




Hamilton

CITY OF HAMILTON

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

TO: Chair and Members Planning Committee	WARD(S) AFFECTED: CITY WIDE
COMMITTEE DATE: June 19, 2012	
SUBJECT/REPORT NO: Food Service Vehicles (PED12085(a)) (City Wide) (Outstanding Business List Item)	
SUBMITTED BY: Tim McCabe General Manager Planning and Economic Development Department	PREPARED BY: Al Fletcher (905) 546-2424 Ext. 1358
SIGNATURE: 	

RECOMMENDATIONS

- (a) That the Licensing By-law 07-170 be amended by deleting Schedule 19 (Refreshment Vehicles) and replacing it with Schedule 6 (Food Service Vehicles), and that the draft by-law attached as Appendix "A" to Report PED12085(a), prepared in a form satisfactory to the City Solicitor, be enacted;
- (b) That a review be brought forward regarding an investigation of a food service vehicle permit parking across the City, including consultation with the Business Improvement Areas and the industry, no later than November 2012;
- (b) 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;
- (c) That the review recommended in the item (b) above include a license fee review and comparison with the fees of other Ontario municipalities;
- (d) That the item titled Food Truck By-law be identified as complete and removed from the Planning Committee's Outstanding Business List.

EXECUTIVE SUMMARY

At the Planning Committee meeting of June 5, 2012, Committee discussions were that staff report back on the legal implications of potential decisions and five outstanding issues as approved by City Council at the May 23, 2012 meeting. These issues are:

- (i) Definition on how 20 metre is measured;
- (ii) How is auxiliary engine noise controlled and maintenance to reduce noise to an acceptable level;
- (iii) Clarity for special events are approved by event organizers;
- (iv) Allowing any of the Business Improvement Areas (B.I.A.s) to opt-out; and,
- (v) Investigate alternative parking provisions for Food Truck operators parked at municipal parking metres.

This Report recommends approval of the draft by-law amending the Licensing By-law with respect to Food Service Vehicles with changes to assist in the clarification of the issues raised by Committee/Council, and that staff report back regarding an investigation of a food service vehicle permit parking system no later than November 2012.

Alternatives for Consideration – See Page 7

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

Financial/Staffing/Legal: N/A

HISTORICAL BACKGROUND (Chronology of events)

City Council, at their meeting of May 23, 2012 referred the Report back to Planning Committee to discuss matters related to legal advice and the following issues to be reviewed by staff:

- (i) Definition on how 20 metre is measured;
- (ii) How is auxiliary engine noise controlled and maintenance to reduce noise to an acceptable level;
- (iii) Clarity for special events are approved by event organizers;
- (iv) Allowing any of the Business Improvement Areas (B.I.A.s) to opt-out; and,
- (v) Investigate alternative parking provisions for Food Truck operators parked at municipal parking metres.

After discussion at the Planning Committee meeting of June 5, 2012, staff prepared a Report addressing the issues above for the June 19, 2012 Planning Committee meeting.

From the initial Report, staff recommended that Food Service Vehicles shall not be located within 20 metres of a food premise. Staff continue to recommend this 20 metres as appropriate. The justification of the 20 metres related to requiring a separation between a Food Premise and Food Service Vehicle so that the public is aware that there is a relationship between the two businesses as to where the food has originated from which relates to consumer protection.

Additional background is provided in Report PED12085.

POLICY IMPLICATIONS

N/A

RELEVANT CONSULTATION

Since the Planning Committee meeting of June 5, 2012, discussions have been held with Councillors, Legal Services, H.A.B.I.A. and the Executive Directors of the B.I.A.s.

ANALYSIS / RATIONALE FOR RECOMMENDATION

(include Performance Measurement/Benchmarking Data, if applicable)

Issues Raised By Council

(i) Definition on how 20 metre is measured

Council wanted improved clarity as to how the 20 metre separation between a Food Service Vehicle and a Food Premises would be measured. It is proposed that Section 10 (f)(i) be deleted in its entirety and replaced with the following:

- “(i) within 20 metres along any abutting road allowance, measured from the point of intersection of the perpendicular projection of the limits of the Food Premises (including any outdoor patio) and the road allowance to the nearest point of the food service vehicle;”

The implementation of this section would be as follows:

- (1) Where a food premise is located at the street line (the property line that divides the lot from the road allowance), the 20 metres would be measured along the road allowance from the point of intersection of the perpendicular projection of the limits of the Food Premises to the road allowance to the nearest point of the food service vehicle.

- (2) Where a Food Premises is set back from the street line, the physical limits of the building will be projected perpendicular to the road allowance to the street line at which point the 20 metres will be measured from that intersection point along the road allowance to the nearest point of the Food Service Vehicle.
- (3) Where a Food Premises is set back from the street line and is a unit within a multiple unit building, the physical limits of the front façade of the unit will be projected perpendicular to the road allowance to the street line at which point the 20 metres will be measured from that intersection point along the road allowance to the nearest point of the Food Service Vehicle. Where an end unit is a Food Premise, the same projection would apply to the side façade of the building.
- (4) Where a Food Premises has an accessory patio, (1), (2) and (3) shall also apply from the limits of the patio.
- (5) Where a Food Court exists in a building abutting a street, (1), (2) and (3) above shall not apply unless the Food Premises have exterior entrances and/or accessory patios at the street level.

(ii) How is auxiliary engine noise controlled and maintenance to reduce noise to and acceptable level

Further study on auxiliary engine noise needs to be done to see if there is a noise beyond the normal decibel level of the street noise or a problem with what is called perceived noise. It is proposed that Food Service Vehicle noise levels be monitored and staff report back to Planning Committee.

There does appear to be a noise issue with auxiliary generators used to operate Food Service Vehicles when the generators are outside the Food Service Vehicle rather than enclosed within it. To avoid this issue in the future as new Food Service Vehicles are built, it is recommended that exterior generators not be permitted.

(iii) Clarity for special events are approved by event organizers

The draft by-law defines a special event as "a special event under the City's Special Event Policy" (SEAT Approval/Permit). To obtain a SEAT permit an event organizer must submit the necessary information to a Festival and Events Officer for review and approval. Upon issuance of this approval, the event organizer can permit the applied for businesses to operate within the limits of the special event. Each of these businesses must hold the proper City of Hamilton licence to operate. However, within the limits of the event, the 20 metre separation between the food service vehicles and Food Premises would not apply.

The only reference to a "special event" in the draft by-law is paragraph 10(f)(iv) whereby no food service vehicle is permitted within 100 metres of the defined limits of the Special Event. The intent of the 100 metres is to reduce any congestion around SEAT events which usually have associated higher levels of vehicular traffic and pedestrian movements whereby the location of a Food Service Vehicle in proximity to the event may present greater public safety issues.

(iv) Allowing B.I.A.s to opt-out

Business licensing regulations must be rationally connected to valid municipal purposes: these valid municipal purposes are health and safety, consumer protection and nuisance prevention which protect the general public interest. Protecting an economic interest cannot be the objective of business licensing regulations although it can be an incidental consequence. If a court is convinced on the evidence that the objective of business licensing regulations is to protect an economic interest, then the regulations may be quashed. This is the advice that was given in Report PED12085, citing *Toronto Taxi Alliance Inc. v. Toronto (City)*, 2005 Ontario Court of Appeal decision.

Accordingly, "opting-out" should be based on one or more valid municipal purposes: i.e. that permitting a food service vehicle within a B.I.A. will have a negative impact on health or safety, consumer protection or nuisance prevention.

(v) Investigate alternative parking provisions for Food Truck operators parked at municipal parking meters

The investigation of a Food Service Vehicles permit parking system, across the City, will need additional time to complete. While acceptable locations may be determined across the City, including B.I.A.s, where the Food Service Vehicles could locate, additional work needs to be looked at regarding the following:

- alignment with the Council approved parking meter revenue sharing program;
- methods of approving and regulating time frames whereby food trucks can locate within the same designated parking space; and,
- City-wide permits to park within a designated spaces and revenue sharing with any B.I.A. with a designated parking space

Staff intends to undertake the necessary research, including consultation with the B.I.A.s and the industry, and report back to Planning Committee in November 2012 with the results of this investigation.

Other Issues

(i) Food service vehicles on private property

Subsection 4(v) of the draft By-law requires that prior to a Food Service Vehicle locating on private property, the operator must provide the City with a letter from the property owner granting permission to locate on the property.

(ii) Signage on food service vehicles

Concerns were raised regarding how the Sign By-law regulates the Food Service Vehicles. The Sign By-law does not regulate signage on vehicles where it is related to the primary use of the vehicle.

(iii) Short term permits

Public Health Services undertakes inspections of Food Service Vehicles. In the case where a food service vehicle cannot meet the public health requirements for a yearly licence, e.g. does not have a sink large enough to clean reused utensils, pots, and pans. Public Health Services may approve its operation for a single event. Section 7 accommodates this by authorizing the issuance of three licences for a term of one day to an applicant in a calendar year. As these approvals are generally for an event lasting great than one day, it is proposed that the wording be changed to extend the term to a maximum of three days:

- “7. In addition to issuing licences with a term of one year to applicants, as described in subsection 8(2) of the General Provisions, the Issuer of Licences may issue up to three licences with a term of up to four days to any one applicant in a calendar year.”

ALTERNATIVES FOR CONSIDERATION

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

The existing By-law cannot be supported by staff as it relates to providing appropriate justification to protect for public health and safety, nuisance prevention and consumer protection. An alternative for Council to consider is to increase the distance separation between a Food Premise and a Food Service Vehicle, e.g. 30 or 50 metres, provided the separation can be justified based on a valid municipal purpose.

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

- ◆ Competitive business environment.
- ◆ 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(a) – Amendment to the Licensing By-law 01-170.

AF/dt

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 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 licences with a term of one year to applicants, as described in subsection 8(2) of the General Provisions, the Issuer of Licences may issue up to three licences with a term of up to four days to any one 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;
 - (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; and
 - (h) no accessory generator associated with the operation of the food service vehicle is used outside of the food service vehicle.
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 along any abutting road allowance, measured from the point of intersection of the perpendicular projection of the limits of the food premises (including any outdoor patio) and the road allowance to the nearest point of 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.