



SECTION: Development	EFFECTIVE DATE: March 27, 2023
RECOMMENDATION NO.: GC47-23	COUNCIL APPROVAL: Res. No. 64-23
SUBJECT: Temporary Patio Sidewalk Use Policy - BIA	POLICY NUMBER: Operations-03

PURPOSE:

This policy regulates the establishment and operation of a temporary patio sidewalk use within the Town of Huntsville BIA to ensure a clear path of travel (including wheelchairs) for pedestrians.

OBJECTIVE:

The objective of the Temporary Patio Sidewalk Use Policy within the BIA is:

- To ensure all members of the public are able to safely navigate the sidewalks in the BIA without hindrance of objects and remain accessible to everyone.
- To define the criteria and process for business use of sidewalks for patios
- To ensure the streetscape remains aesthetically appealing, uncluttered and clean
- To provide an approval and permitting process for sidewalk use

DEFINITIONS:

“Applicant”

Any business owner or property owner making an application for a temporary BIA sidewalk use permit.

“Clear path of Travel”

Includes public outdoor sidewalks (or walkways) designed and constructed for pedestrian and wheelchair travel and are intended to serve a functional purpose. These paths shall create an uninterrupted continuous path of travel connecting the adjacent properties along the public sidewalk.

“Temporary Sidewalk Patio”

Temporary tables and seating used for food and beverage for sale at that establishment. The tables and seating must be removable.

“Other Uses”

Any use of the sidewalk not mentioned above shall fall under the Café/Retail Sidewalk Use policy.

GENERAL TERMS

- a. Sidewalk Patios shall only be permitted as an extension of existing adjacent restaurants, take-out restaurants and taverns on lands zoned for such use as identified in the Community Planning Permit By-law, as amended.
- b. This policy is to be administered by the Director of Development Services or their designate.
- c. All Applicants that are approved must enter into a permit agreement with the Town of Huntsville and adhere to all conditions within the permit and this policy.
- d. Once a Sidewalk Patio is approved, no deviation from the submitted plan shall be permitted without the approval of the Director of Development Services.
- e. The above provisions will work in conjunction with the Special Event by-law.
- f. Any request that does not meet the provisions of the policy will be considered by Council.

TIME OF YEAR

Sidewalk Patios will only be allowed between April 15th and October 31st.

HOURS OF OPERATION

- a. All Sidewalk Patios shall be closed between 11 p.m. – 7:00 a.m.
- b. All Applicants with a Sidewalk Patio shall ensure that there is no outdoor music or amplified sound after 9 p.m. or before 9 a.m. of the following day unless prior approval is granted by Council in accordance with applicable Noise by-laws.

TEMPORARY SIDEWALK PATIO

A yearly permit request to the Town, including a certificate of insurance, must be submitted. This permit will allow for temporary use from April 15th to October 31st. The modular fencing may stay in place overnight and chairs/tables stacked neatly. The chairs, tables and fencing must be able to be removed at the request of the Town as necessary.

Any and all signage (such as sandwich board signs, menu board signs and A-Frame signs) are subject to and must conform to the Town of Huntsville Sign By-law, and do not form part of a Sidewalk Patio use permit.

A Sidewalk Patio shall:

- a. allow a minimum of 1.8 metres of unimpeded sidewalk width (including from boulders, trees and streetlights) for pedestrian and accessible access.
- b. be free and clear of any amenities on the walls that abuts the road. If there are amenities overhanging (such as plants) a minimum of 0.61 metres (2ft) from the edge of the curb is required.
- c. be removed easily and not fixed to the sidewalk or any municipal infrastructure.

- d. be fenced, using removable fencing so as to provide a noticeable barrier, with a distinct visual contrast.
- e. be used for food and beverage for sale at that establishment
- f. neatly stored and presentable when not in use.
- g. shall not incorporate a roof structure but may utilize forms of shade provided they are secured, and do not hinder pedestrian or vehicular traffic.

CONSTRUCTION REQUIREMENTS

If construction is required for a temporary Sidewalk Patio, it must meet all requirements of the Ontario Building Code and all other relevant agencies and include all required permits.

OPERATIONS

- a. All Sidewalk Patios shall be operated in such a manner as to not interrupt normal business activity of the adjacent commercial activities. Applicants shall take all reasonable steps to ensure that their patrons do not yell, shout, hoot, whistle, sing or in other ways disturb passing pedestrians, disturb the peace or detract from the overall environment of the surrounding area.
- b. Cooking is not allowed within the Sidewalk Patio.
- c. Any Sidewalk Patio where liquor is served must be licensed appropriately.
- d. The Applicant shall, at his/her own expense, keep the portion of sidewalk in question in a clean and tidy condition free from papers, rubbish and debris of all kinds, including staining/soiling of the sidewalk.
- e. The Applicant will permit the Town of Huntsville and utility crews to enter the Sidewalk Patio for the purposes of installation, maintenance, and repair of infrastructure at any time.
- f. The Applicant shall ensure that bicycles are not affixed to or leaning against the Sidewalk Patio fence, to ensure the path of travel remains accessible.
- g. The Applicant must post the Sidewalk Cafe as non-smoking in accordance with the *Smoke-Free Ontario Act, 2017, S.O. 2017, c.26, Sched. 3* and regulations thereunder as may be amended from time to time.

LIABILITY

Insurance:

- a. The Applicant shall obtain and maintain during the operation of the Sidewalk Patio where alcohol is being served commercial general liability insurance in the amount of \$5,000,000 (five) million per occurrence, and naming the Corporation of the Town of Huntsville as an additional insured but only with respect to the operations of the named insured. Coverage shall include but not be limited to bodily injury, personal injury, property damage, contractual liability, tenants' legal liability, and contain a cross liability, severability of insured clause. The policy shall contain a waiver of subrogation in favour of the Town and coverage shall not exclude the sale and distribution of alcohol.

- b. The Applicant shall obtain and maintain during the operation of the Sidewalk Patio where no alcohol is being served, commercial general liability insurance in the amount of \$2,000,000 and naming the Corporation of the Town of Huntsville as an additional insured but only with respect to the operations of the named insured. Coverage shall include but not be limited to bodily injury, personal injury, property damage, contractual liability, tenants' legal liability, and contain a cross liability, severability of insured clause. The policy shall contain a waiver of subrogation in favour of the Town.
- c. Prior to the execution of the agreement and upon the placement, renewal, amendment, or extension of all or any part of the insurance, the Applicant shall promptly provide the Town of Huntsville with a certificate of insurance and, if required, a certified true copy(s) of the policy(s) certified by an authorized representative of the insurer together with copies of any amending endorsements applicable to the Agreement.
- d. The policy(s) shall be endorsed to provide the Town of Huntsville with not less than 30 Days' written notice of cancellation.

Indemnification:

- a. The Applicant shall indemnify and save harmless the Town of Huntsville, it's employees, officers, Members of Council and agents ("Indemnified Parties") from and against any claims, demands, losses, or costs, suffered by or imposed on the Indemnified Parties in respect to any loss, damage , bodily injury, or death, to any person or property, directly or indirectly as a result of this policy, entering into a permit agreement and any operations connected therewith, save and except for the negligence or wilful misconduct of the Indemnified Parties. Without limiting the foregoing, it is understood and agreed that this indemnity shall include legal and investigation expenses incurred in defending any claim by the Indemnified Parties in connection to this contract. Further, it is understood and agreed that the Applicant shall immediately reimburse the Indemnified Parties for any and all such amounts upon demand.

APPLICATION

- a. All applications are to be made on the appended application form
- b. All applications are to accompanied by the following:
 - a. Application Fee
 - b. Sketch of the proposal as described in Appendix A.
 - c. A completed criteria checklist submitted by the BIA
 - d. Landlords Letter of Support (if different from Applicant)
 - e. Proof of Notification to Neighboring Businesses
 - f. Certificate of Insurance, naming the Corporation of the Town of Huntsville as additional insured
- c. Any applications which may impact the traveled roadway and parking areas of the District Municipality of Muskoka road shall be circulated to the District Municipality of Muskoka.

TERMINATION

- a. An Applicant shall maintain an approved Sidewalk Patio in accordance with the approved application and this policy, failing which, the applicant may be liable to be evicted from the sidewalk.
- b. Excessive complaints about the location and/or operation of the Sidewalk Patio may lead to the immediate termination of the use.

- c. Upon written notification for failing to adhere to the terms and conditions in the agreement or this policy, the owner/operator shall be expected to vacate the portion of the sidewalk. If the owner/operator fail to vacate in the timeframe indicated within the written notice, Town staff or contractors shall remove the installation and shall recover all costs from the owner/operator.

APPROVALS

Approval for Sidewalk Patios shall be granted by the Director of Development Services and such permission may arbitrarily be withheld or withdrawn by Council.

Annual renewal of Sidewalk Patios will be approved by the Director of Development Services or their designate.

OBJECTIONS

Any person or public body may make written submissions to the Town of Huntsville concerning the rejection of a proposed Sidewalk Patio application. ***Please take note that any objections must include your name, contact information and reasons for your objection.***

RESPONSIBILITY

As described in the policy above.

APPENDIXES

- "A" - Sample application for a Sidewalk Patio
- "B" – Sample of BIA Checklist Letter of Support

APPENDIX A

Example of Print Application:

Town of Huntsville - Department of Development Services

Huntsville BIA Application for Sidewalk Patio

This is an application to use a portion of a municipally owned sidewalk within the Town of Huntsville Downtown BIA for a sidewalk patio as an extension of an existing restaurant.

Date:

Business Name:

Business Address:

Phone number:

Email:

Applicants Name:

(Surname) (Given Name) (Initials)

Mark with **X** to select option: ___New application ___Renewal

I _____ hereby apply for permission for the above business to use a portion of the sidewalk as set out on the attached sketch.

I have reviewed the terms and conditions as per the Town of Huntsville Patio Sidewalk Use Policy and agree to comply with the terms and conditions contained therein.

I indemnify and hold harmless the town of Huntsville from any action, claim, damage or loss whatsoever arising from the use of the sidewalk for the purpose of the Sidewalk Patio.

Signature of the Applicant: _____

Date:

Checklist of Attachments

Read **Patio Sidewalk Use Policy – BIA** at www.Huntsville.ca and/or connect with Town of Huntsville Economic Development Officer, Lauren MacDermid, at lauren.macdermid@huntsville.ca

New Application:

___ Application fee \$250

___ Sketch of the proposal with the following

- a. Proposed layout of the sidewalk patio
- b. Proposed number and arrangement of tables, chairs, umbrellas etc.
- c. Location of any street furniture

- d. Location of any impacted parking areas
- e. Proposed entrance/exit locations
- f. Proposed fence and/or sidewalk design and materials
- g. Location of doors and/or windows on the front of the building

___ BIA Completed Criteria Checklist (connect with BIA Manager to complete)

___ Landlord's Letter (if different from applicant)

___ Proof of Notification to Neighboring Businesses

___ Certificate of Insurance, naming the Corporation of the Town of Huntsville as additional insured

Renewal Application:

___ Application fee \$50

___ Certificate of Insurance, naming the Corporation of the Town of Huntsville as additional insured

APPENDIX B

BIA Board Criteria Checklist Letter of Support



BIA Patio Checklist

1. Would the patio material used fit well with the look and feel of surrounding patios on main street? Yes or No
2. Would this patio location impact a clear path of travel? Yes or No
 - a. **“Clear path of Travel”** - Includes public outdoor sidewalks (or walkways) designed and constructed for pedestrian and wheelchair travel and are intended to serve a functional purpose and not to provide a recreational experience. These paths shall consider adjoining properties to provide a continuous path of travel along the public sidewalk.
4. Would a patio impact neighbouring building? Yes or No
5. Consideration: Does the patio design compliment the look and feel of downtown overall (matching Muskoka streetscape, black, natural materials?) Yes or No

Based on a score out of #5 - #1 not being comfortable and #5 being very comfortable - is the BIA Board comfortable supporting the temporary patio design? This letter will be submitted in the application process to the Town.