

**By-law 33-92
of The Corporation of the City of Oshawa**

being a by-law to provide for the prevention of obstructions upon Highways in the City of Oshawa.

Whereas section 230(1)1 of the *Municipal Act* authorizes a Municipality to license, regulate and govern persons who go to a particular place with goods, wares or merchandise for sale;

And whereas section 315(1) of the *Municipal Act* authorizes a Municipality to prohibit or regulate the obstruction or encumbering of highways;

Be it enacted and it is hereby enacted as a by-law of The Corporation of the City of Oshawa by the Council thereof as follows:

Part I: Definitions

- 1.1 This by-law may be cited as “The Highway Vending By-law”.
- 1.2 In this by-law, the following terms shall have meanings as indicated in this section:
 - (a) “approved authority” means the City, the Region, Ontario Hydro, Bell Canada, Oshawa Public Utilities Commission, Consumers Gas, or any other agency which has the approval of the city or the region to utilize the highway or any part of the highway. Where the context so requires the term “approved authority” includes members of the staff or council of such agency.
 - (b) “articles for sale” means goods, paraphernalia, articles of trade, commodities, merchandise, wares, foodstuffs, confections, and any other items or products of any kind held by a person for subsequent sale to another person, and includes any structures or apparatus used to display the articles.
 - (c) “boulevard” means all the parts of the highway save and except any portion improved for the purpose of the passage of vehicular traffic, and the sidewalk.
 - (d) “city” means The Corporation of the City of Oshawa and, where the context so implies, members of its staff and council.
 - (e) “clerk” means the clerk of the city, or the deputy clerk acting in place of the clerk of the city.
 - (f) “council” means the council of the city.
 - (g) “director” means the director of public works of the city, or his designate.
 - (h) “highway” shall mean a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, designed and intended for, or used by, the general public for the passage of vehicles or persons, whether under the jurisdiction of the region or the city, and including any surface, grassed area, boulevard, ditch, curb, gutter, and sidewalk within the lateral property lines of the highway. For the purposes of this by-law, the term “highway” shall be deemed to include bicycle paths or walking trails maintained by the city for the use of the public, and all parking lots, parking spaces and parking garages owned or operated by the City.
 - (i) “officer” includes a police officer or police constable or other person employed for the preservation and maintenance of the public peace or for the service or execution of civil process; and includes a person assigned the responsibility of administering and enforcing this by-law, and all persons acting under his or her instructions.
 - (j) “Oshawa” means the geographical area comprised of land, air and water, which exists within the Regional Municipality of Durham in the Province of Ontario, and is commonly referred to as the City of Oshawa.

- (k) "pedestrian" means a person on foot or an invalid or other person in a wheelchair, baby carriage, or similar device.
- (l) "person" includes an individual, a sole proprietorship, a partnership, an unincorporated association, a trust, a body corporate, and a natural person, and "persons" has a corresponding meaning.
- (m) "Region" means the Regional Municipality of Durham, and, where the context so implies, members of its staff and council.
- (n) "sidewalk" means all such parts of a highway as are set aside by the city for the use of pedestrians.

Part II: Vending on Highways

- 2.1 Offence: Subject to section 2.4, it shall constitute an offence for a person to place one or more articles for sale upon any highway in Oshawa.
- 2.2 Offence: It shall constitute an offence for a person to hang or expose any articles for sale from any house, store, shop, warehouse or other building so that the same shall project over any portion of a highway in Oshawa.
- 2.3 Offence: It shall constitute an offence for a person to affix or hang articles for sale to or from any posts, poles or fixtures located on the highway in Oshawa which posts, poles or fixtures are the property of an approved authority.
- 2.4 Exemptions: The provisions of section 2.1 shall not apply:
- (i) to interfere with the use of a portion of a highway for a reasonable time for the taking in or delivery of articles for sale;
 - (ii) to prevent a farmer or market gardener selling goods from a place of business or a residence adjacent to the highway; or
 - (iii) to prevent community events such as "sidewalk sales" which have been approved through the issuing of a special events permit by the city, or otherwise exempted by council.
 - (iv) to prevent the sale on a highway of an article for sale that is authorized by a licence issued pursuant to Schedule "L" of the City's Licensing By-law 120-2005, as amended.
- 2.5 Seizure: An officer who observes a violation of sections 2.1, 2.2 or 2.3 of this by-law shall request that the person attending the articles for sale remove them from the highway or from over the highway. In the event that the person refuses to move the articles for sale, or in the event that the articles for sale are unattended, the officer may, in addition to any other penalties, and without prior notice, remove the articles for sale. The lawful owner of the articles for sale seized pursuant to this section may retrieve them within seven days of the seizure upon proof of ownership and upon reimbursing the city for any expenses incurred for removal and storage. Any articles for sale seized pursuant to this section may be disposed of by the city if not claimed within seven days. The city shall not be responsible for any loss or damage to articles for sale seized pursuant to this section.
- 2.6 Easement: Any approved authority may have occasion to enter on the sidewalk upon which articles for sale are situated pursuant to the provisions of section 2.4 of this by-law, for installation and maintenance of cables or any other services. The approved authority may request that the person with care and control of articles for sale move forthwith. If no person with care and control of articles for sale can be located, or if such person fails or refuses to move the articles for sale, the approved authority may seize the articles for sale as if he or she were an officer acting pursuant to section 2.5, or move or arrange to have moved the articles for sale at the expense of the person or proprietor of the business which owns the articles for sale. All costs associated with the moving and/or storage of the articles for sale in accordance with this section may be collected from the person or proprietor of the business which owns the articles for sale. In the event that any articles for sale must be moved or stored pursuant to this section, the city shall not be held responsible for any damage to the articles for sale.

Part III: Penalties upon Conviction

- 3.1 Every person who is convicted of an offense pursuant to the provisions of this by-law shall be liable to the penalties imposed pursuant to the *Provincial Offences Act*, R.S.O. 1980, c. 400, as amended, including all successor legislation.

Part IV: General Provisions

- 41 Interpretation: All words and personal pronouns relating to words contained in this by-law shall be read and construed with the number and gender of the person or persons referred to in each case.
- 42 Severability: In the event that any of the provisions of this by-law are deemed invalid or void, in whole or in part, by any Court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.
- 43 By-law 2365: Section 257 By-law Number 2365, as amended by By-law 2843 of the Corporation of the City of Oshawa, passed the 15th day of January, 1951, is hereby repealed.
- 44 By-law 473: By-law 473 of the Township of East Whitby is hereby repealed.
- 45 Effective Date: This by-law shall come into full force and take effect as of the date of its passing.

By-law read a first, second and third time and finally passed this nineteenth day of May, 1992.

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