



## THE CORPORATION OF THE CITY OF THUNDER BAY

### BY-LAW NUMBER 160-2005

A By-law pursuant to Section 150 of the *Municipal Act, 2001* to provide for the Licensing, Regulation and Governance of Peddlers for consumer protection 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 Peddlers who transact business in Thunder Bay. Peddlers are regulated in Thunder Bay for the purposes of consumer protection and safety. From a consumer protection standpoint, itinerant vendors should be traceable. From a safety standpoint, persons with certain criminal records should not be licensed to peddle wares on a door-to-door basis.

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

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

##### 1.01 **Definitions**

Wherever a word is used in this By-law with its first letter capitalized, the term is being used as it is defined in this section 1.01, or, alternatively, in the section of the appropriate Schedule which defines terms. Where any word appears in ordinary case, its regularly applied meaning in the English language is intended.

- (a) “**Applicant**” means the person making application for issuance of a License under this By-law to Operate a business in Thunder Bay.
- (b) “**Business**” means either (a) the sale of goods from place to place whether the goods are displayed physically or by catalogue, and whether the goods are sold immediately or delivered at a later date; or (b) the sale of goods from a single location for a limited period of time by a person who does not otherwise have a business in Thunder Bay.

- (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) “**City**” means The Corporation of the City of Thunder Bay.
- (e) “**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.
- (f) “**Council**” means the elected municipal council for the City.
- (g) “**License**” means a License to Operate a Business issued pursuant to this By-law. There are two (2) classes of Peddler License as follows:
  - (i) Stationary Peddlers License issued to a Person conducting a time-limited sale of goods a single location in Thunder Bay.
  - (ii) Peddler License issued to a Person who sells goods from place to place in Thunder Bay.
- (h) “**Licensee**” means the holder of a License.
- (i) “**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.
- (j) “**Medical Officer of Health**” means the Medical Officer of Health of the Health Unit. The term also includes his or her designate.
- (k) “**Municipal Law Enforcement Officer**” means a Police Officer, law enforcement officer, the Manager, or another person duly appointed to enforce the by-laws of the City.
- (l) “**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).
- (m) “**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 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.

- (n) “**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.
- (o) “**Peddler**” means a Person who carries on a Business in Thunder Bay.
- (p) “**Police**” means the Thunder Bay Police Service.
- (q) “**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 Corporation, and, in every case, includes all applicable amendments to this By-law, including successor by-laws.

#### 1.03 **Construing this By-law**

The captions, article 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 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 or Council is pending within thirty (30) days of the date referenced in (b).
- (d) shall clearly indicate on the application whether the Peddler will sell from place to place or whether the Peddler will sell from one location only. The License issued shall clearly specify whether the Licensee is authorized to sell from place to place or from a specified location.

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) identification of the site, if any, to be authorized by the License;
- (c) written permission from the site owner, to conduct the Business; and

- (d) 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 Stationary Peddler License will be subject to investigation approvals from the City's Police Services Department and the Licensing & Enforcement Division of the City's Development Services Department.

2.06 **License Surrender**

A 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 Stationary Peddler 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 may include:

- (a) the site from which the Stationary Peddler Business is to operate 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 site from which the Stationary Peddler Business is to operate (or use of those premises for the Business) is not in compliance with the Zoning By-law or any other applicable by-law of the City;
- (c) the site from which the Stationary Peddler Business is to operate requires corrective action pursuant to an order of the Medical Officer of Health;
- (d) the site from which the Stationary Peddler Business is to operate requires corrective action pursuant to an order of the Fire Chief;
- (e) the site from which the Stationary Peddler Business is to operate (or use of such for the Business) requires 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 related criminal offences; or
- (g) the Applicant is financially obligated to the City in some manner.

#### 2.10 **Denial**

Where an Application for a License 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, Peddler Licenses shall come into effect on the date that they are issued and are renewable one year from the date of issue. Stationary Peddler Licenses shall be valid only for the time period for which they are issued and are not renewable.

#### 2.14 **Posting or Carrying Licenses**

The Licensee shall post the Stationary Peddler License in a conspicuous place at the 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 and can be readily produced upon request. A Peddler License must be carried at all times while the Licensee is Operating the Business.

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: the Licensee becomes denied to hold the License;

- (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 a related criminal offence.

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 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 AND 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 a Licensee to operate a Stationary Peddler Business from a site which is not authorized by the License.

3.03 **Cessation or Sale of a Business**

It is an offence to fail to report to the Manager the cessation or sale of his or her Business. This requirement does not apply to the cessation of a Stationary Peddler Business upon the date the License expires.

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 **Failure to Post License**

It is an offence for a Licensee to fail to post his or her Stationary Peddler License in a conspicuous place at the site to which the License applies.

3.06 **Failure to Carry License**

It is an offence for a Licensee to fail to carry his or her Peddler License at all times while Operating the Business.

3.07 **Single Location License**

All goods, wares, merchandise, signs, and other paraphernalia related to the Business of a Stationary Peddler must remain on the site which is licensed, and must not be situated, even temporarily, on abutting properties, including highways.

3.08 **Failure of Stationary Peddler to Keep Goods on Site**

It is an offence for a Stationary Peddler to fail to keep on the site which is licensed all goods, wares, merchandise, signs and other paraphernalia related to the Business.

3.09 **Misuse of Peddler License**

It is an offence for the holder of a Peddler License to establish, or to cause or permit to be established, a display of his or her wares in one location and to vend, or cause or permit others to vend from that location under the auspices of that License.

### 3.10 **Misuse of Stationary Peddlers License**

It is an offence for a Stationary Peddler to sell, or to cause or permit sales, from place to place under the auspices of his or her License.

### 3.11 **Exemptions**

A Peddler License is not required by the following persons:

- (a) persons peddling goods, wares, or merchandise to wholesale or retail dealers in similar goods, wares or merchandise;
- (b) growers, producers, or manufacturers (or their authorized agents or employees) who reside in Thunder Bay and are peddling goods, wares or merchandise which are grown, produced or manufactured in Ontario;
- (c) a farmer resident in Ontario peddling only goods, wares, merchandise or produce from his or her own farms;
- (d) persons who lease or own realty within Thunder Bay upon which they operate a business selling the same wares that are proposed to be peddled;
- (e) persons who sell milk or cream or fluid milk products either by wholesale or retail;
- (f) persons who are agents or employees of Not For Profit Organizations, who are vending for the sole benefit of the organization;
- (g) persons who sell wares at “home parties” upon the invitation of the Owner or Occupant of the premises from which the sale will take place; or
- (h) crafts persons who exhibit or offer for sale, on a temporary basis, at one location goods, wares or merchandise which they themselves have produced or created.

### 3.12 **Onus of Proof of Qualification for Exemption**

Any Peddler who claims an exemption under Section 3.11 of this By-law must provide to the Manager, upon request, the appropriate evidence in support of the claim for the exemption. Similarly, in a prosecution for breach of this By-law, the onus of proving an exemption from requirement for a Peddler License is upon the person claiming the exemption.

## **ARTICLE 4.00: INSPECTIONS**

### **4.01 Inspections**

The Manager, the Police Chief or any person acting under those persons, or any person authorized by Council may at reasonable times during business hours inspect:

- (a) any premises or place where a Stationary Peddler Business is carried on, or there are reasonable and probable grounds to believe a Stationary Peddler Business is being carried on; and/or
- (b) any goods, equipment, books, records or documents used or to be used by any person in connection with a 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; or
- (b) to rectify a deficiency to prevent negative comments; or
- (c) because the Applicant failed to appear at a scheduled inspection;

a fee may be charged as set out in By-law 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 this By-law.

The request for a hearing under Section 5.02(a) shall be provided 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 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 their 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. This 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 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 the 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 such 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 governing Thunder Bay to any historically applicable licensing by-law relating to hawkers or peddlers are deemed to be references to this By-law.

7.02 **Effective Date**

This By-law shall come into force 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