

# The Corporation of the Municipality of West Perth

## By-law 69-2017

### Being a By-law to licence Refreshment Vehicles and regulate Refreshment Vehicles within the Municipality of West Perth

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 onetime 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 Municipality of West Perth deems it appropriate to update the Refreshment Vehicle licensing regulations.

Now therefore, the Council of The Corporation of the Municipality of West Perth hereby enacts as follows:

#### 1. Definitions

In this by-law,

- a. **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;
- b. **Charitable organization** means an organization which is created primarily for a charitable object or purpose in Ontario, is operated not for profit, and includes a religious organization or minor sports group;
- c. **Eating Establishment** has the same meaning as an eating establishment or restaurant as defined in the Municipality's Zoning By-law;
- d. **Fire Chief** means the Fire Chief of the Municipality or an authority having designation in accordance with the Fire Protection and Prevention Act, 1997;
- e. **Health Inspector** means a Public Health Inspector acting under the direction of the Perth District Health Unit Medical Officer of Health;
- f. **Highway** shall have the same meaning as in the Highway Traffic Act, R.S.O. 1990, c. H.8;
- g. **Licence** means a licence issued by the Municipal Clerk to operate a Refreshment Vehicle in accordance with this By-law;
- h. **Licensee** means a Person to whom a Licence has been issued and shall include any Person operating a licenced Refreshment Vehicle;
- i. **Mobile Barbecue** means an open-air barbecue affixed to a cart which is on wheels or is capable of being moved from place to place by a person on which food is prepared and sold or offered for sale to the public;
- j. **Motor Vehicle** means a Motor Vehicle as defined in the Highway Traffic Act, R.S.O. 1990.
- k. **Municipal Act, 2001** means the Municipal Act, 2001, S.O. 2001, c.25;
- l. **Municipal Clerk** means the Clerk of the Municipality or a designate;

- m. **Municipality** means The Corporation of the Municipality of West Perth or the geographic area of West Perth, as the context requires;
- n. **Officer** means an Ontario Provincial Police Officer as defined in the Police Services Act, R.S.O. 1990, and shall include a Municipal Bylaw Enforcement Officer, whose duties include the enforcement of this By-law, including a Fire Prevention Officer, Fire Chief, or any Assistant(s) to The Fire Marshal;
- o. **Person** includes an individual, association, firm, partnership, corporation, trust, organization, trustee or agent, and their heirs, executors or legal representatives;
- p. **Refreshment** includes any form of food or drink intended for human consumption;
- q. **Refreshment Vehicle**, also commonly known as a Food Truck, a commercial operation from which food is cooked and/or refreshments prepared, carried and offered for sale for consumption to the general public, and shall include a conveyance provided with or without wheels or runners used for the carriage of persons or goods and shall include, but not be limited to a car, truck, trailer, motorcycle, cart, carriage, container, wagon, snowmobile or all-terrain vehicle;
- r. **Special Community Events** shall mean a special event or any event that has been sanctioned as a Community Event of Municipal Significance by resolution of Council;
- s. **Special Event** means an event held in the Municipality for which a special events permit has been issued by the Municipality or which has been sanctioned by the Municipality;
- t. **Trailer** means a Trailer as defined in the Highway Traffic Act, R.S.O. 1990;
- u. **Zone** means a Zone as defined in the Municipality of West Perth's Zoning By-law, as amended from time to time.

## 2. General

### Prohibitions

- 2.1. No Person shall operate a Refreshment Vehicle in the Municipality without a Licence.
- 2.2. No Person shall operate a Refreshment Vehicle with a suspended or revoked Licence.
- 2.3. Every Licensee 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 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 or suspended.
- 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 Municipality 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 without written consent of the parent or guardian;
  - 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;
  - 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. An application fee as prescribed in the current General Fees and Charges By-Law;
  - 2.12.2. A photograph of the Refreshment Vehicle;
  - 2.12.3. A copy of the Motor Vehicle or Trailer registration, if 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 legislation in substitution thereof;
  - 2.12.5. Indemnification and proof of Commercial General Liability insurance in the amount of two million dollars (\$2,000,000), and naming the Municipality as an additional insured.
    - 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 licenced vehicles and equipment owned or leased by the Applicant, if applicable;
    - 2.12.5.2 All renewal certificates for such insurance shall be provided thirty (30) days prior to the expiry of the insurance during the term;
    - 2.12.5.3 The Corporation of the Municipality of West Perth may require additional types of insurance coverage or higher limits of insurance coverage as determined by the Municipal Clerk.
  - 2.12.6. A current proof of inspection and approval in writing from the Perth District Health Unit;
  - 2.12.7. Approved Mobile Food Service Equipment Inspection Self Checklist from the West Perth Fire Department;
  - 2.12.8. Where the Refreshment Vehicle is fitted with propane or natural gas, a current certificate issued within thirty (30) days of the date of the Refreshment Vehicle licence application, on the prescribed TSSA

Application for Field Approval of Mobile Food Service Equipment, 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

- 2.12.9. The Municipal Clerk may impose conditions not specified in this By-law as a requirement of obtaining or renewing a Licence.

### **Licencing Renewal Requirements**

- 2.13. Every renewal Licence application to operate a Refreshment Vehicle shall meet the applicable licencing requirements and be accompanied by a renewal fee.

### **Operating Requirements**

- 2.14. Every Licensee 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 Licensee 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 Licensee 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 metres of a school unless authorized to do so by the applicable school board.
- 2.20. No Person shall operate a Refreshment Vehicle within 60 metres from the front entrance of an Eating Establishment.
- 2.21. No person shall operate a Mobile Food Service Equipment /Refreshment Vehicle within 30 metres of a re-fueling station or any other volatile environment.
- 2.22. No Person shall operate a Refreshment Vehicle at a Special Event or within 100 metres of the Special Event unless the event organizer has approved the Refreshment Vehicle as a vendor at the Special Event.
- 2.23. No Person shall operate a Refreshment Vehicle on property owned or managed by the Municipality, unless the Refreshment Vehicle has been awarded the rights to operate at that location by the Municipality.
- 2.23.1. A Refreshment Vehicle authorized to operate at a Municipally owned or operated location shall not be subject to setback requirements for schools or eating establishments.
- 2.24. No Person shall operate a Refreshment Vehicle on a Highway, unless:
- 2.24.1. The Municipality or other applicable road authority has authorized a portion of the Highway for that purpose.
- 2.25. No Person shall operate a Refreshment Vehicle in a Residential Zone, unless:

- 2.25.1. The Refreshment Vehicle is servicing an active construction site for no longer than thirty (30) minutes.
- 2.26. No Person shall operate a Refreshment Vehicle from a location unless the Licensee has obtained the land owner or property manager's permission.
- 2.27. The Licensee shall comply with all Municipal by-laws, including, but not limited to Zoning By-laws and Property Standards By-Law, and comply with all provincial and federal legislation.
- 2.28. Every Licensee 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.
- 2.28.1. Upon request of an Officer, the Licensee shall immediately produce this location log.

### **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.

#### **Revoke, Suspend or Cancel a Licence**

- 3.3. The Municipal Clerk may revoke, suspend, or cancel a Licence if the Licensee fails to comply with any provision of this by-law and such noncompliance is not remedied following notice from the Municipality specifying the particulars of the noncompliance.

#### **Offences and Penalties**

- 3.4. Every person who contravenes any provision of this By-law is guilty of an offence and upon conviction is liable to a fine pursuant to the provisions of the Provincial Offences Act, R.S.O. 1990, c. P.33 and/or the Municipal Act, 2001.

#### **Ultra Vires**

- 3.5. It is hereby declared that notwithstanding that any section of this By-law, or parts thereof, may be found by any court of law to be invalid or beyond the power of the Council to enact, such section or sections or parts thereof shall be deemed to be severable and that all other sections or parts of this By-law are separate and independent therefore and enacted as such.

#### **Conflict**

- 3.6. In the event of a conflict between any provision of this By-law and any other By-law in effect in the Municipality of West Perth or with any other law, statute or regulation applying to the Municipality, the more restrictive requirement shall apply.

### **4. Appeal Process**

- 4.1. The Clerk shall provide in writing to the Applicant or Licensee the particulars for refusing to issue, refusing to renew a license or revoking, suspending or cancelling a license including information regarding the Appeal Process as outlined in Section 3 to this By-law.

- 4.2 When an Applicant or Licensee is not entitled to a License as set out in Sections 3 of this By-law, the Applicant or Licensee may appeal this decision and request a hearing to the Council of the Municipality of West Perth, within 14 days of the decision.
- 4.3 Upon receipt of a written request from an Applicant or Licensee for a hearing, the Clerk shall provide the Applicant or Licensee with written notice of the date, time and location of the hearing and such notice shall be provided at least twenty days prior to such hearing.
- 4.4 The provisions of the Statutory Powers and Procedures Act, R.S.O. 1990, Chapter S.22, or any successor thereof, shall apply to all hearings conducted by Council under this By-law.
- 4.5 If the Applicant or Licensee who has been sent notice of the hearing does not appear at the appointed time and place of the hearing, Council may proceed with the hearing in the absence of the Applicant or Licensee.
- 4.6 Council may uphold or vary the recommendation of the Clerk or do any act or make any decision and the Applicant or Licensee shall not be entitled to any further hearing on the matter before Council and the decision of Council shall be final.
- 4.7 The Council of the Municipality of West Perth may, by Resolution, delegate the holding of the aforesaid Hearing to a Appeal Committee of Council.

## **5. Exemptions**

- 5.1 Notwithstanding Section 2.1 of this By-law, a Licensee of a Refreshment Vehicle shall be permitted to operate in a Public Park in conjunction with and during a Special Community Event provided written approval has been obtained from the Municipality in advance.
- 5.2 The provisions of the By-law shall not apply to a mobile barbecue operated in connection with a charitable fundraising event, or a community event held on a Municipal property, or where written approval has been obtained from the Municipality in advance.

## **6. Short Title**

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

## **7. Effective Date**

This By-law comes into full force and effect on the date of its passing.

Read a first and second time this day of 24<sup>th</sup> day of July, 2017

Read a third and final time and finally passed this 24<sup>th</sup> day of July, 2017

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Mayor Walter McKenzie

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Clerk Carla Preston

## The Municipality of West Perth

### By-law 69-2017

Being a By-law to Licence Refreshment Vehicles and regulate Refreshment Vehicles with the Municipality of West Perth

#### Part I – Provincial Offences Act

Item	Column 1 Short Form Wording	Column 2 Provision Creating or Defining Offence	Column 3 Set Fine
1.	Operating a Refreshment Vehicle without a licence.	2.1	\$350.00
2.	Operating a Refreshment Vehicle with a suspended or revoked licence.	2.2	\$350.00
3.	Obstructing an Officer during performance of a duty.	2.4	\$350.00
4.	Operating a Refreshment Vehicle at a prohibited time.	2.5	\$350.00
5.	Operating a Mobile Food Service Equipment/Refreshment Vehicle within 60 metres of a school without authorization.	2.19	\$350.00
6.	Operating a Refreshment Vehicle with 60 metres of an Eating Establishment.	2.20	\$350.00
7.	Operating a Mobile Food Service Equipment/Refreshment Vehicle within 30 metres of a re-fueling station or volatile environment.	2.21	\$350.00
8.	Operating a Refreshment Vehicle at a Special Event or within 100 metres of Special Event without authorization.	2.22	\$350.00
9.	Operating a Refreshment Vehicle on municipal property without authorization.	2.23	\$350.00
10.	Operating a Refreshment Vehicle on a highway.	2.24	\$350.00
11.	Operating a Refreshment Vehicle in a Residential Zone.	2.25	\$350.00
12.	Operating a Refreshment Vehicle from location without property authorization.	2.26	\$350.00

Note the general penalty provision for the offences listed above is Section 3 of By-law 69-2017, a certified copy of which has been filed, and Section 61 of the Provincial Offences Act, R.S.O. 1990, c.P.33, as amended.