

**THE CORPORATION OF THE CITY OF WELLAND**

**BY-LAW NUMBER 2011 - 173**

**A BY-LAW TO REGULATE BUSINESS LICENSING**

**WHEREAS** Section 151(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25 as amended, (the "Act") permits a local municipality to provide for a system of licenses with respect to a business wholly or partly carried on within the municipality;

**AND WHEREAS** pursuant to Part II, Section 10(2) 6 of the Act, a municipality may pass by-laws respecting the health, safety and well-being of persons;

**AND WHEREAS**, as set out in Section 224 of the Act, it is the role of Council, among other things, to represent the public and to consider the well-being and interests of the municipality;

**AND WHEREAS** it is desirable to continue a system of Business Licences for the purpose of the health, safety and well-being of people in the City of Welland where Council determines it to be in the municipal interest;

**AND WHEREAS** Part XIV of the Act provides for certain powers in relation to the enforcement of municipal by-laws;

**NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF WELLAND** hereby ENACTS AS follows:

**DEFINITIONS**

1. For the purpose of this By-law, the following terms shall have the meanings indicated:

**"Act"** – means the Municipal Act, 2001, S.O. 2001, c. 25, as amended from time to time, or any successor thereof;

**"Appeal Tribunal"** – means the all-citizen tribunal duly appointed by Council to conduct hearings under this By-law;

**"Applicant"** – means any Person or Person(s) whose names appear as applicants on any Business Licence application filed with the City;

**"Building"** – means any building as defined in the Building Code Act, or any structure but does not include a vehicle;

**"Building Code Act"** – means the Ontario Building Code Act, 1992, S.O. 1992, c. 23 and all regulations thereto, as amended from time to time, or any successor thereof;

**"Business"** –includes, without limitation, any trade, occupation or business carried on or engaged in wholly or partly within the City of Welland, and includes any trade, occupation or business carried on or engaged in by a charitable or non profit organization;

**"Business Licence"** - means a current, valid, business licence issued by the City pursuant to this By-law;

**"By-law"** – means this By-law and all schedules forming part of this bylaw, and includes any amendments thereto;

**"City"** – means The Corporation of the City of Welland;

**"Clerk"** – means the Clerk of the City or his or her designate;

**"Council"** – means the Council of the City;

**"Fire Chief"** - means the Chief of Welland Fire and Emergency Services or his or her designate;

**"Fire Protection and Prevention Act"** – means the Fire Protection and Prevention Act, 1997, S.O. 1997, c. 4, and all regulations thereto, as amended from time to time, or any successor thereof;

**"Floor Plan"** - means a drawing to scale, in a form acceptable to the Licensing Officer, setting out the design of the Premises by identifying all Principal Entrances, and other entrances, and all rooms that are to be used for the Provision of Services and the Provision of Goods, and all other rooms, spaces and areas of the lands, buildings, structures or installations in which the owner has an interest;

**"Goods"** - includes books, magazines, pictures, slides, film, phonograph records or discs, prerecorded magnetic tapes, video discs and tapes, visual computer displays, reading, viewing or listening matter, lotions, oils, ointments, clothing, jewellery, and food;

**"Health Protection and Promotion Act"**– means the Health Protection and Promotion Act R S.O, 1990, c. H. 7, and all regulations thereto as amended from time to time, or any successor thereof;

**"Hours of Operation"** - except as otherwise stated in this Bylaw, means the hours of operation as listed on the application for inspections;

**"Highway"** - shall have the same meaning as set out in the Highway Traffic Act, R.S.O. 1990, c. H.8, as amended from time to time or any successor thereof;

**"Identification"** – means a current, valid government- issued: Drivers Licence –issued within North America; Canadian Passport; Canadian Citizenship Card; and Provincial Health Card;

**"Inspection"** - includes physical visit to the Premises, where applicable, or a document review or search;

**"Inspector"** – means a duly appointed municipal law enforcement officer and includes members of the Niagara Regional Police Service;

**"Licensee"** – means a Person to whom a Business Licence has been issued;

**"Licensing Division"** – means the by-law enforcement division of Infrastructure Services of the City;

**"Licensing Officer"** – means the Licensing Officer of the Licensing Division and includes his or her designates;

**"Medical Officer Of Health"** – means the Medical Officer of Health for the Regional Municipality of Niagara or his or her designate;

**"NRPS"** – means the Niagara Regional Police Service;

**"Officer"** – means an officer as so designated by the Licensing Officer;

**"Person"** – means a person and includes a corporation and its directors and officers, or other such entity and includes the heirs, executors, assignees and administrators of such persons;

**"Premises"** – includes any land, including a building, structure or installation and also includes any vehicle, vessel or conveyance used in the operation of the Business;

**"Principal Entrance"** - means all entrances to the Premises which are identified as principal entrances on the Floor Plan and includes any other entrances required to access the Premises where the Business is in a building in common with other establishments, that are not part of the Business;

**"Provide"** - when used in relation to Goods means to Rent, Sell, Lease, Offer to Rent, Lease, Sell or display for Rent, Lease or Sale by retail or otherwise and "Provides", "Providing", and "Provided" shall have the corresponding meanings;

**"Provide"** - when used in relation to Services, includes to furnish, offer or perform any Services, and includes the holding out that any Services are performed, offered or provided, and "Providing", "Provided" and "Provision of" shall have corresponding meanings;

**"Register"** – means a written record containing entries of items or details;

**"Rent"** - means the exchange of a sum of money or other financial consideration for the temporary use of Goods, and "Rental" has the corresponding meaning;

**"Sale"** - means the exchange of a sum of money or other financial consideration for Goods, and Sell has the corresponding meaning;

**"Service"** - includes any activity, facility, performance, exhibition, viewing and encounters;

**"Zoning By-law"** – means the City of Welland By-law 2667 or 1538, as amended from time to time, or any successor thereof; and

**"Well Being"** – means a peaceful, healthy, prosperous and beneficial state.

#### **BUSINESS LICENCE REQUIRED**

2. (a) No Person, except as specifically set out in this By-law and Schedule "A", shall carry on any Business, set out in Schedule "A" of this By-law, without a Business Licence.
- (b) For purposes of this By-law, a Person is deemed to be carrying on a Business if engaged in the Business directly or if employing a person, directly or indirectly, to carry on or engage in the Business.
- (c) Unless otherwise specified, each Business, required to be licensed under Section 2(a), must be separately licensed.

- (d) Where more than one Business is operated at one Premise, all applicable Business Licences are required, and all applicable fees must be paid in full, unless otherwise provided by this By-law.
- (e) This By-law shall not apply to any activities carried on by or on behalf of the City.

#### **OBTAINING A BUSINESS LICENCE**

- 3. (a) Any Person seeking to obtain a new Business Licence shall submit to the Licensing Officer an application for inspection in accordance with this By-law. Once the required inspections as per Schedule "B" of this By-law have been completed the person may then submit an application for a Business Licence in accordance with this By-law. All required inspection/clearance forms must be included with the application for Business Licence.
- (b) The Licensing Officer shall not accept any application for inspections or for a Business Licence if any of the Applicants are under the age of 18 years.
- (c) The Licensing Officer shall not accept any application for inspections, application for a Business Licence, or application for renewal until all requirements relating to the application, as set out in this By-law, have been met.

#### **APPLICATION FOR INSPECTION**

- 4. (a) Every application for inspections shall be made in writing upon a form approved by the Licensing Officer and shall include:
  - (i) the fully and correctly completed inspections application form;
  - (ii) the applicable inspection fee, as set out in City of Welland Fees and Charges By-law 2011-23, as amended;
  - (iii) proof of contractual or proprietary interest in the Premises upon which the Business is to be operated;
  - (iv) a Floor Plan;
  - (v) the hours of operation of the Business; and
  - (vi) any other information required pursuant to this By-law.
- (b) Notwithstanding Section 4a(iv), a Floor Plan is not required if the business is not carried on within a building.
- (c) It is the responsibility of the Applicant to ensure that all Inspections required pursuant to Schedule "B" of this By-law are completed within 60 calendar days of the date on which the Licensing Officer received the completed application for inspections.
- (d) If all Inspections required pursuant to Schedule "B" of this By-law are not completed and approved within 60 calendar days of the date on which the Licensing Officer received the completed application for inspections, the application for inspections shall expire. In that case, the Applicant shall be required to submit a new application for inspections, including the fee, pursuant to Section 4(a) of this By-law.
- (e) The Licensing Officer will, as a courtesy, notify the Applicant in writing of the status of their application after 60 calendar days from the date on which the Licensing Officer received the completed application for inspections.
- (f) Each application for inspections includes up to two (2) Inspections from the Licensing Division. If more than two (2) Inspections from the Licensing Division are required, the application for inspections shall become void and a new application for inspection, including the fee, must be submitted pursuant to Section 4(a) of this By-law.
- (g) Notwithstanding Section 4(c), the Licensing Officer may, prior to the expiry of the sixty (60) calendar day period, upon request by the Applicant in writing:
  - (i) grant an extension of up to thirty (30) calendar days to the application for inspections, if the Applicant demonstrates to the satisfaction of the Licensing Officer that completion of works required to pass the Inspection(s) is in progress; or
  - (ii) extend the sixty (60) calendar day period for such additional period of time as is determined by the Licensing Officer to be appropriate, where due to extenuating circumstances, or reasons outside the control of the Applicant, the inspecting authorities have not carried out the Inspections required by Schedule "B" of this By-law.

- (h) Notwithstanding Section 4(c), the Licensing Officer may, at any time, extend the sixty (60) calendar day period for such additional period of time as is determined by the Licensing Officer to be appropriate, to provide for a period of transition or an additional period of transition in the event of new or amended provisions of this By-law affecting the process or requirements for obtaining a new Business Licence.

#### **APPLICATION FOR BUSINESS LICENCE**

5. (a) Every application for a Business Licence must be submitted to and received by the Licensing Officer no later than thirty (30) calendar days following the Inspection completion date. Any person who does not apply for the Business Licence within the said thirty (30) calendar day period must submit a new application for inspections, including payment of the fee, pursuant to Section 4(a) of this By-law.
- (b) Every application for a Business Licence under this By-law, shall be made in writing upon an application form, and shall include:
- (i) the fully and correctly completed business licence application form;
  - (ii) the application fee and deposit fee (if required), as set out in City of Welland Fees and Charges By-law 2006-193, as amended;
  - (iii) proof of insurance in an amount not less than two million dollars as required by Section 15 of this By-law;
  - (iv) a copy of the current Master Business Licence registered with Service Ontario bearing the proposed name of the Business as shown on the application (or a copy of the Articles of Incorporation, if the proposed name of the Business is to be the same as contained in the Articles of Incorporation) ; and,
  - (v) any other information required pursuant to this By-law.

#### **APPLICATION FOR RENEWAL**

6. (a) Every application for renewal of a Business Licence under this By-law, shall be made in a form satisfactory to the Licensing Officer and shall include:
- (i) the fully and correctly completed renewal application form, if applicable;
  - (ii) the applicable renewal fee, as set out in City of Welland Fees and Charges By-law 2011-23, as amended;
  - (iii) proof of valid insurance in an amount not less than two million dollars as required by Section 15 of this By-law; and
  - (iv) any other information required in the applicable schedule to this By-law.
- (b) In addition, any Licensee who holds a Business Licence as at the effective date of this By-law, must include a Floor Plan as part of the first renewal application following the effective date of this By-law.
- (c) (i) It is the responsibility of the Applicant to ensure that all Inspections required for renewal pursuant to Schedule "B" of this By-law are completed no later than expiry date of the current Business Licence.
- (ii) If all Inspections required for renewal, as set out in Schedule "B" to this By-law, are not completed by expiry date of the current Business Licence, the application for renewal shall expire.
- (d) (i) One (1) inspection by the Licensing Division is included in an application for renewal.
- (ii) If more than one (1) inspection from the Licensing Division is required, the application for renewal is no longer valid and a new application, including fee, for renewal is required.
- (e) (i) Notwithstanding Section 6(c), the Licensing Officer may, prior to the expiry of the Business Licence, upon request by the Applicant in writing:
- (a) grant an extension of up to thirty (30) calendar days to the application for renewal, if the Applicant demonstrates to the satisfaction of the Licensing Officer that completion of work required to pass the Inspection(s) is in progress; or
  - (b) grant an extension for such additional period of time as determined by the Licensing Officer to be appropriate, where due to extenuating circumstances,

for reasons outside the control of the Applicant, the inspecting authorities have not carried out the Inspections required by Schedule "B" of this By-law.

- (ii) Notwithstanding Section 6(c) and 6(g), the Licensing Officer may, at any time, grant an extension to the time for the application for renewal and the expiry date of the current business licence for such additional period of time as is determined by the Licensing Officer to be appropriate, to provide for a period of transition or an additional period of transition in the event of new or amended provisions of this By-law affecting the process or requirements for renewing a Business Licence.
- (f) In the case of an extension granted pursuant to Sections 6(e)(i)(a), 6(e)(i)(b) or 6(e)(ii), the expiry date of the current Business Licence will be extended accordingly.
- (g) A Business Licence that is not renewed by the expiry date or any extension of that date under this By-law is no longer valid.
- (h) The Licensing Officer will, as a courtesy, notify the Applicant in writing of the status of their expired Business Licence after the date of expiry.

#### **ADDITIONAL APPLICATION CRITERIA**

- 7. If an agent is applying on behalf of an Applicant a signed letter from the Applicant designating the agent to act on their behalf is required.

#### **CARRYING ON A BUSINESS**

- 8. The submission of an application for inspections or an application for a Business Licence, including the related fee, does not entitle the Applicant to carry on or engage in a Business under this By-law. The Applicant is only entitled to do so once the Business Licence(s) required by this By-law has been issued for the said Business.

#### **PARTNERSHIPS AND CORPORATIONS**

##### **Partnerships**

- 9. In addition to all other requirements of this by-law, if an application for Inspections or application for Business Licence is made by a partnership, the application shall be accompanied by a written declaration, signed by all partners, stating:
  - (a) the full name of every partner and the address of his or her ordinary residence;
  - (b) the name or names under which he or she intends to carry on the Business;
  - (c) that the Persons therein named are the only members of the partnership; and,
  - (d) the complete mailing address for the partnership, if applicable, and for each partner.

##### **Corporations**

- 10. (a) In addition to the requirements of Sections 3, 4, and 5, if an application for Inspections or an application for Business Licence is made by a corporation, the application shall be accompanied by a valid Corporation Profile Report or a true copy of the current Articles of Incorporation for the corporation and any other incorporating documents or amendments, along with a written declaration signed by the authorized signing officers of the corporation stating:
  - (i) the full name of every director and officer of the corporation and the address of his or her ordinary residence;
  - (ii) the name or names under which the corporation intends to carry on the Business;
  - (iii) that the Persons therein named are the only officers of the corporation; and
  - (iv) the complete mailing address for the corporation.
- (b) If any member of a partnership is a corporation, such corporation shall provide all of the information set out in Section 10(a) of this By-law as part of the application for Inspections and application for Business Licence by the partnership.

### ISSUE OF BUSINESS LICENCE

11. (a) (i) The Licensing Officer is authorized to issue and renew Business Licences in accordance with this By-law.
- (ii) Without limiting Section 11(a)(i), the Licensing Officer may impose conditions, including special conditions on a Business that have not been imposed on all of the Businesses in order to obtain, continue to hold or renew a Business Licence, impose conditions, including special conditions, as a requirement of continuing to hold a Business Licence at any time during the term of the licence, upon the grounds that the conduct of the Applicant or Licensee, or any officer, director, employee or agent 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.
- (b) All Business Licences issued and renewed shall be signed by the Licensing Officer.
- (c) All Business Licences will be issued to the Applicant and bear the name of the Applicant and the Business Name.
- (d) Where two or more Persons carry on or engage in partnership in any Business set forth in Schedule "A" of this By-law, the required Business Licence(s) shall be issued to and bear the name of all partners, who will be jointly and severally responsible for complying with the requirements of this By-law, including, without limitation, complying with the conditions of any Business Licence issued hereunder.
- (e) The Licensing Officer may revise the Business License where the licence contains an error.
- (f) In the event a legal non-conforming use requiring a Business Licence under this By-law ceases to operate for a period of one year, a Business Licence will no longer be issued for the legal non-conforming use.
- (g) The Licensee, upon issuance of a Business Licence and thereafter shall comply with all provisions of this By-law.

### CHANGES IN INFORMATION

12. (a) Where, at any time, there is any change in, or relating to, any of the information or documents required to be filed with the City under this By-law, the Applicant or Licensee, as the case may be, shall report the change in writing to the Licensing Officer no later than fifteen (15) calendar days following the change.
- (b) Any changes to the Floor Plan shall require the prior written approval of the City. A copy of the approved Floor Plan shall be kept on file by the Licensing Officer.

### REQUESTS FROM APPLICANTS OR LICENCEES

13. Where the Applicant or Licensee is more than one person, any requests regarding any application or licence shall be made by all such persons.

### TERM OF BUSINESS LICENCE

14. (a) Every Business Licence shall be in effect from the date of issue, as shown on the Business Licence:
- (i) for the whole of the calendar year to which it applies, expiring on December 31<sup>st</sup> of said calendar year; or
- (ii) where the application for a Business Licence is received after January 1 and prior to the 2<sup>nd</sup> Monday in November of any calendar year, for the remainder of such calendar year, expiring on December 31<sup>st</sup> of said calendar year; or
- (iv) where the application for a Business Licence is received on or after the 2<sup>nd</sup> Monday in November but prior to December 31<sup>st</sup> in any calendar year, for the whole of the following calendar year, expiring on December 31<sup>st</sup> of that calendar year.
- (b) Except as otherwise indicated in this By-law, every application for Business Licence shall be subject to the full fee for such licence.
- (c) Every Business Licence shall be renewed no later than its date of expiry. Any Business Licence which is not so renewed shall become null and void.

- (d) Any Person who has not renewed their Business Licence prior to the date of its expiry will be required to apply for a new Inspection Application and Business Licence in accordance with Sections 3, 4, and 5 of this By-law, and the request shall be processed as a new application.
- (e) Every Business Licence shall cease to be valid if the Business ceases to operate.

#### **INSURANCE REQUIREMENTS**

- 15. (a) Every Licensee holding a valid Business Licence for the retail sale of fireworks and outdoor entertainment events shall carry valid general liability insurance relating to the Business throughout the term of the Business Licence in an amount not less than two million dollars (\$2,000,000) per occurrence.
- (b) The insurance policy as set out in Section 15(a) must be valid at all times during the term of the Business Licence and the Licensee shall provide proof of current insurance at any time, upon demand of the Licensing Officer, or an Officer.
- (c) Without limiting Section 15(a), where a Licensee's insurance policy, as required by this By-law, requires renewal during the term of the Business Licence, the Licensee shall provide proof of such renewal to the Licensing Officer no later than the date of the current insurance policy expiry.
- (d) Without limiting Section 15(a), where there is a change in any information relating to the insurance required by this By-law, the Licensee shall notify the Licensing Officer of the change, and provide written details of the change to the Licensing Officer, no later than fifteen (15) calendar days following the date of the change.

#### **DUPLICATE OR REPLACEMENT BUSINESS LICENCE**

- 16. (a) In the event that a Business Licence issued in accordance with this Bylaw is lost or destroyed, the Licensing Officer upon request by the Licensee and upon satisfactory proof of such loss or destruction, and payment of a replacement fee of \$25.00, shall issue a duplicate of the original Business Licence to the Licensee, upon which shall be stamped or marked "duplicate".
- (b) (i) If the ownership of a Business for which a Business Licence has been issued under this By-law has not changed, but the name of the Business changes, the Licensee shall:
  - (a) notify the Licensing Officer of such change in accordance with Section 12; and,
  - (b) provide a copy of a new Master Business Licence registered with Service Ontario bearing the new name of the Business (the amendment to the Articles of Incorporation, as the case may be, if the amending Articles of Incorporation have the amended name of Business).
- (ii) Upon receiving these documents and upon payment of a replacement fee of \$25.00, the Licensing Officer shall issue a duplicate Business Licence, bearing the new name of the Business. If the ownership of the Business has changed, a new Business Licence shall be required in accordance with Sections 3, 4, and 5 of this By-law.

#### **TRANSFERABILITY, CHANGE OF OWNERSHIP, CHANGE OF LOCATION**

- 17. (a) Every Business Licence issued under this By-law shall be personal to the Licensee(s) indicated on the Business Licence, and to the location as indicated on the Business Licence, and shall not be transferable from Person to Person or location to location.
- (b) A Business Licence shall be deemed to be void immediately upon change of ownership or location of the Business, or upon discontinuation of the business.
- (c) Issuance of a duplicate Business Licence in accordance with Section 16 shall not affect the expiry date of the Business Licence.

#### **DISPLAY OF BUSINESS LICENCE**

- 18. (a) Every Licensee shall ensure that the Business Licence, or duplicate Business Licence issued by the City, is posted within the Premises to which the Business Licence applies, in a conspicuous place, clearly visible to persons entering the Premises, at all times during the Hours of Operation of the Business.
- (b) Notwithstanding Section 18(a) of this By-law, every Licensee shall ensure that the Business Licence is displayed in accordance with the provisions of the applicable schedule to this By-

law governing the Business in question, in all cases where such provisions differ from Section 18(a) of this By-law.

- (c) (i) Notwithstanding Section 18(a), every Licensee shall ensure that, where the Business Licence does not apply to a Premises, that the Business Licence is in the Licensee's possession at all times while engaged in the Business for which the Business Licence was issued.
- (ii) Such Person referred to in (i) above, shall produce such Business Licence immediately to the Licensing Officer or an Officer, upon request.
- (d) No Person, other than the Licensee, shall carry a Business Licence issued by the City, while engaging in the Business for which the Business Licence was issued.
- (e) Without limiting any other provision of this By-law, every Person who is in possession of a Business Licence as described in Section 18(d), while engaged in the Business for which this Business Licence was issued, shall produce, upon request by an Officer, Identification for the purpose of confirming that the carrier of the Business Licence is the Licensee.
- (f) Without limiting any other provision of this By-law, and in addition to any other remedy available to the City, the carrier of the Business Licence shall, upon request by the Officer, surrender said Licence to a Licensing Officer until such time as Identification is produced, in which case the Business Licence shall be deemed to be suspended until Identification has been produced.
- (g) If the bearer of the Business Licence is not the Licensee, the Officer may seize the Business Licence and, in such case, the Officer or the Licensing Officer shall notify the Licensee and hold the Business Licence for safekeeping until it can be returned to the Licensee.
- (h) Every Licensee shall ensure that the Business Licence is not posted or displayed, or held out as valid, when the Business Licence has expired, or has been revoked or suspended pursuant to this By-law.
- (i) Every Licensee shall ensure that the Business to which the Business Licence applies is not, at any time during the term of the Business Licence, advertised or promoted or carried on under any name other than the name endorsed upon the Business Licence issued to the Licensee.

#### **ALTERATIONS PROHIBITED**

- 19. (a) No Person shall alter or deface a Business Licence in any way.
- (b) Every Licensee shall ensure that the Business Licence is not altered or defaced in any way.

#### **ADDITIONAL CONDITIONS**

##### **20. Signage**

- (a) Every Licensee shall ensure that the Hours of Operation of the Business, as set out on the Business Licence issued in relation to the Business, are posted on a sign at every entrance to the Premises from which the Business is operated, in such a manner that they are visible from the exterior of the Premises at each entrance.
- (b) Notwithstanding (a), where the Business has an entrance in common with other establishments to which the Business Licence does not apply, the requirements of (a) may be met by posting the signage at all entrances into the Premises from which the Business operates, and not at the common entrances.

#### **EXCEPTION**

- 21. Where a Business is operated as a home occupation as defined in the City of Welland Zoning By-laws, Sections 20(a), and 20(b) of this By-law do not apply.

#### **PROVISION OF GOODS AND SERVICES**

- 22. Every Licensee shall ensure that no Goods or Services are provided in any room, cubicle, enclosure, partitioned area, or any other space on or in the Premises, that is not designated as a room for such use on the Floor Plan.

#### **COMPLIANCE WITH OTHER LAWS REQUIRED**

- 23. The issuance of a Business Licence under this By-law does not permit or condone the violation of any by-law, statute, order, or regulation in effect in the City of Welland, the Province of Ontario or the Dominion of Canada and it shall be the responsibility of the Licensee to ensure that such applicable legislation is complied with at all times.



## INSPECTIONS

24. (a) Subject to the provisions of the Act, an Officer, accompanied by any person under his or her direction, may, at any reasonable time, enter onto or into any Premises for the purpose of carrying out an inspection to determine whether or not the following are being complied with:
- (i) any provision of this By-law;
  - (ii) a direction or order of an Officer or of the City made under this By-law or made under the Act in relation to the subject-matter of this By-law;
  - (iii) a condition of a Business Licence issued under this By-law; and
  - (iv) an order made under Section 431 of the Act in relation to the subject-matter of this By-law.
- (b) For purposes of an inspection under Section 24(a), an Officer may:
- (i) require the production for inspection of documents or things relevant to the inspection;
  - (ii) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
  - (iii) require information from any person concerning a matter related to the inspection; and
  - (iv) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.
- (c) (i) In addition to and without limiting Section 24(a), it shall be a condition of every Business Licence issued under this By-law that the Licensee shall allow an Officer, and any person under his or her direction, to carry out such inspections as are authorized pursuant to this By-law, including without limitation any inspection pursuant to an order made under Section 438 of the Act, as described in Section 24(g) of this By-law, an inspection to determine compliance with this By-law, or with a direction or order of an Officer or of the City made under this By-law or made under the Act in relation to the subject-matter of this By-law, an inspection to determine compliance with a condition of a Business Licence issued under this By-law, or an inspection to determine compliance with an order under Section 431 of the Act.
- (ii) Further, it shall be a condition of every Business Licence issued under this By-law that the Licensee shall provide to the Officer such information, documents or things relevant to the inspection as may be requested by the Officer pursuant to Section 24(b) of this By-law, and permit any examinations, tests, samples or photographs determined by the Officer to be necessary for the purposes of the inspection.
- (d) No Person shall obstruct or attempt to obstruct any person, including an Officer, having authority for the enforcement or administration of this By-law. For purposes of this clause, "Obstruct" means to hinder, mislead, provide false information or make a false claim or statement, or to prevent or attempt to prevent the execution of a power or duty, and without limiting the foregoing, includes:
- (i) providing false or misleading information;
  - (ii) failing to identify oneself in accordance with Sections 18(e) or 24(f);
  - (iii) preventing, barring or delaying or attempting to prevent, bar or delay entry or inspection by an Officer, or any person under his or her direction, as provided for by this By-law, including but not limited to the removal of documents or things relevant to the inspection, or the taking of any tests, samples or photographs necessary for the purposes of the inspection;
  - (iv) preventing, barring or delaying or attempting to prevent, bar or delay any person, including an Officer, from carrying out his or her duties or exercising his or her powers under this By-law;
  - (v) preventing, barring or delaying or attempting to prevent, bar or delay an Officer, or any person under his or her direction, from exercising his or her authority pursuant to an order issued by a provincial judge or justice of the peace under Section 438 of the Act, as described in Section 24(g) of this By-law;
  - (vi) failing to provide, upon request by an Officer, any information, documents or things relevant to an inspection, including without limitation, any documents specifically required to be kept or provided by this By-law; and

- (vii) failing to surrender a Business Licence, upon request by an Officer, as required by Section 18(e).
- (e) Every Person who,
- (i) is required to obtain a Business Licence under this By-law;
  - (ii) is a Licensee under this By-law; or
  - (iii) is in possession of a Business Licence issued under this By-law, shall identify themselves verbally by giving their correct name and address, or with Identification as defined in this By-law, to an Officer upon request, while such Officer is executing his or her duties in relation to this By-law.
- (f) In addition to any other provision of this By-law, and subject to the provisions of the Act, a provincial judge or justice of the peace may issue an order made under Section 438 of the Act, authorizing an Officer and any person under his or her direction, to enter onto or into any Premises, including a room or Premises actually being used as a dwelling, for the purpose of carrying out an inspection to determine whether or not the following are being complied with:
- (i) any provision of this By-law;
  - (ii) a direction or order of an Officer or of the City made under this By-law or made under the Act in relation to the subject-matter of this By-law;
  - (iii) a condition of a Business Licence issued under this By-law, and
  - (iv) an order made under Section 431 of the Act in relation to the subject-matter of this By-law, and to exercise powers described in Section 24(b) of this By-law, where the provincial judge or justice of the peace is satisfied by evidence under oath that the inspection is reasonably necessary and the Officer has been prevented or is likely to be prevented from doing anything set out in Section 24(a), (b) or (c) of this By-law.
- (g) An Officer named in an order described in Section 24(g), and any person under his or her direction named therein, may, in accordance with the order, enter onto or into the Premises described therein, including any room or Premises actually being used as a dwelling, which is described therein, to undertake the said inspection, and may, for that purpose, exercise any power set out in the order.

#### **ORDERS AND REMEDIAL ACTIONS**

25. (a) If an Officer is satisfied that a contravention of this By-law has occurred, the Officer may make an order requiring the person who contravened the By-law to discontinue the contravening activity.
- (b) An order under Section (a) shall set out,
- (i) reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred; and
  - (ii) the date by which there must be compliance with the order.
- (c) No Person shall fail to comply, in whole or in part, with an order issued under Section 25(a).
26. (a) If an Officer is satisfied that a contravention of this By-law has occurred, the Officer may make an order requiring the Person who contravened the By-law to do work to correct the contravention.
- (b) An order under Section (a) shall set out,
- (i) reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred; and
  - (ii) the work to be done and the date by which the work must be done.
- (c) An order under Section (a) may require work to be done even though the facts which constitute the contravention of the By-law were present before this By-law making them a contravention came into force.
- (d) No Person shall fail to comply, in whole or in part, with an order issued under Section 26(a).

## REFUSAL TO ISSUE OR RENEW A BUSINESS LICENCE

27. The Licensing Officer may refuse to issue or renew a Business Licence:
- (a) if all Inspections required pursuant to this By-law have not been completed and passed;
  - (b) where the conduct of the Applicant or Licensee, including the conduct of any officer, director, employee or agent of a 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;
  - (c) where the issuance of the Business Licence, or renewal of the Business Licence, would be contrary to the health, safety or wellbeing of people in the City of Welland;
  - (d) where the Applicant or Licensee has past convictions under this By-law, or any other By-law, statute or regulation relating to the Business;
  - (e) where the Applicant or Licensee is carrying on an activity in relation to the Business that is, or will be , if the Applicant is licensed , in contravention of this By-law or any other By-law, statute or regulation;
  - (f) where it is determined that the Business, Applicant or Licensee does not comply with applicable legislation such as but not limited to the Building Code Act, Fire Protection and Prevention Act, Health Protection and Promotion Act, or any other municipal by-law;
  - (g) where there is a Court order, or any federal or provincial order ceasing the activity of the Business;
  - (h) where a Business has ceased to operate or,
  - (i) upon such other grounds as are set out in this By-law.

## REFUND OF FEE ON REFUSAL TO ISSUE OR RENEW A BUSINESS LICENCE

28. Where the Licensing Officer's decision to refuse to issue or renew a Business Licence is not appealed in accordance with this By-law, a portion of the fee paid in relation to the application for Business Licence or application for renewal, as the case may be, equivalent to the application portion of the fee as set out in City of Welland Fees and Charges By-law 2006-193, as amended, shall be refunded to the Applicant. No portion of the inspection fee is refundable.

## REVOKING OR SUSPENDING A BUSINESS LICENCE

29. (a) The Licensing Officer has the powers and authority to revoke or suspend a Business Licence:
- (i) where the conduct of the Licensee, including the conduct of any officer, director, employee or agent of a 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;
  - (ii) where the continuation of the Business Licence would be contrary to the health, safety or wellbeing of people in the City of Welland; where the Licensee is convicted of an offence or has convictions under any provision of this By-law, or any other By-law, statute or regulation relating to the business;
  - (iii) where the Licensee is carrying on an activity in relation to the Business that is in contravention of this By-law, or any other Bylaw, statute or regulation;
  - (iv) where it is determined that the Business does not comply with applicable legislation such as but not limited to the Zoning By-law, Building Code and Building Code Act, Fire Protection and Prevention Act, Health Protection and Promotion Act, and any other municipal by-law;
  - (v) where the Business Licence was issued in error based on incorrect or incomplete information provided by the Applicant; or
  - (vi) where the Licensee would be disentitled to a Business Licence for any other reason set out in this By-law.
- (b) A Business Licence issued under this By-law shall remain in effect until a decision to revoke or suspend the Business Licence has been made by the Licensing Officer or, where an appeal has been filed, the Appeal Tribunal.

### REFUND OF FEE ON REVOCATION OF BUSINESS LICENCE

30. When the Licensing Officer or Appeal Tribunal makes a decision to revoke or suspend a Business Licence, no portion of the inspection fee or licence application fee is refundable.

### APPEALS PROCEDURE

31. (a) Where the Licensing Officer refuses to issue or renew a Business Licence or where the Licensing Officer elects to suspend or revoke a Business Licence:
- (i) the Licensing Officer shall send written notice advising the Applicant or Licensee of the refusal, suspension or revocation of the Business Licence;
  - (ii) the written notice of the Licensing Officer shall be sent to the Applicant or Licensee at the address of the Applicant or Licensee provided on the Application, or where a change of information has been provided by the Applicant or Licensee regarding address, at the address reflecting that change of information;
  - (iii) the written notice shall:
    - a. set out the grounds for the refusal, suspension or revocation;
    - b. give reasonable particulars of the grounds;
    - c. be signed by the Licensing Officer; and
    - d. indicate the final date and time by which the Applicant or Licensee may appeal the decision of the Licensing Officer to suspend, revoke, refuse to issue or renew the Business Licence, and the method for doing so, as set out in Section 31(a)(iv); and,
  - (iv) the Applicant or Licensee may appeal the decision of the Licensing Officer to suspend, revoke, or refuse to issue or renew the Business Licence, by filing a written request with the City Clerk, which request must set out the grounds or basis for the request, and must be received in the Clerks Department no later than 4:00 p.m. on the fourteenth (14<sup>th</sup>) calendar day from the date on the notice described in 31(a)(i); and,
  - (v) the Applicant or Licensee shall have no right to appeal the decision of the Licensing Officer to suspend, revoke, or refuse to issue or renew the Business Licence as a result of Fire or Building Code violations;
- (b) If no written request for an appeal is received from the Applicant(s) or Licensee(s) before the deadline as set out in Section 31(a)(iv) regarding the Licensing Officer's decision to suspend, revoke, refuse to issue or renew the Business Licence:
- (i) no extension of the time to request an appeal or hearing will be granted; and,
  - (ii) the decision of the Licensing Officer will be final.

### HEARING OF APPEALS

32. Upon receipt of a written request for a hearing from the Applicant or Licensee, in accordance with Section 31(a)(iv) the Appeal Tribunal shall:
- (a) fix a date and time for such matter to be heard by the Appeal Tribunal within 30 days of receipt of the appeal; and,
  - (b) send by registered mail or hand delivery the notice of hearing, which shall include the date, time and location of the hearing, at least fifteen (15) days prior to the date and time fixed for such hearing, to the Applicant or Licensee, the Licensing Officer or any other Person who has requested such notification in writing from the Appeal Tribunal.

### HEARING PROCEDURE

33. (a) The following procedure shall be followed for appeals relating to the refusing, suspending or revoking of any Business Licence under this By-law:
- (i) the Appeal Tribunal shall circulate copies of all reports from the Licensing Officer and any officers, inspectors, investigators, employees of the corporation or other municipal, provincial, or federal agencies, police officers or Medical Officers of Health, who may be involved in the matter, to the Applicant, Licensee or any other Person to whom notice of the hearing has been given;
  - (ii) the Applicant or Licensee, either personally or through an agent or solicitor, shall be afforded an opportunity to present such material and evidence relevant to the issue

before the Appeal Tribunal, and may ask questions of any person presenting evidence, relating to the evidence presented;

- (iii) the Appeal Tribunal may afford any other Person who appears to have an interest in the matters under discussion, an opportunity to present material and evidence relevant to the issue before the Appeal Tribunal;
  - (iv) the provisions of Sections 5 to 15 and 21 to 24 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c.S.22, as amended, or any successor thereof, shall apply to all hearings conducted by the Appeal Tribunal under this By-law; and,
  - (v) any person presenting evidence relevant to the hearing must be present to answer questions in relation to that evidence.
- (b) if the Applicant or Licensee who has been sent notice of the hearing does not appear at the appointed time and place of the hearing, the Appeal Tribunal may proceed with the hearing in the absence of the Applicant or Licensee and if so, the Applicant or Licensee shall not be entitled to any further proceeding or any further notice of the proceedings.
  - (c) at the conclusion of a hearing, the Appeal Tribunal may give its decision orally or reserve its decision, but in any case it shall provide its decision in writing, with reasons, within fourteen (14) days of the hearing to the Applicant or Licensee and the Licensing Officer.
  - (d) the Appeal Tribunal, in making its decision, may uphold or vary the decision of the Licensing Officer, or impose conditions, including special conditions as a requirement of continuing to hold a Business Licence.
  - (e) the decision of the Appeal Tribunal issued under the By-law is final.

#### **SERVICE OF WRITTEN NOTICE**

34. All notices, orders or other written communications pursuant to this by-law shall, unless otherwise set out herein this by-law, be sufficiently served:
- (i) personally on any Applicant, Licensee or any Person;
  - (ii) posted on the subject Premises;
  - (iii) mailed by registered mail or by regular mail to any Applicant, Licensee or Person at the address provided by the Applicant, Licensee or Person, as the case may be, according to the Licensing Officer's records or known to the Licensing Officer;
  - (iv) when service is effected by registered mail or by regular lettermail, the service shall be deemed to be received on the fifth (5<sup>th</sup>) day after it is mailed or where served by hand delivery or posted on the subject Premises shall be deemed to be received immediately.

#### **RETURNING BUSINESS LICENCES**

35. When a Business Licence has been revoked or suspended; the holder of the licence shall return the licence to the Licensing Officer within two (2) business days of service of the written notice of the decision of the Licensing Officer or, where an appeal has been filed, the decision of the Appeal Tribunal, and the Licensing Officer, or his or her delegates, may enter upon the business premises of the Licensee for the purpose of receiving, taking or removing the said Licence.

#### **OFFENCES**

36. (a) Every Person who contravenes any provision of this By-law, including any Schedule hereto, is guilty of an offence.
- (b) Every director or officer of a corporation who knowingly concurs in the contravention by the corporation of any provision of this By-law, including any Schedule hereto, is guilty of an offence.
- (c) Every offence under this By-law is designated as a continuing offence.

#### **PENALTIES**

37. Except as otherwise provided in this By-law, every Person who is convicted of an offence under any provision of this By-law shall be liable to a fine not to exceed \$10,000 per day or each part of a day that the offence continues. The penalties set out in this Section shall be in addition to any other penalties available at law.

**SCHEDULES**

38. Unless otherwise stated, the requirements of the Schedules shall be in addition to all other requirements of this By-law.

**ULTRA VIRES**

39. (a) It is hereby declared that notwithstanding that any Section 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 there from and enacted as such;
- (b) When any requirement of this By-law is at variance with any other By-law in effect in the City of Welland or with any applicable Provincial or Federal statute or regulation, the more restrictive requirement shall apply unless otherwise stated in such legislation.

**READ A FIRST, SECOND AND THIRD TIME AND PASSED BY COUNCIL THIS  
6<sup>th</sup> DAY OF December, 2011.**

**“Barry Sharpe”            MAYOR**

**“Christine Mintoff”      CLERK**

**SCHEDULE "A"**  
**The Corporation of the City of Welland**  
**By-law 2011 - 173**

**SCHEDULE****BUSINESS**

1	Fireworks – sale of
2	Food Premises
3	Food Vehicle
4	Hawker and Peddlar
5	Outdoor Entertainment Events
6	Pawnbroker
7	Personal Service Establishments
8	Public Garage
9	Donation Collection Bins

**Schedule 1**  
**The Corporation of the City of Welland**  
**By-law Number 2011 - 173**

**RETAIL SALE OF FIREWORKS**

**INTERPRETATION**

1. In addition to the terms in Section 1 of this By-law, the following terms shall have the corresponding meanings:
  - (a) "**Indoor Sales**" means the sale, display or offer for sale of fireworks in or from a building on a site by any person;
  - (b) "**Outdoor Sales**" means the sale, display or offer for sale of fireworks in or from a vending structure on a site by any person;
  - (c) "**Site**" means any area within the City of Welland on which fireworks are displayed, sold or offered for sale;
  - (d) "**Site Plan**" means a drawing of a site which includes all applicable measurements of every vending structure and the surrounding area within 100 metres of the site and on which all buildings and structures, streets or other landmarks are indicated;
  - (e) "**Vending Structure**" means any vehicle, roadside stand or temporary structure, tent or air-supported structure or other conveyance in or from which fireworks are displayed, sold or offered for sale.

**CONDITIONS**

2. No person shall display, offer for sale or sell fireworks unless the person is in compliance with all applicable provisions of this By-law and the City of Welland Fireworks By-law 23-127.
3. Notwithstanding Section 5(b)(ii) of this by-law, local retailers conducting indoor sales and/or outdoor sales as defined in Section 1 of this Schedule shall be required to obtain a Hawker or Peddler Business Licence for "day sales" or "seasonal sales" if the local retailer is operating at a temporary location but shall be exempt from paying the applicable application fee for one temporary location only.
4. In addition to the requirements set out in the City of Welland Fireworks By-law 23-127 any person conducting Outdoor Sales shall:
  - (a) Provide a letter to the Licensing Officer from the owner of property on which a vending structure is to be located, indicating permission to do so has been given to the temporary vendor;
  - (b) Provide a site plan showing the location of each vending structure in reference to City streets, buildings on the site and parking areas on the site, demonstrating compliance with the Federal Explosives Division, Department of Energy, Mines and Resources Table of Outside Distances as indicated in Section 5 below;
  - (c) Not permit the display or sale of fireworks unless the site complies with the Outside Distance regulations set out in Section 5 of this schedule;
  - (d) Erect and maintain connected pylons or fencing of a temporary nature to establish a no encroachment zone at the perimeter of separation distances outlined in paragraph 5 of this schedule;
  - (e) Post and maintain at every entrance point to the no-encroachment zone and at every entrance point to each vending structure, a sign that is clearly visible to the public stating that the items listed in Section 7.2.9 of the City of Welland Fireworks By-law 2003-127 as amended, are prohibited within six (6) metres of a vending structure;
  - (f) Ensure that where the public is permitted access to a vending structure, that such structure has at least two (2) separate entrances;
  - (g) Ensure that no more than twenty (20) persons are in any vending structure at any one time;
  - (h) Ensure that when the public is permitted access to a vending structure the temporary vendor or an agent or employee of the temporary vendor is in attendance;
  - (i) Not operate unless a 2A10BC rated fire extinguisher is provided for each employee to combat fires which have not yet spread to the fireworks and ensure that fires involving



fireworks are not fought but rather efforts are concentrated on evacuation and crowd control;

- (j) Post and maintain a sign indicating "IN CASE OF FIRE CALL 911" that is clearly visible to the public in each vending structure at all times;
- (k) Not leave a vending structure on any site overnight unless at least one (1) security person is on duty whenever the temporary vendor is absent from the site;
- (l) Where a vending structure is a tent, ensure that the tent material conforms with NFPA 701-1977, "Standard Methods of Fire Tests for Flame Resistant Textiles and Films: and that the tent is so labelled.

5. Fireworks – Table of Outside Distances

Column "A"		Column "B"	
Railway, Aerodrome, Canal (in active use) or other navigable water, Dock, Pier or Jetty; Market Place, Public Recreation and Sports Ground or other open place where the public is accustomed to assemble; Public Highway, Private road which is a principal means of access to a Church, Chapel, College, School, Hospital or Factory; River Wall, Sea Wall, Reservoir.		Dwelling House, Retail Shop, Government and Public Buildings. Church, Chapel, College, School, Hospital, Theatre, Cinema or other Building where the public is accustomed to assemble; Factory Building or works used for storage in bulk of petroleum spirit, gas or other inflammable substances; Building or works used for the storage and manufacture of explosives or articles which contain explosives.	
Weight in Pounds	Category "X" Distance in Feet	Weight in Pounds	Category "X" Distance in Feet
100	25	100	50
200	30	200	60
400	35	400	70
600	40	600	80
800	45	800	90
1000	50	1000	100
2000	58	2000	115
3000	62	3000	124
4000	65	4000	130
5000	68	5000	135
6000	70	6000	139
8000	73	8000	146
10000	75	10000	150
15000	80	15000	159
20000	83	20000	165
30000	87	30000	174
40000	90	40000	180
50000	93	50000	185
60000	95	60000	189
80000	98	80000	195
100000	100	100000	200
150000	105	150000	209
200000	108	200000	215
250000	110	250000	220

E.G. A Vendor with a stock of 200 pounds of fireworks must be 30 feet from anything in Column "A" and 60 feet from anything in Column "B".

**Schedule 2**  
**The Corporation of the City of Welland**  
**By-law Number 2011 - 173**

**FOOD PREMISES**

The provisions of this Schedule shall apply in respect of a Food Premises.

**INTREPRETATION**

1. In addition to the terms defined in Section 1 of this by-law, the following terms shall have the corresponding meanings:
  - (a) "Food premises" means any Premises where;
    - (i) food intended for human consumption is prepared; or
    - (ii) food that is not prepackaged, and that is intended for human consumption, is handled, and Provided for Sale, but shall not include a Food Vehicle as defined in this By-law.

**CONDITIONS**

2. Every application for a Business Licence to own or operate a Food Premises under this By-law shall be accompanied by a certificate of approval issued and signed by the Medical Officer of Health.
3. Every owner or keeper of a Food Premises shall keep posted, in a conspicuous place clearly visible to members of the public, at or near the entrance of such establishment, the most recent food safety inspection notice issued by the Medical Officer of Health.
4. Every Person licensed under this By-law and Schedule shall be responsible for maintaining the premises and property in a neat, clean and litter free condition.
5. Every owner of a Food Premises shall keep any garbage stored outside within a completely enclosed garbage storage facility in accordance with City of Welland Zoning By-law 2667, as amended.

**TRANSITION**

6. In the case of a bake shop, place of refreshment or restaurant that meets the definition of a food premises under this by-law, a licence that is valid as of the effective date of the By-law shall be transferred to a Food Premises Licence and the Licensee shall comply with all applicable provisions of this By-law.

**Schedule 3**  
**The Corporation of the City of Welland**  
**By-law Number 2011 - 173**

**FOOD VEHICLE**

The provisions of this Schedule shall apply in respect of Food Vehicles.

**INTERPRETATION**

1. In addition to the terms defined in Section 1 of this By-law, the following terms shall have the corresponding meanings:
  - (a) "Arterial Road" means any Highway with markings identifying more than two traffic lanes;
  - (b) "Chip Wagon" means an immobile vehicle, either mounted on blocks or supported by a conventional wheel, tire and axle system, from which food or beverages are Provided for Sale or sold, or prepared and Provided for Sale or sold;
  - (c) "Food Vehicle" means a Chip Wagon, Mobile Food Preparation Vehicle, or Refreshment Vehicle, and shall not include a Mobile Barbeque Facility or Refrigerated Bicycle Cart;
  - (d) "Mobile Barbeque Facility" means an open air barbeque which is capable of being moved from Premises to Premises by a person;
  - (e) "Mobile Food Preparation Vehicle" means a vehicle from which food prepared therein is provided for sale or sold;
  - (f) "Refreshment Vehicle" means a vehicle from which pre-packaged food items are Provided for sale or sold and in which no food is prepared except beverages;
  - (g) "Refrigerated Bicycle Cart" means a manually propelled itinerant tricycle vehicle from which ice-cream, ice-cream cones, ice milk and other iced confectionery food items are offered for sale or sold to the public;
  - (h) "Site Plan" means a drawing of a site which includes all applicable measurements of the Food Vehicle and the surrounding area within 100 metres of the site and on which all buildings and structures, streets or other landmarks are indicated;
  - (i) "Travelled Portion of the Road Allowance" means the part of the Highway that is improved, designed or ordinarily used for vehicular traffic; and
  - (j) "Vehicle" shall have the same meaning as set out in the Highway Traffic Act, R.S.O. 1990, c. H.8, as amended from time to time, or any successor thereof.

**OWNER OF FOOD VEHICLE**

2. (a) Without limiting any other provision of this By-law, a Person shall be deemed to be engaged in the Business of operating a Food Vehicle if he or she is the registered owner of a Food Vehicle used for such purpose; and
  - (b) Each Food Vehicle shall require a separate Business Licence.

**CONDITIONS – GENERAL**

3. (a) Every Food Vehicle Licensee shall:
  - (i) ensure that a refuse container is supplied for his or her Food Vehicle, and that such container is made available to the customers of the Food Vehicle;
  - (ii) ensure that the Food Vehicle is maintained in good repair.
- (b) Notwithstanding Section 18(a) of the By-law, every Licensee holding a business Licence for a Food Vehicle Business shall ensure that the Business Licence relating thereto is affixed to the vehicle, in a conspicuous place clearly visible to the public at all times during the Hours of Operation of the Business.

**CHIP WAGONS**

4. (a) In addition to all other requirements of this By-law, the following items shall be submitted with every application for inspections relating to a Food Vehicle that is a Chip Wagon:

- (i) a letter from the Owner of every property on which the Food Vehicle will be situated, authorizing the Applicant to conduct such Business from the property; and
  - (ii) a Site Plan to be approved by the City, indicating compliance with the criteria set out in Section 4(c) of this Schedule.
- (b) No Business Licence shall be issued for a Food Vehicle that is a Chip Wagon unless the Site Plan has been approved by the City.
- (c) Every Licensee of a Food Vehicle that is a Chip Wagon shall ensure that the Chip Wagon is not operated at any time:
- (i) on any Highway;
  - (ii) within 22.86 metres (75 feet) of any corner of any intersection;
  - (iii) within 15.24 metres (50 feet) from the nearest edge of the Traveled Portion of the Road Allowance; or
  - (iv) when such Chip Wagon occupies an area greater than 37.16 square metres (400 square feet).

#### **MOBILE FOOD PREPARATION VEHICLE**

5. (a) In addition to all other requirements of this By-law, the following items shall be submitted with every application for inspections and renewals relating to a Food Vehicle that is a Mobile Food Preparation Vehicle:
- (i) a letter from the Owner of every property on which the Food Vehicle will be situated authorizing the Applicant to conduct such Business from the property; and
  - (ii) a Site Plan to be approved by the City, indicating compliance with the criteria set out in Section 4(c) of this Schedule.
- (b) No Business Licence shall be issued for a Food Vehicle that is a Mobile Food Preparation Vehicle unless the Site Plan has been approved by the City.
- (c) Every Licensee of a Food Vehicle that is a Mobile Food Preparation Vehicle shall ensure that the Mobile Food Preparation Vehicle is not operated at any time:
- (i) on any Highway;
  - (ii) within 22.86 metres (75 feet) of any corner of any intersection;
  - (iii) within 15.24 metres (50 feet) from the nearest edge of the Traveled Portion of the Road Allowance; or
  - (iv) on any property where, due to the area occupied by the Food Vehicle, the minimum parking space requirement for said property is not in compliance with the City's Zoning By-law.

#### **REFRESHMENT VEHICLE**

6. Every Licensee of a Food Vehicle that is a Refreshment Vehicle shall ensure that the Refreshment Vehicle does not provide Goods or Services while such Vehicle is on any Highway.
7. Every Licensee of a Food Vehicle that is a Refreshment Vehicle shall ensure that:
- (a) only pre-packaged food items are provided for sale or sold from the Refreshment Vehicle and that no food is prepared therein except hot beverages and that no food item is provided for sale or sold from the Refreshment Vehicle;
    - (i) at any location other than industrial or commercial establishments or to workers on a construction site;
    - (ii) to the general public; and
    - (iii) unless such food is pre-packaged in individual servings and the date of preparation of said food item is clearly displayed on the package of the food item; and,
  - (b) the said Refreshment Vehicle does not remain in any particular location, providing service to customers, for more than 30 minutes.

**Schedule 4**  
**The Corporation of the City of Welland**  
**By-law Number 2011 - 173**

**HAWKER AND PEDDLAR**

The provisions of this Schedule shall apply in respect of Hawkers and Peddlars.

**INTREPRETATION**

1. In addition to the terms defined in Section 1 of this by-law, the following terms shall have the corresponding meanings:
  - (a) A "Hawker" or "Peddler" includes:
    - (i) any person who goes from place to place, or to a particular place, with goods, wares or merchandise for sale, or who carries and displays samples, patterns or specimens of any goods, wares or merchandise for which orders are taken and that are to be delivered in the City afterwards; and
    - (ii) any retailer which has an employee or agent who goes from place to place or to a particular place with goods, wares or merchandise for sale, or who carries and displays samples, patterns or specimens of any goods, wares or merchandise for which orders are taken and that are to be delivered in the City afterwards;
    - (iii) but excludes a consumer show open to the public or a trade show open by invitation or registration only, the primary purpose of which are the display of goods and products and not the direct sale of them.
  - (b) "Local Retailer" means any individual or business which provides for the selling or offering for sale of goods or services at a building or structure located within the City which is subject to property tax in the City;
  - (c) "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;

**CATEGORIES OF LICENCE**

2. The following categories of Hawker and Peddler are hereby established:
  - (a) Category 1 – "Day Sales" - shall include the sale of goods such as, but not limited to, flowers, and fresh produce, for a one to three day period from one specific location such as, but not limited to, a parking lot, a service station lot or a vacant commercial lot where the use is permitted in the Zoning By-law.
  - (b) Category 2 – "Seasonal Sales" – shall include temporary businesses such as, but not limited to, gardening products sales and Christmas tree sales for one period of up to three months from one specific location such as, but not limited to, a parking lot or a vacant commercial lot and may include the use of a temporary structure such as a greenhouse or sales office where the use is permitted in the Zoning By-law.
  - (d) Category 3 – "General" – shall include any Hawker or Peddler excluding Categories 1 or 2 as defined in Section 2 of this schedule.

**CONDITIONS**

3. No person shall, in the City:
  - (a) carry on the business of Hawker or Peddler; or
  - (b) be engaged in services to the public in connection with the business of a Hawker or Peddler;

without holding a current valid Business Licence for such Business issued under the provisions of this by-law.
4. Notwithstanding Section 17(a) and (b) of this by-law, the Business Licence of an employee of a Hawker or Peddler requiring their own Business Licence shall be transferable to another employee upon the return of the original licence issued by the Licensing Officer and upon the completion of an application form by the new employee.
5. Notwithstanding Section 3 of this Schedule, no Business Licence shall be required for hawking, peddling or selling goods, wares or merchandise:

- (a) to wholesale or retail dealers in similar goods, wares or merchandise; or
  - (b) if the goods, wares or merchandise are hawked, peddled or sold by an agent of the grower, producer or manufacturer, acting on behalf of a dealer who pays business tax in the City in respect of premises used for the sale of goods, wares or merchandise; or
  - (c) for existing local retailers who are carrying out any "day sales" or "seasonal sales" if the temporary selling activity is an extension of the existing business at that location; or
  - (d) for local farm growers who are carrying out any "day sales" or "seasonal sales" if the produce they are selling is being sold from their own property and has been grown and harvested by them.
  - (e) if the goods, wares or merchandise are hawked, peddled or sold at a Special Event as defined by City policy and for which a special events permit has been obtained.
6. In a prosecution for a breach of this Part of this by-law, the onus of proving that he does not, for any of the reasons mentioned in Section 5 of this by-law, require to be licensed is upon the person charged.
7. No person licensed, or required to be licensed, as a Hawker or Peddler shall carry on the business of a hawker or peddler in any public park in the City except under a permit of the City.
8. Notwithstanding Sections 4(a)(ii) and 5(b)(ii) registered charitable organizations shall be required to obtain a Hawker or Peddler Business Licence for "day sales" or "seasonal sales" but shall be exempt from paying the applicable fees.
9. Notwithstanding Section 5(b)(ii) local retailers shall be required to obtain a Hawker or Peddler Business Licence for "day sales" or "seasonal sales" if the local retailer is operating at a temporary location but shall be exempt from paying the applicable application fee for one temporary location only, provided that the goods, wares or merchandise offered for sale at the temporary location are the same goods, wares or merchandise offered for sale continuously when the local retailer is open for business at their permanent location for at least three (3) months prior to their application for the Hawker or Peddler Business Licence.

**Schedule 5**  
**The Corporation of the City of Welland**  
**By-law Number 2011 - 173**

**OUTDOOR ENTERTAINMENT EVENTS**

The provisions of this Schedule shall apply in respect of Outdoor Entertainment Events.

**INTERPRETATION**

1. In addition to the terms defined in Section 1 of this By-law, the following terms shall have the corresponding meanings:
  - (a) "Carnival" means an exhibition, display, event or amusement show, including a circus, which may include the operation of one or more amusement devices;
  - (b) "Outdoor Entertainment Event" means any public or private exhibition, Carnival, rave, commercial performance or show, attended by or which might reasonably be expected to be attended by more than 500 people, held outdoors on private property.

**CONDITIONS**

2. No person shall hold, operate or conduct an Outdoor Entertainment Event on private property within the City unless the property owner or his duly authorized representative holds a valid Business Licence issued pursuant to this by-law.
3. All applications for an Outdoor Entertainment Event Licence shall include a site plan showing the proposed layout of the event and parking areas.
4. The organizers or promoters of an Outdoor Entertainment Event shall obtain an Outdoor Entertainment Event Licence a minimum of thirty (30) days prior to the event taking place.
5. The Licensing Officer shall consider applications for Outdoor Entertainment Event Business Licences pursuant to this by-law and may establish conditions to be met by the promoters or organizers of such events, having due regard for health, sanitation, vehicular and traffic control, dog control, public safety and the protection of public and private property.

**Schedule 6**  
**The Corporation of the City of Welland**  
**By-law Number 2011 - 173**

**PAWNBROKERS**

The provisions of this Schedule shall apply in respect of Pawnbrokers.

**INTERPRETATION**

1. In addition to the terms defined in Section 1 of this By-law, the following terms shall have the corresponding meanings:
  - (a) "Pawnbroker" means any Person who carries on the business of taking by way of pawn or pledge any article for the repayment of money lent thereon.

**CONDITIONS**

2.
  - (a) Every Licensee shall comply will all the provisions of the Pawnbrokers Act R.S.O. 1990, C. P.6, as amended from time to time or any successor thereof (the "Pawnbrokers Act").
  - (b) Pursuant to the Pawnbrokers Act, every Pawnbroker Licensee shall give to the City, security to the satisfaction of the City in the sum of two thousand dollars (\$2,000.00), for the due observance by the Pawnbroker of the Pawnbrokers Act;
  - (c) No Pawnbroker Licensee shall purchase or acquire, from any Person, any article or object on which the serial number has been obliterated or mutilated, without first having given the NRPS 24 hours prior notice of such intended purchases or acquisitions;
  - (d) Every Pawnbroker Licensee who has reasonable cause to suspect that an article offered to the Pawnbroker has been stolen or otherwise unlawfully obtained shall forthwith report the matter to a member of the Niagara Regional Police Service.



**Schedule 7**  
**The Corporation of the City of Welland**  
**By-law Number 2011 - 173**

**PERSONAL SERVICE ESTABLISHMENT**

The provisions of this Schedule shall apply in respect of Personal Service Establishments.

**INTREPRETATION**

1. In addition to the terms defined in Section 1 of this by-law, the following terms shall have the corresponding meanings:
  - (a) "Aesthetician Salon" means any premise wherein is provided for hire or gain facials, waxing, manicures, pedicures, electrolysis or tanning;
  - (b) "Barbershop" means any premise wherein is provided for hire or gain the cutting, dressing, shampooing, adorning or beautifying of hair or the scalp or the shaving and trimming of beards;
  - (c) "Electrolysis" means a process by which body hair is removed;
  - (d) "Hair Salon" means any premises or part thereof wherein is provided for hire or gain the cutting, dressing, shampooing, adorning or beautifying of hair or the scalp and includes a barbershop;
  - (e) "Hairstylist" means any person who performs the services of cutting, dressing, shampooing, adorning or beautifying hair or scalps in a Hair Salon;
  - (f) "Personal Service Establishment" means any premises in which is provided services, including but not limited to activities, facilities, or treatments for the improvement of a person's physical or psychological health or appearance such as, but not limited to Hair Salons, Tattoo Parlours, Tanning salons, Spas, Electrolysis, Piercing and Aesthetician Salon;
  - (g) "Pierce" means the use of needles or other instruments to permanently create a hole in or through the skin, for the purpose of decorating such a hole with jewellery, hoops, studs or other decorative items, and "Piercing" shall have the corresponding meaning;
  - (h) "Spa" means the use of natural elements to enhance and manage personal health and improve personal appearance and for the purpose of this By-law Beauty Spa and Health Spa shall have the same meaning;
  - (i) "Tanning" means to provide for use an area where ultra-violet or other light sources are used to radiate the skin in an attempt to produce changes in skin pigmentation, and also includes the application or sale of artificial bronzing and tanning lotions designed to change skin tone or colour; and,
  - (j) "Tattoo Parlour" means any premises where an indelible figure is fixed upon the body by the insertion of pigment under the skin.

**REQUIRED SIGNAGE**

2. Every Personal Services Establishment Licensee shall ensure that:
  - (a) a list of all services provided by the Personal Services Establishment and a fees list for those services, are posted in a conspicuous location within the Personal Services Establishment and clearly visible to all persons entering any principal entrance of the establishment as identified in the Floor Plan; and,
  - (b) only those services set out in the posted list of services required in Section 3(a) of this Schedule, are provided in the personal services establishment, and only the fees set out on the fees list, required in Section 3(a) of this Schedule, are charged for the respective services.

**DESIGN OF PREMISES**

3. Every Licensee shall ensure that:
  - (a) every contact surface, equipment, fixture, table, mat and any other surface upon which any person lies, sits or otherwise contacts while being provided any service in the Personal Services Establishment is in good repair and is constructed of impervious material that is able to be readily cleaned and sanitized after each customer's use;

- (b) every contact surface, equipment, fixture, table, mat and any other surface upon which any person lies, sits or otherwise contacts while being provided any service in the personal services establishment is cleaned in accordance with Provincial Infectious Diseases Advisory Committee "Best Practices for Cleaning, Disinfection and Sterilization" dated March 2006 and amended from time to time;
- (c) all linens are laundered after each use;
- (d) clean and used or soiled linens are kept separate at all times;
- (e) the Personal Services Establishment is equipped with adequate toilet and washroom accommodations pursuant to the Building Code Act, and regulations thereto, as amended from time to time, and successor thereof, and that those facilities are available and accessible to staff and clients at all times;
- (f) the facilities set out in Section 4(e) of this schedule are equipped at all times with:
  - (i) a hand washing basin that has a supply of hot and cold water;
  - (ii) liquid soap in a dispenser;
  - (iii) hot air dryers or clean single service towels or disposable paper towels;
  - (iv) a receptacle for used towels and waste material.

#### **HAIR SALON**

- 4. (a) no Hair Salon Licensee shall act as a hairstylist unless he or she is the holder of a current certificate of qualification as a barber or hairdresser; and
- (b) every Hair Salon Licensee shall ensure that every hairstylist operating in the hair salon is the holder of a current certificate of qualification as a barber or hairdresser.

#### **TRANSITION**

- 5. (a) A Hair Salon or Barbershop licence that is valid as of the effective date of this By-law shall be transferred to a Personal Services Establishment Business Licence and the Licensee shall comply with all applicable provisions of this By-law.
- (b) The Licensee shall be required to renew the Personal Services Establishment Business Licence prior to its expiry.

**Schedule 8**  
**The Corporation of the City of Welland**  
**By-law Number 2011 - 173**

**PUBLIC GARAGE**  
**(AUTOMOTIVE RENTAL, SALES AND SERVICE)**

The provisions of this Schedule shall apply in respect of a Public Garage.

**INTREPRETATION**

1. In addition to the terms defined in Section 1 of this By-law, the following terms shall have the corresponding meanings:
  - (a) "Automobile Service Station" means a building or structure or part thereof where gasoline, oil, grease, anti-freeze, tires, tubes, tire accessories, electric light bulbs, spark plugs and batteries for motor vehicles are stored or kept for sale, or where motor vehicles may be oiled, greased or washed, or have their ignition adjusted, tires inflated or batteries charged or where only minor or running repairs essential to the actual operation of motor vehicles are executed or performed;
  - (b) "Motor vehicle" means includes an automobile, motorcycle, motor assisted bicycle and any other vehicle propelled or driven otherwise than by muscular power.
  - (c) "Public garage" includes any of the classes of public garage established in Schedule 8 of this by-law.

**CLASSES OF LICENCE**

2. The following classes of automobile service station are hereby established:
  - (a) Class A shall include a building or place where motor vehicles are hired or kept or used for hire;
  - (b) Class B shall include a building or place where motor vehicles are stored or kept for sale;
  - (c) Class C shall include a place being an open lot only where motor vehicles are stored or kept for sale;
  - (d) Class D shall include a building or place where gasoline or oil products are stored or kept for sale;
  - (e) Class E shall include a building or place used as a motor vehicle repair shop;
  - (f) Class F shall include a building or place used for washing or cleaning motor vehicles; and
  - (g) Class G shall include an automobile service station.

**CONDITIONS - GENERAL**

3. No person shall operate a Public Garage without holding a current valid Business Licence for such Premises or Business issued under the provisions of this By-law.
4. No person shall operate a Public Garage contrary to this part of this by-law.
5. Any Public Garage Business Licence issued under the provisions of this by-law may be for all or any of the purposes or classifications which are included in this schedule but the Business Licence shall be limited to the purposes of the class designated therein.
6. Every applicant for Public Garage Business Licence shall indicate on the application form the class or classes of the proposed Business as provided in this schedule.

**Schedule 9**  
**The Corporation of the City of Welland**  
**By-law Number 2011-173**

**DONATION COLLECTION BINS**

The provisions of this Schedule shall apply in respect of Donation Collection Bins

**INTERPRETATION**

1. In addition to the terms defined in Section 1 of this By-law, the following terms shall have the corresponding meanings:
  - a) "Charity" means a registered charity as defined in subsection 248(1) of the Income Tax Act, R.S.C. 1985 (5<sup>th</sup> Supp) or successor legislation that has a registration number issued by the Canada Revenue Agency or successor agency.
  - b) "Donation Collection Bin" means any receptacle used for the purpose of collecting clothing donations or other items from the public.
  - c) "Operator" means the operator of the donation collection bin.
  - d) "Owner" means the owner or occupant of the private property on which the donation collection bin is located.
  - e) "Private Property" means any property not owned by the municipality.
  - f) "Waste Material" means any discarded items adjacent to a donation collection bin.

**CONDITIONS**

2. No operator shall place a donation collection bin on private property without the consent of the owner.
3. No operator shall permit a donation collection bin to be located on a property zoned residential.
4. No operator shall permit a donation collection bin to be located on any street or property owned or maintained by the City of Welland.
5. No owner shall permit a donation collection bin to be located on a property zoned residential.
6. No operator shall permit a donation collection bin to be placed on a property in a location that is within three (3) metres of an access or egress to any property.
7. No operator shall permit a donation collection bin to be placed on a property within 0.9 meters (2 feet 11 inches) from all property lines.
8. No operator shall permit a donation collect bin to be placed on the property in a location that creates a visual obstruction for vehicular traffic or pedestrians.
9. The owner shall ensure that all areas immediately adjacent to the donation collection bin are clean and free of waste material.
10. Each Donation Collection Bin shall require a separate licence.
11. The operator shall ensure the donation collection bin is maintained in good repair.

**REQUIRED SIGNAGE**

12. Every operator shall:
  - (i) Display the name and telephone number of the operator in a conspicuous place on the donation collection bin, in lettering no smaller than 100 millimeters x 75 millimeters, and of a contrasting colour.
  - (ii) Display the type of organization: for-profit or not-for-profit, in a conspicuous place on the donation collection bin, in lettering no smaller than 100 millimeters x 75 millimeters, and of a contrasting colour.
  - (iii) Display the schedule of times for pick up of donated items, in a conspicuous place on the donation collection bin, and of a contrasting colour.

13. The operator shall ensure that the information contained in Section 12 is maintained and current at all times.

**REMOVAL OF DONATION COLLECTION BINS AND ENFORCEMENT**

14. a) When a Donation Collection Bin is placed, or is not maintained, in contravention of the provisions of this By-law, such Donation Collection Bin may be removed immediately by the City without notice if located on, over, partly on, or partly over property owned by or under jurisdiction of the City at the expense of the Operator, and the Operator shall be invoiced.
- b) Where a Donation Collection Bin has been removed by the City such Donation Collection Bin shall be stored for a period of thirty (30) days and the Donation Collection Bin Operator may redeem the Donation Collection Bin upon payment of the storage and removal fees prescribed by the City. Where a Donation Collection Bin has not been redeemed within the thirty (30) day period, such Donation Collection Bin may be forthwith destroyed or otherwise disposed of by the City without notice or compensation and the Operator shall be invoiced.

**Schedule "B"**  
**The Corporation of the City of Welland**  
**By-law Number 2011 - 173**

**REQUIRED INSPECTIONS FOR BOTH INITIAL  
APPLICATIONS AND RENEWALS**

<b>SCHEDULE #</b>	<b>BUSINESS</b>	<b>APPLICATION</b>	<b>RENEWAL</b>
1	Fireworks – sale of	By-law, Fire, Zoning	By-law, Fire
2	Food Premises	Building, By-law, Health, Zoning	By-law, Health
3	Food Vehicle	By-law, Fire, Health, Zoning	By-law, Fire, Health
4	Hawker and Peddler	By-law, Zoning	By-law
5	Outdoor Entertainment Event	By-law, Fire, Health, NRP, Zoning	By-law, Fire, Health, NRP
6	Pawnbroker	By-law, Zoning	By-law
7	Personal Service Establishment	By-law, Health, Zoning	By-law, Health
8	Public Garage	Building, By-law, Zoning,	By-law
9	Donation Collection Bins	By-law, Zoning	By-law

**Inspection Divisions:**

Building – Building Department – Integrated Services  
By-law – By-law Enforcement Division  
Fire – Welland Fire and Emergency Services – Fire Prevention Office  
Health – Niagara Region Public Health Department  
NRP – Niagara Regional Police  
Zoning – Integrated Services

**Contact Information:**

Integrated Services Department – Building and Zoning Inquiries	905-735-1700 Ext 2251 or Ext 2257
By-law Enforcement Division	905-735-1700 Ext 2252
Welland Fire and Emergency Services	905-735-9922
Niagara Region Public Health	905-735-5697
Niagara Regional Police	905-735-7811