and conditions of Sidewalk Cafés and Sidewalk Patios

- Patio setup must be removable and constructed of:
 - i. 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 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
- 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 business frontage, unless supported by the building owner
- Portable signs as per By-Law 115-2010 (A-Frame signs, sandwich board signs and temporary signs) must maintain a minimum 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
 - Separation of 1.5 metres must be maintained between the nearest edge of the temporary sidewalk and the nearest edge of any intersection, cross-walk, bus shelter or bus stop
 - All temporary sidewalks must have a consistent appearance and be:
 - i. Constructed of sturdy Material
 - ii. Designed for stability
 - iii. Accessible
 - iv. Allow for proper drainage
 - v. Design for easy removal
 - All costs for traffic control devices are borne by the Applicant

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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 building
- Merchandise displays are only allowed on sidewalks between 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
- 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 sidewalks
- 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 By-Law 115-2010 (A-Frame signs, sandwich board signs and temporary signs) must maintain a minimum 1.5 metres distance of unobstructed sidewalk width for pedestrian movement

Approving Authority

- Applications may be approved through the authorized personnel in the Planning Department