



BY-LAW NO. 2018-031

**A BY-LAW OF THE CORPORATION OF THE TOWN OF
BRACEBRIDGE TO LICENCE AND REGULATE
TEMPORARY VENDORS WITHIN THE TOWN OF
BRACEBRIDGE**

WHEREAS Section 8 of the *Municipal Act*, 2001, S.O. 2001 c. 25 (hereinafter referred to as the "Municipal Act"), provides that the powers of the Municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on municipalities to enable municipalities to govern their affairs as they consider appropriate and to enhance the municipality's ability to respond to municipal issues;

AND WHEREAS Section 9 of the *Municipal Act* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purposes of exercising authority under the *Municipal Act* or any other Act;

AND WHEREAS Section 11 of the *Municipal Act* provides that a lower tier municipality may pass by-laws that it considers necessary or desirable for the public;

AND WHEREAS Section 150 of the *Municipal Act* defines a business as any business wholly or partly carried on within a municipality even if the business is being carried on from a location outside of the municipality and includes the sale or hire of goods or services on an intermittent or one-time basis and the activities of a transient trader;

AND WHEREAS Sections 151 and 160 of the *Municipal Act* provide that a municipality may provide for a system of licences with respect to a business and pass by-laws licensing businesses under any section of the *Municipal Act* or any other Act;

AND WHEREAS Section 153(2) of the *Municipal Act* states that a by-law providing for a system of licences for a business may require as a condition of obtaining, continuing to hold or renewing a licence that the business comply with the land use control by-laws or requirements under the Planning Act or any other Act.

AND WHEREAS Section 425(1) of the *Municipal Act* states that a municipality may pass by-laws providing that a person who contravenes a by-law of the municipality passed under this Act is guilty of an offence;

AND WHEREAS Section 426(1) of the *Municipal Act* states that no person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty under this Act or under a by-law passed under this Act;

AND WHEREAS Section 429 of the *Municipal Act* permits a municipality to establish a system of fines for offences under a by-law of the municipality passed under this Act and designates an offence as a continuing offence;

AND WHEREAS Section 436 of the Act states that a municipality has the power to pass by-laws providing that the municipality may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with: a by-law of the municipality

passed under this Act, a direction or order of the municipality made under this Act or made under a by-law of the municipality passed under this Act, a condition of a licence issued under a by-law of the municipality passed under this Act or an order made under section 431 of this Act;

AND WHEREAS the *Door to Door Sales Prohibition Act, 2016* and the *Consumer Protection Act, 2002* list goods and services that are prohibited from being marketed or sold on a door to door sales basis unless previous arrangements have been made with the property owner or occupant.

AND WHEREAS the Council for the Town of Bracebridge deems it expedient to establish regulations to control business activities relating to the sale of goods on a temporary basis on both privately owned property as well as door to door sales in the interest of consumer protection and nuisance control;

AND WHEREAS a "Modern and Prosperous Economy" has been identified as a strategic objective by the Council of the Corporation of the Town of Bracebridge;

"AND WHEREAS by motion 18-GC-121, the Council of The Corporation of the Town of Bracebridge deems it expedient to pass such a by-law;

NOW THEREFORE, THE COUNCIL OF THE CORPORATION OF THE TOWN OF BRACEBRIDGE ENACTS AS FOLLOWS:

1. DEFINITIONS

- 1.1 **Applicant** means a person, company or organization that has made an application for or is required to be licensed as a temporary vendor or who has been issued a temporary vendor business licence by the Town.
- 1.2 **Charitable Organization** means an organization or group recognized by the Canada Revenue Agency (CRA) as being charitable and in full compliance with the reporting requirements under either the *Charities Accounting Act, R.S.O. 1990, c. C.10* or the *Income Tax Act, R.S. 1985, c. 1*.
- 1.3 **Council** means the Council of The Corporation of the Town of Bracebridge.
- 1.4 **Door to Door Sales** means attending a property for the purpose of attempting to sell a product or service or discussing the potential sale of a product or service on other than an invitation basis.
- 1.5 **Exempt Permanent Business** means a permanent business other than those listed on Schedule "A" of this by-law.
- 1.6 **Highway** includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, and any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof.
- 1.7 **Invitation Basis** means an arrangement whereby the representative of a business or potential consumer has been invited and has been scheduled to attend a specific property by the owner or occupant of the property in order to demonstrate goods, wares, merchandise, samples or services to the owner or occupant of the property or potential consumer.
- 1.8 **Licence** means a business licence issued by the Licensing Officer to an applicant permitting the applicant to carry on business as a temporary vendor within the Town under the authority of this by-law.

- 1.9 **Licensee** means an applicant person, company or organization that has been issued a temporary vendor business licence.
- 1.10 **Licensing Officer** means the Chief By-Law Enforcement Officer for the Town or a designate.
- 1.11 **Non-Profit** means the same as not for profit and means a service club, athletic team or other group or organization seeking to raise money through donations and/or sales for the advancement of education, athletics, religion, culture and the arts, health and welfare with all proceeds from the donations or sales benefitting the service club, athletic team or other group or organization.
- 1.12 **Non-Profit Sales** means that all sales are conducted on a non-profit basis.
- 1.13 **Officer** means an individual appointed by Town Council as a By-Law Enforcement Officer for the Town under the authority of the Police Services Act, R.S.O. 1990, c. P.15 or any police officer employed by the Ontario Provincial Police.
- 1.14 **Operate** means to manage, work, control, maintain, conduct or attempt to conduct business operations.
- 1.15 **Owner** means the registered owner of the land on which the temporary vendor business is being or is to be conducted, or the person, company or organization appearing as the applicant or owner on the temporary vendor business licence application or business licence issued by the Licensing Officer.
- 1.16 **Permanent business** means a business that is currently operating from a fixed location within the Town of Bracebridge inside a building on a property currently paying property tax to the Town and upon which the business use is permitted under the authority of the zoning by-law currently in effect.
- 1.17 **Premises** means a location where a temporary vendor is conducting or attempting to conduct business.
- 1.18 **Special Event** means an event proceeding under the authority of a special event permit issued by the Town.
- 1.19 **Temporary Vendor** means a person, company or organization that sells or offers for sale any goods, wares, merchandise or services or who carries and exposes goods, wares or merchandise that are to be delivered afterwards but shall not include any of the activities of a permanent business or as otherwise exempted under this by-law.
- 1.20 **Town** means The Corporation of the Town of Bracebridge.
- 1.21 **Valid** means currently in effect and not expired.

2. LICENCE APPLICATION

- 2.1 Every person, company or organization making application for a temporary vendor business licence shall submit the following information and/or documentation to the Licensing Officer as part of a complete application package:
 - 2.1.1 A completed Town business licence application form indicating the name of the applicant, the requested term of the business licence along with the required business licence application fee as contained in the Town Fees and Charges by-law currently in effect;

2.1.2 Written permission from the owner of the property upon which the temporary vendor proposes to conduct business operations confirming:

2.1.2.1 that the applicant is permitted to operate from the property;

2.1.2.2 the nature of the sales activity that the applicant has indicated will take place from the property;

2.1.2.3 the period of time the applicant will be permitted to conduct business operations on the property.

2.1.3 Any other documentation as determined by the Licensing Officer;

2.2 Temporary vendor business licence application fees are contained in the current Town Fees and Charges By-Law. A business licence application fee for a temporary vendor is non-refundable and is not pro-rated.

3. TERM OF LICENCE

3.1 The term of every temporary vendor business licence shall be indicated on the business licence after which time the business licence shall become null and void.

4. SCHEDULES

4.1 All schedules attached to this by-law shall form part of the by-law.

5. NO VESTED RIGHT

5.1 No person, company or organization shall have a vested right to the continuation or re-issuance of a business licence. All business licences issued, renewed, cancelled, suspended or terminated remain the sole property of the Town.

6. LICENCE TRANSFER

6.1 A temporary vendor business licence issued to a specific licensee is valid only for the business operations conducted by that licensee. Once issued, no business licence may be transferred, sold or otherwise used by any other person, company or organization without the express approval of the Licensing Officer.

7. LICENCE ISSUANCE/SUSPENSION/REVOCATION

7.1 The Licensing Officer shall receive, review and process all submitted applications for a temporary vendor business licence and shall issue a business licence to the applicant if the requirements of this by-law have, in the opinion of the Licensing Officer, been satisfied.

7.2 The Licensing Officer may refuse to issue a business licence and may suspend or cancel an issued business licence when:

7.2.1 The applicant or licensee does not meet or has failed to adhere to the requirements of this by-law, other Town by-laws or any applicable provincial or federal legislation;

- 7.2.2 The Licensing Officer determines that the location and/or operation of the proposed temporary vendor business are likely to create or have created a public nuisance;
- 7.2.3 The Licensing Officer determines that the temporary vendor business operation is or is likely to be contrary to the public interest.
- 7.3 Notice of the suspension or cancellation of an issued business licence shall be in a written form and may be communicated to the licensee via any one of the following approved methods:
 - 7.3.1 Personal service to a person working as a temporary vendor;
 - 7.3.2 Posting the notice in a prominent location on the premises of the temporary vendor;
 - 7.3.3 Mailing the notice through regular mail to the licensee at the address noted on the business licence application. When notice of licence cancellation or suspension is communicated to the licensee via regular mail, the licence shall be deemed to be cancelled or suspended three (3) business days after mailing.

8. NOTICE AND APPEAL

- 8.1 A licensee that has had a temporary vendor business licence application refused or an issued business licence suspended or cancelled by the Licensing Officer may make a written application to Council to have the decision of the Licensing Officer overturned.
- 8.2 Upon receipt of a written application as outlined in section 8.1, Council may either:
 - 8.2.1 Confirm the decision of the Licensing Officer or;
 - 8.2.2 Overturn the decision of the Licensing Officer.
- 8.3 At Council's sole discretion, permit the applicant an opportunity to address Council.
- 8.4 Any decision made by Council to allow or deny an applicant to address Council at a public meeting, to uphold the initial business licence refusal, suspension or cancelation or to issue the business licence with or without conditions, shall be final.

9. GENERAL PROVISIONS

- 9.1 A temporary vendor shall not operate anywhere within the Town without possessing and displaying in a location visible to customers a valid temporary vendor business licence issued by the Licensing Officer for the Town under the authority of this by-law.
- 9.2 A temporary vendor business licence may be issued for any one of the following durations:
 - 9.2.1 One day (24 hours maximum)
 - 9.2.2 Week-end (Saturday and Sunday – 48 hours maximum)
 - 9.2.3 One week (7 calendar days)

- 9.2.4 One month (first to last day of a calendar month)
- 9.2.5 Six months (consecutive months within one calendar year)
- 9.3 A separate temporary vendor business licence shall be required for every different location in which a temporary business operates.
- 9.4 A temporary vendor shall not conduct door to door sales at any time within the Town.
- 9.5 A temporary vendor shall not operate between the hours of 9:30 P.M. and 7:30 A.M.
- 9.6 A temporary vendor shall not operate within 100 metres of a permanent business when, in the opinion of the Licensing Officer, the temporary vendor is offering for sale or selling comparable merchandise, goods, wares or services to that of the permanent business.
- 9.7 A temporary vendor shall not operate on any portion of a highway.
- 9.8 A temporary vendor shall not operate within the Town for a period exceeding six (6) months in any one calendar year.

10. EXEMPTIONS

- 10.1 Section 9.4 of this by-law shall not apply to a religious organization or member of a religious organization or a political candidate or a volunteer working on behalf of a political candidate when canvassing door to door for the purpose of providing information, literature or an election sign only.
- 10.2 This by-law shall not apply to a temporary vendor operating and included as part of a special event or as otherwise specifically recognized and authorized by Council motion or when operating inside of a Town building with the approval of the Town staff member responsible for the rental of the property.
- 10.3 Section 9.4 of this by-law shall not apply to an exempt permanent business conducting door to door sales during the posted or advertised regular business hours for the business provided the persons conducting door to door sales:
 - 10.3.1 Are directly employed by the permanent business and not employed by a contractor or sub-contractor on behalf of the permanent business;
 - 10.3.2 Wear identification clearly stating the name of the employee and the name of the permanent business represented by the employee;
 - 10.3.3 Immediately vacate the property when requested to do so by the property owner or occupant.
- 10.4 Sections 9.1, 9.4, and 9.6 of this by-law shall not apply to a temporary vendor operating on a not for profit or charitable basis when all of the proceeds obtained by the temporary vendor are retained by or being provided to the not for profit or charitable organization as determined by the Licensing Officer.
- 10.5 This by-law shall not apply to any temporary vendor operating and included as part of the Bracebridge Farmer's Market with the approval of the Board of Directors for the Bracebridge Farmer's Market.

- 10.6 The following activities shall not be deemed to be temporary vendors for the purpose of business licensing under this by-law:
- 10.6.1 A manufacturing activity or industry;
 - 10.6.2 The sale of goods by wholesale;
 - 10.6.3 The generation, exploitation, extraction, harvesting, processing, renewal or transportation of natural resources;
 - 10.6.4 The sale of goods, wares or merchandise in accordance with the *Bankruptcy and Insolvency Act, R.S., 1985, C. B-3*;
 - 10.6.5 The sale of consumable or manufactured goods, wares or merchandise if they were lawfully grown or produced by a farmer, family member or employee of a farmer on land within Bracebridge and offered for sale or sold on the farm where the goods, wares or merchandise was grown or produced;
 - 10.6.6 Business operations conducted during regular business hours as a normal component of a permanent business whether inside or outside of the building on the property upon which the permanent business is located;
 - 10.6.7 A yard sale or garage sale in accordance with the regulations contained in the Town's Comprehensive Zoning By-Law currently in effect;
 - 10.6.8 The sale of goods, wares or merchandise by auction.
 - 10.6.9 The appraisal and/or purchase of jewelry, gold or other valuables.

11. INSPECTIONS

- 11.1 The Licensing Officer or other Officer may enter onto land at any reasonable time and may be accompanied by any person for the purpose of carrying out an inspection, taking photographs and obtaining evidence to determine whether a temporary vendor is in compliance with this by-law or an order issued under the authority of this by-law.
- 11.2 No person shall hinder or obstruct, or attempt to hinder or obstruct, an officer or person assisting the Licensing Officer or Officer when exercising a power or performing a duty under this by-law. For the purposes of this section, the failure to properly identify upon request by an officer shall be deemed to be obstruction of the officer.
- 11.3 A temporary vendor shall provide proof of being currently licensed to the Licensing Officer or Officer upon request. Refusal to provide proof of being currently licensed to the Licensing Officer or Officer shall be deemed obstruction as indicated in section 11.2 of this by-law.

12. OFFENCES AND PENALTIES

- 12.1 Any person who contravenes any provision of this by-law is guilty of an offence and is, upon conviction, liable to any penalty provided under the Provincial Offences Act, R.S.O. 1990, c. P.33, as amended and the Municipal Act, 2001, S.O. 2001 c.25.

12.2 Every person guilty of an offence under this by-law may, if permitted under the Provincial Offences Act, pay a set fine and the Chief Justice of the Ontario Court of Justice shall be requested to establish set fines in accordance with Schedule "A" of this by-law.

12.3 For the purpose of this by-law, each day of a continuing offence shall be deemed to be a separate offence.

13. VALIDITY AND SEVERABILITY

13.1 Every provision of this by-law is declared severable from the remainder and if any such provision of this by-law shall be declared invalid by a court of competent jurisdiction, such declaration shall not affect the validity of the remainder of the by-law.

14. FORCE AND EFFECT

14.1 This by-law shall come into force and effect upon the date Council approves the by-law.

15. REPEAL

15.1 On the date that the set fines are approved by the Regional Senior Justice of the Ontario Court of Justice, By-law 2010-071 is hereby repealed.

16. SHORT TITLE

16.1 This by-law may be referred to as the "Temporary Vendor By-Law".

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 9th DAY OF MAY, 2018.

Mayor, Graydon Smith

Director of Corporate Services/Clerk,
L. McDonald

SCHEDULE "A"

Permanent Businesses are Prohibited From Conducting Door to Door Sales of the Following Products and Services At All Times

1. Air cleaners
2. Air conditioners
3. Air purifiers
4. Duct cleaning services
5. Furnaces
6. Water filters
7. Water heaters
8. Water purifiers
9. Water softeners
10. Water treatment devices
11. Bundles of these goods and services

SCHEDULE "B"**Proposed Set Fines and Short Form Wording**

ITEM	Offence	Section	Proposed Set Fine
1.	Operate without valid licence	9.1	\$400.00
2.	Fail to properly display licence	9.1	\$200.00
3.	Fail to display licence for location of operation	9.3	\$200.00
4.	Conduct door to door sales	9.4	\$400.00
5.	Operate during prohibited hours	9.5	\$250.00
6.	Operate within 100 metres of comparable permanent business	9.6	\$250.00
7.	Operate on Town property or highway	9.7	\$250.00
8.	Obstruct officer performing duty	11.2	\$400.00