

THE CORPORATION OF LOYALIST TOWNSHIP

BY-LAW 2011-12

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 licences 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 licence

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

Section 1: Definitions

1. For the purpose of this by-law the following definitions shall apply:
 - (a) "Applicant" means the person who applies for a licence under this by-law;
 - (b) "Director" shall mean the Director of Administrative Services or designate for The Corporation of Loyalist Township.
 - (c) "Council" shall mean the Council of The Corporation of Loyalist Township;
 - (d) "Designated area" means 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 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;
 - (e) "Highway" includes the entire right-of-way of a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or tressle, 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;
 - (f) "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;

- (g) "Medical Officer of Health" shall mean the Medical Officer of Health for Kingston Frontenac Lennox and Addington Health Unit or a duly authorized designate;
- (h) "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;
- (i) "Municipality" shall mean The Corporation of Loyalist Township;
- (j) "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;
- (k) "Provincial Offences 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;
- (l) "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";
- (m) "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
- (n) "Transient and Itinerant Traders Licence" shall mean a licence issued by the municipality in accordance with this by-law;
- (o) "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 Director or his or her designate is responsible for the administration of this by-law.
- 2.2 All Provincial Offences 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 Director requesting an exemption from any of the prohibitions described in Sections 3 and 4 and Council hereby delegates to the Director or his or her designate, the authority to process any such application and to approve, reject or approve with conditions, an exemption.
- 2.4 **Grant of Exemption**
Upon receipt of a written application for Grant of Exemption to this by-law, the Director 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 Director determines to be appropriate.
- 2.5 The Director shall consider all applications for exemption and shall only grant an exemption, or an exemption on conditions, where:
- (a) the request is necessary and in the public interest;
 - (b) the proposed mitigation measures are appropriate;
 - (c) the duration of the requested exemption is reasonable.
- 2.6 **Details of Application for Exemption**
The application mentioned in Clause 2.3 shall contain:
- (a) the name and address of the applicant;
 - (b) a statement of the particular provision or provisions of the by-law from which exemption is sought;
 - (c) the period of time, of a duration not in excess of six months, for which the exemption is sought;
 - (d) the reasons why the exemption should be granted; and
 - (e) a statement of the steps, if any, planned or presently being taken to bring about compliance with the by-law.

2.7 Breach

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 Director.
- 3.2 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 Director under the authority of this By-law, shall carry on its business or trade within the municipality.
- 3.3 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 has 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; or
 - (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; or
 - (iii) if products are sold as part of a community market; or
 - (iv) 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
 - (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 business tax in the municipality in respect of the premises used for the sale of such goods, wares or merchandise; or
 - (vi) 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 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.

3.5 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 pay to the municipality a non-refundable application fee in the amount identified in Clause 3.8;
- (c) the applicant shall complete an application for a licence in the form attached as Schedule A;
- (d) 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 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 Loyalist Township zoning by-laws. A mobile eating establishment or seasonal stand will also be permitted on lands zoned as recreational open space, park/open space and community facility pursuant to the Loyalist Township zoning by-laws;

- (d) the designated area shall not be located within 250 metres of a business establishment or another designated area in which similar products are sold;
 - (e) the designated area shall not be located within 50 metres of a signalized intersection as measured from the property line closest to the signalised intersection;
 - (f) the designated area shall be set back at least twelve metres from a highway measured from the property line closest to the highway;
 - (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 motorized mobile eating establishments shall be roadworthy and comply with the Highway Traffic Act and shall be licensed for operation on a public highway;
 - (k) A separate Transient Traders' licence shall be taken out for each mobile eating establishment;
- 3.7 Upon receipt of a completed application on the prescribed form (attached as Schedule 'A' to this by-law), including payment of the applicable licence fee, and subject to compliance with all other sections of this By-law, the Director shall issue a Transient and Itinerant Trader Licence.
- 3.8 The fee for a Transient and Itinerant Trader Licence shall be:
- (a) in the case of persons who have resided continuously within the municipality for at least one year (1) prior to the application for the licence, the sum of two hundred and fifty dollars (\$250.00); and
 - (b) in all other cases, the sum of three hundred dollars (\$300.00).
- 3.9 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.

- 3.10 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 4 - Regulations:

- 4.1. 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.
- 4.2. Any employee or agent of a person to whom a Transient and Itinerant Trader Licence has been issued shall, when required by any Provincial Offences Officer of the municipality, exhibit his authority to sell the goods, wares or merchandise of the person to whom the licence was issued.
- 4.3. Upon demand by any Provincial Offences Officer 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 it failing which such person, employee or agent shall be guilty of an offence unless such licence is accounted for satisfactorily.
- 4.4 (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 Director 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 Branch, and found to comply with the Ontario Propane Code and, prior to the issuance of a Transient Trader Licence under this By-law, supply the Director with written confirmation of compliance in this regard.

Section 5: Revocation and Contravention

- 5.1 A Transient or Itinerant Trader Licence issued under the provisions of this By-law may be revoked by the Director 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 designate, or the Technical Safety Standards Association 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 a Provincial Offences Officer.

Section 6: Validity

- 6.1 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 7: Penalty

- 7.1 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 8: Effective Date

8.1 By-law 2004-57 and any other by-laws or portions thereof conflicting with this by-law are hereby repealed.

8.2 This by-law shall come into force and take effect upon the date of its passing.

ENACTED AND PASSED THIS 14th day of MARCH, 2011.

MAYOR

CLERK

SCHEDULE 'A' TO BY-LAW 2011-12

APPLICATION FOR TRANSIENT TRADERS LICENCE



The Corporation of Loyalist Township
263 Main Street, PO Box 70
Odessa, ON K0H 2H0
613-386-7351

APPLICANT NAME: _____ PHONE # _____

MAILING ADDRESS: _____
(STREET, CITY, POSTAL CODE)

BUSINESS NAME: _____

BUSINESS PHONE NUMBER: _____

PLATE # OF VEHICLE UNDER THIS LICENCE (if applicable): _____

LOCATION OF VEHICLE/STAND/CART UNDER THIS LICENCE: _____

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 licence being issued.

ATTACH THE FOLLOWING ADDITIONAL DOCUMENTS:	CHECK:
Permission 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)	

FEES PER CLASS	CIRCLE ONE:
Resident	\$250.00
Non-resident	\$300.00

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 LICENCE IF GRANTED.

SWORN BEFORE ME AT LOYALIST TOWNSHIP, IN THE COUNTY OF LENNOX AND ADDINGTON THIS _____ DAY OF _____, 20_____.

SIGNATURE OF APPLICANT

Commissioner etc.

****Personal information contained on this form is collected under authority of the Municipal Act, 2001, as amended By-law 2011 - __ and will be used to determine eligibility for a licence.****