

TOWN OF MARKHAM
Ontario



BY-LAW 2002-296

**A BY-LAW TO PROVIDE FOR THE LICENSING AND REGULATION OF
EATING ESTABLISHMENTS AND FOOD STORES**

This By-law is printed under and
by authority of the Council of
the Town of Markham

(Consolidated for convenience only
to December 14, 2007)

Amended by:
By-law 2007-282 – December 11, 2007



2002-296

To Provide for the Licensing and Regulation of Eating Establishments and Food Stores

WHEREAS the *Municipal Act, 2001* provides that Council may, by by-law, licence and regulate eating establishments in the municipality and may revoke such licence;

AND WHEREAS the Town of Markham deems it advisable to enact a by-law to licence and regulate Eating Establishments and Food Stores for health and safety reasons;

THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF MARKHAM ENACTS AS FOLLOWS:

1. DEFINITIONS:

“**Applicant**” means the individual making application for a license to operate an eating establishment in the Town.

“**By-Law**” means this by-law;

“**Committee**” means the Licensing Committee of the Town;

“**Eating Establishment**” means a building or place where food and drink are prepared and offered for sale for takeout or to be consumer on the premises;

“**Food or Drink**” includes any kind of food, refreshment, alcoholic and non-alcoholic beverages, and any other commodity intended for human consumption;

“**Food Safety Inspection Report**” means a report issued by the Medical Officer of Health to an eating establishment or food store as a result of any inspection conducted pursuant to the *Health Protection and Promotion Act* or the regulations enacted thereunder, as amended from time to time;

“Foodstuffs” means an edible commodity meant for human consumption and shall include but not be limited to items dispensed from vending machines;

“Food Store” means any premises or part thereof where foodstuffs are sold, offered for sale, or displayed, but not intended for consumption on the premises;

“Licensing Officer” means the person or persons authorized by Council to act on their behalf in all matters relating to this By-Law;

“Medical Officer of Health” means the Medical Officer of Health for the York Regional Health Unit as defined in the Health Protection and Promotion Act and the regulations enacted thereunder, or his designate;

“operator” means the person responsible for the management or supervision of an eating establishment or food store or any serving person employed or performing services therein;

“owner” means any person who owns a business licensed or required to be licensed under this by-law;

“person” means a natural person, a corporation or a partnership;

“premises” means any premises licensed or required to be licensed under this by-law;

“Provincial Offence Officer” means a person appointed by By-Law of The Corporation of the Town of Markham as a Provincial Offence Officer pursuant to the authority under section 15 of *The Police Services Act*, R.S.O. 1990, c. P.15 or designated in writing by a Minister under subsection 1(3) of *The Provincial Offences Act*, R.S.O. 1990, c. P.33 as a Provincial Offences Officer;

“to operate” includes to manage, supervise and otherwise be responsible for the control, management or supervision of an Eating Establishment or Food Store and includes any serving person employed or performing services therein, whether or not the person so operating such establishment is licensed or required to be licensed under this By-Law;

“Town” means The Corporation of the Town of Markham.

2. GENERAL PROVISIONS

2.1 Every person who owns or operates an Eating Establishment or Food Store shall obtain a licence as required under this By-Law.

- 2.2 No owner or operator of a business, trade, calling, occupation or profession licenced or required to be licenced under the terms of this By-Law shall carry on or permit to be carried on, a business, trade calling, occupation or profession as stated in this By-Law, within the Town of Markham unless a licence has been issued authorizing such business, trade, calling, occupation or profession pursuant to the terms of this By-Law.
- 2.3 Every person who owns or operates more than one eating establishment or food store shall obtain a separate licence for each separate store or premises.
- 2.4 No licence issued pursuant to the terms of this By-Law shall be transferred, sold, leased, subleased, rented or assigned to any person other than the person named on the licence.
- 2.5 No person shall enjoy a vested right in the continuance of a licence and the value of a licence shall be the property of the Town and shall remain so irrespective of the issue, renewal or revocation thereof.
- 2.6 No person licenced to carry on any trade, calling, business or occupation pursuant to this By-Law shall advertise, promote or carry on such trade, calling business or occupation under any name other than the name endorsed upon his licence.
- 2.7 Every person licenced under this By-Law shall produce, upon demand of any person authorized to enforce the provisions of this By-Law, the licence issued pursuant to this By-Law.
- 2.8 The following persons are authorized to enforce the provisions of this By-Law:
 - (a) the Licensing Officer
 - (b) a Provincial Offences Officer
 - (c) the Chief Fire Official
 - (d) the Chief of Police
 - (e) the Chief Building Official
- 2.9 An establishment or premise shall at all times when the said premises are open to the public, be entered and inspected by any person authorized to enforce the provisions of this By-Law.
- 2.10 No person shall hinder or obstruct any person authorized to enforce the provisions of this By-Law from entering or inspecting a Premise or part thereof for the purposes of enforcing the provisions of this By-Law.

- 2.11 Every Licencee shall notify the Licensing Officer of the Town, in writing, within seven (7) working days after the event, of any change in any of the information contained in the application or renewal form.
- 2.12 The fees in this By-Law shall be payable in full and not be pro-rated.
- 2.13 The original licence issued in respect of this By-Law shall be posted in a conspicuous place within the Premises.
- 2.14 Any licence granted under this By-Law shall be cancelled by the Licensing Officer where such licence has been issued through error or contrary to the provisions of any other by-law or regulation.
- 2.15 In this By-Law, the words expressed in one gender shall include both genders.
- 2.16 Every licence issued under this By-Law shall expire on **December 31** each year.

3. ADMINISTRATION, APPLICATION, RENEWAL OF LICENCES

- 3.1 The Licensing Officer shall:
 - a) receive and process all applications for licences and renewal of licences required under this by-law;
 - b) administer the issuance of licences in accordance with the provisions of this by-law;
 - c) maintain and keep records of all applications received and licences issued;
 - d) generally perform administrative functions incidental and necessary to the due administration and enforcement of this By-Law;
 - e) where a licence has been issued pursuant to this By-Law and otherwise remains in full force and effect, renew the licences of persons who meet the requirements of this By-Law.
- 3.2 Every person making application for a licence under this By-Law shall do so in person at the Town of Markham and no person other than the applicant shall complete the prescribed forms. Where such person is a corporation then such application shall be made by a director or officer of that corporation. Where such person is a partnership, then such application shall be made by one of the partners.

- 3.3 Every person making application for a licence under this By-Law shall at the time of application submit the appropriate fees as set out in By-Law No. 2002-284 and shall submit any forms or documents required or requested by the Licensing Officer.
- 3.4 If the applicant is a corporation, the application must be accompanied by a certified copy of the incorporating document showing the names and addresses of all directors and officers.
- 3.5 If the applicant is a registered partnership, a certified copy of the Registered Declaration of Partnership showing the names and addresses of all partners.
- 3.6 Prior to the issuance of a licence, a copy of the application shall be forwarded to the Medical Officer of Health, the Chief Fire Official, and any other departments of the Town and any other public authorities as may be required under this By-Law or other legislation, or which may be affected, for a report.
- 3.7 If the Licensing Officer does not receive any adverse report and all other requirements of this By-Law have been met, the Licensing Officer shall issue the licence.
- 3.8 In the event that an adverse report is received, the Licensing Officer shall not issue the licence and shall forthwith notify the applicant in writing of such report. The applicant shall be given forty-five (45) days to contact the Licensing Officer to advise of steps taken or to be taken to correct the deficiencies. Failure to do so will result in termination of the application.
- 3.9 Receipt of the application or the licence fee by the Town shall not represent approval of the application for the issuance of a licence nor shall it obligate the Town to issue such licence.
- 3.10 Every licensee shall notify the Licensing Officer, in writing, within seven (7) days after the event, of any change in any of the information contained in the application or renewal form.
- 3.11 Where a change has occurred in the business name of a licensee, the licensee shall notify the Licensing Officer within seven (7) days of the date of the change of the new information.

4. LICENCE REVIEW AND HEARINGS

- 4.1 The Licensing Officer shall, upon receipt of an application for a licence or the renewal

thereof, make or cause to be made such investigations as may be necessary with respect to such application and shall:

- (a) if the investigation or any other information available to the Town discloses reasonable grounds to believe that the applicant may not be entitled to the issuance or renewal of a licence on the grounds referred to in section 4.5 or by reason of any other provision of this By-Law, forthwith cause notice of this fact to be sent by prepaid mail to the applicant at the address as shown on the application form; or
- (b) subject to the provisions of this By-Law, direct that the licence be issued or renewed.

4.2 A notice sent pursuant to clause 4(1)(a) shall include:

- (a) a statement that the applicant may request a hearing of the application before a Committee of Council by delivering a written request for a hearing to the Clerk within thirty (30) days of the date of the notice sent pursuant of clause 4(1)(a); and
- (b) a statement that if no request for a hearing is delivered by the applicant in accordance with clause (a) of this subsection, the application will not be granted.

4.3 Where the Town receives a request for a hearing from an applicant for a licence in accordance with clause 4(2)(a), the application for a licence shall be forwarded forthwith to a Committee of Council for a hearing.

4.4 If, before the expiry of a licence, the applicant has applied for renewal of the licence and has remitted the prescribed fee, the licence shall be deemed to continue:

- (a) until the renewal is granted, or
- (b) if the licensee is served with a notice under clause 4(2)(a), until the time for requesting a hearing has expired and, where a hearing has been requested, until the Committee of Council has made a disposition of the application.

4.5 An applicant for a licence, or for the renewal of a licence is, subject to the provisions of this By-Law, entitled to be issued the licence or renewal, except where:

- (a) the conduct of the applicant affords reasonable grounds for belief that the applicant has not carried on, or will not carry on his or her business or occupation in accordance with law and with integrity and honesty; and
- (b) there are reasonable grounds for belief that the carrying on of the business or occupation by the applicant has resulted, or will result, in a breach of this By-Law

or any other law; or

- (c) the applicant is a corporation and its conduct or the conduct of its officers, directors, employees or agents affords reasonable grounds for belief that its business or occupation has not been, or will not be, carried on in accordance with law and with integrity and honesty; or
 - (d) there are reasonable grounds for belief that the premises, accommodation, equipment or facilities in respect of which the licence is required have not complied, or will not comply, with the provisions of this By-Law or any other law; or
 - (e) the conduct of the applicant or other circumstances afford reasonable grounds for belief that the carrying on of the business by the applicant has infringed, or would infringe, the rights of other members of the public, or has endangered, or would endanger, the health or safety of other members of the public.
- 4.6 The Committee of Council shall consider at a public hearing all applications for licences or renewal of licences referred to it pursuant to subsection 4(3) of this By-Law and the Committee of Council may, subject to this By-Law, grant the licence applied for or may refuse to grant such licence, or may grant the licence to the applicant upon such conditions as the Committee of Council considers appropriate and as are authorized by law.
- 4.7 The Licensing Officer may refer to the Committee of Council for a hearing any matter in respect of which a licence may be refused, suspended, revoked or have conditions imposed on it pursuant to this by-Law.
- 4.8 The Committee of Council may, for any of the reasons set out in section 4.5 of this By-Law:
- (a) suspend or revoke any licence issued under this By-Law;
 - (b) impose such conditions upon a licence as it considers appropriate and as are authorized by law;
 - (c) suspend a licence or continue the suspension of a licence where a hearing which has been commenced is for any reason adjourned, pending final disposition of the hearing.
- 4.9 Despite section 4.7 of this By-Law, the Committee of Council may, having regard to the conduct of the business by the licensee, suspend the passing of penalty and direct that the licence continue on such conditions as the Committee of Council considers just and as

are authorized by law.

- 4.10 Where a licensee who is bound by conditions issued in accordance with section 4.8 is found to have contravened those conditions or any provision of this By-Law, in addition to any penalty that the Committee of Council may impose in respect of that contravention, the panel of the Committee of Council which issued the conditions may:
- (a) impose any suspension or revocation of the licence that could have been imposed had the passing of penalty not been suspended; and
 - (b) impose such further conditions as the Committee of Council considers just and as are authorized by law.
- 4.11 Upon suspension or revocation of a licence issued under this By-Law, the licensee shall return the licence and any plate or plates or any other evidence of such licence issued under this By-Law to the Licensing Officer, and the Licensing Officer shall have access to any premises, or other property of the licensee for the purpose of receiving or taking the licence, or other evidence of such licence and no person shall refuse to deliver the licence, or other evidence of such licence to the Licensing Officer or shall in any way prevent or hinder the receiving or taking of same.
- 4.12 Notice of the revocation of any licence may be given by the Licensing Officer by registered letter, mailed to the address given by the licensee in his or her application for the licence, or by communication to the licensee in any manner whatsoever and upon such notice, the licence revoked shall cease and terminate and be of no further effect.
- 4.13 The Clerk shall, prior to the commencement of any hearing before the Committee of Council, give to the licensee or applicant at least seven (7) days notice of such hearing, mailed or delivered to the address last known to the Licensing Officer.
- 4.14 The proceedings of the Committee of Council shall be taken down and recorded by a court reporter.
- 4.15 All hearings conducted before the Committee of Council shall be governed by the *Statutory Powers Procedures Act*, R.S.O. 1990, c. S.22.
- 4.16 A decision of the Committee of Council made in a matter heard under this By-Law must be presented to Council for final adoption.

5. DISCLOSURE REQUIREMENTS

- 5.1 Every application for a licence for an Eating Establishment or Food Store shall be

submitted to the Medical Officer of Health and any report received by the licensing department in response thereto shall be considered in the determination of whether or not the licence should be issued or refused in accordance with this By-Law.

- 5.2 Notwithstanding any other section of this By-Law, every owner and operator of an eating establishment and food store shall post a notice of availability of the Food Safety Inspection report.
- 5.3 Every owner and operator of an eating establishment and food store shall, when so requested by any person, produce the most recent Food Safety Inspection Report or reports.

6. PENALTY

- 6.1 Any person who contravenes the provisions of this By-Law is guilty of an offence and, upon conviction, is liable to a maximum fine as established pursuant to the *Provincial Offences Act*, R.S.O. 1990, c. P.33 as amended.
- 6.2 If a court of competent jurisdiction declares any provision or any part of a provision of this By-Law to be invalid or to be of no force and effect, it is the intention of the Council in enacting this By-Law, that each and every other provision of this By-Law authorized by law, be applied and enforced in accordance with its terms, to the extent possible according to law.

7. ENACTMENT

- 7.1 By-Law No. 2002-75, "A By-Law to Provide for the Licensing and Regulation of Eating Establishments" shall be repealed effective January 1, 2003.

READ A FIRST, SECOND AND THIRD TIME AND PASSED THIS 10TH DAY OF
DECEMBER, 2002.

"Sheila Birrell"

TOWN CLERK

"Don Cousens"

MAYOR