

LICENCE

Chapter 584 REFRESHMENT PLACES

Article 1 INTERPRETATION

- 584.1.1 Closed - defined
- 584.1.2 Place of refreshment - defined
- 584.1.3 Refreshment - defined

Article 2 GENERAL PROVISIONS

- 584.2.1 General provisions - Chapter 500
- 584.2.2 Fees - Chapter 501
- 584.2.3 Schedule 'A' - Business Licence Procedure
- 584.2.4 Operation - without licence - prohibited
- 584.2.5 Applicable - all locations - within - outside - City
- 584.2.6 Classes of licences
- 584.2.7 Class A licence - hours of operation
- 584.2.8 Class A licence - hours extension issued under Act
- 584.2.9 Operation - licence - suspended - revoked - prohibited
- 584.2.10 Condition of licence - compliance

Article 3 ENFORCEMENT

- 584.3.1 Fine - for contravention - person
- 584.3.2 Fine - for contravention - corporation

REFRESHMENT PLACES

Article 4 VALIDITY

584.4.1 Severability

Article 5 REPEAL - ENACTMENT

584.5.1 By-law - previous

584.5.2 Effective - date

SCHEDULE

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 the ability to require inspections of Places of Refreshment to insure certain minimal health and safety standards are met before issuing a licence protects consumers;*

AND WHEREAS *Council has determined that licensing Places of Refreshment owners and operators protects consumers as there is a record of licence holders and the ability to require legal, honest and sanitary operation of such businesses 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 Place of Refreshment owners and 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

584.1.1 Closed - defined

“closed” means not open for the serving of any customer.

584.1.2 Place of refreshment - defined

“place of refreshment” includes a restaurant, ice cream parlour, dairy bar, tea room, sandwich shop, lunch counter, hot dog and hamburger stand, peanut stand, fish and chip shop, refreshment booth, refreshment stand and a place where refreshments are sold from a vending machine, but does not include a refreshment vehicle.

584.1.3 Refreshment - defined

“refreshment” means food or drink which may be consumed by humans.

Article 2 GENERAL PROVISIONS

584.2.1 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.

584.2.2 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.

584.2.3 Schedule ‘A’ - Business Licence Procedure

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

584.2.4 Operation - without licence - prohibited

No person shall own or operate a place of refreshment without having made application and having received a licence issued in the name of the Council by the Manager of Licensing or his/her delegate.

584.2.5 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.

584.2.6 Classes of licences

There shall be the following classes of licences pursuant to this Chapter:

- (a) Class A places of refreshment for which a licence to sell liquor has been issued under the Liquor Licence Act;

- (b) Class B places of refreshment on the premises of a school, college or university where refreshments are sold only to the students and employees of such school, college or university;
- (c) Class C all other places of refreshment.

584.2.7 Class A licence - hours of operation

Every premises for which a Class A place of refreshment licence has been issued under this Chapter shall be closed between the hours of 3 a.m. and 5 a.m. each day except the first day of January in each year.

584.2.8 Class A licence - hours extension issued under Act

Notwithstanding Section 584.2.7 a Class A place of refreshment may remain open from 3 a.m. to 5 a.m. each day where permitted due to an extension of the hours of sale of liquor pursuant to the *Liquor Licence Act*.

584.2.9 Operation - licence - suspended - revoked - prohibited

No person shall operate or permit to be operated a place of refreshment while a licence issued under this Chapter is suspended or revoked by Council.

584.2.10 Condition of licence - compliance

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

**Article 3
ENFORCEMENT**

584.3.1 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).

584.3.2 Fine - for contravention - corporation

Notwithstanding Section 584.3.1, 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 4
VALIDITY

584.4.1 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 5
REPEAL - ENACTMENT

584.5.1 By-law - previous

By-law 2002-186, section 28 of By-law 2002-233 and the contents of the previous Chapter 584 are hereby repealed as of January 1, 2005.

584.5.2 Effective - date

This Chapter comes into force and effect on January 1, 2005. By-law 2004-257, 6 December, 2004.

REFRESHMENT PLACES

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.

REFRESHMENT PLACES

7. The Manager of Licensing may refer an application or a licence to Council or a Committee of Council where:
 - (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:

REFRESHMENT PLACES

- (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

REFRESHMENT PLACES

- (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 2004-257, 6 December, 2004; Schedule 'A'; By-law 2006-46, 13 February, 2006.