

Licence

Chapter 591 Business Operated On A Temporary Basis

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WHEREAS subsection 11 (2) of the *Municipal Act, 2001*, c. 25, provides a lower-tier municipality with the authority to pass by-laws for the health, safety and well-being of persons and the protection of persons and property, including consumer protection;

AND WHEREAS the Scope of Powers conferred under subsection 8

(3) of the *Municipal Act, 2001*, c. 25 permit that by-laws passed under sections 10 and 11 may provide for a system of licenses respecting the matter;

AND WHEREAS section 150 of the *Municipal Act, 2001*, c. 25 without limiting the broad powers granted to municipalities through sections 9, 10 and 11 of the *Municipal Act, 2001*, c. 25 provides that a local municipality may licence, regulate and govern any business wholly or partly carried on within the municipality for one or more of the following purposes: health and safety, nuisance control or consumer protection;

AND WHEREAS the Council of the City of Woodstock deems it advisable to license the business known as “Businesses Operated on a Temporary Basis” for the purposes of health and safety, nuisance control and consumer protection.

Article 1 - Short Title

591.1.1 Citation

This Chapter may be cited and known as the “Businesses Operated on a Temporary Basis Licensing By-law.”

Article 2 - Interpretation

591.2.1 Business operated on a temporary basis - defined

“business operated on a temporary basis” shall include:

- a) any person who goes from place to place, or to a particular place, to buy, sell or rent goods, wares or merchandise or who carries and displays samples, patterns or specimens of any goods, wares

- or merchandise for which orders are taken and that are to be delivered within the geographic limits of the City afterwards;
- b) any business, person, or organization which has an employee or agent who goes from place to place, or to a particular place, to buy, sell or rent goods, wares or merchandise, or who carries and displays samples, patterns, or specimens of any goods, wares or merchandise for which orders are taken and that are to be delivered within the geographic limits of the City afterwards;
 - c) but excludes a consumer show open to the public or trade show open by invitation or registration only, the primary purpose of which are the display of goods and products and not the direct sale of them;
 - d) for purposes of this definition a business shall be deemed to be carried on within the within the geographic limits of the City if any part of the business is carried on within the geographic limits of the City even if the business is being carried on from a location outside the City.

591.2.2 Building - defined

“building” shall mean a structure that is permanently on site and assessable for that purpose.

591.2.3 By-law Enforcement Officer - defined

By-law Enforcement Officer means a person appointed by the Council of the Corporation to enforce the by-laws of the municipality or a public officer employed by the Woodstock Police Services Board or its successor.

591.2.4 Charitable - defined

“charitable” shall mean any charity that is registered or is eligible to be registered with the federal government and has a registered charity number that has been issued or any organization that is eligible to receive a lottery licence.

591.2.5 City - defined

“City” means The Corporation of the City of Woodstock.

591.2.6 Classes of businesses - defined

The classes of “business operated on a temporary basis” shall include the following:

Class 1

“Door to Door Sales” shall include any business, person or organization which engages in the solicitation, sale, purchase or rental of goods, wares, merchandise or services, or has aforementioned actions conducted on their behalf, on a door to door basis.

Class 2

“Door to Door Salesperson” shall include any person who engages in the solicitation, sale, purchase, or rental of goods, wares merchandise, or services on a door to door basis including salespersons or agents.

Class 3

“Day Sales” shall include the sale of manufactured goods such as but not limited to electronics, sports equipment and tools for a maximum period of one day from one specific location per calendar year such as, but not limited to, a parking lot or vacant commercial facility where such use is permitted under the City Zoning By-law.

Class 4

“Craft Show” shall include the exhibiting or offering for sale on a temporary basis at one location by Canadian crafts people, goods, wares or merchandise which they themselves have produced where such use is permitted under the City Zoning By-law.

Class 5

“Trade Show” shall include the exhibiting or offering for sale on a temporary basis at one location by several manufacturers or distributors, goods, wares or merchandise which they themselves have produced or manufactured or are distributing on behalf of the producer or manufacturer; and may include the tools utilized to produce the goods, ware or merchandise but excludes a consumer show or trade show operating as an integral part of a convention or conference, where such use is permitted under the City Zoning By-law.

Class 6

“Antique/Collectible Show/Flea market” shall include the exhibiting or offering for sale on a temporary basis at one location, antique or collectible goods, wares or merchandise where such is permitted under the City Zoning By-law.

Class 7

“Event Sales” shall include the exhibiting or offering for sale on a temporary basis at one location by several manufacturers or distributors, goods, wares or merchandise which are associated with the organized occasion such as a social function or sports competition or a significant occurrence being conducted where such use is permitted under the City Zoning By-law.

Class 8

“Seasonal Sales” shall include temporary businesses such as but not limited to gardening product sales, Christmas tree sales and farm produce for a period of up to 5 months from one specific location such as but not limited to, a parking lot or vacant lot and may include the use of a temporary structure such as a greenhouse, sales office or shelter where the use is permitted in the City Zoning By-law.

Class 9

“General” shall include any business operated on a temporary basis excluding Classes 1, 2, 4, 5, 6, 7, & 8 as defined in Section 591.2.6 where the use is permitted in the City Zoning By-law. The sale of manufactured goods is not eligible to be licensed under this clause being subject to the provisions of Class 3.

591.2.7 Clerk - defined

“Clerk” shall be defined as the Clerk or Deputy Clerk appointed by by-law of the City.

591.2.8 Farmer’s Market - defined

“farmer’s market” shall mean the market, generally but not exclusively operated on Saturday at 875 Nellis Street, and the market generally, but not exclusively operated on Thursday afternoons by the Board of Management (BIA) on the corner commonly known as “Museum Square” and a portion of Market Street in the City.

591.2.9 Local retailer - defined

“local retailer” shall mean any individual or business which provides for the selling, buying or renting of goods or services in a building located within the City which is subject to property tax in the City.

591.2.10 Person - defined

“person” is an owner, agent, employee or adult responsible for others engaging in, managing or otherwise involved in a business activity pursuant to this Chapter.

Article 3 - General Provisions

591.3.1 Operation - without valid licence - prohibited

Subject to the exceptions described in this Chapter, no person shall engage in or carry on a business operated on a temporary basis within the City without first having obtained a licence to do so. (See Set Fine.)

591.3.2 Licence - compliance - Zoning By-law

No licence shall be issued where the use is not permitted under the provisions of the City Zoning By-law.

591.3.3 Licence - carried - at all times

A licensee shall, while carrying on a business operated on a temporary basis as defined by this Chapter:

- a) with respect to premises, display the licence in a conspicuous place in or on the said premises; (See Set Fine) or
- b) with respect to a vehicle, display the licence in a conspicuous place in or on the said vehicle; (See Set Fine) or

- c) with respect to an individual, maintain the licence issued by the Corporation containing their photo on their person while conducting the activity for which the licence was issued. (See Set Fine.)

591.3.4 Licence - produced - upon demand

Upon demand being made by a by-law enforcement officer, a person conducting a business operated on a temporary basis shall produce his/her licence for same. (See Set Fine)

591.3.5 Failure to produce licence - deemed offence

A person failing to produce on demand a licence issued under this Chapter shall be deemed to have committed an offence under this Chapter.

591.3.6 Cancellation - suspension - refund

The Corporation may at any time cancel or suspend any licence issued under this Chapter and any licence fee collected for such licence shall be refunded for the period of cancellation or suspension.

591.3.7 Cancellation - suspension - privileges - discontinued

While any licence granted under this Chapter is suspended or cancelled, the licensee shall not exercise any right or privilege conferred by such licence and any such licensee attempting to exercise any right or privilege under such licence shall be liable to the same penalties and may be prosecuted in the same way as though such person had procured no such licence.

591.3.8 Sale - on highways - prohibited

No person shall be allowed to peddle merchandise or conduct retail sale of any nature from a temporary outdoor display in or upon any highway within the corporate limits of the City.

591.3.9 Public Park - City

No person licensed shall carry on a business on a temporary basis in any public park in the City except under permission of the City.

Article 4 - Licence - Issue - Requirements

591.4.1 Procedure - requirements

Applications must be filed in writing on the prescribed form with payment of the applicable application fee. The applicant shall provide any documentation that the Clerk deems appropriate. The Clerk shall provide a copy of every application for the issuance or renewal of a business operated on a temporary basis licence to such civic departments, boards, commissions, authorities or agencies as the Clerk considers may have an interest in the application; who may submit comments or recommendations

to the Clerk in respect of the application within such time specified by the Clerk.

591.4.2 Information - held by Clerk - open to inspection

Any application, comment, recommendation, information, document or thing in the possession of the Clerk pursuant to the provisions of this Chapter shall be made available by the Clerk for an inspection by any person employed by the City for administration purposes and/or enforcement purposes subject to the limitations imposed by the *Municipal Freedom of Information and Protection of Privacy Act*.

591.4.3 Licence - granted - signed - by Clerk

Each licence shall be issued in the name of the City and shall be granted and signed by the Clerk or his/her designate.

591.4.4 Contravention - other laws - prohibited

The issuance or renewal of a licence is not intended and shall not be construed as permission or consent by the City for the holder of the licence to contravene or to fail to observe or comply with any law of Canada or Ontario or any Chapter of this Code or by-law of the City.

591.4.5 Issuance - rejected - conditions

The Clerk shall issue a business operated on a temporary basis licence to an applicant except where:

- a) the past conduct of the applicant or an individual who is a member of a partnership that affords reasonable grounds for belief that the business will not be carried on in accordance with the law;
- b) the applicant is a corporation or a partnership of which a member is a corporation and the past conduct of an officer, director or shareholder who owns or controls 10% or more of its issued and outstanding voting and non-voting shares affords reasonable grounds for belief that the business will not be carried on in accordance with the law;
- c) the applicant is carrying on activities that are, or will be if the applicant is licensed in contravention of this Chapter; or
- d) the applicant is in default with respect to any other financial obligation to the City.

591.4.6 Issuance - rejected - dispute to Appeal Tribunal

Where a licence holder or applicant disputes in writing the non-issuance of a licence or the revoking of a licence, the disputed matter shall be referred by the Clerk to the Appeal Tribunal as outlined in Article 7, which shall hear representations from the applicant and determine the matter.

591.4.7 Obstruction - hinder inspection - prohibited

No person shall obstruct a person inspecting or withhold, destroy, conceal or refuse to furnish any information or thing required by a person inspecting for the purposes of this Chapter.

591.4.8 Issue - expiry - February 15 - one year after issue

Each licence granted under this Chapter shall be for one year from February 15 in the current year and expire on the 15th of February one year after issuance or sooner if the licence so indicates.

591.4.9 Renewal - by new application

Any person requiring a new licence for a year following the date of expiry of any previous licence shall apply for the new licence in the same manner as for any new applicant.

591.4.10 Transfer - prohibited

Every licence, at all times, is owned by and is the property of the City and is valid only in respect of the person, location and premises named therein and for the nature of the business stated in the licence. No licence may be sold, purchased, leased, mortgaged, charged, encumbered, assigned, transferred or otherwise dealt with.

591.4.11 Licence - address - notification of change

Every licensee shall notify the Clerk within seven days of any change in his/her business or home address.

Article 5 - Fees

591.5.1 Fees - required - set out

Licence fees shall be paid as captioned below: (By-law 8894-14, January 16, 2014, By-law 9154-17 – September 7, 2017)

<u>Class</u>	<u>Definition</u>	<u>Cost</u>
Class 1	Door To Door Sales	\$140/year/business
Class 2	Door To Door sale	\$80/year/sales person
Class 3	Day Sales	\$650/day
Class 4	Craft Show Non-profit	\$140/event \$55/year
Class 5	Trade Show	\$140/event (\$55/event for Non-Profit)
Class 6	Antique/Collectible Show	\$140/event (\$55/event for Non-Profit)
Class 7	Event Sales	\$80/event (\$55/event for Non-Profit)

<u>Class</u>	<u>Definition</u>	<u>Cost</u>
Class 8	Seasonal Sales	\$130/month/location
Class 9	General	\$110/day/location

591.5.2 Reduction - after February 15 - prohibited

There shall be no reduction in the licence fee for any licence issued after the 15th day of February in any year.

Article 6 - Exemptions

591.6.1 Wholesale - retail dealers - similar goods

No licence is required for peddling to wholesale or retail dealers in similar goods, wares or merchandise.

591.6.2 Flea Market - antique show - craft show

Notwithstanding any other section of this by-law, a person who, if it were not for this section, is otherwise required to be licensed under this by-law, and who offers for sale or sells goods, wares, or merchandise to the public at a flea market, craft show or antique show or place which is licensed under this by-law, is not required to be licensed under this Part for the purposes of offering for sale or selling goods, wares or merchandise to the public at such flea market, craft show, antique or collectible show, trade show or place.

591.6.3 Other circumstances

Notwithstanding Section 591.3.1 of this Chapter, a licence shall not be required for selling goods, wares or merchandise.

- a) existing local retailers are exempt from obtaining a licence and paying a licence fee for "day sales" or "seasonal sales" or general Class 9 sale if the temporary selling activity is an extension of the existing business at that location; or
- b) if the goods, wares or merchandise are sold at an Event Sale, Class 7, as defined by City Policy and for which an Events Sales Licence has been obtained.
- c) Fundraising sales by students of Oxford County schools shall be required to have a licence under Class 2 Door to Door Sale and are exempt from paying a licence fee.

591.6.4 Local retailers

Local retailer shall be required to obtain a licence under this by-law if the local retailer is operating at a temporary location but shall be exempt from paying the appropriate licence fee for one temporary location only, provided that the goods, wares or merchandise offered for sale at the temporary location are the same goods, wares or merchandise offered for sale continuously when the local retailer is open for business at their permanent location for at least three months.

591.6.5 Exemption - charitable - religious - non-profit

Charitable, religious and non-profit organizations that have a chapter in the County of Oxford shall pay a reduced fee for Class 4, 5, 6 and 7 according to the fee schedule as set out in Section 591.5.1.

591.6.6 Exemption - charitable - door to door sales

Oxford County residents shall require a licence but be exempt from the fee for a door to door salesperson in Section 519.5.1, Class 2, when acting on behalf of a charitable or non-profit organization that has a chapter in the County of Oxford selling goods or merchandise as a fundraising event. Charitable - religious - non-profit organization shall be defined as any organization that meets the eligibility criteria under the A.G.C.O. guidelines.

591.6.7 Exemption - farm - products - own land

No licence is required if the produce are grown or produced by a resident of the municipality who offers for sale or sells only the produce of his/her own property consistent with the City Zoning By-law.

591.6.8 Exemption - Farmers' Market - BIA Market

Sales conducted at the farmers' market at the Woodstock Fair Grounds and at the Museum Square conducted by the BIA are exempted from the provisions of this Chapter. By-law 8652-11, January 13, 2011.

Article 7 - Refusal - Revocation - Suspension of Licence

591.7.1 Notice - issued - conditions set out

The Clerk shall provide a notice of refusal to issue a licence to an applicant if the conditions for issuance have not been met, the Clerk determines that, the information on the Licensee's application for a licence is inaccurate or the applicant has contravened a Section of this Chapter. If the Applicant, or any of its directors, officers or managers have been convicted of an offence under the Criminal Code of Canada, the Clerk may, with the consultation of the Police Department, refuse to issue a licence to an Applicant. The Clerk shall provide the applicant with the written notice of refusal to issue a licence setting out the reasons for refusal, when the right to review will expire and how to apply for a review. By-law 9141-17, July 13, 2017

591.7.2 Notice - how served

The notice shall be served personally or by registered mail to the applicant at the address shown on the application.

591.7.3 Application - not filed - expired without notice

If an application for review has not been filed within fourteen days of the Clerk having effected service of the notice, the applicant's right to a review will expire without further notice.

591.7.4 Licence fee returned - not granted - review expired

The Clerk shall return the licence fee paid at the time of the application if the

licence is not granted and the applicant's right to a review has expired.

591.7.5 Revocation or suspension of a licence

The Clerk shall provide a notice to revoke or suspend a licence if the licensee no longer complies with the conditions for issuance after the licence is issued, the Clerk determines that, the information on the licensee's application for the licence is inaccurate, the licensee has contravened a Section of this Chapter or if the licensee or any of its directors, officers or managers have been convicted of an offence under the Criminal Code of Canada. The Clerk shall give the licensee notice of the revocation or suspension in writing setting out the reasons for revocation or suspension, when the right to a review will expire and how to apply for a review. The notice shall be served personally or by registered mail to the licensee's address last on file with the Clerk.

591.7.6 Application for review - expiry

If an application for review has not been filed within fourteen days of the Clerk having effected service of the notice, the applicant's right to review will expire without further notice.

591.7.7 Licence - fee - refund - pro-rated

The Clerk shall return a pro-rated portion of the licence fee (based on the length of time the licence was in effect) of a revoked or suspended licence.

591.7.8 Application for review - procedure - deadline

An applicant or licensee in receipt of a notice to refuse, revoke or suspend a licence, may, within fourteen days after service of notice apply in writing for a review of notice to refuse, revoke or suspend a licence by filing the application for review with the Clerk and the provisions of Sections 591.7.10 to 591.7.21, inclusive shall apply.

591.7.9 Report for a review of status of licensee

The Clerk may report to the Review Tribunal any reasons for the issuance of notice of refusal, revocation or suspension including any breaches by the licensee of this Chapter or other relevant considerations.

591.7.10 Review hearing - date of

Upon receipt of the application to review, the Clerk shall determine a date for the review hearing with the Review Tribunal chairperson which shall be at least fourteen days after the receipt of the application for review.

591.7.11 Review hearing - notice of

Upon determination of the review hearing date, the Clerk shall give notice in writing to the applicant or licensee, said notice to:

- a) include a statement;
 - i. as to the time, date, place and purpose of the review

- hearing, and
- ii. that, if the applicant or licensee does not attend the review hearing, the Review Tribunal shall proceed in the absence of the applicant or licensee and the applicant or licensee will not be entitled to any further notice;
- iii. be served personally or by registered mail to the applicant or licensee at the address last on file with the Clerk; and
- iv. where the good character, propriety of conduct or competence of an applicant or licensee is an issue, contain reasonable information of any allegation with respect thereto.

591.7.12 Review hearing - by Review Tribunal - procedure

The Review Tribunal shall hold the review hearing at the time, place and date set out in the notice. The applicant or licensee may be represented at the review hearing by counsel, and the applicant or licensee or their counsel shall have the right to adduce evidence, submit argument on their behalf and cross-examine witnesses adverse in interest.

591.7.13 Review hearing - City - represented

The City shall be represented at the review hearing by either the Clerk or the City Solicitor, who is entitled to adduce evidence and submit arguments in reply to evidence and arguments on behalf of the applicant or licensee.

591.7.14 Review hearing - onus upon applicant

At the review hearing, the onus shall be upon the applicant or licensee to show cause why:

- a) the licence should be granted;
- b) the licence should not be suspended or revoked; or
- c) conditions should not be imposed on the licence.

591.7.15 Review hearing - open to public - exception

All review hearings shall be public hearings unless the applicant or licensee requests that the hearing be held in closed session and the Review Tribunal may approve the request by a simple majority.

591.7.16 Review hearing - applicant absent - decision rendered

Where notice of the review hearing has been served on the applicant or licensee and the applicant or licensee does not attend the hearing, the Review Tribunal may proceed with the review hearing and render a decision in the absence of the applicant or licensee.

591.7.17 Review hearing - completion - decision rendered

Upon completion of the review hearing, the Review Tribunal shall render a decision which shall:

- a) confirm the Clerk's decision to refuse, revoke or suspend the licence;
- b) reject the Clerk's decision and order the Clerk to issue a licence; or
- c) reject the Clerk's decision to revoke or suspend the licence.

591.7.18 Licence - conditions - imposed

Where the Review Tribunal rejects the Clerk's decision, the Review Tribunal may impose conditions, including special conditions, on the applicant or licensee as a requirement to hold a licence on such terms as are deemed just.

591.7.19 Review Tribunal - decision final - binding

The Review Tribunal's decision shall be final and binding.

591.7.20 Review Tribunal - decision in writing

The Review Tribunal shall give its decision in writing to the Clerk within seven days of the date of the completion of the review hearing.

591.7.21 Waiver of hearing

Despite any of the provisions of this Chapter, a proceeding may be disposed of by a decision of the Review Tribunal given:

- a) without a hearing; or
- b) without compliance with any other requirements of the *Statutory Powers Procedure Act*, as amended, or of this Chapter,

where the applicant or licensee has waived such hearing or compliance.

591.7.22 Review Tribunal - decision - notification procedure

The Clerk shall notify the applicant or licensee of the decision by serving a copy personally or by registered mail to:

- a) the applicant or licensee at the address shown on the application, or last on file with the Clerk; or
- b) the counsel or agent of the applicant or licensee, if any, at the address as stated to the Review Tribunal.

591.7.23 Licence - continued until expired

If the decision rendered is to reject the Clerk's decision, the licence shall be issued or in the case of a notice to suspend or revoke the licence shall continue until its expiry date.

591.7.24 Licence - suspended or revoked - authority

If the decision is to confirm the Clerk's decision to suspend or revoke the licence, the licensee shall within twenty-four hours of service of notice by registered mail, or immediately if the notice is personally served, return

the licence to the Clerk and the Clerk shall have access to any premises or other property of the licensee for the purpose of receiving or taking the same.

591.7.25 Conditions - imposed - acceptance confirmed

If the decision is to confirm the Clerk's decision to impose conditions on the licence, the licensee shall within twenty-four hours of service of notice by registered mail or immediately if the notice is personally served, advise the Clerk as to his or her acceptance of the conditions.

591.7.26 Service of notice - by registered mail

Service of a notice by registered mail is effective on the fifth day after the document is mailed. By-law 8773-12, June 7, 2012.

Article 8 – Enforcement

591.8.1 Fine - for contravention

Every person and every director or officer of a corporation who contravenes any of the provisions of this Chapter is guilty of an offence and upon conviction is liable to a fine or penalty up to \$25,000 as provided in the *Municipal Act, 2001*.

591.8.2 Fine - for contravention - corporation

Every corporation who contravenes any of the provisions of this Chapter is guilty of an offence and upon conviction is liable to a fine or penalty up to \$50,000 as provided in the *Municipal Act, 2001*.

591.8.3 Separate offence - daily

Each day a violation of this Chapter continues shall constitute a separate and distinct offence under this Chapter.

Article 9 - Repeal - Enactment

591.9.1 By-laws - previous

All previous by-laws regarding businesses operated on a temporary basis licensing are hereby repealed.

591.9.2 Effective date

This Chapter shall come into force and take effect as of third and final reading of the enabling by-law. By-law 8652-11, January 13, 2011.