



CORPORATION OF THE TOWN OF NEWMARKET

BY-LAW NUMBER 2008-79

A BY-LAW TO PROVIDE FOR THE LICENSING, REGULATING AND GOVERNING OF SECOND HAND GOODS SHOPS AND SECOND HAND GOODS DEALERS.

WHEREAS *Section 151 of the Municipal Act 2001, S.O. 2001, c.25*, as amended, provides that a municipality may provide for a system of licenses with respect to a business;

AND WHEREAS the Town of Newmarket considers it desirable and necessary to repeal *Schedule 17 of By-law Number 2002-151*, as amended, being a by-law to License, Regulate and Govern any Business carried on within the Town of Newmarket;

THEREFORE BE IT ENACTED by the Municipal Council of the Corporation of the Town of Newmarket as follows:

SECTION 1 - DEFINITIONS:

1.1 In this By-law:

- (1) "Acquisition" means the process by which one comes into possession of a good by any means including, without limitation, by means of purchase, purchase together with an exchange or trade, receipt or holding. "Acquire" has a corresponding meaning;
- (2) "Appeals Committee" means a committee that is appointed from time to time by Council for the purpose of hearing appeals regarding the revocation, suspension, cancellation or refusal to issue or renew a license pursuant to this by-law;
- (3) "Applicant" means a person applying for a license to carry on a business, activity or undertaking pursuant to this by-law;
- (4) "Clerk" means the Town Clerk of the Town of Newmarket or his/her designate;
- (5) "Council" means Council of the Corporation of the Town of Newmarket;
- (6) "Garage Sale" means a sale of goods from a residential dwelling or premise where the sale lasts no longer than two (2) days, provided further that the sale from that residential dwelling or premise occurs no more than two (2) times per year and the Second Hand Dealer is either the user of the goods sold, or is one of not more than three (3) households conducting a sale of goods used by the members of those households or is a tenant or condominium association relating to a residential building;
- (7) "License" means the authorization obtained or granted or issued pursuant to this by-law to carry on a business, activity or undertaking;
- (8) "Licensed" means to have in one's possession a valid and current license issued pursuant to this by-law;
- (9) "Licensee" means any person who is licensed pursuant to this by-law or a licensee applying for renewal of a license as the context requires;
- (10) "Licensing Officer" means the Licensing Officer of the Town of Newmarket;
- (11) "Owner" means person who has in respect of premises an estate for life, or a greater estate, legal or equitable, or a leasehold estate;

- (12) "Person" includes an individual, corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law;
- (13) "Pawnbroker" means a person who carries on the business of taking by way of pawn or pledge any article for the repayment of money lent thereon and includes a person who offers a buy-back service in relation to such articles;
- (14) "Premise" means any place that is used by a Pawnbroker or a Second Hand Goods Dealer to carry on the business of a Pawnbroker or a Second Hand Goods Dealer, and includes any areas where such goods are stored and any area where records relating to such business are stored and "premises" includes any booth or stall used by a Second Hand Goods Dealer for the sale of second hand goods;
- (15) "Provincial Offences Officer" means a police officer or person designated under the *Provincial Offences Act*;
- (16) "Second Hand Goods" means goods acquired from a person who is not a Manufacturer or a Wholesaler;
- (17) "Second Hand Goods Dealer" means a person who carries on the business of selling goods by way of retail that have previously been used for the purpose for which such goods were designed and "Second Hand Goods Dealer" includes any person who travels from place to place to sell second hand goods;
- (18) "Seller" means a person who sells or who offers to sell any Second Hand Goods;
- (19) "Town" means the Corporation of the Town of Newmarket.

SECTION 2 - GENERAL LICENSING PROVISIONS

- 2.1 Administration of this by-law shall be the responsibility of the Clerk or Licensing Officer, who are hereby authorized to issue licenses to owners.
- 2.2 The Clerk or Licensing Officer may revoke, cancel, suspend or refuse to renew or issue a license pursuant to the provisions of this by-law.
- 2.3 An application for a new or renewal license shall be completed and submitted to the Clerk or Licensing Officer on the forms provided along with the prescribed fee as may be set by Council from time to time.
- 2.4 Receipt of the application and/or the license fee by the Town shall not represent approval of the application for the issuance of a license nor shall it obligate the Town to issue such license.
- 2.5 No person shall promote or carry on business under any name other than the name endorsed upon his/her license.
- 2.6 No person shall enjoy a vested right in the continuance of a license and the value of a license shall be the property of the Town and shall remain so irrespective of the issue, renewal or revocation thereof.
- 2.7 Every license shall have endorsed thereon the location of a Premise and such endorsement shall be for one location only and such license shall be valid only for the location endorsed thereon.
- 2.8 The term of each license shall, unless otherwise expressed in this by-law, be valid for a period of one year from the first day of January in the year of issuance or renewal up to and including the last day of December in the year of issuance, unless sooner revoked, amended, cancelled, suspended or voluntarily relinquished to the Town.

- 2.9 An application for renewal of a license issued pursuant to this by-law shall be delivered along with the prescribed fee in person to the Clerk or Licensing Officer, before the expiry date of such license.
- 2.10 An applicant is entitled to be licensed and a licensee is entitled to have such license renewed, except where:
- (1) the past conduct of the applicant or licensee affords reasonable grounds for belief that the applicant or licensee will not carry on the activity for which the applicant is applying for or the licensee is licensed for, in accordance with law and with integrity and honesty;
 - (2) the applicant or licensee is carrying on activities that are, or will be if the applicant was licensed, in contravention of this by-law;
 - (3) there are reasonable grounds for belief that the premises, accommodation, equipment or facilities in respect of which the license is required, do not comply with the provisions of this by-law or other applicable law;
 - (4) there are reasonable grounds for belief that an applicant or licensee has provided a false statement or false information for the purpose of obtaining a license;
 - (5) the applicant or licensee is not in compliance with any Policies, Town by-laws or any other legislative requirement under the *Planning Act* or any other Act.
- 2.11 A license issued to an owner under this by-law is not transferable.
- 2.12 The provisions of this by-law, which require a license, are not applicable to employees of a Second Hand Goods Dealer provided their employer is licensed pursuant to this by-law.
- 2.13 The provisions of this by-law are not applicable to a Second Hand Goods Dealer whose principal business is engaged in the sale of goods for:
- (1) Registered Charitable Organizations;
 - (2) Garage Sales;
 - (3) Clothing Stores;
 - (4) Motor Vehicles;
 - (5) Any part of premises used for any of the above noted sales.
- 2.14 The provisions of this by-law are not applicable to a Pawnbroker or Second Hand Goods Dealer when acquiring goods by means of a purchase or sale
- (1) by a straight trade or exchange (goods for goods); or
 - (2) in exchange for a credit note
- and provided the acquisition is with no exchange of money.

SECTION 3 - LICENSING PROHIBITION

- 3.1 No person may operate as a Pawnbroker or a Second Hand Goods Premise or operate as a Pawnbroker or Second Hand Goods Dealer in the Town without making application for, obtaining and maintaining, pursuant to the terms of this by-law, a license therefore authorizing him/her to carry on such trade, calling, business or occupation in respect of the Premise authorized on such license.
- 3.2 No person may be a Pawnbroker or a Second Hand Goods Dealer or operate a Second Hand Goods Premise from which Second Hand Goods are sold except in accordance with the following regulations:

- (1) No Pawnbroker or Second Hand Goods Dealer and /or no person employed by or acting under the direction of a Second Hand Goods Dealer, may receive second hand goods from any person who is under the age of eighteen (18) years or from any person who appears to be under the influence of alcohol or drugs;
- (2) No Pawnbroker or Second Hand Goods Dealer may permit any employee to work at a Premise without first instructing such employee in the regulations of this By-law and ensuring that such employee complies with these regulations. Every Pawnbroker and Second Hand Goods Dealer shall be responsible for the acts or omissions of its employees in the carrying on of the sale of second hand goods and the business conducted from the Premise in the same manner and to the same extent as though such acts or omissions were the acts or omissions of the Pawnbroker or Second Hand Goods Dealer.
- (3) Every Pawnbroker and every Second Hand Goods Dealer shall keep their license issued in respect of this By-law posted in a conspicuous place in the Premises in a manner satisfactory to the Licensing Officer, at all times during the currency of the license.
- (4) No Pawnbroker or Second Hand Goods Dealer and/or no person employed by or acting under the direction of a Second Hand Goods Dealer, shall accept any second-hand good from which the serial number has been removed or obscured and each such person shall immediately report to police all information available to them on the identity of the individual attempting to sell such articles and any information regarding the article itself.

SECTION 4 - TRANSACTION RECORDS

4.1 No Pawnbroker or Second Hand Goods Dealer shall permit the acquisition of a Second Hand Good unless a record respecting the Second Hand Good is created at the time of Acquisition that includes the following particulars:

- (1) date and time of acquisition;
- (2) the identity of the employee acquiring the Second Hand Good;
- (3) all consideration given including price paid; and
- (4) description of the Second Hand Good that is reasonably sufficient to identify it and to distinguish it from other Second Hand Goods of the same type including, as applicable, each of the following:
 - (a) Identity of its Manufacturer;
 - (b) Year of manufacture;
 - (c) Make;
 - (d) Model;
 - (e) Serial numbers;
 - (f) Identifying marks;
 - (g) Titles;
 - (h) Media (eg., compact disk, tape, vinyl record, DVD, VHS tape);
 - (i) Weight;
 - (j) Colour;
 - (k) Karat;
 - (l) Engraving; and
 - (m) Gem type.
- (5) a unique number.

SECTION 5 - RETENTION OF SECOND HAND GOODS

- 5.1 No Pawnbroker or Second Hand Goods Dealer may sell, exchange, alter, melt or otherwise dispose of any Second Hand Good within the earlier of thirty (30) days from the date of obtaining possession thereof or thirty (30) days after providing a transaction record relating to such Second Hand Good as required in this By-law and, during this period, such good shall be kept in the Premise used by the Pawnbroker or Second Hand Goods Dealer for the sale of Second Hand Goods and shall be separate from and not mixed with other Second Hand Goods in the same Premises.
- 5.2 If a Second Hand Goods Dealer obtains an independent appraisal of value relating to any Second Hand Good, the Second Hand Goods Dealer shall retain a copy of the appraisal for not less than thirty (30) days after the appraised Second Hand Good is re-sold.
- 5.3 In circumstances where the Licensing Officer or a Provincial Offences Officer suspects that specified Second Hand Goods were stolen, the Provincial Offences Officer shall be entitled, upon providing a receipt therefore, to remove such Second Hand Goods for the purpose of criminal investigation, provided such Second Hand Goods are either returned within sixty (60) days or further retained by means of a Court Order.

SECTION 6 - APPLICATION NEW/RENEWAL

- 6.1 Every applicant shall complete the license application form provided from time to time by the Licensing Officer in accordance with the requirements of this By-law and shall provide all information requested thereon. In the case of a Premise operated by a partnership such appearance shall be made by one of the partners, provided the application shall be signed by all of the partners and in the case of a Premise operated by a corporation, such appearance shall be made by an officer of the corporation and not by an agent thereof.
- 6.2 At the time of submission of their application, every applicant shall pay to the Town the fee as set by Council from time to time.
- 6.3 Every applicant shall submit a York Region Police Clearance Letter.
- 6.4 Every applicant shall provide a certificate of incorporation as proof that the corporation is in good standing and has not been dissolved under the *Business Corporations Act* or any other applicable legislation.
- 6.5) Without limiting the generality of any other provision in this By-law, persons associated in a partnership applying for a license under this By-law shall file with their application a statutory declaration, in writing, signed by all members of the partnership, which declaration shall state:
- (1) the full name of every partner and the address of his ordinary residence;
 - (2) the name or names under which they carry on or intend to carry on business;
 - (3) that the persons therein named are the only members of the partnership; and
 - (4) the mailing address for the partnership.
- 6.6 Without limiting the generality of any other provision in this By-law, every corporation applying for a license shall file with the Licensing Officer, at the time of making its application, a copy of its articles of incorporation or other incorporating document and shall file a statutory declaration, in writing, signed by an officer of the corporation, which declaration shall state:

- (1) the full name of every shareholder and the address of his ordinary residence;
- (2) the name or names under which it carries on or intends to carry on business;
- (3) that the persons therein named are the only shareholders of the corporation; and
- (4) the mailing address for the corporation.

6.7 Every person applying for a license shall file with the Licensing Officer, documentation satisfactory to the Licensing Officer demonstrating the applicant's right to possess or occupy the premises and if any applicant is not the registered owner of the property upon which the Premise is to be located, such person shall file with the Licensing Officer a copy of his lease, if any, and a copy of any other document constituting or affecting the legal relationship relating to the said lands or premises between said applicant and the registered owner or owner in fee simple of the said real property.

6.8 The Licensing Officer shall:

- (1) receive and process all applications for licenses and renewal of license to be issued under this By-law;
- (2) co-ordinate the enforcement of this By-law;
- (3) generally perform all the administrative functions conferred upon him/her by this By-law;
- (4) make or cause to be made a circulation respecting the application which shall include circulation of the license application to Planning and Building Departments for comments;
- (5) make or cause to be made all investigations and inspections which he/she deems necessary to determine whether an applicant meets the requirements of this By-law and all applicable laws;
- (6) where a license has been issued pursuant to this By-law and otherwise remains in full force and effect, renew the licenses of persons who meet the requirements of this By-law.

SECTION 7 - REVOCATION, SUSPENSION OR CANCELLATION OR REFUSAL TO RENEW OR ISSUE

7.1 The Clerk or Licensing Officer may revoke, suspend, cancel or refuse to renew or issue a license:

- (1) where the applicant or licensee has been found by the Clerk or Licensing Officer to fail to comply with any provision of this By-law.

7.2 Upon such revocation, suspension, cancellation or refusal to renew or issue, a written notice signed by the Clerk or Licensing Officer shall be delivered to the applicant or licensee within seven (7) business days as provided for hereunder:

- (1) such notice shall set out and give reasonable particulars of the grounds for the decision; and
- (2) shall inform the applicant or licensee of his/her entitlement to a hearing before the Appeals Committee, if he/she delivers within seven (7) business days after the date of service or the date of mailing of the notice, whichever is later, a written request for a hearing; and

- (3) if a written request from the applicant or licensee is not received by the Clerk or Licensing Officer within the prescribed time, the decision of the Clerk or Licensing Officer shall be final and the licensee shall deliver within twenty four (24) hours of the expiration of the appeal period, the license.

7.3 Where a hearing held pursuant to this by-law has taken place and the license was revoked, suspended, cancelled or refused for renewal, the licensee shall return the license to the Clerk or Licensing Officer within seventy-two (72) hours of receiving the written notice of the decision of the Appeals Committee sent pursuant to the provisions of this by-law.

7.4 When a person has had his license revoked, suspended or cancelled under this by-law the Clerk or Provincial Offences Officer may enter upon the business premise for the purpose of receiving, taking, or removing the said license.

7.5 When a person has had his/her license revoked, suspended or cancelled under this by-law he shall not refuse to deliver or in any way obstruct or prevent the Clerk or Provincial Offences Officer from obtaining the said license.

SECTION 8 - APPEALS COMMITTEE HEARING

8.1 Upon receipt of a written request for a hearing from an applicant or licensee, the Clerk shall advise the Appeals Committee and request the Appeals Committee to convene a meeting and shall give the applicant or licensee written notice of the date, time and location of such meeting which shall not be less than seven (7) business days after the date of notice.

8.2 The Clerk shall make a recommendation to the Appeals Committee with respect to revocation, suspension, cancellation or refusal to renew or issue a license or recommend that a license be issued subject to certain terms and conditions.

8.3 The applicant or licensee shall have the right to make a submission in support of an application or renewal or retention of a license at such hearing.

8.4 The Appeals Committee shall deliberate the merits of the evidence presented and shall render its decision either at the meeting or within seven (7) business days. A written notice advising of the decision made by the Appeals Committee shall be given to the applicant or licensee by the Clerk or Licensing Officer, seven (7) business days after the decision has been rendered.

8.5 Notwithstanding, if an applicant or licensee who has been given written notice of the hearing does not attend such hearing, the Appeals Committee may proceed with the hearing in the applicant or licensee's absence and the applicant or licensee shall not be entitled to any further notice of the proceedings.

8.6 The decision of the Appeals Committee is final and is not subject to an appeal.

SECTION 9 - SERVING OF NOTICE OR ORDER

9.1 Any notice or order required to be given pursuant to this by-law by the Clerk or Licensing Officer shall be deemed to be sufficiently served if delivered personally or sent by registered mail or by prepaid first class mail addressed to the person to whom service is to be made at the address on the application or the last known address on file in the Clerk's Office.

- 9.2 Notice served by either registered mail or by prepaid first class mail shall be deemed to have been received on the seventh business day following the mailing of the notice.

SECTION 10 - NOTIFICATION OF CHANGE OF INFORMATION

- 10.1 When a licensee who is an individual changes their name, address, or any information relating to the license, the licensee shall notify the Clerk or Licensing Officer within seven (7) business days after the change of information relating to the license and shall if required by the Clerk or Licensing Officer return the license immediately to the Clerk or Licensing Officer for amendment.
- 10.2 Where a licensee is a corporation and there is change in the information as set out in the application for license, such as the names or addresses of the officers or directors, the location of the corporate head office or any change in the ownership of shares, the licensee shall notify the Clerk or Licensing Officer of the change within seven (7) business days thereof and shall if required by the Clerk or Licensing Officer return the license immediately to the Clerk or Licensing Officer for amendment.

SECTION 11 - INSPECTION OF PREMISES/RECORDS

- 11.1 Every Pawnbroker and every Second Hand Goods Dealer shall during the regular operating hours of the Second Hand Good Premise and at all times when Second Hand Goods are provided therein make available for inspection by the Licensing Officer or a Provincial Offences Officer, the original of any document or record referred to in this By-law and shall provide a photocopy thereof upon request.
- 11.2 Every Pawnbroker and every Second Hand Goods Dealer shall, at all times during the regular operating hours of the Premise and at all times when Second Hand Goods are provided therein, permit the entry by and the inspection of the Premise and of the Second Hand Goods of the Second Hand Goods Dealer by the Provincial Offences Officer, together with such other persons who may be necessary to identify potentially stolen Second Hand Goods.
- 11.3 No person may obstruct or hinder the entry or the inspection of a Second Hand Good Premise by the Licensing Officer or a Provincial Offences Officer.

SECTION 12 - POWER OF ENTRY

- 12.1 The Town may enter on a property at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:
- (1) the provisions of this By-law;
 - (2) an order issued under this By-law; or
 - (3) an order made under Section 431 of the *Municipal Act*.
- 12.2 Where an inspection is conducted by the Town, the person conducting the inspection may;
- (1) require the production for inspection of documents or things relevant to the inspection;
 - (2) inspect and remove documents or things relevant to the inspection for the purpose of making copies and extracts;
 - (3) require information from any person concerning a matter related to the inspection including their name, address, phone number and identification; and

- (4) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purpose of inspection.

12.3 The Town may undertake an inspection pursuant to an order issued under Section 438 of the *Municipal Act*.

12.4 The Town's power of entry may be exercised by an employee, officer or agent of the Town or by a member of a police force with jurisdiction, as well by any person under his or her direction.

SECTION 13 - PENALTY

13.1 Every person who contravenes a provision of this by-law, including an Order issued under this by-law, is guilty of an offence.

13.2 If a person is in contravention of any provision of this by-law, and the contravention has not been corrected, the contravention of the provision shall be deemed to be a continuing offence for each day or part of a day that the contravention remains uncorrected.

13.3 If an Order has been issued under this by-law, and the Order has not been complied with, the contravention of the Order shall be deemed to be a continuing offence for each day or part of a day that the Order is not complied with.

13.4 Every person who is guilty of an offence under this by-law shall be subject to the following penalties:

- (1) Upon a first conviction, to a fine not less than \$350.00 and not more than \$100,000.00;
- (2) Upon a second or subsequent conviction for the same offence, to a fine of not less than \$500.00 and not more than \$100,000.00;
- (3) Upon conviction for a continuing offence, to a fine of not less than \$500.00 and not more than \$10,000.00 for each day or part of a day that the offence continues;
- (4) Upon conviction of a multiple offence, for each offence included in the multiple offence, to a fine of not less than \$500.00 and not more than \$10,000.00.

13.5 For the purpose of this by-law, "multiple offences" means an offence in respect of two or more acts or omissions each of which separately constitutes an offence and is a contravention of the same provision of this by-law.

13.6 For the purpose of this by-law, an offence is a second or subsequent offence if the act giving rise to the offence occurred after a conviction had been entered at an earlier date for the same offence.

SECTION 14 - SEVERABILITY

14.1 If a court of competent jurisdiction should declare any section or part of a section of this by-law to be invalid such section or part of a section shall not be construed as having persuaded or influenced Council to pass the remainder of this by-law and it is hereby declared that the remainder of this by-law shall be valid and shall remain in force.

14.2 Where the provisions of this By-law conflict with the provisions of any other by-law or Act, the more restrictive provisions shall apply.

SECTION 15 – REPEAL/EFFECTIVE DATE

15.1 THAT Schedule 17 of By-law 2002-151 as amended, is hereby repealed and that this By-law shall come into force and effect upon its enactment.

ENACTED THIS 10TH DAY OF NOVEMBER, 2008.



Tony Van Bynen, Mayor



Anita Moore, Town Clerk