



## THE CORPORATION OF THE CITY OF THUNDER BAY

### BY-LAW NUMBER 155-2005

A By-law pursuant to Section 150 of the *Municipal Act, 2001* to provide for the Licensing and Regulation of Eating Establishments and/or Food Shops for health and safety reasons in the City of Thunder Bay, in the District of Thunder Bay.

#### Recitals

1. The *Municipal Act, 2001*, authorizes Council to license and regulate a variety of businesses and events.
2. The authority in the *Municipal Act, 2001* includes: the power to issue Licenses on condition, revoke Licenses, suspend Licenses, to regulate or govern the place used in the carrying on of business, and many other matters.
3. Council considers it appropriate to license Eating Establishments and Food Shops in Thunder Bay. From a health standpoint, licensing enables regular inspections to facilitate compliance with health and cleanliness standards. It also enables linking the License to carry on the Business with compliance with Health Related Legislation. From a safety standpoint, licensing enables regular inspections to facilitate compliance with safety legislation including the *Fire Protection and Prevention Act, 1997*. From a nuisance prevention standpoint, licensing enables linking the License to carry on the Business with compliance with Nuisance Prevention Legislation. From a consumer protection standpoint, licensing enables linking the License to carry on the Business with Consumer Protection Legislation.

ACCORDINGLY, THE COUNCIL OF THE CORPORATION OF THE CITY OF THUNDER BAY ENACTS AS FOLLOWS:

#### **ARTICLE 1.00: INTERPRETATION**

##### 1.01 **Definitions**

Wherever a term set out below appears in the text of this By-law with its initial letter capitalized, the term is intended to have the meaning set out for it in this Section 1.01. Wherever a term below appears in the text of this By-law in regular case, it is intended to have the meaning ordinarily attributed to it in the English language.

- (a) **“Applicant”** means the person making application for issuance or renewal of a License under this By-law to Operate a Business in Thunder Bay.

- (b) **“Business”** means the Operation of an Eating Establishment and/or Food Shop that prepares and/or sells Food and Drink for immediate or later consumption, whether the Food and Drink is to be consumed on or off the premises. The term expressly excludes any business which is Licensed under a separate by-law of the City, or any business which is not subject to licensing by the City. The term expressly excludes each of the following:
- (i) premises that sell food solely through vending machines;
  - (ii) institutional food services (including: hospitals, nursing homes, homes for the elderly, day care centres or school nutrition programs);
  - (iii) milk pasteurization plants or milk storage depots;
  - (iv) water bottling facilities and/or ice manufacturing plants;
  - (v) special events at which food is sold;
  - (vi) lodging houses or bed & breakfast establishments;
  - (vii) hotels, as per the *Hotel Registration of Guests Act*; and
  - (viii) refreshment vehicles as defined in By-law 163-2005.
- (c) **“By-law”** means this By-law, as it may be amended from time to time, unless another by-law is expressly referenced by name or number. The Recitals to, and the Schedules attached to this By-law are considered integral parts of it.
- (d) **“Chief Building Official”** means the person within the City’s administration who fulfills the function of the chief building official as required by the *Building Code Act, 1992*, or his or her designate.
- (e) **“City”** means The Corporation of the City of Thunder Bay.
- (f) **“Committee”** means the committee of Council to which Council has delegated the responsibility of handling Licensing matters. Where there has been no delegation, the term refers to the Committee of the Whole.
- (g) **“Consumer Protection Legislation”** means any City by-law or Provincial legislation which regulates activity in order to protect consumers. For example, the *Liquor License Act* prohibits the sale of alcohol to minors to protect those consumers.
- (h) **“Council”** means the elected municipal council for the City.

- (i) **“Eating Establishment”** means a restaurant, refreshment stand and/or take out centre where food is prepared and offered for retail sale and where facilities are provided for the immediate consumption of such food on the premises.
- (j) **“Fire Chief”** means the person within the City’s administration who fulfills the function of the fire chief as required by the *Fire Protection and Prevention Act, 1997*. The term also includes his or her designate.
- (k) **“Food and Drink”** includes either food or drink, and includes any and every kind of food, refreshment, alcoholic or non-alcoholic beverage and any other commodity intended for human consumption.
- (l) **“Food Shop”** means any place wherein food stuffs including meats and meat by-products intended for human consumption are made for sale, offered for sale, stored or sold, but is not intended to be a place where food stuffs are consumed on the premises.
- (m) **“Health Related Legislation”** means any City by-law or Provincial legislation which regulates activity in order to protect or preserve human health. For example, the City’s Smoking Prohibition By-law prohibits smoking in Eating Establishments to protect food service industry employees from the health effects of second-hand smoke.
- (n) **“License”** means a License to Operate a Business issued pursuant to this By-law.
- (o) **“Licensee”** means the holder of a License.
- (p) **“Manager”** means the Manager of the Licensing & Enforcement Division of the Development Services Department for the City. The term also includes his or her designate.
- (q) **“Medical Officer of Health”** means the Medical Officer of Health of the Health Unit. The term also includes his or her designate.
- (r) **“Municipal Law Enforcement Officer”** means a Police Officer, a law enforcement officer, the Manager, or another person duly appointed to enforce the by-laws of the City.
- (s) **“Not For Profit Organization”** means an organization, which is either (a) created primarily for a charitable object or purpose in Ontario, (b) is operated not for profit, (c) a registered charity as described in Subsection 248(1) of the *Income Tax Act* (Canada).

- (t) **“Nuisance Related Legislation”** means any City by-law or Provincial legislation which regulates activity in order to protect people from things considered to be nuisances. For example, the City’s Noise Prohibition By-law regulates noise emission in order to strike a balance between enjoyment of property and reasonable sound associated with urban living.
- (u) **“Operator”** means a person who has care and control of a Business at any given point in time. The term includes any one or more of the following persons:
  - (i) the Owner of a location from which a Business is conducted;
  - (ii) the Operator of a Business;
  - (iii) the occupier of a location from which a Business is conducted;
  - (iv) one who assists or acts on behalf of the Owner or occupier of a location from which a Business is conducted, including a manager or supervisor;
  - (v) one who has the care or management of a location from which a Business is conducted; or
  - (vi) a Licensee.

The terms **“Operate”**, **“Operation”** and words of like import or intent have corresponding meanings.

- (v) **“Owner”** means a person with legal title to real or personal property. The terms **“Own”**, **“Ownership”**, and words of like import or intent have corresponding meanings.
- (w) **“Police”** means the Thunder Bay Police Service.
- (x) **“Thunder Bay”** means the geographic area under the jurisdiction of the City.

## 1.02 **Legislation, By-laws**

Each reference to Provincial legislation in this By-law is printed in *Italic font* and, unless otherwise specified, is a reference to the Revised Statutes of Ontario, 1990 edition, and, in every case, includes all applicable amendments to the legislation, including successor legislation. Each reference to another by-law in this By-law, unless otherwise specified, is a reference to a by-law of the City, and, in every case, includes all applicable amendments to this By-law, including successor By-laws.

1.03 **Construing this By-law**

The captions, articles and section names and numbers appearing in this By-law are for convenience of reference only and have no effect on its interpretation. This By-law is to be read with all changes of gender or number required by the context. The words “**include**”, “**includes**”, “**including**” and “**included**” are not to be interpreted as restricting or modifying the words or phrases which precede them.

1.04 **Severability**

If a court or tribunal of competent jurisdiction declares any portion of this By-law to be illegal or unenforceable, that portion of this By-law will be considered to be severed from the balance of the By-law, which will continue to operate in full force.

**ARTICLE 2.00: ADMINISTRATION OF THIS BY-LAW**

2.01 **Administration of By-law**

Unless otherwise indicated, the administration of this By-law is assigned to the Manager, who may delegate the performance of his or her functions under this By-law from time to time as occasion requires.

2.02 **Application**

Applications for all Licenses under the provisions of this By-law:

- (a) shall be made to the office of the Licensing & Enforcement Division of the Development Services Department of the City, on forms to be provided;
- (b) when received by the Licensing & Enforcement Division office, will be stamped with the date of receipt and processed in the order in which they are received; and
- (c) must be finalized unless a hearing before the Committee is pending within thirty (30) days of the date referenced in (b).

2.03 **Application Information Required**

Every Applicant shall provide in full, at the time the application is submitted, all of the information requested on the application form as well as:

- (a) payment of the prescribed License fee as set out in By-law Number 297-2002;

- (b) if applicable, the identification of the site or sites to be authorized by the License; and
- (c) any other document or information as may be required in any other part of this By-law.

2.04 **License Fee**

The fee for obtaining a License shall be as set out in By-law Number 297-2002. No fee is refundable except in the event that a License is revoked by reason of municipal staff error. In that case the Licensee is entitled to a full refund.

2.05 **Application Subject to Approval**

Every site for which the Applicant seeks a License for an Eating Establishment and/or Food Shop is subject to investigation approvals from the Health Unit, the City's Fire Services Department and the Licensing & Enforcement Division of the City's Development Services Department.

2.06 **License Surrender**

Licensee may at any time surrender a License. Surrender of a License does not entitle the Licensee to a refund of all or any portion of the License fee paid.

2.07 **Transfer Prohibited**

Every License, at all times, is Owned by the City and is valid only in respect of the person and/or the site named in the License. No License may be sold, purchased, leased, mortgaged, charged, encumbered or assigned. Should a Business relocate, the Licensee must apply for a new License for the new site.

2.08 **Circulation Requirement**

Before issuance of a License, the Applicant shall circulate the application to those persons or agencies as set out in the relevant application, as applicable to the class and status of the License. In all cases, the Manager shall confirm with the Development Services Department that the zone for the site from which the Business is to be carried out is appropriate.

## 2.09 **Negative Comments**

The circulation referred to in Section 2.08 may result in negative comments to the Manager. Negative comments may result in the denial of the application under this By-law. Alternatively, negative comments may result in the issuance of a License upon specific conditions. Examples of negative comments include:

- (a) the Applicant's premises or place of Business is the object of an order to comply made under the Property Standards By-law, or an order made under the *Building Code Act, 1992*;
- (b) the Applicant's premises (or use of those premises for the Business) are not in compliance with the Zoning By-law or any other applicable by-law of the City;
- (c) the Applicant's premises require corrective action pursuant to an order of the Medical Officer of Health;
- (d) the Applicant's premises require corrective action pursuant to an order of the Fire Chief;
- (e) the Applicant's premises (or use of such for the Business) require modification in order to remove a barrier as that term is defined in the *Ontarians With Disabilities Act, 2001* or similar legislation;
- (f) the Applicant was previously convicted of an offence pursuant to this (or a predecessor) By-law; or
- (g) the Applicant is financially obligated to the City in some manner.

## 2.10 **Denial**

Where an application is denied, the reasons for the denial shall be specified in writing, and the Manager shall provide the Applicant with the reasons.

## 2.11 **License Issuance**

Where no negative comments are received as a result of the circulation required by Section 2.08, and where the Applicant's documentation is in order and the applicable fee has been paid, the Manager shall grant the License, or the renewal, as applicable, to the Applicant.

2.12 **License with Conditions**

The Manager may, in response to negative comments resulting from the circulation required in Section 2.08, issue a License subject to specific conditions. The conditions must address any deficiencies identified in the negative comments.

2.13 **Time Limit**

Except as otherwise provided in this By-law, Licenses shall come into effect on the date that they are issued and expire one year from the date of issue.

2.14 **Posting Licenses**

The Licensee shall post the License in a conspicuous place at each site to which the License applies. This Section of the By-law may be complied with through posting of a photocopy or other reproduction of the License, provided the original License is maintained at the site of the Business and can be readily produced upon request.

2.15 **Duplicate License**

A duplicate License may be issued by the Manager to replace any License previously issued which has been lost, stolen or destroyed, upon written application by the Licensee and upon payment of a fee as set out in By-law Number 297-2002.

2.16 **Revocation or Suspension**

No person enjoys a vested right in the continuance of a License. The Manager may recommend to the Committee that a License be revoked or suspended for a certain period of time in the following circumstances:

- (a) the Licensee is unable to hold the License or carry on the Business under this By-law or any other legislation;
- (b) the Licensee fails to comply with any condition imposed upon the License under Section 2.12 of this By-law;
- (c) the Licensee has been convicted of an offence pursuant to this By-law on more than one (1) occasion within a twelve (12) month period; or
- (d) the Licensee has been convicted of any offence pursuant to Health Related Legislation, Nuisance Related Legislation or Consumer Protection Legislation involving the Business.



## 2.17 **Renewals**

If the facts, conditions and negative comments are the same as had been received in a prior year, and if the Manager or the Committee authorized that License issue for that prior time period, the Manager may renew the License. Notwithstanding this Section, all renewal applications are subject to any circulation requirements pursuant to Section 2.08.

## **ARTICLE 3.00: REGULATIONS & OFFENCES**

### 3.01 **Operating without a License**

It is an offence for a person to Operate a Business without having first taken out a License from the City pursuant to this By-law.

### 3.02 **Operation at Unauthorized Site**

It is an offence for any person to Operate a Business from a site which is not authorized by a License.

### 3.03 **Cessation or Sale of a Business**

It is an offence for a Licensee to fail to report to the Manager the cessation or sale of his or her Business.

### 3.04 **Change of Address**

It is an offence for a Licensee to fail to report to the Manager every change of mailing address or telephone number of that Licensee within fifteen (15) days of the change.

### 3.05 **Fail to Post License**

It is an offence for a Licensee to fail to post the License in a conspicuous place at each site to which the License applies.

## **ARTICLE 4.00: INSPECTIONS**

### 4.01 **Inspections**

The Manager, the Medical Officer of Health, the Fire Chief, a Municipal Law Enforcement Officer, or any person acting under those persons, may at reasonable times, during regular business hours, inspect:

- (a) any premises or place where a Business is carried on or there are reasonable and probable grounds to believe a Business is being carried on; and/or
- (b) any goods, equipment, books, records or documents used or to be used by the Operator in connection with the Business.

4.02 **Hindering Inspections**

It is an offence for any person to hinder or obstruct or to attempt to hinder or obstruct any person exercising any power authorized by Section 4.01.

4.03 **Re-Inspection Fee**

When a re-inspection is required to:

- (a) confirm compliance with a condition imposed;
- (b) rectify a deficiency to prevent negative comments; or
- (c) because the Applicant or Operator failed to appear at a scheduled inspection;

a fee may be charged as set out in By-law Number 297-2002.

**ARTICLE 5.00: COMMITTEE**

5.01 **Delegation to Committee**

Pursuant to Section 468 of the *Municipal Act, 2001* general licensing powers contained in Part IV of the *Municipal Act, 2001* are assigned by the Council to the Committee. The Committee shall make all final decisions with respect to refusal to issue, suspension or revocation of a License under this By-law.

5.02 **Applicant Request for Hearing**

An Applicant may, upon payment of the fee set out in By-law 297-2002, request a hearing of the Committee to:

- (a) review the determination by the Manager under Section 2.10 that the application for a License be denied; or
- (b) review any conditions imposed upon a License pursuant to Section 2.12 of the By-law.

The request for a hearing under Section 5.02(a) shall be provide to the Manager within fifteen (15) days of the date that the Applicant received the reasons for the denial under Section 2.10. the request for a hearing under Section 5.02(b) shall be provided to the Manager within fifteen (15) days of the date the License was issued.

5.03 **Administration Request for Hearing**

Where the Manager intends to recommend to the Committee that a License be revoked or suspended, he or she shall give notice of the intended recommendation to the Applicant or Licensee, together with the reason for the intended recommendation, as well as to such other persons, civic departments, boards, commissions, authorities or agencies as appear to have an interest in the recommendation. The notice shall include the details required by Section 5.04 of this By-law.

5.04 **Notice of Hearing**

The notice required by Section 5.03 shall:

- (a) contain a reference to Sections 150 and 252 of the *Municipal Act, 2001* under which the hearing will be held;
- (b) contain the reasons for the proposed conditions, refusal, suspension or revocation;
- (c) specify the time, place and purpose of the hearing of the Committee at which the proposed refusal, suspension or revocation will be considered;
- (d) inform the affected Applicant or Licensee that he or she is entitled to attend the hearing and to present evidence and to make submissions regarding the proposal and that, in his or her absence, the Committee may proceed to consider the proposal, and the Applicant or Licensee will not be entitled to any further notice of the proceeding;
- (e) afford the affected Applicant or Licensee a reasonable opportunity, before the hearing, to show or achieve compliance with all lawful requirements for the retention of the License; and
- (f) be given at least fifteen (15) days notice prior to the date of the Committee hearing.

5.05 **Hearing by Committee**

At the hearing, the Committee may suspend, revoke or refuse to issue any License, may amend conditions imposed on a License, or may add conditions to a License:

- (a) for any reason that would deny the Licensee for a License if he or she were an Applicant;
- (b) where the Licensee or Applicant is in breach of a condition of the License or of this By-law;
- (c) if a report is filed subsequent to the date of the issuance of the License or by any department or agency which originally provided its approval to the issuance of the License which indicates that the Licensee no longer complies with any of the provisions of this By-law; or
- (d) if the conduct of an Applicant or Licensee affords reasonable cause to believe that the Applicant or Licensee will not carry on or engage in the Business in accordance with the law or with honesty or integrity.

#### 5.06 **Committee Decision**

A decision of the Committee refusing, suspending, amending or adding conditions to, or revoking an application or License takes effect upon the rendering of the decision by the Committee.

### **ARTICLE 6.00: ENFORCEMENT AND PENALTIES**

#### 6.01 **Enforcement**

This By-law may be enforced by any Municipal Law Enforcement Officer.

#### 6.02 **Penalties**

Every person who commits an offence pursuant to this By-law is liable, upon conviction, to the penalties prescribed in the *Provincial Offences Act*.

### **ARTICLE 7.00: PREDECESSOR BY-LAWS; EFFECTIVE DATE**

#### 7.01 **References to Predecessor By-laws**

References in other by-laws of the City to any historically applicable licensing by-law for Food Shops, Eating Establishments, or words imparting the same meaning are deemed to be references to this By-law.

**7.02 Effective Date**

This By-law shall come into force and take effect on January 1, 2006.

Enacted and passed this 19th day of December, A.D. 2005 as witnessed by the Seal of the Corporation and the hands of its proper Officers.

Lynn Peterson

Mayor

Bonnie Nistico

Deputy City Clerk