

Authority: Item 7, Planning Committee
Report 12-008 (PED12085)
CM: May 15, 2012

Bill No. 119

CITY OF HAMILTON

BY-LAW NO. 12-

**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 23 day of May, 2012 .

R. Bratina
Mayor

R. Caterini
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.