

TOWN OF HAMPTON TRANSIENT TRADER BY-LAW
BY-LAW # 174-06 INCLUDING BY-LAW #209-15 AMENDMENTS
A BY-LAW TO REGULATE AND LICENSE TRANSIENT TRADERS

The Council of the Town of Hampton under the authority vested in it, by Section 11 (1) (f) and Section 168 of the *Municipalities Act*, enacts as follows –

SHORT TITLE

1. This By-law shall be known as the Transient Trader By-law.

DEFINITIONS

2. In this By-law:

“Auctioneer” means a person, licensed through the Province of New Brunswick under the Auctioneer Licensing Act, who disposes of goods, services, merchandise or lands by public sale to the highest or best bidder;

“Business” means any marketing activity conducted for the sale of goods, merchandise or services for a profit;

“By-law Enforcement Officer” means a person appointed by Council to enforce the regulation of this By-law;

“Clerk” means the clerk for the Town of Hampton;

“Council” means the Mayor and Councillors of the Town of Hampton;

“Development Officer” means a person appointed by Council under Section 16(1)(a) of the *Community Planning Act*;

“License” means a Transient Trader’s license issued under this By-Law;

“Licensee” means a person who is eligible to be issued, or has been issued, a Transient Trader License under this By- Law;

“Municipality” means the Town of Hampton;

“Peddler” means any person who peddles or hawks or carries from place to place or door to door, goods or merchandise for the purpose of peddling, hawking; word "peddler" shall include the words "hawker" or "huckster";

"Permanent Building" means an enclosed or partially enclosed structure on a permanent foundation.

"Person" means an individual, corporation, partnership, association, club or firm;

"Police Officer" means a member of the Royal Canadian Mounted Police; a police officer appointed under Section 10, 11 or 17.3 of the Police Act; or an auxiliary police officer or an auxiliary police constable appointed under Section 13 of the Police Act, when accompanied by or under the supervision of a member of the Royal Canadian Mounted Police;

"Plural, masculine or feminine terms" may apply whenever the singular, masculine or feminine is used in this By-law. It shall be considered as if the plural, feminine or masculine has been used where the context of the party or parties hereto so require;

"Public Road Right of Way" means street, lanes, road, highways, alleys, thoroughfares or place that is used by the public for passage of vehicles and has been accepted by Council under the Community Planning Act; this includes parking area(s) located along Town Streets.

"Street Vendor" means any person involved in the street sales of edibles and non-edibles from portable display units;

"Temporary Business" means the sale of goods, merchandise or services sold by a business being operated in the municipality for less than six weeks or operating out of the vehicle, truck or other mobile unit and includes any business conducted by a transient trader;

"Transient Trader" means any person not having a permanent place of business with the Town of Hampton and/or whose name has not be entered in the assessment rolls for the Town of Hampton, who offers goods or merchandise for sale by private sale, or who otherwise carries on a temporary business. The definition of the term Transient Trader includes Peddler and Street Vendor;

"Vehicle" means a vehicle that is self-propelled (motor) or manually propelled.

QUALIFICATIONS

3. With the exception of Section 92 of the *Municipalities Act*, no Transient Trader shall carry on business within the Town of Hampton without obtaining a license in the manner hereafter set out.
4. With the exception of Section 11 of this by-law, the sale of goods or merchandise from a Vehicle is prohibited within the Town of Hampton without the issuance of a Transient Trader license.
5. Transient Traders may only operate within the days and hours stipulated on a license issued by the Town of Hampton under this by-law.

6. No Transient Trader conducting business from a Vehicle shall display goods or merchandise outside such a vehicle.
7. No Transient Trader shall carry on business within a radius of one hundred and fifty (150) meters of an established retail outlet engaged in selling goods and merchandise of a similar nature; unless written permission from such retail outlet is provided.
8. No Transient Trader shall carry on business within the Town of Hampton's Public Road Right of Way.

RELEVANCE OF BY-LAW

9. Pursuant to Section 113 of the *Municipalities Act*, this By-law shall apply to any Transient Trader whether or not:
 - a) he carries on or engages in such business partly within and partly outside the municipality; or
 - b) he occupies or uses a place of business in connection with such business.
10. Persons engaged in any business regulated by this By-law shall not be relieved from complying with provisions of this By-law merely by reason of associating temporarily, or temporarily carrying on business or comingling its business with any local dealer, trader, merchant or auctioneer or by conducting such transient business in connections with, as part of, or in the name of any local dealer, trader, merchant or auctioneer.

EXCEPTIONS

11. None of the provisions of this By-law shall apply to :
 - a. a person selling his own produce including fruits, vegetables, meats and other products from his farm or garden provided those products are uncooked or processed in any way (Section 168(3)(c), *Municipalities Act*);
 - b. a fisherperson selling fish, oysters or any other product harvested by him from the sea, provided those products are uncooked or processed in any way (Section 168(3)(c), *Municipalities Act*);
 - c. a person selling Christmas trees, wreathes or any related forestry items harvested or produced by him from products harvested in New Brunswick;
 - d. commercial travelers or other persons selling by sample, specimen or price list directly to dealers of the municipality and doing business herein;

- e. a resident of the municipality holding a garage sale or a yard sale on his property for no more than ten (10) days annually;
- f. trade shows, craft fairs, Farmer’s Markets, community yard sales or flea markets;
- g. an auctioneer offering goods, services or merchandise for sale by auction;
- h. persons employed by any temperance, benevolent or religious society in the Province for the peddling or selling of temperance tracts or other moral or religious publications under the direction of such society, to the exclusion of other goods and merchandise (Section 168(3)(c), *Municipalities Act*);
- i. resident merchants operating an establishment fronting in the proper zoned area having sidewalk display sales not interfering with pedestrian and vehicular traffic;
- j. municipally-based service clubs, boy scouts, girl guides and other non-profit organizations; or

LICENSE AND FEE

12. Upon receiving a formal application, the Development Officer may, subject to terms and conditions that he or she considers fit, recommend the issuance of a license under this by-law (“Development Officers Recommendation”). In making such recommendation, the Development Officer shall ensure compliance with this and any other applicable by-laws, regulations or legislation.

A license under this By-law:

- a) shall be issued by the Clerk following the Clerk’s receipt of the Development Officer’s Recommendations and upon the Clerk being satisfied that the information required under section 15 is complied with.
- b) may be granted within the following Zones, as defined by the Zoning By-law and Municipal Plan By-law:
 - Commercial;
 - Town Center;
 - Mixed Use;
 - Institutional (upon approval from the applicable Town Department);
 - Parks and Recreation (upon approval from applicable Town Department); and
 - Neighbourhood Business.
- c) may be granted for Town Owned locations outlined in Schedule A: “Available Town Owned Operating Locations” following the approval of the respective Town Department. If approved, a set up area at the requested location will be determined by the respective Town Department.

- d) may be issued under this By-law for set up on private property provided written permission from the land owner is submitted with application and the location meets all other standards as outlined in this and any other applicable By-law.
 - e) shall be valid only for the calendar days, the location and the sale of goods as indicated on the license.
13. The license fee shall be determined as per attached Schedule “B: Guidelines for Transient Trader License Fees”; applicable fee must be paid prior to release of license.
14. The expiry date for issued licenses’ in any given calendar year shall be December 31st, unless otherwise stipulated on license.
15. The application referred to under Section 12 shall contain the following information:
- a) the name and address or headquarters of the person applying for the license;
 - b) if the applicant is not an individual, the name and addresses of the applicant’s principal officers and managers;
 - c) the name and address of the person or persons who will be in direct charge of conducting the Temporary Businesses;
 - d) particulars of any vehicle to be operated or used by the applicant for the purpose of operating the Temporary Business, including a copy of applicable vehicle registration, if applicable.
 - e) a declaration from the applicant that the applicant has not been convicted of a criminal or quasi-criminal offence in the last two (2) years;
 - f) a declaration from the applicant that there are no unsettled complaints filed against the applicant with the Department of Consumer and Corporate Affairs through Service New Brunswick;
 - g) proof of General Liability Insurance coverage in the principal sum of two million dollars (\$2,000,000.00);
 - h) a description of all goods and merchandise to be sold and the requested dates and hours of operation;
 - i) any application for a Transient Trader’s license must also be signed by the party on whose property the temporary business shall be located; and
 - j) the Development Officer may require additional information from the applicant from time to time as it deems necessary.

16. No license under this By-law shall be used or worn at any time by any other person other than to whom it was issued and must be posted in full view of the public at all times during operation.
17. A license issued under this By-law is valid only for the goods or merchandise specified on the face of the License. The sale of any product other than those shall result in immediate suspension and possible cancellation of the License, to be exercised in the absolute discretion of the Town and forfeiture of all fees and deposits paid and the Licensee may be disqualified from future consideration for a License under this By-law.
18. Any Transient Trader shall, upon request by the By-law Enforcement Officer or such other designated representative appointed by the town, present for inspection all or any goods or wares intended to be sold.
19. A person carrying on a Temporary Business or exercising the trade of a Transient Trader within the Municipality on the day this by-law comes into effect shall submit an application for a License to the Development Officer no later than ten (10) days after such day.
20. No person carrying on a Temporary Business or exercising the trade of a Transient Trader within the Municipality on the day this by-law comes into effect shall be prosecuted for a violation of this By-law unless:
 - (i) he fails to submit his application for a License to the Development Officer in accordance with this by-law.
 - (ii) he submits his application for a License to the Development Officer in accordance with this by-law and that application is rejected.

INSPECTIONS:

21. No person who had or is required to have a licence under this by-law shall obstruct or hinder or permit the obstruction or hindrance of any inspection under this by-law.
22. The By-law Enforcement Officer or such other designated representative appointed by the Town may at any reasonable time enter upon and inspect any premises for which a licence has been issued under this by-law.

CANCELLATION AND SUSPENSION

23. Should any violation of the issued License, this by-law and/ or any other applicable by-law, legislation or regulation or terms of conditions imposed upon the issuance of the License occur, the By-Law Enforcement Officer or other representative appointed by the town, shall suspend the issued License until such time as the violation has been resolved to the satisfaction of the By-Law Enforcement Officer or other representative appointed by the town, or there is a recommendation made to Council for cancellation of license.

24. The Council may for cause at any time cancel, without any rebate of fee, any License and, from the date of such cancellation, such License shall be null and void. Any failure to adhere to any statute, regulation or By-law of the Federal Government, the Province of New Brunswick or the Town of Hampton shall constitute cause for cancelation.

VIOLATIONS, PENALTIES AND FINES

25. A person who violates any provision of this By-law is guilty of an offence and, on summary conviction is liable to a fine of not less than One Hundred Dollars (\$100.00) and not more than Two Hundred Dollars (\$200.00).

26. Unless otherwise provided for within this By-law, a person who has committed a violation of the provision of this By-law may at the discretion of By-law Enforcement Officer or other representative appointed by the town either before or after the institution of proceedings against a person in respect of an offence under this By-law, pay to the Town of Hampton, at the Town Office, located at 27 Centennial Road, Hampton, New Brunswick, the minimum fine prescribed:

- a) For a first offence, a sum equal to the minimum penalty prescribed for such a violation, being One Hundred Dollars (\$100.00);
- b) For a second offence, a sum equal to twice the minimum penalty prescribed for such a violation, being Two Hundred Dollars (\$200.00);
- c) For a third and subsequent offences, a sum equal to the maximum penalty prescribed for such violations, being Two Hundred Dollars (\$200.00);

and payment constitutes a full satisfaction, release and discharge of all penalties incurred by such person for such violation, and for the purposes hereof shall have the same effect as if a judge had duly convicted the person for the violation for which the amount was paid, and a certificate purporting to be signed by the Treasurer or designate to the effect that the sum has been paid in respect to a specific violation shall be prima facie evidence in all Courts of the conviction and the person committing the violation is not liable to be prosecuted or further prosecuted therefore. The person so accepting payment under this section shall forward such payment to the Treasurer together with a copy of the receipt.

27. In the case of an ongoing violation, a separate offence is committed for each day the person fails to comply with the provisions of this By-law.

28. Where in the opinion of the By-Law Enforcement Officer or Police Officer, a Transient Trader has violated this By-Law or any provision of the By-Law, the By-Law Enforcement Officer shall, upon direction of the Council in addition to any other remedy or penalty prescribed herein, by notice served upon the Transient Trader, cancel the License issued.

29. The notice referred to in Section 28 shall be sufficiently served upon the Transient Trader in person or if it is mailed by prepaid registered post to the last known residence or place of business of the transient trader.
30. Service of Notice referred to in Section 29 by registered post shall be deemed to have been effected five (5) days after the Notice was deposited into the mail.

MISCELLANEOUS

31. The Licensee shall be responsible for the maintenance of the vending location and all equipment used must be maintained in clean and orderly condition.
32. No Licensee, nor any person in or on his behalf, shall blow a horn, ring a bell or use any sound device; including any loud speaker, radio or amplifying system, during such time as the transient trader is engaged in business.
33. The Licensee shall upon changing his address immediately notify the Development Officer in writing of such change.
34. The Licensee shall be responsible for the following:
 - a. supply of a refuse container/waste receptacle and ensure that the container is maintained in a position immediately adjacent to the service at all times;
 - b. the refuse generated from the Licensee's establishment be disposed of and receptacles are removed during the non-operating hours; and
 - c. clean up in the general vicinity of the vending location and litter created as a result of the operation.
35. Remove the vending unit from the site of operation at the end of each day.
36. Cooperate with Town staff so as to enable the operation to exist without nuisance and a minimum of problems.
37. If the Town owned property is not available due to maintenance or construction, the Licensee will not be permitted to operate at the location until such time as the work has been completed or permission has been granted by the applicable Town Department. The Town accepts no liability for a situation of this nature.
38. The Town reserves the right, at any time, to limit the number of Transient Traders operating within town limits and at specified locations.

VALIDITY

39. The invalidity of any section, clause, sentence or provision of this By-law shall not affect the validity of any other section, clause or provision of this By-law which can be given effect without such parts.

BY-LAW REPEALED

40. The Village of Hampton By-law #106-91, A *BY-LAW TO REGULATE AND LICENSE PEDDLERS AND TRANSIENT TRADERS* is repealed.

Bylaw #174-06

First Reading: June 13, 2006

Second Reading: June 13, 2006

Third Reading and Enactment: July 11, 2006

Original Signed By

James M. Hovey, MAYOR

Original Signed By

Megan A. O'Brien Harrison, CLERK

Bylaw# 209-15 A *Bylaw to Amend Transient Trader Bylaw #174-06*

First Reading: January 13, 2015

Second Reading: January 13, 2015

Third Reading and Enactment: February 10, 2015

Original Signed By

Ken Chorley, MAYOR

Original Signed By

Megan A. O'Brien Harrison, CLERK

SCHEDULE "A"

The Town of Hampton Transient Trader By-law

Available Town Owned Operating Locations:

- 1. The following public areas are available for Transient Trader Operation subject to appropriate town department approval and any terms & conditions deemed necessary:**
 - **Town Square Parking area - off of Railway Avenue**
 - **Comex Parking lot on William Bell Drive**
 - **Earle Bovaird Ball Field/Tennis court area**
 - **Ronald Mahoney Ball Field**
 - **Veterans Park Ball Field**
 - **Hampton Community Centre park and parking area**
 - **Lighthouse Park**
 - **Dutch Point Park**

- 2. Transient Trader operations are prohibited within all Public Road Right of Ways.**

Schedule "B"

The Town of Hampton Transient Trader By-law

Guideline for Transient Trader License Fees

<u>Food Truck/Wagon:</u>
Means a vehicle either mounted on blocks or supported by a conventional wheel, tire and axle system from which food items and non-alcoholic beverages are offered for sale or sold to the public;
\$10.00/ day to a maximum of \$ 200.00 / month
<u>Mobile/Portable Food Stand:</u>
Means an open-air barbecue or steamer affixed to a vehicle which is on wheels or is capable of being moved from place to place by a person on which food is prepared and sold or offered for sale to the public;
\$10.00/ day to a maximum of \$ 200.00 / month
<u>Refreshment Vehicle:</u>
Means a vehicle or other itinerant food premise from which pre-packaged food items are offered for sale or sold and from which no food is prepared except hot beverages;
\$8.00/ day to a maximum of \$ 80.00 / month
<u>Refrigerated Cart:</u>
Means a manually propelled vehicle from which food items are offered for sale or sold to the public;
\$8.00/ day to a maximum of \$ 80.00 / month
<u>Peddlers:</u>
Any person who peddles or hawks or carries from place to place or door to door, goods, services or merchandise for the purpose of peddling, hawking or selling them;
\$8.00/ day to a maximum of \$ 80.00 / month
<u>Non-edible Street Vendor:</u>
Any person involved in the street sale of non-edibles from portable display units or vehicle;
\$10.00/ day to a maximum of \$ 200.00 / month