



## **The Corporation Of The Municipality Of South Huron**

### **By-Law #47-2018**

#### **Being a By-Law respecting the issuing of Licences for Hawkers, Peddlers and Refreshment Vehicles within the Municipality of South Huron**

**Whereas** Part IV of the *Municipal Act 2001*, S.O. 2001, c25, as amended, provides for a system of licences and sets out the conditions precedent to a municipality licensing a business; and

**Whereas** subsection 151(1) of the *Municipal Act*, 2001 provides that, without limiting sections 9 and 10 of the Act, a municipality may provide for a system of licenses with respect to a business and may,

- (a) prohibit the carrying on or engaging in the business without a licence;
- (b) refuse to grant a licence or to revoke or suspend a licence;
- (c) impose conditions as a requirement of obtaining, continuing to hold or renewing a licence;
- (d) impose special conditions on a business in a class that have not been imposed on all of the businesses in that class in order to obtain, continue to hold or renew a licence;
- (e) impose conditions, including special conditions, as a requirement of continuing to hold a licence at any time during the term of the licence;
- (f) license, regulate or govern real and personal property used for the business and the persons carrying it on or engaged in it; and,
- (g) require a person, subject to such conditions as the municipality considers appropriate, to pay an administrative penalty if the municipality is satisfied that the person has failed to comply with any part of a system of licenses established by the municipality; and

**Whereas** the Council for the Corporation of the Municipality of South Huron considers it necessary and desirable for the public to exercise its licensing powers for the purposes of Health and Safety; and/or Nuisance Control; and/or Consumer Protection; and

**Whereas** section 23.2 of the *Municipal Act*, 2001 permits a municipality to delegate certain legislative and quasi-judicial powers; and

**Whereas** subsection 391(1) of the *Municipal Act*, 2001 provides that a municipality may impose fees and charges on persons for services or activities provided or done by or on behalf of it; for costs payable by it for services or activities provided or done by or on behalf of any other municipality or any local board; and, for the use of its property including property under its control; and

**Whereas**, pursuant to section 151 of the *Municipal Act*, 2001, the following businesses are licensed for the following reasons:

**Hawker-Peddler**, for the purpose of ensuring the vendor is following all required health regulations to ensure that the consumer does not become ill, to ensure that the business is not a nuisance by hindering vehicles or pedestrian traffic and/or causing a hazard in any way

and/or having a negative aesthetic impact on the Municipality, and to protect the consumer who is purchasing the products being sold.

**Refreshment Vehicles**, for the purposes of health and safety and ensuring that the vendor is following all required health regulations, and to ensure that the consumer does not become ill, and to ensure that the vendors are not hindering vehicle or pedestrian traffic and/or causing a hazard in any way and/or having a negative aesthetic impact on the Municipality which would fall under nuisance control.

**Now therefore** be it resolved that the Council of The Corporation of the Municipality of South Huron enacts as follows:

## 1. Interpretation

For the purpose of this By-law the following terms shall have the corresponding meanings:

- (a) **“Agricultural Farmers Market”** means a venue for locally grown and/or manufactured agricultural [products, including but not limited to foodstuffs, handicrafts, artwork or locally generated services.
- (b) **“Applicant”** means any person whose name appears as the applicant on any licence application form received by the municipality;
- (c) **“By-Law”** means this By-Law and any amendments thereto including all Schedules forming any part of this By-law and any amendments thereto;
- (d) **“Chip Wagon”** means either a mobile or immobile vehicle either mounted on blocks or supported by a conventional wheel, tire and axle system from which food items are offered for sale or sold to the public;
- (e) **“Clerk”** means the Clerk of the Municipality of South Huron or his or her designate;
- (f) **“Council”** means the Council of the Municipality of South Huron;
- (g) **“Flea Market”** means a show which;
  - i. Has more than 1 vendor selling their own merchandise; or
  - ii. Has a non-refundable admission fee; or
  - iii. Is held in a public hall which is assessed for commercial property tax or a municipally owned facility which is licensed as a public hall;
- (h) **“Food Vehicle”** means Chip Wagon, Mobile Barbecue Facility, Refreshment Vehicle or Refrigerated Bicycle Cart;
- (i) **“Highway”** includes a common and public highway, street, road, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, and part of which is intended for or used by the general public for the passage of vehicles and included the area between the lateral property lines thereof;
- (j) **“Inspector”** means any municipal employee or other person authorized by the Municipality to carry out inspections under and to enforce the provisions of this By-law and the provisions of the application for licence.;
- (k) **“Licence”** means the official document issued by the Municipality under the provisions of this By-law bearing the signature of the Clerk authorizing a person to conduct, operate or carry on any of the trades, businesses or occupations listed in Schedule “A” to this By-law;
- (l) **“Licensee”** means any person licenced under this By-law;
- (m) **“Mobile Barbecue Facility”** means an open-air barbecue affixed to a cart which is on wheels or is capable of being moved from place to place by a person on which food is prepared and sold or offered for sale to the public;
- (n) **“Municipality”** means the Municipality of South Huron;

- (o) **“Person”** includes a corporation, organization, association and a partnership and the heirs, executors, administrators and other legal representatives of a person to whom the context can apply according to law;
- (p) **“Public Park”** means a recreational area for public use that is owned or controlled by the Municipality;
- (q) **“Refreshment Vehicle”** means a vehicle or other itinerant food premise from which pre-packaged food and grocery items are offered for sale or sold and from which no food is prepared except hot beverages;
- (r) **“Refrigerated Bicycle Cart”** means a manually propelled itinerant tricycle vehicle from which ice-cream, ice-cream cones, ice milk and other iced confectionery food items are offered for sale or sold to the public;
- (s) **“Retail Exhibition”** means a show which:
  - i. Has 10 or more vendors selling their own merchandise; or
  - ii. Is held in a public hall, hotel or shopping mall; or
  - iii. Is held for short periods of time and not on a regular or weekly basis.
- (t) **“Schedule”** means all regulations attached to and forming part of the By-law including any amendments thereto; and
- (u) **“Site Plan”** means a drawing of a site which includes all applicable measurements of the Food Vehicle and the surrounding area within 100 metres of the site and on which all buildings and structures, Highways, driveways or other landmarks are indicated;
- (v) **“Trade Show”** means a show or exhibition organized to be held in a facility with regulated admittance; and
- (w) **“Transient Trader”** is a person who goes from place to place, or to a particular place, with goods, wares or merchandise for sale, or who carries and provides samples, patterns or examples of any goods, wares or merchandise; and
- (x) **“Vehicle”** shall have the same meaning as set out in the *Highway Traffic Act*, R.S.O. 1990, Ch H8.

## 2. Licences Required

- 2.1.** No person shall carry on or permit the operation of any of the following trades, businesses or occupations in the Municipality of South Huron without a licence to do so issued by the Municipality:
- a) Food vehicle including but not limited to a chip wagon, mobile barbeque facility, refreshment vehicle, refrigerated bicycle cart;
  - b) Transient trader (Annual); and
  - c) Transient trader (One day)
- 2.2.** No person shall carry on any of the following events without a licence to do so issued by the Municipality:
- d) Agricultural Farmers Market;
  - e) Flea market;
  - f) Retail Exhibition; or
  - g) Trade Show.
- 2.3.** No person shall operate a Food Vehicle in any Public Park at any time wherein such Public park a concession stand or booth is situated.
- 2.4.** No person shall operate a Food Vehicle at a location not approved in the Application and shown on the Site Plan.

**2.5.** Every Licensee of a Food Vehicle shall ensure that every sign affixed to or used in conjunction with the Food Vehicle complies with any Municipality sign by-laws or county of Huron sign By-Laws.

**2.6.** Every Licensee of a Food Vehicle shall supply a refuse container for his or her Food Vehicle to the satisfaction of the Municipality and the Licensee shall ensure that:

- a) Such refuse container is maintained in a position immediately adjacent to the Food Vehicle at all times; and
- b) All refuse generated from the operation of the licensee's Food Vehicle is contained in such refuse container; and
- c) All refuse generated from the Licensee's Food Vehicle is disposed of in accordance with the Municipality's By-laws; and
- d) The adjoining area is kept in a clean, sanitary and attractive condition.

**2.7.** No Licence issued under this By-law shall be valid unless all applicable fees, as set out in the South Huron Fees and Charges By-Law are paid in full.

### **3. Exemptions**

**3.1.** No Licence shall be required for the selling of goods, wares or merchandise 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 the farmer's own farm.

**3.2.** The provisions of this By-law and Schedules, if any, shall not apply to a Licensee of a Food Vehicle operating in a Public Park in conjunction with and during a special event provided written approval has been obtained from the Municipality in advance.

**3.3.** The provisions of this By-law and Schedules, if any, shall not apply to Mobile Barbecue Facilities operated in connection with a charitable fundraising event, or a community event held on Municipal property, or where written approval has been obtained from the Municipality in advance.

### **4. Application for Licence**

**4.1.** No licence shall be issued to any Applicant under the age of 18 years without the written consent of the parent or guardian.

**4.2.** Every application for a licence under this By-law shall be made in writing and shall be accompanied by the applicable licence fee and proof of age if requested by the Clerk.

### **5. Licence Fees**

Every Licence issued under this By-law, unless the same shall be revoked in accordance with Section 14 hereof, shall only be in effect for the calendar year in which it is issued and shall expire on the 31<sup>st</sup> day of December next following the date of issue and a new licence shall be required for each calendar year thereafter.

## **6. Proof of Insurance**

Every Licensee shall keep in full force and effect during the term of the licence general liability insurance in connection with the trade, business or occupation licensed in the minimum amount of \$5,000,000.00 and proof of such insurance shall be provided upon demand to the Clerk or an Inspector.

## **7. Partnerships**

Where two or more persons carry on or engage in partnership in any of the trades, businesses or occupations set forth in any of the Schedules forming part of this By-law, 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 and all such partners shall be jointly and severally liable for compliance with the terms of the licence and this By-law.

## **8. Issue of Licence**

Every licence issued in accordance with this By-law shall be issued in the name of the Municipality by the Clerk.

## **9. Licence not Transferable**

Every licence issued under this By-law shall be personal to the holder thereof and shall not be transferable or assignable from person to person or location to location and no licensee shall advertise or promote or carry on business under any name other than the name endorsed upon the licence issued to the licensee.

## **10. Display of Licence**

**10.1.** Every person issued a licence under this By-law where such Licence is applicable to a particular premises, shall ensure that said Licence is posted on the premises in a conspicuous place clearly visible to the public at all times while the Licence is in effect.

**10.2.** Every person issued a Licence under this By-law, where such Licence is not applicable to a particular premises, shall ensure that the Licence is in the Licensee's possession at all times while engaged in the business for which the Licence was issued and such person shall produce such Licence upon request of the Clerk or an Inspector.

## **11. Compliance with Other Laws Required**

The issuance of a Licence under this By-law does not permit or condone the violation of any other law, statute or other regulation in effect in the Municipality of South Huron, the Province of Ontario or the Dominion of Canada.

## **12. Grounds for Refusal to Issue or Renew a Licence**

The Clerk may refuse to issue or renew a Licence where:

- a) The fees due in respect of such Licence have not been paid in full;

- b) The application or any documents requisite to the Licence being issued have not been completed or have been completed incorrectly or have not been provided to the Clerk; or
- c) The Applicant or licensee is carrying on an activity that is, or will be, if the Applicant is licensed, in contravention of this By-law or any other law, statute or other regulation;
- d) The grounds as set out in Section 150(11) of the Municipal Act, as amended, are applicable, in the opinion of council; or
- e) The Applicant or Licensee has ever been convicted of an offence under any provisions of this By-law.

The Clerk shall provide in writing the particulars for refusing to issue or renew a licence and information regarding the Appeal Process as outlined in Section 18 of this By-law.

### **13. Refund of Fee on Refusal to issue or Renew a Licence**

When the Clerk refuses to issue or renew a Licence, the Licence fee paid for such issuance or renewal shall be fully refunded.

### **14. Issuance or Renewal of Licence on Terms and Conditions**

Notwithstanding any other provision of this By-law the Clerk may issue a Licence or renew a Licence subject to such terms and conditions as in the opinion and discretion of the Clerk are necessary or appropriate to give effect to this By-law.

### **15. Revoke, Suspend or Cancel a Licence**

The Clerk may revoke, suspend or cancel a Licence:

- a) where the Licensee would be disentitled to the Licence for any of the reasons set out in Section 11 of this By-law;
- b) when the Licensee is convicted of an offence under any provision of this By-law; or
- c) where the Licensee is not in compliance with any of the provisions of this By-law

### **16. Refund of Fee on Revocation of Licence**

When a Licence is revoked, suspended or cancelled under Section 14 of this By-law, the Licensee is entitled to a refund of that part of the Licence fee which is proportionate to the unexpired part of the term for which the Licence was issued.

### **17. Revoked, Suspended or Cancelled Licences to be Returned**

- a) When a Licence has been revoked, suspended or cancelled, the holder of the Licence shall return the Licence to the Clerk by the next business day following receipt of the written notice of the decision of the Clerk.
- b) When a Licensee has had his or her Licence revoked, suspended or cancelled, the Licensee shall not refuse to return the Licence or shall not in any way obstruct or hinder the Clerk or an Inspector from obtaining the Licence.

### **18. Appeal Process**

- a) The Clerk shall provide in writing to the Applicant or Licensee the particulars for refusing to issue, refusing to renew a license or revoking, suspending or cancelling a licence including information regarding the Appeal Process outlined in Section 18 of the by-law.
- b) When an Applicant or licensee is not entitled to a Licence as set out in Sections 11, 13 and 14 of this By-law, the Applicant or Licensee may appeal this decision and request a hearing to the Council of the Municipality of South Huron within 14 days of the decision.
- c) Upon receipt of a written request from an Applicant or Licensee for a hearing, the Clerk shall provide the Applicant or licensee with written notice of the date, time and location of the hearing and such notice shall be provided at least twenty days prior to such hearing.
- d) The provisions of the Statutory Powers and Procedures Act, R.S.O. 1990, Ch S22 or any successor thereof, shall apply to all hearings conducted by Council under this By-law.
- e) If the Applicant or licensee who has been sent notice of the hearing does not appear at the appointed time and place of the hearing, Council may proceed with the hearing in the absence of the Applicant or licensee.
- f) Council may uphold or vary the recommendation of the Clerk or do any act or make any decision and the Applicant or Licensee shall not be entitled to any further hearing on the matter before Council and the decision of Council shall be final.
- g) The Council of the Municipality of South Huron may, by resolution, delegate the holding of the aforesaid hearing to a Committee of Council.

## **19. Inspections**

**19.1.** No person who has or is required to have a Licence under this By-law shall obstruct or hinder or permit the obstruction or hindrance of any inspection under this By-law.

**19.2.** The Clerk or an Inspector may at any reasonable time enter upon and inspect any premises in respect of which an application has been made for a Licence or for which a Licence has been issued under this By-law.

## **20. Signs**

- a) Only one sign is used in association with any sale, except where a sale is conducted on a corner property, a maximum of two signs may be used with no more than sign abutting each Highway;
- b) Every sign used is a freestanding, portable sign constructed of a wood, metal or other rigid material in accordance with the South Huron Sign By-law.
- c) The location of every sign to be used in conjunction with the sale is illustrated on the site Plan; and
- d) Every sign used is located wholly on the property on which the sale is being conducted and is at least 3.0 metres away from any shoulder of a Highway or property line of a road allowance
- e) Signage in contravention to this By-law shall be subject to confiscation without notice by the Municipality of South Huron staff or any other designated person and a fee of \$50.00 per sign shall be applicable.

## **21. Specific Provisions**

In addition to the provisions of this By-law, every holder of a Licence shall comply with the specific provision and regulations set out in the application, as the same may be amended from time to time, which are applicable to the trade, business or occupation being conducted, operated or carried on by the Licensee pursuant to the Licence.

## **22. Offence**

Every person who contravenes any provision of this By-law or any Schedule to this By-law is guilty of an offence.

## **23. Penalties**

**23.1.** Every person who is convicted of an offence under any provision of this By-law or any Schedule to this By-law shall be liable to a penalty as set out in Section 171 of the Provincial Offences Act, R.S.O. 1990, Chapter P. 33, or any successor thereof.

**23.2.** The Medical Officer of Health, By-Law Enforcement Officer, Fire Chief and any Officer appointed by the Municipality of South Huron may enter, at all reasonable times, upon any property subject to the regulations of this by-law and the application requirements in order to ascertain whether such regulations or directions are being obeyed.

## **24. Ultra Vires**

It is hereby declared that notwithstanding that any section of this By-law or parts thereof, may be found by any court of law to be invalid or beyond the power of the council to enact, such section or sections or parts thereof shall be deemed to be severable and that all other sections or parts of this by-law are separate and independent therefore and enacted as such.

## **25. Conflict**

In the event of a conflict between any provision of this By-law and any other By-law in effect the Municipality of South Huron or with any other law, statute or regulation applying the Municipality, the more restrictive requirement shall apply

## **26. Enactment**

**26.1.** That By-law 67-2004 is hereby repealed.

**26.2.** That this by-law shall come into force and effect upon the third and final reading thereof.

Read a first and second time this 22<sup>nd</sup> day of May, 2018.

Read a third and final time this 22<sup>nd</sup> day of May, 2018.

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Maureen Cole, Mayor

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Rebekah Msuya-Collison, Clerk