

THE CORPORATION OF THE CITY OF SAULT STE. MARIE

BY-LAW 2003-53

LICENSING: (R.1.2.16) being a by-law to license, govern and regulate peddlers

WHEREAS Part IV of the *Municipal Act*, 2001 S.O. 2001, c.25, said Part IV being entitled "Licensing and Registration" sets out the conditions precedent to a municipality licensing a business;

AND WHEREAS s. 150(2) of the *Municipal Act* sets out three purposes for which a municipality may license a business, those purposes being health and safety, nuisance or consumer protection or a combination of all three;

AND WHEREAS the types of allowable costs for licence fees are set out in s. 150(10) of the said *Municipal Act*, those costs being the costs associated with preparation of the by-law, inspections related to the by-law, enforcement of the by-law against the person operating without a licence, prosecution and court proceedings, and reciprocal licensing arrangements;

AND WHEREAS after a review carried out by the Tax and Licence Division of the Finance Department, Police Services and the Legal Department it was determined that for the purpose of nuisance control and consumer protection it was necessary to license peddlers;

AND WHEREAS the consumer protections basis for the by-law is to assist in determining whether any of the applicants for licences have been convicted of an offence in another municipality concerning the peddling of goods;

AND WHEREAS the nuisance control basis for the by-law is to ensure that holders of licences comply with the requirements of the by-law and specifically post licences in a conspicuous place;

AND WHEREAS the proposed annual fee for each peddler licence is proposed to be \$250.00 per licence;

AND WHEREAS approximately eight peddler licences were issued by The Corporation of the City of Sault Ste. Marie in the year 2002;

AND WHEREAS the costs of the Legal Department in preparing, reviewing and circulating this by-law for comments, and circulating it after it has been considered by Council are estimated to be \$300.00;

AND WHEREAS the costs of advertising the public meeting to be held to consider the passing of the by-law along with preparing the notice and arranging for it to be placed in the local newspaper are estimated to be \$100.00;

AND WHEREAS the costs of the Tax and Licence Division of the Finance Department in issuing peddler licences are estimated to be \$960.00 (estimated at two hours per licence application including review of application and preparation of licences, issuance of the licence and responding to inquiries regarding peddler licences x \$60.00 per hour);

AND WHEREAS the costs of Police Services inspections of the various peddler licence is estimated to be \$1,500.00 per year;

AND WHEREAS the above-noted costs total \$2,860.00;

AND WHEREAS a notice of the public meeting for consideration of this by-law was given in accordance with s. 150(4) of the *Municipal Act*;

NOW THEREFORE THE COUNCIL of the Corporation of the City of Sault Ste. Marie pursuant to the *Municipal Act*, 2001, S.O. 2001, c.25, **ENACTS** as follows:

PART I - LICENCES

1. LICENCE REQUIREMENTS

- (1) There shall be taken out by every 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 that are to be delivered in the municipality afterwards a licence for which said licence the person obtaining same shall pay to The Corporation of the City of Sault Ste. Marie at the time of the taking out of such licence the fee fixed by this by-law.
- (2) No such licence is required for hawking, peddling or selling goods, wares or merchandise
 - (a) to wholesale or retail dealers in similar goods, wares or merchandise,

- (b) if the goods, wares or merchandise are grown, produced or manufactured in Ontario and are hawked, peddled or sold by the grower, producer or manufacturer or his agent or employee having written authority so to do, in the municipality in which the grower, producer or manufacturer resides, or
- (c) if the goods, wares or merchandise are grown or produced by a farmer resident in Ontario who offers for sale or sells only the produce of his own farm, or
- (d) if the goods, wares or merchandise are hawked, peddled or sold by a person who pays property tax in the municipality, or by his employee, or by his agent, or
- (e) if the goods, wares or merchandise are hawked, peddled or sold by an agent of the grower, producer or manufacturer, acting on behalf of a dealer who pays property tax in the municipality in respect of such goods, wares or merchandise, or
- (f) by persons who sell milk or cream or fluid milk products to the consumer or to any person for resale,
- (g) by persons who enter into a written agreement with a non-profit charitable organization to sell their goods, wares or merchandise at a show or fund-raising event organized by the non-profit charitable organization and only during the hours of operation of the non-profit charitable organization's fund-raising event or show.
- (h) by persons who participate in a consumer show open to the public or a trade show open by invitation or registration only, the primary purpose of which is the display of goods, wares or merchandise, and also excludes a consumer show or trade show operating as an integral part of a convention or conference.

2. LICENCE FEE

The licence fee for every person who applies for a licence referred to in Section 1 shall be the sum of \$255.00 **[amended by By-law 2017-232]** for the year in which it is issued or any part thereof.

3. EXEMPTION AND ONUS

- (1) Any person claiming the status of a servant or employee of the person described in Section 1(2) shall exhibit his authority when required so to do by any police officer, the City Tax Collector or any other authorized municipal employee.
- (2) In a prosecution for a breach of this by-law the onus of proving that a person does not require a licence under this by-law for any of the reasons mentioned in Section 1(2) shall be upon the person charged.

4. PROHIBITIONS

- (1) No person shall within the limits of The Corporation of the City of Sault Ste. Marie carry on or engage in any trade, calling, business or occupation set out in Section 1 of this by-law until he or she has procured such licence so to do.
- (2) No person operating under a licence issued pursuant to this by-law shall engage in physical intimidation including but not limited to entering or failing to leave private property when it is known or ought reasonably be known to be unwelcome. **[amended by By-law 2016-189]**

PART II - PROCEDURAL AND GENERAL PROVISIONS

5. APPLICATION FOR LICENCE

- (1) On an application for a licence, or the renewal thereof, the applicant shall complete the prescribed forms and shall furnish to the Tax and Licence Division of The Corporation of the City of Sault Ste. Marie such information as the City may direct to be furnished.
- (2) The City Tax Collector shall, upon receipt of an application for a licence, make or cause to be made all investigations required by law or by the City relative to such application.
- (3) Every applicant for a licence shall disclose each municipality in Ontario in which he has carried on business in the year immediately preceding his application for a licence and where the applicant is a limited company the names and addresses of all the officers of the company shall be disclosed.
- (4) Every applicant for a licence shall disclose whether he, a partner or a corporation of which he is an officer or director has been convicted of an offence under a by-law passed by another municipality regulating the types of businesses described in Section 1 of this by-law or the *Business Practices Act*, R.S.O. 1990, chapter B.18.

- (5) No licence shall be granted until the application has been referred to the Chief of Police and he has investigated and reported in respect thereof. In the event that the applicant has been convicted of an offence relating to fraud, theft or a violation of a peddler licensing by-law in another municipality, the Chief of Police may recommend that a licence not be issued to the applicant.
- (6) Every licence issued pursuant to this by-law shall permit the licensee to carry on or engage in any trade, calling, business or occupation set out in Section 1 of this by-law only in the particular location for which the licence has been issued, and not in any other location, unless a separate licence has been issued for said location.

6. CANCELLATION OR REVOCATION OF LICENCE

- (1) Any licence issued pursuant to the provisions of this by-law may be revoked or cancelled at any time by the City, without notice, subject to the provisions of the *Statutory Powers Procedures Act* and the *Municipal Act*.
 - a. For any reason that would disentitle the holder of the licence if he or she were an applicant;
 - b. If the information in the application is false;
 - c. If the operation of the licensee's business is or will not be carried on in compliance with the law;
 - d. If the conduct of the licensee is calculated to mislead, deceive, or intimidate the public, or in a manner contrary to the provisions of this by-law. **[amended by By-law 2016-189]**
- (2) Upon cancellation or revocation of a licence, the licensee shall return to the City Tax Collector all licence certificates and licence plates, badges and other indicia issued by the City with reference to such licence.

7. REFUND OF LICENCE FEE

- (1) Where a licence granted is revoked or cancelled and where a fee has been paid for the granting of the licence, the City may refund that part of the licence fee that is proportionate to the portion of the term remaining from the date upon which the licence was revoked or cancelled.

- (2) Where a licensee ceases to operate and where a fee has been paid for the granting of the licence, the City may, upon the application of the licensee, refund that part of the licence fee that is proportionate to the portion of the term remaining from the date upon which the licensee ceased to operate.

8. SIGNATURE OF LICENCE

The City Tax Collector or his designate shall on behalf of the City sign all licences issued by it pursuant to this by-law and his signature may be printed or mechanically reproduced on each licence issued, and such licence shall be in such form as the City may, from time to time, designate.

9. LOST LICENCES

Upon his being satisfied that a licence has been lost and that the applicant for a new licence form has made a diligent search therefor and is making application for a new licence form in good faith, and if such applicant undertakes in writing to the City Tax Collector to surrender the lost licence form to him if found, the City Tax Collector may issue a duplicate licence to such applicant which shall consist of a true copy of the original licence upon which the word "duplicate" is endorsed over the signature of the City Tax Collector. A fee of \$20.00 shall be charged for any replacement licence issued.

10. LICENCE TO BE POSTED

- (1) Every person obtaining a licence under this by-law, where the same applies to a place or premises used in the carrying on of the business, shall keep the licence posted up in some conspicuous place on the business premises in respect of which the licence is issued, and every person so licensed shall, when so requested by any member of the Sault Ste. Marie Police Service, City Tax Collector or a designate, produce a licence for inspection.
- (2) Every person obtaining a licence under this by-law, where the same applies to the occupation of such person, shall carry his licence with him when engaged in the occupation for which the licence is issued, and every person so licensed shall, when so requested by any member of the Sault Ste. Marie Police Services or City Tax Collector or a designate, produce a licence for inspection.

11. PARTNERSHIP

- (1) Where two or more persons carry on or engage in partnership in business, the licence may be issued in the name of one partner only, but when the application for licence is made, the name and address of each member of the partnership shall be set out therein.
- (2) Where a business is carried on under a name other than that of the licensee, the licence shall nonetheless be issued in the name of the licensee, but there shall be endorsed thereon the name under which the business is carried on and no person shall carry on any such business under any name other than a name so endorsed upon the licence.

12. TRANSFER OF LICENCE

- (1) No person shall enjoy a vested right in the continuance of a licence and upon the issue, renewal, transfer or suspension thereof, the value of a licence shall be the property of the City.
- (2) No licence shall be transferred except upon the written approval of the City.

13. COMPLIANCE WITH REGULATIONS

Every person applying for or holding a licence under this by-law, or who is liable to be licensed under this by-law, shall in such application or in carrying on such business, observe, comply with and be governed by the regulations set out in this by-law which relate to such business.

14. INSPECTION

Any person duly authorized by the City may at all reasonable times inspect as much of any place or premises on the carrying on of any business in respect of which any person has or is required to have a licence.

15. PENALTIES

- (1) Any person violating any of the provisions of this by-law shall be subject to a penalty of not more than \$2,000.00, exclusive of costs, and all such penalties shall be recoverable under the *Provincial Offences Act*.
- (2) For the purposes of this section, a separate violation shall be deemed to have been committed for each and every day during

which such violation continues, and conviction in respect of a violation shall not operate as a bar to further prosecution if such violation continues.

16. GRANTING OF LICENCE

- (1) If, after making the inquiries required under this by-law, the City Tax Collector or his designate is satisfied that a licence should be issued the City Tax Collector shall issue a licence to the applicant.
- (2) If, after making the inquiries required under this by-law, the City Tax Collector or a designate is of the opinion that a licence should not be issued, the City Tax Collector shall so advise the applicant in writing. The applicant may, within fourteen days of being so advised, request that the matter of the issuance of the licence be referred to City Council for a final determination of whether a licence should be issued.

17. DURATION OF LICENCES

The licences for the trades, callings, business and occupations set out in this by-law shall, unless they are expressed to be for a shorter or longer time, expire in each year on the 31st day of December.

18. INTERPRETATION

In this by-law, unless the context otherwise requires, words importing the singular member shall include the plural and words importing the masculine shall include the feminine.

19. CONFLICT

In the case of a conflict between the provisions of this by-law and any other municipal by-law, the provisions of this by-law shall prevail.

20. SEVERANCES

If any section, subsection, sentence, clause, phrase or provision of this by-law is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of the by-law. The City hereby declares that it would have passed this by-law and each section, subsection, sentence, clause, phrase and provision herein, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or provisions be declared invalid.

21. REPEAL

By-law 84-195 is hereby repealed.

22. EFFECTIVE DATE

This by-law shall be effective on the date of its final passing.

READ THREE TIMES and **PASSED** in open Council this 17th day of March, 2003.

“John Roswell”

MAYOR - JOHN ROWSWELL

“Donna Irving”

CLERK - DONNA P. IRVING