THE CORPORATION OF THE TOWNSHIP OF SOUTH FRONTENAC
BY-LAW 2014-48

BEING A BY-LAW FOR LICENSING, REGULATING AND GOVERNING TRANSIENT AND ITINERANT TRADERS, FOR REGULATING VENDING IN STREETS AND FOR REGULATING AND GOVERNING REFRESHMENT VEHICLES.

WHEREAS Section 11(3)(11) of the Municipal Act, S.O. 2001, C.25 authorizes a Municipality to pass by-laws respecting business licensing.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF SOUTH FRONTENAC ENACTS AS FOLLOWS:

Section 1 - Definitions:

1. For the purpose of this By-law the following definitions shall apply:

(a) "Applicant" means the person who applies for a license under this bylaw.

(b) "Council" shall mean the Council of The Corporation of the Township of South Frontenac.

(c) "Designated area" means an area designated for the parking of vehicles for the purpose of selling products there from or an area designated for the purpose of vending from a portable display unit located in such area and that is not part of a highway and is zoned by the Township's bylaw to permit a commercial or industrial use and for a mobile eating establishment or seasonal stand also including areas zoned recreation open space, park/open space or community facility.

(d) "Highway" includes the entire right-of-way of a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or tressle designed and intended for or used by the general public for the passage of vehicles.

(e) "Itinerant Trader" shall include any person who goes from place to place or to a particular place with goods, wares or merchandise for sale or who carries and exposes samples, patterns or specimens of any goods, wares or merchandise that are to be delivered in the municipality afterwards.

(f) "Medical Officer of Health" shall mean the Medical Officer of Health for Kingston Frontenac Lennox and Addington Health Unit or his/her duly authorized delegate.

(g) "Mobile eating establishment" shall mean any vehicle, trailer, cart or other structure not placed on a permanent foundation which is equipped for cartage, storage and the preparation of food stuffs, beverages, confections and such items are offered directly for consumption to the general public, and includes a chip wagon, a mobile canteen and other refreshment vehicles.

(h) "Municipality" shall mean The Corporation of the Township of South Frontenac.

(i) "Person" shall include a corporation or partnership.

(j) "Seasonal Stand" shall mean any building, stand or shed of any kind which is equipped for the preparation, storage, heating, cooling or sale of food stuffs without limiting its generality commonly known as a "stand".

(k) "Transient and Itinerant Traders License" shall mean a license issued by the municipality in accordance with this by-law.

(l) "Transient Trader" shall include:

(i) any person commencing business who has not resided continuously in the municipality for at least three months next preceding the time of commencing such business in the municipality; or

(ii) any person whose name has not been entered on the assessment roll; or

(iii) any person whose name has been entered on the assessment roll for the first time, in respect of business assessment; and who offers goods, wares or merchandise for sale by auction conducted personally or by a licensed auctioneer or otherwise, or who offers goods, wares or merchandise for sale in any other manner. For greater certainty, the sale of goods by one or more such persons acting under the authority, direction, supervision, or with the permission of a person to whom a Transient and Itinerant Trader License has been issued shall, for the purpose of this by-law, be a sale by the person to whom the license was issued.

Section 2 – Licensing:

1. No person shall sell any goods, wares or merchandise or operate a mobile eating establishment or seasonal stand while on a highway, a vacant lot or a parking lot adjacent thereto, or property owned by the municipality without the prior approval of Council.

2. No transient trader, itinerant trader, mobile eating establishment or seasonal stand which does not hold a valid Transient and Itinerant Trader License issued by the municipality's Provincial Offences Officer under the authority of this By-law, shall carry on its business or trade within the municipality.

3. A Transient and Itinerant Trader License shall not be required in the following circumstances:

   (a) the sale of the stock of a bankrupt or insolvent business within the meaning of any bankruptcy or insolvency Act in force in Ontario if such stock belonged to a business that was being carried on in the municipality at the time of the bankruptcy or insolvency, and no goods, wares or merchandise have been added to such stock;

   (b) the sale of any stock damaged by reason of fire if such stock belonged to a business that was being carried on in the municipality at the time of the fire, and no goods, wares or merchandise have been added to such stock;

   (c) the sale of a business to a "bona fide" purchaser who continues the business;

   (d) a mobile eating establishment or seasonal stand operated at an auction or other disposal/sale of household contents and effects of a private residence in the municipality if such household contents and effects belong to the owner or the occupant of such residence in the municipality immediately prior to the auction or other disposal/sale provided that the mobile eating establishment or seasonal stand is on private property or on an adjacent road allowance in a location where its operation win not cause a traffic problem on a public road;

   (e) a sale of goods wares or merchandise by or under the auspices of the municipality or by a non-profit organization;

   (f) any sale by hawking, peddling or otherwise of goods wares or merchandise;

      (i) to wholesale or retail dealers in similar goods, ware or merchandise; or

      (ii) if the goods, wares or merchandise are grown, produced or manufactured in Ontario and are hawked, peddled or sold by the grower, producer or manufacturer, or an agent or employee of such person having written authority so to do, if such grower, producer or manufacturer resides in the municipality; or

      (iii) if goods, wares or merchandise are grown or produced by a farmer resident in Ontario who offers for sale or sells only the produce of the farmer's own farm; or

      (iv) if the goods, wares or merchandise are hawked, peddled or otherwise sold by a person who has already paid business tax in the municipality in respect to a business that deals in such goods, wares or merchandise, or by an employee agent or such person;

or

(v) if the goods, wares or merchandise are hawked, peddled or otherwise sold by an agent of the grower, producer or manufacturer, acting on behalf of the dealer who already pays business tax in the municipality in respect of the premises used for the sale of such goods, wares or merchandise; or

(vi) by persons who sell milk or cream or fluid milk products to the consumer or to any person for resale.

(vii) the products sold are in accordance with and part of a community festival of the municipality or non-profit organization and the vendor has received permission in writing from the organizers of the festival to sell within the celebration area.

4. Any person may apply for a Transient Trader License, including a mobile eating establishment or seasonal stand, granting the holder the exclusive right;

(a) to sell products from a vehicle to be parked in a designated area specified in the license provided the holder complies with the terms and conditions prescribed by the license and any agreement entered into with the municipality as a condition of receiving the license, or

(b) to sell from a portable display unit to be located in a designated area specified in the license provided the license holder complies with the terms and conditions prescribed by the license and any agreement entered into with the municipality as a condition of receiving a license.

5. The following procedure shall be applicable in respect to the granting of a transient trader license:

(a) the applicant shall determine the proposed location for the designated area and shall provide a letter from the property owner or property manager permitting the use of his/her land for the proposed use;

(b) the applicant shall pay to the municipality a non refundable application fee in the amount identified in Section 8 below;

(c) the applicant shall complete an application for a license in the form attached as Schedule A;

(d) the applicant shall submit a site plan which clearly shows the designated area along with the location of proposed parking, signage and refuse containers;

6. In addition to the application form, fee and other matters required by Section 4, the proposed location for the designated area shall comply with the following criteria:

(a) no portion of the designated area shall be located on a highway or part thereof;

(b) no portion of the designated area shall be located directly in front of an entrance or exit from a building;

(c) the designated area shall be located only on land zoned as commercial or industrial pursuant to the Township of South Frontenac zoning bylaws. A mobile eating establishment or seasonal stand will also be permitted on lands zoned as recreational open space, park/open space and community facility pursuant to the Township of South Frontenac zoning by-laws;

(d) the designated area shall not be located within 500 meters of a business establishment or another designated area in which similar products are sold; unless there is written consent from the permanent business establishment;

(e) the designated area shall not be located within 50 meters of a signalized intersection as measured from the property line closest to the signalized intersection;

(f) the designated area shall be set back at least twelve meters from a

highway measured from the property line closest to the highway;

(g) the parking, signage and refuse requirements indicated in the site plan shall be within the designated area;

(h) in the case of a mobile eating establishment or seasonal stand, it shall not become a nuisance in regard to odour;

(i) The operator of the mobile eating establishment or seasonal stand shall be responsible for maintaining the area within 60 meters of the mobile eating establishment or seasonal stand, free of litter;

(j) All conditions in Item 6 apply to paragraph 3(d), 3(e) and 3(f)(vii).

7. Upon receipt of a written application to the municipality for a Transient and Itinerant Traders License which application shall include a statement containing full description of the goods, wares or merchandise which the applicant proposes to sell or offer for sale under such license, and upon payment of the prescribed license fee, and subject to compliance with all other sections of this By-law, the Municipalities Provincial Offences Officer shall issue a Transient and Itinerant Trader License.

8. The fee for a Transient and Itinerant Trader License shall be established in Schedule "B", attached to this By-law.

9. Any fee paid for a Transient and Itinerant Trader License shall be credited to the person paying it, or to any "bona fide" purchaser of the business who carries on the business, on account of taxes payable in respect of the business, and in respect of real property taxes on the land used for the purposes of or in connection with the business if the land is owned by the person carrying on the business, during the year in which the License is issued and five (5) years thereafter.

10. Every Transient and Itinerant Trader License issued under this by-law shall take effect on the day it is issued and expire on December 31 of the year in which it was issued.

Section 3 – Regulations:

1. Every person to whom a Transient and Itinerant Trader License has been issued shall:

   (i) in the case of a transient trader, cause such license to be prominently and permanently displayed in the place of business; and

   (ii) in the case of the itinerant trader, carry the license at all times while conducting business in the municipality.

2. Any employee or agent of a person to whom a Transient and Itinerant Trader License bas been issued shall, when required by any peace officer or Provincial Offences Officer of the municipality, exhibit his authority to sell the goods, wares or merchandise of the person to whom the license was issued.

3. Upon demand by any Peace Officer or Provincial Offences Officer of the municipality, any person to whom a Transient and Itinerant Trader License has been issued or the employee or agent of such person, shall exhibit it failing which such person, employee or agent shall be guilty of an offence unless such license is accounted for satisfactorily.

4. If a Peace Officer or Provincial Offences Officer demands the production of the Transient and Itinerant Trader License by any person to whom this by-law applies and such demand is not complied with, the Peace Officer shall arrest such person without a warrant and take him before the nearest Justice of the Peace to be dealt with according to law, or issue Provincial Offences Notice.

5.(a) The operator of every mobile eating establishment or seasonal stand shall at all times comply with the requirements of the Medical Officer of Health and prior to the issuance of a Transient Trader License under this By-law, supply the Provincial Offences Officer with written

confirmation of compliance in this regard;

(b) Every mobile eating establishment or seasonal stand which is equipped with propane-fuelled appliances, must be inspected by a certified propane fitter, registered by the Fuel Safety Branch, and found to comply with the Ontario Propane Code and. prior to the issuance of a Transient Trader License under this By-law, supply the Provincial Offences Officer with written confirmation of compliance in this regard.

(c) Every mobile eating establishment or seasonal stand shall receive written approval from the Fire Chief that the requirements of Schedule "C" attached to this by-law have been met.

Section 4 - Revocation and Contravention:

1. A Transient or Itinerant Trader License issued under the provisions of this By-law may be revoked by the Provincial Offences Officer when:

   (a) In the case of a mobile eating establishment or seasonal stand, written notice has been received from the Medical Officer of Health or the Fire Chief stating that the mobile eating establishment or seasonal stand is operating contrary to required standards; or

   (b) The Licensee has been served notice of non-compliance with the terms of this By-law, by the Provincial Offences Officer.

2. Revocation of the transient or itinerant license by Provincial Offences Officer shall be subject to a hearing with provisions, as provided by the Statutory Powers Procedures Act.

3. Any person who contravenes the provisions of the By-law shall be guilty of an offence and liable to a penalty not exceeding $5,000.00 exclusive of costs recoverable under the Provincial Offences Act, R.S.0.1990 Chapter P.33.

Section 5 - Effective Date:

1. By-law 2001-22 and 2002-95 and any other by-laws or portions thereof conflicting with this by-law are hereby repealed.

2. This by-law shall come into force and take effect upon the date of its passing.

Dated at The Township of South Frontenac this 5th day of August, 2014.

Read a first and second time this 5th day of August, 2014.

Read a third time and finally passed this 5th day of August, 2014.

THE CORPORATION OF THE
TOWNSHIP OF SOUTH FRONTENAC

Gary Davison, Mayor

Wayne Orr, Clerk/CAO

SCHEDULE "A"

TO BY-LAW 2014-48

APPLICATION FOR A TRANSIENT TRADER
OR
MOBILE EATING ESTABLISHMENT OR SEASONAL STAND LICENCE

I, _____ OF

_____
(ADDRESS)

_____
(PHONE NUMBER)

HEREBY MAKE APPLICATION UNDER BY-LAW 2002-95 FOR A LICENCE FOR A TRANSIENT TRADER, MOBILE EATING ESTABLISHMENT OR SEASONAL STAND UNDER:

A) MY OWN NAME:

_____

OR

B) OPERATING UNDER THE NAME OF:

_____

C) ADDRESS IF DIFFERENT FROM ABOVE:

_____

D) IF APPLICATION IS MADE ON BEHALF OF A CORPORATION, STATE ADDRESS OF HEAD OFFICE:

_____

E) IF APPLICATION IS MADE BY A PARTNER, STATE ADDRESS OF PARTNER(S):

_____

F) THE PRIMARY LOCATION OF ANY VEHICLE USED UNDER THE LICENCE SHALL BE:

_____

G) DESCRIPTION OF VEHICLE:
MAKE: _____ MODEL: _____ LICENSE PLATE #: _____

H) THE PRODUCTS TO BE SOLD FROM THIS VEHICLE AT THIS LOCATION ARE DESCRIBED AS:

_____

I) LETTERS OF COMPLIANCE:

Medical Officer of Health: _____

Fire Chief: _____

Certified Propane Fitter: _____

Signature of Land Owner Authorizing Use: _____

NOTE: A COPY OF A LETTER FROM THE PROPERTY OWNER OF THIS LOCATION GIVING PERMISSION TO USE THE PREMISES MUST BE ATTACHED TO THIS APPLICATION.

THE ORIGINAL LETTER MUST BE CARRIED AT ALL TIMES WITH THE LICENCE.

I HAVE PREVIOUSLY HELD A MOBILE VENDOR'S LICENCE FOR THE TOWNSHIP OF SOUTH FRONTENAC:

_____

(LICENCE NUMBER)

THIS APPLICATION MUST BE REVIEWED AS TO THE SUITABILITY OF THE LOCATION PRIOR TO ANY LICENCE BEING ISSUED.

COMMENTS AND CONDITIONS:

_____

_____

_____

APPLICANTS ARE ADVISED THAT THE APPROVAL OF OTHER AUTHORITIES MAY BE REQUIRED: eg) HEALTH UNIT; PROVINCIAL VEHICLE PERMIT, VENDOR'S PERMIT ETC.

I, _____, SWEAR THAT THE INFORMATION GIVEN IN THIS APPLICATION AND ANY SUPPORTING DOCUMENTS IS TRUE AND COMPLETE AND I UNDERSTAND THAT FALSE STATEMENTS COULD RESULT IN THE REVOCATION OF A LICENCE IF GRANTED.

SWORN BEFORE ME AT THE TOWNSHIP OF SOUTH FRONTENAC
THIS _____ DAY OF _____, 20___.

_____

(SIGNATURE OF APPLICANT)

_____

(COMMISSIONER etc.)

**** THE PERSONAL INFORMATION CONTAINED ON THIS FORM IS COLLECTED UNDER AUTHORITY OF THE MUNICIPAL ACT AND BY-LAW 2014-48 AND WILL BE USED TO DETERMINE ELIGIBILITY FOR A LICENCE.

SCHEDULE "B"

TO BY-LAW 2014-48

FEES

Mobile eating establishments and/or seasonal stands:

1. Existing non-conforming use and occupation of commercially zoned land with an occupied building.

   Fee = $150.00

2. Occupation of commercially zoned land with a vacant building.

   Fee = $300.00

3. Occupation of commercially zoned vacant land.

   Fee = $500.00

SCHEDULE "C"

TO BY-LAW 2014-48

REQUIREMENTS FOR FIRE DEPARTMENT APPROVAL

The following requirements must be met for Fire Department Approval of a mobile eating establishment, which utilizes equipment for the cooking of food.

1. A smoke alarm shall be mounted on the ceiling of the mobile eating establishment.

2. A carbon monoxide detector shall be mounted as low as possible on the inside of the mobile eating establishment away from direct wind.

3. One dry chemical extinguisher of a size to be determined by the Ontario Fire Code, Section 6.2.6.9 shall be supplied.

4. The fire extinguisher shall be mounted in accordance with the requirements of Ontario Fire Code Section 6.2.1.3. (1)

5. All mobile eating establishments shall be equipped with an exhaust hood that complies with NFPA 96 2-1 to 2-5 inclusive.

6. The minimum distance from a building shall be 4.6 meters or 15 feet. If the distance is less than 4.6 meters or 15 feet then the requirements of the Ontario Fire Code for Commercial Cooking Equipment, Sections 2.6.1.12 to 2.6.1.14 inclusive shall apply.