



Town of Port Hawkesbury Vending By-Law

Title

1. This By-Law is entitled the “Vending By-Law”.

Definitions

2. In this By-Law:

- (1) “abutter” means the owner, lessee or occupier of any premises or lot in the Town of Port Hawkesbury which abuts a Town street;
- (2) “auctioneer” means a person who conducts sales by auction;
- (3) “busking” means providing entertainment in a public place, not for a set fee, but with the expectation that members of the public will make a donation for the entertainment;
- (4) “community group” means a group or organization that works to carry out activities that benefit a particular group and/or the Town as a whole;
- (5) “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;
- (6) “council” means the elected Municipal Council of the Town of Port Hawkesbury;
- (7) “flea market” means an outdoor market at which persons are rented or provided space for a fee or rent for the purpose of selling new or used merchandise to the public;
- (8) “linear metres” means the length of the longest dimension of a fixed stand;
- (9) “mobile canteen” means a vehicle used for the display, storage, transportation or sale of food or beverages by a mobile vendor;
- (10) “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;
- (11) “non-mobile stand” means a stand that is not a mobile stand;

- (12) “not for profit” means an organization operated on a cost-recovery basis and not seeking profit;
- (13) “owner” of land means a part owner, joint owner, tenant in common, or joint tenant of the whole or any part of the land and, in the absence of proof to the contrary, means the person assessed for the land;
- (14) “public places” means:
- (a) streets;
 - (b) property owned by the Town;
 - (c) property owned by the Province of Nova Scotia that is open to the public; and
 - (d) public parks and trails;
- (15) “in, on or near a public place” includes locations that are:
- (a) driveways, parking lots, and vacant or undeveloped lots any portion of which is within 25 metres of a public place;
 - (b) within 25 metres of a public place; or
 - (c) visible from a public place
- (16) “peddle” means to travel about selling wares or services;
- (17) “permit” means a vending permit issued pursuant to this by-law;
- (18) “private property” means real property within the Town of Port Hawkesbury not owned by the Town, the Province of Nova Scotia or the Government of Canada;
- (19) “roadway” means that portion of a street between the curb lines or the traveled portion of a street designed for vehicular traffic and, except where the context indicates otherwise, includes a crosswalk;
- (20) “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;
- (21) "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;
- (22) "street" means a public street, highway, road, lane, sidewalk, thoroughfare, bridge, square and the curbs, gutters, culverts and retaining walls in connection therewith;
- (23) “town” means the Town of Port Hawkesbury, a body corporate pursuant to the Municipal Government Act;

(24) “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; and
(b) services, unless they are provided in a building;

(25) “vending machine” means a mechanical or electronic device that:
(a) is operated by the introduction of a coin, counter or slug; and
(b) dispenses food, beverages, goods, wares or services, including newspapers and other publications;

(26) “vendor” means an owner, agent, operator, or employee of a vending business including mobile vendors;

(27) “yard sale” means a sale of surplus household goods by the occupants or neighbours of the residential property at which the sale is carried on.

Vending Machines

3. The CAO may by written instrument lease space for a term not exceeding one year for vending machines on streets or other public places owned by the Town and vending machines operated in compliance with the terms of such leases do not contravene this By-Law.

4. Vending machines placed and operated in compliance with the terms of any valid and subsisting written lease, license or permission from the property owner upon which they are situate do not contravene this By-Law.

Vending on Abutting Streets or Land

5. On the streets, or portions of streets 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 24 of this By-Law.

Yard Sales

6. Subject to Section 7, yard sales on private property do not contravene this By-Law provided that:

(1) the owner of the property upon which the yard sale vending is occurring expressly authorizes such yard sale vending;

(2) the property owner and the yard sale vendor do not set up or place, or allow to be set up or placed, outside in a location visible from a public place any yard sale vending merchandise, stands or equipment before 12 hours in advance of the time that the yard sale vending is permitted to begin pursuant to this By-Law; and

(3) the property owner and the yard sale vendor do not leave or allow to be left outside in a location visible from a public place any yard sale vending merchandise, stands or equipment more than 12 hours after the time that the yard sale vending is required to cease pursuant to this By-Law.

7. Council may by resolution designate properties upon which yard sales are not permitted to occur, upon recommendation or advice from the Traffic Authority that yard sales at such properties are or may cause a safety hazard or an obstruction to traffic.

Farmers Markets

8. This By-law does not apply to the vendors of the Port Hawkesbury Farmer's Market when operating at official Port Hawkesbury Farmer's Market Events.

Exemptions

9. Vending undertaken as a fundraiser for not for profit groups is not subject to this bylaw.

10. This bylaw does not regulate or prevent buskers from performing in public place in the Town.

11. This bylaw does not apply to any person offering for sale the products of the farm, forest or sea.

Prohibition

12. Except as expressly authorized by Sections 3 to 9 of this By-Law, no person:

(1) shall vend at flea markets in the Town 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 except in accordance with the terms and conditions of a Vending Permit;

(3) shall vend or peddle in the Town except in accordance with the terms and conditions of a Vending Permit;

(4) do business in the Town as an auctioneer without first obtaining a vending permit pursuant to the terms and conditions of this By-law.

13. In accordance with, and subject to, the provisions of this By-Law, Vending Permits shall be obtained for the vending:

(1) of food and beverages at mobile canteens or peddling carts on streets, private property and at specifically identified other locations;

(2) of food and beverages and other merchandise or services at stands at specifically identified locations;

- (3) of merchandise at flea markets at specifically identified locations situated on private property during any 6 months of the year;
- (4) by peddling; and
- (5) by auctioneering

14. All Vending Permits shall be obtained by application to the CAO. 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 CAO 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;
- (2) the maximum number of:
 - (a) mobile canteens;
 - (b) mobile stands;
 - (c) linear metres of non-mobile stands; and
 - (d) square metres of flea market space for which a Vending Permit is sought;
- (3) whether the application is for a permit:
 - (a) for a full year;
 - (b) for a season of 6 months or less, and, if so, the dates of the season for which the permit is sought; or
 - (c) for one or more occasions on less than 10 days in any year, and if so, the dates for which the permit is sought;
- (4) 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 in which each mobile canteen will sell food and beverages to the public; and
 - (e) a photograph of each mobile canteen;

(5) 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 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;

(6) in the case of permits for flea markets:

(a) the precise location, described by civic address and a plan diagram showing the dimensions and layout of the flea market;

(b) the maximum dimensions of the product display space; and

(c) the property owner shall provide in writing their consent to the Vending Permit Application

(7) in the case of peddling or auctioneering, a description of the wares or services being sold;

(8) the permit fee pursuant to Section 15; and

(9) where applicable, the civic address of any public places other than streets at which the applicant seeks permission to vend, along with written authorization from the owner of such property for the vending to occur there;

15. The fees to be paid to the Town for a Vending Permit issued pursuant to the Vending By-Law shall be in accordance with the Town of Port Hawkesbury "Vending Fees Policy".

16. 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, 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.

17. Subject to the other provisions of this By-Law, the CAO shall issue a separate numbered Vending Permit, containing terms and conditions consistent with this By-Law and the permit application, for each mobile stand, flea market or mobile canteen and for each non-mobile stand location, peddler, which complies with the requirements of this By-Law.

18. In the event of a change in ownership of the person owning a mobile canteen, 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 CAO in writing of the applicable new information and the Permit shall be amended accordingly without a fee.

19. A Vending Permit shall remain in effect for a period of not more than one year from the date of issuance.

20. The CAO may refuse to issue, renew or amend, or may revoke or suspend a Vending Permit for breach of this or any other By-Law or of the terms or conditions of a permit upon notice to an applicant or permit holder.

21. A person aggrieved by a decision of the CAO pursuant to Section 20 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.

22. After the hearing of an appeal, Council may confirm, rescind or vary the decision of the CAO.

23. 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.

24. No person, with or without a Vending Permit, shall:

- (1) vend within 100 metres 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 the hours of 10:00 p.m. and 8:00 a.m. of the following day, unless expressly approved in the Vending Permit;
- (3) leave any stand or mobile canteen unattended in a public place or on private property;

- (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; including emptying the litter and recycling receptacles;
- (6) allow any items relating to the operation of a stand, flea market or mobile canteen to be placed anywhere other than in, on or under the stand, flea market or mobile canteen;
- (7) install more than one portable sign. The portable sign shall be placed within 3.5 metres of the vendor location and shall be no more than 1 metre high and not more than 0.6 metres in width; must be of stable design and surfaces and finishes must be well maintained;
- (8) vend to persons in motor vehicles;
- (9) 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;
- (10) sell anything other than which he/she is licensed to vend as established in a vending permit;
- (11) any stand or mobile canteen that uses a fuel fired appliance for the preparation or warming of food or drinks shall be inspected by the Fire Inspector prior to the issuance of a Vending Permit;
- (12) any stand or mobile canteen equipped with a fuel fired appliance shall be equipped with a minimum of a 2A10BC rated fire extinguisher or suitable alternative as directed by the Office of The Fire Marshall. A photograph shall be provided;
- (13) vend within the street in competition with the abutter;
- (14) 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; and
 - (e) vend when customers or persons apparently waiting to become customers are obstructing the traffic of pedestrians on a sidewalk;
- (15) when vending from a stand:
 - (a) situate a stand or vend from a stand situated in a roadway, unless the stand is a pedal stand;
 - (b) vend upon a sidewalk 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 metre 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;

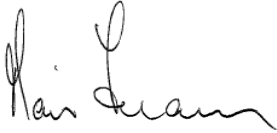
- (d) vend when customers or persons apparently waiting to become customers are standing in a roadway;
 - (e) vend within five feet of an entrance way to any building, except a building owned by the permit holder;
 - (f) vend within twenty-five feet of any driveway entrance to a police or fire station, 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; and
 - (i) vend within the street in competition with the abutter
- (16) when vending on private property the vendor shall:
- (a) only be eligible to vend on appropriately zoned commercial properties pursuant to the Land Use By-Law;
 - (b) be subject to a vending permit and relevant provisions of the Land Use By-law and other applicable legislation and Town By-Laws; and
 - (c) The property owner shall provide in writing their consent to the Vending Permit Application
- (17) vend from a fixed stand with a width in excess of 1.25 metres;
- (18) vend on any sidewalk that is less than 2 metres in width;
- (19) peddle on any premises where a sign prohibiting peddling has been clearly posted;
- (20) when vending at flea markets:
- (a) vend without the express authorization of the owner of the property upon which the flea market vending is occurring;
 - (b) set up or place, or allow to be set up or placed, outside in a location visible from a public place any vending merchandise, stands or equipment before 12 hours in advance of the time that the flea market vending is permitted to begin pursuant to this By-Law;
 - (c) leave or allow to be left outside in a location visible from a public place any vending merchandise, stands or equipment more than 12 hours after the time that the flea market vending is required to cease pursuant to this By-Law; and
 - (d) Council may by resolution designate properties upon which flea markets are not permitted to occur, upon recommendation or advice from the Traffic Authority that flea markets at such properties are or may cause a safety hazard or an obstruction to traffic.

Penalty

25. Any person who contravenes any provision of this By-Law is punishable on summary conviction by a fine of not less than two hundred (\$200.00) dollars and not more than two thousand (\$2000.00) dollars and to imprisonment of not more than sixty (60) days in default of payment thereof.

Date of First Reading: September 6, 2016
Date of Advertisement of Notice of Intent to Consider: September 14, 2016
Date of Second Reading: October 4, 2016
Date of Advertisement of By-law Passage and Approval: October 12, 2016
Date of Mailing Certified Copy to SNSMR: October 26, 2016

I certify that the Vending By-Law for the Town of Port Hawkesbury was adopted by Council at a Public Meeting, October 4, 2016.



Maris Freimanis P. Eng.
Chief Administrative Officer

October 26, 2016

Date

