



**CITY OF HAMILTON**

**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT**  
**Parking and By-law Services Division**

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| <b>TO:</b> Chair and Members<br>Planning Committee   | <b>WARD(S) AFFECTED:</b> CITY WIDE   |
| <b>COMMITTEE DATE:</b> May 15, 2012  |  |
| <b>SUBJECT/REPORT NO:</b><br>Food Service Vehicles (PED12085) (City Wide)                                |  |
| <b>SUBMITTED BY:</b><br>Tim McCabe<br>General Manager<br>Planning and Economic Development<br>Department | <b>PREPARED BY:</b><br>Al Fletcher (905) 546-2424 Ext. 1358<br>William Young (905) 546-2424 Ext. 2469<br>Marty Hazell (905) 546-2424 Ext. 4588 |
| <b>SIGNATURE:</b>  |  |

**RECOMMENDATION**

- (a) That, in accordance with the City Council direction of March 7, 2012 that staff prepare a revised Food Truck By-law, the Licensing By-law 07-170 be amended as follows:
- (i) by removing the requirement that food service vehicle operators obtain written permission from eating establishments within 100 metres of where the food service vehicle is located or will be stopped;
  - (ii) by adding the following requirements:
    - (1) annual proof of compliance with the Technical Safety Standards Act, 2000 (TSSA);
    - (2) no selling to the public on a road within 20 metres of a boundary of an eating establishment;
    - (3) no selling to the public:
      - (aa) for longer than 15 minutes on residential streets and for longer than three hours on all other roads;

- (bb) on residential streets from 8:00 p.m. to 8:00 a.m. daily and between 1:00 a.m. and 8:00 a.m. daily on any road;
  - (cc) on a road within 100 metres of the boundary of a Special Event as defined by the City's Special Event Policy;
  - (dd) within the Hess Village Entertainment District from 2:30 a.m. to 8:00 a.m.;
  - (4) must move 250 metres (minimum) between stopping for selling to the public on any road;
  - (5) no idling of an internal combustion engine for longer than three minutes within three metres of a habitable room's door, window or other opening;
  - (6) require an operator to keep a log of all stops including address, times and dates;
  - (7) require an operator to move if, in the opinion an Officer, the location is or may become undesirable for reasons of safety or interference with access to any property;
  - (8) to provide a water and grease disposal/spill containment plan;
  - (9) must be a minimum 1.5 metres from any property line while selling on private property;
- (b) That the Licensing By-law 07-170 be amended by deleting Schedule 19 (Refreshment Vehicles) and replaced with Schedule 6 (Food Service Vehicles), and that the draft by-law attached as Appendix "B" to Report PED12085, prepared in a form satisfactory to the City Solicitor, be enacted;
- (c) That the new Food Services Vehicles By-law be monitored and a review be brought forward to the Planning Committee prior to the Summer of 2013;
- (d) That the review recommended in the item (c) above include a license fees review and comparison with the fees of other Ontario municipalities;
- (e) That the item titled Food Truck By-law be removed from the Planning Committee's Outstanding Business List.

### **EXECUTIVE SUMMARY**

City Council directed staff to prepare a revised Food Truck By-law no later than June 19, 2012, and to prepare parameters and criteria for a "Pilot Program" that would permit Food Trucks in Regional and/or Community Parks. This Report recommends amendments to the Licensing By-Law to relax the requirements on Food Service Vehicles to assist the growing food service vehicle industry while continuing to provide for public health and safety.

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS** (for Recommendation(s) only)

**Financial/Staffing/Legal:** N/A

**HISTORICAL BACKGROUND** (Chronology of events)

The following was approved by City Council on March 7, 2012 in approving Planning Committee Report 12-003 (February 28, 2012):

- “(a) Staff was directed to prepare a revised Food Truck By-law no later than June 19, 2012;*
- (b) Staff was directed to prepare parameters and criteria for a “Pilot Program” that would permit Food Trucks in Regional and/or Community Parks.”*

The following motion was approved by City Council on March 28, 2012 in approving Planning Committee Report 12-004 (March 20, 2012):

*“Whereas City Council on March 7, 2012, in approving Planning Committee Report 12-003 (February 28, 2012), directed staff to prepare a revised Food Truck By-law for consideration no later than June 2012 and to prepare parameters and criteria for a “Pilot Program” that would permit Food Trucks in Regional and/or Community Parks;*

*Whereas there is an opportunity for a Refreshment Vehicle Operator to partner with the Hamilton Public Library as a pilot during the James Street North Art Crawl.*

*Therefore be it resolved:*

- (a) That Gorilla Cheese be exempt from the Licensing By-law requirement;*
- (b) That Refreshment Vehicle Operator obtain written approval or permission from any eating establishment within 100m of where the refreshment vehicle is to be located, while in the lay by on the south side of York Boulevard in front of the Hamilton Public Library during the James Street North Art Crawls until such time as the Planning Committee receives a staff report respecting the Food Truck by-law.”*

It is also important to note that the Licensing Tribunal, in hearing an appeal in 2011, expressed concern about the Licensing By-law requirement for a food service vehicle operator to obtain prior written approval of an owner of any eating establishment within 100 metres (328 feet).

City Council, on June 14, 2006, approved a recommendation of the Licensing Committee that:

*“That a condition be added to all Refreshment Vehicle Licences (i.e. Hot Dog Carts) issued within the Hess Village Entertainment District operating in conjunction with an Eating Establishment, requiring the closing down of the operation of the Refreshment Vehicle no later than 2:30 a.m.”*

City Council, on March 28, 2012 received and referred to the Planning Committee for consideration, a letter dated March 27, 2012 from Tony Elenis, CEO Ontario Restaurant Hotel & Motel Association, respecting the Food Truck Pilot Program Report scheduled to come forward June, 2012 (See Appendix “A”). Planning Committee on April 3, 2012 referred the letter to staff for review as part of the requested Report dealing with a revised Food Truck By-Law.

#### **POLICY IMPLICATIONS**

N/A

#### **RELEVANT CONSULTATION**

Economic Development, Emergency Services, Public Works, Public Health Services and Legal Services were consulted in the preparation of this Report.

Through discussions with Public Health Services, some concerns arose over matters unrelated to the proposed changes in this Report. Staff will meet with Public Health Services to continue discussions specifically related to licensing of vehicles during Special Events and any other matters.

The Chamber of Commerce is supportive of the food service vehicle industry in Hamilton, and at the time of writing this Report, is developing recommendations for Council to consider for a revised Food Service Vehicle By-law.

Staff consulted with the Hamilton Association of Business Improvement Areas (HABIA) with respect to the controls on food service vehicles, and HABIA has created a sub-committee to examine the issue. However, as it was apparent that HABIA would not reach consensus before the June, Planning Committee advised staff to provide a copy of the Report respecting a revised Food Service Vehicle By-law to HABIA, and to also encourage individual BIAs to appear as delegations when the matter comes forward.

#### **ANALYSIS / FOR RECOMMENDATION**

(include Performance Measurement/Benchmarking Data, if applicable)

The current Licensing By-law requirements are outdated, as they were created originally to deal only with catering trucks and ice cream vehicles. The food service vehicle industry is diversifying and gaining consumer popularity across North America. Accordingly, updating the regulations of a by-law to ensure that the public and consumers are protected and that nuisances are minimized is required.

Staff consulted with the Ontario Restaurant Hotel and Motel Association, and they are concerned about the impact that a more flexible food truck by-law would have on their members.

In 2011, 98 food service vehicle licences were issued; an increase of 21 licences (27%) from the previous year when 77 food service vehicle licences were issued. There are three types of food service vehicle licences as follows:

- Class 'A' - non-travelling food service vehicle on private property (19) (e.g. chip wagon, hot dog cart);
- Class 'B' - motorized food service vehicle operating on the road (71) (e.g. ice cream or food) truck; and,
- Class 'C' - non-motorized travelling food service vehicle operating on public/private property (8) (e.g. ice cream tricycle).

A review of other Ontario municipalities (i.e. Ottawa, Toronto, Mississauga, London, and Burlington) has revealed that Hamilton is generally less restrictive than other cities because Hamilton allows food service vehicles to operate on the road other than at set locations and without additional requirements such as permits/permissions. Instead, Hamilton's Licensing By-law requires that food service vehicle operators obtain written permission from eating establishments within 100 metres of where the food service vehicle is located or will be stopped. Many cities are, however, reviewing their by-laws in acknowledgement of the fact that the food service industry is growing and diversifying.

Staff regularly receives complaints related to Class 'B' and Class 'C' operations, and the complaints have been increasing proportionately with the increase in licences. The following types of complaints are received:

- noise associated with chimes, music, engine idling, generators, etc.;
- interference with approved Special Event operations;
- operating close to an eating establishment without the required permissions;
- odour from food cooking, vehicle idling, etc.;
- motorist/pedestrian sight line obstructions; and,
- patrons crowding around a food service vehicle distracting motorists.

Currently, Food Service Vehicles are subject to various inspections including:

- annual visual interior/exterior vehicle inspections and submission of an Ontario Ministry of Transportation Vehicle Inspection report or a Safety Standards Certificate issued under the Highway Traffic Act;
- annual Public Health inspections to ensure that the food supply, storage, preparation, handling and food service complies with the Health Protection and Promotion Act; and,
- Emergency Services inspections of non-mobile Class 'A' vehicles (i.e. chip wagons) to ensure an appropriate fire extinguisher is mounted in the event of a grease fire.

Other than the above inspections which are required to protect public health and safety there are no other material requirements other than:

- requiring a food service vehicle operator, whether on public and private property to obtain written permission from eating establishments within 100 metres of an eating establishment;
- restricting operation on residential streets from 8:00 p.m. to 8:00 a.m. daily and within the Hess Village Entertainment District from 2:30 a.m. to 8:00 a.m.; and,
- restricting operation within 100 metres of a school or park boundary or an approved Special Event.

The City licenses certain classes of businesses in the interest of promoting public health or safety, consumer protection and/or nuisance prevention. In hearing an appeal in 2011, the City's Licensing Tribunal expressed concern that food service vehicle operators are required to obtain written permission from eating establishments within 100 metres of where the food truck is located/or will be stopped because permissions could be granted/obtained under duress. Further, licensing to create an economic advantage is not a valid municipal purpose.

In view of the above, staff recommend eliminating the written permission requirement (except that food service vehicles operating on private property still require the property owner's written permission) and replacing it with a general prohibition that food service vehicles may not stop to sell to the public on a road within 20 metres of a boundary of an eating establishment.

To update the By-law in light of the growing and diversifying food service vehicle industry, staff recommend the following other controls on food service vehicles which are intended to provide increased flexibility while protecting public safety and nuisance control:

- increase the time they are allowed to stop to sell from 10 minutes to 15 minutes on a residential street and limit the time to three hours on all other roads;
- no selling to the public:
  - between 1:00 a.m. and 8:00 a.m. daily on any road;
  - within 100 metres of an approved Special Event;
  - on residential streets from 8:00 p.m. to 8:00 a.m. daily;
  - within the Hess Village Entertainment District from 2:30 a.m. to 8:00 a.m. (while this requirement is being enforced, it was not added to the Licensing By-Law in 2006, and is included in the draft by-law attached to this Report);
  - within 100 metres of a school/park boundary or an approved Special Event (current provision in the Licensing By-Law being maintained);
- require a food service vehicle to move 250 metres (minimum) between stopping for selling to the public on a road;
- no idling of an internal combustion engine for longer than three minutes within three metres of a habitable room's door, window or other opening;

- require an operator to keep a log of all stops including address, times and dates;
- require an operator to move if, in the opinion an Officer, the location is or may become undesirable for reasons of safety or interference with access to any property;
- a minimum 1.5 metres from any property line while selling or offering for sale on private property;
- compliance with Technical Safety Standards Act, 2000 (TSSA) which deals with fuel-related safety services associated with the safe transportation, storage, handling and use of fuels such as gasoline, diesel, propane, natural gas and hydrogen; and,
- to provide a water and grease disposal/spill containment plan.

The new amending by-law attached to this Report further modifies the requirements on food service vehicles when they are part of an approved Special Event or with other City approval by:

- including a 100 metre separation distance between the designated Special Event area and non-participating food service vehicles; and,
- removing the separation distance between eating establishments and food service vehicles when part of an approved Special Event.

With respect to the direction to “...prepare parameters and criteria for a pilot program that would permit Food Trucks in Regional and/or Community Parks”, refreshment vehicles are currently permitted in City parks when permits, agreements and/or contracts are approved through Public Works tenders or Special Events or other City approvals.

Planning and Economic Development staff were advised that Public Works intends to issue a Request for Tender (RFT) to permit certain parks to have food service vehicles this year, and that they intend to report to the Public Works Committee respecting this matter before the Summer. Planning Committee may wish to provide input or request that Public Works consider a pilot project as opposed to a permanent program.

As part of the research for this report, staff found that other Ontario municipalities appear to be charging much higher fees for annual and temporary mobile refreshment vehicle licences and/or permits. Therefore, it might be appropriate to conduct a review of the licensing fees in terms of cost recovery and comparison with other Ontario municipalities.

Concerns about consideration of a more flexible Food Service Vehicle By-law were expressed by Tony Elenis, CEO Ontario Restaurant Hotel & Motel Association by letter dated March 27, 2012, a copy of which is attached as Appendix “A” to this Report. The concerns relate primarily to maintaining regulations “...necessary for the safe and fair operation of any food service establishment - mobile or not”, and the “unfair playing field” because mobile operators have lower start-up and operating costs.

With respect to the OHRMA's concerns about maintaining regulations required to protect public health and safety, in staff's opinion the recommended by-law includes all provisions necessary to protect public health and safety, and most of the OHRMA's suggested regulations are included in the draft by-law.

With respect to the concerns about an "*unfair playing field*" between eating establishments and mobile food service operations, it is important to reiterate that, in accordance with the Municipal Act, the City licenses certain classes of businesses to promote public health or safety, consumer protection and/or nuisance prevention.

Examples of other mobile businesses currently operating in this community include estheticians/spas/hairdressers, automotive glass repair, automotive parts, dog care and grooming, dog walkers (replacing kennels), photographers and catering companies.

Licensing to create an economic advantage or to limit competition is not a valid municipal purpose, as explained in a 2005 Ontario Court of Appeal decision, *Toronto Taxi Alliance Inc. v. Toronto (City)*. In the course of this proceeding, the lower court had accepted the taxi owners' contention that the "primary purpose" of Toronto's new Taxi Licensing By-law was to "re-engineer the taxicab industry" and quashed the By-law. After carefully reviewing Toronto's rationale for the new by-law, the Court of Appeal disagreed with the lower court, finding that the primary purpose was "to enhance consumer protection and improve health and safety" which was a valid municipal purpose, and not to deal with economic concerns and interests which was not a valid municipal purpose. In upholding the new by-law, the Court of Appeal further found that it was not fatal if economic concerns and interests were affected incidentally when valid municipal purposes were addressed.

**ALTERNATIVES FOR CONSIDERATION  
(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)**

The new Licensing By-law Schedule could prohibit food service vehicles in a defined geographical area such as the Downtown Community Improvement Project Area, any Business Improvement Area, the Ancaster Village Core Area, Hess Village Entertainment District or with the Glanbrook Village Core Area, except during an approved Special Event.

Currently, food service vehicles are required to obtain a business licence from the City and pay the annual fee (currently \$218.60), even if they intend to operate only for a few days at a Special Event. Consideration could be given to creating a short-term Food Service Vehicle Licence (three days or less) with a reduced fee (e.g. \$60 per day). However, this would likely further compound concerns about a level playing field with eating establishments.



**CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)**

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability, 3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development, 6. Environmental Stewardship, 7. Healthy Community

**GROWING OUR ECONOMY** - The recommended By-law is intended to assist the growing food service vehicle industry while continuing to protect public health and safety.

**APPENDICES / SCHEDULES**

Appendix 'A' to Report PED12085 - Letter from Tony Elenis, CEO Ontario Restaurant Hotel & Motel Association dated March 27, 2012.

Appendix "B" to Report PED12085 - Recommended amendment to the Licensing By-law 07-170.

BY/AF/MH/dt



March 27, 2012

Mayor Bob Bratina, Members of the Planning Committee  
and all City Councillors  
Hamilton City Hall  
2nd floor - 71 Main St. West  
Hamilton, ON L8P 4Y5

VIA EMAIL

Dear Mayor and Members of Council:

On behalf of The Ontario Restaurant Hotel & Motel Association, (ORHMA) I am writing in regard to the Planning Committee's outstanding business item DD as it relates to a Food Truck Pilot Project in the City of Hamilton. ORHMA is aware that the committee is considering this concept with a proposed due date of June 19, 2012.

The Ontario Restaurant Hotel & Motel Association (ORHMA) is the largest provincial hospitality Association in Canada. With over 4,000 members, representing more than 11,000 establishments across the province, the ORHMA is uniquely positioned to represent the industry's interests at both the Provincial and Municipal levels of government. Please consider our comments as provided herein.

Despite the rise in popularity of food trucks in American cities, the local restaurant groups there have spoken out on the unfair playing field and disadvantages of a food truck operation against the expense of running a brick and mortar restaurant. Debates on regulating food trucks have occurred in every city and are still occurring and this type of business seems to be succeeding. Restaurants contribute significantly to the culture and economy of a city, so it is imperative that regulation of this new mobile element of the industry is drafted with the intention of maintaining the confidence of restaurateurs that municipalities value the presence of a strong food service industry in the form of traditional brick and mortar establishments.

Data on the business of food trucks in Canada in particular is scarce. A Globe and Mail article in the fall of 2011 sites that food trucks typically bank a profit equivalent to about 40 per cent of sales. For a bricks-and-mortar restaurant, the average profit is closer to 4 per cent on the high end. The relatively low entry costs for food trucks are a motivating factor for these businesses and the mobility gives operators an edge over bricks-and-mortar restaurants. The notion that the trucks attract people to a certain location is arguable, as they tend to gravitate to where the people are—they're not stuck in a location that can't make money.

Food Truck operators are calling for loosened regulations and a reduction in the number of restrictions they are currently faced with when attempting to sell their wares on the streets of any given municipality. ORHMA contends that such restrictions and regulations are necessary for the safe and fair operation of any food service establishment – mobile or not. Any such



loosening of the laws must first consider the health and safety of the community as well as the unfair playing field that would be created for bricks and mortar food service establishments already operating at great expense within the community.

**Significant Issues facing the Restaurant Sector must be considered if food trucks are to be regulated in Ontario Municipalities:**

- Pressures from weakening economy have not been kind to the restaurant industry. The slim margins and increases to top line expenses that are currently seen will only continue to waiver by the competition from the food truck concept.
- Unpredictability of when and where a food truck may show up, creates an unfair disadvantage for brick and mortar restaurants – this level of competition must be addressed by permits and regulations guiding when and where a food truck can operate.
- Unfair playing field of start up and operational costs and permit burdens.
- Restaurants have contributed to cities economies for many years with fixed expenses and have been paying taxes.
- Municipalities need to consider the impact of mobile revenues wherein mobile units from “out of town” wheel in for a day, make their money and take their profits with them – where is the economic or social benefit for the municipality?
- Brick and mortar eateries concerned the trucks costing less to operate than traditional restaurants have an unfair edge over the restaurants that:
  - Pay high property taxes and premium rents;
  - Employ locals, including many youth and students;
  - Start up operational costs are much higher, including licensing, permitting and inspection compliance requirements;
  - A typical restaurant has the expense of marketing their location and drawing customers to the location;
  - Long term leasing/capital expenses.

Standard Health Inspections are mandated and routinely performed on general food business establishments, institutional food service establishments, mobile food premises and child nourishment programs for compliance with the Ontario Food Premises Regulations.(see Appendix A for copy of Provincial Regulations). ORHMA supports a strong Health Inspection presence for mobile food units.

In addition to the health regulations, the following regulatory considerations must be extended to food trucks in every municipality:

**Food Safety**

- City ordinances regulating class of trucks ranging from those which sell pre-packaged/prepared foods to those with chefs that prepare food directly inside the trucks.
- Standard rules and frequency of health inspections.

- Mobile eateries to adhere to inspection signage regulations.

#### **Locations away from restaurant traffic blocks**

- Keep food trucks at least 100 meters away from restaurants – otherwise require written consent of restaurant operator to locate within distance less than 100 meters.
- Limit how many food trucks can park per acre: One truck per half-acre or less, two trucks on lots between one-half and one acre and three for lots between one and two acres. There is no maximum on lots that are more than two acres, as in the case of a special event.
- Not allowed to occupy any parking spaces that are needed to meet the requirements for principal use of a property.
- Plan to tie food trucks with parking violations and permanently revoke permits.
- No commercial activity at a parking meter -parking meters are for customers as to allow commercial activity-it will directly compete with business needs of traditional inline business.
- Not allow in downtowns, entertainment districts and theme districts with high intensification of restaurants (ie: "Chinatown").
- Limit trucks to pre-approved vending spots that meet the aforementioned restrictions.

#### **Hours of Operation in same location**

- Hours of operation should be limited.
- Restriction on length of time trucks can stay in one place , how far these can move when time is up.
- Stay mobile and stay in one location no more than 15 minutes.
- Not allowed to move to a second location within same block or general vicinity.

#### **Permits**

- Municipalities are encouraged to make permitting a mandatory requirement for operators and permits should be conditional for period of time no greater than one year in order to allow the city to evaluate success of food truck presence and to address any concerns/problems stemming from imposition of guidelines. A mandatory review of the system is encouraged within a prescribed timeline of issuance of first permit.
- Permits approval process should be subject to all appropriate municipal inspections.
- By-laws requiring trucks to apply for fixed site permits - with rules referring to a specified location of business in permit issued.
- Compromise discussion in city development zones where trucks can have a one day at the park to lessen impact on restaurants.
- Property owner and vendor would have to obtain a zoning permit.

#### **Prevent crowds and late night disturbances.**

- Food trucks would not be allowed to have amplified sound or signs on sidewalks.
- Not allowed to set up outdoor seating areas.



- Since many of these are run by diesel emissions and are running all day and all night this will lead to unpleasant environment in smoke and vibrations - emissions must be minimized.
- Address requirements for garbage disposal, parking, safety and traffic.

We would ask that the Committee and Council please consider these issues in your deliberations over the scope of a food truck pilot project in the City of Hamilton. We would be happy to address any of the issues contained within this letter or any other questions you may have of the foodservice industry on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Elenis", is positioned below the word "Sincerely,".

Tony Elenis  
President & CEO  
Ontario Restaurant Hotel & Motel Association

**Authority:** Item , Committee  
Report (Staff report number)  
CM: Date

**Bill No.**

**CITY OF HAMILTON**

**BY-LAW NO. \_\_\_\_\_**

**To Amend By-law No. 07-170, a By-law to License and Regulate Various  
Businesses**

**WHEREAS** Council enacted a by-law to license and regulate various businesses being City of Hamilton By-law No. 07-170;

**AND WHEREAS** this By-law provides for amending City of Hamilton By-law No. 07-170 by deleting Schedule 19 – Refreshment Vehicles and replacing it with a new Schedule 6 – Food Service Vehicles;

**NOW THEREFORE** the Council of the City of Hamilton enacts as follows:

1. Schedule 19 of By-law No. 07-170 is deleted and replaced with the new Schedule 6, entitled "Food Service Vehicles", attached as Appendix A to this By-law.
2. Section 30 of the General Provisions of By-law No. 07-170 is amended by deleting the title "Schedule 19 Refreshment Vehicles" and further by deleting "Schedule 6 (Reserved)" and replacing it with "Schedule 6 Food Service Vehicles".

3. All licences issued under Schedule 19 which are current and valid on the day this By-law comes into force shall be deemed to be:
  - (a) current and valid under the new Schedule 6; and
  - (b) subject to all of the applicable provisions of By-law No. 07-170 and the new Schedule 6, including but not limited to expiring and being renewable as though they had been issued under the new Schedule 6.
4. Despite the deletion of Schedule 19, the deleted Schedule 19 shall continue to apply to proceedings in respect of offences that occurred before its repeal.
5. This By-law comes into force on the day it is passed.

**PASSED** this                      day of                      , 20 .

|                     |                           |
|---------------------|---------------------------|
| _____               | _____                     |
| R. Bratina<br>Mayor | R. Caterini<br>City Clerk |

## SCHEDULE 6

### FOOD SERVICE VEHICLES

#### INTERPRETATION

1.(1) In this Schedule,

**"Certificate of Inspection"** means a certificate in a form approved by the City's Medical Officer of Health which sets out the results of an inspection conducted under the Health Protection and Promotion Act or its regulations;

**"charity"** means a registered charity as defined in the Income Tax Act (Canada) which has a registration number issued by the Canada Revenue Agency, or a successor agency;

**"food service vehicle"** means any vehicle from which refreshments are sold or offered for sale for consumption by the public and includes but is not limited to a cart, wagon, trailer, truck and bicycle, irrespective of the type of power employed to move the food service vehicle from one point to another, and:

- (a) a **Class A** food service vehicle is a motorized or non-motorized food service vehicle that is used as a non-travelling, site-specific food premises including but not limited to a catering truck, chip truck or refreshment trailer.
- (b) a **Class B** food service vehicle is a motorized food service vehicle that is used as a travelling food premises including but not limited to a catering truck, chip truck, ice cream truck, refreshment trailer or hot dog cart;
- (c) a **Class C** food service vehicle is a non-motorized food service vehicle that is used as a travelling food premises from which pre-packaged frozen products exclusively are offered for sale including but not limited to an ice-cream cycle, yogurt cart or juice carts;



**"food service vehicle plate"** means a metal number plate issued by the Issuer of Licences to a food service vehicle operator with a current and valid food service vehicle licence;

**"property"** means a parcel of land which can be legally conveyed pursuant to the provisions of the Planning Act and does not include road allowance;

**"public health inspector"** means a public health inspector employed in the City's Public Health Services Department;

**"refreshment"** means food or drink;

**"residential local road"** means an Urban Residential Local Road as described in the City's Transportation Master Plan (May 2007) as amended or replaced from time to time; and

**"special event"** means a special event under the City's Special Event Policy.

## **LICENCE REQUIRED**

2. No person shall operate a food service vehicle without a licence.
3. Despite section 2, no licence is required for a food service vehicle operated by a charity or an educational, religious or youth sports organization for the purpose of raising funds during an event.
4. Before a licence may be issued, every applicant for a licence, in addition to complying with the General Provisions of this By-law, shall:
  - (a) submit:
    - (i) a list of the types of refreshments to be sold or offered for sale, specifying the source supplying the refreshments and identifying refreshments that will be refrigerated or heated as part of the operation of the food service vehicle;
    - (ii) a spill containment plan including a description of how and where grease and grey water will be disposed of;
    - (iii) a description of the type of food service vehicle to be licensed;
    - (iv) the location where the food service vehicle will be parked or stored when not in use;

- (v) written approval from the property owner or owners where the food service vehicle will be located when selling or offering for sale refreshments;
  - (vi) for a food service vehicle that is subject to Director's Order FS-056-06 (issued under the Technical Standards and Safety Act, 2000 and its regulations), as amended or replaced from time to time, a completed inspection certificate and information fact sheet issued no more than 36 days before an application or renewal is submitted;
  - (vii) for a Class B food service vehicle, proof of current and valid motor vehicle insurance satisfactory to the Issuer of Licences with a third party liability limit of no less than \$2,000,000 per occurrence; and
  - (viii) for a Class B or a Class C food service vehicle selling or offering for sale refreshments when on road allowance on other City property, proof of current and valid liability insurance satisfactory to the Issuer of Licences naming the City as an additional insured with a third party liability limit of no less than \$2,000,000 per occurrence; and
- (b) make the food service vehicle available for inspection as required by the Issuer of Licences.
5. A separate licence shall be issued for each food service vehicle and shall list each property, if any, where the food service vehicle will be located.
  6. A licence to operate a food service vehicle shall not be issued until a public health inspector has informed the Issuer of Licences that all requirements under the Health Protection and Promotion Act and its regulations have been fully complied with.
  7. In addition to issuing a licence with a term of one year, as described in subsection 8(2) of the General Provisions, the Issuer of Licences may issue up to three licences with a term of one day to an applicant in a calendar year.

## DUTIES OF OPERATORS

8. Every person operating a Class A, Class B or Class C food service vehicle shall ensure that:
- (a) only the food service vehicle and property, if any, for which the licence has been issued are used;
  - (b) the food service vehicle is equipped and maintained with:
    - (i) a clean compartment for the storage of food, and, in the case of a food service vehicle selling or offering for sale ice cream, frozen desserts or other frozen confections, the compartment shall be refrigerated; and
    - (ii) at least one suitable waste container;
  - (c) the food service vehicle is kept in a clean and orderly condition and maintained in all respects in a condition suitable of the purpose for which it is used;
  - (d) the food service vehicle is adequately lighted and ventilated;
  - (e) the food service vehicle plate is:
    - (i) affixed to the rear exterior of the food service vehicle or to another location on the food service vehicle approved in advance by the Issuer of Licences; and
    - (ii) plainly visible in its entirety at all times;
  - (f) only the items on the list submitted under paragraph 4(a)(i) are sold or offered for sale; and
  - (g) no internal combustion engine associated with the operation of the food service vehicle idles for more than 3 minutes within 3 metres of a habitable room's door, window or other opening measured from the nearest point of the exhaust venting to the nearest point of the habitable room's door, window or other opening.

9. Every person operating a Class A food service vehicle shall ensure that:
  - (a) the food service vehicle is at least 1.5 metres from any property line; and
  - (b) in the Hess Village Entertainment District, the food service vehicle does not operate between 2:30 a.m. and 8 a.m.
10. Every person operating a Class B or Class C food service vehicle shall ensure that:
  - (a) the food service vehicle is in a safe mechanical condition before it is driven;
  - (b) the food service vehicle is not driven if it is in an unsafe mechanical condition;
  - (c) all statutes, regulations and by-laws governing driving, parking or stopping the food service vehicle are complied with at all times;
  - (d) the business name of the food service vehicle operator is displayed:
    - (i) on both sides of the food service vehicle or on another location as approved in advance by the Issuer of Licences;
    - (ii) in letters and numbers at least 18 centimetres in height;
    - (iii) in a colour that contrasts with the background colour; and
    - (iv) so as to be plainly visible in its entirety at all times;
  - (e) the food service vehicle is moved at the verbal or written request of the Issuer of Licences or an officer appointed or assigned to enforce this Schedule, if, in the opinion of the Issuer of Licences or an officer the location:
    - (i) is or may become undesirable for safety reasons; or
    - (ii) interferes with normal access to any property;
  - (f) the food service vehicle does not stop on road allowance to sell or offer for sale refreshments:
    - (i) within 20 metres of the road allowance directly in front of a food premises, measured along the most direct road allowance route from the nearest point of the projection of the food premises boundary to the road allowance to the nearest point on the food service vehicle;

- (ii) within 6 metres of an intersection;
  - (iii) within 100 metres of any park or school, measured along the most direct road allowance route from the nearest point of the park or school boundary to the nearest point on the food service vehicle;
  - (iv) within 100 metres of the boundary of a special event measured along the most direct road allowance route from the nearest point of the special event boundary to the nearest point on the food service vehicle, except when approved as part of a special event;
  - (vi) for more than 15 minutes at any one location on a residential local road or for more than 3 hours at any one location on any other road and with not less than 250 metres separating the previous location from the next location, measured along the most direct road allowance route from the nearest point of the previous location to the nearest point of the next location; or
  - (vii) to a customer who is standing on the travelled portion of a road allowance, not including a sidewalk;
- (g) the food service vehicle does not operate:
- (i) on a residential road between 8 p.m. on one day and 8 a.m. on the next day; or
  - (ii) on any other road between 1 a.m. and 8 a.m.;
- (h)(i) a location log is kept for each day the food service vehicle is operated in a form satisfactory to the Issuer of Licences that includes the following information about each location on road allowance the food service vehicle stops to sell or offer for sale refreshments:
1. the street name;
  2. the municipal address of the nearest property;
  3. the nearest intersection; and
  4. the time the stop began and ended:
- (ii) the location log is kept for at least one year; and
  - (ii) the location log is made available to the Issuer of Licences upon request;

- (i) there is no crying of wares, sounding of chimes or use of similar means to attract attention:
    - (i) while the food service vehicle is in motion; or
    - (ii) for more than 5 seconds at intervals of not less than 5 minutes;
  - (j) all children and customers are safely away from the food service vehicle before putting it in motion; and
  - (k) the food service vehicle is not washed or repaired while on a road allowance except, in the case of repair, when repair is necessary to move the food service vehicle off the road allowance.
11. Every person operating a Class B food service vehicle shall ensure that:
- (a) the food service vehicle is driven by a person holding a current, valid provincial driver's licence;
  - (b) the food service vehicle is equipped and maintained with:
    - (i) a "WATCH FOR CHILDREN" warning sign in readily legible black letters at least 15 centimetres high on a yellow background:
      - 1. affixed to the rear exterior of the food service vehicle; and
      - 2. plainly visible in its entirety at all times;
    - (ii) a minimum of two amber lights on top, placed as to be readily visible by a person 1.5 metres in height standing 1.2 metres in front of or behind the vehicle, that flash when the food service vehicle stops to sell or offer for sale refreshments;
    - (iii) a rear bumper having an angled cover on top designed and placed so as to prevent a child from standing or sitting on top; and
    - (iv) waste receptacles, placed upon arrival when the food service vehicle stops to sell or offer for sale refreshments and removed together with all waste collected in the waste receptacles or accumulated in the surrounding area upon leaving.

## **POSTING OF CERTIFICATES OF INSPECTION**

12.(1) Every person operating a food service vehicle shall ensure that:

- (a) a public health inspector is not obstructed when:
  - (i) posting a Certificate of Inspection in a clearly visible and conspicuous location on the food service vehicle;
  - (ii) removing a Certificate of Inspection which has been posted on the food service vehicle;
- (b) no one other than a public health inspector posts or removes a Certificate of Inspection on the food service vehicle.