

Corporation of the Town of Newmarket

By-law 2018-39

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 provides instruction in the operation of motor vehicles but does not include an individual who provides in-class instruction only;

“Driving Instructor 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;

“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;

“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 **Driving Instructor 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 **Driving Instructor Licence** shall be valid for a period of (1) one year from the 1st day of September in the year of issuance or renewal up to and including the 31st day of August of the following year unless:
 - (1) the **Driving Instructor Licence** has been suspended or revoked;

- (2) the **Driving Instructor Licence** has been cancelled at the request of the licensee;
- 3.2 An **Application** for the renewal of a **Driving Instructor 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 **Driving Instructor 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) provide a valid current Class "G" Ontario Driver's Licence;
 - (5) provide proof of a valid Ministry of Transportation Driving Instructor's Licence; and
 - (6) 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 **Driving Instructor Licence** upon request of the Officer;
 - (5) produce documentation showing dates and times that driving instructions and/or testing are being provided;
 - (6) affix **Plate** to the right rear bumper of the **Driving School Vehicle**;
 - (7) affix a roof sign on the vehicle showing the business name of the **Driving School** as shown on the **Driving Instructor Licence** while providing driving instruction to students;

- (8) affix the **Plate** 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 **Driving Instructor** 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 or 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 Driving Instructor Licence

- 6.1 The **Director** may revoke, suspend, cancel, refuse to issue or renew, a **Driving Instructor 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 **Driving Instructor 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** by hand delivered, regular mail, or registered mail 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;

- (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 by registered mail 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 **Driving Instructor Licence** or the **Plate**.
- 6.3 Where a hearing held pursuant to this by-law has taken place and the **Driving Instructor Licence** was revoked, suspended, cancelled or refused for renewal, the **Licensee** shall return the **Driving Instructor 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/her **Driving Instructor 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 **Driving Instructor Licence** or **Plate**.
- 6.5 When a **Person** has had his/her **Driving Instructor 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 **Driving Instructor Licence** or the **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 **Driving Instructor Licence** or recommend that a **Driving Instructor 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 **Driving Instructor 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 **Driving Instructor 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 **Driving Instructor Licence**, the **Licensee** shall notify the **Director** within seven (7) business days after the change of information relating to the **Driving Instructor Licence** and shall if required by the **Director** return the **Driving Instructor Licence** immediately to the **Director** for amendment.

Section 9 - Order

- 9.1 If an **Officer** is satisfied that this by-law has been contravened, the **Officer** may make an order, known as an Order to Discontinue Activity, requiring the **Person** who contravened the by-law, or who caused or permitted the contravention, or the **Owner** or occupier of the land on which the contravention occurred, to discontinue the contravention.
- 9.2 An Order to Discontinue Activity shall set out:
- (a) the municipal address of the property on which the contravention occurred;
 - (b) the date of the contravention;
 - (c) the reasonable particulars of the contravention of the by-law; and
 - (d) the date by which there must be compliance with the order.
- 9.3 No **Person** shall contravene an Order to Discontinue Activity.

Section 10 - Service of Order

- 10.1 The Order to Discontinue Activity may be served personally on the **Person** to whom it is directed or by registered mail to the last known address of that **Person**, in which case it shall be deemed to have been served on the fifth day after it is mailed.

Section 11.0 – Power of Entry

- 11.1 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*.
- 11.2 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.
- 11.3 The **Town** may undertake an inspection pursuant to an order issued under Section 438 of the Municipal Act.
- 11.4 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 12.0 - Obstruct Officer

- 12.1 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 13.0 – Penalty

- 13.1 Every **Person** who contravenes a provision of this by-law is guilty of an offence.
- 13.2 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.
- 13.3 Every **Person** who is guilty of an offence under this By-law shall be subject to the following penalties:
- 13.4 Upon a first conviction, the minimum fine shall be \$350.00 and the maximum fine shall be \$100,000.00;
- 13.5 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.
- 13.6 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.
- 13.7 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.
- 13.8 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 14.0 – Severability

- 14.1 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.
- 14.2 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 15.0 – Short Title

- 15.1 Licensing of **Driving Instructors**

Section 16.0 – Repeal

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

Enacted this 18th day of June, 2018.

Tony Van Bynen, Mayor

Lisa Lyons, Town Clerk