

TOQUAHT NATION GOVERNMENT

BUSINESS LICENSING ACT

TNS 9/2014



This law enacted on October 2nd, 2014

Anne Mack

Signed _____
Anne Mack, a wit of the Toquaht Nation

DEPOSITED IN THE
REGISTRY OF LAWS AND
OFFICIAL RECORDS

ON 2014 / 10 / 02

Kristen Johnson

Signature of Law Clerk

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PREAMBLE

The Toquaht Nation believes that a healthy and prosperous future requires the Toquaht Nation to encourage businesses on Toquaht lands that foster a safer, stronger, healthier, more financially secure, more self-reliant and more sustainable community. To accomplish these goals, it is in the best interest of the Toquaht Nation that Council regulates the orderly conduct and administration of business on Toquaht lands to protect the health, welfare and safety of Toquaht citizens and non-members ordinarily resident on Toquaht lands, to protect the environment, to prevent and minimize nuisances and misleading business practices and to establish different regulations for different classes of business.

In order to better regulate businesses, Council deems it necessary to require an owner of a business operating on Toquaht lands to hold a current, valid and subsisting business licence to operate their business. Council also deems it expedient to impose fees for the granting, issuing and transferring of business licences and to provide for the collection of those fees to cover the cost of regulating businesses on Toquaht lands under this Act.

The Toquaht Nation adopts this Act based on these values.

PART 1 - INTRODUCTORY PROVISIONS

Short title

1.1 This Act may be cited as the Business Licensing Act.

Executive oversight

1.2 The member of the Executive holding the lands, public works and environmental protection portfolio is responsible for the executive oversight of this Act.

Authority and application

- 1.3 (a) This Act is enacted under
- (i) 13.28.1 of Chapter 13 Governance of the Maa-nulth Treaty,
 - (ii) section 3.2(y) of the Constitution, and
 - (iii) sections 3.1(a)(viii)(G), 3.1(b) and 3.1(c) of the Foreshore Agreement.
- (b) This Act applies to the licensing and conduct of businesses on Toquaht lands and, for certainty, on Toquaht foreshore.
- (c) This Act does not apply to a Toquaht public institution or a Toquaht public corporation.

Definitions

1.4 In this Act,

“accessory building” has the meaning given to that term in the Building and Development Authorization Act;

“business” means the carrying on of a commercial or industrial undertaking of any kind or nature, or the providing of professional, personal or other services, for the purpose of gain or profit, but does not include an activity carried on by a government, its agencies or an incorporated body wholly owned or controlled by a government that provides a government service;

“business licence” means a licence issued in accordance with this Act to operate a business on Toquaht lands or Toquaht foreshore;

“commercial accommodation” means a business that provides temporary accommodation such as a hotel, motel, resort, bed and breakfast, short term rental or commercial guest house;

“director” means the director of lands, public works and resources;

“home occupation” means any home craft, professional practice or other livelihood carried on within a residential unit by the owner, lessee, tenant or occupier;

“owner” means

- (a) in the case of a motor vehicle or a commercial vehicle, the person registered from time to time in accordance with the Motor Vehicle Act (British Columbia) or the Commercial Transport Act (British Columbia) as the owner of the motor vehicle or the commercial vehicle, and
- (b) in the case of land, a building or premises, the registered owner, a tenant, lessee, agent, licensee and any other person who has the right of access to and control of the land, building or premises;

“public place” means any place to which the public is entitled or permitted to have access without payment and includes parks, open spaces, beaches, land owned by Toquaht Nation, roads or highways;

“restaurant” means premises or any portion of premises where meals or refreshments are sold or offered for sale and includes a dining room, dining lounge, coffee shop, lunch room or any combination of these;

“street vendor” means a person who sells or offers for sale to the public from a vehicle, cart, temporary structure or similar facility goods, wares, merchandise, crafts, foodstuffs, articles or things immediately delivered to the customer;

“Toquaht lands” means, unless otherwise indicated, either Toquaht lands or Toquaht foreshore, as the circumstances require;

“vendors market” means a privately owned and operated location where two or more street vendors operate their businesses.

PART 2 - BUSINESS LICENCES

Business licence required

- 2.1**
- (a) A person must not carry on a business on Toquaht lands without holding a valid and subsisting business licence issued in accordance with this Act.
 - (b) Every business licence issued in accordance with this Act must be posted in a conspicuous place on the premises or on the thing or article for which the business licence is issued.
 - (c) A person must not carry on a business on Toquaht lands for which a business licence is required while that business licence is suspended.

Exemption

- 2.2** The following businesses and operations are not required to hold a business licence:
- (a) an owner or operator of a taxicab or other commercial carrier who only discharges passengers on Toquaht lands;
 - (b) an owner or operator of a retail business who only delivers on Toquaht lands goods sold by them in the ordinary course of business and only picks up goods on Toquaht lands being returned or exchanged;
 - (c) a wholesaler, manufacturer or processor who is only in the business of offering for sale or selling their own merchandise and delivering it in their own vehicle to a business on Toquaht lands for resale in the normal course of business;
 - (d) a person practising a profession governed by a special Act unless they regularly and generally carry on that business on Toquaht lands;
 - (e) a performance, concert, exhibition or other entertainment when the entire proceeds, above actual expenses, are devoted to a charitable purpose; and
 - (f) a performance, concert, exhibition, other entertainment or concession which is held in a location in which a business is licensed to operate for that purpose.

One business licence for each business and location

- 2.3** Every person who operates
- (a) more than one type of business,
 - (b) more than one business under a different business name, whether located on the same premises or not, or

- (c) a business on more than one premises, land or property description, whether the business name is the same or not,

must hold a separate licence for each business type, business name or location.

Application for a business licence

- 2.4**
- (a) A person must apply for a new business licence, or a transfer of a business licence to a new location, in the prescribed form and pay the prescribed fee.
 - (b) Each application must be signed by the owner of the business.
 - (c) An application under this section must include a true and correct statement in writing disclosing the nature and character of the business to be carried on by the applicant, including the
 - (i) proper name of the business,
 - (ii) legal name of the business if different from the name provided under paragraph (i),
 - (iii) mailing address of the business,
 - (iv) number of persons engaged or occupied in the business, and
 - (v) any other information the director may reasonably request.
 - (d) The director may, acting reasonably, request, and if requested the applicant must provide with his or her application, a copy of any certificate or other document issued by the Toquaht government, the government of Canada, the government of British Columbia, a municipality or other authority, including the following:
 - (i) if the applicant is a corporation, a copy of its certificate of incorporation;
 - (ii) if the business is operated on premises located on Toquaht lands,
 - (A) a final report authorizing occupancy under the Building and Development Authorization Act, and
 - (B) a fire safety certificate from the applicable fire marshal;
 - (iii) if the business is a restaurant, a certificate issued by the applicable health inspector;
 - (iv) if the business requires specific insurance coverage, proof of adequate insurance;

- (v) if the business will offer alcohol for sale, a liquor licence approval from the government of British Columbia; or
- (vi) if the business involves the use of a motor vehicle or a commercial vehicle, proof of vehicle registration.

Prorated fees

2.5 The fee payable under section 2.4(a) for a new business is reduced by half if the application is made after August 31.

Term

2.6 A business licence issued in accordance with this Act is an annual licence valid for one calendar year and expires on December 31 each year.

Renewal

- 2.7**
- (a) A person who wishes to renew a business licence must do so in the prescribed form and pay the prescribed fee no later than 30 days after the expiration of the business licence.
 - (b) A person who does not apply for a renewal of a business licence in accordance with subsection (a) must apply for a new business licence in accordance with section 2.4.

Amendment

- 2.8** A person must apply in the prescribed form to amend a business licence in the following circumstances:
- (a) the nature or character of the business has changed in a material way from what was provided in the statement referred to section 2.4(c);
 - (b) a condition on which the business licence was issued has changed in a material way; or
 - (c) the location of the business is to be changed.

Termination

2.9 It is the responsibility of the person to whom a business licence is issued to inform the director in writing when the business licence is no longer required for that business.

PART 3 - REQUIREMENTS

General requirements for all business licences

- 3.1**
- (a) A person that carries on a business on Toquaht lands must comply with all applicable Toquaht laws, federal laws and provincial laws.
 - (b) Every business licence issued under this Act is deemed to be a personal licence to the licensee named in that business licence and a business licence is not transferable to another person.
 - (c) A person must not carry on a business of any kind, in any way or manner on property owned by the Toquaht government, parks, boulevards, highways or other public property without prior written approval from the director.
 - (d) A business located on Toquaht lands required to be licensed under this Act must not advertise or promote the products and services of the business to the public through electronic media, print media, signage or any other means of promotion unless they are the holder of a valid business licence issued in accordance with this Act.

Home occupation

- 3.2**
- (a) A person must not operate a business as a home occupation without a valid and subsisting business licence for a home occupation.
 - (b) A business operated as a home occupation may only be located on Toquaht land zoned for residential use that allows a business to be conducted as a home occupation.
 - (c) No more than three businesses operated as a home occupation are permitted in a single residential unit.
 - (d) A business operated as a home occupation must be wholly contained within the residential unit or an accessory building approved by the director in writing.
 - (e) No more than four persons of an immediate family ordinarily resident in the residential unit and one assistant not ordinarily resident in the residential unit may be engaged in a business operated as a home occupation.
 - (f) A business operated as a home occupation must not contribute or cause any unreasonable noise, heat, glare, odour, electrical interference or other nuisance to any adjacent property.
 - (g) A person must not allow any storage associated with a business operated as a home occupation to occur outside the residential unit or its approved accessory building without the prior written approval of the director.

- (h) A business operated as a home occupation must not exceed 40% of the gross floor area of the residential unit in which the business is located.

Guided tour or charter operation

- 3.3 (a) A person must not operate a business as a guided tour or charter operation without a valid and subsisting business licence for a guided tour or charter operation.
- (b) An application under section 2.4 for a business licence for a guided tour or charter operation on a parcel of Toquaht land must be accompanied by
 - (i) a copy of a validly issued and subsisting interest in, or licence in relation to, that parcel of Toquaht land,
 - (ii) the proposed hours, days and dates of operation of the business, and
 - (iii) a completed tour operator disclosure statement in the prescribed form.

Commercial accommodation

- 3.4 (a) A person must not operate a business which provides commercial accommodation without a valid and subsisting business licence for commercial accommodation.
- (b) A person must not operate a bed and breakfast, short term rental, commercial guesthouse or any other form of room rental from a residential unit that rents rooms, suites or any other combination of rooms for temporary accommodation unless they are ordinarily resident on the property or in any building or structure located on the property other than a residential unit.
- (c) A person must not advertise bed and breakfast accommodation without providing a breakfast.

Street vendor

- 3.5 (a) A person must not operate a business as a street vendor without a valid and subsisting business licence for a street vendor.
- (b) An application under section 2.4 for a business licence for a street vendor must be accompanied by
 - (i) the written permission from the property owner where the business is to be operated,
 - (ii) a site plan showing the location of any structure or display to be used in the business, and

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- (iii) a drawing showing the design of the structure or display to be used in the business.
 - (c) A business licence for a street vendor must be posted in a conspicuous place whenever business is conducted.
 - (d) If a business is operated from a vehicle, the vehicle must have the business name and address displayed in a conspicuous place on both sides of the vehicle.
 - (e) Every street vendor must use a lawful scale capable of weighing or measuring accurately any commodity sold in the business where price is contingent upon the weight or size of the commodity.

Vendors market

- 3.6**
- (a) A person must not operate a business as a vendors market without a valid and subsisting business licence for a vendors market.
 - (b) An application under section 2.4 for a business licence for a vendors market on privately owned and properly zoned Toquaht land must be accompanied by
 - (i) a site plan of the property outlining where parking, storage, washrooms and signage are to be located, and
 - (ii) the proposed hours of operation of the vendors market.
 - (c) The owner of a vendors market must ensure that each individual street vendor carrying on a business in that vendors market has obtained a business licence from the director prior to allowing the street vendor to occupy space in the vendors market.

PART 4 - ENFORCEMENT

Business licence suspension

- 4.1**
- (a) A person to whom a business licence has been issued under this Act must, in carrying on the business authorized by that business licence, comply with the applicable requirements set out in Part 3 for that business licence.
 - (b) If a person contravenes subsection (a), the director may decide to suspend the applicable business licence and issue a notice of suspension in the prescribed form and that notice of suspension must be delivered in accordance with Toquaht law to that person.
 - (c) A notice of suspension must include a description of
 - (i) the contravention that resulted in the notice of suspension,
 - (ii) the available process to appeal the suspension,
 - (iii) any fees that will be payable in relation to the suspension or the appeal, and
 - (iv) the date by which the contravention must be corrected and an appeal filed.
 - (d) If a person to whom a notice of suspension has been delivered in accordance with subsection (b) fails to correct the contravention described in the notice of suspension within seven days after the notice of suspension has been delivered to that person, the applicable business licence is suspended and the director must post the notice of suspension on the premises for which the business licence was issued.
 - (e) A notice of suspension posted under subsection (d) must not be removed from the premises until
 - (i) the business licence is reinstated in accordance with subsection (f),
 - (ii) a new business licence is issued for the premises, or
 - (iii) the director determines there is no reasonable likelihood of the business ever resuming operations on the premises.
 - (f) The director may reinstate a business licence suspended under this section if the director is satisfied, acting reasonably, that the contravention described in the applicable notice of suspension has been corrected.

Review by Administrative Decisions Review Board

- 4.2** (a) No later than seven days after delivery of a notice of suspension under section 4.1, the person to whom the notice of suspension was delivered may request a review of the director's decision to suspend that person's business licence by the Administrative Decisions Review Board.
- (b) After conducting a review in accordance with the Administrative Decisions Review Act, the Administrative Decisions Review Board may
- (i) uphold the suspension of the business licence, or
 - (ii) reinstate the person's business licence.
- (c) For certainty, a business licence suspended under section 4.1(d) remains suspended until it is reinstated by
- (i) the director in accordance with section 4.1(f), or
 - (ii) the Administrative Decisions Review Board under subsection (b)(ii),
- or it expires.

Offences and penalties

- 4.3** (a) A person who contravenes section 2.1(a) commits an offence and is liable, on summary conviction, to a fine not exceeding \$500 per day for each day the offence continues up to a maximum of \$5,000.
- (b) A person who contravenes section 2.1(c) commits an offence and is liable, on summary conviction, to a fine not exceeding \$1,000 per day for each day the offence continues up to a maximum of \$5,000.

Repeat offences

- 4.4** The maximum fine to which a person is liable on a second or subsequent conviction for the same offence is double the amount established under section 4.3.

PART 5 - GENERAL

Regulations

- 5.1** (a) The Executive may make regulations which it considers necessary or advisable for the purposes of this Act.
- (b) The powers of the Executive under subsection (a) include the power to make regulations
- (i) prescribing when a ticket may be issued for an offence under this Act and, if so, establishing in relation to that offence the amount of
 - (A) the penalty,
 - (B) the discounted penalty, and
 - (C) the surcharge penalty,
 - (ii) prescribing any matter or thing referred to in this Act as prescribed or to be prescribed,
 - (iii) respecting the form and content of applications and notices that are required or permitted under this Act,
 - (iv) defining words and expressions that are used but not defined in this Act, and
 - (v) generally for the purpose of giving effect to this Act.

Commencement

- 5.2** (a) Subject to subsections (b) to (d), this Act comes into force on Toquaht lands on the date it is enacted.
- (b) This Act comes into force on Toquaht foreshore by Order of the Executive.
- (c) An Order of the Executive under subsection (b) must not be made until
- (i) notice of that Order and a copy of this Act has been posted in accordance with Toquaht law for at least 30 days, and
 - (ii) notice of that Order has been published in accordance with Toquaht law.
- (d) A notice under subsection (b) must provide an opportunity for at least 30 days to persons affected by this Act to make representations to the Executive concerning this Act.

- (e) The Executive must give full and fair consideration to any representations received in accordance with subsection (d) and may, by regulation, make necessary amendments to this Act in relation to Toquaht foreshore to address any concern raised by a representation received in accordance with subsection (d).