

TOWNSHIP OF GEORGIAN BAY
BY-LAW 2014-56

BEING A BY-LAW FOR LICENSING, REGULATING AND GOVERNING TRANSIENT AND ITINERANT TRADERS, FOR REGULATING VENDING IN STREETS, AND FOR REGULATING AND GOVERNING REFRESHMENT VEHICLES

WHEREAS the Municipal Act, 2001, c.25, provides that municipalities may pass by-laws to establish a system of licenses with respect to businesses;

AND WHEREAS the Municipal Act, 2001, c.25 provides that municipalities may pass by-laws to prohibit the carrying on or engaging in a business without a license

NOW THEREFORE the Council of The Corporation of The Township of Georgian Bay enacts as follows:

Section 1: Definitions

For the purpose of this by-law the following definitions shall apply:

"Applicant" means the person who applies for a license under this by-law;

"Clerk" shall mean the Clerk or designate for The Corporation of The Township of Georgian Bay.

"Council" shall mean the Council of The Corporation of The Township of Georgian Bay;

"Designated area" means an area designated for the parking of vehicles for the purpose of selling products there from or an area designated for the purpose of vending from a portable display unit located in such area and that is not part of a highway and is zoned by the Township's bylaw to permit a commercial or industrial use and for a mobile eating establishment or seasonal stand also including areas zoned recreation open space, park/open space or community facility;

"Fire Department" means the Chief of the Georgian Bay Fire Department or his/her designate;

"Highway" includes the entire right-of-way of a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for passage of vehicles and includes the area between the lateral property lines thereof;

"Itinerant Trader" shall include any 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;
"Medical Officer of Health" shall mean the Medical Officer of Health for Simcoe-Muskoka Health Unit or a duly authorized designate;

"Mobile eating establishment" shall mean any vehicle, trailer, cart or other structure not placed on a permanent foundation which is equipped for cartage, storage and the preparation of food stuffs, beverages,

confections and such items are offered directly for consumption to the general public, and includes a chip wagon, a mobile canteen and other refreshment vehicles;

"Municipality" shall mean The Corporation of The Township of Georgian Bay;

"Person" shall mean any human being, firm, partnership, incorporated company, corporation, association whether incorporated or unincorporated, agent or trustee, and the heirs, executor or other legal representatives of a person who whom the context can apply according to law;

"Municipal Law Officer" shall mean an individual appointed by by-law or other agencies designated by Council who are responsible for the administration of this by-law;

"Seasonal Stand" shall mean any building, stand or shed of any kind or refreshment vehicle installed seasonally on Township property licensed by this by-law which is equipped for the preparation, storage, heating, cooling or sale of food stuffs without limiting its generality commonly known as a "stand";

"Technical Safety Standards Association" (TSSA) means the Provincial ministry responsible for requirements of various safety and technical standards and for fuel storage and handling, pressure vessels, hazardous materials;

"Transient and Itinerant Traders License" shall mean a license issued by the municipality in accordance with this by-law;

"Transient Trader" shall mean a person who sells merchandise at a temporary location, who is not a permanent merchant in that place. A person vending at a craft show or trade show is not a "transient trader" for the purposes of this by-law.

Section 2: Administration

- 2.1 The Clerk or his or her designate is responsible for the administration of this by-law.
- 2.2 All Municipal Law Enforcement Officers with authority to enforce the by-laws of the municipality are responsible for enforcing the provisions of this by-law.
- 2.3 Any person may submit an application to the Clerk requesting an exemption from any of the prohibitions described in Sections 3 and 4 and Council hereby delegates to the Clerk or his or her designate, the authority to process any such application and to approve, reject or approve with conditions, an exemption.

Grant of Exemption

- 2.4 Upon receipt of a written application for Grant of Exemption to this by-law, the Clerk may refuse to grant any exemption or may grant the exemption applied for. Any exemption granted shall specify the time period not in excess of six months during which it is effective and may contain such terms and conditions as the Clerk determines to be appropriate.

- 2.4.1 The Clerk shall consider all applications for exemption and shall only grant an exemption or an exemption on conditions, where:
- i. the request is necessary and in the public interest;
 - ii. the proposed mitigation measures are appropriate;
 - iii. the duration of the requested exemption is reasonable.

Details of Application for Exemption

- 2.4.2 The application mentioned in Clause 2.3 shall contain:
- the name and address of the applicant;
- i. a statement of the particular provision or provisions of the by-law from which exemption is sought;
 - ii. the period of time, of a duration not in excess of six months, for which the exemption is sought;
 - iii. the reasons why the exemption should be granted; and
 - iv. a statement of the steps, if any, planned or presently being taken to bring about compliance with the by-law.

Breach

- 2.4.3 Breach by the applicant of any of the terms or conditions of the exemption shall render the exemption null and void and is an offence under this by-law.

Section 3: Licensing

- 3.1 No person shall sell any goods, wares or merchandise or operate a mobile eating establishment or seasonal stand while on a highway, a vacant lot or a parking lot adjacent thereto, or property owned by the municipality without the prior approval of the Clerk.
- 3.2 No transient trader, itinerant trader, mobile eating establishment or seasonal stand which does not hold a valid Transient and Itinerant Trader License issued by the Clerk under the authority of this By-law, shall carry on its business or trade within the municipality.
- 3.3 A Transient and Itinerant Trader License shall not be required in the following circumstances:
- i. the sale of the stock of a bankrupt or insolvent business within the meaning of any bankruptcy or insolvency Act in force in Ontario if such stock belonged to a business that was being carried on in the municipality at the time of the bankruptcy or insolvency, and no goods, wares or merchandise has been added to such stock;
 - ii. the sale of any stock damaged by reason of fire if such stock belonged to a business that was being carried on in the municipality at the time of the fire, and no goods, wares or merchandise have been added to such stock;
 - iii. the sale of a business to a "bona fide" purchaser who continues the business;
 - iv. a mobile eating establishment or seasonal stand operated at an auction or other disposal/sale of household contents and effects of a private residence in the municipality if such household contents and effects belong to the owner or the occupant of such residence in the municipality immediately prior to the auction or other disposal/sale provided that the mobile eating establishment or seasonal stand is on private property or on an adjacent road allowance in a location where its operation will not cause a traffic problem on a public road;

- v. a sale of goods, wares or merchandise by or under the auspices of the municipality or by a non-profit organization;
- vi. any sale by hawking, peddling or otherwise of goods wares or merchandise;
- vii. to wholesale or retail dealers in similar goods, ware or merchandise; or
- viii. 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 an agent or employee of such person having written authority so to do, if such grower, producer or manufacturer resides in the municipality; or
- ix. if products are sold as part of a community market or;
- x. if the goods, wares or merchandise are hawked, peddled or otherwise sold by a person who has already paid business tax in the municipality in respect to a business that deals in such goods, wares or merchandise, or by an employee agent or such person; or
- xi. if the goods, wares or merchandise are hawked, peddled or otherwise sold by an agent of the grower, producer or manufacturer, acting on behalf of the dealer who already pays business tax in the municipality in respect of the premises used for the sale of such goods, wares or merchandise; or
- xii. the products sold are in accordance with and part of a community festival of the municipality or non-profit organization and the vendor has received permission in writing from the organizers of the festival to sell within the celebration area.

3.4 Any person may apply for a Transient Trader License, including a mobile eating establishment or seasonal stand, granting the holder the exclusive right to:

- i. sell products from a vehicle to be parked in a designated area specified in the license provided the holder complies with the terms and conditions prescribed by the license and any agreement entered into with the municipality as a condition of receiving the license, or
- ii. sells from a portable display unit to be located in a designated area specified in the license provided the license holder complies with the terms and conditions prescribed by the license and any agreement entered into with the municipality as a condition of receiving a license.

3.5 The following procedure shall be applicable in respect to the granting of a transient trader license:

- i. the applicant shall determine the proposed location for the designated area and shall provide a letter from the property owner or property manager permitting the use of his/her land for the proposed use and confirming that all property taxes are paid to date on the proposed property location;
- ii. the applicant shall pay to the municipality a non-refundable application fee in the amount identified in the most recent Fees and Charges By-law enacted by the municipality;
- iii. the applicant shall complete an application for a license in the form attached as Schedule A;
- iv. the applicant shall submit a site plan which clearly shows the designated area along with the location of proposed parking, signage and refuse containers;

3.6 In addition to the application form, fee and other matters required the proposed location for the designated area shall comply with the following criteria:

- i. no portion of the designated area shall be located on a highway or part thereof;
- ii. no portion of the designated area shall be located directly in front of an entrance or exit from a building;
- iii. the designated area shall be located only on land zoned as commercial or industrial pursuant to the Township of Georgian Bay zoning by-laws.
- iv. the designated area shall not be located within 250 metres of a business establishment or another designated area in which similar products are sold;
- v. the designated area shall not be located within 50 metres of a signalized intersection as measured from the property line closest to the signalized intersection;
- vi. the designated area shall be set back at least twelve metres from a highway measured from the property line closest to the highway;
- vii. the parking, signage and refuse requirements indicated in the site plan shall be within the designated area;
- viii. in the case of a mobile eating establishment or seasonal stand, it shall not become a nuisance in regard to odour;

3.7 The operator of the mobile eating establishment or seasonal stand shall be responsible for maintaining the area within 60 metres of the mobile eating establishment or seasonal stand, free of litter;

3.8 All motorized mobile eating establishments shall be roadworthy and comply with the Highway Traffic Act and shall be licensed for operation on a public highway;

3.9 A separate Transient Traders' license shall be taken out for each mobile eating establishment or seasonal stand;

3.10 Upon receipt of a completed application on the prescribed form (attached as Schedule 'A' to this by-law), including payment of the applicable license fee, and subject to compliance with all other sections of this By-law, the Clerk shall issue a Transient and Itinerant Trader License.

3.11 Every Transient and Itinerant Trader License issued under this by-law shall take effect on the day it is issued and expire on December 31st of the year in which it was issued.

Section 4 - Transient Traders Operating On Municipal Properties

4.1 Applicants wishing to acquire a license for operations located on municipal property shall be required to comply with the provisions of this by-law in addition to obtaining the consent of the current sitting Council.

4.2 All applications for Transient Traders licenses operating on Municipal property shall be subject to a competitive bidding process either through a Request for Proposals or an Expression of Interest and subject to the following special provisions:

Commercial General Liability

- 4.3. The successful applicant for a license shall, at his or her expense, obtain and keep in force during the term of this licensed agreement, Commercial General Liability Insurance satisfactory to the Municipality, written by an insurer licensed to conduct business in Ontario and include but not be limited to the following:
- i. A limit of liability of not less than two million dollars(\$2,000,000)/ occurrence.
 - ii. The Municipality shall be named as an additional insured;
 - iii. The policy shall contain a provision for cross liability in respect of the named insured;
 - iv. Non-owned automobile coverage with a limit of at least two million dollars (\$2,000,000) including contractual non-owned coverage;
 - v. Products and completed operation coverage (Broad Form) with an aggregate limit not less than two million dollars (\$2,000,000).
 - vi. That 30 days prior notice of an alteration, cancellation or material change in policy terms which reduces coverage's shall be given in writing to the Municipality

Removal of Licensed Mobile Eating Establishments

- 4.4. All Mobile Eating Establishments and Seasonal Stands shall be removed at the end of each season (by October 31st) and not reinstated before April 1st each year.
- 4.5 All electrical costs, tippage fees, and septic disposal fees to be borne by the License holder.
- 4.6 The Term of the License shall be for one year but may be extended up to an additional 4 years if the licensee makes application in writing to the Clerk's Office no later than February 1st in the year following the issuance/renewal of the license.
- 4.7 The agreement may be transferrable to a successor or assign with the written approval of Council.
- 4.8 The applicant shall be required to submit a plan to acknowledge and accommodate the requirements of the Accessibility for Ontarians with Disabilities Act.
- 4.9 Failure to remove any transient vending apparatus or equipment from public property will result in the removal of said property by the municipality or authorized agent with the cost of such removal being borne by the equipment or apparatus owner.
- 4.10 Where the municipality has been compelled to take steps to remove vending apparatus or equipment, no compensation shall be paid to the owner for the equipment or apparatus, nor for loss of earnings or livelihood. The owner acknowledges that the equipment/apparatus may be held in impound for up to 60 days and may be reclaimed upon the payment of all outstanding fees, fines and storage charges. After 60 days, the municipality may liquidate the equipment/apparatus in order to recover the costs or removal. The liquidation will be conducted in accordance with our surplus asset policy.

Section 5 - Regulations:

- 5.1 Every person to whom a Transient and Itinerant Trader License

has been issued shall:

- i. in the case of a transient trader, cause such license to be prominently and permanently displayed in the place of business; and
 - ii. in the case of the itinerant trader, carry the license at all times while conducting business in the municipality.
- 5.2 Any employee or agent of a person to whom a Transient and Itinerant Trader License has been issued shall, when required by any Municipal Law Enforcement Officer of the municipality, exhibit his authority to sell the goods, wares or merchandise of the person to whom the license was issued.
- 5.3 Upon demand by any Municipal Law Enforcement Officer of the municipality, any person to whom a Transient and Itinerant Trader License has been issued, or the employee or agent of such person, shall exhibit it, failing which such person, employee or agent shall be guilty of an offence unless such license is accounted for satisfactorily.
- 5.4 The operator of every mobile eating establishment or seasonal stand shall at all times comply with the requirements of the Medical Officer of Health and the Fire Department and, prior to the issuance of a Transient Trader License under this By-law, supply the Clerk with written confirmation of compliance in this regard;
- 5.5 Every mobile eating establishment or seasonal stand which is equipped with propane-fuelled appliances must be inspected by a certified propane fitter registered by the Fuel Safety Branch, and found to comply with the Ontario Propane Code and, prior to the issuance of a Transient Trader License under this By-law, shall supply the Clerk with written confirmation of compliance in this regard.

Section 6: Revocation and Contravention

- 6.1 A Transient or Itinerant Trader License issued under the provisions of this By-law may be revoked by the Clerk when:
 - i. In the case of a mobile eating establishment or seasonal stand, written notice has been received from the Medical Officer of Health or designate, or the Technical Safety Standards Association, or Fire Department stating that the mobile eating establishment or seasonal stand is operating contrary to required standards; or
 - ii. The Licensee has been served notice of non-compliance with the terms of this By-law, by a Provincial Offences Officer.

Section 7: Validity

- 7.1 If a court of competent jurisdiction declares any provision, or part of a provision, of this by-law to be invalid, or to be of no force and effect, it is the intention of Council in enacting this by-law that each and every provision of this by-law authorized by law be applied and enforced in accordance with its terms to the extent possible according to law.

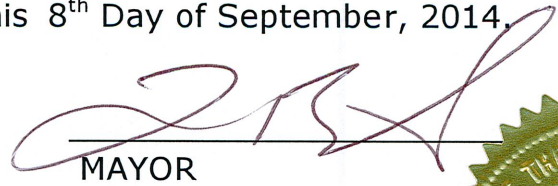
Section 8: Penalty

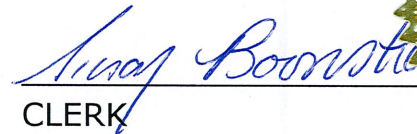
- 8.1 Every person who contravenes any provisions of this by-law shall be guilty of an offence and, upon conviction, is subject to a fine as provided in the Provincial Offences Act and to any other applicable penalties.

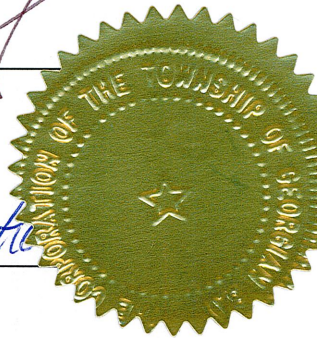
Section 9: Effective Date

- 9.1 Any other by-laws, or portions thereof conflicting with this by-law are hereby repealed.
- 9.2 The Enforcement Provisions contained in this By-law shall come into full force and effect on January 1, 2015.

Read and enacted in Open Council this 8th Day of September, 2014.


MAYOR


CLERK





SCHEDULE 'A' TO BY-LAW 2014-56

APPLICATION FOR TRANSIENT TRADERS LICENSE

APPLICANT NAME:

PHONE #

MAILING ADDRESS: (STREET, CITY, POSTAL CODE)

BUSINESS NAME:

BUSINESS PHONE NUMBER:

PLATE # OF VEHICLE UNDER THIS LICENSE (if applicable) :

LOCATION OF VEHICLE/STAND/CART UNDER THIS LICENSE:

NAME AND CONTACT INFORMATION FOR PROPERTY OWNER
(where vehicle is to be located, if different from applicant):

TYPE OF GOODS/SERVICES TO BE SOLD:

Note: This application must be reviewed by all municipal departments to determine suitability of location prior to any license being issued.

ATTACH THE FOLLOWING ADDITIONAL DOCUMENTS:	CHECK:
Confirmation Letter from Property Owner	
Site Map of Vending Area	
Health Department Inspection (current within last 60 days)	
Technical Safety Standards Association Approval (if applicable)	
Propane Inspection and certification (if applicable)	
Insurance Certificate (\$2, 000,000 min – Licenses issued on municipal	
Accessibility for Ontaria ns with Disabilities Act Accommodation Plan	

ANNUAL PERMIT FEE	\$300.00
Monthly Fee for Municipal Lands (tbd by RFP bid)	

I, _____, SWEAR THAT THE INFORMATION GIVEN IN THIS APPLICATION AND ANY SUPPORTING DOCUMENT IS TRUE AND COMPLETE AND UNDERSTAND THAT FALSE STATEMENTS COULD RESULT IN THE REVOCATION OF A LICENSE IF GRANTED.

SWORN BEFORE ME AT THE TOWNSHIP OF GEORGIAN BAY, IN THE DISTRICT OF MUSKOKA THIS _____ DAY OF _____, 20__.

SIGNATURE OF APPICANT

CLERK

****Personal information contained on this form is collected under authority of the Municipal Act, 2001, as amended and will be used to determine eligibility for a license.****