

LICENCE

Chapter 536 DRIVING SCHOOL OPERATIONS INSTRUCTORS AND EMPLOYEES

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Schedule 'A' - Business Licence Procedure

WHEREAS *it is deemed expedient to exercise the powers conferred on Council by the Municipal Act, 2001, S.O. 2001, c. 25;*

WHEREAS *Council has determined that failure to have necessary minimum qualifications or to take safety precautions while instructing new drivers can cause danger to driving students and the general public both during and after the time of instruction;*

AND WHEREAS *Council has determined that the ability to require certain minimum qualifications have been obtained and safety precautions are taken by Driving Instructors and Driving School Operators before issuing licences protects consumers;*

AND WHEREAS *Council has determined that licensing Driving Instructors and Driving School Operators protects consumers as there is a record of licence holders and the ability to require honest operation of their business and to hold licensees responsible when the business is not conducted in accordance with the law or with integrity;*

AND WHEREAS *Council has determined that the ability to add conditions to, suspend, revoke or refuse licences encourages Driving Instructors and Driving School Operators to comply with the by-law requirements;*

AND WHEREAS *notice of a public meeting was given by advertisement in a local newspaper on September 17, 2004;*

AND WHEREAS *a public meeting was held on September 27, 2004 to allow any person attending to make representations with respect to this by-law.*

Article 1 INTERPRETATION

536.1.1 Driving instructor - defined

“driving instructor” means a person who is employed to teach a person to operate a motor vehicle.

536.1.2 Driving school operator - defined

“driving school operator” means a person who, for gain, carries on a business of teaching persons to operate motor vehicles.

Article 2 GENERAL PROVISIONS

536.2.1 General provisions - Chapter 500

The provisions of Chapter 500 of the City of Kitchener Municipal Code shall apply to this Chapter. In the event of any conflict, the provisions of this Chapter shall apply.

536.2.2 Fees - Chapter 501

The fees for a licence under this Chapter shall be as set out in Chapter 501 of the City of Kitchener Municipal Code.

536.2.3 Schedule ‘A’ - Business Licence Procedure

The provisions of Schedule ‘A’ hereto shall form a portion of this Chapter.

536.2.4 Operation - without licence - prohibited

No person shall act as a driving instructor or a driving school operator without having made application and having received a licence issued in the name of Council by the Manager of Licensing or his/her delegate.

536.2.5 Applicable - all locations - within - outside - City

The provisions of this Chapter apply to any trade, occupation, calling or business described herein that is carried on either wholly or partly within the City even if the business is being carried on from a location outside the City.

536.2.6 Documentation - required

Every applicant for a driving school operator licence shall provide to the Manager of Licensing:

- (a) business address;
- (b) proof of insurance, endorsed to provide that the City will be given notice in writing of any cancellation, expiration or change in the amount of the policy, insuring the licensee and all duly licensed employees in the amount of at least Two Million Dollars (\$2,000,000) for public liability for damages resulting out of the

operation of any motor vehicle specified as being used in the driving school operator's business;

- (c) a safety check certificate for each of the motor vehicles over two years old used or to be used in the business;
- (d) a declaration stating the make, model, serial number and Ontario registration permit number issued pursuant to the laws of the Province of Ontario for each of the motor vehicles to be used in the business;
- (e) a declaration stating the name and address of each driving instructor employed by the driving school operator;
- (f) proof that the driving school operator holds, or has in its employ a holder of, a current driving instructor's licence issued pursuant to the laws of the Province of Ontario, and
- (g) proof that the driving school operator holds, or has in its employ the holder of, an Ontario Safety League advanced instructors course certificate or equivalent.

536.2.7 Instructor - applicant - licence - employer identified

Every applicant for a driving instructor licence shall provide to the Manager of Licensing:

- (a) proof that the driving instructor holds a current unrestricted driving instructor's licence issued pursuant to the laws of the Province of Ontario; and
- (b) a declaration identifying his/her employer.

536.2.8 Plate - each vehicle - form - cost

Upon issuing a driving school operator licence the Manager of Licensing shall furnish to the licensee one plate for each of the motor vehicles to be used in the business of the licensee. The said plate shall bear a number and the words "Student Driver" and "Kitchener" and the licensee shall reimburse the City for the actual cost of each plate required.

536.2.9 Vehicle - use - restriction

No person shall instruct or cause instruction to be given in a motor vehicle in the City that is not bearing identifying markers required in Section 536.3.1 hereof, except that the instruction may be given to a student in an unmarked vehicle supplied by that student when, that student already holds or has held a valid permit for the operation of that vehicle which he/she seeks to renew.

536.2.10 Vehicle - identifying markers - unlicensed - prohibited

No person shall operate or cause to be operated any motor vehicle for the instruction of student drivers bearing any identifying markers or equipment or a sign indication that he/she is operating a vehicle for the business of a driving school in the City unless he/she holds a driving instructor licence hereunder.

536.2.11 Operation - licence suspended - revoked - prohibited

No person shall act as a driving instructor or driving school operator while a licence issued under this Chapter is suspended or revoked by Council.

536.2.12 Conditions of licence - compliance

No person shall violate any condition that Council places on a licence issued under this Chapter.

Article 3**DRIVING SCHOOL OPERATOR - RESPONSIBILITY****536.3.1 Vehicle - requirements - operator responsibility**

Every driving school operator shall ensure that every motor vehicle used in the business:

- (a) has attached the one plate furnished pursuant to Section 536.2.8, which said plate shall remain attached during the currency of the licence;
- (b) is equipped with a roof sign of at least 1300 square centimetres (201.6 square inches) in size, clearly indicating the name and nature of the business, said sign to be visible from both the front and the rear of the vehicle;
- (c) is equipped with a dual-control braking system;
- (d) is maintained in good repair; and
- (e) from December 1st to March 1st is equipped with snow tires or radial tires.

536.3.2 Change of staff - information filed - deadline

Every driving school operator shall ensure that a declaration pursuant to Section 536.2.6 advising the Manager of Licensing of all changes in the driving school operator's staff of licensed instructors is filed within fourteen days of the occurrence of such change.

536.3.3 Change of vehicle - information filed - deadline

Every driving school operator shall ensure that a declaration pursuant to Section 536.2.6 advising the Manager of Licensing of all changes of vehicles used by the driving school operator is filed within fourteen days of the occurrence of such change.

536.3.4 Instructor - licence endorsed - Manager of Licensing

Every driving school operator shall ensure that where a new driving instructor comes into the driving school operator's employment the licence issued for each driving instructor is endorsed by the Manager of Licensing to show the change of employer.

536.3.5 Instructor - using own vehicle - requirements

Every driving school operator shall ensure that where any driving instructor in the driving school operator's employment is the owner of a vehicle in which such driving instructor proposes to give instruction, the vehicle is licensed for such use.

536.3.6 Stationary - advertisements - other - requirements

Every driving school operator shall ensure that all stationery, forms, bills, invoices, statements and any other printed or written advertising material, including any published advertisement in a newspaper used in the course of such business, bears the driving school operator's name, business telephone number and business address.

536.3.7 Licence - displayed - prominent - at place of business

Every driving school operator shall ensure that the licence under this Chapter is prominently displayed at the driving school operator's place of business during the period the licence is in force.

536.3.8 Employment - non-licensed driver - prohibited

No driving school operator shall employ a person as a driving instructor who is not licensed in accordance with this Chapter.

536.3.9 Vehicle - use - only as licensed

No driving school operator shall use any motor vehicle in the business that is not enumerated in the declaration filed with the Manager of Licensing pursuant to Section 536.2.6.

536.3.10 Location - restrictions

Every driving school operator shall ensure that the established place of business or branch office, branch classroom or advertised address of any driving school in the City does not consist of or include a house trailer, a temporary address, a telephone answering service, a room or rooms in a hotel, a rooming house or other address service or post office box, provided that a telephone answering service or telephone answering machine may be used outside of normal business hours.

536.3.11 Office - open to the public

Every driving school operator shall ensure that the established place of business shall consist of an office open to the public.

536.3.12 Classroom facilities - requirements

Every driving school operator shall ensure that if classroom facilities are provided, they shall comply with the following provisions:

- (a) the classroom or, where there is more than one, the main classroom, shall be accessible to or adjoining the main office of the driving school;
- (b) the main classroom shall contain:
 - (i) seating facilities and writing surfaces for a minimum of five students at the same time,
 - (ii) chalkboards or instructional devices which are visible from the seating area,
 - (iii) charts, diagrams or pictures relating to the operation of motor vehicles and traffic laws,
 - (iv) textbooks, reference books and pamphlets relating to the operation of motor vehicles and traffic laws, and
 - (v) magnetic traffic boards.

536.3.13 Offices - equipment - records - sufficient

Every driving school operator shall ensure that the main office and any branch office of each driving school in the City contains sufficient space, equipment, records and personnel to transact the business of the driver training school.

536.3.14 Branch office - compliance

Every driving school operator shall ensure that a branch office or branch classroom shall comply with all the requirements for the main office or main classroom.

Article 4**DRIVING INSTRUCTOR - RESPONSIBILITY****536.4.1 Vehicle - in good repair - extra brake pedal required**

Every driving instructor shall keep his/her vehicle in good repair and in mechanically sound condition and maintain in any such vehicle in addition to the standard controls and brakes for use by the student driver, extra braking equipment in good working condition, placed in a position for ready use by the instructor.

536.4.2 Licence - displayed - plainly visible to student

Every driving instructor shall while giving driving instruction in a marked vehicle belonging to or used by a driving school, display his/her driving instructor licence hereunder in the said vehicle in such a position that it is plainly visible to the student driver.

536.4.3 Roof sign - requirement

Every driving instructor shall ensure the roof sign required pursuant to Section 536.3.1(b), is securely affixed to the roof of the motor vehicle.

536.4.4 Student driver - licensed - minimum age requirement

No driving instructor shall instruct any student unless the student driver is:

- (a) the holder of a motor vehicle operator's temporary instruction permit issued pursuant to the laws of the Province of Ontario;
- (b) a resident of any other province of Canada, who is at least sixteen years of age and has complied with the law of the province in which he/she resides as to the licensing of motor vehicle operators or chauffeurs; or
- (c) a resident of any other country or state,
 - (i) who is at least sixteen years of age and is the holder of a valid international driver's permit, or
 - (ii) who is at least sixteen years of age and has not resided in Ontario for more than three months in any one year and has complied with the law of the country or state in which he/she resides as to the licensing of motor vehicle operators or chauffeurs.

536.4.5 Student - to be accompanied by another - permitted

If the student driver requests that he/she be accompanied by one person other than the driving instructor, the driving instructor shall ensure that his/her request is complied with and that the other person shall be seated in the back seat of the motor vehicle.

536.4.6 Trainee - supervisor - in car - student to consent

If the consent of the student driver is obtained, a trainee instructor or supervising instructor shall be able to be seated in the back seat of the motor vehicle during instruction or the purpose of observing the methods of instruction.

Article 5
ENFORCEMENT

536.5.1 Fine - for contravention - person

Every person who contravenes any provision of this Chapter and every director or officer of a corporation who concurs in such contravention by the corporation is guilty of an offence and is liable, upon conviction, to a fine not exceeding Twenty-Five Thousand Dollars (\$25,000).

536.5.2 Fine - for contravention - corporation

Notwithstanding Section 536.5.1, every corporation that contravenes any provision of this Chapter is guilty of an offence and is liable, upon conviction, to a fine not exceeding Fifty Thousand Dollars (\$50,000).

Article 6
VALIDITY

536.6.1 Severability

It is hereby declared that each and every of the foregoing sections of this Chapter is severable and that, if any provisions of this Chapter should for any reason be declared invalid by any Court, it is the intention and desire of Council that each and every of the then remaining provisions hereof shall remain in full force and effect.

Article 7
REPEAL - ENACTMENT

536.7.1 By-law - previous

By-law 2000-186, section 11 of By-law 2000-228, sections 11 and 12 of By-law 2001-239, section 9 of By-law 2001-233, section 8 of By-law 2001-241, section 13 of By-law 2002-233 and the contents of the previous Chapter 536 are hereby repealed as of January 1, 2005.

536.7.2 Effective date

This Chapter comes into force and effect on January 1, 2005. By-law 2004-259, 6 December, 2004.

DRIVING SCHOOL OPERATIONS

SCHEDULE

Schedule 'A' - Business Licence Procedure

1. Upon receipt of a complete licence application the Manager of Licensing shall either issue or renew a licence hereunder or shall refer the matter to Council or a Committee of Council where appropriate under the provisions of this Chapter or any other by-law of Council.
2. Save as otherwise provided herein, every licence issued or renewed pursuant to this Chapter shall be issued in the name of Council by the Manager of Licensing.
3. The Manager of Licensing shall not process an application where that application is incomplete. An application will be deemed incomplete where:
 - (a) required information has not been provided on the application form;
 - (b) information or documentation required by the Manager of Licensing as part of the application process has not been provided;
 - (c) the prescribed licence fee is unpaid; or
 - (d) the Manager of Licensing has received an unsatisfactory report regarding an investigation carried out pursuant to Chapter 500 of the City of Kitchener Municipal Code or any other by-law of the City and the conditions causing the report to be unsatisfactory have not been remedied.
4. Where the Manager of Licensing receives an incomplete application, the Manager of Licensing shall, where an address or other contact information has been provided, notify the applicant that the application is incomplete and of the steps required to complete the application.
5. Where the Manager of Licensing decides an application is incomplete, the applicant shall have the right to appeal that decision to Council or a Committee of Council.
6. If the Manager of Licensing is unable to determine whether an application is incomplete, he/she may refer the matter to Council or a Committee of Council for consideration.
7. The Manager of Licensing may refer an application or a licence to Council or a Committee of Council where:

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- (a) the applicant or licensee does not meet the requirements of this Chapter or any other applicable law or by-law;
 - (b) there are reasonable grounds for belief that an application or other document provided to the Manager of Licensing by or on behalf of an applicant or licensee contains a false statement or provides false information;
 - (c) the past or present conduct of any person, including the officers, directors, employees or agents of a corporation, affords reasonable cause to believe that the person will not carry on or engage in the business in accordance with the law or with honesty and integrity;
 - (d) without limiting the generality of Section 7(c), any person, including the officers, directors, employees or agents of a corporation, has contravened this Chapter or any other by-law or federal or provincial statute or regulation while engaged in or conducting the business;
 - (e) any special conditions placed on a former or current licence of the applicant or licensee under this Chapter have not been met; or
 - (f) the provisions of this Chapter provide grounds not to issue or renew in the circumstances.
8. When any matter has been referred or appealed to Council or a Committee of Council, the applicant or licensee shall be given reasonable notice of the time and place of the hearing and shall be invited to make submissions.
9. When any matter has been referred or appealed to Council or a Committee of Council, after due consideration of the application or licence and after Council or a Committee of Council has heard such representations as the applicant or licensee and staff may care to make, Council may direct that the licence be issued or renewed, or may refuse, suspend, revoke or add conditions to a licence where:

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- (a) the applicant or licensee does not meet the requirements of this Chapter or any other applicable law or by-law;
- (b) information or documentation required by the Manager of Licensing as part of the application process has not been provided;
- (c) the application is incomplete or the prescribed licence fee is unpaid;
- (d) the Manager of Licensing receives an unfavourable report regarding an investigation carried out pursuant to Chapter 500 of The City of Kitchener Municipal Code or any other by-law of the City;
- (e) there are reasonable grounds for belief that an application or other document provided to the Manager of Licensing by or on behalf of an applicant or licensee contains a false statement or provides false information;
- (f) the past or present conduct of any person, including the officers, directors, employees or agents of a corporation, affords reasonable cause to believe that the person will not carry on or engage in the business in accordance with the law or with honesty and integrity;
- (g) without limiting the generality of Section 9(f), any person, including the officers, directors, employees or agents of a corporation, has contravened this Chapter or any other by-law or federal or provincial statute or regulation while engaged in or conducting the business;
- (h) any special conditions placed on a former or current licence of the applicant or licensee under this Chapter have not been met;
- (i) the provisions of this Chapter provide grounds not to issue or renew in the circumstances; or

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- (j) the applicant or licensee has consented to the refusal, suspension, revocation or adding of conditions to the licence.
10. Where a licensee is convicted of an offence under any federal or provincial Act, any regulation made thereunder, or any by-law of the City in relation to or during the carrying on of the trade, calling, business or occupation licensed hereunder, the licence may be suspended forthwith by Council until such time as the matter can be heard and finally determined by Council. By-law 2004-259, 6 December, 2004; Schedule 'A'; By-law 2006-46, 13 February, 2006.