

**DISTRICT OF PORT HARDY
BYLAW NO. 16-2006**

**A BYLAW TO PROVIDE FOR THE LICENSING AND REGULATING
OF BUSINESSES WITHIN THE DISTRICT OF PORT HARDY**

WHEREAS Council deems it necessary and expedient to provide for regulating and licensing of businesses;

NOW THEREFORE, the Municipal Council of the District of Port Hardy, in open meeting assembled, ENACTS as follows:

1. TITLE

This bylaw may be cited as the "Business Licence Bylaw No. 16-2006."

2. DEFINITIONS

In this bylaw, unless the context otherwise requires:

BUSINESS shall mean the carrying on of a commercial or industrial undertaking of any kind or nature or the providing of professional, personal or other service for the purpose of gain or profit;

COUNCIL shall mean the Council of the District of Port Hardy;

DISTRICT shall mean the municipality of the District of Port Hardy;

EMPLOYEE shall mean a full time employee, permanent part-time or full time equivalent;

FLOOR AREA shall mean the space of any storey of a building between exterior walls;

INSPECTOR shall mean the person appointed from time to time as the Municipal Inspector;

MARINE BUSINESS shall mean any vessel-based business operating from a Port Hardy marina, excluding commercial fish boats.

MOBILE VENDOR shall mean a business utilizing a motor vehicle or a manually powered cart for the purpose of vending food and non-alcoholic beverages.

NON-RESIDENT BUSINESS shall mean a business, other than a resident business, carried on in the District or with respect to which any work or service is performed in the District;

RESIDENT BUSINESS shall mean a business carried on, in or from premises within the District;

RESIDENTIAL BUSINESS shall mean the carrying on of a business within the primary dwelling unit in a residential zone;

3. LICENSING

(a) Council shall:

- (i) require an owner or operator of a business to hold a valid and subsisting licence for carrying on a business;

- (ii) fix and impose licence fees for licences; and
 - (iii) provide for the collection of licence fees and the granting, issuing and transferring of licences.
- (b) Council may establish areas within the District of Port Hardy in which licensed mobile vendors may operate and may make such regulations for mobile vending as it deems appropriate and necessary.

4. EXEMPTIONS

- (a) The following non-resident businesses are not required to hold a licence under this bylaw:
- (i) commercial travellers offering for sale or selling merchandise to merchants for resale by them in the ordinary course of their businesses.
 - (ii) owners or operators of carriers other than taxicabs who either pick up passengers or chattels in the District for discharging or delivering outside the District or deliver in the District passengers or chattels picked up outside the District, or both.
 - (iii) owners or operators of non-resident taxicabs who only discharge passengers in the District.
 - (iv) owners or operators of retail businesses who only deliver commodities sold by them in the ordinary course of business and pick up commodities being returned or exchanged.
 - (v) a wholesaler, manufacturer or processor who is only in the business of offering for sale or selling his own merchandise and delivering it in his own vehicle to merchants for resale by them in the ordinary course of their businesses.
 - (vi) (A) a person practising a profession governed by a special act unless he regularly and generally carries on business in the District;
 - (B) an itinerant seller, as defined by the *Consumer Protection Act*, who furnishes and maintains security pursuant to that *Act* is exempt from Section 11 of this bylaw.

It is also a condition of an itinerant retail business licence that the sellers only sell their goods and wares from commercially zoned property provided written permission is obtained from the owner / agent prior to issuance of the business licence.

- (b) No licence is required under this bylaw with respect to any performance, concert, exhibition or entertainment, the entire proceeds of which, above actual bona fide expenses, are donated to any charitable purpose.
- (c) Upon application to the District by a non-profit organization or service club whose revenues are used solely for charitable or benevolent purposes, the District may waive the licence fee payable. Exempt status may be reviewed upon any changes

in operation of the organization or club.

5. INSPECTOR

(a) Duties

The Inspector may:

- (i) administer this bylaw and any amendment made thereto;
- (ii) keep records of applications made and licences issued pursuant to this bylaw and may keep copies of all documents related to the administration of this bylaw; and
- (iii) be deemed to have authority to enforce this bylaw and to pursue legal action against the owners or agents of those businesses that neglect to do or refrain from doing anything that is required to be done by the provisions of the bylaw.

(b) Powers

The Inspector:

- (i) shall have the power to grant, issue or transfer licences as hereinafter provided;
- (ii) is authorized to carry out the administrative procedures in this bylaw and to require such additional information as may be deemed necessary when dealing with any applicant for a licence pursuant to this bylaw;
- (iii) may approve all premises on or upon which the applicant for a licence proposes to carry on a business and/or all vehicles used in connection herewith prior to granting such licence and the Inspector may, in his discretion, also require such premises or vehicles to be approved by the Medical Health Officer, the Building Inspector, the Fire Chief, the Chief Constable, any Provincial or Municipal Officer, or any one of them, as he deems fit;
- (iv) notwithstanding (iii) above, the Inspector shall require all food service operators to provide evidence of approval from the Health Inspector before issuance of a business license;
- (v) may suspend for such period as he may determine any licence issued pursuant to this bylaw if the holder thereof:
 - (A) is convicted of an offence indictable in Canada;
 - (B) is convicted of any offence under any Municipal Bylaw or Statute of the Province in respect of the business for which he is licensed or with respect to the premises named in his licence;
 - (C) has, in the opinion of the Inspector, conducted his business in a manner or performed a service in a manner or sold, offered for sale, displayed for sale, or distributed to a person actually or apparently under the age of nineteen years anything that may be harmful or dangerous to the health or safety of such person;
 - (D) has, in the opinion of the Inspector, been guilty of such gross misconduct in respect of the business or with respect to the premises named in his licence as to warrant the suspension of his licence;

- (vi) The Inspector shall be permitted by every licensee under this bylaw to reasonable access to the premises for the purpose of determining the fitness of the premises for a licence pursuant to this bylaw.

6. LICENCES

(a) Requirements

The following requirements shall be in effect:

- (i) Every person carrying on, maintaining, owning or operating within the District any profession, business, trade, occupation, calling, undertaking or thing shall hold a subsisting licence therefor from the District and shall pay therefor the fee specified in the current District of Port Hardy Rates Bylaw in respect thereof, which fee shall in all cases be paid in advance.
- (ii) A separate licence is required for each location where a business operates within the District.
- (iii) Every licence issued pursuant to the provisions of this bylaw shall state that the name of the holder thereof is licensed to carry on the profession, business, trade, occupation, calling, undertaking or thing stipulated therein in a lawful manner for the period specified at the place stated therein.
- (iv) Every licence issued under this bylaw shall be in the form prescribed from time to time and each person shall post the same and keep the same posted in a conspicuous place on the premises or on the thing or article in respect of which the licence is issued, and in the case where the holder thereof has no business premises, such licence shall be carried upon his person at all times when he is engaged in the business for which the licence is issued in the District. Any person failing to post up the licence and keep the same posted as aforesaid shall be guilty of an offence and liable for the penalty as herein provided.
- (v) All business licences issued under this bylaw shall be granted as annual licences for each calendar year. The annual business licence fee prescribed in the current District of Port Hardy Rates Bylaw shall be one-half the year's fee for a person who becomes liable to be licensed after the 30th of June in any year. However, no reduction in licence fees shall be made on account of any person ceasing to do business at any particular time.
- (vi) Every holder of a licence to carry on the business of owning, operating or maintaining one or more vending machines shall keep a notice affixed to each machine stating his name, address and telephone number.
- (vii) Every person licensed as a Contractor shall on the written request of the Inspector provide a list of all sub-trades engaged on each specific job on a form prescribed by the Inspector. Failure, neglect or refusal to submit such list within two weeks of delivery of each written request shall be an infraction of the bylaw and render such liable to the penalties hereby imposed.
- (viii) Where one owner carries on more than one classification of business set forth in this bylaw from one premise, that owner shall pay to the municipality

the full licence fee based on the total number of employees of all businesses.

- (ix) All marine businesses must provide proof of liability insurance of a minimum amount of \$2,000,000 naming the District of Port Hardy as an “additional insured”. Proof must be provided at the time of issuance of a business licence.
 - (x) Each shopping mall shall purchase a yearly retail licence to cover vendors at craft fairs, trade shows and other temporary sales outlets that operate for one month or less in the hallways of the mall.
- (b) Temporary Licensing
- (i) Notwithstanding any other provision of this bylaw, the Licence Inspector may authorize the granting of a Temporary Business Licence for a specified time to a maximum of one (1) year for those businesses requesting a licence that do not conform to existing zoning, building or any other such applicable bylaws of the District of Port Hardy. No further extensions for Temporary Business Licence will be considered past the original twelve-month period.
 - (ii) The applicant for a Temporary Business Licence shall provide a Performance Bond or other security in the amount of one hundred twenty-five percent (125%) of the value of deficiency(s), as determined by a guarantee/certified quote or estimate, otherwise the value to be determined by the Inspector.
 - (iii) The holder of a Temporary Business Licence shall be allowed to continue to operate the business for a maximum of one year after which the District may redeem the performance bond or other security to rectify the deficiency as stated on the Temporary Business Licence.
 - (iv) Should the holder of the Temporary Business Licence complete the deficiencies as described, the security and any interest accrued shall be returned to the holder of the business licence.

7. APPLICATIONS

- (a) The application for a licence shall be on an application form provided for the purpose in the form prescribed from time to time and shall be signed by the owner of the business or his duly authorized agent provided that in the case of partnerships or multiple owners, any one of such owners or partners may apply and such owner or partner applying shall be deemed to be the duly authorized agent of all the members of the partnership.
- (b) The application form shall be delivered to the Inspector and shall be accompanied by the fee prescribed in the current District of Port Hardy Rates Bylaw.
- (c) Where any applicant desires to apply for more than one licence, the particulars of each and every licence applied for should be on a separate application form for each business for which a licence is sought.
- (d) All applications for licences shall give a full description in detail of the premises in or upon which the applicant intends to carry on a business for which he has made an application for a licence and no person to whom the licence has been granted shall carry on a business upon any premises other than those set forth in the said

application without first making an application under this Section for a new licence or for a transfer of such licence as hereinafter provided.

- (e) All applications for licences under this bylaw shall be made to the Inspector on the form of application provided and therein the applicant shall make a true and correct statement in writing disclosing all things required.

8. TRANSFERS

- (a) Any person desiring to obtain the transfer of any licence or a part interest in any licence held under this bylaw by any other person shall make application in every material respect the same as that required to obtain a licence under this bylaw; and the powers, conditions, requirements and procedures herein contained relating to the granting and refusal of licences and appeals thereon shall apply to all such applications.
- (b) An application for a transfer of a licence shall be made when:
 - (i) a person changes his place of business or in any manner makes a material change to his place of business; and
 - (ii) a person changes the number of tables, rooms, machines, or anything required from initially prescribed applications;

and the Inspector will endorse the changes of the licence and collect any additional fees thereof.

9. RESIDENTIAL BUSINESS LICENCE

The following terms and conditions are to be given due consideration by the Licence Inspector prior to the issuance of a residential business licence:

- (a) That the carrying on of business by an individual within a residential zone be conducted within the primary dwelling unit only.
- (b) The residential business will not involve the exterior display of any product or commodity. Signage is permissible provided it is displayed from within the primary dwelling unit.
- (c) The business portion of the primary dwelling unit shall not exceed twenty percent (20%) of the floor area.
- (d) The business shall be carried on only by a person or person resident on the parcel, and no more than one person not resident thereon shall work within the premises.
- (e) The business shall produce no public nuisance whether by noise, vehicles, smoke, odour, dust, glare, electrical interference or by other means.
- (f) The business shall not interrupt the peace and tranquillity of the neighbourhood so as to cause a nuisance.
- (g) The residential business shall provide sufficient off-street parking so as not to affect the neighbourhood.

- (h) The residential business licence issued shall not detract from the commercial zone of the community.
- (i) The fee for a residential licence shall be that listed in the current District of Port Hardy Rates Bylaw
- (j) That in a rented premise the landowner, manager or agent shall authorize in writing the tenant to obtain a licence and such authorization shall be submitted prior to the issuance of a licence.

10. SECURITY FOR NON-RESIDENT LICENCES

- (a) The Council hereby makes it a requirement of this bylaw that a person applying for a licence to carry on a non-resident business of any class or classes specified in the current District of Port Hardy Rates Bylaw shall give to the District security conditional on his carrying on his business without deceit, misrepresentation and fraud on his part.
- (b) Security under subsection (a) shall be:
 - (i) by way of cash, certified cheque, bonding or an irrevocable letter of credit;
 - (ii) in the amount specified in the current District of Port Hardy Rates Bylaw.
- (c) The District shall return any security collected under subsection (a):
 - (i) 120 days following receipt of written notice from the business owner confirming that he no longer operates a business within the District; and
 - (ii) provided the District has not received any notice of claims against, or wrongdoing by, the said business.

11. GENERAL

- (a) Council may, upon affirmative vote of at least two-thirds of all members, refuse in any particular case to grant the request of an applicant for a licence or renewal of a licence.
- (b) The Council may revoke a licence for reasonable cause after giving notice to the licensee and after giving the licensee an opportunity to be heard.
- (c) Any person who has applied for but failed to be granted a licence or who has had a licence revoked may appeal to Council.

12. PENALTIES

- (a) Every person who violates any of the provisions of this bylaw or who suffers or permits any act or thing to be done in contravention of any such provisions or who neglects to do or refrains from doing any thing required to be done by any of the provisions of this bylaw shall be deemed to be guilty of an infraction thereof and liable to the penalties hereinafter provided. Every continuing infraction shall be deemed to be a new and separate offence for each day during which the same shall continue.
- (b) Any person guilty of an infraction of this bylaw shall be liable upon summary

conviction to a minimum fine or penalty of One Hundred Dollars (\$100.00) and costs; and on default of payment, to imprisonment for a term not exceeding Sixty (60) days.

13. SEVERABILITY

If a court of competent jurisdiction declares any portion of this bylaw invalid, then the invalid portion must be severed and the remainder of the bylaw is deemed valid.

14. REPEAL

The District of Port Hardy "Business Licence Bylaw No. 12-2005" and all amendments thereto are hereby repealed.

READ A FIRST TIME ON THE 10th DAY OF OCTOBER, 2006

READ A SECOND TIME ON THE 10th DAY OF OCTOBER, 2006

READ A THIRD TIME ON THE 10th DAY OF OCTOBER, 2006

ADOPTED ON THE 24th DAY OF OCTOBER, 2006

ORIGINAL SIGNED BY:

DIRECTOR OF
CORPORATE SERVICES

MAYOR

Certified to be a true copy of the District of Port Hardy
Business License Bylaw 16-2006

DIRECTOR OF
CORPORATE SERVICES