

THE CORPORATION OF TOWNSHIP OF SOUTH STORMONT

BY-LAW NO. 64-2004

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 S. 5 (1) provides that the powers of a municipal corporation are to be exercised by its council;

AND WHEREAS the *Municipal Act, 2001*, c. 25 S. 5 (3) provides that the powers of every council are to be exercised by by-law;

AND WHEREAS the *Municipal Act, 2001*, c. 25 S. 150 (1) authorizes a local municipality to license, regulate and govern any business wholly or partly carried on within the municipality even if the business is being carried on from a location outside the municipality;

AND WHEREAS the *Municipal Act, 2001*, c. 25 S. 150 (2) authorizes municipalities to exercise licensing powers, including imposing conditions, for one or more of the following purposes:

- i) Health and safety;
- ii) Nuisance control;
- iii) Consumer protection;

AND WHEREAS pursuant to the *Municipal Act, 2001*, c. 25 S. 150 (3) Council of The Corporation of Township of South Stormont has determined that Transient and Itinerant Traders may be, by their nature, a class of business that:

- a) could present a potential risk to the health and safety of those persons who patronize the business due to the:
 - i) design, layout and location of the business;
 - ii) lack of appropriate and sufficient agency approvals;
- b) has the potential to be carried on in a manner that can create a public nuisance to the neighbouring community by:
 - i) operating in a manner that can be disruptive to the reasonable expectations and values of the community and its members;

AND WHEREAS for the purpose of addressing the foregoing concerns as they relate to health and safety and nuisance control, the Council of The Corporation of Township of South Stormont deems it desirable to license, regulate and govern the operation of Transient and Itinerant Traders in the manner hereinafter set out.

NOW THEREFORE the Council of The Corporation of Township of South Stormont enacts as follows:

Section 1: Definitions

1. For the purpose of this By-law the following definitions shall apply:
 - (a) "Applicant" shall mean the person who applies for a licence under this bylaw.
 - (b) "Clerk" shall mean the Clerk for The Corporation of Township of South Stormont.
 - (c) "Council" shall mean the Council of The Corporation of Township of South Stormont.

- (d) "Designated area" shall mean an area designated for the parking of vehicles for the purpose of selling products therefrom 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 zoning by-law to permit the proposed commercial or industrial use and for a mobile eating establishment or seasonal stand including areas zoned recreation open space, park/open space or community facility.
- (e) "Fire Chief" shall mean the Fire Chief of the applicable fire department of the Township of South Stormont.
- (f) "Highway" includes the entire right-of-way of a common and public highway, street, avenue, crescent, parkway, driveway, square, place, bridge, viaduct or tressle designed and intended for or used by the general public for the passage of vehicles.
- (g) "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.
- (h) "Licensee" shall mean the applicant to whom the License has been issued.
- (i) "Medical Officer of Health" shall mean the Medical Officer of Health for Cornwall, Prescott, Russell, Stormont, Dundas & Glengarry or his duly authorized delegate.
- (j) "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.
- (k) "Municipality" shall mean The Corporation of Township of South Stormont.
- (l) "Municipal Law Enforcement Officer" shall mean the Municipal Law Enforcement Officer of the Township of South Stormont, who is responsible for the enforcement of municipal by-laws.
- (m) "Person" shall include a corporation or partnership.
- (n) "Seasonal Stand" shall mean any building, stand or shed of any kind which is equipped for the preparation, storage, heating, cooling or sale of food stuffs without limiting its generality commonly known as a "stand".
- (o) "Transient and Itinerant Traders Licence" shall mean a licence issued by the municipality in accordance with this by-law.
- (p) "Transient Trader" shall include:
 - (i) any person commencing business who has not resided continuously in the municipality for at least three months preceding the time of commencing such business in the municipality; or
 - (ii) any person whose name has not been entered on the assessment roll.

Section 2: Licensing

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 Council.

2. No transient trader, itinerant trader, mobile eating establishment or seasonal stand which does not hold a valid Transient and Itinerant Trader Licence issued by the Clerk under the authority of this By-law, shall carry on its business or trade within the municipality, unless otherwise exempted by this by-law.
3. A Transient and Itinerant Trader Licence shall not be required in the following circumstances:
 - (a) 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 have been added to such stock;
 - (b) 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;
 - (c) the sale of a business to a "bona fide" purchaser who continues the business;
 - (d) 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;
 - (e) a sale of goods, wares or merchandise by or under the auspices of the municipality or by a non-profit organization;
 - (f) any sale by hawking, peddling or otherwise of goods wares or merchandise;
 - (i) to wholesale or retail dealers in similar goods, ware or merchandise;
 - (ii) 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;
 - (iii) if goods, wares or merchandise are grown or produced by a farmer resident in Ontario who offers for sale or sells only the produce of the farmer's own farm;
 - (iv) if the goods, wares or merchandise are hawked, peddled or otherwise sold by a person who has already paid commercial 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;
 - (v) 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 commercial tax in the municipality in respect of the premises used for the sale of such goods, wares or merchandise;

- (vi) by persons who sell milk or cream or fluid milk products to the consumer or to any person for resale; or
 - (vii) 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.
4. Any person may apply for a Transient Trader Licence, including a mobile eating establishment or seasonal stand, granting the holder the exclusive right to:
- (a) sell products from a vehicle to be parked in a designated area specified in the licence provided the holder complies with the terms and conditions prescribed by the licence and any agreement entered into with the municipality as a condition of receiving the licence, or
 - (b) sell from a portable display unit to be located in a designated area specified in the licence provided the licence holder complies with the terms and conditions prescribed by the licence and any agreement entered into with the municipality as a condition of receiving a licence.
5. The following procedure shall be applicable in respect to the granting of a transient trader licence:
- (a) 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;
 - (b) the applicant shall obtain approval from authorities where applicable, which may include the Eastern Ontario Health Unit, United Counties of Stormont, Dundas & Glengarry, Ministry of Transportation and Fire Department.
 - (c) the applicant shall pay to the municipality a non-refundable application fee in the amount identified in the Township of South Stormont Fees & Charges By-law;
 - (d) the applicant shall complete an application for a licence in the form attached as Schedule A;
 - (e) the applicant shall submit a site plan which clearly shows the designated area along with the location of proposed parking, signage and refuse containers;
6. In addition to the application form, fee and other matters required by Section 5, the proposed location for the designated area shall comply with the following criteria:
- (a) no portion of the designated area shall be located on a highway or part thereof;
 - (b) no portion of the designated area shall be located directly in front of an entrance or exit from a building;
 - (c) the designated area shall be located only on land zoned as commercial or industrial pursuant to the Township of South Stormont Zoning By-laws. A mobile eating establishment or seasonal stand will also be permitted on lands zoned as open space, as an accessory to recreational park community facilities pursuant to the Township of South Stormont Zoning By-laws;

- (g) the parking, signage and refuse requirements indicated in the site plan shall be within the designated area;
 - (h) in the case of a mobile eating establishment or seasonal stand, it shall not become a nuisance in regard to odour;
 - (i) 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;
 - (j) all conditions in Item 6 apply to Section 2, paragraph 3(d), 3(e) and 3(f)(vii).
7. Upon receipt of a written application to the municipality for a Transient and Itinerant Traders Licence which application shall include a statement containing full description of the goods, wares or merchandise which the applicant proposes to sell or offer for sale under such licence, and upon payment of the prescribed licence fee, and subject to compliance with all other sections of this By-law, the Clerk shall issue a Transient and Itinerant Trader Licence.
8. Any fee paid for a Transient and Itinerant Trader Licence shall be credited to the person paying it, or to any "bona fide" purchaser of the business who carries on the business, on account of taxes payable in respect of the business, and in respect of real property taxes on the land used for the purposes of or in connection with the business if the land is owned by the person carrying on the business, during the year in which the Licence is issued.
9. Every Transient and Itinerant Trader Licence 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 3 - Regulations:

1. Every person to whom a Transient and Itinerant Trader Licence has been issued shall:
- (i) in the case of a transient trader, cause such licence to be prominently and permanently displayed in the place of business; and
 - (ii) in the case of the itinerant trader, carry the licence at all times while conducting business in the municipality.
2. Any employee or agent of a person to whom a Transient and Itinerant Trader Licence has been issued shall, when required by the Municipal Law Enforcement Officer, or designate of the municipality, exhibit his authority to sell the goods, wares or merchandise of the person to whom the licence was issued. It failing, which such person, employee or agent shall be guilty of an offence unless such licence is accounted for satisfactorily.
3. Upon demand by the Municipal Law Enforcement Officer, or designate of the municipality, any person to whom a Transient and Itinerant Trader Licence has been issued, or the employee or agent of such person, shall exhibit his authority to sell the goods, wares or merchandise of the person to whom the licence was issued. It failing, which such person, employee or agent shall be guilty of an offence unless such licence is accounted for satisfactorily.
4. (a) 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 prior to the issuance of a Transient Trader Licence under this By-law, supply the Municipal Law Enforcement Officer, or designate with written confirmation of compliance in this regard;

- (b) 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 Division, Technical Standards and Safety Authority and found to comply with the Ontario Propane Code, Technical Standards and Safety Authority and, prior to the issuance of a Transient Trader Licence under this By-law, supply the Clerk with written confirmation of compliance in this regard;
- (c) Once obtained, the License must be clearly displayed in full view in the designated area at all times.

Section 4: Grant of Exemption of Council

1. Notwithstanding anything contained in this by-law, any person may make application to Council to be granted an exemption from any of the provisions of this by-law.

Section 5: Revocation and Contravention

1. A Transient or Itinerant Trader Licence issued under the provisions of this By-law may be revoked by the Clerk when:
 - (a) In the case of a mobile eating establishment or seasonal stand, written notice has been received from the Medical Officer of Health or the Fire Chief stating that the mobile eating establishment or seasonal stand is operating contrary to required standards; or
 - (b) The Licensee has been served notice of non-compliance with the terms of this By-law, by the Municipal Law Enforcement Officer, or designate.
2. Revocation of the Transient or Itinerant Licence by the Clerk shall be subject to a hearing with provisions, as provided by the *Statutory Powers and Procedures Act*.
3. Any person who contravenes the provisions of the By-law shall be guilty of an offence and liable to a penalty not exceeding \$5,000.00 exclusive of costs recoverable under the Provincial Offences Act, R.S.O. 1990 Chapter P.33.

Section 6: Effective Date

1. That any other by-law inconsistent with this by-law is hereby repealed.
2. This by-law shall come into force and take effect upon the date of its passing.

READ and passed in open Council, signed and sealed this 13th day of October, 2004.

Original signed by Jim Bancroft

Mayor

Original signed by Betty de Haan

Clerk

CORPORATION OF THE TOWNSHIP OF SOUTH STORMONT
SCHEDULE 'A' TO BY-LAW 64-2004

Application for a Transient Trader, Itinerant Trader
Mobile Eating Establishment or Seasonal Stand License

I _____ OF _____

(ADDRESS)

PHONE NUMBER

Hereby make application under By-law 64-2004 for a License for a Transient
Trader, Mobile Eating Establishment or Seasonal Stand under:

A) MY OWN NAME:

OR

B) OPERATING UNDER THE NAME OF:

C) ADDRESS IF DIFFERENT FROM ABOVE:

D) IF APPLICATION IS MADE ON BEHALF OF A CORPORATION, STATE ADDRESS
OF HEAD OFFICE: _____

2. IF APPLICATION IS MADE BY A PARTNER, STATE ADDRESS OF PARTNER(S)

3.(A) THE PRIMARY LOCATION OF ANY VEHICLE USED UNDER THE LICENCE
SHALL BE _____

3. (B) THE PRODUCTS TO BE SOLD FROM THIS VEHICLE AT THIS LOCATION ARE
DESCRIBED AS _____

**NOTE: A COPY OF A LETTER FROM THE PROPERTY OWNER OF THIS
LOCATION GIVING PERMISSION TO USE THE PREMISES MUST
BE ATTACHED TO THIS APPLICATION.**

4. I HAVE PREVIOUSLY HELD A MOBILE VENDOR'S LICENCE WITH THE TOWNSHIP OF SOUTH STORMONT _____
License Number

5. (A) THIS APPLICATION MUST BE REVIEWED BY ALL MUNICIPAL DEPARTMENTS (FIRE, BUILDING, PLANNING, TREASURY, PUBLIC WORKS, PARKS & RECREATION and CLERKS) TO DETERMINE SUITABILITY OF LOCATION PRIOR TO ANY LICENCE BEING ISSUED.

For office use only:

COMMENTS AND CONDITIONS: _____

5. (B) APPLICANTS ARE ADVISED THAT THE APPROVAL OF OTHER AUTHORITIES MAY BE REQUIRED, I.E. HEALTH UNIT; PROVINCIAL VEHICLE PERMIT - VENDOR'S PERMIT, ETC.

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

Sworn before me at the Township of South Stormont, in the County of Stormont, this _____ day of _____, _____.

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SIGNATURE OF APPLICANT

Commissioner etc.

****PERSONAL INFORMATION CONTAINED ON THIS FORM IS COLLECTED UNDER AUTHORITY OF THE MUNICIPAL ACT, 2001 AND BY-LAW 64-2004 AND WILL BE USED TO DETERMINE ELIGIBILITY FOR A LICENCE.****