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## **Licensing of Driving School Instructors Staff Report**

Report Number: 2018-11

Department(s): Legislative Services

Author(s): Florence DiPassio, Licensing Officer

Meeting Date: June 11, 2018

### **Recommendations**

1. That the report entitled Licensing of Driving School Instructors dated June 11, 2018 be received; and,
2. That Council repeal the Restricted Area By-law 2017- 32 and adopt the Licensing of Driving Instructors By-law (Appendix A ); and,
3. That the Fees and Charges By-law be amended to include the Driving School Instructor Licencing fees; and,
4. That Staff be authorized and directed to do all things necessary to give effect to this resolution.

### **Purpose**

The purpose of this report is to obtain Council approval to repeal the Restricted Area By-law 2017-32, and replace it with a new Driving School Instructor Licensing By-law. In addition to maintaining the current "Restricted Area," the Driving School Instructor Licensing By-law also outlines a licensing system for driving instructors.

### **Background**

At the March 5, 2018 Council meeting, staff were directed to obtain feedback from industry stakeholders and residents related to the proposed licensing framework and regulations for driving school instructors, and subsequently report back to Council.

A Public Information Centre (PIC) was held on March 27, 2018 and attendees included representatives from the driving school industry, residents, staff and Members of Council. At the PIC staff provided a presentation on the issue to date and outlined the proposed licensing system.

## Feedback provided from the driving schools instructors

At the PIC, representatives from the driving school industry, specifically driving instructors, provided the following comments and feedback:

- A Vulnerable Sector Screening (VSS) is already a requirement of the Provincial Driving Instructor Licence and requiring instructors to get another VSS to obtain a municipal licence is burdensome
- If the Town implements a driving instructor licence, it should be required for all driving instructors operating in Newmarket, not just those whose businesses are located in Newmarket
  - Implementing a licensing requirement for Newmarket businesses/instructors only is punitive
  - Driving instructors from other municipalities that are operating in the Town of Newmarket should also be required to obtain a municipal driving instructor licence
- The proposed fee of \$250 is higher than expected and should be lowered
  - As many municipalities require driving instructor licences, Driving School Instructors that operate in a number of municipalities are required to obtain multiple licences which can be costly
- Can driving instructors take students into the Restricted Area as long as they are not practicing maneuvers like 3 point turns or emergency stops (e.g. driving through the area)?
- The Restricted Area is too large and encompasses many streets that are not used as DriveTest test route streets

## Feedback provided from residents

- Are there ways to identify a driving school vehicle other than a licence plate?
- Are there ways to identify a vehicle that is being used for a DriveTest driving exam?
  - A decal or form of identification should be provided by the DriveTest Centre to indicate that a vehicle is on a test
  - This decal would help enforce the by-law as there is currently no way to identify a vehicle and determine if it is being used for a DriveTest driving exam, or if it is in the Restricted Area contrary to the by law (e.g. practice testing)
- Restricted Area signs are small and difficult to see when driving by
- Can cameras be used to identify instructors or vehicles, similar to red light cameras?
- Overall, residents noticed a reduction of the number of cars in the Restricted Area since it was established in 2017

## **Discussion**

Staff has considered the comments provided at the PIC and has made amendments to the proposed licensing framework to incorporate the feedback received. Based on concerns raised regarding the licensing costs and requirements, staff have adjusted the licence fee and will only require instructors to provide proof of a valid Ministry of Transportation driving instructor licence and a valid G class divers licence.

In addition staff has removed the requirement of two types of licences; originally a driving instructor licence and driving school vehicle licence were both proposed. The revised licensing system consists of a Driving School Instructor licence only.

Many comments raised by residents and driving instructors related to Ministry of Transportation or DriveTest regulations, such as identifying vehicles that are on a test, or the boundaries of the test route areas. Staff continue to work in collaboration with the Ministry of Transportation and DriveTest management staff for further solutions. However, at this time, the Restricted Area will not be modified, as it provides a clear boundary that encompasses all test route streets. DriveTest Management has repeatedly expressed that identifying vehicles that are on a test with a decal or sticker is a potential danger to the individual taking the test as it draws attention from other drivers.

Staff routinely monitored the Restricted Area but experienced challenges enforcing the current Restricted Area by-law. Municipal enforcement officers cannot pull vehicles over, and without a Newmarket licence plate, it is difficult to identify which vehicles operating in the Restricted Area are driving school vehicles, private vehicles, or are vehicles being used by individuals to take a DriveTest driving exam. Staff propose that the Town of Newmarket Driving Instructor licence plate will allow for municipal enforcement officers to easily identify driving instructor vehicles operating within the Town. In addition, The DriveTest Centre can act as a "check point" whereby municipal enforcement officers can check driving instructor licences when the driving instructors park at the DriveTest centre. This will help to improve enforcement of the Restricted Area, conviction of those operating in contravention of the By-law and strive to achieve a balance between residents' concerns and industry requirements associated with the DriveTest Centre in Newmarket.

## **New Licensing Framework**

In summary, the revised licensing framework will consist of:

- A Driving School Instructor Licence only
- A one year licence that will cost \$125.00
- Requirement to hold and provide proof of a valid Ontario Class G driver's licence

- Requirement to hold and provide proof of valid Ministry of Transportation Driving Instructors Licence
- Upon approval, the instructor will receive a Town of Newmarket Licence plate to affix to their vehicle.

## **Next Steps**

Should Council approve the Driving School Instructor Licensing By-law attached as Appendix A to this report, staff will begin enforcement of the by-law three months from the date of approval. This will allow staff to effectively complete project deliverables, which include:

- Educating driving schools, instructors, and members of the public of the Town's new licensing system;
- Establishing the administrative processes for driving school and instructor licensing (for example: acquiring licence plates, creating applications, etc.);
- Allocating information technology resources to support licensing and enforcement; and,
- Training licensing, enforcement and staff on new standards.

Staff will enforce the By-law by conducting routine licence checks at the Newmarket Drive Test Centre.

## **Conclusion**

Staff have consulted with residents and the driving school industry to gather feedback regarding licensing of Driving School Instructors in the Town of Newmarket. Staff brought forward a revised licensing system for Council consideration based on the comments received by residents and the industry at the Public Information Centre held on March 27, 2018. Should Council approve the licensing system, staff will move forward with the aforementioned next steps.

## **Business Plan and Strategic Plan Linkages**

This report relates to the "Well Equipped and Managed" link of the Town's community vision implementing policy and processes that reflect sound, accountable governance.

## **Consultation**

Staff has consulted with municipalities such as Guelph, Markham, and Brampton regarding their respective framework for Licensing Driving Instructors and enforcement

of their Licensing By-law. Staff continues to consult with residents and the driving school industry through consistent email communication and a Public Information Centre held on March 27, 2018.

## **Human Resource Considerations**

A Municipal Licensing Officer position was approved in 2018 budget to support enforcement requirements.

## **Budget Impact**

The costs, including education and enforcement will be accommodated with the 2018 budget.

## **Attachments**

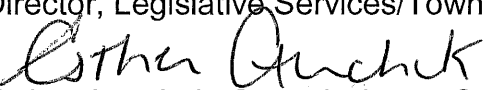
Appendix A

## **Approval**

Insert approval authority names and roles that are accountable for the information contained in this report.



Lisa Lyons  
Director, Legislative Services/Town Clerk



Esther Armchuk, Commissioner, Corporate Services

## **Contact**

Florence DiPassio

# Corporation of the Town of Newmarket

## By-law 2018-XX

A By-law to Regulate and License Driving Instructors to operate in the Town of Newmarket.

Whereas Section 151 of the Municipal Act 2001, S.O. 2001, c25, as amended, establishes that a municipality may provide for a system of licences with respect to a business;

And whereas the Council of the Town of Newmarket deems it advisable to pass such by-law;

Therefore be it enacted by the Council of the Corporation of the Town of Newmarket as follows:

### Section 1 – Definitions

1.1 In this By-law:

“**Appeals Committee**” means a committee that is appointed from time to time by Council for the purpose of hearing appeals regarding the revocation, suspension, cancellation or refusal to issue or renew a licence pursuant to this By-law;

“**Applicant**” means a Person applying for a new licence or licence renewal under this By-law;

“**Application**” means a prescribed form for a licence provided by the Director, and shall include an application for a license renewal, accompanied by appropriate documentation and fee;

“**Council**” means the Council of the Corporation of the Town of Newmarket;

“**Director**” means the Director of Legislative Services of the Town and includes his/her designate;

**“Driving Instructor”** means an individual who accepts remuneration to provide instruction in the operation of motor vehicles but does not include an individual who provides in-class instruction only;

**“Driving School”** means a driving school which holds a driving school licence issued by the Ontario Ministry of Transportation;

**“Driving School Vehicle”** means a motor vehicle that is being used by a Driving Instructor for the purpose of teaching a Person to operate a motor vehicle;

**“Fees and Charges By-law”** means the Town’s Fees and Charges By-law, as amended from time to time;

**“Highway”** includes a common and public highway, street, avenue, parkway, driveway, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof;

**“Licence”** means the authorization obtained, granted or issued to a Driving Instructor pursuant to this By-law to carry on a business, activity or undertaking issued by the Director;

**“Licensed”** means to have in one’s possession a valid and unexpired licence issued pursuant to this By-law;

**“Licensee”** means any person who is licensed pursuant to this by-law or a licensee applying for renewal of a licence as the context requires;

**“Ministry of Transportation Driving Instructor’s Licence”** means a licence issued to a Driving Instructor by the Ontario Ministry of Transportation;

**“Officer”** means a Police Officer as defined under the Police Services Act, R.S.O. 1990, c, P15, as amended, an individual appointed by the Town as a Municipal Law Enforcement Officer pursuant to section 15 of the Police Services Act, as amended, or any other individual designated by the Town to enforce this By-law;

**“Operate”** when used in reference to a Driving School Vehicle includes driving the said vehicle and to make or have it available to the public in service as a Driving School Vehicle, and operated, operating and operation have corresponding meanings;

**“Person”** includes an individual, business, firm, corporation, organization, partnership, trust, trustee, agent or legal representative of an individual;

**“Plate”** means a number plate issued by the Town to a person licensed pursuant to this By-law;

**“Restricted Area”** means the area on highway used by Drive Test employees for conducting driving tests as contained in Schedule “A” of this By-law;

“**Town**” means the Corporation of the Town of Newmarket;

## **Section 2.0 - Prohibitions**

- 2.1 No Person shall engage in or carry on the business of a **Driving Instructor** within the Town without a valid and unexpired **Licence**.
- 2.2 No Person except an individual may hold a **Driving Instructor Licence**.
- 2.3 No Person’s **Driving Instructor Licence** is valid unless the individual holds a valid **Ministry of Transportation Instructor’s Licence**.
- 2.4 A Person’s **Driving Instructor Licence** ceases to be valid at any time that the Person’s **Ministry of Transportation Driving Instructor’s Licence** ceases to be valid.

## **Section 3.0 - General Provisions**

- 3.1 Every **Licence** shall be valid for a period of (1) one year from the 1<sup>st</sup> day of September in the year of issuance or renewal up to and including the 31<sup>st</sup> day of August of the following year unless:
  - (1) the **Licence** has been suspended or revoked;
  - (2) the **Licence** has been cancelled at the request of the licensee;
  - (3) payment of the said **Licence** has not been made.
- 3.2 An **Application** for the renewal of a **Licence** shall be delivered to the office of the **Director** on or before the expiry date.

## **Section 4.0 – Driving Instructor Licence Requirements**

- 4.1 Every Person applying for a **Licence** or renewal shall:
  - (1) submit an **Application** signed by the individual;
  - (2) submit an **Application** by appearing in person at the office of the Director;
  - (3) submit a copy of the insurance policy or a certificate of automobile insurance to the **Director** that is issued by an insurer of duly authorized to issue insurance within the Province of Ontario and for each **Driving School Vehicle**, coverage shall be in the amount of \$2 million (\$2,000,000.00) dollars for personal injury and property damage arising out of any one accident or



occurrence, and such policy shall be endorsed to the effect that the **Director** will be given fifteen (15) business days' notice in writing of any cancellation;

- (4) submit one (1) valid piece of Government issued identification when the individual appears at the office of the **Director**;
- (5) provide a valid current Class "G" Ontario Driver's Licence
- (6) provide proof of a valid **Ministry of Transportation Driving Instructor's Licence**; and
- (7) submit the fee as set out in the **Fees and Charges By-law**.

4.2 Every **Driving Instructor** shall:

- (1) carry a valid and unexpired **Ministry of Transportation Driving Instructor's Licence**;
- (2) carry a valid and unexpired **Licence**;
- (3) produce a valid and unexpired **Ministry of Transportation Driving Instructor's Licence** upon request of an Officer;
- (4) produce a valid and unexpired **Licence** upon request of the Officer;
- (5) affix a Plate to the **Driving School Vehicle**;
- (6) affix a roof sign on the vehicle showing the business name of the **Driving School** as shown on the **Licence** while providing driving instruction to students;
- (7) affix the **Licence** validation tag to the plate.

#### **Section 5.0 - Restricted Area**

- 5.1 No **Driving Instructor** shall **Operate** or permit to **Operate** a **Driving School Vehicle** on any **Highway** within the area marked "**Restricted Area**" in Schedule "A" to this By-law.
- 5.2 No **Operator** of **Driving School Vehicle** shall **Operate** or permit to **Operate** a **Driving School Vehicle** on any **Highway** within the area marked "**Restricted Area**" in Schedule "A" to this By-law.
- 5.3 Notwithstanding 5.1 and 5.2 a **Driving School Vehicle** may be **Operated** within the area marked "**Restricted Area**" in Schedule "A" provided that:

- (1) The **Driving Instructor** is picking up and dropping off a student residing in the "**Restricted Area**" for the purpose of giving driving instruction; or
- (2) When a **Driving Instructor** is picking up or dropping off a student from a Secondary School located in the "**Restricted Area**"; or
- (3) When a **Driving School Vehicle** is used for the purpose of a driving test required by the Ontario Ministry of Transportation.

## **Section 6.0 - Revoke, Suspend, Cancel, Refuse to Issue or Renew a Licence**

6.1 The **Director** may revoke, suspend, cancel, refuse to issue or renew, a **Licence**:

- (1) where the past conduct of the **Applicant** or **Licensee** affords reasonable grounds for belief that the **Applicant** or **Licensee** will not carry on the activity for which the **Applicant** is applying for or the **Licensee** is **Licensed** for, in accordance with law and with integrity and honesty; and/or
- (2) where the **Applicant** or **Licensee** has been found by the **Director** to fail to comply with any provision of this by-law or any other by-law or statute; and/or
- (3) where the past conduct of the **Applicant** affords reasonable grounds for belief that the issuance of a **Licence** would be adverse to the public interest; and/or
- (4) where the **Applicant** is in default of any fine or fines which have been imposed by a court as a sentence arising from a conviction for breach of a by-law enacted by the Town, or arising from a conviction for a breach of a law or regulation.

6.2 Upon such revocation, suspension, cancellation or refusal to renew or issue, a written notice signed by the **Director** shall be delivered to the **Applicant** or **Licensee** within seven (7) business days as provided for hereunder:

- (1) such notice shall set out and give reasonable particulars of the grounds for the decision; and
- (2) shall inform the **Applicant** or **Licensee** of his entitlement to a hearing before the **Appeals Committee**, if he delivers within seven (7) business days after the date of service or the date of mailing of the notice, whichever is later, a written request for a hearing; and
- (3) if a written request from the **Applicant** or **Licensee** is not received by the **Director** within the prescribed time, the decision of the **Director** shall be

final and the **Licensee** shall deliver within twenty-four (24) hours of the expiration of the appeal period, the **Licence** or the **Driving School Vehicle Plate**.

- 6.3 Where a hearing held pursuant to this by-law has taken place and the **Licence** was revoked, suspended, cancelled or refused for renewal, the **Licensee** shall return the **Licence** to the **Director** within seventy-two (72) hours of receiving the written notice of the decision of the **Appeals Committee** sent pursuant to the provisions of this by-law.
- 6.4 When a **Person** has had his **Licence** revoked, suspended or cancelled under this by-law the **Director** may enter upon the business premise or into the vehicle of the **Licensee** for the purpose of receiving, taking, or removing the said **Licence** or Owner's Plate.
- 6.5 When a **Person** has had his **Licence** revoked, suspended or cancelled under this by-law he shall not refuse to deliver or in any way obstruct or prevent the **Director** from obtaining the said **Licence** or the Owner's Plate.

#### **Section 7.0 - Appeals Committee Hearing**

- 7.1 Upon receipt of a written request for a hearing from an **Applicant** or **Licensee**, the **Director** shall advise the **Appeals Committee** and request the **Appeals Committee** to convene a meeting and shall give the **Applicant** or **Licensee** written notice of the date, time and location of such meeting which shall not be less than seven (7) business days after the date of notice.
- 7.2 The **Director** shall make a recommendation to the **Appeals Committee** with respect to revocation, suspension, cancellation or refusal to renew or issue a **Licence** or recommend that a **Licence** be issued subject to certain terms and conditions.
- 7.3 Before the **Appeals Committee** makes any decision, a written notice advising the **Applicant** or **Licensee** of the recommendations being made by the **Director** with respect to the **Licence** shall be given to the **Applicant** or **Licensee** by the **Director**.
- 7.4 The **Applicant** or **Licensee** shall have the right to make a submission in support of an **Application** or renewal or retention of a **Licence** at such hearing and if the **Applicant** or **Licensee** who has been given written notice of the hearing does not attend such hearing, the **Appeals Committee** may proceed with the hearing in the **Applicant** or **Licensee's** absence and the **Applicant** or **Licensee** shall not be entitled to any further notice of the proceedings.
- 7.5 The decision of the **Appeals Committee** is final and binding and is not subject to an appeal.

#### **Section 8.0 - Notification of Change of Information**

- 8.1 When a **Licensee** who is a natural individual changes their name, address, or any information relating to the **Licence**, the **Licensee** shall notify the **Director** within seven (7) business days after the change of information relating to the **Licence** and shall if required by the **Director** return the **Licence** immediately to the **Director** for amendment.
- 8.2 Where a **Licensee** is a corporation and there is change in the information as set out in the **Application** for **Licence**, such as the names or addresses of the officers or directors, the location of the corporate head office or any change in the ownership of shares, the **Licensee** shall notify the **Director** of the change within seven (7) business days thereof and shall, if required by the **Director**, return the **Licence** immediately to the **Director** for amendment.

### Section 9.0 – Power of Entry

- 9.1 The **Town** may enter on a property at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:
- (1) the provisions of this by-law;
  - (2) an order issued under this by-law; or
  - (3) an order made under Section 431 of the *Municipal Act*.
- 9.2 Where an inspection is conducted by the **Town**, the **Person** conducting the inspection may;
- (1) require the production for inspection of documents or things relevant to the inspection;
  - (2) inspect and remove documents or things relevant to the inspection for the purpose of making copies and extracts;
  - (3) require information from any **Person** concerning a matter related to the inspection including their name, address, phone number and identification; and
  - (4) alone or in conjunction with a **Person** possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purpose of inspection.
- 9.3 The **Town** may undertake an inspection pursuant to an order issued under Section 438 of the *Municipal Act*.

9.4 The Town's power of entry may be exercised by an employee, **Officer** or agent of the **Town** or by a member of a police force with jurisdiction, as well by any **Person** under his or her direction.

### **Section 10.0 - Obstruct Officer**

10.1 No **Person** shall hinder or obstruct, or attempt to hinder or obstruct, the **Officer**, or other **Person** so authorized who is performing a duty or exercising a power under this By-law pursuant to Section 426 of the Municipal Act, 2001.

### **Section 11.0 – Penalty**

11.1 Every **Person** who contravenes a provision of this by-law is guilty of an offence.

11.2 If a **Person** is in contravention of any provision of this by-law, and the contravention has not been corrected, the contravention of the provision shall be deemed a continuing offence for each day or part of a day that the contravention remains uncorrected.

11.3 Every **Person** who is guilty of an offence under this By-law shall be subject to the following penalties:

11.4 Upon a first conviction, the minimum fine shall be \$350.00 and the maximum fine shall be \$100,000.00;

11.5 Upon a second or subsequent conviction for the same offence, a fine shall be a minimum of \$500.00 and the maximum fine shall be \$100,000.00;

(1) Upon conviction for a continuing offence, the minimum fine shall be \$500.00 and the maximum fine shall be \$10,000.00 for each day or part of a day that the offence continues;

(2) Upon conviction of a multiple offence, for each offence included in the multiple offence, the minimum fine shall be \$500.00 and the maximum fine shall be \$10,000.00.

11.6 For the purposes of this By-law, 'multiple offence' means an offence in respect of two or more acts or omissions each of which separately constitutes an offence and is a contravention of a provision of this By-law.

11.7 For the purposes of this By-law, an 'offence' is a second or subsequent offence if the act giving rise to the offence occurred after a conviction had been entered at an earlier date for the same offence."

11.8 Any **Person** who contravenes any of the provisions of this By-law is guilty of an offence and upon conviction is liable to a fine as provided for under *the Provincial Offences Act*.

## **Section 12.0 – Severability**

- 12.1 If a court of competent jurisdiction should declare any section or part of a section of this by-law to be invalid such section or part of a section shall not be construed as having persuaded or influenced **Council** to pass the remainder of this by-law and it is hereby declared that the remainder of this by-law shall be valid and shall remain in force.
- 12.2 Where the provisions of this by-law conflict with the provisions of any other by-law or *Act*, the more restrictive provisions shall apply.

## **Section 13.0 – Short Title**

- 13.1 Licensing of **Driving Instructors**

## **Section 14.0 – Repeal**

- 14.1 By-law Number 2017-32, is hereby repealed and this by-law shall come into force and effect upon its adoption.

Enacted this xxx day of xxx, 201x.

Tony Van Bynen, Mayor

Lisa Lyons, Town Clerk