

Office Consolidation of By-Law 2005-206



The Corporation of the
Municipality of Clarington
By-Law 2005-206

Being a By-law to licence, regulate and govern peddlers within the municipality, and to protect consumers by regulating the goods and merchandise sold, the manner in which those items are sold and the locations from which they are sold.

Passed, by Council, on: October 24, 2005

Consolidated as of: November 16, 2016

Amendments:

Amending By-Law	Date	Amendment Details
2015-017	February 9, 2015	Section 1.0 is amended by adding the definition of "Special Event", Section 3.1 is amended by adding Section (j).

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Municipality of Clarington

By-Law 2005-206

Being a by-law to regulate, govern and licence Peddlers within the geographic limits of the Municipality of Clarington, and to repeal By-law 92-230 and its amendments

WHEREAS pursuant to section 150(1) of the *Municipal Act S.O. 2001, c.25*, a local municipality may exercise its power to licence, regulate and govern any business carried on within the municipality; and;

AND WHEREAS it is the intent of the Council of the Municipality of Clarington to regulate peddlers within the municipality to protect and promote the health and safety of its residents and to protect consumers by regulating the goods and merchandise sold, the manner in which those items are sold and the locations from which they are sold and to protect the residents from potential nuisance problems by regulating the hours of operation and requiring compliance with the provisions of the by-law;

NOW THEREFORE the Council of the Corporation of the Municipality of Clarington enacts as follows:

1.0 DEFINITIONS: For the purposes of this by-law;

“Certificate of Licence” shall mean a document issued by the Municipal Clerk and bearing the seal of the Corporation of the Municipality of Clarington which identifies the name of the holder of the licence, description of business being licenced and where applicable the location of operation;

“Charity” and **“Charitable Organization”** shall include an organization if no part of its income is paid to or otherwise made available for the personal benefit of any of its proprietors, members or shareholders, and if one of the main aims and normal activities includes projects and undertakings that have a charitable objective or purpose including:

- a. the relief of poverty
- b. the advancement of education
- c. the advancement of religion
- d. other charitable purposes beneficial to the community;

“Council” shall mean the Council of the Corporation of the Municipality of Clarington;

“Direct Sales Contract” shall have the same meaning as defined in the *Consumer Protection Act, R.S.O. 1990, c. C31*;

“Executory contract” means a contract between a buyer and a seller for the purchase and sale of goods or services in respect of which delivery of the goods or performance of the services or payment in full of the consideration is not made at the time the contract is entered into;

“Flea Market” shall mean a market involving multiple vendors for inexpensive or secondhand articles;

“Goods” shall include all forms of goods, wares or merchandise, offered for sale or intended to be offered for sale;

“Highway” shall have the same meaning as defined in the *Highway Traffic Act, R.S.O. 1990, c. H8*;

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"Itinerant seller" means a seller whose business includes soliciting, negotiating or arranging for the signing by a buyer, at a place other than the seller's permanent place of business, of an executory contract for the sale of goods or services, whether personally or by an agent or employee;

"Licence Identification Card" shall mean a photo identification card issued by the Municipal Clerk and bearing an identification number, photo of the person licenced and be signed by the Municipal Clerk;

"Municipal Clerk" shall mean the Municipal Clerk of the Corporation of the Municipality of Clarington or the Deputy Clerk acting in place of the Municipal Clerk;

"Municipal Peddler's Licence" shall mean a licence issued by the Municipal Clerk, under the provisions of this by-law, to carry on the business of a peddler and shall consist of both the Certificate of Licence and the Licence Identification Card;

"Officer" shall include any sworn member of the Durham Regional Police Services or a Municipal Law Enforcement Officer as appointed by Council;

"Owner" shall include the person or persons shown on the records of the land registry office, or the tax roll of the Municipality, as having title to the land or responsibility for it, as well as the tenant and person or persons lawfully in possession of, or exercising control over, the property;

"Peddler" shall mean any person who goes from place to place or to a specific place with goods, wares or merchandise for sale, or who carries and exposes samples, patterns or specimens of any goods, wares or merchandise which are to be delivered in the Municipality of Clarington;

"Peddler's Assistant" shall mean any person working for, or in association with a Peddler licenced pursuant to the provisions of this by-law. Such person may work from the same location or from a secondary location and need not be under the direct supervision of the Peddler;

"Person" shall include an individual, a sole proprietorship, a partnership, an unincorporated association, a trust, a body corporate, a natural person, and "Persons" has a corresponding meaning;

"Sell" includes exposing an item for sale and offering the item for sale;

"special event" for the purposes of this By-law includes any cultural, recreational event and any demonstration, parade or other event as licenced under By-laws 2014-020 or 2014-021.

"Yard Sale" shall mean the outdoor sale of used goods or household appliances held on the premises of the seller and for a maximum duration of 3 days. Garage Sale shall have a similar meaning.

2.0 Licence Required

2.1 This by-law is enacted in order to ensure the safety of the public from unscrupulous, improper or illegal practices and to create a fair and equitable business environment for all persons covered by this by-law.

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- 2.2 For every licence class set out in Schedule “A” attached hereto and forming a part of this by-law, there shall be taken out by every person carrying on business within such class, a license from the Municipality authorizing him or her to carry on their trade and no person shall, either directly or indirectly, carry on business within such class, either for profit or not, for which a license is required by this by-law without first having obtained a license therefore. Failure by such a person to comply with this section constitutes an offence.
- 2.3 A person who receives a Municipal Peddler’s License pursuant to the provisions of this by-law must comply with the regulations set out in this by-law and all other schedules to this by-law, as applicable. Failure to comply with the regulations in the applicable Schedule(s) constitutes an offence.
- 2.4 An agent, trustee or representative of persons carrying on business within one of the classes as listed in Schedule A attached hereto and forming a part of this by-law, in the Municipality for which a license is required shall also be personally liable for the compliance of his principal, beneficiary or persons he represents in connection with this by-law. Failure by such a person to comply with this section constitutes an offence.
- 2.5 Every person licenced pursuant to the provisions of this by-law shall carry the Licence Identification Card issued to him by the Municipality of Clarington at all times while working and shall produce same upon demand of an officer or any person to whom they are selling goods.
- 2.6 Every person licenced pursuant to the provisions of this by-law shall, within 24 hours, produce the Certificate of Licence issued to them by the Municipality of Clarington, following the demand of an officer.
- 2.7 No person shall sell or display any goods other than those indicated in their licence application and their Certificate of Licence.
- 2.8 No person who is licenced pursuant to the provisions of this by-law shall establish a display and/or sell from that location for a period longer than fifteen minutes under the auspices of that licence unless they have been licenced for that location.
- 2.9 All licences issued pursuant to this by-law shall be issued on an annual basis and shall expire on March 1st of each year.
- 2.10 There shall be no reduction of the licence fee or extension of time for licence applications submitted after the March 1st deadline.
- 2.11 Every person working as an assistant to the holder of a Municipal Peddler’s Licence shall be licenced as a Peddler’s Assistant.
- 2.12 Every Peddler’s Assistant licenced pursuant to the provisions of this by-law shall carry the Licence Identification Card issued to them by the Municipality of Clarington at all times while working and shall produce same upon demand of an officer or any person to whom they are selling goods.
- 2.13 Every Peddler’s Assistant licenced pursuant to the provisions of this by-law shall, within 24 hours, produce to the investigating officer, the Certificate of Licence issued to them by the Municipality of Clarington, following the demand of the officer.

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- 2.14 The Municipal Clerk, upon receipt of the application for a license may make, cause to be made, or request, any additional documents, investigations or inspections in respect of such application for a license as the Municipal Clerk deems appropriate or in the interest of the general public, and any costs incurred for such inspections or documents shall be at the applicant's expense.

3.0 Exemptions

- 3.1 A Municipal Peddler's Licence shall not be required for persons selling goods;
- (a) to wholesale or retail dealers in similar goods;
 - (b) if the goods are grown, produced or manufactured in the Municipality of Clarington and are peddled or sold by the grower, producer or manufacturer or his or her agent having written authority to do so;
 - (c) if the goods are grown or produced by a farmer, resident in Ontario who offers for sale or sells only the goods and produce of his or her own farm;
 - (d) if the goods are peddled or sold by an owner or operator of a business which has lawfully operated within the Municipality of Clarington for at least twelve months prior to the date of the peddling or selling;
 - (e) if the goods consist of milk, cream or fluid milk products which are sold to the consumer or to any person for resale;
 - (f) under the terms of a Direct Sales Contract as governed by the *Consumer Protection Act R.S.O., c. C. 31*,
 - (g) for a non-profit or charitable organization, where the persons involved are selling for the benefit of the charitable organization;
 - (h) as part of a recognized flea market or farmer's market lawfully operating within the Municipality of Clarington;
 - (i) as part of a recognized craft or trade show operating lawfully within the Municipality of Clarington.
 - (j) as part of an approved Special Event as licenced pursuant to either Clarington By-law 2014-020 or 2014-021.

4.0 General Provisions

- 4.1 An applicant for a Municipal Peddler Licence shall specify whether they wish to conduct their business from a specific stationary location, or if they wish to be mobile.
- 4.2 An application for a Municipal Peddler Licence shall include a Certificate of Insurance showing that said Owner has a current policy of insurance providing for third party liability of at least one million dollars (\$1,000,000.00) insurance coverage for the use designated in the licence; and shall be endorsed by the issuer indicating that the Municipality will receive at least 10 days written notice prior to any cancellation, expiration or variation in the amount of the policy. The certificate shall set forth in detail the coverage of the current valid policy of insurance, the name and address of the person insured, the policy number, the effective date, the expiry date, the limits of liability and the details of the coverage. The insurance shall name the Municipality of Clarington as an insured party

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- 4.3 No Municipal Peddler Licence or Peddler's Assistant Licence shall be issued to any person under the age of 16 years.
- 4.4 No person shall be employed by a holder of a Municipal Peddler Licence unless they have been licenced under the provisions of this by-law.
- 4.5 No person shall employ a person to act as a Peddler's Assistant, unless that person is licenced pursuant to the provisions of this by-law.
- 4.6 No person shall operate as a Peddler or a Peddler's Assistant within any area of the Municipality designated as part of a festival or event covered by a Road Occupancy or Special Event Permit without prior written approval of the event organizer.
- 4.7 Pursuant to section 4.6, any person operating as a Peddler or Peddler's Assistant within any area as specified above, shall, upon demand of an officer, produce the required written approval in addition to any other requirement as set out in this by-law.

5.0 Stationary Peddler Licence

- 5.1 A Stationary Municipal Peddler Licence shall not be issued for a particular location unless the proposed location is appropriately zoned to permit the sale of goods from that location.
- 5.2 A Stationary Municipal Peddler Licence application shall include a detailed sketch of the location of the stand or display on the proposed lot and the measured setbacks from any entrance, road allowance or other structure on the lot.
- 5.3 An application for a Stationary Municipal Peddler Licence shall include a written declaration of permission from the property owner granting permission for the applicant to operate from their property. Such declaration shall indicate the duration of the sale and the nature of the goods to be sold.
- 5.4 Where a peddler intends to operate their stationary sales business from more than one location, a separate application shall be required for each location. Such application shall contain all the information as required for a single location.

6.0 Yard Sales

- 6.1 A Municipal Peddler's Licence shall not be required for a person conducting a yard sale of goods on their own property, provided that no person shall conduct more than 4 yard sales in a calendar year and there shall be at least 4 weeks between each sale.
- 6.2 Any person conducting any number of yard sales over the number specified above shall require a separate Municipal Peddler's Licence for each week of operation of the sale or part thereof. Failure to obtain a licence shall constitute a separate offence for each week of operation.

7.0 Mobile

- 7.1 Every application for a Mobile Municipal Peddler's Licence and a Peddler's Assistant for a Mobile Municipal Peddler shall include a Criminal Record Search of the applicant.

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- 7.2 If a review of the application reveals that:
- (a) the applicant is in breach of this or some other Municipal by-law or law of Ontario or Canada;
 - (b) the applicant has been convicted of an offence pursuant to a similar by-law in another municipality; or
- 7.3 the applicant has a prior Criminal record, for which he has not received a Pardon, the Municipal Clerk shall deny the application.
- 7.4 Notwithstanding section 7.2(c), if more than seven years have elapsed since the final disposition date of the Criminal Record, and it is, in the opinion of the Municipal Clerk, of a minor nature, the Municipal Clerk may approve the application.
- 7.5 No person shall carry on business as a Mobile Peddler before the hour of 10:00 a.m., or after the hour of 8:00 p.m. local time.
- 7.5 Where a motor vehicle is directly related to and forms part of the business of mobile sale of goods, the applicant for a Mobile Peddler's Licence shall submit
- (a) a currently valid, Safety Standards Certificate issued by an authorized agent under Ministry of Transportation regulations for the vehicle to be licensed;
 - (b) proof of ownership of the vehicle to be licensed.
 - (c) Proof of insurance as required in this by-law.
- 8.0 **Sales on Highways**
- 8.1 No person shall impede or accost another person in an attempt to sell their goods.
- 8.2 No person shall sell goods of any kind on any highway, road allowance or from a vacant lot adjacent to any highway or road allowance within the boundaries of the Municipality of Clarington.
- 8.3 Any person found selling goods from any highway, road allowance or from a vacant lot adjacent to any highway or road allowance shall remove the goods forthwith at the direction of an officer. Failure to comply shall constitute an offence.
- 8.4 Where any person has failed to remove goods from any highway, road allowance or vacant lot adjacent to a highway as directed by an officer, the officer shall have the authority to and shall remove the goods or cause them to be removed and be stored in a suitable place. All resulting costs plus an administration fee of 15% of the total bill shall be assessed against the owner of the goods in addition to any other action taken by the Municipality.
- 8.5 No person shall obstruct or in any way interfere with an officer or other person operating under the officer's direction in the removal of goods from any highway, road allowance or vacant lot adjacent to a highway.
- 8.6 The Municipality may recover the expense incurred in removing and storing goods as referred to in section 8.3 by action commenced against the person who failed to remove the goods or from the owner of the goods if the peddler and the owner are not the same person.

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8.7 In performing any work as required to bring the situation into compliance, the Municipality and its agents shall not be liable to compensate such owner, agent, vender or employee or other person having an interest in the goods by reason of anything done by or on behalf of the Municipality under the authority of this by-law.

9.0 Penalties and Conditions

9.1 Any person who contravenes any provision of this by-law and every director or officer of a corporation who contravenes any provision of this by-law is guilty of an offence and upon conviction shall be liable to a fine as set out in the *Municipal Act, 2001*.

9.2 Where a corporation is convicted of an offence under any provision of this by-law, the maximum penalty that may be imposed on the corporation shall be as provided in the *Municipal Act 2001*.

9.3 Should any section, clause, or provision of this By-law be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this By-law as a whole or any part thereof, other than the part so declared to be invalid.

9.4 In addition to any other penalty as prescribed, the Municipality may suspend or revoke any licence issued pursuant to this by-law.

9.5 The provisions of this by-law shall come into full force and effect immediately upon its final passing by Council.

9.6 By-law 92-230 and its amendments are hereby repealed.

Passed on the 24th day of October, 2005

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Schedule A

Classification of Licences

STATIONARY \$300.00 per year

MOBILE \$300.00 per year

ASSISTANT \$100.00 per year