

THE CORPORATION OF THE MUNICIPALITY OF CLARINGTON

BY-LAW NO. 2006-116

Being a by-law to license, regulate and govern
Auctioneers in the Municipality of Clarington
and to repeal By-law 74-54 of the former Town of Newcastle
and all of its amendments

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

AND WHEREAS *Council has determined that requiring auctioneers to meet certain record keeping, accounting and financial requirements with respect to proceeds of auctions protects consumers who have left goods to be auctioned;*

AND WHEREAS *Council has determined that requiring certain records to be kept by auctioneers will assist the police in locating items that may have been stolen and thereby protect consumers from purchasing stolen items;*

AND WHEREAS *Council has determined that licensing auctioneers protects consumers as there is a record of licence holders and the ability to hold them accountable where the business is not conducted in accordance with the law or with honesty and integrity;*

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

NOW THEREFORE *the Council of the Corporation of the Municipality of Clarington enacts as follows:*

DEFINITIONS

“auction” means any public sale in which item(s) are sold or offered for sale to the highest bidder whether in person or by newspaper, television, radio, or other media.

“auctioneer” means a person who sells or puts up for sale item(s) by auction and shall specifically include a person placing any item(s) for sale to the highest bidder in any local media.

“Clerk” means Municipal Clerk of the Corporation of the Municipality of Clarington or the Deputy Clerk acting in place of the Clerk;

“Committee” means the General Purpose and Administration Committee of the Council of the Corporation of the Municipality of Clarington;

“Council” means the Council of the Corporation of the Municipality of Clarington;

“**Item(s)**” shall include any goods, wares, merchandise, services, effects, or property;

“**Municipality**” shall mean the Corporation of the Municipality of Clarington;

1.0 GENERAL PROVISIONS

- 1.1 The fees for a licence under this By-law shall be as set out in Schedule “A” attached hereto and forming part of this By-law.
- 1.2 No person shall act as an auctioneer without having made application and having received a licence issued in the name of Council by the Clerk or his/her delegate.
- 1.3 No person shall permit any other person to place an advertisement in any local newspaper to auction any item(s) within the Municipality unless the person placing the advertisement is licenced under this By-law.
- 1.4 No person shall permit or assist a person to act as an auctioneer within the Municipality without a Municipal licence having been issued to that person prior to the commencement of the auction.
- 1.5 No person shall broadcast an auction from the Municipality unless the auctioneer acting therein has a licence issued under this By-law.
- 1.6 Every person who has received a licence shall allow any Police officer, and any other person duly authorized, including any Municipal Law Enforcement Officer to inspect at any reasonable time:
 - (a) the premises where an auction is being held; and
 - (b) the books kept in accordance with this By-law.
- 1.7 Every auctioneer shall keep good order in his/her auction room and offices and shall keep proper books of account of the business transacted by him/her as auctioneer, which books shall give the names and addresses of persons depositing goods with him/her for sale, the description of the goods, the price for which same may be sold and the names and addresses of persons purchasing such goods or any portion thereof.
- 1.8 No auctioneer shall conduct or permit to be carried on in his/her premises any mock auction or shall knowingly or willfully make, or permit to be

made, any misrepresentation as to the quality or value of the goods, wares, merchandise or effects which may be offered for sale by him/her.

- 1.9 Every auctioneer's licence shall be automatically suspended upon the holder or one of the holders thereof making an assignment under any statute respecting bankruptcy or any other assignment for the general benefit of his/her creditors or upon his/her being declared or adjudged a bankrupt, or upon his/her taking advantage of any other statute for the benefit of insolvent debtors and he/she shall not again carry on the business of an auctioneer without the express consent of Council.
- 1.10 Nothing in this By-law shall apply to a sheriff or bailiff offering for sale goods or chattels seized under an execution or distrained for rent.
- 1.11 No person shall act as an auctioneer while a licence issued under this By-law is suspended or revoked by Council.
- 1.12 No person shall violate any condition that Council places on a licence issued under this By-law.
- 1.13 No licence shall be required for an auctioneer or auction conducted by or on behalf of a religious or charitable organization.

2.0 LICENCING PROCEDURE

- 2.1. Upon receipt of a complete licence application the Clerk 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 By-law or any other by-law of Council.
- 2.2 Unless otherwise specified in this by-law, every licence issued or renewed pursuant to this By-law shall be valid for a period of one calendar year and shall expire on December 31st of each year. The licence fee shall not be pro-rated or reduced in any way regardless of when the initial licence is issued.
 - 2.2.1 Notwithstanding Section 2.2, a licence may be granted for a single individual auction event. Such licence shall be valid for the one auction event only.
 - 2.2.2 An applicant who has been licenced pursuant to section 2.2.1 may apply for any number of single event auction licences. The procedure for each

application shall be the same as for an annual licence and the fees to be paid shall be as set out in Schedule A of this By-law.

- 2.3 The Clerk 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 Clerk as part of the application process has not been provided;
 - (c) the prescribed licence fee is unpaid; or
 - (d) the Clerk has received an unsatisfactory report regarding an investigation carried out pursuant to this By-law or any other by-law of the Municipality and the conditions causing the report to be unsatisfactory have not been remedied.
- 2.4 Where the Clerk receives an incomplete application, the Clerk 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.
- 2.5 Where the Clerk decides an application is incomplete, the applicant shall have the right to appeal that decision to Council or a Committee of Council.
- 2.6 If the Clerk is unable to determine whether an application is incomplete, he/she may refer the matter to Council or a Committee of Council for consideration.
- 2.7 Where:
- (a) the applicant or licensee does not meet the requirements of this By-law or any other applicable law or by-law;
 - (b) there are reasonable grounds for belief that an application or other document provided to the Clerk 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 2.7(c), any person, including the officers, directors, employees or agents of a corporation, has contravened this By-law 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 By-law have not been met; or
 - (f) the provisions of this By-law provide grounds not to issue or renew in the circumstances;
 - (g) the applicant is in breach of this or some other Municipal by-law or law of Ontario or Canada;
 - (h) the applicant has been convicted of an offence pursuant to a similar by-law in another municipality; or
 - (i) the applicant has a prior Criminal record, for which he has not received a Pardon,
- the Clerk shall deny the application.

- 2.8 Notwithstanding section 2.7(i), if more than seven years have elapsed since the final disposition date of the Criminal Record, and it is, in the opinion of the Clerk, of a minor nature, the Clerk may approve the application.
- 2.9 An applicant who has been denied a licence by the Clerk pursuant to Section 2.7 may request that his application be heard by Committee or Council, which may, in its discretion, issue the licence in question. Upon request, the Clerk shall refer the matter to the Council or to Committee.
- 2.10 Council or Committee shall consider the matter and the rules in Section 3 shall apply with necessary modifications.
- 2.11 In considering an application under Section 2.10, Council or Committee may impose any conditions it sees fit as a requirement of obtaining, continuing to hold or renewing a licence, including any condition which would otherwise contravene any other provisions of the By-law.
- 2.12 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.
- 2.13 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:

- (a) the applicant or licensee does not meet the requirements of this By-law or any other applicable law or by-law;
- (b) information or documentation required by the Clerk as part of the application process has not been provided;
- (c) the application is incomplete or the prescribed licence fee is unpaid;
- (d) the Clerk receives an unfavourable report regarding an investigation carried out pursuant to Section 2.7 of this By-law;
- (e) there are reasonable grounds for belief that an application or other document provided to the Clerk 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 2.13(f), any person, including the officers, directors, employees or agents of a corporation, has contravened this By-law 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 By-law have not been met;
- (i) the provisions of this By-law provide grounds not to issue or renew in the circumstances; or
- (j) the applicant or licensee has consented to the refusal, suspension, revocation or adding of conditions to the licence.

2.14 Where a licensee is convicted of an offence under any federal or provincial Act, any regulation made thereunder, or any by-law of the Municipality 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.

3.0 REVOCATION AND SUSPENSION

3.1 Council or Committee may revoke, suspend, impose any conditions upon, or refuse to issue or renew any licence to any person under this By-law.

3.2 The Clerk is authorized to suspend any license issued to any person under this by-law pending a review by Council or Committee.

3.3 Council or Committee may, in exercising the discretion mentioned in Section 2.10, consider any matter raised under paragraph 2.7 or any other matter that relates to the general welfare, health or safety of the public.

3.4 Hearing by Council or Committee:

- a) The applicant will be advised of the date, place and time fixed for such hearing at least five days prior to the hearing.
- b) At such hearing, Council or Committee shall receive a written report from the Clerk and from such other persons, officers or agencies who may be involved in the matter being considered by Council or Committee.
- c) Council or Committee shall not make a decision under Section 13.1 without first affording the person or applicant the opportunity to be heard before the Council or Committee.
- d) After such opportunity to be heard is afforded the person or applicant, Council or Committee may make any decision in respect of which the hearing was held or the opportunity for hearing afforded without holding a further hearing or affording further opportunity for a hearing in such matter.
- e) Where the Council or Committee conducts a hearing in respect of any matter in this subsection, the rules set out in *The Statutory Powers Procedure Act* shall apply to Council or Committee in the exercise of its power of decision in respect to such matter.

3.5 Where Council or Committee has exercised its authority under section 3.1, the decision of Council or Committee shall be binding only on the licence as issued for the Municipality and shall not be deemed to affect a licence as issued by another municipality.

4.0 FINANCIAL

4.1 The books maintained by the auctioneer shall be in sufficient detail to show:

- (a) all money received in trust for clients;
- (b) all disbursements out of money held in trust;
- (c) the unexpended balance of money held in trust for each person for whom such money is held; and
- (d) all other money received and disbursed in connection with his/her business.

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- c) Council or Committee shall not make a decision under Section 13.1 without first affording the person or applicant the opportunity to be heard before the Council or Committee.
- d) After such opportunity to be heard is afforded the person or applicant, Council or Committee may make any decision in respect of which the hearing was held or the opportunity for hearing afforded without holding a further hearing or affording further opportunity for a hearing in such matter.
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- 4.2 Every auctioneer shall pay the proceeds of any goods sold by him/her on behalf of a client into an account designated as a trust account at a chartered bank, trust company or a credit union.
- 4.3 Section 4.2 shall not apply to:
- (a) money which is forthwith paid over to the client;
 - (b) money which is paid into a separate account opened or to be opened in the name of the client or some person named by that client as the duly authorized agent of that client;
 - (c) money which, with the client's authority, is paid to a third party; or
 - (d) the auctioneer's reasonable fees and disbursements.
- 4.4 The auctioneer shall not pay any of his/her own monies into the trust account provided that where he/she receives money or security for money representing in part money belonging to a client and in part money belonging to him/her and it is not practical to split the money, he/she shall pay the whole of such money into the trust account and thereafter withdraw that part of the money therefrom that belongs to him/her.
- 4.5 At all times, the auctioneer shall maintain sufficient balances on deposit in the trust account or accounts to meet all his/her obligations with respect to funds held in trust for clients.
- 4.6 No money shall be drawn from the trust account other than money required for payment to or on behalf of a client or money drawn to be paid to the auctioneer in respect of a liability of the client to the auctioneer, provided that money so drawn shall not in any case exceed the total amount of the money held for the client.
- 4.7 All the records and books as referred to in this By-law shall be made available for inspection upon request of a police officer or Municipal Law Enforcement Officer. Failure to provide the records and books as required by this section shall constitute an offence.

5.0 ENFORCEMENT

- 5.1 Every person other than a corporation who contravenes any provision of this By-law 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 as set out in the *Municipal Act, 2001, S.O. 2001, c. 25*.

5.2 Every corporation that contravenes any provision of this By-law is guilty of an offence and is liable, upon conviction, to a fine as set out in the *Municipal Act, 2001, S.O. 2001, c. 25*.

6.0 VALIDITY

6.1 It is hereby declared that each and every of the foregoing Sections of this By-law is severable and that, if any provisions of this By-law 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.

7.0 REPEAL - ENACTMENT

7.1 By-law 74-54 of the former Town of Newcastle and its amendments are hereby repealed.

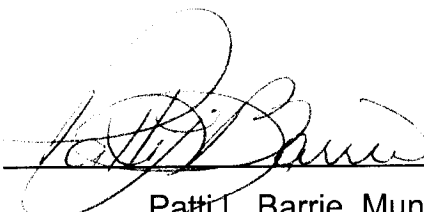
7.2 This By-law comes into force and effect on the date of its passage

BY-LAW read a first and second time this 29th day of May 2006

BY-LAW read a third time and finally passed this 29th day of May 2006



John Mutton, Mayor



Patti L. Barrie, Municipal Clerk

SCHEDULE "A"

By-law 2006-

BUSINESS LICENCE FEES

AUCTIONEER (ANNUAL)	\$75.00
AUCTIONEER (SINGLE EVENT)	\$40.00