

BY-LAW NO. 2005- 115

THE CORPORATION OF THE CITY OF OWEN SOUND

A BY-LAW TO PROVIDE FOR THE LICENSING OF CERTAIN BUSINESSES

WHEREAS the Council of The Corporation of the City of Owen Sound deems it desirable to enact a By-law for licensing certain businesses within the City of Owen Sound; and

WHEREAS Section 150 of the Municipal Act, 2001 permits municipalities to licence, regulate and govern any business wholly or partly carried on within the municipality; and

WHEREAS, except as otherwise provided, a municipality may only exercise its licensing powers under this section, including imposing conditions, for one or more of the following purposes – health and safety, nuisance control, consumer protection; and

WHEREAS a By-law licensing or imposing any condition shall include an explanation as to the reason the municipality is licensing it or imposing the conditions and how that reason relates to the purposes under the Municipal Act, 2001, Section 150, sub-section (2); and

WHEREAS a public meeting was held on the 6th day of June, 2005 at which time a draft licensing By-law was considered relating to the licensing of businesses.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF OWEN SOUND HEREBY ENACTS AS FOLLOWS:

SECTION 1 - DEFINITIONS

1. For the purposes of this By-law the following definitions shall apply:
 - 1.1 “Auction” shall mean a public sale of goods or property in which prospective purchasers bid until the highest price is reached.
 - 1.2 “Auctioneer” shall mean a person who does the calling when goods, wares, merchandise or effects are sold by auction.
 - 1.3 “Business” shall mean a trade, business or occupation and includes the sale or hire of goods or services on an intermittent or one-time basis, the showing for the purpose of sale or hire of samples, patterns or specimens of any goods and an activity, but does not include:
 - 1.3.1 Manufacturing or Industrial Businesses;
 - 1.3.2 Wholesale Businesses;
 - 1.3.3 Natural Resource based businesses; and
 - 1.3.4 Exemptions by Ministerial Regulation.
 - 1.4 “City” shall mean the City of Owen Sound and municipal boundaries of the said City.
 - 1.5 “Clerk” shall mean the City Clerk of The Corporation of the City of Owen Sound.
 - 1.6 “Corporation” shall mean The Corporation of the City of Owen Sound.

- 1.7 “Council” shall mean the Council of The Corporation of the City of Owen Sound.
- 1.8 “Hawker or Peddler” shall mean any person who goes from place to place or to a particular place with goods, wares or merchandise for sale or who carries and exposes samples, patterns or specimens of any goods, wares or merchandise to be delivered in the City of Owen Sound afterwards.
- 1.9 “Home Occupation” shall mean a business or occupational use conducted within a dwelling unit or an accessory building or structure thereto as an accessory use to the residential use, in accordance with the rules provided within the City’s Zoning By-law, as amended.
- 1.10 “Licence” shall mean a licence issued pursuant to this By-law.
- 1.11 “Licensed Premises” shall mean the premises where the licensee carries on their licensed business.
- 1.12 “Licensee” shall mean a person licensed under this By-law.
- 1.13 “Masculine” shall include the feminine gender and the neuter.
- 1.14 “Medical Officer of Health” shall mean the Medical Officer of Health of the Bruce-Grey Health Unit or his/her subordinates to whom may be delegated such authority from time to time.
- 1.15 “Person” shall mean not only an individual but also a partnership and corporate body, and association and the heirs, executors, administrators, successors and assigns or other legal representative thereof.
- 1.16 “Refreshment Vehicle” shall mean any vehicle or conveyance which is so designed as to be capable of being used and is used for the purpose of the sale of dispensing of food or drinks intended for consumption by the general public.
- 1.17 “Singular” includes the plural and the plural includes the singular.
- 1.18 “Transient Trader” shall mean a person who offers goods, wares or merchandise for sale in any manner in the municipality:
- 1.18.1 other than on a permanent basis, or
- 1.18.2 on a permanent basis if the total time the person has operated the business on a permanent basis and the time the person continuously resided in the municipality immediately before beginning to operate the business on a permanent basis is less than three months.

SECTION 2 – LICENSES

- 2.1 No person shall carry on any business within the City of Owen Sound until securing from the Corporation a licence authorizing the person to carry on such business and shall have paid to the Corporation at or before the time of making application for such licence the fee (Schedule 3) therefor fixed by this By-law. In the case of the licence fee mentioned above, no refund in part or in whole shall be made by the Corporation notwithstanding the non-issuance of the licence applied for.

- 2.2 For clarification, without limiting the generality of subparagraph 2 hereof, licences are required to be taken out by:
- 2.2.1 every Auctioneer (Schedule 4)
- Reason: Auctioneers are transient in nature. They are not regulated by any other governmental body or association. There is the potential for consumers to be taken advantage of. These reasons relate to the consumer protection authority.
- 2.2.2 every person who owns or operates a Refreshment Vehicle (Schedule 9)
- Reason: Refreshment Vehicle operators handle and store food thereby creating the potential for illness or disease to be transmitted through this activity. These reasons relate to the health and safety and consumer protection authorities.
- 2.2.3 every Hawker and Peddler (Schedule 7)
- Reason: Hawkers and Peddlers are transient in nature. They are not regulated by any other governmental body or association other than Provincial legislation regarding a customers ability to terminate a purchase shortly after the purchase. There is the potential for consumers to be taken advantage of. Products sold include food items. These reasons relate to the consumer protection and health and safety authorities.
- 2.2.4 every Transient Trader (Schedule 10)
- Reason: A Transient Trader is transient in nature. However, a Transient Trader may occupy a business location that would require inspections and clearances from departments and agencies in order to ensure that the business premises are safe for the public. Customers could potentially be put in situations where they can be easily intimidated or taken advantage of. These reasons relate to the health and safety and consumer protections authorities.
- 2.2.5 every Barber Shop (Schedule 6) or Beauty Salon (Schedule 5) (Hairdressing Establishment) operator
- Reason: The operation of a Barber Shop or a Beauty Salon contains an element of risk for clients. There is potential for illness or disease to be transmitted through this activity. These reasons relate to health and safety.
- 2.2.6 every person who operates a Home Occupation (Schedule 2)
- Reason: There is the potential for the storage of hazardous materials. There is the possibility that noise, odour or light could disturb the surrounding residences. A Home Occupation occupies a location that would require inspections and clearances from departments and agencies in order to ensure that the business premises are safe for the operator and clients. These reasons relate to health and safety and nuisance control.
- 2.2.7 Refreshment Bicycle (Schedule 8)
- Reason: Refreshment bicycle operators handle and store food thereby creating the potential for illness and disease to be transmitted through this activity. These reasons relate to the health and safety and consumer protection authorities.

SECTION 3 – REGULATION AND ENFORCEMENT

- 3.1 The Clerk shall be charged with the administration of this By-law and the maintenance of all records relating thereto and without limiting the generality of the foregoing and in addition to all other duties as set out in this By-law shall:
- 3.1.1 receive all applications for licenses on forms prescribed by the Corporation (Schedule 1 or Schedule 2)
 - 3.1.2 subject to the provisions of Section 3.4 hereof respecting licence renewals the Clerk shall place all new licence applications before City Council for approval in principle
 - 3.1.3 upon receipt of an application, obtain compliance letters from the Bruce-Grey Health Unit and the Fire and Emergency Services Department, Building and Planning and Development Divisions, or any successor Divisions or Departments of the City of Owen Sound and consent of the landlord or condominium corporation in the case of a home occupation business that may be allowed in accordance with the regulations contained within the City's Zoning By-law.
 - 3.1.4 when City Council has approved a business licence application in principle and the Clerk is satisfied that the issuance of a licence is in accordance with the provisions of this By-law, and all other applicable legislation and is not adverse to the public interest, effect issuance of the licence
 - 3.1.5 when of the opinion that the issuance of a licence would not be in compliance with the provisions for this By-law and all other applicable legislation or would be adverse to the public interest, refer the application to the Council of the City of Owen Sound for consideration
 - 3.1.6 furnish each person and corporation issued a licence pursuant to the provisions of this By-law with a copy of the By-law
- 3.2 The Clerk may demand from an applicant that the original or a copy of any deed, document, lease or any other paper or instrument be submitted or produced in order to be satisfied that the applicant is the owner or occupant of property as defined in Section 1 of this By-law.
- 3.3 Notwithstanding the other provisions of this By-law, the duties of the Clerk shall include the following:
- 3.3.1 report to Council whenever required by them to do so
 - 3.3.2 make, or cause to be made, all necessary investigations in connection with all violations and complaints with respect to the provisions of this By-law and the suspension and revocation of licences and report the same to the Council
 - 3.3.3 inspect, or cause to be inspected, any premises or vehicle for which a licence is applied for and re-inspect, or cause to be re-inspected, every such premises or vehicle during the times as may be deemed necessary while such licence is in effect
 - 3.3.4 ascertain by inspection and enquiry, from time to time or as often as may be required, whether or not licensees continue to comply with the provisions of this By-law

- 3.3.5 when the Clerk is of the opinion that there has been a breach of any of the provisions of this By-law, the Clerk shall, as soon as possible thereafter, report the facts to Council

RENEWAL OF LICENCE

- 3.4.1 The Clerk may renew an existing licence upon production by the applicant of the existing licence, and at or before the time of making application for the renewal of such licence, the applicant shall pay the fee established by this By-law.
- 3.4.2 Before renewing a licence, the Clerk shall be satisfied that, where applicable, no reports have been received to the effect that the licensee has failed to comply with:
- 3.4.2.1 the regulations within the jurisdiction of the Medical Officer of Health for the Bruce-Grey Health Unit
 - 3.4.2.2 the fire, zoning, building, or minimum standards requirements of the City of Owen Sound
 - 3.4.2.3 the requirements of residence, where applicable
 - 3.4.2.4 all other relevant provisions of this By-law
- 3.4.3 An application for renewal of a licence shall be submitted to the Clerk no later than three months following the expiry of a licence. After three months it will not be considered a renewal and the application will be processed and considered a new application.

NON-ISSUANCE OR REVOCATION OF LICENCE

- 3.5.1 A licence will be refused, or subsequently revoked, if there are circumstances which exist, or arise, relating to the applicant or the business which affords reasonable grounds for belief that to grant or to permit the continuation of the licence would infringe the rights, health or safety of other members of the public. Non-payment of fines levied by a Court under this By-law or a predecessor is a reason to refuse a licence or a renewal thereof.
- 3.5.2 No person shall enjoy a vested right in the continuance of a licence and upon the issue, renewal, revocation or suspension of a licence, the licence and any municipal plate shall remain the property of the Corporation.
- 3.5.3 The Clerk shall prescribe the forms to be used in the administration of this By-law and all applications required to be submitted pursuant to the provisions of this By-law shall be made on the forms provided therefor by the Clerk.
- 3.6.1 Council may revoke, suspend or refuse to issue or renew any licence.
- 3.6.2 Council may, in exercising the discretion mentioned in paragraph 3.6 hereof, consider any matter raised or any other ground that relates to the general welfare, health or safety of the public or the community.
- 3.6.3 Council shall not make a decision under paragraph 3.6 hereof without first affording the person or applicant the opportunity to be heard before Council.

- 3.6.4 After such opportunity to be heard is afforded the person or applicant, Council may make any decision in respect of which the hearing was held or the opportunity for hearing afforded without holding a hearing or affording an opportunity for a hearing in such manner.
- 3.6.5 Written notice of the decision of Council shall be given by the Clerk to the person or applicant, said notice to be served personally or by registered mail to the person or applicant at the address shown on their application and the decision of Council shall be effective as at the time of personal service or mailing, as the case may be.

POSTING UP OF LICENCE

- 3.7 Every person obtaining a licence under this By-law shall:
- 3.7.1 where the licence applies to premises, keep their licence posted in some conspicuous place on the premises in respect to which the licence is issued and every person so licensed shall, when requested to by any person authorized by Council, produce the licence for inspection.
- 3.7.2 where the same does not apply to premises, keep on their person the licence issued and every person so licensed when requested to do so by any person authorized by Council shall produce the licence for inspection.
- 3.7.3 where the licence applies to a vehicle, keep on the person driving such particular vehicle the individual licence issued with respect to said vehicle and shall, when requested to by any person authorized by Council, produce the licence for inspection and where plates are issued with respect to such individual licence, the plates shall be securely fixed to the back of the vehicle in a position approved by the Clerk

PARTNERSHIPS

- 3.8 In the case of partnerships or any other like combination or association, no more than one licence shall be required to be taken out for any one place, business or premises, but when application for licence is made, the names and addresses of each member of the partnership or business shall be set forth thereon.

INSPECTION OF RECORDS

- 3.9 The Clerk or any other person duly authorized by Council or by this By-law may at all reasonable times, inspect as much of any house, place or premises as is used for any business in respect of which any person has or is required to have a licence under this By-law and any such person so authorized may, when the need arises and is required by this By-law or schedules of this By-law to do so, inspect the books, records and other documents of or relating to any such business and no person who has or is required to have a licence under this By-law shall obstruct or hinder the making of the inspection aforesaid or cause or permit the same to be obstructed or hindered.

MEDICAL OFFICER OF HEALTH

- 3.10 All premises licensed under this By-law may be inspected at any reasonable time by the Medical Officer of Health and no licensee shall obstruct or interfere with the said Medical Officer of Health in making any such inspection. If it appears to the Medical Officer of Health that there exists in or upon such premises any unclean or

unsanitary condition or practice, the licensee may be ordered by the Medical Officer of Health to remedy such condition or such practice and failure to do so shall be a breach of this By-law.

LICENCE PERSONAL

- 3.11 No person shall enjoy vested right in the continuance of a licence and upon the issue, renewal or transfer, cancellation or suspensions thereof, the value of the licence shall be in the property of The Corporation of the City of Owen Sound.

TRANSFER OF LICENCE

- 3.12 No licence shall be transferred except with the consent in writing of the Corporation and the Corporation shall not be bound to give such consent.

CONDUCT ON PREMISES

- 3.13 No person licensed under this By-law shall:
- 3.13.1 permit any sign, poster or advertising device being portable or stationary to be located on the premises of the licensee without such sign, poster or advertising device being first approved as to size, type and location by the City of Owen Sound and paying the permit fee, where applicable

APPLICATION OF SCHEDULES

- 3.14.1 Every person applying for or holding a licence under this By-law, shall in such application or in carrying on or engaging in the business in respect of which a licence is issued, observe, comply with and be governed by the regulations set out in the respective schedules to this By-law which relates to such person and the said schedules and regulations contained therein shall be and they hereby form a part of this By-law.
- 3.14.2 The City Clerk shall be empowered to make adjustments of an administrative nature from time to time to Schedules 1 and 2 being the City of Owen Sound General Business Licence Application and City of Owen Sound Home Occupation Business Licence Application respectively.

EXPIRY DATE AND FEES

- 3.15 The licences for the businesses referred to in this By-law shall, unless they are expressed to be for a shorter or longer time, be for one (1) year unless they are sooner forfeited or revoked.

INDEMNIFY AND SAVE HARMLESS THE CITY OF OWEN SOUND

- 3.16.1 The granting of a licence under the provisions of this By-law shall be dependent on that the licensee shall indemnify and save harmless The Corporation of the City of Owen Sound, its servants, workers, contractors and agents from all loss, damage suits, costs and expenses of every nature and kind arising from or in consequence with the carrying on of said business, trade, calling or occupation.

- 3.16.2 Where applicable, any person making application for a licence shall provide to the City of Owen Sound, proof of insurance for public liability in the amount of Two Million Dollars (\$2,000,000.00) inclusive of bodily injuries, property damage and accident benefits, for damage occasioned by any accident arising out of the operation of said business, trade, calling, or occupation.
- 3.16.3 Further said proof of insurance shall name The Corporation of the City of Owen Sound as an additional insured party, under the terms and conditions of the insurance policy.

ZONING

- 3.17 All licence holders shall obey any other By-laws passed by The Corporation of the City of Owen Sound. The issuance of a licence does not give to the licensee the right to locate their particular place of business in any area where the Zoning By-law does not permit the carrying on of such business. This clause is not to be construed as preventing the carrying on of such business where the licence holder has been carrying on any business as a legal non-conforming use.

PENALTY

- 3.18.1 Any person who contravenes any of the provisions of this By-law is guilty of an offence.
- 3.18.2 Any person convicted of an offence under any section of this By-law shall forfeit and pay a fine which shall be recovered under the provisions of the Provincial Offences Act.
- 3.18.3 In accordance with Sections 150 (8) (k) of the Municipal Act, 2001, C.25, the City may require the payment by a licensed business of additional fees at any time during the term of the licence for costs incurred by the city attributable to the activities of the business.

SCHEDULES

- 3.19 Schedules 1 through 10 attached hereto are hereby declared to be and do form part of this By-law.

HEADINGS NOT PART OF THIS BY-LAW

- 3.20 The headings in the body or Schedules of this By-law form no part of the By-law but are inserted for convenience of reference only.

BY-LAWS REPEALED

- 3.21.1 That By-law 2001-007, as amended by By-law Numbers 2001-043, 2001-068, 2002-196 be hereby repealed.
- 3.21.2 That any other By-laws, or parts thereof, that are inconsistent with the provisions of this by-law are hereby deemed to be repealed.

SECTION 4 – SEVERABILITY

4. If, for any reason, any section, clause or provision of this By-law is declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this By-law as a whole or any part thereof, other than the part which was declared to be invalid.

5. This By-law may be known by a short name and cited as “The City of Owen Sound Business Licensing By-law”.
6. This By-law shall come into full force and effect upon the final passing thereof.

FINALLY PASSED AND ENACTED this 20th day of June, 2005.

Mayor

Clerk