

THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE



BY-LAW

NO. 2019 - 009

**BEING A BY-LAW TO REGULATE SEASONAL MOBILE WATERSPORT
EQUIPMENT RENTAL BUSINESSES WITHIN THE MUNICIPALITY OF
KINCARDINE**

WHEREAS pursuant to the *Municipal Act, 2001*, S.O. 2001, c. 25 as amended, Sections 8 (1) and 9 provide that the powers of a municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues and has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;;

AND WHEREAS pursuant to the provisions of the said Municipal Act, Section 151 provides that a local municipality may licence, regulate and govern any business wholly or partly carried on within the municipality [even if the business is being carried on from a location outside the municipality];

AND WHEREAS the Council of The Corporation of the Municipality of Kincardine deems it advisable to licence, regulate and govern seasonal mobile watersport equipment rental businesses within the Municipality of Kincardine;

NOW THEREFORE the Council of The Corporation of the Municipality of Kincardine **ENACTS** as follows:

1.0 DEFINITIONS

- 1.1 "Business Hours" – means the hours in a day in which business is commonly conducted, for the purposes of seasonal mobile watersport equipment rental activities these hours are 9:00 am to 9:00 pm Sunday to Saturday.
- 1.2 "By-law Enforcement Officer" – means a commissionaire, assistant or and other officer or civilian person engaged by the South Bruce O.P.P and/or appointed by the Municipality of Kincardine to enforce or carry out the provisions of this by-law or any part or parts thereof.
- 1.3 "Clerk" – means the Clerk for the Municipality of Kincardine.
- 1.4 "Council" – means the Council of The Corporation of the Municipality of Kincardine.
- 1.5 "Director" - means the Director of Parks & Recreation for the Municipality of Kincardine
- 1.6 "Licence" – means a licence issued under the provisions of this by-law.
- 1.7 "Licensee" – means a person licensed under the provisions of this by-law.

- 1.8 "Municipality" – means The Corporation of the Municipality of Kincardine"
- 1.9 "Public Property" - means any real property, or interest therein, owned, leased, operated, or otherwise controlled by the Municipality of Kincardine
- 1.10 "Seasonal Mobile Watersport Rental Business" – means a seasonal rental business for human powered watersport equipment including paddleboards, kiteboards, surf boards, kayaks, canoes and the like.
- 1.11 "Seasonal Mobile Rental Area" – means the area 400 meters south of the south pier at Station Beach delineated in Schedule "A" of this By-Law where a seasonal mobile watersport rental business may be located.
- 1.12 "Seasonal Mobile Rental Site" – means a designated site for the purposes of a mobile watersport rental business approved by the Municipality.
- 1.13 "Season Duration" – means from April 1st to November 1st in a given calendar year.

2.0 PROHIBITIONS:

- 2.1 No person shall operate a seasonal mobile watersport rental business within the Municipality unless they hold a current license pursuant to this By-law.
- 2.2 Every Licensee shall affix a seasonal mobile water sport rental business licence in a conspicuous place at the site for which it is issued.
- 2.3 No person shall operate a seasonal mobile watersport rental business in a location other than the Seasonal Mobile Rental Site approved by the Municipality.
- 2.4 No seasonal mobile watersport rental business shall be operated in such a manner that it unreasonably confines, impedes or presents a hazard to pedestrians or other users of the beach, boardwalk or emergency route.
- 2.5 No person shall transfer a licence except with consent in writing of the Municipality and the Municipality shall not be bound to give such consent.
- 2.6 No person shall operate a seasonal mobile watersport rental business except during defined business hours during the Season Duration.
- 2.7 No person shall fail to remove their seasonal mobile watersport rental business from public property during non-business hours. Overnight parking of a seasonal mobile watersport rental business on a seasonal mobile rental site is prohibited
- 2.8 No person shall equip a seasonal mobile watersport rental business with any sounding device, loud speakers, amplifiers or other hailing devices for attracting attention.
- 2.9 No person shall equip a seasonal mobile watersport rental business with a generator or other such devise that are powered by gas, diesel, propane, or any other fuel.
- 2.10 No person shall use the electrical outlets located on public property for use by the seasonal mobile watersport rental business.

- 2.11 No person shall equip a seasonal mobile watersport rental business with any solid structure, portable shelter or dwelling that you are unable to see through, does not include a sun canopy or tent that does not contain sides.
- 2.12 No person shall cut damage or remove dune grass or plants or trees from the beach for the purpose of a seasonal mobile rental site.
- 2.13 No person shall offer for sale or for rent any item on the beach not described in Section 1 of this by-law

3.0 REGULATIONS

- 3.1 A Licensee shall be responsible for the removal and disposal of any and all refuse or trash that is created by the Licensee or their customers in accordance with the Municipality's Waste Management By-laws.
- 3.2 A Licensee shall comply with all applicable regulations of the Ontario Fire Code and all requirements of the Kincardine Fire Department.
- 3.3 A Licensee shall at its own expense, promptly observe, perform, execute and comply with all applicable laws, rules, requirements, orders, directions, ordinance and regulations of every Federal, Provincial, or Municipal authority in the operation of their individual seasonal mobile watersport rental business.
- 3.4 A Licensee is permitted to use a sandwich board sign for advertising, not to be bigger than 30" wide and 4' in height at the seasonal mobile rental site during business hours only.

4.0 Administration

- 4.1 Every application for a licence shall be in the form as prescribed by the Clerk.
- 4.2 Every application for a licence shall be accompanied by:
 - a. The full and true name under which the business is to be conducted;
 - b. Acceptable written proof that the applicant is at least eighteen years of age;
 - c. A description of proposed seasonal mobile watersport business
 - d. A photo of the applicants proposed seasonal mobile watersport business including the logo, colour scheme, insignia, and any other distinguishing characteristics;
 - e. When any change occurs regarding the written information required, prior to the issuance of the licence, the applicant shall give written notification of such changes to the Clerk within two (2) weeks after such change.
- 4.3 Licence fees pursuant to this By-law shall be established through the Municipality's Consolidated Rates & Fees By-law.
- 4.4 The Licensee must provide the Municipality with a valid insurance certificate of a minimum of two million dollars (\$2,000,000.00) liability insurance and name the Municipality as an additional insured. The Licensee must provide proof of insurance prior to commencing the business.
- 4.5 The Licensee agrees to name The Corporation of the Municipality of Kincardine in the Licensee's Release of Liability, Waiver of

claims Assumption of Risks and Indemnity Agreement signed by each customer.

- 4.6 The Licensee shall indemnify and hold harmless the Municipality of Kincardine, its officers, members of municipal council and employees from and against any liabilities, claims, expenses, demands, loss, costs, damages, actions, suits or other proceedings by whomsoever made, directly or indirectly arising out of the agreement attributable to bodily injury, sickness, disease or death or to damage to or destruction of tangible property including loss of revenue or incurred expense resulting from disruption of service and caused by any acts of omissions of the Licensee, its officers, agents, servants, employees, customers, invitees or licensees, or occurring in or on the premises or any part thereof and, as a result of activities under this agreement.
- 4.7 Applications will be processed and approved by the Clerk's Department in consultation with the Director of Parks and Recreation.
- 4.8 Applications will be awarded based on Municipality of Kincardine Residents / Business, consideration of previous vending agreements, proximity to other direct competition operating from a building and impact on the neighbourhood and visual appearance.
- 4.9 Seasonal mobile rental site location preference will be balanced with the proximity to other businesses and beach activity.
- 4.10 If more applications are received than the allotted spaces then a bid or lottery process may be used to award the site.
- 4.11 All licences are valid for the designated seasonal mobile rental site for the seasonal duration and are required to be renewed annually and a separate licence fee paid yearly.
- 4.12 Any application that is denied will be outlined for the applicant and shall be eligible for a new application for the following year.
- 4.13 Any decision of the Clerk's Department to refuse, suspend or revoke a licence may be appealed to Council by filing, in writing, an appeal with the Clerk within ten (10) days of the notice of decision being provided. All decisions made by Council on these matters are final.

5.0 PENALTIES

- 5.1 Every person who contravenes any provisions of this by-law is guilty of an offence and is subject to the penalties as prescribed in the *Provincial Offences Act*, R.S.O. 1990 Ch. P.33, as amended or by suspension or revocation of any licence issued under this By-law.
- 5.2 The Municipality reserves the right to refuse, suspend or revoke a licence.
- 5.3 All provisions of this by-law may be enforced by a By-law Enforcement Officer of the Municipality.

6.0 GENERAL

- 6.1 That By-law No. 2014 - 042 "Seasonal Mobile Watersport Equipment Rental Business By-law" be hereby repealed.
- 6.2 This By-law shall come into full force and effect upon its final passage.

6.2 This By-law may be cited as the “Seasonal Mobile Watersport Equipment Rental Business By-Law (2019)”

READ a FIRST and SECOND TIME this 16th day of January, 2019.

READ a THIRD TIME and FINALLY PASSED this 16th day of January, 2019

Original Signed By
Mayor – Anne Eadie

Original Signed by
Clerk – Donna MacDougall

Seasonal Mobile Rental Area

Station Beach Road



Access Gate

THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE

PART I PROVINCIAL OFFENCES ACT

BY-LAW NO. 2019 - 09

Being a By-law to Regulate Seasonal Mobile Watersport Equipment Rental Businesses within the Municipality of Kincardine

| ITEM | COLUMN 1 Short Form Wording | COLUMN 2 Provision creating or defining offence | COLUMN 3 Set fine |
|------|--|--|----------------------|
| 1 | Operate without a licence | Section 2.1 | 400.00 |
| 2 | Fail to affix licence in a conspicuous place | Section 2.2 | 25.00 |
| 3 | Operate in a location other than the Site approved | Section 2.3 | 100.00 |
| 4 | Operate outside of business hours | Section 2.6 | 100.00 |
| 5 | Failure to remove business during non-business hours | Section 2.7 | 100.00 |
| 6 | Use of electrical outlets on public property. | Section 2.10 | 250.00 |
| 7 | Equip business with unpermitted structure | Section 2.11 | 100.00 |
| 8 | Damage/ remove dune grass or plants or trees | Section 2.12 | 350.00 |
| 9 | Offer for sale or for rent unpermitted items | Section 2.13 | 350.00 |

Note: The penalty provisions for the offences indicated above is section 5.1 of By-law No. 2019 - 009, a certified copy of which has been filed.