



# BY-LAW

NO. 2011 - 143

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**BEING A BY-LAW TO REGULATE THE USE OF MUNICIPAL SIDEWALKS  
ON MUNICIPAL ROAD ALLOWANCES IN THE MUNICIPALITY OF  
KINCARDINE**

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**WHEREAS** Sections 11 (1) and (3) of the *Municipal Act, 2001*, S.O. 2001, c. 25 as amended gives broad authority to lower-tier municipalities to provide any service or thing that the municipality considers necessary or desirable for the public and respecting matters within the sphere of jurisdiction of highways, including parking and traffic on highways.

**AND WHEREAS** pursuant to the said *Municipal Act*, Section 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** the Council of The Corporation of the Municipality of Kincardine wishes to regulate the use of sidewalks in the Municipality of Kincardine.

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

1.0 **DEFINITIONS**

- 1.1 "Busking" means the practice of performing in public places for tips and gratuities. Performances can include musical performance, dance, living statue, balloon twisting, card tricks, and the like.
- 1.2 "Chief Building Official" means the Chief Building Official (C.B.O.) of the Municipality of Kincardine.
- 1.3 "Commercial Area" means any area designated as "General Commercial" in the existing Zoning By-law of the Corporation of The Municipality of Kincardine
- 1.4 "Merchant" shall mean a person who, in the ordinary course of business,
  - i) sells tangible personal property;
  - ii) sells or tenders a service, or
  - iii) operates a place of amusement.
- 1.5 "Pedestrian" means any person afoot, invalids, children in wheeled carriages, and muscular powered or motorized wheelchairs
- 1.6 "Place of Business" shall mean the premises where a business is carried on.

- 1.7 "Restaurant" means a building or structure or part thereof used to prepare food and offer for sale for immediate consumption within the building or structure, or adjacent patio and may include an accessory take-out service.
- 1.8 "Sidewalk" means that portion of the highway between the curb line and the property line of the lot abutting the highway improved for the use of pedestrians.
- 1.9 "Temporary Side Walk Café" means an area of the sidewalk designated directly in front of or beside the Place of Business operating as a restaurant, where tables and chairs and benches may be placed.

## 2.0 SIDEWALK DISPLAYS

- 2.1 Merchants may display merchandise and/or advertising devices (e.g. sandwich board signs) from their place of business on the road allowance immediately in front of their place of business under the following conditions:

- i) the merchandise and/or advertising device is restricted to a maximum width of 76cm (30 in.) and a maximum height of 1.2 metres (4 feet);
- ii) in all cases where merchandise and/or an advertising device is placed on the sidewalk, a minimum of 127 cm. (50 in.) clearance must be maintained on the sidewalk for pedestrian travel;
- iii) the merchandise and/or advertising device must be located immediately in front of the place of business;
- iv) such merchandise and/or advertising device shall only be displayed during normal business hours.

- 2.2 Merchandise and/or advertising devices shall only be displayed on public property if there is insufficient private property in front of the place of business.

- 2.3 The display of merchandise and/or advertising devices is permitted in all commercial and industrial zones in the Municipality of Kincardine.

## 3.0 TEMPORARY SIDEWALK CAFÉ

- 3.1 An owner or occupant of property abutting a sidewalk may establish, operate and maintain a Temporary Sidewalk Café for the commercial purpose of providing a seating area for patrons immediately in front of or beside their place of business under the following conditions;

- i) the abutting commercial property must be operating as a restaurant or café.
- ii) are placed, maintained and used on a designated area
- iii) are not permanently affixed to a Sidewalk;

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- iv) may consist of tables, chairs, and benches
- v) furniture is restricted to a maximum width of 76cm (30 in.) and a maximum height of 1.2 metres (4 feet);
- vi) a minimum of 127 cm. (50 in. ) clearance must be maintained on the sidewalk for pedestrian travel;
- vii) furniture must be located immediately in front or beside of the place of business; and
- viii) shall only be displayed during normal business hours.

3.2 Temporary Cafés shall only be located on public property if there is insufficient property in front of the place of business.

3.3 Temporary Cafes are permitted in the General Commercial Area in the Municipality of Kincardine subject to Municipal approval.

#### 4.0 Busking

4.1 Busking shall be permitted in the General Commercial Area all year under the following conditions;

- i) do not use amplification or combustible materials
- ii) do not interfere with pedestrian traffic or impede the ingress or egress of store patrons
- iii) do not create risk to public health and safety

4.2 Applicant must obtain prior authorization from the CBO indicating location, date, time and type of busking.

#### 5.0 Snow Clearing

5.1 All merchants must keep sidewalks free and clear from all merchandise, signage and temporary café sidewalks for the clearing of snow.

6. 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 c 33.

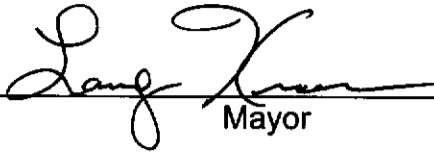
7. By-Law No. 1996-62 of the former Town of Kincardine, and any other by-laws amending the same, are hereby repealed.

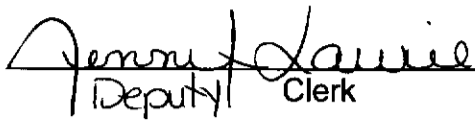
8. This by-law shall come into full force and effect upon its final passage.

9. This by-law may be cited as the "Municipality of Kincardine Sidewalk By-Law".

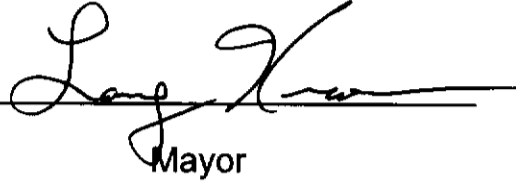
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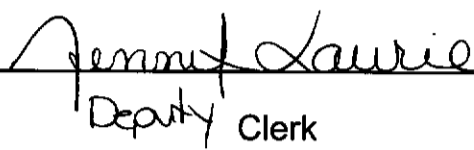
**READ a FIRST and SECOND TIME** this 16<sup>th</sup> day of November, 2011.

  
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Mayor

  
\_\_\_\_\_  
Deputy Clerk

**READ a THIRD TIME and FINALLY PASSED** this 16<sup>th</sup> day of November, 2011.

  
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Mayor

  
\_\_\_\_\_  
Deputy Clerk

