



**The Municipal Corporation of the
Town of Fort Erie
BY-LAW NO. 217-05**

**BEING A BY-LAW TO LICENCE AND REGULATE VARIOUS
BUSINESSES IN THE TOWN OF FORT ERIE AND TO REPEAL
CERTAIN BY-LAWS**

WHEREAS Section 151 of the *Municipal Act, 2001*, as amended, provides for the licencing of businesses in a municipality including the power to licence, revoke or suspend the licence, and to impose conditions or special conditions, and

WHEREAS it is deemed necessary and expedient to licence, regulate and govern certain businesses within the Town of Fort Erie.

NOW THEREFORE the Municipal Council of The Corporation of the Town of Fort Erie hereby enacts as follows:

PART 1 - SHORT TITLE

1.1 The Short Title of this by-law shall be the "Business Licencing By-law."

PART 2 – DEFINITIONS

2.1 For the purposes of this by-law:

- (a) **"Appeals Committee"** means an Appeals Committee for the purposes of this by-law comprised of three (3) Members of Council and two alternates who shall hear any appeals under this by-law;
- (b) **"Applicant"** means any person applying for a licence under this by-law;
- (c) **"Business"** shall include but is not limited to:
 - (i) trades and occupations;
 - (ii) the sale or hire of goods, wares, merchandise or services on an intermittent or one-time basis;
 - (iii) the display of samples, patterns, or specimens of goods for the purpose of sale or hire

but does not include

- (i) a manufacturing or an industrial business, except to the extent that it sells its products or raw material by retail;
- (ii) the sale of goods by wholesale; or

- (iii) the generation, exploitation, extraction, harvesting, processing, renewal or transportation of natural resources;
- (iv) those businesses that municipalities are prevented from licencing as set out under *O.Reg. 243/02* and other Regulations enacted from time to time; and

for purposes of this definition a business shall be deemed to be carried on within the Town if any part of the business is carried on within the Town even if the business is being carried on from a location from outside the Town;

- (d) “**Council**” means the Municipal Council of the Town of Fort Erie;
- (e) “**Fire Chief**” means the Fire Chief of the Town of Fort Erie or Fire Inspector, or designate;
- (f) “**Licence**” means the official document issued by the Town under the provisions of this by-law bearing the signature of the Coordinator, Community Liaison and Business Licencing authorizing a person to conduct a business listed in the schedules annexed hereto to this by-law;
- (g) “**Medical Officer of Health**” means the Medical Officer of Health for the Regional Municipality of Niagara or designate, duly appointed under the Health Protection and Promotion Act;
- (h) “**Officer**” means any Town employee authorized by the Council to enforce the provisions of any by-law or to conduct inspections in relation to this by-law, or any police officer or Medical Officer of Health or designate;
- (i) “**Owner**”- premises - with respect to premises shall mean the registered owner of the land on which the premises is situated and includes a trustee acting on behalf of the registered owner, the estate of a registered owner and a person with a lease hold interest in the land;
- (j) “**Owner**” with respect to a trade, calling, business, or occupation shall mean the business, company or partnership that carries on the trade, business or occupation and whose name appears on the licence issued by the Town for such trade, business or occupation pursuant to this by-law;
- (k) “**Person**” shall include an individual, a partnership, a firm or a corporation;
- (l) “**Premises**” means any land, including, a building, structure or installation and also includes any vehicle, vessel or conveyance used in the operation of a business;

- (m) **“Registered Charitable Organization”** means any charity that is registered or is eligible to be registered with the Federal Government and has a registered charity number that has been issued;
- (n) **“Special Event”** shall mean an annual community event with all proceeds donated for charitable or not-for-profit purposes;
- (o) **“Town”** means the Corporation of the Town of Fort Erie;
- (p) **“Town Clerk”** means the Clerk of the Corporation of the Town of Fort Erie or designate.

PART 3 - GENERAL PROVISIONS

3.1 LICENCING - POWERS

The powers to licence, regulate and govern a business includes the power to,

- (a) prohibit the carrying on or engaging in the business without a licence;
- (b) refuse to grant a licence or to revoke or suspend a licence;
- (c) impose conditions as a requirement of obtaining, continuing to hold or renewing a licence;
- (d) impose special conditions on a business in a class that have not been imposed on all of the businesses in that class in order to obtain, continue to hold or renew a licence;
- (e) impose conditions, including special conditions, as a requirement of continuing to hold a licence at any time during the term of the licence;
- (f) licence, regulate or govern real and personal property used by the business and the persons carrying it on or engaged in it, and
- (g) require a person, subject to such conditions as the municipality considers appropriate, to pay an administrative penalty if the municipality is satisfied that the person has failed to comply with any part of a system of licences established by the municipality.

3.2 ADMINISTRATION AND LICENCING POWERS

3.2.1 Unless otherwise indicated, the administration of this by-law including approval of applications and issuance of licences shall be assigned to the Coordinator, Community Liaison and Business Licencing who may delegate the performance of his/her functions under this by-law from time to time as the occasion requires.

3.2.2 The Coordinator, Community Liaison and Business Licencing shall issue or renew a licence provided that the provisions of this by-law have been complied with.

3.2.3 The Coordinator, Community Liaison and Business Licencing may issue or renew a licence prior to the receipt of all inspection reports or approvals required herein where the Coordinator, Community Liaison and Business

Licencing is satisfied that such inspections or approvals will be reasonably delayed due to internal scheduling constraints; and provided the applicant is advised that the licence may be revoked if the subsequent inspections or approvals determine that the business is not in compliance with this by-law.

3.3 ENFORCEMENT

The Enforcement of this by-law shall be primarily assigned to the members of the Niagara Regional Police Service and to the By-law Enforcement Service for the Town but any Officer with a duty to enforce under any statute or this by-law shall do so accordingly.

3.4 PART 2 – APPLIES TO – ALL OF THE PARTS

All of the regulations contained in this part of the by-law shall apply to all licences required under the provisions of this by-law.

3.5 LICENCE REQUIRED

No person shall carry on any trade, calling, business, or occupation set out in the Schedules of this by-law, without a licence to do so issued by the Town. Each trade, calling, business or occupation shall be separately licenced.

3.6 LICENCE - APPLICATION

Every person wishing to make an application for a business licence, or renewal thereof under this by-law, shall file:

- (a) a completed application form, and
- (b) the application fee prescribed in the schedules of this by-law

3.7 LICENCE – APPLICATION – FULL INFORMATION – REQUIRED

Upon receipt of an application for a licence, the Coordinator, Community Liaison and Business Licencing shall:

- (a) stamp the application with the date and time of receipt and process applications in the order in which they were received, and
- (b) circulate the application to applicable officers for inspection and approval.

3.8 LICENCE – APPLICATION – SUBJECT TO APPROVAL

Every application shall be subject to approvals from such municipal or provincial departments or agencies as may be set out in the Schedules of this By-law and such other municipal or provincial departments or agencies as the Coordinator, Community Liaison and Business Licencing deems necessary.

3.9 OTHER LAWS

The requirement of obtaining a licence under this by-law is in addition to and not in substitution for any other requirement to obtain a licence or licences or other regulatory approvals under any other federal, provincial or municipal regulations.

3.10 LICENCE - DISPLAY

Every person holding a licence issued pursuant to this by-law shall:

- (a) with respect to premises, display the licence in a conspicuous place in or on the said premises, or
- (b) with respect to a vehicle, display the licence in a conspicuous place in or on the said vehicle, or
- (c) with respect to an individual, maintain the licence on their person while conducting the activity for which the licence was issued.

3.11 LICENCE – PROPERTY OF TOWN – TRANSFER PROHIBITED

Every licence, at all times, is owned by and is the property of the Town and is valid only in respect of the person and the premises or of the person named therein and for the nature of business stated in the licence, and no licence may be sold, purchased, leased, mortgaged, charged, encumbered, assigned, pledged, transferred, seized, distained or otherwise dealt with.

3.12 INFORMATION – HELD BY COORDINATOR, COMMUNITY LIAISON AND BUSINESS LICENCING – OPEN TO INSPECTION

Any application, comment, recommendation, information, document or thing in the possession of the Coordinator, Community Liaison and Business Licencing pursuant to the provisions of this by-law shall be made available by the Coordinator, Community Liaison and Business Licencing for an inspection:

- (a) by any person employed in the administration or the enforcement of this by-law, and
- (b) by any other person upon the consent, satisfactory to the Coordinator, Community Liaison and Business Licencing, of the person, civic department, board, commission, authority or other agency which produced or submitted the application, comment, recommendation, information, document or thing;

subject only to the limitations imposed by the *Municipal Freedom of Information and Protection of Privacy Act*.

3.13 INSPECTIONS – OFFICERS

Subject to Part 3.15 of this by-law, any member of the Niagara Regional Police Service or any Officer may, at all reasonable times and upon producing proper identification, enter and inspect any premises or any part of any premises licenced under the provisions of this by-law.

3.14 NO PERSON – OBSTRUCT - PERSON WHO ENFORCES

No person shall hinder or obstruct, or attempt to hinder or obstruct, any person exercising a power or performing a duty under this by-law.

3.15 INSPECTIONS – DWELLING – POLICE – SEARCH WARRANT

Except under the authority of a search warrant under the *Provincial Offences Act* or in accordance with the provisions of Section 430 of the *Municipal Act, 2001*, as amended from time to time, any person exercising a power of entry on behalf of the Town under this by-law shall not enter any room or place actually used as a dwelling without requesting and obtaining the consent of the occupier, first having informed the

occupier that the right of entry may be refused and entry made then only under the authority of a search warrant.

3.16 RECORDS – TO BE KEPT – AS REQUIRED

No person shall fail to keep any and all of the records to be kept by under the provisions of any section of any part of this by-law.

3.17 DEFICIENCIES – SPECIFIED – NOTICE TO - APPLICANT

Where any determination is made that any premises or person named in the application does not receive the approvals required by this by-law, the reasons for the lack of the required approvals shall be specified, and the Coordinator, Community Liaison and Business Licencing shall notify the applicant of all such reasons.

3.18 LICENCE – NOT TO BE ISSUED OR RENEWED – WHERE BY-LAW CONTRAVENED

No licence shall be issued to any person in respect of any premises in which the carrying on or operation of the business for which the application is being made is in contravention of any by-law of the Town, or any applicable Provincial or Federal legislation.

3.19 LICENCE – TERM OF EXPIRY

All licences shall be issued and shall be valid on an annual basis, save and except where stated otherwise in any of the Schedules to this by-law.

3.20 LICENCE – ADMINISTRATION FEE - LICENCE REFUSED OR WITHDRAWN

All business licence fees are non-refundable if the application is refused for any reason or is withdrawn by the applicant prior to the issuance of a licence.

3.21 ISSUANCE, RENEWAL – CONDITIONS

Every initial licence and every renewal thereof, is subject to the following conditions of obtaining, continuing to hold, and renewing a licence, all of which shall be performed and observed by the applicant, holder of the licence or by the operator of the business:

- (a) the applicant shall pay the applicable licence fee;
- (b) the applicant shall allow, at any reasonable time, the Town to inspect the place and premises used for the business and the equipment, vehicles and other personal property used or kept for hire in the carrying out of the business;
- (c) the applicant shall ensure that the place or premises used for the business are not constructed or equipped so as to hinder the enforcement of this by-law;
- (d) the premises in which the business is located shall be in accordance with the requirements of the *Building Code Act* and the regulations thereunder, the *Fire Protection and Prevention Act, 1997* and the regulations thereunder, and any by-law of the Town prescribing standards for the maintenance and occupancy of property within the Town;
- (e) where premises in which the business is located are altered and a building permit is required to carry out the alterations, the premises, as altered, shall be in accordance with the *Building Code Act* and the regulations thereunder, the

Fire Protection and Prevention Act, 1997 and the regulations thereunder, and any by-law of the corporation prescribing standards for the maintenance and occupancy of property within the Town;

- (f) the use of the premises for the purpose of the business is permitted or conforms with the uses of the premises permitted under the applicable zoning by-law or is a legal non-conforming use;
- (g) the owner or operator shall have a contractual or proprietary interest in the lands and premises upon which the business is to be operated which will enable the owner or operator to carry on the business;
- (h) the applicant or licence holder shall not carry on activities that are in contravention of this by-law;
- (i) the applicant or licence holder shall not fail to pay any part of a fine for a contravention of this by-law after the fine becomes due and payable under Section 66 of the Provincial Offences Act, including any extension of time for payment ordered under that section.

3.22 REVOKING, SUSPENDING OR CANCELLING

A licence may be revoked, suspended or cancelled:

- (a) where the licensee would be disentitled to a licence for the reasons set out in Subsection 3.21 of this by-law;
- (b) when the licensee is convicted of an offence under any provision of this by-law, or any other municipal, Provincial or Federal statute or regulation with respect to the business;
- (c) upon recommendation from the Appeals Committee respecting the licensee's business practices or standards;
- (d) where the licence was issued incorrectly based on incorrect or incomplete information provided by the applicant;
- (e) any business licence application that has not received approvals from all municipal or Provincial departments or agencies as the Coordinator, Community Liaison and Business Licencing deems necessary because of the applicant's inability to comply with the requirements to become licenced.

PART 4 – APPEALS

4.1 LICENCING POWERS – DELEGATION TO APPEALS COMMITTEE

- (a) The general licencing powers contained in Part IV of the *Municipal Act, 2001*, S.O. 2001, c.25 as amended are hereby assigned to the Appeals Committee.
- (b) The Appeals Committee shall make the final decision with respect to refusing to issue, refusing to renew, suspending or revoking a licence under this by-law.

4.2 REFERRAL – APPEALS COMMITTEE – COORDINATOR, COMMUNITY LIAISON AND BUSINESS LICENCING

- (a) At any time before the Coordinator, Community Liaison and Business Licencing either issues or renews a licence, or recommends to refuse to issue or to refuse to renew a licence, he/she may, or he/she shall on the request of the applicant

refer the application for such issuance or renewal of the licence to the Appeals Committee.

- (b) Where there is a referral to the Appeals Committee pursuant to this section, the Appeals Committee shall hold a meeting for the purpose of directing the Coordinator, Community Liaison and Business Licencing to issue or renew the licence, or not to issue or renew the licence, and the Appeals Committee,
- (c) when directing the Coordinator, Community Liaison and Business Licencing, may require the imposition of conditions specific to the licence regarding compliance by the applicant with any requirements of this by-law.

4.3 RECOMMENDATION – APPEALS COMMITTEE – REFUSE TO ISSUE, RENEW, SUSPENSION, REVOCATION - NOTICE – HEARING REQUEST

- (a) Where the Coordinator, Community Liaison and Business Licencing intends to recommend to the Appeals Committee to refuse to issue, to refuse to renew, to revoke or to suspend a licence, he/she shall give notice of his/her intended recommendation for refusal to the applicant or licence holder, together with the reason for the intended recommendation, as well as to such other persons, departments, boards, commissions, authorities or agencies who appear to have an interest in the recommendation.
- (b) Within seven (7) days of mailing of the Coordinator, Community Liaison and Business Licencing's notice in (a) above, the applicant or licence holder may request a hearing before the Appeals Committee. Such request for a hearing shall be in writing and must be received by the Coordinator, Community Liaison and Business Licencing no later than ten (10) days after the Coordinator, Community Liaison and Business Licencing mailed the notice to the applicant.
- (c) Any request for a hearing shall be accompanied by an appeal fee of \$100.00.

4.4 REFUSAL – SUSPENSION – REVOCATION – NOTICE OF HEARING – CONTENT

Where the Coordinator, Community Liaison and Business Licencing receives a written request for a hearing in compliance with Section 4.3(b), the Coordinator, Community Liaison and Business Licencing shall schedule a hearing before the Appeals Committee and shall provide notice of the hearing to the applicant or licence holder. The notice of the hearing shall:

- (a) contain a reference to Sections 150 and/or 252 of the *Municipal Act, 2001* under which the hearing will be held;
- (b) contain a reason or reasons for the proposed refusal, suspension or revocation;
- (c) specify the time, place and purpose of the hearing of the Appeals Committee at which the proposed refusal, suspension or revocation will be considered;
- (d) inform the affected applicant or the affected holder of the licence that he/she is entitled to attend the hearing and make submissions regarding the proposal and that, in his/her absence, the Appeals Committee may proceed to consider the proposal, and the applicant or affected holder of the licence will not be entitled to any further notice in the proceedings;
- (e) afford the affected applicant or the affected holder of the licence a reasonable opportunity, before the hearing, to show or achieve compliance with all lawful requirements for the retention of the licence, and

- (f) be given at least fifteen (15) days notice prior to the date of the Appeals Committee hearing.

4.5 REFUSAL – SUSPENSION – REVOCATION – BY APPEALS COMMITTEE – HEARING

At the hearing, the Appeals Committee may suspend, revoke or refuse to issue any licence that may be issued under the provisions of any part of this by-law:

- (a) for any reason that would disentitle the holder to a licence if he/she were an applicant;
- (b) where the holder of the licence or application is in breach of a condition of the licence or of this by-law;
- (c) if a report is filed subsequent to the date of the issuance of the licence or by any department or agency which provided its approval originally to the issuance of the licence which indicates that a licenced premise no longer complies with any of the provisions of this by-law;
- (d) upon such grounds as are set out in this by-law;
- (e) if the conduct of the applicant or licensee affords reasonable cause to believe that the applicant or licensee will not carry on or engage in the business in accordance with the law or with honesty and integrity;
- (f) if, in the case of a corporate applicant or licensee, the conduct of its officers, directors, employees or agents affords reasonable cause to believe that the business will not be engaged in or carried on in accordance with the law or with honesty and integrity.

4.6 SUSPENSION – INTERIM – PENDING – DURING MEETING

Where there is a referral or request for a hearing to the Appeals Committee, the Committee may, where the Committee considers it to be necessary in the public interest, immediately suspend the licence for a period exceeding fifteen (15) days.

4.7 SUSPENSION – INTERIM - EXTENSION

The Appeals Committee may, at the meeting mentioned in Section 4.2 of this part of this by-law, extend the interim suspension until the Committee disposes of the proposed suspension or revocation.

4.8 SUSPENSION – INTERIM – NOTICE – CONTENT

The notice mentioned in Section 4.4 of this by-law shall inform the holder of the licence of any interim suspension and of the authority of the Committee under Sections 4.6 and 4.7 of this by-law.

4.9 APPEALS COMMITTEE – PROCEEDINGS

At a hearing, the Appeals Committee:

- (a) shall afford the affected applicant or the holder of the licence an opportunity, at the hearing, of making submissions in respect of the matter that is the subject of the Committee's proceedings;
- (b) shall afford any person, municipal department, board, commission, authority or agency given notice under Section 4.4 of this by-law and in attendance at the

- hearing, or any other person in the discretion of the Committee, an opportunity to make submissions in respect of the matter that is the subject of the Committee's proceedings;
- (c) may close a portion of the hearing to the affected applicant or licence holder only for the purpose of receiving confidential legal advice;
 - (d) may close all or a portion of the hearing to the public if the Committee is of the opinion that intimate financial or personal matters may be disclosed of such a nature, having regards to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest, outweighs the desirability of adhering to the principle that the hearing be open to the public;
 - (e) shall give due consideration to the submissions made to it;
 - (f) shall take such action to refuse, suspend or revoke the application or licence, or not to refuse, suspend or revoke the application or licence, as the Appeals Committee considers proper in the circumstances;
 - (g) shall give notice of its decision to the Coordinator, Community Liaison and Business Licencing, to the applicant or to the licence holder, and to any person, municipal department, board, commission, authority or agency in attendance at the hearing, together with the reasons for its decision.

PART 5 – FEES

- 5.1 (a) The sums of money set out in **Schedule “LLS-A”** of By-law No.40-09 as amended or superseded from time to time, are hereby fixed as the licence fees and shall be paid before the issue or renewal of any licence. Unless otherwise specified, the fees shown are for the current calendar year and are due and payable by January 31st of the licence year.
- (b) A late payment charge shall be added to the licence fee for those renewal applications received after January 31st in the current licence year in the amount established in **Schedule “LLS-A”** of By-law No. 40-09 as amended or superseded from time to time.

PART 6 – SCHEDULES

Schedules “1” to “11” are attached hereto and form part of this by-law.

PART 7 – OFFENCES

- 7.1 Every person, director or officer of a corporation who contravenes or concurs in the contravention by the corporation (hereinafter referred to as “person”), of any provision of this by-law is guilty of an offence and is liable upon conviction and at the discretion of the presiding Justice of the Peace or Judge of the Ontario Court (Provincial Division) or other relevant Justice or Judge or Court, to a fine pursuant to the provisions of the Provincial Offences Act, R.S.O. 1990, Chapter p.33, as amended.

PART 8 – PENALTIES

- 8.1 Every person who contravenes Sections 3.5, 3.10 (a), (b) and (c), 3.11, 3.14, 3.16, and Sections 4.1 and 4.2 of Schedule “5” of this by-law is guilty of an offence and liable to the set fines established under Schedule “A” annexed hereto and shown as Schedule “12
- 8.2 Any person found to be in contravention of this by-law, shall be issued a notice of such violation. Every such person may, within seventy-two hours of the time when such notice was issued, pay at the Town of Fort Erie Municipal Offices a penalty for and in full satisfaction of such violation as set out in Schedule “12” annexed hereto and forming part of By-law No. 217-05. The failure of such person to pay the said sum as set forth in Schedule “12” annexed hereto, subjects him or her to the penalties here and before provided for the violation of the provisions of this by-law.
- 8.3 The court, in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted, and such order shall be in addition to any other penalty imposed on the person convicted.
- 8.4 In the event that any provision of this by-law is found to be invalid or unenforceable, all other provisions of this by-law shall remain in force or effect.
- 8.5 The set fines described herein shall come into force and effect upon receipt of the Judge’s Order from the Ministry of the Attorney General.

PART 9 - ULTRA VIRES

- 9.1 (a) It is hereby declared that notwithstanding that any part of this by-law, or parts thereof, may be found by any Court of law to be invalid or beyond the power of the Council to enact, such section or sections or parts thereof shall be deemed to be severable and that all other sections or parts of this by-law are separate and independent therefrom and enacted as such.
- (b) When any requirement of this by-law is at variance with any other by-law in effect in the Town or with any applicable Provincial or Federal statute or regulation, the more restrictive requirements shall apply unless otherwise stated in such legislation.

PART 10 - MODIFICATIONS OR CORRECTIONS

Pursuant to the provisions of Section 227 of the *Municipal Act, 2001* the Town Clerk is hereby authorized to effect any minor modifications or corrections of an administrative, numerical, grammatical, semantical or descriptive nature or kind to the by-law and schedules as may be necessary after the passage of this by-law.

PART 11 - REPEALED BY-LAWS

The following by-laws be and they are hereby repealed and any and all other applicable by-laws inadvertently not mentioned herein: By-law Nos. 239-2002, 203-2001, 202-2001, 212-2000, 91-2000, 195-98, 154-98, 92-97, 220-95, 193-95, 194-95, 184-95, 232-92, 173-92, 147-92, 38-92, 260-89, 206-88, 102-88, 16-87 and 133-71.

PART 12 - EFFECTIVE DATE OF BY-LAW

This by-law shall come into force and effect on the 1st day of January, 2006.

PART 13 – EXPIRY OF BY-LAW

THAT PART 13 of By-law No. 217-05 respecting the expiry of the by-law be and it is hereby repealed.

PART 14 – DELEGATION FOR ADULT ENTERTAINMENT ESTABLISHMENTS

The authority of The Corporation of the Town of Fort Erie to licence, regulate and govern adult entertainment establishments pursuant to Section 151 of the *Municipal Act, 2001*, as amended, is hereby delegated to The Regional Municipality of Niagara.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 12th DAY OF DECEMBER, 2005.

MAYOR

CLERK

I, the Clerk, of The Corporation of the Town of Fort Erie hereby certifies the foregoing to be a true certified copy of By-law No. 217-05 of the said Town. Given under my hand and the seal of the said Corporation this _____ day of _____, 20__ .