



Town of Digby Vending & Licensing By-Law # 2009 – 01

Title

1. This By-Law is entitled the "*Vending and Licensing By-Law*".

Definitions

2. (a) In this By-Law:
 - (1) "*amusement performance / special event*" means ,without limiting the foregoing, to include public entertainment events, exhibitions, fairs, parades or circus [see Bylaw #1997-01]in a public place or any other such activity or performance of a temporary nature which might interfere with the lawful use and enjoyment of said public place by other persons.
 - (2) "*abutter*" means the owner, lessee or occupier of any premises or lot in the Town of Digby which abuts a Town of Digby street;
 - (3) "*crosswalk*" means that portion of a roadway ordinarily included within the prolongation or connection of curb lines or the edge of a roadway and property lines at intersections or any portion of a roadway clearly indicated for pedestrian crossings by lines or other markings on the road surface;
 - (4) "*hack*" means horse drawn carriage or rickshaw used to transport passengers for compensation.
 - (5) "*licensing authority*" means the Clerk of the Town of Digby.
 - (5) "*linear meters*" means the length of the longest dimension of a fixed stand;
 - (6) "*mobile canteen*" means a vehicle used for the display, storage, transportation or sale of food or beverages by a mobile vendor;
 - (7) "*mobile stand*" means a stand having any wheels with a diameter in excess of [10 cm.] or having or designed to have removable wheels of such diameter, and each such stand capable of being moved as a separate unit shall be counted as a separate mobile stand;

- (8) **"non-mobile stand"** means a stand that is not a mobile stand;
- (9) **"motor vehicle"** means every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, and, without limiting the foregoing, includes "off-road vehicles [ATV's, dirt bikes] and motorcycles, and which is propelled or driven otherwise than by muscular power, but does not include motorized wheelchairs, or vehicles used exclusively upon stationary rails or tracks.
- (10) **"public places"** means:
- (a) streets;
 - (b) property owned by the Town of Digby
 - (c) property owned by the Province of Nova Scotia that is open to the public; and
 - (d) public parks and trails; and
- "in, on or near a public place"** includes locations that are
- (e) driveways, parking lots, and vacant or undeveloped lots any portion of which is within 25 metres of a public place;
 - (f) within 25 metres of a public place; or
 - (g) visible from a public place;
- (11) **"roadway"** means that portion of a street between the curb lines or the travelled portion of a street designed for vehicular traffic and, except where the context indicates otherwise, includes a crosswalk;
- (12) **"sidewalk"** means that portion of a street between the curb line and adjacent property line or any part of the street especially set aside for pedestrian travel and separated from the roadway;
- (13) **"stand"** includes a table, showcase, bench, rack, pushcart, wagon or wheeled vehicle or device that can be moved without the assistance of a motor and is used for the display, storage, transportation or sale of food, beverages or other merchandise by a mobile vendor;
- (14) **"street"** means a public street, highway, road, lane, sidewalk, thoroughfare, bridge, square and the curbs, gutters, culverts and retaining walls in connection therewith;

- (15) **“transient motor-vehicle vendor”** means a person temporarily selling or offering for sale motor vehicles at a particular location for a specified time, that is not operating such business elsewhere in the Town from a building or other structure which is subject to property tax assessment pursuant to the *Assessment Act*.
- (16) **“sell motor vehicles”** includes selling or offering for sale, trading or otherwise transferring for valuable consideration, whether present or executory.
- (17) **“vend”** or **“vending”** means the sale, or offering for sale, outside an enclosed building of
 - (a) food, beverages or other merchandise, unless they are immediately delivered to a residence or shop by the person selling them,
 - (b) services, unless they are provided in a building;

2. (b) **License / Vending Permit General Provisions**

- 1. Subject to the other provisions of this By-Law, the ***Town Clerk or By-Law Enforcement Officer*** shall issue a separate numbered License / Vending Permit, containing terms and conditions consistent with this By-Law and the license / permit application which complies with the requirements of this By-Law.
- 2. The ***Town Clerk or By-Law Enforcement Officer*** may refuse to issue, renew or amend, or may revoke or suspend a License / Vending Permit for breach of this or any other By-Law or of the terms or conditions of a license / permit upon notice to an applicant or license / permit holder.
- 3. A person aggrieved by a decision of the ***Town Clerk or By-Law Enforcement Officer*** may appeal that decision to Council within 15 days of its mailing to the applicant or permit holder, by written notice of appeal to the Clerk.
- 4. After the hearing of an appeal, Council may confirm, rescind or vary the decision of the ***Town Clerk or By-Law Enforcement Officer***.

Vending on Abutting Streets or Land

- 3. On the sidewalks and on properties abutting them, vending carried out at non-mobile stands by abutters who operate a retail commercial enterprise in the abutting property, during the hours that the abutting retail commercial enterprise is open for business does not contravene this By-Law if it is carried out in compliance with Section 18 of this By-Law.

Farmers Markets

4. ***Vending at specific farmers market [s] designated by resolution of Council does not contravene this By-Law.***

Prohibition

5. Except as expressly authorized by Sections 3 to 6 of this By-Law, no person
- (1) shall vend at flea markets in the Town of Digby except in accordance with the terms and conditions of a Vending Permit;
 - (2) shall otherwise vend in, on or near a public place in the Town of Digby except in accordance with the terms and conditions of a Vending Permit
6. In accordance with, and subject to, the provisions of this By-Law, Vending Permits may be obtained for the vending:
- (1) of food and beverages at mobile canteens on streets and at specifically identified other locations;
 - (2) of food and beverages and other merchandise or services at stands at specifically identified locations;
7. All Vending Permits shall be obtained by application to the ***Town Clerk or By-Law Enforcement Officer***. The application for a Vending Permit, or an amendment to a Vending Permit, shall be made in writing, in duplicate, on such form as may be specified by the ***Town Clerk or By-Law Enforcement Officer*** from time to time, and signed by the person applying therefore. Every application for a Vending Permit shall contain the following information:
- (1) the name, postal and civic address and phone number of the applicant; the
 - (2) maximum number of
 - (a) mobile canteens;
 - (b) mobile stands;
 - (c) linear meters of non-mobile stands;
 - (3) in the case of permits for mobile canteens:
 - (a) the provincial motor vehicle registration number and description by make, model, and year of any vehicles to be used by the applicant as a mobile canteen;

- (b) confirmation that the applicant will
 - (i) maintain throughout the period for which the permit is sought, insurance for third party liability on each mobile canteen in an amount of not less than *[\$1 million]* per occurrence,
 - (ii) only allow the mobile canteen to be driven by operators with valid operators' permits of the requisite class for that type of vehicle, and
 - (iii) only operate or allow the operation of the mobile canteen in accordance with all requirements pursuant to the *Health Act and Regulations* and other applicable enactments;
- (c) a description of the foods and beverages to be sold at each mobile canteen;
- (d) a description of the areas in the Town of Digby in which each mobile canteen will sell food and beverages to the public;
- (e) a photograph of each mobile canteen;
- (4) in the case of permits for stands:
 - (a) where the stand is to be used for the sale of foods and beverages, confirmation that the applicant will only operate or allow the operation of the stand in accordance with all requirements pursuant to the *Health Act and Regulations* and other applicable enactments;
 - (b) a description of the foods and beverages or other merchandise or services to be sold at each stand;
 - (c) where the stand is a mobile stand:
 - (i) a description of the areas in the Town of Digby in which each mobile stand will sell food and beverages to the public;
and
 - (ii) a photograph of each mobile stand or, where several stands have the same appearance, of each type of mobile stand;
 - (d) where the stand is a non-mobile stand:
 - (i) the precise location, described by civic address and a plan diagram showing the sidewalk dimensions and all other dimensions relevant to the provisions of this By-Law, at which the stand will be operated;

And

- (ii) the maximum dimensions of the stand and a description of whether it is a table, bench, showcase, or rack;
 - (5) the permit fee pursuant to section 8; and
 - (6) where applicable, the civic address of any private property at which the applicant seeks permission to vend, along with written authorization from the owner of such property for the vending to occur there;
8. The fee for a Vending Permit is as fixed by policy of Council. *For convenience a copy of the current policy is with, although not part of, this bylaw.*
9. A Vending Permit shall not be issued in respect of vending goods or services that are not permitted to be vended, or the vending of which is regulated, by valid Federal, Provincial statutes or regulations or by-laws of the Town of Digby, except in accordance with such regulatory requirements, and compliance with such regulatory requirements shall be deemed to be a term and condition of every Vending Permit.
10. In the event of a change in ownership of the person owning a mobile canteen, garden centre or a stand for which a permit has been issued, or a substitution of a new mobile canteen, flea market or mobile stand for one for which a permit has been issued, the owner, or the new owner in the case of a change in ownership, shall notify the **Town Clerk or By-Law Enforcement Officer** in writing of the applicable new information and the Permit shall be amended accordingly without a fee.
11. A Vending Permit shall remain in effect for a period of not more than one year from the date of issuance.
12. [a] By Resolution the Council of the Town of Digby may grant Licensing Authority for the issuing of Vending Permits under this by-law to an Organizing Committee of a Special Event / Festival for the specified period of the event/festival and designate the public places that may be used for vending.
- [b] Notwithstanding [a] above, in the granting of said authority, it is to be understood that all relevant terms and conditions of this by-law will continue in force.
- [c] The Organizing Committee of a Special Event / Festival will forward a list, of approved vendor permits issued and corresponding numbered public places assigned, to the Clerk or By-law Enforcement Officer for the Town.

13. A Vending Permit issued under this By-Law shall be conspicuously displayed on the mobile stand, flea market or mobile canteen or on or next to a non-mobile stand to which it relates so as to be clearly visible from the street at all times during which goods or services are being offered for sale pursuant to this By-Law.
14. No person, with or without a Vending Permit, shall:
 - (1) vend within [100 meters] of the grounds of any school between 1/2 hour prior to the start of the school day and 1/2 hour after dismissal at the end of the school day;
 - (2) vend between e.g. 10:00 p.m. and 8:00 a.m. of the following day, or unless otherwise noted on Vending Permit with the exception of Special Events Permits.
 - (3) leave any stand or mobile canteen unattended on a street;
 - (4) sell food or beverages for immediate consumption unless there is available for public use a suitable litter receptacle for the use of customers;
 - (5) leave any vending location without first picking up, removing and disposing of all litter, trash or refuse associated in any way with the vending activity;
 - (6) allow any items relating to the operation of a stand, garden centre, flea market or mobile canteen to be placed any where other than in, on or under the stand, garden centre, flea market or mobile canteen;
 - (7) vend to persons in motor vehicles;
 - (8) sound or permit the sounding of any device which produces a loud and raucous noise, or use or operate any loudspeaker, public address system, radio, sound amplifier or similar device to attract the attention of the public or cry his wares to the disturbance of the public;
 - (9) when vending from a mobile canteen:
 - (a) vend when the mobile canteen is situated in a no parking area, or in area in which parking is prohibited at that time;
 - (b) vend when the mobile canteen obstructs a roadway;
 - (c) vend when customers or persons apparently waiting to become customers are standing in a roadway;

- (d) vend within twenty-five feet of any driveway entrance to a police or fire station, or within fifteen feet of any other driveway other than a driveway for property on which the vending is lawfully occurring;
 - (e) vend when customers or persons apparently waiting to become customers are obstructing the traffic of pedestrians on a sidewalk;
- (10) when vending from a stand:
- (a) situate a stand or vend from a stand situated in a roadway;
 - (b) vend when there is snow or ice on the sidewalk;
 - (c) vend so as to obstruct the traffic of pedestrians, or wheelchairs, and without limiting the generality of the foregoing, a minimum width of 1 meter of sidewalk shall be left unobstructed between the curb and a stand situated on a sidewalk, or between the stand and the nearest building or other obstruction to the interior of the sidewalk;
 - (d) vend when customers or persons apparently waiting to become customers are standing in a roadway;
 - (e) vend within five feet of an entrance way to any building, except a building owned by the permit holder;
 - (f) vend within twenty-five feet of any driveway entrance to a police or fire station, or within fifteen feet of any other driveway, other than a driveway for the property on which the vending is lawfully occurring;
 - (g) vend within twenty-five feet of the crosswalk at any intersection;
 - (h) allow the stand or any other item relating to the operation of the vending business to lean against or hang from any building or other structure lawfully placed on public property, without the owner's permission.
- (11) vend from a fixed stand with a width in excess of 4 feet.

Business License

15. (1) NO person or persons shall operate any business or business enterprise within the Town, without first obtaining a “Business License”, either on their own behalf or as an agent of another.

It shall be an offence for any person to carry on a business, profession, or calling, requiring a license under this Bylaw, without first having obtained a valid license therefore.

- (2) A Business License shall not be granted to a person or persons who are indebted to the Town of Digby for outstanding/unpaid Business Occupancy taxes from a prior business enterprise in the Town, until such time as the outstanding indebtedness have been corrected.
- (3) A Licensing Fee [*The fee is as fixed by policy of Council. For convenience a copy of the current policy is with, although not part of, this bylaw.*] is to accompany the Application for Business License.
- (4) (a) Any person who contravenes Sub-section (1) is punishable on summary conviction by a fine of not less than three hundred (\$300.00) dollars and not more than one thousand (\$1000.00) dollars and to a term of imprisonment of not more than thirty (30) days in default of payment thereof.
- (b) Each subsequent day for which the business or business enterprise is conducted without a Business License is a separate offence under this bylaw and is punishable on summary conviction by a fine of not less than three hundred (\$300.00) dollars and to a term of imprisonment of not more than thirty (30) days in default of payment thereof.

Transient Traders - Sale of Motor Vehicles

16. **Sale of Motor Vehicles**

1. No person shall sell motor vehicles in the Town as a transient motor vehicle vendor except in accordance with this bylaw.
2. The Clerk and/or the Bylaw Enforcement Officer are persons designated by Council to be responsible for the enforcement of this bylaw, and any peace officer shall have enforcement authority.
3. A transient motor vehicle vendor shall obtain a license to sell motor vehicles in the Town, and any sale by such vendor without a current and valid license shall be an offence.

4. Every application for a licence shall be made in writing to the Town Clerk, the licensing authority, and shall contain:
 1. The name, mailing address, telephone number, and, if available, facsimile number and e-mail address of applicant;
 2. The corporate or partnership name, if applicable;
 3. A certified copy of a valid and current Motor Vehicle Dealers' License issued by the Province of Nova Scotia under the applicable regulations promulgated pursuant to the Motor Vehicle Act;
 4. If the applicant is proposing to sell at a site of which the applicant is not the owner, written permission from the owner;
5. After receipt of a completed application, the licensing authority shall issue a licence:
 1. Upon confirming that the proposed site of the sale is zoned for such use under the Land Use Bylaw;
 2. Upon receipt of the licence fee; [see Schedule "B"]
6. A license issued under this bylaw shall;
 1. Be conspicuously displayed at all times at the site of the vendor's business.
7. A licence issued under this bylaw shall be in force for the specified period during which a transient motor vehicle vendor offers motor vehicles for sale, shall expire at the conclusion of that period, and may be reissued for each subsequent sale of motor vehicles by a transient motor vehicle vendor .

Revocation

8. A license may be revoked where;
 1. The licensee has provided incorrect information in the application for a licence;
 2. The licensee's provincial Motor Vehicle Dealers' Licence has been revoked or is no longer in force;
 3. The licensee is in violation of any provision of this or any other bylaw of the Town;

Penalties , Enforcement

9. Every person who contravenes or fails to comply with any provision of this bylaw, or person who owns or controls premises or property used for unlicensed sale of motor vehicles by a transient motor-vehicle vendor commits an offence and is liable on conviction to a penalty of not less than \$500.00 and not more than \$10,000.00 or, in default of payment, to a term of imprisonment of not less than 30 days.
10. Where a person is selling motor vehicles contrary to this bylaw, or other terms and conditions of a licence, the Town may, in addition to any other remedy or penalty herein, and without notice of any kind, impound and remove any vehicles and all costs or charges for the removal and storage shall be paid before the vehicles are released.
11. The Town may apply to a judge of the Supreme Court of Nova Scotia for an injunction or other order where;
 - a. Land is being used in contravention of this bylaw;
 - b. A person is selling motor vehicles without having paid the licence fee required; or
 - c. A breach of this bylaw is anticipated or is of a continuing nature.

Licence Fees

12. (1) The fee for the issuance of a licence under this bylaw shall be as fixed by policy made by Town Council pursuant to section 49 of the *Municipal Government Act*. *For convenience a copy of the current policy is with, although not part of, this bylaw.*
- (2) For convenience a Certified Copy of the said policy shall be affixed to, *although not part of*, this bylaw as Schedule "A". In the event that the fee so fixed is changed, a Certified Copy of the new policy shall be affixed in the place of the previous.

Transient Traders License

17. No person, unless he is at the time a ratepayer of the Town shall without first having obtained a license for that purpose, exercise within the Town on his own behalf or as the agent of another, the calling of a hawker or peddler of goods, or sell, barter, or otherwise trade, or offer to sell, barter or otherwise trade any kind of goods, wares or merchandise within the Town; provided that without such license any farmer or market gardener may sell within the Town the produce of his own farm or dairy, excepting milk, and any fisherman may sell within the Town any fish of his own catching and any person whatsoever may sell to any wholesale or retail dealer of any goods within the Town any goods in which such wholesale or retail dealer trade.
18.
 - (1) Such license shall be known as a "Transient Trader's License" and every such license issued shall terminate on the 31st day of March next after the date of license unless sooner canceled or revoked.
 - (2) The Transient Traders License Fee [The fee for Transient Traders License is as fixed by policy of Council. For convenience a copy of the current policy is with, although not part of, this Bylaw as Schedule "A"] shall accompany the Application for Transient Traders License.
19. The rights and privileges conferred upon and licensed under a Transient Trader's License shall immediately cease at the end of the period mentioned in such license, and he shall not thereafter be entitled to exercise any such right or privilege until he shall have had such license renewed under the provisions of this By-law, and paid the fees chargeable in respect of such renewal, or obtained a new license.

Amusement Performance / Special Events

20.
 1. NO person or persons shall operate any amusement performance or special event within the Town, without first obtaining an Amusement Performance / Special Event license, either on their own behalf or as an agent of another.
 2. The Amusement Performance / Special Event Fee [The fee for Amusement Performances / Special Events License is as fixed by policy of Council. For convenience a copy of the current policy is with, although not part of, this Bylaw as Schedule "A"] shall accompany the Application for said license.

Hack License

21. NO person or persons shall operate any hack, (horse-drawn carriage) or rickshaw business enterprise within the Town, without first obtaining a “Hack License”, either on their own behalf or as an agent of another.

The Hack / Rickshaw License Fee [The fee for Hack License is as fixed by policy of Council. For convenience a copy of the current policy is with, although not part of, this Bylaw as Schedule “A”] shall accompany the Application for Hack License.

22. It shall be an offence for any person to carry on a business, profession, or calling, requiring a license under this Bylaw, without first having obtained a valid license therefore.

Repeal

23. All previous Town of Digby Vending/Licensing Bylaws are hereby repealed.

Penalty

24. Any person who contravenes any provision of this By-Law is punishable on summary conviction by a fine of not less than five hundred (\$500.00) dollars and to imprisonment of not more than sixty (60) days in default of payment thereof.
25. Any person who contravenes sections of this By-Law and who is given notice of the contravention may pay to the Town of Digby, at the place specified in the notice, the sum of \$100.00 pursuant to *Payment in Lieu of Prosecution Policy* within 14 days of the date of the notice and shall there by avoid prosecution for that contravention.

Clerk's Annotation For Official By-Law Book

Date of first reading: 02 February 2009

Date of advertisement of Notice of Intent to Consider: 11 February 2009

Date of second reading: 02 March 2009

*Date of advertisement of Passage of By-Law: 11 March 2009

Date of mailing to Minister a certified copy of By-Law: 11 March 2009

I certify that this **VENDING & LICENSING BY-LAW** was adopted by Council and published as indicated above.

E. Thomas Ossinger, Town Clerk

11 March 2009

Date

* Effective Date of the By-Law unless otherwise specified in the text of the By-Law

Schedule "A"
License Fees

License Fees pursuant to this By-law shall be:

	Type of Vending / License	Annual Fee
(a)	Mobile Canteen / Lunch Trucks	\$ 500.00
(b)	Mobile Stand	\$ 100.00
(c)	Non-Mobile Stand	\$ 100.00
(d)	Lunch/Ice Cream/Hot Dog Wagon	\$ 25.00 per wagon unit
(e)	Amusement Performance / Special Events License	\$ 500.00 (per event)
(f)	Transient Traders License (Non-resident Seller of Goods)	\$ 250.00
(g)	Business License	\$ 15.00
(h)	Hack License	\$ 200.00
(g)	Auxiliary Vending	\$ 0.00
(h)	Designated Site	Determined by Tender

Schedule "B"

Motor Vehicle Transient Vendors Licence Fee

The fee for the issuance of a licence under the Motor Vehicle Transient Vendor provisions of the Vending and Licensing Bylaw is fixed at the following;

0 - 30 consecutive days / monthly	\$ 500.00
0 - 90 consecutive days	\$1000.00
0 - 180 consecutive days	\$1500.00
Annual	\$2500.00

This policy shall take effect on the coming into force of the Vending and Licensing Bylaw.

I Certify this is a true copy of a policy adopted by Council of the Town of Digby pursuant to subparagraph 49(1)(c)(I) of the *Municipal Government Act* on February 15, 2006.

E. Thomas Ossinger, Town Clerk