



Town of Whitby

By-law # 7512-19

Refreshment Vehicle By-law

Being a By-law to licence Refreshment Vehicles and regulate Refreshment Vehicles within the Town of Whitby.

Whereas under Subsection 8(3) of the Municipal Act, 2001, a by-law respecting a matter may,

(a) regulate or prohibit the matter; (b) require persons to do things respecting the matter; and (c) provide for a system of licences respecting the matter;

Whereas under Subsection 11(2) of the Municipal Act, 2001, a municipality may exercise its licensing powers for the purpose of consumer protection and to protect the health and safety of the general public;

Whereas under Section 151 of the Municipal Act, 2001, a municipality may provide for a system of licences with respect to any business wholly or partly carried on within the municipality, including the sale or hire of goods or services on an intermittent or one-time basis;

Whereas Section 391 of the Municipal Act, 2001 enables a municipality to pass a by-law imposing fees or charges for services or activities provided or done by or on behalf of it; and

Whereas the Council of the Corporation of The Town of Whitby deems it appropriate to update the Refreshment Vehicle licensing regulations.

Now therefore, the Council of The Corporation of the Town of Whitby hereby enacts as follows:

1. Definitions

- 1.1. **Applicant** means a Person seeking a Licence or renewal of a Licence and is the Person who is managing or responsible for the overall operations of a Refreshment Vehicle;
- 1.2. **Commissioner of Corporate Services/Treasurer** means the Commissioner of Corporate Services/Treasurer of the Town or a designate;
- 1.3. **Eating Establishment** has the same meaning as an eating establishment or restaurant as defined in the Town's Zoning By-law;
- 1.4. **Fire Chief** means the Fire Chief of the Town or an authority or person having such designation in accordance with the Fire Protection and Prevention Act, 1997, S.O. 1997, c. 4, as amended or successor thereto;
- 1.5. **Frozen Treat Vehicle** means a Refreshment Vehicle from which only ready-to-eat frozen dessert-type Refreshments (such as popsicles, ice cream bars, and slushies) are prepared and/or sold for consumption to the public;

- 1.6. **Health Inspector** means a Public Health Inspector acting under the direction of the Medical Officer of Health for the Regional Municipality of Durham;
- 1.7. **Highway** shall have the same meaning as “highway” in the Highway Traffic Act, R.S.O. 1990, c. H.8, as amended or successor thereto;
- 1.8. **Licence** means a licence issued by the Municipal Clerk to operate a Refreshment Vehicle in accordance with this By-law;
- 1.9. **Licencee** means a Person to whom a Licence has been issued and shall include any Person operating a licensed Refreshment Vehicle;
- 1.10. **Motor Vehicle** means a “motor vehicle” as defined in the Highway Traffic Act, R.S.O. 1990, c. H.8, as amended or successor thereto;
- 1.11. **Municipal Act, 2001** means the Municipal Act, 2001, S.O. 2001, c.25, as amended or successor thereto;
- 1.12. **Municipal Clerk** means the Clerk of the Town or a designate;
- 1.13. **Officer** means a Police Officer as defined in the Police Services Act, R.S.O. 1990, c. P.15, as amended or successor thereto, and shall include a Municipal Law Enforcement Officer, whose duties include the enforcement of this By-law, including a Fire Prevention Officer;
- 1.14. **Person** includes an individual, association, firm, partnership, corporation, trust, organization, trustee or agent, and their heirs, executors or legal representatives;
- 1.15. **Refreshment** includes any form of food or drink intended for human consumption;
- 1.16. **Refreshment Vehicle**, also commonly known as a **Food Truck**, means any Vehicle or Trailer from which Refreshments are prepared and/or sold for consumption to the public;
- 1.17. **Special Event** means an event held in the Town for which a special event permit has been issued by the Town or which has been sanctioned by the Town;
- 1.18. **Town** means The Corporation of the Town of Whitby or the geographic area of Whitby, as the context requires;
- 1.19. **Trailer** means a “trailer” as defined in the Highway Traffic Act, R.S.O. 1990, c. H.8, as amended or successor thereto, and also includes any cooking appliance or device that is transported by a Vehicle;
- 1.20. **Vehicle** means a “vehicle” as defined in the Highway Traffic Act, R.S.O. 1990, c. H.8, as amended or successor thereto; and

1.21. **Zone** means a Zone as defined in the Town of Whitby's Zoning By-law, as amended from time to time.

2. General

Prohibitions

- 2.1. No Person shall operate a Refreshment Vehicle in the Town without a Licence.
- 2.2. No Person shall operate a Refreshment Vehicle with a suspended or revoked Licence.
- 2.3. The Licencee shall conform to the requirements and conditions of the Licence throughout the Licence term.
- 2.4. No Person shall obstruct an Officer during the performance of a duty under this By-law.
- 2.5. No Person shall sell Refreshments from a Refreshment Vehicle between the hours of 11:00 p.m. and 7:00 a.m.
- 2.6. Every Person providing Refreshments from a Refreshment Vehicle shall do so in accordance with the applicable provisions of the Health Protection and Promotion Act, R.S.O. 1990, c.H.7, as amended, and regulations made thereunder and any successor legislation in substitution thereof.

Licensing Procedures

- 2.7. Every application for a Licence shall be completed and submitted on forms prescribed by the Municipal Clerk.
- 2.8. A Licence is not transferrable.
- 2.9. Licences are valid from the date of issuance and expire on December 31st of each year, unless revoked, suspended, or otherwise issued for a shorter or different period of time.
- 2.10. Licences will not be prorated.
- 2.11. The Municipal Clerk shall refuse to issue or renew a Licence where:
 - 2.11.1. the application for a Licence fails to meet the requirements for issuance set forth in this By-law or any other Town by-law or applicable regional by-law or provincial or federal law.
 - 2.11.2. the Applicant is not at least 18 years of age;
 - 2.11.3. the application is incomplete;

- 2.11.4. the Licence was issued in error;
- 2.11.5. the prescribed fee has not been paid;
- 2.11.6. the Applicant has submitted false information in support of the application; or
- 2.11.7. an Officer or Health Inspector, by way of inspection, has determined that the Refreshment Vehicle is not in compliance with this By-law.

Licensing Requirements

2.12. Every Licence application to operate a Refreshment Vehicle shall include:

- 2.12.1. the applicable fee as set out in the Town's Fees and Charges By-law;
- 2.12.2. a photograph of the Refreshment Vehicle;
- 2.12.3. a copy of the Vehicle or Trailer registration, where applicable;
- 2.12.4. if a Motor Vehicle, a valid safety standards certificate issued by a provincially authorized Motor Vehicle inspection mechanic certifying that the Motor Vehicle to which the licence application relates complies in all respects with the applicable equipment and performance standards set out in the regulations made under the Highway Traffic Act, R.S.O. 1990, c.H.18, as amended, or any successor thereto;
- 2.12.5. indemnification and proof of Commercial General Liability insurance in the amount of two million dollars (\$2,000,000) for the sale of prepackaged foods or five million dollars (\$5,000,000) for when raw food is being cooked, and naming the Town as an additional insured. Proof of indemnification and insurance shall be on the prescribed Town form(s). In addition:
 - 2.12.5.1 proof of Automobile Liability insurance in the amount of two million dollars (\$2,000,000), coverage against claims for bodily injury and/or property damage for all licensed Motor Vehicles and related equipment owned or leased by the Applicant;
 - 2.12.5.2 it shall be the responsibility of the Licencee to ensure that all such insurance is renewed and kept in force and effect without interruption during the term of the Licence, and evidence of such insurance renewal must be submitted to the Town upon request; and
 - 2.12.5.3 the Town or the Municipal Clerk may require additional types of insurance coverage or higher limits

of insurance coverage as determined by the
Commissioner of Corporate Services/Treasurer;

- 2.12.6. where required for the sale of Refreshments from the Refreshment Vehicle, a valid proof of inspection and approval in writing from the Region of Durham Health Department or other regional health department for the period of time set out in the Licence;
- 2.12.7. where the Refreshment Vehicle is fitted with propane or natural gas (except for "20-pound" or smaller sized propane or natural gas tanks), a current certificate issued within thirty (30) days of the date of the Refreshment Vehicle licence application, on the prescribed TSSA form, by a provincially authorized propane or natural gas fitter, as the case may be, certifying that the Refreshment Vehicle complies with the applicable equipment and performance standards as prescribed by the Province of Ontario; and
- 2.12.8. such other conditions as the Municipal Clerk may impose that are not otherwise specified in this By-law as a requirement of obtaining or renewing a Licence.

Licensing Renewal Requirements

- 2.13. Every renewal Licence application to operate a Refreshment Vehicle shall meet the applicable Licensing Requirements of this By-law, and be accompanied by a renewal fee set out in the Town's Fees and Charges By-law.

Operating Requirements

- 2.14. Every Licencee shall produce the Licence issued in accordance with this By-law when requested to do so by an Officer or Health Inspector.
- 2.15. Every Licencee shall affix the Licence to the Refreshment Vehicle so it is clearly visible to the public and customers at all times.
- 2.16. The Refreshment Vehicle and immediate surrounding location shall be kept in a clean and sanitary condition at all times.
- 2.17. Every Licencee shall equip the Refreshment Vehicle with a garbage receptacle of sufficient size to accommodate all waste material generated by the operation of the Refreshment Vehicle.
- 2.18. Every Refreshment Vehicle shall be equipped with a fire extinguisher that is maintained in good working order and has been approved for such use by the Fire Chief.

Location Requirements

- 2.19. No Person shall operate a Refreshment Vehicle within 60 meters of a school unless authorized to do so by the applicable school board.
- 2.20. No Person shall operate a Refreshment Vehicle within 60 meters from the front entrance of an Eating Establishment.
- 2.20.1. Notwithstanding Section 2.20, no Person shall operate a Refreshment Vehicle within 60 meters from the property line of the property upon which an Eating Establishment is situated in the Commercial Area of the Downtown Secondary Plan or the Central Area Boundary of the Brooklin Secondary Plan.
- 2.21. No Person shall operate a Refreshment Vehicle at a Special Event or within 100 meters of the Special Event unless the event organizer has approved the Refreshment Vehicle as a vendor at the Special Event.
- 2.21.1. Where a Refreshment Vehicle is operating at a Special Event and they have entered into a separate agreement with the Town to operate at the Special Event, then the operation of the Refreshment Vehicle does not require a Licence for the Special Event.
- 2.21.2. Where a Refreshment Vehicle is operating at a Special Event and they have not entered into a separate agreement with the Town to operate at the Special Event, then a Person wishing to operate the Refreshment Vehicle at the Special Event is required to obtain a Licence in accordance with this By-law, and is eligible to apply for a short-term Licence that is good for the duration and location of the Special Event only, up to a maximum of 96 hours of operation.
- 2.22. No Person shall operate a Refreshment Vehicle on property owned or managed by the Town, unless the Refreshment Vehicle has been awarded the rights to operate at that location by the Town.
- 2.22.1. A Refreshment Vehicle authorized to operate at a Town owned or operated location shall not be subject to setback requirements for schools or eating establishments, but shall be required to obtain a Licence in accordance with this By-law.
- 2.23. No Person shall operate a Refreshment Vehicle on a Highway, unless:
- 2.23.1. The Town or other applicable road authority has authorized a portion of the Highway for that purpose.
- 2.24. No Person shall operate a Refreshment Vehicle in a Residential Zone, unless:

- 2.24.1. The Refreshment Vehicle is servicing an active construction site for no longer than thirty (30) minutes.
- 2.25. No Person shall operate a Refreshment Vehicle from a location unless the Licencee has obtained the land owner or property manager's permission.
- 2.26. Every Licencee shall keep a location log for each day the Refreshment Vehicle is operating that includes a note for each stop made by the Refreshment Vehicle for the purpose of preparing or offering food for sale, and the date, time, duration, and location of the stop.
 - 2.26.1. Upon request of an Officer, the Licencee shall immediately produce this location log.

Frozen Treat Vehicle

- 2.27. In addition to the requirement to obtain a Licence, any Person operating a Frozen Treat Vehicle shall be subject to the following:
 - 2.27.1. Section 2.24 (Residential Zone restrictions) and Section 2.26 (location log requirements) shall not apply to a Person operating a Frozen Treat Vehicle.
 - 2.27.2. Where the Frozen Treat Vehicle is not a Motor Vehicle, Section 2.18 shall not apply.
 - 2.27.3. Notwithstanding Section 2.12.5, the Municipal Clerk may apply different insurance requirements as a condition for the issuance of a Licence.
 - 2.27.4. Notwithstanding the Town's Noise By-law or any successor thereto, no Person operating a Frozen Treat Vehicle shall operate any type of auditory signaling device or electronic amplification/speaker system (including, but not limited to: ringing bells or gongs; blowing horns, sirens, or whistles; playing of music; or the use of a loudspeaker) while in a Residential Zone between the hours of 9:00 PM to 8:00 AM, any day of the week.

3. Enforcement and Penalties

Inspections

- 3.1. An Officer may, at any reasonable time, enter upon any property for the purpose of carrying out an inspection to determine whether or not the provisions of this by-law have been complied with.
- 3.2. No Person shall prevent hinder or interfere or attempt to prevent hinder or interfere with an inspection undertaken by an Officer.

Suspension of Licence

- 3.3. The Municipal Clerk may suspend a Licence if the Licencee fails to comply with any provision of this By-law and such non-compliance is not remedied following notice from the Town specifying the particulars of the non-compliance.

Offences and Penalties

- 3.4. Every Person who contravenes any provision of this By-law or any provision of a Licence issued under this By-law is guilty of an offence and upon conviction is liable to a maximum fine of \$100,000.00, and in the case of a continuing offence, for each day or part of a day that the offence continues, an additional maximum fine of \$10,000.00.
- 3.5. In addition to Section 3.4, the Municipal Clerk shall refuse to issue a Licence to any Person, or shall refuse to renew a Licence, or shall revoke a Licence where:
 - 3.5.1. a Person or a Licencee has any unpaid fines arising from a conviction for an offence under this By-law;
 - 3.5.2. a Person or a Licencee has submitted false information or documents in support of an application for a Licence;
 - 3.5.3. in the sole and absolute discretion of the Municipal Clerk, a suspension under Section 3.3 is not appropriate or sufficient given the nature of the non-compliance with this By-law; or
 - 3.5.4. after a period of suspension under Section 3.3, there is continued non-compliance with the provisions of this By-law.

4. Short Title

- 4.1. The short title of this By-law shall be the "Refreshment Vehicle By-law".

5. Repeal of Existing By-law

- 5.1. Subject to Section 6.1, By-law # 7125-16 is hereby repealed on the coming into force of this By-law.

6. Effective Date

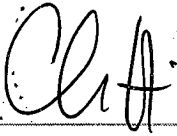
- 6.1. This By-law shall come into force and effect on the date of final passage. All Refreshment Vehicles issued a current Licence in accordance with By-law # 7125-16, as amended, may continue operating under the provisions of By-law # 7125-16, as amended, until said Licence expires, or may obtain a Licence and be subject to the provisions of this By-law prior to the existing Licence having expired. Where a Person applies for a Licence under this By-law and

holds a Licence under By-law # 7125-16, as amended, the Licence fees shall be prorated for the remainder of the time that the Licence is valid.

By-law read and passed this 28th day of May, 2019.



Don Mitchell, Mayor



Christopher Harris, Town Clerk