

THE CORPORATION OF THE CITY OF SAULT STE. MARIE

BY-LAW NO. 2018-67

PEDDLER AND FOOD VENDOR LICENCING: (R1.57) A by-law to licence, govern and regulate peddlers and street sales and to repeal By-laws 2003-51 and 2003-53.

WHEREAS Part IV of the *Municipal Act, 2001*, S.O. 2001, c.25, Part IV being entitled "Licences" sets out the conditions precedent to a municipality licencing a business;

AND WHEREAS s. 151 of the *Municipal Act* sets out a municipality's powers with respect to licencing a business and allows a municipality to provide for a system of licences with respect to a business;

AND WHEREAS after a review carried out by the City Clerk's Department, Police Services and the Legal Department it was determined that for the purpose of nuisance control and consumer protection it was necessary to licence peddlers and food vendors;

AND WHEREAS the proposed fees for each peddler and food vendor licence is set out in Schedule "A" to this by-law;

AND WHEREAS there are costs to the City associated with preparing this by-law, issuing licences, and enforcing this by-law;

AND WHEREAS the City wishes to strengthen compliance and enforcement to ensure greater fairness for local business;

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:

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PART I – DEFINITIONS

In this by-law:

"Applicant" means the person making application for issuance of a Licence under this by-law.

"City" means the Corporation of the City of Sault Ste. Marie.

"Council" means the Council of the City of Sault Ste. Marie or, where a hearing body of Council has been designated by Council for such purpose, means the hearing body of Council.

"Farmers' Market" means a physical retail marketplace, either indoor or outdoor, consisting of booths, tables or stands where Northern Ontario farmers and vendors sell fruits, vegetables, meats, cheeses, prepared foods and beverages, wares and merchandise which they themselves produce and/or craft.

"Fire Chief" means the Fire Chief of the City of Sault Ste. Marie Fire Services or any officer of that Service.

"Food Vending Vehicle" means a handcart, peddled vehicle, vehicle, or trailer from which refreshments and/or food are sold for consumption by the public.

"Food Vendor" includes:

- (a) a person operating or using a Food Vending Vehicle; or
- (b) any person who goes from place to place, or to a particular place, with food or refreshments for sale to the public at large; or
- (c) any retailer which has an employee or agent who goes from place to place or to a particular place with food or refreshments for sale to the public at large.

"Licence" means a Licence issued pursuant to this by-law, which authorizes a Person to operate or use a Food Vending Vehicle or to go from place to place or to a particular place with goods, wares, merchandise, food or refreshments for sale, or to carry and expose samples, patterns or specimens of any goods, wares, merchandise, food or refreshments. There are six (6) classes of Food Vending Vehicle Licences and four (4) classes of Peddler Licences.

"Licencee" means the holder of a Licence.

"Medical Officer of Health" shall mean the Algoma Public Health Unit Medical Officer of Health or a person delegated by him or her for the purposes of this by-law.

"Owner" with respect to a premises licenced under this by-law shall mean the registered owner of the land on which the premises is situated and includes a trustee acting on behalf of the registered owner, the estate of a registered owner and a person with a leasehold interest in the land.

"Owner" with respect to a trade, business or occupation licenced under this By-law shall mean the person, company or partnership that carries on the trade, business or occupation and whose name appears on the Licence issued by the City for such trade, business or occupation pursuant to this by-law.

"Peddler" includes:

- (a) any person who goes from place to place, or to a particular place, with goods, wares or merchandise, excluding food or refreshments, for sale, or who carries and displays samples,

patterns or specimens of any goods, wares or merchandise, excluding food or refreshments;
or

- (b) any retailer which has an employee or agent who goes from place to place or to a particular place with goods, wares or merchandise, excluding food or refreshments, for sale, or who carries and displays samples, patterns or specimens of any goods, wares or merchandise, excluding food or refreshments.

"Person" shall include an individual, a partnership, a firm or a corporation.

"Resident" shall include an individual, a partnership, a firm or a corporation who owns or rents long-term, a residential property within the City of Sault Ste. Marie or who pays commercial property tax. "Long-term" with respect to rental shall mean a minimum twelve (12) month rental.

"Sidewalk" means any public walkway, or portion of a highway between the curb line or the lateral line of a roadway and the adjacent property line.

PART II – GENERAL PROVISIONS

All of the regulations contained in this Part of this by-law shall apply to all Licences required under this by-law in addition to any other regulation contained in any other part of this by-law.

2.1 LICENCES

2.1.1 Licence Requirement

There shall be taken out by every person who operates or uses a Food Vending Vehicle or by every person who goes from place to place or to a particular place with goods, wares, merchandise, food or refreshments for sale, or who carries and exposes samples, patterns or specimens of any goods, wares, merchandise, food or refreshments, 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 set out by this by-law.

2.1.2 Licence Fees

- (1) The sums of money set out in Schedule "A" of this by-law are hereby fixed as the fees for Licences and which shall be paid before the issue or renewal of any Licence. Unless otherwise specified, the fees shown are for the current calendar year or the portion thereof unexpired on the date of the application.
- (2) In order to receive the "Resident" fee for a Food Vendor Licence, the Applicant must provide, to the satisfaction of the City Clerk of the Corporation of the City of Sault Ste. Marie, or his/her designate, proof of ownership of property or proof of long-term rental (minimum twelve (12) month rental) within the City of Sault Ste. Marie, the determination of which shall be at the discretion of the City Clerk, or his/her designate.

2.1.3 Late Licence Fee

- (1) A Licence shall be taken out prior to any person operating or using any Food Vending Vehicle or carrying on or engaging in any trade, calling, business or occupation set out in Section 2.1.1 of this by-law.

- (2) A person who takes out a Licence after already engaging in the aforementioned activities in which a Licence is required for shall pay an additional "Late Licence" fee as set out in Schedule "A" to this by-law.

2.1.4 Duration of Licence

The duration of the Licence shall be set out on the Licence and shall depend on the Class of Licence issued.

2.1.5 Location of Licence

- (1) Every Licence issued pursuant to this by-law shall permit the Licencee to operate or use any Food Vending Vehicle or carry on or engage in any trade, calling, business or occupation set out in Section 2.1.1 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.
- (2) Despite subsection (1), a person holding any Class 3, 4, 5 or 6 Licence may engage in door-to-door or mobile sales, and such permission shall be explicitly indicated on the Licence.

2.1.6 Transfer Not Permitted

- (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.

2.2 APPLICATION PROCEDURE

2.2.1 Administration

The City Clerk, or his/her designate, shall be responsible for the administration of this by-law and shall be the Issuer of Licences under this by-law.

2.2.2 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 City Clerk's Department of the Corporation of the City of Sault Ste. Marie such information as the City may direct to be furnished.
- (2) The City Clerk, or his/her designate, 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/she has carried on business in the year immediately preceding his/her 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/she, a partner or a corporation of which he/she 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 2.1.1 of this bylaw 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 Sault Ste. Marie Police Services and it 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 licencing by-law in another municipality, the Sault Ste. Marie Police Services may recommend that a Licence not be issued to the Applicant.

2.2.3 Issuance of Licence

- (1) If, after making the inquiries required under this by-law, the City Clerk, or his/her designate, is satisfied that a Licence should be issued the City Clerk, or his/her designate, shall issue a Licence to the Applicant.
- (2) If, after making the inquiries required under this by-law, the City Clerk, or his/her designate, is of the opinion that a Licence should not be issued, the City Clerk, or his/her designate, shall so advise the Applicant in writing. The Applicant may, within fourteen (14) 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.
- (3) Every Licence issued under this by-law, where the same applies to a Food Vending Vehicle, shall be issued to the owner of the Food Vending Vehicle on the application of such owner and in accordance with the provisions of this by-law.

2.2.4 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*, R.S.O. 1990, c S.22 and the *Municipal Act, 2001*, S.O. 2001, c. 25:
 - (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 Licencee's business is or will not be carried on in compliance with the law;
 - (d) If the conduct of the Licencee is calculated to mislead, deceive, or intimidate the public, or in a manner contrary to the provisions of this by-law.
- (2) Upon cancellation or revocation of a Licence, the Licencee shall return to the City Clerk, or his/her designate, all Licence certificates and licence plates, badges and other indicia issued by the City with reference to such Licence.

2.2.5 Signature on Licence

The City Clerk, or his/her designate, shall on behalf of the City sign all Licences issued by it pursuant to this by-law and his/her 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.

2.2.6 Lost Licences

Upon the City Clerk, or his/her designate, 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 Clerk, or his/her designate, to surrender the lost Licence form to him if found, the City Clerk, or his/her designate, 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 Clerk, or his/her designate. **[AMENDED BY BY-LAW 2019-180]**

2.2.7 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 Licencee, the Licence shall nonetheless be issued in the name of the Licencee, 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.

2.3 RESPONSIBILITIES OF LICENCEE

2.3.1 Licence to be Posted/Carried

- (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 Licenced shall, when so requested by any member of the Sault Ste. Marie Police Service, a Municipal By-law Enforcement Officer, or the City Clerk, or his/her 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/her Licence with him when engaged in the occupation for which the Licence is issued, and every person so Licenced shall, when so requested by any member of the Sault Ste. Marie Police Services, Municipal By-law Enforcement Officer, or City Clerk, or his/her designate, produce a Licence for inspection.
- (3) Every person obtaining a Licence under this by-law, where the same applies to a Food Vending Vehicle, shall during the currency of such Licence be kept affixed to and prominently displayed on the Food Vending Vehicle for which the Licence was issued.

2.3.2 Compliance with Laws

- (1) Every person applying for or holding a Licence under this by-law, or who is liable to be Licenced 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.
- (2) No person shall operate or use a Food Vending Vehicle or carry on or engage in any trade, calling, business or occupation set out in Section 2.1.1 of this by-law in contravention of any of the provisions of any other by-law of the Corporation or of any provincial or federal law.

- (3) Each holder of a Licence, where the same applies to a Food Vendor, shall comply with all provincial requirements regarding the handling of food.

2.3.3 Physical Intimidation Prohibited

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.

2.3.4 Operate in Permitted Location

No person holding any Class 1 or Class 2 Licence shall operate or use any Food Vending Vehicle or carry on or engage in any trade, calling, business or occupation set out in Section 2.1.1 of this by-law in any location other than the particular location for which the Licence has been issued.

PART III – FOOD VENDORS

Part III of this by-law applies to “Food Vending Vehicles” and “Food Vendors” only.

3.1 LICENCE – CLASSES

The following classes of "Food Vendors" are hereby established:

Class 1 – “Stationary Day Sales” shall include temporary businesses for one period of up to seven (7) days from one specific location and may include the use of a temporary structure where the use is permitted in the Zoning By-law.

Class 2 – “Stationary Temporary Sales” shall include temporary businesses for one period of up to three (3) months from one specific location and may include the use of a temporary structure where the use is permitted in the Zoning By-law.

Class 3 – "Mobile Day Sales" shall include any business, person or organization that conducts sales or has sales conducted on his/her or its behalf by door-to-door solicitation, or by moving from place to place, and such Licences shall be valid for a period of up to seven (7) days only.

Class 4 – "Mobile Temporary Sales" shall include any business, person or organization that conducts sales or has sales conducted on his/her or its behalf by door-to-door solicitation, or by moving from place to place, and such Licences shall be valid for a period of up to three (3) months only.

Class 5 – “Ice-cream or Hotdog Cart” shall include a vehicle from which only ice-cream and related products, or hotdogs and related products, are sold or offered for sale for consumption by the public, including, but not limited to, push carts and wheeled vehicles.

Class 6 – “Annual Sales” shall include any business, person or organization that conducts sales or has sales conducted on his/her or its behalf from one specific location, which may include the use of a temporary structure where the use is permitted in the Zoning By-law, or by door-to-door solicitation, or by moving from place to place, and such Licences shall be valid only for the calendar year in which it was issued.

3.2 REQUIREMENTS FOR FOOD VENDOR

3.2.1 Health Certificate

No Food Vending Vehicle or Food Vendor shall be Licenced under this by-law unless the City Clerk's Department has received from the Medical Officer of Health a certificate of approval of such vehicle.

3.2.2 TSSA Approval

If the Food Vending Vehicle contains fuel-burning equipment, the Applicant must provide the City Clerk's Department with a Technical Standards and Safety Authority ("TSSA") certificate of approval.

3.2.3 Fire Extinguisher

If the Food Vending Vehicle contains fuel-burning equipment, the Applicant must provide to the City Clerk's Department satisfactory proof that the Food Vending Vehicle is equipped with a working 2A10BC certified portable fire extinguisher.

3.2.4 Location Approval

No Food Vending Vehicle or Food Vendor shall be Licenced as a Class 1 or Class 2 Food Vendor under this by-law unless the Applicant has received approval from the relevant City Department(s) of the location in which the Food Vending Vehicle shall operate.

3.2.5 No Alterations of Additions

No person shall make any alteration in or addition to the structure of a Licenced Food Vending Vehicle or to the equipment used therein or thereon for the storage, preparation or serving of food.

3.2.6 Insurance

A person operating a Food Vending Vehicle or operating as a Food Vendor on City-owned property shall maintain at all times during the currency of the Licence a minimum of Five Million (\$5,000,000.00) Dollars comprehensive general liability insurance in respect of personal injury, death, loss or damage of or to any person or property of third parties, with insurers licenced to conduct business in Ontario. The City shall be added as an Additional Insured to the required liability insurance policy or policies and no such policy shall be cancelled or allowed to lapse without at least thirty (30) days written notice having been given to the City. An Insurance Certificate, on the C.S.I.O. form and satisfactory to the City's Risk Manager, shall be provided to the City prior to the commencement of the Licence date.

3.3 LOCATION OF FOOD VENDING VEHICLE

3.3.1 Stationary Only (Class 1 and 2 Licences)

Class 1 and Class 2 Food Vendors may operate only in the location issued on the Licence and are not permitted to move from place to place.

3.3.2 Sidewalk, Boulevard and/or Road Allowance

If a person proposes to locate a free standing Food Vending Vehicle on a property owned by the City Corporation that is a sidewalk, boulevard and/or road allowance, that person must

locate at a distance not less than thirty (30m) metres from an entrance to a food service premises unless written approval is received from the Owner and/or operator of such premises.

3.3.3 City Property

- (1) If a person proposes to locate a free standing Food Vending Vehicle on a property owned by the City Corporation not identified in 3.3.2 that person must first obtain approval for that location from the City Clerk's Department and/or relevant City Departments.
- (2) If the operator of the Food Vending Vehicle is not satisfied with the decision of the City Clerk's Department and/or relevant City Departments regarding the location of the Food Vending Vehicle on City property, the operator of the food vending vehicle is entitled to request that the matter be heard and a decision made by City Council.

3.3.4 Obstruction of Entrance/Exit Prohibited

No Food Vending Vehicle shall be placed so as to obstruct the entrance or exit to any building, whether the building is located on public or private property.

3.3.5 Located on Highway

No person shall sell or serve food or refreshments from the front of a Food Vending Vehicle or from the side thereof that faces the centre of the highway on which the vehicle stands.

3.3.6 Occupation without Permission

It is an offence for any person to operate a Food Vending Vehicle at any location without the written consent of the Owner of the land from which the Food Vending Vehicle is operated.

3.3.7 Residential Areas Prohibited

- (1) No persons, except those listed in subsection (2), shall sell or serve food or refreshments from a Food Vending Vehicle within an area of the City zoned Residential.
- (2) The following persons are permitted to sell or serve food or refreshments from a Food Vending Vehicle within an area of the City zoned Residential:
 - (a) Persons holding a Class 5 Food Vendor Licence selling ice-cream and related products; and
 - (b) Persons invited to sell or serve food or refreshments at an event upon the invitation of the Owner or Occupant of the premises from which the sale will take place.

3.4 EXEMPTIONS

- (1) No such Licence is required for operating a Food Vending Vehicle or operating as a Food Vendor:
 - (a) if the food product is grown or produced by a farmer resident in Ontario who offers for sale or sells only the produce of his/her own farm;
 - (b) by persons who enter into a written agreement with a non-profit charitable organization to sell their food product 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 fundraising event or show;
 - (c) by persons who participate in a Farmers' Market open to the public;

- (d) by persons who pay commercial property tax in the City for a business wherein food is prepared at the commercial property for which the taxes are based for consumption by the public.
- (2) Persons described in subsection 3.4(1)(d) are required to obtain a Licence when operating a Food Vending Vehicle and/or preparing and/or selling food off site.

PART IV – PEDDLERS

Part IV of this by-law applies to “Peddlers” only and is only applicable to the extent that door-to-door sales are permitted under the *Consumer Protection Act, 2002*, S.O. 2002, c.30.

4.1 LICENCE – CLASSES

The following classes of "Peddlers" are hereby established:

Class 1 – “Stationary Day Sales” shall include temporary businesses for one period of up to seven (7) days from one specific location and may include the use of a temporary structure where the use is permitted in the Zoning By-law.

Class 2 – “Stationary Temporary Sales” shall include temporary businesses for one period of up to three (3) months from one specific location and may include the use of a temporary structure where the use is permitted in the Zoning By-law.

Class 3 – "Door-to-Door Day Sales" shall include any business, person or organization that conducts sales or has sales conducted on his/her or its behalf by door-to-door solicitation and such Licences shall be valid for a period of up to seven (7) days only.

Class 4 – "Door-to-Door Temporary Sales" shall include any business, person or organization that conducts sales or has sales conducted on his/her or its behalf by door-to-door solicitation and such Licences shall be valid for a period of up to three (3) months only.

4.2 EXEMPTIONS

- (1) 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 hawked, peddled or sold by a person who operates a business selling similar goods, wares or merchandise in the City of Sault Ste. Marie, or by his/her employee or agent;
 - (c) if the goods, wares or merchandise are hawked, peddled or sold by a person who pays property tax in the City, or by his/her employee or agent;
 - (d) 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 City in respect of such goods, wares or merchandise;
 - (e) 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 fundraising event or show;
 - (f) by persons who participate in a Farmers' Market open to the public;
 - (g) by persons who sell wares at “home parties” or “events” upon the invitation of the Owner or Occupant of the premises from which the sale will take place.

PART V – ADMINISTRATION AND ENFORCEMENT

5.1 ENFORCEMENT

5.1.1 Enforcement Agency

The Sault Ste. Marie Police Service and the City's Municipal By-law Enforcement Officer(s), or a designate, shall be responsible for the enforcement of this by-law.

5.1.2 Inspections and Re-inspections

- (1) The Sault Ste. Marie Police Service, a Municipal By-law Enforcement Officer or any person acting under those persons, or any person authorized by the City may at reasonable times during business hours inspect as much of any place or premises carrying on any business in respect of which a person has or is required to have a Licence.
- (2) The Sault Ste. Marie Police Service, a Municipal By-law Enforcement Officer or any person acting under those persons, or any person authorized by the City may at reasonable times during business hours inspect:
 - (a) any premises or place where a Stationary Peddler business is carried on, or where 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.
- (1) When a re-inspection is required to confirm compliance with the provisions of this by-law a fee in the amount of One Hundred (\$100.00) Dollars shall be charged.

5.1.3. Offences and 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*, R.S.O. 1990, c. P.33.
- (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.

5.2 ENACTMENT

5.2.1 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.

5.2.2 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.

5.2.3 Severances

If any section, subsection, sentence, clause, phrase or provision of this bylaw 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.

5.2.4 By-laws Repealed

By-Laws 2003-51 and 2003-53 of the Corporation of the City of Sault Ste. Marie and any amendments made thereto are hereby repealed.

5.2.5 Effective Date

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

PASSED in open Council this 28th day of May, 2018.

"Christian Provenzano"

MAYOR – CHRISTIAN PROVENZANO

"Malcolm White"

CITY CLERK – MALCOLM WHITE

[AMENDED BY BY-LAW 2019-180]

SCHEDULE "A"

Fees are as set out in the User Fee By-law as updated from time to time.