

Corporation of the City of Owen Sound

By-law No. 2023-128

A By-law to Provide for the Licence and Regulation of Businesses in the City of Owen Sound

WHEREAS section 11(2) of the *Municipal Act, 2001* S.O. 2001 c.25 (the "Act") provides that municipalities may pass by-laws for the purpose of ensuring economic, social well-being of the municipality, and the health, safety and well-being of people in the municipality; and

WHEREAS section 151 of the Act provides for a system of business licences for any business wholly or partially carried on within the municipality and allows a municipality to prohibit the carrying on or engaging in the business without a licence, to refuse to grant a licence, to revoke or suspend a licence or to impose special conditions for a licence; and

WHEREAS section 445 of the Act provides that if a by-law has been contravened, the municipality may make an order requiring the person who contravened the by-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to do work to correct the contravention and that the municipality may provide that any person who contravenes such an order is guilty of an offence; and

WHEREAS section 447 of the Act provides that if an owner is convicted of knowingly carrying on or engaging in a trade, business or occupation without a licence required by a business licensing by-law, the court may order that the premises or part of the premises be closed for no longer than two years; and

WHEREAS section 447.1 of the Act provides that upon application, a Superior Court of Justice may issue an order for all or part of a premises to close if activities on the premises constitute a public nuisance which has a detrimental impact on the use and enjoyment of nearby property and the owner or occupants knew or ought to have known of the nuisance and did not take adequate steps to eliminate it; and

WHEREAS section 441 of the Act provides that the City's treasurer may give written notice of any fines imposed for the contravention of a business licensing by-law that become due and payable, the final date on which fines are payable, and if the fine remains unpaid after the final date, the fine is determined to be unpaid taxes; and

WHEREAS on September 9, 2014, the Council of The Corporation of the City of Owen Sound (the "City") passed By-law No. 2014-150 to provide for the licensing and regulation of business; and

WHEREAS on November 20, 2023, City Council passed Resolution R-231120-009 directing staff to bring forward the subject by-law for approval and to repeal By-law No. 2014-150, in consideration of staff report CR-23-086, presented to the Corporate Services Committee on November 9, 2023;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF OWEN SOUND HEREBY ENACTS AS FOLLOWS:

Part I. Part I. Short Title, Purpose and Scope

Short Title

1. This by-law may be referred to as the "Business Licensing By-law" and when so referenced includes all future amendments, unless otherwise specified.

Purpose

2. This by-law has been enacted to licence and regulate businesses to:
 - a. protect the economic well-being of the City;
 - b. prevent nuisance and maintain order in the City;
 - c. protect the health, safety and well-being of the citizens of the City; and
 - d. ensure compliance with applicable rules and regulations, including building, zoning, fire safety and public health requirements.
3. For greater clarity, this by-law has not been enacted to endorse or guarantee:
 - a. the quality of products, workmanship or services provided by the Business; or
 - b. the skills or credentials of a Business owner, operator or employee.

Scope

4. This by-law applies to every business operating in the City except:
 - a. exhibitions, concerts, festivals and other organized public amusements that do not have vendors operating on-site;
 - b. Farmer's Market vendors or other temporary sale of farm products in the form of honey, maple syrup, or unprocessed fruits, vegetables and grains; and
 - c. businesses set out in the Municipal Act or the regulations under it which the City does not have authority to regulate including;
 - i. the sale or service of liquor or any condition respecting containers of, or facilities for the return of, alcoholic beverages;
 - ii. a courier or transportation business or owners or drivers of vehicles used in courier or transportation business;
 - iii. a business of trading in real estate or persons registered under the Real Estate and Business Brokers Act who are carrying on business as real estate brokers, salespersons or brokerages;
 - iv. electricians, master electricians or electrical contractors;
 - v. any requirement for a tradesperson to complete examinations or obtain any certificate issued by the City in relation to their competence to perform the trade if they hold an Ontario College of Trades certificate of qualification in that trade;
 - vi. a manufacturing or an industrial business, except to the extent that it sells its products or raw material by retail;
 - vii. the sale of goods by wholesale; or

- viii. the generation, exploitation, extraction, harvesting, processing, renewal or transportation of natural resources;
- d. short-term rentals, which are regulated by the City's Short-Term Rental By-law;
- e. dog kennels, which are regulated by the City's Kennel Licensing By-law; and
- f. non-commercial sales such as the sale of second-hand goods on digital platforms or at yard sales.

Part II. Interpretation

Headings

- 5. The division of this by-law into parts and the insertion of headings are for convenient reference only and shall not affect the interpretation of the by-law.

References to Applicable Law

- 6. All references to applicable law are ambulatory and apply as amended from time to time.

No Relief of Duties

- 7. The provisions of this by-law or issuance of a business licence does not relieve any person operating a business from provincial business registration requirements or the requirements of any applicable by-law, act or regulation.

Definitions

- 8. For the purposes of this by-law:

"Business" means any hawker peddler operating in the City or any organization or enterprising entity engaged in commercial, industrial or professional activities, for profit or otherwise, with an office or place of business located within the City, and includes but is not limited to:

- a. trades and occupations;
- b. exhibitions, concerts, festivals and other organized public amusements, held for profit or otherwise, that have on-site vendors;
- c. the sale or hire of goods or services on an intermittent or one-time basis; ~~and~~
- d. the display of samples, patterns or specimens of goods for the purpose of sale or hire; ~~and~~
- e. **Emergency Shelter and Support Services;**

"Business Licence" means a valid licence issued by the City to a business pursuant to this by-law;

"City" means the Corporation of the City of Owen Sound and a reference to the City is a reference to its geographical area or to the municipal corporation, as the context requires;

"City Clerk" means the Clerk of the City or their designate;

"Council" means the Council of the City;

"Emergency Shelter and Support Service or E.S.S.S." means a facility, organization, or association that provides social support services, including temporary accommodation, to individuals in need and, for greater certainty, includes overnight shelters, warming centres, cooling centres, and drop-in centres. For the purposes of this By-law, an Emergency Shelter and Support Service does not include a hospital or other medical facility governed by the *Public Hospitals Act* or a health care facility or practice regulated under the *Regulated Health Professions Act, 1991*, or social support services provided by the City.

"E.S.S.S. Property" means the lot on which an E.S.S.S. sits and includes each Building on the Lot on which the E.S.S.S. is situated.

"E.S.S.S. Operator" means the entity operating the services providing the Emergency Care and includes a registered owner of the property on which the E.S.S.S. is located.

"Enforcing Officer" means a Police Officer of the Owen Sound Police Service; a By-law Enforcement Officer, Building Inspector, Fire Chief, Fire Prevention Officer or the Chief Building Official, appointed by the City; and the Medical Officer of Health of the Health Unit or their designate;

"Hawker Peddler" means a person operating a business in the City, on a temporary basis or without leasing for longer than three months, or without owning property in the City, including operating by way of:

- a. flyer or phone sales; or
- b. traveling from place to place or door to door;

"Health Protection and Promotion Act" means the *Health Protection and Promotion Act*, R.S.O. 1990, c H.7;

"Health Unit" means the Grey Bruce Health Unit;

"Home Occupation Business" means a business within a dwelling unit or an accessory building or structure, which is an accessory use to the principle residential use by a resident therein;

"Mobile Food Business" includes street food vending carts, mobile preparation premises and catering vehicles as defined in Ontario Regulation 562 under the *Health Protection and Promotion Act*;

"Municipal Act" means the *Municipal Act, 2001*, S.O. 2001, c. 25;

"Operate" or "Operating" when referring to a business, includes carrying on, conducting, maintaining, owning or keeping the business;

"Person" includes an individual, partnership, firm or corporation and any heirs, executors or legal representatives to whom the context can apply;

"Provincial Offences Act" means the *Provincial Offences Act*, R.S.O. 1990, c. P.33; and

"Short-term rental" means all or part of a legally established dwelling that operates or offers a place of temporary residence, lodging or occupancy by way of a rental agreement or similar commercial transaction for a period of twenty-eight (28) consecutive nights or less and, for greater clarity, includes bed & breakfasts;

"Social support service" means a program or amenity provided by a facility, organization, or association to promote the welfare of others;

“Street Vendor Agreement” means an agreement between the operator of a mobile food business and the City that allows the business to operate on City property, including but not limited to sidewalks and walkways;

“Technical Standards and Safety Act” means the *Technical Standards and Safety Act, 2000*, S.O. 2000, c. 16.

“Temporary accommodation” means short-term housing provided to individuals or families who lack access to permanent or stable housing at a particular point in time.

Part III. General

Operation

- 9. No person may operate a business in the City without a business licence.
- 10. No person may operate a business in the City where a business licence has expired or been refused, revoked or suspended.
- 11. No person may operate a business in the City contrary to an order issued by an enforcing officer or a superior court of justice.

Additional Requirements

- 12. Without limiting any provision of this by-law, no person may operate a business described in column 1 of the table to this section without adhering to the requirements identified in column 2 in the same row.

Business requirements table

Column 1 - Business	Column 2 - Requirements
Mobile Food	Set out in Schedule 'A'
Hawker and Peddler	Set out in Schedule 'B'
Emergency Shelter and Support Service	Set out in Schedule 'C'
Home Occupation	Set out in the City's Zoning By-law
Adult Entertainment	Set by the Owen Sound Police Services Board
Body Rub Parlour	Set by the Owen Sound Police Services Board
Escort Services	Set by the Owen Sound Police Services Board
Salvage Yards	Set by the Owen Sound Police Services Board
Secondhand Shops	Set by the Owen Sound Police Services Board
Taxis	Set by the Owen Sound Police Services Board

Part IV. Business Licence

Licence Display

13. Every person who operates a business in the City must display a business licence as follows:
 - a. in a way which is visible to the public and enforcing officers, or
 - b. by carrying a copy with them while operating a hawker peddler business and showing it to any person on request.

Business Relocation and Change of Ownership

14. Every person who operates a business in the City must reapply for a business licence if the business moves to a new location or changes ownership.

Application

15. Every person who applies for a business licence must contact the City's Planning Division before submitting a business licence application to ensure that the proposed business meets all zoning regulations.
16. Every person who applies for a business licence must provide the following to the City in the form or manner provided by the City:
 - a. a complete business licence application;
 - b. a non-refundable business licence fee as set out in the City's Fees and Charges By-law;
 - c. a sign permit application, if required; and
 - d. any other document required by the City Clerk.

Approval

17. Council hereby delegates authority to the City Clerk to issue business licences subject to the following conditions, limits, procedures and notice requirements:
 - a. upon receipt, a business licence application must be circulated to City departments, and to the Health Unit as required;
 - b. the Clerk may not issue the business licence until all parties which were circulated on the Business Licence application have confirmed that they have no objections to the proposed business;
 - c. the City Clerk may issue business licences, subject to any applicable conditions, limits or expiry dates for the following businesses:
 - i. a general business;
 - ii. a home occupation business;
 - iii. a mobile food business; and
 - iv. a hawker peddler business; and
 - d. notice of all approved business licences will be included on the Council agenda.

Part V. Penalty and Enforcement

Enforcement

18. The City Clerk and any enforcing officer may refuse, revoke or suspend a business licence, subject to any limits in the Municipal Act, under the following circumstances;
 - a. non-payment of any fees, charges or outstanding fines;
 - b. non-compliance with an order, condition on a business licence or any provision of this by-law or any applicable by-law, Act or regulation;
 - c. as directed by Council; or
 - d. the continuation of the business poses an immediate danger to the health or safety of any person or to any property.
19. Any enforcing officer may:
 - a. enforce the provisions of this by-law:
 - b. inspect, at any reasonable time, any business which is licenced or has applied for a business licence to determine if the business complies with this by-law or any applicable by-law, Act or regulation;
 - c. issue a work order, order to discontinue activity or order to do any action or thing required to bring a business into conformity with this by-law or any applicable by-law or any Act or regulation; or
 - d. apply to a Superior Court of Justice for an order for a business to close where the conditions for public nuisance or lack of a business licence set out in the Municipal Act have been satisfied.
20. Where an enforcing officer has reasonable grounds to believe that an offence has been committed by a person, the officer may require the name, address, date of birth and proof of identity of that person, and the person shall supply the required information.
21. No person shall provide false information or give a false statement to an enforcing officer, employee and/or agent of the City in the lawful exercise of a power or duty under this by-law.
22. No person shall hinder or obstruct, nor attempt to hinder or obstruct, either directly or indirectly, an enforcing officer, employee and/or agent of the City in the lawful exercise of a power or duty under this by-law.

Penalty

23. Any person who contravenes the provisions of this by-law is guilty of an offence and, upon conviction, is subject to the penalty set out in the Provincial Offences Act.
24. For the purposes of this by-law, each day that a contravention of this by-law continues constitutes a separate and distinct offence.
25. In addition to any other remedy provided for in law, where all or part of a fine under this by-law remains unpaid, such fine may be added to the tax roll for property owned in whole or in part by the person upon whom the fine is imposed and collected as municipal taxes.

Part VI. Part VI. Conflict and Transition

Conflict

26. In the event the provisions of this by-law are inconsistent with the provisions of the Municipal Act, its regulations or any other Act, the provisions of the Act or regulation shall prevail.

Terms Severable

27. The terms and provisions of this by-law are severable and should any term or provision be found by a court of competent jurisdiction to be legally unenforceable, inoperative or invalid, the remainder of the by-law will continue to be in full force and effect.

Repeal

28. By-law No. 2014-150 is repealed.

Enactment

29. This by-law comes into full force and effect upon the final passing thereof at which time all by-laws, policies and resolutions that are inconsistent with the provisions of this by-law are hereby amended or repealed insofar as it is necessary to give effect to the provisions of this by-law.

FINALLY PASSED AND ENACTED this 4th day of December 2023.

Mayor Ian C. Boddy

Briana M. Bloomfield, City Clerk

Schedule 'A' – Mobile Food Business Regulations

Licence Application

1. In addition to the requirements set out in section 16 of this by-law, every person applying for a business licence for a mobile food business shall:
 - a. provide a photograph of the mobile food vehicle; and
 - b. provide a Mobile Food Service Equipment (TSSA) form completed by a qualified inspector if fueled by propane or other cooking fuel.

Operation

2. Every person operating a mobile food business shall ensure that:
 - a. the mobile food business does not operate and is not on City property between the hours of 11:00 p.m. and 7:00 a.m. the following day;
 - b. the business operates in compliance with the *Accessibility for Ontarians with Disabilities Act, 2005* and the *Smoke-Free Ontario Act, 2017*;
 - c. the area around the mobile food business is clean and free of garbage, grease and snow;
 - d. all health and safety regulations are followed, including but not limited to the provisions of the Health Protection and Promotion Act, the Technical Standards and Safety Act, and National Fire Protection Association Code 96;
 - e. the business licence is displayed on the mobile food business; and
 - f. any signage complies with the City's Sign By-law.

Operating Locations

3. No person shall operate a mobile food business:
 - a. on a sidewalk or walkway which in any way blocks or creates a hazard to pedestrians; and
 - b. on any portion of a City highway or on-street parking space.
4. Subject to sections 5 and 6 of this schedule, mobile food businesses shall not be operated on property without the owner or occupier's permission.
5. To operate a mobile food business at a festival or event held in the City, the operator must:
 - a. have permission from the organizers of the event; and
 - b. operate in accordance with all event rules and regulations.
6. To operate a mobile food business on City property, including City parks and parking lots, the operator must have an approved lease or street vendor agreement with the City.

Street Vendor Agreements

7. Council hereby delegates authority to the City Manager or delegate to approve Street Vendor Agreements subject to the following:
 - a. the term of the agreement is for a calendar year or less; and

- b. approval of Street Vendor Agreements shall be determined on a first come, first served basis.

DRAFT

Schedule 'B' – Hawkers Peddler Regulations

Licence Application

1. Applicants shall complete a business licence application as set out in section 16 of this by-law.

Licence Expiry

2. A hawker peddler business licence may be issued to:
 - a. a single hawker peddler business for one week or the calendar year;
 - b. organizers of a special event with multiple hawker peddlers for the duration of the event, up to one year; or
 - c. a property owner for the calendar year to permit multiple hawker peddlers to operate at the property.

Operation

3. For greater clarity, a business that has a City business licence is not required to purchase a hawker peddler business licence if their advertising involves flyer or phone sales or traveling from place to place or door to door.

Operating Locations

4. Without written consent from the City, no hawker peddler shall operate on any:
 - a. City property, including sidewalks, streets or highways; or
 - b. vacant lots in the City;

Licence Display

5. Persons licensed as hawker peddlers who are travelling door to door must:
 - a. carry a copy of their business licence with them; and
 - b. wear a tag identifying their name and the name of the business.

Signs

6. Signage must be displayed in accordance with the City's Sign By-law.

Schedule 'C' – Emergency Shelter and Support Services Regulations

Licence Application Requirements

1. In addition to the requirements set out in section 16 of this by-law, every person applying for a business licence for an Emergency Shelter and Support Service shall include:
 - a. An operational plan outlining specific measures to comply with City By-laws and applicable law including but not limited to;
 - i. A Crime Prevention Through Environmental Design (CPTED) Assessment, completed by the Owen Sound Police Service at the request of the applicant, to maintain the safety and security of the property and surrounding community which shall include such elements as lighting, security, video surveillance, and landscaping features;
 - ii. A lot maintenance plan identifying locations of waste receptacles, garbage facilities and the frequency or maintenance schedule to address litter, waste accumulation and debris arising from the activity of the E.S.S.S. or its patrons on the property and in the road allowance immediately adjacent to their property;
 - b. The contact information for a Local Contact who is available to respond to matters involving the E.S.S.S. at all times within a period of no greater than one (1) hour from the time of contact by telephone or email.

License Conditions

2. In addition to other requirements of the By-law, each of the following is a condition as a requirement of continuing to hold a license as an E.S.S.S. Operator:
 - a. E.S.S.S. Operators must notify the City of any changes to the information provided at the time of licence application;
 - b. E.S.S.S. Operators must maintain the property in accordance with the CPTED Assessment required under section 1(a)(i), and the lot maintenance plan required under section 1(a)(ii);
 - c. E.S.S.S. Operators must give an Enforcing Officer access to the E.S.S.S. at any reasonable time for the purpose of conducting an inspection to confirm compliance with the regulations;
 - d. E.S.S.S. Operators and associated E.S.S.S.'s must ensure compliance with all applicable law, or any notices or orders issued under applicable law, and must take reasonable measures to mitigate non-compliance by patrons of the E.S.S.S. on the premises and within the road allowance immediately adjacent to the premises, including but not limited to:
 - i. the Health Protection and Promotion Act, 1990, R.S.O. 1990, c. H.7 (Ontario) and its regulations;
 - ii. the Fire Protection and Prevention Act, 1997, S.O. 1997, c. 4 (Ontario) and its regulations;

- iii. the Building Code Act, 1992, S.O. 1992, c. 23 (Ontario) and its regulations;
 - iv. Zoning By-law 2010-078, as amended;
 - v. Property Standards By-law 1999-030, as amended;
 - vi. Yard Maintenance By-law 2018-048, as amended;
 - vii. Noise By-law 2024-027, as amended;
 - viii. Nuisance By-law 2024-026, as amended;
 - ix. Traffic By-law 2009-075, as amended; and
 - x. Waste Management By-law 2005-151, as amended;
- e. E.S.S.S. Operators must ensure that their Local Contact is available to respond to matters involving the E.S.S.S. within one (1) hour from the time of contact by telephone or email by any person at all times;
 - f. E.S.S.S. Operators must maintain the sidewalk immediately adjacent to their premises free from any goods, articles, or other obstructions;
 - g. E.S.S.S. Operators must maintain the sidewalk immediately adjacent to their premises free from any refuse or litter;
- 3. In the case of an overnight shelter space, E.S.S.S Operators must, upon request from an Enforcing Officer, provide an occupancy report detailing the number of daily occupants and remaining available spaces.
 - 4. Any E.S.S.S. that is lawfully operating on the date this Schedule comes into force shall apply for a license no later than January 1, 2027.