



City of Kingston By-Law Number 2024–109

“Public Market By-Law”

Passed: December 19, 2023

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A By-Law Respecting the Kingston Public Market

1 st Reading	December 19, 2023
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Whereas:

The *City* is a single-tier municipality incorporated pursuant to an order made under section 25.2 of the *Municipal Act, 2001*;

Subsection 5 (1) of the *Municipal Act, 2001* provides that the powers of a municipality must be exercised by its council;

Subsection 5 (3) of the *Municipal Act, 2001* provides that a municipal power must be exercised by by-law unless the municipality is specifically authorized to do otherwise;

Pursuant to subsection 10 (1) of the *Municipal Act, 2001*, a single tier municipality may provide any service or thing that the municipality considers necessary or desirable for the public; and

Pursuant to section 113 of the *Municipal Act, 2001*, a local municipality may establish, maintain and operate a farmers market, a flea market and other similar types of markets, and may regulate a farmers market, a flea market and other similar types of markets of any person including regulating the hours of operation of a market.

Therefore, Council enacts:

1 Interpretation

1.1 This by-law may be cited as the *Public Market By-Law*.

1.2 In this by-law:

"Administrative Policies Committee" means the Administrative Policies Committee designated by *Council* or, in the event of organizational changes, another committee designated by *Council* to carry out the committee's responsibilities for appeals under this by-law;

"City" means The Corporation of the City of Kingston;

"Council" means the Council of the *City*;

"craft" means an item of decorative design and handicraft, or an item produced by hand and consisting of a one-of-a-kind or studio production work, and generally includes those items made with some degree of artistic purpose, but excludes mass-manufactured items;

"daily permit" means a permit issued by the *City* to a *stall holder* pursuant to this by-law governing the *stall holder's* use and occupation of a *stall* for one day;

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"**jury**" means the *market* jury established by the *manager* pursuant to Schedule D of this by-law;

"**licence agreement**" means the licence agreement entered into by the *City* and the *stall holder* pursuant to this by-law governing the *stall holder's* use and occupation of a *stall*;

"**manager**" means the Manager of Recreation & Leisure Services for the *City*, the *manager's* delegate, or, in the event of organizational changes, the manager of the appropriately titled department;

"**market**" means the City of Kingston public market located at Springer Market Square, as approximately shown on Schedule A;

"**market clerk**" means the *person* designated by the *manager* to manage the *market*;

"**market season**" means from January 1 to December 31 in each year;

"**Municipal Act, 2001**" means the *Municipal Act, 2001*, S.O. 2001, c.25;

"**person**" includes an individual, a corporation, a partnership, and an association;

"**producer**" means a *stall holder* who produces a minimum of 80% of their product;

"**Provincial Offences Act**" means the *Provincial Offences Act*, R.S.O. 1990, c. P.33;

"**re-seller**" means a *stall holder* who produces less than 80% of their product and/or buys their product either locally or from wholesalers;

"**stall**" means that portion of the *market* licensed by the *City* to a *stall holder* pursuant to a *daily permit* or *licence agreement*, as the case may be; and

"**stall holder(s)**" means a *person* who has entered into a *licence agreement* with the *City* for the use and occupation of a *stall*, or who has received a *daily permit* from the *City* for the use and occupation of a *stall*.

1.3 For the purposes of interpreting this by-law:

- (a) a reference to any legislation, regulation, or by-law or to a provision thereof includes a reference to any legislation, regulation or by-law enacted, made or passed in substitution thereof or amendment thereof;

- (b) any reference to legislation or by-laws includes all of the regulations made thereunder; and
- (c) “include”, “includes” and “including” indicate that the subsequent list is not exhaustive.

1.4 This by-law will not be interpreted as exempting any *person* from the requirement to comply with any other *City* by-law or federal or provincial legislation. In the event of conflict between the provisions of this by-law and any other *City* by-law, the more restrictive provision will apply.

2 Administration

2.1 The *manager* is responsible for the administration of this by-law.

2.2 Where this by-law provides that the *manager* may do an act, the *manager* may, when doing the act, seek and consider information or documents from any *person*, and may consult with other *City* employees, legal counsel, or other advisors, all as the *manager* considers necessary.

2.3 Where this by-law provides that the *manager* may do an act, it may be done by an individual authorized by the *manager* to do the act.

2.4 Every application for a new *licence agreement*, or a renewal of an existing *licence agreement*, must be submitted to the *manager* in the form provided.

2.5 Every application for a new *licence agreement*, or a renewal of an existing *licence agreement*, must be accompanied by the full licence fee, as set out in *City of Kingston By-Law Number 2005-10, “A By-Law to Establish Fees and Charges to be Collected by The Corporation of the City of Kingston”*, together with the jurying fee referred to in Schedule D, if applicable.

2.6 Despite subsection 2.5 of this by-law, a *producer* may request a 50% fee reduction in exchange for a bi-weekly donation to a local food program or organization that supports the most vulnerable populations in the community, subject to and in accordance with the terms of the *licence agreement*.

2.7 The *manager* will review each complete application and will grant or refuse to issue a *licence agreement* or *daily permit*, as the case may be, and will notify the applicant of its decision in writing.

2.8 All applications for a *craft stall* or the sale of *crafts* must include a detailed description of the *crafts* to be offered, as well as information on how the *crafts* are produced. All such applications are subject to the *jury* process described in Schedule D.

- 2.9 A *person* whose application for a *licence agreement* or a renewal of a *licence agreement* has been refused, or a *person* whose *licence agreement* has been terminated may, within 15 days of being notified of the *City's* decision, submit an application to appeal to the *Administrative Policies Committee* for a review of the decision. A *person* whose application for a *daily permit* has been refused has no right of appeal and the decision of the *manager* is final.
- 2.10 On appeal, the *Administrative Policies Committee* has the power to affirm the decision of the *manager* to refuse or terminate the *licence agreement*, or to direct the *manager* to issue, renew or reinstate the *licence agreement*.
- 2.11 Decisions of the *Administrative Policies Committee* are final.

3 Application of By-Law and Prohibitions

- 3.1 This by-law applies to the use of the *market*. Non-*market* civic events held in Springer Market Square will be regulated by the *City of Kingston First Capital Place Policy*, the *City of Kingston Special Events Policy for City Parks and Facilities*, and all other applicable City policies.
- 3.2 No *person* will sell, offer for sale, display, distribute or hand out any item in, on or at the *market* without a valid *licence agreement* or a *daily permit* issued under the provisions of this by-law.
- 3.3 No *person* will knowingly submit an application for a *licence agreement* or *daily permit* that contains false, misleading or deceptive information.
- 3.4 No *stall holder* or employee of a *stall holder* will discriminate in the carrying on of business against any member of the public on the basis of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability.
- 3.5 No *stall holder* may sell, offer for sale, display, distribute or give any live animal, including any live bird, live fish, or live reptile, at the *market*.

4 Licence Agreements and Daily Permits

- 4.1 Each *stall holder* is required to execute a *licence agreement* or to obtain a *daily permit* prior to accessing or using the *stall*. Each *licence agreement* and *daily permit* will contain the terms and conditions specified in this by-law, including the general provisions set out in Schedule C of this by-law, subject to any modifications or additional provisions which may be made to those general provisions as reasonably required by the *manager* and approved by the *City's* Director of Legal Services.
- 4.2 No *stall holder* will transfer or assign their *licence agreement* or *daily permit* or sublicense or allow any other *person* to occupy the *stall* without the prior written consent of the *manager*.

- 4.3 Every *stall holder* must comply with all applicable federal, provincial, and municipal laws and regulations governing the use and occupation of the *stall* and the operation of the *stall holder's* business at the *stall*.
- 4.4 A *stall holder* may request a temporary suspension of its obligations under the *licence agreement*, subject to and in accordance with Schedule E of this by-law.
- 4.5 All *stall holders* must display their *stall* card in a prominent place in their *stall* at all times.

5 Allocation of Stalls and Eligibility for Renewal

- 5.1 *Stalls* will be allocated to *stall holders* based on seniority and compliance with the attendance requirements set out in subsection 5.3 below, except between November 1 and March 31 inclusive, when *stalls* will be offered by availability and seniority. Seniority will be determined by the number of consecutive years that the *stall holder* has maintained a *stall* at the *market*.
- 5.2 In allocating *stalls* to new *stall holders*, preference will be given to *producers* who live within a 100-kilometre radius of the geographic boundaries of the City of Kingston.
- 5.3 In order to be eligible for renewal of a *licence agreement*, a *stall holder* must achieve 80% attendance at the *market*, during the days and at the times specified in Schedule B, in the *stall holder's* best three months of the previous *market season*, subject to subsection 5.4 below. For clarity, in calculating the 80% attendance threshold, inclement weather days, as determined by the *manager*, will be excluded.
- 5.4 Despite subsection 5.3, a *producer* is only required to maintain a minimum attendance of one day per week during the *producer's* best three months of the previous *market season* in order to be eligible for renewal of a *licence agreement*.

6 Cancellation, Postponement and Rainchecks

- 6.1 Any *licence agreement* or *daily permit* may be cancelled by the *manager* at any time for breach of any provision of the *licence agreement*, *daily permit*, or this by-law.
- 6.2 The *City* may, without notice, require the closure and/or vacation of the *market* at any time due to a real or perceived emergency. For purposes of this subsection 6.2, an emergency includes any public emergency, such as a pandemic and/or epidemic as deemed to be such by the *City* in its sole discretion.

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- 6.3 If the *market* is required by the *City* for a special event, including a program, filming activity or civic event approved by the *City*, the *manager* may, upon at least four weeks' notice to the *stall holders*, require the closure, vacation and/or postponement of the *market* on the days and at the times specified in the notice. Such notice will include any scheduled rain dates for the special event. In addition to the notice period, the following terms and conditions will be applicable in the case of a cancellation or postponement:
- (a) in the case of postponement, the *market* day will be rescheduled to the next available Friday, where reasonably possible;
 - (b) the *City* must display signage at the *market* announcing the cancellation/postponement for a period of at least one week prior to the cancellation/postponement;
 - (c) the *City* and Tourism Kingston must announce the cancellation/postponement on their websites and through social media channels.
- 6.4 Rain checks will only be offered to *daily permit* holders who have paid the daily fee, and who are required to vacate the *market* prior to 11:00 a.m. due to inclement weather. Rain checks will not be offered to *licence agreement* holders.

7 Jury

- 7.1 The composition and duties of the *jury* with respect to the sale of *crafts* at the *market* are set out in Schedule D of this by-law.

8 Schedules

- 8.1 The following schedules are attached to and form part of this by-law:

Schedule A – Market Layout

Schedule B – Market Days and Hours

Schedule C – General Provisions for Stall Holders

Schedule D – Composition and Duties of the Jury

Schedule E – Requests for Temporary Absences

9 Inspection & Enforcement

- 9.1 The *manager*, the *market clerk*, and any authorized agent or employee of the *City*, has the right, at any time and from time to time, to inspect the *stalls*, and all property, equipment, products and fixtures in the *stalls*, to determine whether the requirements of this by-law are being complied with, and no *person* will obstruct, hinder or otherwise interfere with such an inspection.

10 Offences & Administrative Penalties

- 10.1 Every *person* is guilty of an offence as provided for in the *Provincial Offences Act* if the *person*:
- (a) contravenes any provision of this by-law;
 - (b) hinders, obstructs or interferes with the *manager* in the exercise of the *manager's* powers and duties; or
 - (c) hinders, obstructs or interferes with a *person* authorized by the *manager* to do an act in the exercise of that *person's* authority to do the act.
- 10.2 Every officer or director of a corporation who knowingly concurs in the contravention of any provision of this by-law is guilty of an offence as provided for in the *Provincial Offences Act*.
- 10.3 Every *person* who is convicted of an offence under this by-law is liable to a minimum fine of \$500 and to a maximum fine of \$100,000 pursuant to subsections 429 (1) and (3) of the *Municipal Act, 2001*.
- 10.4 A *person* who is convicted of an offence under this by-law is liable, for each day or part of a day that the offence continues, to a minimum fine of \$500 and a maximum fine of \$10,000, and the total of all daily fines for the offence is not limited to \$100,000 as provided for in section 429 of the *Municipal Act, 2001*.
- 10.5 When a *person* has been convicted of an offence under this by-law, the Ontario Court of Justice or any court of competent jurisdiction may, in addition to any other penalty imposed on the *person* convicted, make an order:
- (a) prohibiting the continuation or repetition of the offence by the *person* convicted; and
 - (b) requiring the *person* convicted to correct the contravention in the manner and within the period that the court considers appropriate.
- 10.6 The *City* may collect unpaid fines for a contravention of this by-law in accordance with the following:
- (a) the *City* treasurer may give notice that if any part of a fine for a contravention of this by-law remains unpaid after the fine becomes due and payable under section 66 of the *Provincial Offences Act*, including any extension of time for payment under section 66 or 66.0.1 of the *Provincial Offences Act*, the treasurer may give the *person* against whom the fine was imposed a written notice specifying the amount of the fine payable and the final date on which it is payable, which must be not less than 21 days after the date of the notice;

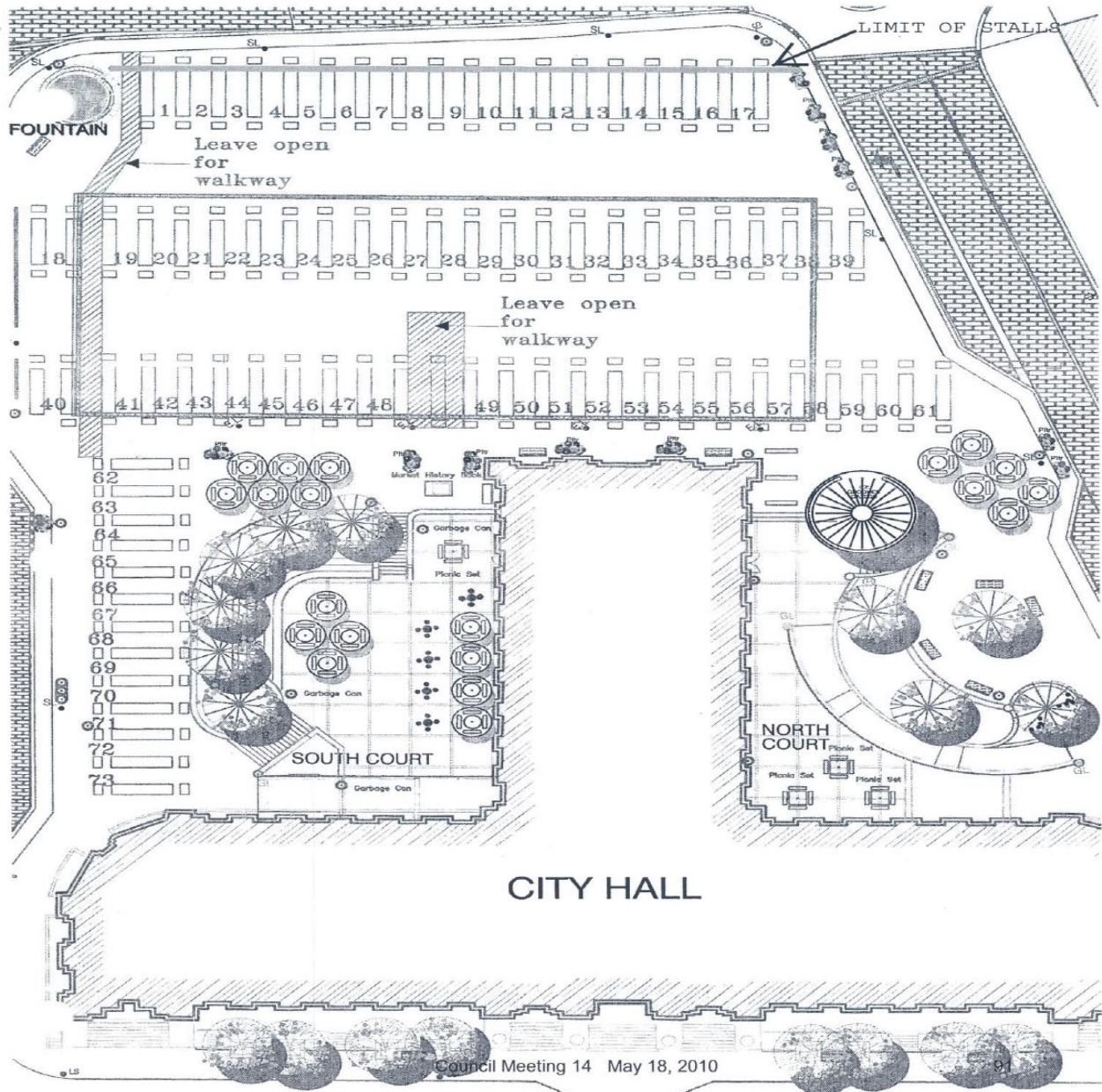
- (b) if the fine remains unpaid after the final date specified in the notice, the fine is deemed to be unpaid taxes for the purposes of section 351 of the *Municipal Act, 2001*.

11 General

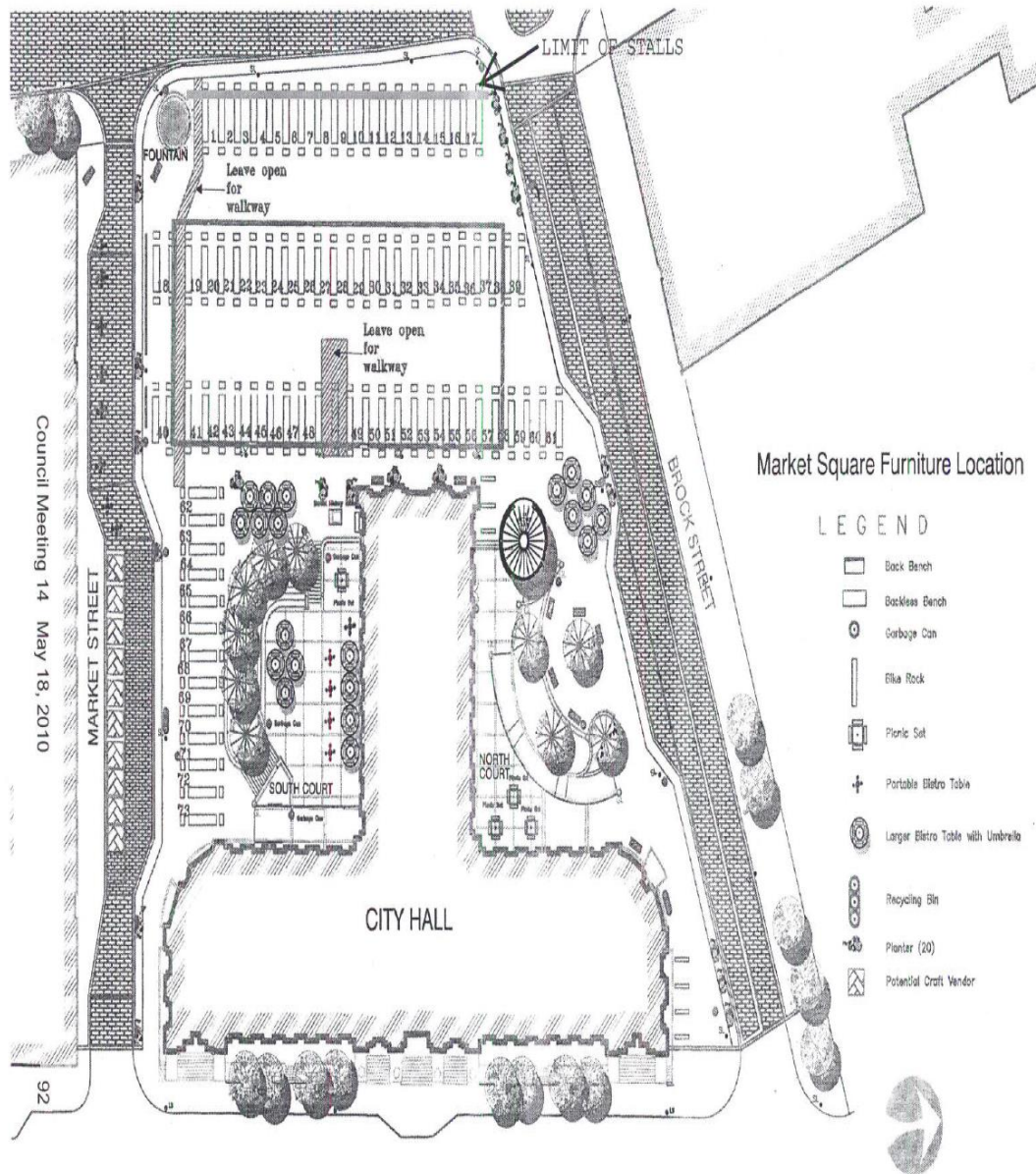
- 11.1 If a court of competent jurisdiction declares any provision, or any part of a provision, of this by-law to be invalid, or to be of no force and effect, it is the intention of Council in enacting this by-law that each and every provision of this by-law authorized by law be applied and enforced in accordance with its terms to the extent possible according to law.
- 11.2 This by-law will come into force and take effect on the date it is passed.

Schedule A

Market Layout



Schedule A Continued



Schedule B

Market Days and Hours

- 1) The *market* will run during the *market season* on the following days: Tuesday, Thursday, and Saturday.
- 2) The regular *market* operating hours are as follows:
 - a) 8:30 a.m. to 5:00 p.m. from April 1 to October 31; and
 - b) 9:00 a.m. to 5:00 p.m. from November 1 to March 31.
- 3) *Stall holders* must set-up their *stall* no earlier than 6:00 a.m. and no later than 8:30 a.m. on *market* days during the months of June, July and August, or by 9:00 a.m. during any other calendar month, unless otherwise authorized by the *market clerk*. All *stall holders* must vacate the *market* by no later than 6:00 p.m. each day.
- 4) If a *stall* remains unoccupied by 8:30 a.m. during the months of June, July and August, or by 9:00 a.m. during any other calendar month, the *market clerk* has the right to offer the *stall(s)* to the other *stall holders* in attendance for use on the subject day. Unoccupied *stalls* will be allocated based on seniority pursuant to subsection 5.1 of this by-law, subject to the following provisions:
 - a) if a *producer* or *re-seller stall* is unoccupied, a *producer* or *re-seller* who is in attendance may request to relocate to that *stall* at no additional cost. If no *producer* or *re-seller* requests to be relocated, or if more than one *producer* or *re-seller* requests to be relocated, the unoccupied *stall* will be allocated based on seniority in the manner described above; and
 - b) if a *craft stall* is unoccupied, a *craft stall holder* who is in attendance may request to relocate to that *stall* at no additional cost. If no *craft stall holder* requests to be relocated, or if more than one *craft stall holder* requests to be relocated, the unoccupied *stall* will be allocated based on seniority in the manner described above.
- 5) The *market clerk* may reassign *stalls* to improve the compatibility and appearance of the *market*, and to assure that no *stall holder* is isolated.
- 6) Despite the foregoing, *craft stall holders* may operate on regular *market* days in the produce area of the *market*, provided space is available.
- 7) During the months of April to October inclusive, *producers* and *re-sellers* may offer for sale *craft* products, provided that the *craft* products do not occupy more than 10% of the display area of the *stall*, and provided the *crafts* have been approved by the *jury* in accordance with Schedule D.

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- 8) During the months of November to March inclusive, *producers* and *re-sellers* may offer for sale *craft* products, provided that the *craft* products do not occupy more than 20% of the display area of the *stall*, and provided the *crafts* have been approved by the *jury* in accordance with Schedule D.

Schedule C

General Provisions for Stall Holders

1. Market Sales

- 1) The *stall holder* will not use or permit the use of a *stall* for any purpose other than the following:
 - (a) the retail sale of raw or processed product of an agricultural crop, industry or enterprise, such as, by way of example, fruits and vegetables;
 - (b) food sampling in accordance with the provisions of the *Health Promotion and Protection Act*, R.S.O. 1990, c. H.7, and all public health regulations, rules and guidelines; and
 - (c) the retail sale of *crafts* approved pursuant to Schedule D of this by-law.
- 2) Stall holders, except for craft vendors, must post legible signage in the stall, which is displayed in a clear and unobstructed location, indicating where products are grown/produced to ensure that the public can make informed decisions about their food.
- 3) No *craft* vendor will occupy more than one *stall* in the *market*.

2. Attendance

Stall holders must use reasonable efforts to notify the *market clerk* in advance if the *stall holder* is unable to attend the *market* on a scheduled *market* day in accordance with the *market* hours set out in Schedule B.

3. Vehicles and Parking, No Obstructions

- 1) *Stall holders* are permitted to park their vehicles in their designated *stall* on regular *market* days, during the hours set out in Section 2 of Schedule B, so long as the *stall* is being actively operated for business.
- 2) *Stall holders* are only permitted to park their vehicles in their designated *stall*. Any vehicle that will not fit on a double *stall* will not be permitted in any other location on the *market*.
- 3) *Stall holders* must maintain their vehicles, trailers and associated equipment, and must take whatever precautions are necessary to ensure that there is no fluid leakage on the *market*, including placing cardboard or other materials under the oil pan of the vehicle. *Stall holders* must minimize vehicle idling at the *market* in accordance with the *City's* idling by-laws.

- 4) The *stall holder* will not obstruct and will not permit the obstruction of any sidewalks, including by way of placement of awnings, signs, fixtures or products. Awnings may be permitted to overhang onto a sidewalk if the *manager* determines that the awning does not interfere with pedestrian and/or other traffic or adjacent *stalls*.

4. Operating Requirements

All *stall holders* must comply with the operating requirements set out in the *licence agreement* or *daily permit*, including all insurance, indemnification, maintenance, and cleaning requirements set out in the *licence agreement*.

5. Community Purpose Stalls

Despite the provisions of this by-law, one *stall* in the *market* will be reserved for community purposes on *market* days in a location designated by the *City*. During the period from November 1 to March 31 in each year, the *City* will reserve six *stalls* for community purposes, in locations designated by the *City*. The community purpose *stall(s)* will be available on a daily, first-come, first-served basis, upon application in writing to the *market clerk*. Each application for a community purpose *stall* must be for one date only.

6. Sale of Ice Cream Products

The sale of ice cream products from mobile carts is permitted in the *market* on regular *market* days; provided, however, that such sales only take place from the two internal roadways between Brock Street and Market Street. The ice cream vendor will not block internal vehicular traffic that is ongoing throughout *market* days or interfere with any *stall holder's* ability to do business. Ice cream vendors must also obtain and abide by the terms of all other *City* permits as required.

7. Modification of Conditions

These conditions may be modified or added to as provided for under subsection 4.1 of this by-law.

Schedule D

Composition and Duties of the Jury

- 1) All first-time applications for the sale of *crafts* at the *market* will be referred to the *jury* for the purpose of ensuring that the *crafts* to be offered meet established criteria.
- 2) The *jury* will consist of three individuals appointed by the *manager* who are not *stall holders*. Members of the *jury* will be chosen based on their experience in *crafts* and their knowledge of *craft* techniques. Employees of the *City* will not be eligible to sit on the *jury* in a decision-making capacity; however, *City* employees may be present to advise and make recommendations to the *jury*.
- 3) The applicant for the sale of *crafts* must be present in person (or virtually if the jurying process is conducted electronically) for the jurying process.
- 4) Members of the *jury* will be compensated at a rate set by the *manager* from time to time.
- 5) Any *person* may appeal the decision of the *jury* to the *manager* within 15 days of being notified of the *jury's* decision. On appeal, the *manager* has the power to affirm the decision of the *jury*, or to approve the application.

Schedule E

Requests for Temporary Absences

The *manager* may grant temporary sabbaticals/leaves of absence (a “*temporary absence*”) to *stall holders* for a period not to exceed 12 months in the aggregate. Requests for a *temporary absence* must be submitted in writing to the *manager* and will be governed by the following provisions:

- 1) The written request for a *temporary absence* must be received by the *manager* before February 1 of each year;
- 2) The written request for a *temporary absence* must include the *stall* number and the reason for the *temporary absence*;
- 3) Requests for *temporary absences* will only be granted due to medical or health conditions, or other circumstances beyond the reasonable control of the *stall holder*;
- 4) In order to request a *temporary absence*, the *stall holder* must be in good standing under the terms of the *licence agreement* and this by-law; and
- 5) The *manager* will respond in writing within 15 business days and will either approve or deny the request for a *temporary absence*. The decision of the *manager* is final.