

CITY OF WHITEHORSE

BYLAW 2013-23

A bylaw to provide for the licensing and regulating of businesses in the City of Whitehorse

WHEREAS section 247 of the *Municipal Act* (R. S. Y. 2002) provides that Council may by bylaw impose and collect business licenses and fees, inspection fees, parking fees, recreation fees and other fees, utility charges, fines and penalties as considered necessary; and

WHEREAS section 247 of the *Municipal Act* provides that Council may by bylaw take into revenue fines, interest on deposits and investments, any charges for the operation of any services or utilities under the control of Council, and any other funds the municipality may acquire; and

WHEREAS it is deemed desirable to license and regulate businesses carried on or operated within the City:

NOW THEREFORE, the Council of the municipality of the City of Whitehorse, in open meeting assembled, hereby ENACTS AS FOLLOWS:

SHORT TITLE

1. This bylaw may be cited as the "**Business License Bylaw**".

APPLICATION

2. This bylaw applies to any person conducting business within the boundaries of the City.
3. Wherever the singular or masculine is used in this bylaw, they shall be construed as being the plural or feminine or vice versa.

SEVERABILITY

4. If any section, subsection, clause, sub-clause or phrase of this Bylaw is for any reason held to be invalid, unlawful or unenforceable by the decision of any Court or competent jurisdiction, that section, subsection, clause, sub-clause or phrase shall be struck from the Bylaw and its severance shall not affect the validity of the remaining portions of this Bylaw.

INTERPRETATION

5. In this bylaw, unless the context otherwise requires, "ADULT" means a person who is over 18 years of age.

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"ADULT BOOK, ADULT MAGAZINE or ADULT VIDEO means any book, magazine, movie or video medium primarily appealing to or designed to primarily appeal to erotic or sexual appetites, or which depicts violence or cruelty.

"AGENT" means a person vested with authority to represent or act for others.

"AMUSEMENT PARK" means any premises where mechanical, electrical, or other devices or exhibits are designed for entertainment of the public.

"APPLICANT" means a person who applies for a license or renewal of a license.

"BUSINESS" means:

- (1) a commercial, merchandising or industrial activity or undertaking;
- (2) a profession, trade, occupation, calling or employment; or
- (3) an activity providing goods or services.

"BYLAW" means this bylaw and all appendices forming part of this bylaw, and includes any amendments thereto.

"CHARITABLE ORGANIZATION" means a corporation, trust, or organization registered as a charity under the federal Income Tax Act for the purpose of conducting charitable activities such as relief of poverty, advancement of education, advancement of religion, or certain other purposes that benefit the community. The income from a charitable organization cannot be used for the personal benefit of any of its members, shareholders, or governing officials.

"CHILD" means a person who is, or without evidence to the contrary, appears to be, under the age of twelve years.

"CIRCUS" means a large, public entertainment, typically presented in one or more very large tents or in an outdoor or indoor arena, featuring a variety of performances by acrobats and other performers.

"CITY" means the City of Whitehorse.

"CITY MANAGER" means the City Manager of the City of Whitehorse.

"COUNCIL" means the duly elected council of the City of Whitehorse.

"DESIGNATED OFFICER" means an employee of the City of Whitehorse, or an authorised representative as designated by the City Manager.

"DOOR-TO-DOOR SALESPERSON" means any person who, whether as principal or agent:

- (1) goes from door-to-door and offers goods, wares or merchandise for sale; or
- (2) offers or exposes for sale to any person by means of samples or merchandise to be afterwards delivered or shipped into the City, other than as a mail order business or a wholesale or retail dealer in such merchandise having a permanent place of business in the City.

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“GARAGE SALE” means the occasional sale of second-hand household goods belonging to the owner or tenant of residential premises as an accessory use only to the residential dwelling.

“INTER-MUNICIPAL LICENSE” is an Inter-Municipal Business License issued by any municipality signatory to the Inter-Municipal Business License Agreement negotiated between the City and other Yukon municipalities.

“LICENSE” means any business license issued pursuant to this bylaw.

“LICENSED PREMISES” means an establishment holding a Government of Yukon Liquor Board license to sell or distribute liquor.

“LICENSEE” means the holder of a current license under this bylaw.

“LICENSE FEE” means a fee payable for a license under Appendix “A” of the Fees and Charges Bylaw.

“MINOR BUSINESS ACTIVITIES” means operations conducted within the City that involves minimal operating activities and revenue. These operations include artists who sell their products at special events and party plan activities (e.g. Tupperware; Fifth Avenue Jewellery, etc.).

"MOBILE VENDOR" means an independently operated vehicle, structure, or mobile food vending apparatus occupying public or private space typically for the purpose of providing food and beverages, retail products, or services for commercial sale by a business entity, in an outdoor setting to either passers-by or seated patrons.

“NET FLOOR AREA” means the floor area of a building or structure, or part thereof measured from the glazing line or interior walls whether above, below, or at grade excluding attics, boiler rooms, common corridors, electrical vaults, elevators, mechanical rooms, stairwells, and toilets.

“NON-PROFIT SOCIETY” means a group registered with the Government of Yukon as a non-profit society (in good standing) under the *Societies Act*.

“NON-RESIDENT BUSINESS” means any business other than a Resident Business.

"OPERATOR" means a person who owns or operates a business, whether or not the business is licensed pursuant to this bylaw.

"PERSON" means an individual, a corporation, an association or a partnership.

"PREMISES" means a store, office, dwelling unit, warehouse, factory, building, enclosure, yard or other place occupied or capable of being occupied, by any person for the purpose of carrying on any business.

“PUBLIC LAND” means land that is owned by the City of Whitehorse.

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“RESIDENT BUSINESS” means any business which operates from a fixed location within the Yukon or any Door-to-Door Salesperson or Mobile Vendor which is operated by a person residing within the Yukon for six (6) consecutive months immediately prior to the date of application for a business license.

"RETAIL SALES/WHOLESALE OUTLETS" means all businesses offering goods, wares and merchandise for sale.

“SEASONAL LICENSE” means a business operating for a maximum of six (6) consecutive months per year and includes but is not limited to mobile vendors, contractors, consultants, tour operators, charter operations, and seasonal rental accommodations.

“STANDARD LICENSE” means a business license that is issued for a twelve (12) month period.

“TRADE NAME” means the name supplied by an applicant and used to identify a business to patrons.

“VENDING MACHINES” means a machine that dispenses small articles including food, drinks, or other products when a coin, bill, or token is inserted.

“YOUNG PERSON” means a person who is, or without evidence to the contrary, appears to be, twelve years of age or more, but under eighteen years of age.

DUTIES AND RESPONSIBILITIES

6. The Designated Officer is hereby delegated the authority to grant licenses pursuant to the provisions of this bylaw.
7. The Designated Officer is hereby delegated the authority to refuse, suspend or cancel licenses under this bylaw after having given the applicant or licensee, as the case may be, written notice of the proposed decision as outlined in section 47 of this bylaw.
8. The Designated Officer shall,
 - (1) ascertain as far as reasonably practicable that all information furnished by an applicant in connection with an application for a license or transfer of license is true in substance and fact;
 - (2) prepare and issue all licenses pursuant to the terms of this bylaw;
 - (3) inspect as often as necessary all premises licensed or required to be licensed pursuant to the provisions of this bylaw in order to ascertain that such premises comply with the said provisions; and
 - (4) prosecute any person who fails to comply with the provisions of this bylaw.

GENERAL REGULATIONS AND LICENSE APPLICATIONS

9. No person shall operate any business within or partly within the City without first having obtained a City of Whitehorse Business License and paid the license fee.

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10. Any person, company or organization operating a business, as defined in this bylaw, shall require a business license.
11. A non-profit organization that is charging for services or selling goods is considered a business, and shall require a business license and pay the applicable license fee.
12. Before the issuance or renewal of a license, an applicant must submit to the City:
 - (1) an application in a form established by the City;
 - (2) the license fee;
 - (3) a trade name certificate from Yukon Government Community Services if the applicant is naming the business anything other than their name;
 - (4) a letter of compliance from the Yukon Workers' Compensation Health and Safety Board if the applicant is employing anyone other than themselves or the company is registered as a limited (Ltd.) company;
 - (5) a letter of approval from Yukon Government Health and Social Services if the business relates to any kind of food service or personal service;
 - (6) proof of liability insurance as detailed in section 40; and
 - (7) any other information required pursuant to this bylaw.
13. Every license issued pursuant to this bylaw shall be valid only with respect to the address of the business stipulated thereon and a separate license is required for each location where a business operates within the City.
14. A valid license will permit a business to carry on the specific activities described in the license application. A licensee must not carry on activities which contravene the provisions of their license or any provisions of this bylaw.
15. A license issued under this bylaw is not transferable from one person, organization or business to another unless authorized by a Designated Officer under section 39.
16. No person shall interfere with or obstruct the Designated Officer in the performance of any duties.

SEPARATE LICENSE

17. Where there is more than one separate and distinct business activity operating in or from one premise, each business shall be deemed a separate business and shall require a separate license.
18. The Designated Officer may use discretion to determine whether a business activity falls within an existing license or whether a new license is required.

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19. Where there is more than one separate and distinct trade name displayed within one premise, each trade name shall be deemed to indicate the operation of a separate business, for which a separate license is required.
20. Where an umbrella organization such as a farmer's market, tradeshow, or craft fair charges for the use of their space, they shall be required to obtain a business license. Participants who are selling goods at these events are also required to obtain their own license.

EXEMPT FROM LICENSE

21. A license is not required for:
 - (1) a registered charitable organization;
 - (2) a non-profit organization that does not conduct business activities;
 - (3) a performance, concert, exhibition, cultural event or entertainment for which the entire proceeds, above actual expenses, are devoted to a charitable organization;
 - (4) a performance, concert, exhibition, cultural event or entertainment held in a public theatre or other establishment that holds a current business license;
 - (5) a garage sale;
 - (6) rental property management services involving three or less rental units, offices, suites, rooms, or spaces within the City;
 - (7) political events and canvassing; and
 - (8) temporary fundraising activities.
22. The Designated Officer may use discretion when determining whether a particular organization, group or entity is exempt from obtaining a business license.

LICENSE TERM

23. A standard business license required by this bylaw is issued for a 12 month period and shall expire 12 months from the date of issue.
24. A seasonal business license required by this bylaw is issued for a six month consecutive period.
25. The City shall not issue a renewal notice for seasonal business licenses upon the expiration of the license term.

LICENSE FEE

26. A license is not valid until it has been issued by the Designated Officer and the license fee has been paid.

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27. An applicant for a license must pay to the City the applicable license fee for that business as set out in Appendix 'A' of the City of Whitehorse Fees and Charges Bylaw. No license shall be issued until the fee is paid.
28. The applicable license fee must be paid:
 - (1) at the time of application for the original business license; and
 - (2) on or before the expiration date of the current license if the business is to be carried on beyond the date when the current license expires.
29. The holder of a valid City of Whitehorse business license shall not be entitled to a refund once the license has been issued.
30. The licensee shall notify the Designated Officer of any change regarding the business license and as a result of the change, shall pay any additional fees required by this Bylaw or any other Bylaw/Legislation.
31. Where the holder of an existing license applies for an additional license, the fee payable for the additional license shall be adjusted so that the renewal date for the additional license falls on the same renewal date as the applicant's existing license.
32. Where license fees are calculated on a square metre basis, the area shall be calculated based on the net floor area of the business commercial space.
33. Council may review the business license fees on an annual basis to ensure that they are reflective of annual inflation, are comparable to other municipalities, and are reflective of City business license operating expenses.

CONDITIONAL LICENSES

34. Where the Designated Officer issues a license subject to certain conditions, the license shall be endorsed with the particulars of such conditions.

LICENSES SUBJECT TO OTHER BYLAWS AND REGULATIONS

35. A license issued under this bylaw is not to be deemed to be a representation by the City to the licensee that the business or proposed business complies with any or all applicable bylaws or other enactments, and the licensee shall ensure compliance with bylaws and other enactments. Where the licensee is found to be in violation of any other bylaw or enactment, the Designated Officer shall cancel the license and not refund the license fees.

TRANSFER OF LICENSE

36. Where a licensee makes application to change the place of business, the Designated Officer may, upon the payment of the prescribed transfer fee and the surrender of the original license, issue a replacement license reflecting the address of the new place of business.

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37. A licensee must notify the Designated Officer in writing of any change in the type or nature of the business, and any change in the location or ownership of the business.
38. No replacement license shall be issued in accordance with this bylaw where the premises to which the applicant wishes to transfer the license do not comply with the requirements of all applicable bylaws, or the proposed use of those premises would not comply with the requirements of the said bylaws.
39. Where a licensee makes application to transfer the license to another person or to change the name of the business, the Designated Officer shall, upon receipt of required documentation and payment of the prescribed transfer fee and the surrender of the original license, issue a replacement license in the name of the transferee.

LIABILITY INSURANCE

40. All applications for any business being conducted on public land shall supply proof of valid public liability insurance in an amount of at least two million dollars (\$2,000,000.00). The City may require public liability insurance at a higher rate at its sole discretion. The licensee is required to maintain such insurance in force throughout the period that the business license is in effect. The City shall be included as an additional insured and shall be provided 30 days prior notice of cancellation on all general liability policies.

POSTING OF LICENSE IN PREMISES

41. Every licensee shall post the business license in a prominent and conspicuous location to which the public has access, at the place of business for which the license was issued. Where a licensee has no premises within which to post the license, the licensee shall produce the license when required to do so during business hours by a Designated Officer.
42. Upon request from the general public, every licensee shall produce a copy of his/her current business license.

INSPECTIONS

43. A licensee shall permit a Designated Officer to enter and inspect any business premises for the purpose of determining compliance with this bylaw.
44. Upon request by the Designated Officer, all licensees shall produce all documents related to the business including the license, proof of insurance, and any other certification or letters of approval.
45. No person shall attempt to prevent, obstruct or hinder the Designated Officer from making an inspection authorized by this bylaw.

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SUSPENSION OF LICENSE

46. A Designated Officer may suspend a license if the licensee:
- (1) is convicted of an offence under any municipal bylaw or statute of the Territory with respect to the business for which the business is licensed, or with respect to the premises named in the business;
 - (2) has been guilty of such gross misconduct in respect of the business or with respect to the premises named in the business license that it warrants the suspension of the business license;
 - (3) has ceased to meet the lawful requirements to carry on the business for which he/she is licensed, or with respect to the premises named in the business license; or
 - (4) has, in the opinion of the Designated Officer, conducted the business in a manner, performed a service in a manner, or sold, offered for sale, displayed for sale or distributed anything that may be harmful or dangerous to the health or safety of a child or young person.
47. In the event of suspension of the business license by the Designated Officer, the suspension shall be made in writing, signed by the Designated Officer, and served on the licensee at the address given by the licensee on the application form for the business license, or his/her last known address, or delivered to the licensee by registered mail.
48. A notice of suspension may be posted by the Designated Officer upon the premises for which the license was issued and the notice shall not be removed until the license is reinstated, or the suspended licensee ceases to occupy the premises, or a new license is issued for the premises.
49. No person shall operate a business for which a license required by this bylaw is under suspension.

REVOCAION OF A LICENSE

50. The Designated Officer may revoke a license for reasonable cause after giving notice in writing to the licensee and after giving the licensee an opportunity to be heard.
51. A notice of revocation of a license may be posted by the Designated Officer upon the premises for which the license was issued and the notice shall not be removed until the former licensee ceases to occupy the premises, or a new license is issued for the premises.
52. The notice and opportunity to be heard in section 50 is not required where a licensee by reasonable effort cannot be found.

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APPEAL

53. Any person or business who has applied for but failed to be granted a license or who has had their business license suspended under stipulations of this bylaw or who has had their license revoked may appeal the suspension in writing to Council within 30 days after the license has been suspended, and Council may grant the request for reinstatement of the business license.
54. The right of appeal under section 53 shall be barred and extinguished if not received in writing by Council within the 30 day period set out in this bylaw.

SPECIFIC BUSINESS REGULATIONS

Vending Machines

55. Any person operating more than three vending machines within the City shall be required to purchase a business license.
56. No business license shall be required with respect to:
 - (1) Vending machines which serve or vend only products produced by the owner of the vending machine or his employees; or
 - (2) Coin operated washers, dryers, or other laundry equipment provided by the owner of any apartment, boarding house, or rooming house or tourist facility for the exclusive use of the residents thereof; or
 - (3) Coin operated vehicle-washing equipment provided for the exclusive use of residents at a tourist facility.

Goods Offered for Sale on Streets or Public Land

57. No person shall display, store, or accumulate goods or merchandise which are offered for sale or intended to be offered for sale on any street, sidewalk, boulevard, or other public land unless authorized in advance by the Designated Officer.
58. Where goods or merchandise are found stored on a street, sidewalk, boulevard or public land, a Designated Officer may take said goods or merchandise into custody and cause them to be taken to a safe and suitable place, and the said goods or merchandise shall not be released to the owner thereof until the said owner or his agent has paid all costs and charges incurred in the removal and storage of the goods.
59. Goods or merchandise taken into custody that is not reclaimed within three months may be offered for sale by public auction.
60. At the discretion of the Designated Officer the temporary display and sale of merchandise or goods by licensed businesses on sidewalks directly adjacent to their place of business may be allowed, subject to other City bylaws and policies.

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61. Mobile Vendors are not permitted to display goods or merchandise which are offered for sale or intended to be offered for sale on a street, sidewalk or boulevard, or other public land other than at pre-determined locations authorised in advance by the City.

Adult Book, Adult Magazine or Adult Video

62. Persons who offers adult books, adult magazines, or adult videos for sale, rent, or lease in any premises where such items are on display to the public shall place such items:
- (1) At a distance not less than 1.5 metres above the floor; and
 - (2) In display cases in such manner that only the title is displayed; and
 - (3) In display cases that are within clear view of the area where payment is made for purchased items.
63. No person shall provide any adult books, adult magazines, or adult videos to any child or young person.

Door-to-Door Salesperson

64. All applications for a door-to-door salesperson business license where the operator visits private residential dwellings door-to-door must be accompanied by a Royal Canadian Mounted Police "Consent to Release of Information" form for the purpose of performing a criminal record check.
65. No door-to-door salesperson business license where the operator visits private residential dwellings door to door shall be issued to any person who has been convicted under the *Criminal Code of Canada* for an offense relating to:
- (1) any sexual offence or an offence tending to corrupt public morals; or
 - (2) an offence relating to robbery or extortion.
66. For door-to-door salesperson businesses with more than one salesperson, the company shall be required to register with Yukon Government Community Services and have Yukon Workers' Compensation Health and Safety Board coverage for each salesperson.
67. Each salesperson within a door-to-door salesperson business shall be required to undergo a criminal records check.
68. Each salesperson of a door-to-door salesperson business shall carry a City-issued identification card.
69. Each member is required to display to any person they are conducting business, a copy of the business license and identification card.

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Mobile Vendors

70. Mobile vendors who sell food and beverages are required to submit Yukon Government Health and Social Services approval for new licenses and renewals.
71. All applications for a mobile vendor shall submit written permission from the property owner where the vehicle, structure or apparatus is located on.

Minor Business Operations

72. The discretion of whether a business falls within the minor business category is left to the Designated Officer.

PENALTY

73. Any person who fails to comply with the requirements of this bylaw commits an offence and is liable, upon summary conviction, to:
 - (1) a voluntary fine under section 20 of the *Summary Convictions Act*, issued in respect of an offence specified in Appendix "A" attached hereto and forming part of this bylaw;
 - (2) a fine not exceeding ten thousand dollars (\$10,000.00) where proceedings are commenced pursuant to the summary conviction provisions of the *Criminal Code of Canada*; or
 - (3) a fine not exceeding five hundred dollars (\$500.00) where proceedings are commenced pursuant to the *Summary Convictions Act* of the Yukon.

REPEAL

74. Bylaw 99-04, including all amendments thereto, is hereby repealed.

COMING INTO FORCE

75. This bylaw shall come into full force and effect upon the final passing thereof.

FIRST and SECOND READING: May 13, 2013
THIRD READING and ADOPTION: May 27, 2013

ORIGINAL BYLAW SIGNED BY:

"Dan Curtis"

Dan Curtis, Mayor

"N. L. Felker"

Norma L. Felker, Assistant City Clerk

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APPENDIX "A" VOLUNTARY FINES

<u>Ticket Description</u>	<u>Penalty</u>
No license	\$200.00
Contravene a condition of the license	\$200.00
Operation of a business while suspended or revoked	\$400.00
Fail to provide information or a license	\$200.00
Fail to display a license in public view	\$50.00
Failure to notify of a change in business	\$100.00
Obstructing a license officer	\$400.00
Mobile Vendor, unauthorised locations	\$200.00
Adult material improperly displayed	\$200.00
Adult material provided to child or young person	\$200.00