

Policy

Section: 5.0 Roads

Policy: Sidewalk Patio Policy

Policy By-Law: **DRAFT**

Date:

Revision:

Coverage:

The policy shall cover all sidewalks in the Municipality of Arran-Elderslie.

Policy Statement:

The Corporation of the Municipality of Arran-Elderslie is committed to the beautification and enhancement of our commercial areas but also recognizes the importance of ensuring accessibility standards are maintained. Sidewalk patios on the sidewalks provide an opportunity for downtown businesses to extend activities and create an atmosphere downtown that people want to spend time in. A sidewalk patio, when designed and facilitated appropriately, can make a significant contribution to the downtown community.

The purpose of the Sidewalk Patio Policy is to outline the process and provide guidelines for the erection of patios onto municipal property.

Legislative Authority:

Municipal Act, 2001, S.O. 2001, c. 25

Contents:

1.0 Definitions

County means the Corporation of the County of Bruce.

Certificate of Insurance (COI) means a COI issued by an insurance company or broker. The COI verifies the existence of an insurance policy and summarizes the key aspects and conditions of the policy. For example, a standard COI lists the policyholder's name, policy effective date, the type of coverage, policy limits, and other important details of the policy.

Commercial General Liability Insurance means liability coverage for bodily injury and/or property damage claims brought against the insured by a third party or member of the public.

Liquor Liability Insurance means liability coverage for claims arising out of the sale, manufacture or serving of alcoholic beverages. Under standard Commercial General Liability policies, coverage is excluded if the insured is in the business of serving alcohol. If selling, serving or making alcohol, liquor liability coverage needs to be ADDED to the existing general liability policy or purchased on its own.

Municipality means the Corporation of the Municipality of Arran-Elderslie as a governing body.

Sidewalk Café means an open group of tables and chairs and other accessories situated and maintained on a public sidewalk, parking space or municipally owned property for the use and consumption of food and beverages sold to the public from, or in an adjoining or adjacent indoor food and beverage establishment.

Sidewalk Patio means a fence enclosed group of tables and chairs and other accessories situated and maintained upon a public sidewalk, parking space or municipally owned property for the use and consumption of food and beverages including alcoholic beverages sold to the public from, or in, an adjoining or adjacent indoor establishment located adjacent to the business.

2.0 General Provisions

1. Any person who wishes to erect, install, and/or maintain a Sidewalk Sidewalk Patio on municipal lands shall be required to apply to the Municipality seeking permission to do so, together with drawings or plans sufficient to describe the encroachment.
2. The Municipality shall review the application to ensure that any patio on Municipality owned land, does not or will not:
 - a. Interfere with the Municipality's intent and purpose in holding the municipal owned land.
 - b. Create an unsafe condition.
 - c. Create liabilities for which the Municipality cannot assign full responsibility to the owner of said Sidewalk Patio
 - d. Create a situation that is contrary to any Municipal By-Law, Municipal Policy or Resolution, or any Provincial or Federal regulation or legislation.
 - e. Interfere with work, plans, efforts, or initiatives of the Municipality to maintain Municipality owned lands.
 - f. Interfere with any utility or other similar installation located on Municipal owned lands.

3. Sidewalk Patios must directly abut the applicant's business and shall only be permitted to supplement an existing business of similar nature.
4. Sidewalk Patio shall only be approved if their location and construction maintain a safe, secure and comfortable sidewalk environment for all pedestrians.
5. Sidewalk Patio shall comply with O. Reg. 191.11, Integrated Accessibility Standards.
6. Permits may impose specific conditions in the agreement to address concerns identified by the Municipality.
7. In the event that locates are required, it is the responsibility of the applicant to make the necessary arrangements and pay the associated fee.
8. Permits shall be annual from May 1st to October 15th. Items may not be placed before approval is granted and must be removed on or before the end date of the permit. All permits shall be terminable by the Municipality or applicant upon ten (10) days written notice. Permits cannot be assigned or transferred.
9. No Sidewalk Patio shall:
 - Permit the use of patio heaters.
 - Permit smoking.
 - Contravene the provisions of the Municipal Noise By-Law currently in effect.

3.0 Special Conditions

1. Where the Sidewalk Patio will encroach on County owned lands, the applicant will also be required to apply to the County for an encroachment permit. The County of Bruce will work with the Municipality of Arran-Elderslie to ensure the application and drawings meet the requirements and are acceptable to both the County and the Municipality.
2. Applications will be considered on a case-by-case basis by the Municipality. A list of conditions to be met for approval may be sent to the County of Bruce. If the application is not acceptable, a list providing the reasons for non-approval will be provided to the County of Bruce.

3. The County of Bruce will contact the applicant with the approval or the conditions or approval, or the disapproval of the application.
4. If the proposed Sidewalk Patio is placed on both Municipal and County property, an encroachment agreement and/or permit will be required by both parties, along with the applicable fees.

Sidewalk Patio Conditions

1. No person shall establish a Sidewalk Patio unless a permit has been issued by the Municipality.
2. Sidewalk Patio furnishings, fences and other improvements must be removable and not permanently fixed in place. All objects must be contained within the approved Sidewalk Patio area and removed during the off-season or after the Sidewalk Patio ceases operation. The street, sidewalk and Municipal owned lands must be restored to its original condition to the satisfaction of the Municipality.
3. All Sidewalk Patios must comply with applicable Smoking Legislation and all other Federal, Provincial and Municipal Laws.
4. Music or other entertainment provided for patrons of Sidewalk Patio shall not be amplified or create a nuisance to abutting property owners. The Municipality reserves the right to revoke permits, without reimbursement of fees, where this nuisance occurs. Nuisance may include, but shall not be limited to, police reports of loud, boisterous or unreasonable noise, offensive language or other disruptive behaviour.
5. The Municipality and all public utility agencies retain the right of access to the approved Sidewalk Patio areas for the installation, maintenance and repair of pipes, cables, wires, poles, hydrants, etc. as necessary. In case of emergency, no notice will be given. For scheduled work, a minimum notice of forty-eight (48) hours will normally be given.

Sidewalk Patio Requirements

1. Information Requirements
The applicant shall submit a site plan illustrating the proposed location and placement of tables, chairs, fences, traffic safety barriers and all other accessories to be included within the defined patio space which

includes the patio building envelope and any utility poles, accessible parking spaces, trees, bike racks, benches, hydrants, parking metres, shelters, manholes, traffic signs, catch basins, awnings and any other physical or drainage features of the street within 6 metres (19.7 ft) of any public utility that may be affected by the development. If alcoholic beverages will be served, a copy of the establishments approved liquor licence allowing the sale and consumption of alcoholic beverages within the proposed area must be submitted along with the application.

2. Design

The design of the Sidewalk Patio shall be consistent with the character of the building, for which it serves as an accessory use. Patio aesthetics shall conform with the Municipality's community toolkits and façade improvement guidelines, where applicable.

3. Location:

Patios that extend from the building façade are required to ensure that a minimum 1.5 metre unobstructed pedestrian corridor is maintained. The unobstructed pedestrian corridor does not include the utility strip/boulevard area.

4. Fencing:

Fencing of a Sidewalk Patio that sells alcoholic beverages, must form a fully enclosed perimeter.

The fencing requirements are as follows and must be in compliance with the Alcohol and Gaming Commission of Ontario:

- a. The minimum height for fencing is 1.1 metres (42 inches) to a maximum of 1.2 metres (48 inches).
- b. Fencing shall be supported by metal foot plates and shall not be designed to penetrate the surface of the sidewalks (ie. No bolts/brackets) except as authorized by Public Works unless alternative supports are approved by the Municipality such as planters, weights, etc.
- c. Fencing should be of solid construction and be designed for easy removal from the site.
- d. Fencing shall not include point finials or similar features to the top of the fence.
- e. Fencing located within 6 metres (20 ft) of the intersection shall not obstruct the vehicular view angles as determined by the Municipality.
- f. Fencing to be removed by October 15th of each year to allow for sidewalk maintenance and snow clearing.
- g. Traffic safety barriers shall also be provided as an additional level of safety

5. Drainage:

Sidewalk Patio design shall ensure for proper drainage of water and other debris and shall not be placed in a way that will obstruct the curb, gutter and/or catch basins. Where debris and/or other matter has collected surrounding the installation, it shall be removed daily.

6. Umbrellas:

Umbrellas shall be located entirely within the approved Sidewalk Patio fence area.

7. Waste and Storage:

Sidewalk Patio operators shall maintain the Patio area, and the immediately adjacent area, in a clean and safe working condition at all times. Refuse containers are not allowed within the Patio area. The storage of waste is not allowed.

8. Access:

A Sidewalk Patio operator shall maintain a minimum width of 1.5 metres of unobstructed entrance to a Sidewalk Patio. Barrier free access shall be maintained.

8. Lighting:

Lighting of a Sidewalk Patio shall be approved provided all lighting is task oriented and will not spill onto abutting properties or interfere with the vehicular traffic travel lanes. All lighting shall be contained within the patio area.

9. Signs & Advertising:

No signs or advertising within a Sidewalk Patio shall be permitted with the exception of a menu and no smoking/no vaping sign(s).

10. Sidewalk Patio Furnishings:

All tables, chairs and decorative accessories in a Sidewalk Patio should be constructed using weather resistant materials. Any bar unit, service cart or server's workstation shall be portable and shall not be permanently attached to the wall of the facing building or the fencing. All furnishings and equipment with the exception of umbrellas shall not exceed the height of the fence.

11. Site Visibility Triangle:

Where Sidewalk Patios are located in proximity to intersections, staff will review the proposal to ensure that vehicular and

pedestrian safety is maintained. Patios may require alterations to ensure safety.

12. Hours of Operation:

Sidewalk Patios operations must comply with the provisions of the Municipal Noise By-Law currently in effect.

Application and Fees

Applications will be submitted to the Clerk and shall be reviewed by the Public Works Manager and Economic Development and Communications Coordinator, or their designate. Applications must be accompanied by the required fee as per the Municipality's Fees and Charges Bylaw.

Approval will be on an annual basis to ensure applications follow current legislative requirements.

Indemnification

The permit holder shall to the fullest extent permitted by law, hold harmless, defend at its own expense, and indemnify the Municipality of Arran-Elderslie, its officers, employees, agents, and volunteers, (the Municipality) against any and all liability, claims, losses, damages, or expenses, including reasonable attorney's fees, arising from all acts or omissions of the Permit Holder or its officers, agents, or employees by reason of, resulting from, or otherwise related to, either directly or indirectly, the presence or operation of the sidewalk encroachment; excluding, however, such liability, claims, losses, damages, or expenses arising from the Municipal's sole negligence or willful acts

Insurance

The permit holder must have Commercial General Liability Insurance including but not limited to bodily injury including death, personal injury, property damage, tenants legal liability and cross-liability/severability of interest provisions in the amount of Two Million Dollars (\$2,000,000.00) per occurrence with a property damage deductible not to exceed \$1,000 or as agreed to by Permit Holder and name The Corporation of The Municipality of Arran-Elderslie and the Corporation of the County of Bruce as an Additional Insured.

The Commercial General Liability Policy shall contain an endorsement to provide the Municipality of Arran-Elderslie with (30) days prior written notice of cancellation

The permit holder shall furnish the Municipality with a certified copy of the insurance policy or an insurance policy or an insurance certificate in a form acceptable to the Municipality prior to permit approval. The certificate shall be

mailed, faxed, emailed or dropped off to the Clerk's Department.

Any permit holder involved in the sale or furnishing of alcoholic beverages shall also maintain Liquor Liability Insurance with a minimum per occurrence limit of not less than Two Million Dollars (\$2,000,000.00) per occurrence. The Corporation of The Municipality of Arran-Elderslie and the Corporation of the County of Bruce shall be named as an Additional Insured on the Liquor Liability Insurance policy.

The Liquor Liability Insurance Policy, if required, shall contain an endorsement to provide the Municipality of Arran-Elderslie with (30) days prior written notice of cancellation. All insurance policies/coverage shall contain a Cross Liability and Severability of Interest clauses.

The permit holder shall maintain the required insurance coverage during the term of the permit. The Municipality may cancel a permit for failure to maintain or provide the required insurance coverage.

Compliance

Failure to comply with the terms of this policy and any additional conditions as provided on the approved permit will result in the termination of the permit. Permit holders will be provided notice in writing of the violation and provided a timeline of no more than three (3) calendar days to comply. If the violation is not corrected, the Municipality reserves the right to remove the items at the expense of the permit holder.

Patios erected on municipal property without a valid permit will be required to submit an application and applicable fee within three (3) calendar days. The Municipality reserves the right to remove all items at the expense of the owner if no application is received.

Inspection

To ensure compliance, the Public Works Manager or designate will inspect the associated features as approved in the application. If found to be non-compliant, the features will need to be remove