

THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE



BY-LAW

NO. 2019 - 008

**BEING A BY-LAW TO REGULATE REFRESHMENT VEHICLES WITHIN
THE MUNICIPALITY OF KINCARDINE**

WHEREAS Sections 8 (1) and 9 of the said Municipal Act, provide that the powers of a municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues and a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS Section 151 of the *Municipal Act, 2001* S.O. Chapter 25 provides that a local municipality may license, regulate and govern any business wholly or partly carried on within the municipality [even if the business is being carried on from a location outside the municipality];

AND WHEREAS Section 11(2) of the said Act authorizes a lower tier municipality to pass by-laws respecting health, safety and well-being of persons;

AND WHEREAS the Council of The Corporation of the Municipality of Kincardine deems it advisable to license, regulate and govern Refreshment Vehicles within the Municipality of Kincardine;

NOW THEREFORE the Council of The Corporation of the Municipality of Kincardine **ENACTS** as follows:

1.0 DEFINITIONS

The following definitions shall apply for the purposes of this by-law:

- 1.1 "approved location" shall mean the location(s) specified in the application and for which a licence has been granted.
- 1.2 "By-law Enforcement Officer" – shall mean a commissionaire, assistant or and other officer or civilian person engaged by the South Bruce O.P.P and/or appointed by the Municipality of Kincardine to enforce or carry out the provisions of this by-law or any part or parts thereof.
- 1.3 "Clerk" shall mean the Clerk or Deputy Clerk of the Municipality of Kincardine.
- 1.4 "Council" shall mean the Council of The Corporation of the Municipality of Kincardine.

- 1.5 "eating establishment" shall mean a building or part of a building where food is offered for sale or sold to the public for consumption and which has seating and eating facilities. Such uses include a restaurant, ice cream parlour, tea or lunchroom and/or coffee shop.
- 1.6 "licence" shall mean a licence under the provisions of this by-law. "Licensee" shall mean the person to whom the licence has been issued and who assumes the primary responsibility for complying with this by-law. "Located Refreshment Vehicle" – shall mean a motor vehicle or trailer equipped for the cartage, storage and preparation of refreshments which is used only for the sale of such refreshments intended for the consumption by the general public and only located at an approved location. It must be capable of being readily removed from an approved location within 24 hours of a notice to remove being received. A "Located Refreshment Vehicle" shall be included in the definition of "Refreshment Vehicle".
- 1.7 "Medical Officer of Health" shall mean the Medical Officer of Health for the Grey Bruce Health Unit or his/her duly authorized delegate.
- 1.8 "Mobile Refreshment Vehicle" – shall mean a motor vehicle or trailer equipped for the cartage, storage and preparation of refreshments which is used only for the sale of such refreshments intended for the consumption of the general public and moves from more than one location in any given day. A "Mobile Refreshment Vehicle" shall be included in the definition of "Refreshment Vehicle".
- 1.9 "Municipality" – shall mean The Corporation of the Municipality of Kincardine.
- 1.10 "roadworthy" shall mean the vehicle complies with the requirements of *The Highway Traffic Act* and is Licensed by the Ministry of Transportation for operation on a public highway. The applicant for a licence shall produce such vehicle licence prior to issuance of a licence.
- 1.11 "operate" shall mean the act of selling, offering for sale, or otherwise dispensing of refreshments and "operator" shall have a like meaning.
- 1.12 "refreshment" shall mean all food stuffs or beverages either prepared on site or pre-packaged and intended for consumption by the public. Refreshments shall include, but not limited to, french fries, hamburgers, onion rings, pogos, hotdogs, sausages, sandwiches, popcorn, ice cream, candy, confections and fresh produce.
- 1.13 "Refreshment Cycle" – shall mean a non-motorized cycle from which frozen ice cream, yogurt or popsicles are sold.
- 1.14 "Refreshment Vehicle" shall mean any vehicle from which refreshments are sold for human consumption, and which includes a Located Refreshment Vehicle, Mobile Refreshment Vehicle and a Refreshment Cycle.
- 1.15 "Special Event" shall mean a one time, annual or infrequently occurring event being held on Municipality of Kincardine property that is exclusively reserved for the occasion. It must have predetermined opening and closing dates/times and be open to public participation/attendance.

2.0 GENERAL PROVISIONS

- 2.1 No person shall operate a refreshment vehicle within the limits of the Municipality of Kincardine unless and until the operator has obtained a separate licence for said refreshment vehicle, as issued under the provisions of this by-law. The applicant for every licence shall be a minimum of eighteen (18) years of age.
- 2.2 No person shall operate a refreshment vehicle without affixing a refreshment vehicle licence issued under the provisions of this by-law in a conspicuous

place on a refreshment vehicle for which it is issued.

- 2.3 No person shall operate a refreshment vehicle in a location other than those areas specified below:
 - 2.3.1 All municipal public property with the exception of residential zones, and except when refreshment vehicles are authorized by Council as part of a community self-funding event i.e. Canada Day, Massed Pipe Bands.
 - 2.3.2 Private property in non-residential zones with the permission of the owner.
- 2.4 No person shall locate or operate more than one refreshment vehicle on private property in non-residential zones.
- 2.5 No person shall operate a refreshment vehicle in a location where the operation of the refreshment vehicle would conflict with an existing agreement of Council or any of its committees or local boards, unless written permission is granted by the lessee.
- 2.6 No person shall locate a refreshment vehicle in such a manner that it unreasonably confines, impedes or presents a hazard to pedestrians or other users of a sidewalk, un-traveled portion of a municipal road allowance or municipal park.
- 2.7 No person shall transfer a licence except with consent in writing of the Municipality and the Municipality shall not be bound to give such consent.
- 2.8 No person shall operate a refreshment vehicle between the hours of 11:00 p.m. and 8:00 a.m. of the next day.
- 2.9 No person shall equip a licensed refreshment vehicle with any sounding device, loud speakers, amplifiers or other hailing devices for attracting attention.
- 2.10 No person shall operate a refreshment vehicle closer than 12.5 metres to an eating establishment that is paying a property tax to the Municipality of Kincardine. Should the owner of a refreshment vehicle wish to locate the said vehicle closer than 12.5 metres to an eating establishment, written acknowledgement from the affected eating establishment owner shall be filed with the application. Distance is calculated from the lot line of the eating establishment to the refreshment vehicle location.
- 2.11 No person shall locate or operate a refreshment vehicle on the travelled portion of the public highway which for the purposes of this by-law shall mean the portion of the highway maintained for the passage of motor vehicles but shall not include the sidewalk or boulevard adjacent to the highway.
- 2.12 No person shall locate or operate a refreshment vehicle on a sidewalk or boulevard adjacent to a public highway, except in accordance with section 3.11 and 3.12 of this by-law.
- 2.13 No person shall locate a refreshment vehicle within 3 metres of all built structures.
- 2.14 No person shall use a generator in conjunction with a refreshment vehicle except when a power outage beyond the control of the licensee occurs and directly affects the operation of the refreshment vehicle.
- 2.15 No operator of a refreshment vehicle shall conduct business from areas designated as public parking unless permission has been granted by the Municipality.
- 2.16 No person shall connect a refreshment vehicle to a municipal utility source.

3.0 REGULATIONS

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- 3.1 Every licensee shall ensure that an adequate number of containers for recyclable materials and waste receptacles with self-closing lids are provided in accessible locations in the vicinity of the refreshment vehicle, and such containers shall be kept in a clean sanitary condition.
- 3.2 Every licensee shall ensure that all refuse generated by the operation of a refreshment vehicle shall be disposed of in accordance with the Municipality's Waste Management By-laws. The placing of refuse in a sidewalk refuse container provided by the Municipality is not sufficient to constitute removal.
- 3.3 Every licensee shall ensure that the waste receptacles are emptied at least once a day.
- 3.4 Every licensee shall ensure the refreshment vehicle, any and all appurtenant accessories and equipment, and the immediate vicinity shall be kept in a clean and sanitary condition at all times.
- 3.5 Every licensee shall ensure that the refreshment vehicle, all accessories and equipment shall be kept in good repair and at all times and in a clean and sanitary condition.
- 3.6 Every licensee shall ensure that:
 - 3.6.1 no person other than a bona fide employee of the licensee shall operate the refreshment vehicle, and
 - 3.6.2 any employee (operator) shall be adequately trained in the safe operation of the refreshment vehicle and equipment, and
 - 3.6.3 all employees are familiar with the contents of this by-law, and
 - 3.6.4 any operator or employee under his control, management or supervision does not breach any of the provision of this by-law.
- 3.7 Every licensee shall ensure that all conditions expressed by the Municipality of Kincardine Fire Department and the Grey Bruce Health Unit, forming part of any approval shall be adhered to at all times.
- 3.8 Every licensee shall comply with all applicable Municipal and Provincial provisions and regulations.
- 3.9 The term of each licence shall be from the first day of January to the thirty-first day of December in each year, and no licence shall be issued except on payment of the full amount of the prescribed fee.
- 3.10 Located Refreshment Vehicle:
 - 3.10.1 The property on which a Located Refreshment Vehicle is to be located shall be zoned Commercial or Industrial as set out in the current Zoning By-law with written permission from the property owner submitted with the application.
 - 3.10.2 Every Located Refreshment Vehicle shall be capable of being moved and driven or towed on a highway upon 24 hours' notice by a by-law enforcement officer.
 - 3.10.3 Permanent electrical or other utility hook-ups are prohibited. To provide for the operation of exhaust fans, approved lighting and other electrical power requirements, a Refreshment Vehicle may be connected to an approved power source provided such connection is made by means of a connection which can be readily and safely disconnected. Such connection must not inhibit the capability of the Refreshment Vehicle to be mobile on short notice or to otherwise cause the Refreshment Vehicle to be recognized as a permanent structure.

3.10.4 Every Located Refreshment Vehicle application shall include a site plan drawn to scale showing the proposed vehicle location, adjacent structures, entrance and exit from adjacent street(s), proposed additions to the vehicle, signs, the location and proposed temporary hook-up of all utilities and set back distances from the street, all as required by the provision of this by-law.

3.10.5 The Refreshment Vehicle shall be located at least three (3) metres from the front line of the property on which it is located or at the discretion of the Clerk.

3.10.6 No sign or advertising device may be displayed, except in accordance with the Sign By-law.

3.11 Mobile Refreshment Vehicle:

3.11.1 The Mobile Refreshment Vehicle may be operated as a fully mobile unit offering food and drink for sale to the general public

3.11.2 While conducting business from a public roadway, the vehicle shall be parked off the travelled portion of the public highway.

3.11.3 The Mobile Refreshment Vehicle shall not interfere with the normal movement of pedestrian and vehicular traffic and the maintenance of the sidewalks and streets in the Municipality.

3.11.4 The power for the Mobile Refreshment Vehicle will be supplied by the permit holder and the permit holder will be responsible for the cost of the power.

3.11.5 The Mobile Refreshment Vehicles may not remain on any site except during the hours of 8 a.m. and 11 p.m. and must be removed from the site at the end of each day.

3.12 Refreshment Cycle:

3.12.1 Despite Section 2.3, Refreshment Cycles shall be allowed to operate in residential zones.

3.12.2 While conducting business from a public roadway, the vehicle shall be parked off the travelled portion of the public highway.

3.12.3 The Refreshment Cycle shall not interfere with the normal movement of pedestrian and vehicular traffic and the maintenance of the sidewalks and streets in the Municipality.

3.13 Special Event Provisions

3.13.1 Refreshment Vehicles may be permitted to operate during specified special events provided that the vendor has received written permission from the organizer.

3.13.2 Special Event organizers must ensure that each refreshment vehicle attending the event have completed the Refreshment Vehicle Special Event Application Form and must submit these applications to the Municipality if requested.

3.13.3 Sections 2, 4, and 5 of this by-law are not applicable to refreshment vehicles that are within the confines of the special event area and authorized by the special event organizer.

4.0 APPLICATION

4.1 Every application for a licence shall be in the form as prescribed by the Clerk and shall supply any other information relating to that application as required

by the Municipality.

4.2 Every application for a refreshment vehicle licence shall:

4.2.1 be accompanied by the required licence fee as per the current Municipality of Kincardine Rates and Fees By-law;

4.2.2 be accompanied by a photocopy of the current motor vehicle registration document;

4.2.3 be accompanied by a photograph of the refreshment vehicle;

4.2.4 be accompanied by Food Premises Inspection Report, R.R.O. 1990, Regulation 562, signed by the Local Board of Health Official certifying that the refreshment vehicle has been inspected within the last (3) months and it conforms to the applicable sections of the Health Protection and Promotion Act;

4.2.5 include a signature from the Fire Chief or authorized officer of the Municipality of Kincardine Fire Department having inspected the refreshment vehicle within the last three (3) months and confirming that it confirms with the applicable sections of the Ontario Fire Code;

4.2.6 be accompanied by a copy of a Mobile Food Service Equipment (MFSE) Annual Inspection Certificate for MFSE's from the Technical Standards & Safety Equipment (TSSA);

4.2.7 be accompanied by proof of insurance as described in Section 6 hereof;

4.2.8 be signed by the applicant who shall certify as to the truth of the contents of the application;

4.2.9 be accompanied by any documentation required in section 3.10, 3.11 and 3.12.

4.3 Applications will be processed and approved by the Clerk's Department of the Municipality.

4.4 Any decision of the Clerk's Department to refuse, suspend or revoke a licence may be appealed to Council by filing, in writing, an appeal with the Clerk within ten (10) days of the notice of decision being provided. All decisions made by Council on these matters are final.

5.0 FEES

5.1 A licence fee shall be charged on an annual basis in accordance with the current Municipality of Kincardine Rates and Fees By-law.

5.2 No application shall be reviewed or issued unless the required licence fees have been paid in full.

6.0 INSURANCE & INDEMNIFICATION

6.1 The licensee must provide the Municipality with a valid insurance certificate of a minimum of two million dollars (\$2,000,000.00) liability insurance and name the Municipality as an additional insured. The licensee must provide proof of insurance prior to commencing the business.

6.2 The licensee agrees to name The Corporation of the Municipality of Kincardine in the licensee's Release of Liability, Waiver of claims Assumption of Risks and Indemnity Agreement signed by each customer.

6.3 The licensee shall indemnify and hold harmless the Municipality of Kincardine, its officers, members of municipal council and employees from and against any liabilities, claims, expenses, demands, loss, costs, damages, actions, suits or

other proceedings by whomsoever made, directly or indirectly arising out of the agreement attributable to bodily injury, sickness, disease or death or to damage to or destruction of tangible property including loss of revenue or incurred expense resulting from disruption of service and caused by any acts of omissions of the licensee, it's officers, agents, servants, employees, customers, invitees or licensees, or occurring in or on the premises or any part thereof and, as a result of activities under this agreement.

7.0 PENALTIES

- 7.1 Every person who contravenes any of the provision of this by-law is guilty of an offence and is subject to the penalties as prescribed in the *Provincial Offences Act*, R.S.O. 1990 Ch. P.33, as amended or by suspension or revocation of any licence issued under this by-law.
- 7.2 The Municipality reserves the right to refuse, suspend or revoke a licence.
- 7.3 All provisions of this by-law may be enforced by the Municipal By-law Enforcement Officer.

8.0 MISCELLANEOUS

- 8.1 That By-law No. 2015 - 049 be hereby repealed.
- 8.2 That this by-law shall come into full force and effect upon its final passage.
- 8.3 This by-law may be cited as the "Refreshment Vehicle By-law (2019)".

READ a FIRST and SECOND TIME this 16th day of January, 2019.

READ a THIRD TIME and FINALLY PASSED this 16th day of January, 2019.

Original Signed By
Mayor – Anne Eadie

Original Signed by
Clerk – Donna MacDougall

THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE

PART I PROVINCIAL OFFENCES ACT

BY-LAW NO. 2019 - 08

Being a By-law to Regulate Refreshment Vehicles within the Municipality of Kincardine

ITEM	COLUMN 1 Short Form Wording	COLUMN 2 Provision creating or defining offence	COLUMN 3 Set fine
1	Operate a Refreshment Vehicle without a licence	Section 2.1	400.00
2	Operate a Refreshment Vehicle without affixing a licence	Section 2.2	25.00
3	Operate a Refreshment Vehicle in a location other than those specified	Section 2.3	100.00
4	Operate a refreshment vehicle between 11:00 pm and 8:00 am	Section 2.8	100.00
5	Operate a refreshment vehicle within 12.5 meters of an eating establishment	Section 2.10	250.00
6	Operate on the travelled portion of the highway	Section 2.11	100.00
7	Locate/Operate on a sidewalk or boulevard	Section 2.12	100.00
8	Use a generator in conjunction with a refreshment vehicle	Section 2.14	100.00
9	Conduct business from areas designated as public parking	Section 2.15	100.00
10	Connect to a municipal utility source	Section 2.16	250.00
11	Fail to dispose of refuse	Section 3.2	200.00
12	Failure to keep in a clean and sanitary condition	Section 3.4	100.00

Note: The penalty provisions for the offences indicated above is section 7.1 of By-law No. 2019 - 08, a certified copy of which has been filed.