



Town of Huntsville Staff Report

Meeting Date: April 25, 2022

To: Council

Report Number: DEV-2022-73

Confidential: No

Author(s): Lauren MacDermid, Economic Development Officer

Subject: Update on Use of Municipal Lands (BIA) - Sidewalk and Patio Policy

Report Highlights

- Goal of the policy is to be proactive through mitigating risk
- There are currently no guidelines in place for sidewalk use of retail and art displays.
- Provide an overview of why it is important to have record that the Town is named as an additional insured on a business' insurance policy

Recommendation

That: Council approves the Sidewalk Use Policy – BIA, attached as Appendix "A" to Report DEV-2022-73;

And Further That: Delegation of Authority By-law 2021-17 be amended to delegate authority to the Director of Development Services, or designate to enter into agreements with any necessary parties related to the expansion or creation of a patio, retail display, or art installation, occupying a sidewalk, for business purposes, as long as they adhere to all relevant legislation and obtain all agency required approvals, and any other conditions the Town deems necessary, to safely operate an outdoor patio/cafe or Retail Display;

And Further That: Fees and Charges By-law 2021-88 be amended to include a permit fee of \$250 for sidewalk patio/cafe and \$100 fee for a retail/art display;

And Further That: Sidewalk Patio/Café Policy (Resolution No. 257-06) be hereby rescinded.

Background

Staff were directed to seek additional review and consultation with the BIA board on the Sidewalk and Patio Policy brought forth via Report DEV-2022-15.

A Special BIA Board Meeting was held on April 6, 2022, for Town Staff to present the policy, answer questions and collect feedback from the BIA board.

Discussion

Staff attended a BIA Board meeting on April 6, 2022. There was a significant amount of discussion and questions, and in the end, the BIA Board provided a letter noting that they do not feel any policies were warranted. There is an assumption that the sidewalks in front of each business should be available for their use without any permits or approvals from the Town.

To address questions and feedback from the BIA (see appendix B). The following information is highlighted:

Risk Management

The goal of this policy is to be proactive. The Town does not want an incident to happen where risk could have been mitigated in advance. From a business perspective, insurance generally will only cover business activities within a defined business (the building itself). If an incident were to happen on the Town's property, and the business did not inform their insurer of the change in their operations, they could be denied coverage. It is important to have record that the Town is named as an additional insured on a business' insurance policy if they should choose to utilize the sidewalk space. Other municipalities in Ontario have similar sidewalk policies which have been useful when an incident occurs and a claim is made. A "wait and see" approach would not be recommended, especially with the BIA Board and its activities being covered under the Town's insurance policy. For additional comments from the Town's insurance please see appendix C.

Permit vs. By-law Approach

Permitting is a softer approach than a By-law. The permit acts as a contract and ensures that the businesses have Town permission to use the sidewalk. Delegated authority would work with the business to address non-compliance before escalating to enforcement and could occur in a timely manner.

A By-law would address non-compliance through removal of items and/or ticketing.

Sign By-law

It is important to note that outdoor store 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. Signage is not included in the Sidewalk and Patio Policy.

COVID Relief

Provides businesses with the opportunity to use more of the sidewalk legally, as opposed to the assumption. While also creating a simplified process that does not require deputations to Council when utilizing the sidewalk.

2010 Policy

The current 2010 Patio License Policy requires all applicants to enter into a lease agreement with insurance of \$5 million indemnifying the Town of Huntsville against all liabilities that may arise from the use of the sidewalks. Further, this policy only applies to patios that would be required to be "constructed" and are of a semi-permanent nature.

As the Streetscape improvements have made considerable changes to the sidewalks, the Operations department has determined that no structures should be permitted of a semi-permanent or permanent nature in an effort to maintain the integrity of the infrastructure.

Currently, the approval for sidewalk patios/cafes has not been delegated to staff and is required to be approved by Council. This results in the need for businesses to complete a deputation to Council to seek approval which could result in untimely delays. In addition, the requirement to obtain and maintain \$5 million in insurance coverage for the operations of the sidewalk patio license exists within the current policy and certificates of insurance would be required to be provided to the Town to be in compliance with the 2010 policy.

Provincial Order O. Reg. 345/20, Patios

The Patios Order will end on April 27, 2022. These Orders eliminated Planning Act requirements for notice and public meetings and removed the ability to appeal when municipalities passed temporary use by-laws for new or expanded restaurant and bar patios. This allowed municipalities to pass or amend these by-laws quickly to address local circumstances and needs as they evolved. The order was a temporary measure and, in line with the province's lifting of public health measures, will end on April 27, 2022.

From a Town of Huntsville perspective, the comprehensive Zoning By-law 2008-66P did not require additional parking or setbacks for patios that were installed on municipal lands, so this was not an issue locally. Further, in an effort to assist businesses during COVID, Council delegated, through resolution 186-20, the Director of Operations and Protective Services and the Chief Building Official authority to enter into agreements with any necessary parties related to the expansion or creation of a patio occupying a sidewalk, road, parking space, or other Town owned lands, for businesses purposes, for 2020, and renewed in 2021. Through these delegated authorities, staff ensured that the proponents adhered to the proper building, fire, Alcohol Gaming Commission of Ontario codes and any other conditions the Town deemed necessary to safely operate an outdoor patio.

There are currently no exemptions or delegated authority for any patios on Town owned lands for 2022. Should Council choose not to implement the new policy as proposed and not rescind the 2010 policy, the current policy would continue to guide the activities pertaining to patios. In the event there are no policies in place to govern the use of the downtown sidewalks for sidewalk patios/cafes, Council could alternatively request that all BIA businesses be required to submit to the Town proof of insurance adding the Town as an additional insured for any use of the sidewalk.

Options

Recommendation #1 – Council could choose to accept the recommendations within this report **(Recommended)**

Recommendation #2 – Council could choose to adopt the policy with no fees **(Not Recommended)**

Recommendation #3 – Council could choose to continue with the 2010 Patio policy **(Not Recommended)**

Recommendation #4 – Council could request that all BIA business be required to submit to the Town proof of insurance adding the Town as an additional insured for any use of the sidewalk.

Recommendation #5 - Council could choose to not accept any of the recommendations within this report **(Not Recommended)**

Operational

Permit fee of \$250 for patio/café and \$100 for retail display will be charged and could directly offset other Economic Development initiatives such as Small Community Grants. The fee would cover a portion of the staff time that will be required to administer this program and would not operate on a cost recovery basis, as it is an economic development initiative.

Prior to the 2022 Fees and Charges Bylaw the fee in place for the Sidewalk Patio Licence was \$106.00 per year application fee and \$7.50/sq.ft. lease. This was removed from the 2022 Fees and Charges By-law in anticipating of the permit program being redeveloped.

Council Strategic Direction / Relevant Policies / Legislation / Resolutions

- EcDev.1.6 - Identify opportunities to ensure a vibrant downtown. Collaborate and support with BIA in identifying year-round business opportunities. Support the Main Street Streetscape project in partnership with the BIA
- RdINF.3.4 - Complete Main Street Streetscape (mandate)

Attachments

[Appendix A - TOH Sidewalk-Use-Policy](#)

[Appendix B - BIA Feedback Sidewalk Policy](#)

[Appendix C - Insurance comments on Sidewalk Policy](#)

Consultations

Alicia Horne, Asset and Risk Management Coordinator

Robin McCleave, Vice President, Public Sector Risk Management Leader, BFL

Respectfully Submitted: Lauren MacDermid, Economic Development Officer

Manager Approval (if required): _____

Director Approval: Kirstin Maxwell, Director of Development Services

CAO Approval: Denise Corry, Chief Administrative Officer



DRAFT Sidewalk Use Policy - BIA

SECTION:	EFFECTIVE DATE:
SUBJECT: Sidewalk Use Policy - BIA	POLICY NUMBER:
<p>PURPOSE:</p> <p>This policy regulates the establishment and operation of sidewalk patios, cafes and Retail Displays within the Town of Huntsville BIA to ensure a clear path of travel (including wheelchairs) for pedestrians.</p>	
<p>OBJECTIVE:</p> <p>The objective of the Temporary BIA Sidewalk Use Policy is:</p> <ul style="list-style-type: none"> • 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/cafes and Retail Displays. • To ensure the streetscape remains aesthetically appealing, uncluttered and clean • To provide an approval and permitting process for sidewalk use 	
<p>DEFINITIONS:</p> <p>“Applicant” Any business owner or property owner making an application for a temporary BIA sidewalk use permit.</p> <p>“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.</p>	

“Temporary Sidewalk patios/cafés”

Temporary tables and seating used for food and beverage for sale at that establishment. The tables and seating must be removable, without ties or anchors and can be stored inside of the establishment each night.

"Temporary Retail Display"

Outdoor display clothing, items, structures or chattels used to exhibit wares or services of items for sale at that establishment. The Retail Display must be removable, without ties or anchors and can be stored inside of the establishment each night.

“Other Uses”

Any use of the sidewalk not mentioned above.

GENERAL TERMS

- a. Sidewalk patios/cafes shall only be permitted as an extension of existing restaurants, take-out restaurants and taverns on lands zoned for such use as identified in the Zoning By-Law 2008-66P or Community Planning Permit By-law, as amended.
- b. Any temporary Retail Displays must also fall under this policy
- c. This policy is to be administered by the Director of Development Services or his/her designate.
- d. 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.
- e. Once a sidewalk patio/cafe is approved, no deviation from the submitted plan shall be permitted without the approval of the Director of Development Services.
- f. The above provisions do not apply when a SEAT application has been issued that will occupy or incorporate the sidewalk.
- g. Art and cultural displays proposed outside of a recognized event will fall under this policy. Consideration may be given to remain overnight.
- h. Any request that does not meet the provisions of the policy will be considered by Council.

TIME OF YEAR

Sidewalk Patios/Cafes and Retail Displays will only be allowed between April 15th and October 31st.

HOURS OF OPERATION

- a. All sidewalk Patios/Cafes and Retail Displays shall be closed and removed by 11 p.m.
- b. All Applicants with a sidewalk Patio/Café and Retail Displays 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.

TEMPORARY SIDEWALK PATIO/CAFÉ AND RETAIL DISPLAYS

For businesses that would like to include a temporary sidewalk Patio/Café or Retail Display within the Business Improvement Area (Main St East from Lorne Street to Main Street West between John Street) a yearly permit request to the Town, including proof of insurance must be submitted. This permit will allow for daily temporary use of removable tables, chairs, signage, clothing racks and décor from April 15th to October 31st.

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 use permit.

A sidewalk Patio/Café shall:

- a. Be located within 1 metre of the exterior front wall of the building for which a Permit is issued provided a minimum of 1.8 metres of sidewalk can be achieved;
- b. Be able to be removed easily from exterior
- c. Used for food and beverage for sale at that establishment
- d. Be stored inside of establishment each night

A sidewalk Retail Display shall:

- a. Be located within 1 metre of the exterior front wall of the building for which a Permit is issued provided a minimum of 1.8 metres of sidewalk can be achieved;
- b. Only display clothing, items, structures of chattels used to exhibit wares or services of items for sale at that establishment
- c. Be able to be removed easily from exterior
- d. Be stored inside of establishment each night

CONSTRUCTION REQUIREMENTS

If construction is required for a temporary sidewalk Patio/Café or Retail Display, it must meet all requirements of the Ontario Building Code and all other relevant agencies.

OVERNIGHT OCCUPATION, SEMI-PERMANENT INSTALLATIONS

If a business proposes an occupation or use that does not meet the provisions of this policy, the request shall be considered by Council. This includes any patio or display that remains overnight, alters the streetscape, or requires construction.

For example, if a business is looking for a patio to remain in place for the season, and not

removed each evening, a [deputation to council](#) would be needed. The deputation would provide as much information as possible such as design plans, construction details, impact on accessibility of sidewalk for pedestrians etc.

GENERAL OPERATIONS

- a. All sidewalk patios/cafes and Retail Displays 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/cafe
- c. Any sidewalk patio/cafe where liquor is served must be licensed by the LCBO
- d. The Applicant of the sidewalk patio/cafe 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.
- e. The Applicant will permit Town of Huntsville and utility crews to enter the patio/cafe for the purposes of installation, maintenance and repair of infrastructure at any time.
- f. The Applicant shall ensure that bicycles are not affixed or leaning against the sidewalk patio/cafe fence.
- g. The Applicant agrees to post the patio/cafe as non-smoking

LIABILITY

Insurance:

- a. The Applicant shall obtain and maintain during the operation of the patio/café where alcohol is being served, general liability insurance in the amount of \$5,000,000 (five) million per occurrence, and \$2,000,000 for all other uses, 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 limited to bodily injury, personal injury, property damage, contractual liability, tenants legal liability and contain a cross liability severability of insured clause.
- b. 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 confirmation of coverage 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.
- c. 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 from any action, claim, damage or loss whatsoever arising out of the use of the sidewalk for the purpose of a sidewalk patio/café or Retail Display.

APPLICATION

- a. All applications are to be made on the appended application form
- b. All applications are to be accompanied by the following:
- c. Application Fee
- d. Sketch of the proposal as described in Section 5b.
- e. A letter of support from the BIA
- f. Landlords Letter of Support (if different from Applicant)
- g. Copy of Proof of Insurance, naming the Town
- h. Any applications which have impact on the traveled roadway and parking areas of District of Muskoka Roads shall be circulated to the District of Muskoka.

TERMINATION

- a. An Applicant shall maintain an approved sidewalk patio/café or Retail Display 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 patio/café or Retail Display may lead to the termination of the lease.
- c. Upon written notification for failing to adhere to the terms and conditions in the lease 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/cafes and Retail Displays 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/cafes and Retail Displays will be approved by the Director of Development Services or his/her designate.

OBJECTIONS

Any person or public body may make written submissions to the Town of Huntsville concerning the rejection of a proposed permit 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/Café or Display

DRAFT



Downtown Huntsville BIA
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705-789-1400
huntsvillebia@gmail.com

To: Huntsville Town Council,

Re: 2022 Sidewalk Policy

The Downtown Huntsville BIA Board of Directors held a special board meeting on April 6th to discuss the proposed Sidewalk Policy for downtown Huntsville. Town staff were present to explain the policy and answer any questions.

As a result of the meeting the Downtown Huntsville BIA recommends moving forward this year with no new policy and the current 2010 Patio Policy would remain in effect. We feel there have not been issues in the past to warrant a policy. Coming out of COVID-19 and Diggin' Downtown, the Board feels having a year to explore the potential of the new sidewalks is important to help embrace sidewalk activation.

The Downtown Huntsville BIA Board of Directors looks forward to continuing working with Town staff on future policies and procedures.

Yours sincerely,

A handwritten signature in cursive script that reads "Morgan Lonsdale".

Morgan Lonsdale

In conjunction with Lauren's comments and acting in the capacity of an insurance broker, it is always in the best interest of an insured to disclose to their insurer any changes in their business's operations. This could include expanding an insured's business operations onto a municipal sidewalk. The certificate of insurance will confirm to the Town that the business owner has protected their personal assets by having the required insurance in place for their operations while on municipal property.

Acting as a municipal risk manager, in the event the business owner's negligence resulted in the Town being named in a law suit, to protect the Town's financial interest the certificate of insurance needs to confirm that the Town has been added as an additional insured onto the business owner's general liability policy. The Town being added as an additional insured would only be with respect to the operations of the business owner. The Town would still be responsible if their negligence was to cause the loss.

It is not an onerous task for a business to confirm they have insurance, nor is it an onerous task for the insurance broker for that business to provide the Town with confirmation of insurance naming the Town as an additional insured. In my experience this would be standard practice for many municipalities anytime a third party is providing a service on behalf of a municipality or wanting to use municipal lands for a specific purpose such as the use of a municipal sidewalk for business purposes.

Best regards,
Robin

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