

**THE CORPORATION OF
THE TOWNSHIP OF WELLESLEY**

Mobile Food Vending By-law 6/2017

Being a by-law to license, regulate and govern mobile food vending in the Township of
Wellesley

WHEREAS Part IV of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended (the “*Municipal Act, 2001*”), authorizes a municipality to license, regulate and govern business carried on within the municipality;

AND WHEREAS Council considers it desirable to exercise this authority respecting Mobile Food Vending Operations for the purposes of health, safety, nuisance control and consumer protection;

NOW THEREFORE BE IT RESOLVED THAT THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF WELLESLEY ENACTS AS FOLLOWS:

Short Title:

This By-law may be known as the “Mobile Food Vending By-law 2017”.

1. DEFINITIONS

“**Chief Building Official**” means a person appointed by Council to the position of Chief Building Official of the Township in accordance with s.3(2) of the *Building Code Act, 1992*, S.O. 1992 c. 23, as amended (the “*Building Code Act, 1992*”), or his or her designate;

“**Clerk**” means the Municipal Clerk of the Township appointed pursuant to s. 228 of the *Municipal Act, 2001*, or his or her designate;

“**Council**” means the Council of the Township of Wellesley;

“**Fees and Charges By-law**” means the Fees and Charges By-law of the Township, in effect at the time of the license application;

“**Fire Chief**” means a person appointed by Council to the position of Fire Chief of the Township in accordance with s. 6 of the *Fire Protection and Prevention Act, 1997*, S.O. 1997, c. 4, as amended, or his or her designate;

“**food**” means food or drink for human consumption and includes refreshments and confections;

“**food cart**” means a cart, bicycle or tricycle which is:

- (a) propelled by muscular power and can be moved from place to place; and
- (b) from which food or refreshments are sold or offered for sale to the general public;

“**food truck**” means a vehicle or trailer from which food or refreshments are offered for sale to the general public;

“**highway**” means a highway under the jurisdiction of the Township and within the geographic limits of the Township and includes all lands within the lateral boundaries of the highway;

“**Law Enforcement Officer**” means a municipal law enforcement officer of the Township appointed by Council pursuant to s. 15 of the *Police Services Act, R.S.O. 1990, c P15*, as amended;

“**license**” means a license issued under this by-law;

“**licensee**” means a person who holds a license under this by-law;

“**mobile food vending operation**” means a Food Cart or a Food Truck;

“**Police Officer**” means a Police Officer appointed by the Waterloo Regional Police Service;

“**Public Health Inspector**” means an inspector employed by the Region’s Public Health Unit or a successor agency;

“**public property**” means property owned by the Township, Region or the Grand River Conservation Authority;

“**Region**” means the Regional Municipality of Waterloo;

“**regional road**” means a highway under the jurisdiction of the Region and within the geographical limits of the Township, and includes all lands within the lateral boundaries of the highway;

“**restaurant**” means a building or part of a building where food is prepared and offered or kept for retail sale to the public for consumption either on or off the premises including an outdoor patio and includes such uses as a café, cafeteria, tea or lunch room, dairy bar, coffee shop, snack bar or refreshment room or stand;

“**special event**” means a one time, annual or infrequently occurring event within the Township, which is a celebration of a specific theme, has a pre-determined opening and closing date and time, and is available to the community at large;

“**Township**” means the Township of Wellesley;

“**Zoning By-law**” means a by-law enacted by the Township under section 34 of the Planning Act, R.S.O. 1990, c. P.13, as amended,

2. PROHIBITIONS

2.1 No person shall do any of the following, except in accordance with a *license* issued under this by-law and in accordance with the provisions of this by-law:

- (a) carry on a *Mobile Food Vending Operation*;
- (b) permit a person to carry on a *Mobile Food Vending Operation*;
- (c) sell food from a *Mobile Food Vending Operation*; or
- (d) hold themselves out as being licensed to carry on a *Mobile Food Vending Operation*.

2.2 No person shall do any of the following, under a name other than the name under which a license has been issued under this by-law:

- (a) carry on a *Mobile Food Vending Operation*;
- (b) permit a person to carry on a *Mobile Food Vending Operation*;
- (c) sell food from a *Mobile Food Vending Operation*; or
- (d) hold themselves out as being licensed to carry on a *Mobile Food Vending Operation*.

2.3 No person shall carry on a *Mobile Food Vending Operation* under this by-law:

- (a) if the *license* has expired or been revoked; or
- (b) while the *license* is under suspension.

2.4 No person shall transfer or assign a license issued under this by-law without the written consent of the *Clerk*.

2.5 No person shall provide false or misleading information to the *Township* when applying for a *license* under this by-law, renewing a license or at any other time.

3. ADMINISTRATION

Clerk Shall Administer

3.1 Unless otherwise indicated, the administration of this by-law is assigned to the *Clerk*.

Records

3.2 The *Clerk* shall maintain records of *Mobile Food Vending Operation license* applications, documentation, inspection reports, departmental and agency approvals and issued licenses in accordance with the Township's Records Retention By-law.

3.3 *Licensees* must ensure copies of all certificates and approvals are kept in the *Mobile Food Vending Operation* at all times and available for immediate inspection upon demand by a *Municipal Law Enforcement Officer, Police Officer* or *Public Health Inspector*.

License Applications

3.4 Every applicant for a *Mobile Food Vending Operation* license shall:

- (a) complete an application in the form prescribed by the *Clerk*, including setting out such information or attaching such documentation as may be reasonably required by the *Clerk*, from time to time, which includes, but is not limited to, the information and documentation outlined in Section 3.5 of this by-law;
- (b) submit their completed application to the *Clerk*; and
- (c) pay the applicable fee pursuant to the Township's *Fees and Charges By-law*.

3.5 Every application for a *license* shall include the following:

- (a) Region Public Health Unit approval;
- (b) proof of compliance with TSSA regulations (where applicable);
- (c) a copy of the applicant's driver's license (if applicable);
- (d) a copy of the ownership for the *Food Truck* or *Food Cart*; (if applicable)
- (e) a photo of the *Food Truck* or *Food Cart*;
- (f) proof of general liability insurance, by an insurer satisfactory to the Township, in the amount of \$2,000,000.00;
- (g) proof of automotive liability insurance, by an insurer satisfactory to the Township, in the amount of \$2,000,000.00 on all vehicles used in *Mobile Food Vending Operations*;
- (h) the dimensions of the *Food Truck* or *Food Cart*;
- (i) a plan for the containment and disposal of grey water, grease and garbage in a sanitary manner satisfactory to the *Township*;
- (j) a description of *food* menu;
- (k) written permission from the owner of the private property on which the *Mobile Food Vending Operation* is to be situated, clearly acknowledging and agreeing with the intended use of the private property, if applicable; and
- (l) a general sketch or plan showing the location of the *Mobile Food Vending Operation* as it relates to other buildings and structures on the private property, when the *Mobile Food Vending Operation* is placed on private property.

4. LICENSES

Grounds for Refusal

4.1 The *Clerk* shall:

- (a) receive and process complete applications for:
 - (i) licenses to be issued under this by-law, and,
 - (ii) renewal of licenses to be issued under this by-law;
- (b) issue licenses and renew licenses to any person who meets the requirements of this by-law except where:
 - (i) the conduct of an applicant affords reasonable grounds for belief that the applicant has not carried on, or will not carry on, his/her operation in accordance with the law;
 - (ii) there are reasonable grounds for belief that the carrying on of the operation may be adverse to the public interest;
 - (iii) the applicant is the subject of an order made by the *Township* or the *Region*;
 - (iv) the application is not in compliance with the *Zoning By-law*; or
 - (v) the applicant is indebted to the *Township* in respect of fines, penalties, judgments, outstanding property taxes, or any other amounts owing.
- (c) the *Township* reserves the right to issue licenses with additional conditions at the *Township*'s sole discretion.

Suspension or Revocation of License

4.2 If, at any time, the *Clerk* determines, as a result of evidence that is provided, that the *Mobile Food Vending Operation* is not conforming to the requirements of this by-law, the *Clerk* may suspend or revoke the license.

Term of License

4.3 A *license* issued or renewed under this by-law to carry on a *Mobile Food Vending Operation* shall be for the current year and shall expire on the 31st day of January of the following year or until said license is revoked or suspended.

Fees

4.5 Any Person required to obtain a *license* or to renew a *license* pursuant to this By-law shall apply in writing on the prescribed application form provided by the Municipal Clerk and shall deposit with the Municipal Clerk, at the time of application, all required licensing fees as set out in the *Fees and Charges By-law* as well as any required approvals, inspections or documentation required by this By-law or as deemed necessary by the Municipal Clerk.

4.6 Acceptance of the license fee does not constitute approval of the application or oblige the *Clerk* to issue a license.

4.7 No fee for a *license* issued under this by-law shall be pro-rated for a portion of the year, regardless of when the license application is submitted to the *Clerk*.

4.8 Every fee paid for a license under this by-law is refundable if the license is refused by the *Clerk*.

5. GENERAL REGULATIONS

Approved Dimensions and Weight

5.1 A *Food Truck* shall not exceed:

- (a) 2.6 metres in width;
- (b) 12.2 metres in length; and
- (c) 4,500 kilograms.

5.2 A *Food Cart* shall not exceed overall dimensions of 1.2 metres in width and 2.4 meters in length.

Parking Restrictions

5.3 No person shall allow *Mobile Food Vending Operations* to park overnight on Public Property or private property after posted hours except property owned, leased or rented by the operator for the storage of the *Mobile Food Vending Operation* and in compliance with the *Zoning By-law*.

Operational Restrictions

5.4 No person shall operate a *Mobile Food Vending Operation*:

- (a) within a 90 metre radius of any entrance to a Restaurant;
- (b) on *Township* or *Regional Roads*;
- (c) in a manner that interferes with the normal use of a sidewalk by pedestrians;
- (d) within 100 metres of any elementary or secondary school
- (e) on private or public property without the written consent of the property owner;
- (f) within 9 metres of any intersection; or
- (g) in a manner that obstructs an entrance to a property.

5.5 Every licensee shall:

- (a) maintain the *Mobile Food Vending Operation* in a clean and sanitary condition;
- (b) provide adequate measures for the storage and disposal of waste;
- (c) be equipped with a waste container with a self-closing lid and adequate recycling material containers;
- (d) keep all waste and recycling material containers in a clean and sanitary condition and empty them at least once daily;
- (e) provide sufficient levels of illumination to permit the safe use of the *Mobile Food Vending Operation*;
- (f) ensure that no waste generated from the *Mobile Food Vending Operation* is deposited in any Township owned waste container by the owner or employees of the *Mobile Food Vending Operation*;
- (g) ensure that, where a *Mobile Food Vending Operation* is powered by propane, that:
 - (i) the *Mobile Food Vending Operation* is inspected and certified at the time of application, and on an annual basis, by an authorized inspector;
 - (ii) that such certification is filed with the *Clerk* at the time of application, for the issuance or renewal of a license, or as may be required by the *Clerk*; and

- (iii) shall comply with all Ministry of Labour and Ontario Fire Code requirements.
- (h) ensure that the *Mobile Food Vending Operation* is free from holes, crevices or cracks;
- (i) ensure that the surface of the *Mobile Food Vending Operation* is kept clean and in good condition;
- (j) ensure that only single service disposable cups, plates, forks, spoons, knives and containers are used and that serviettes are provided from a dispenser;
- (k) locate any tank or container required for the operation of a *Mobile Food Vending Operation* on the *Food Truck* or *Food Cart* itself;
- (l) comply with all of the provisions of this by-law;
- (m) comply with all *Township* by-laws including, but not limited to, its *Zoning By-laws*; and
- (n) comply with all provincial and federal statutes and regulations.

6. LOCATION REQUIREMENTS

Permitted Zones

- 6.1 A *Mobile Food Vending Operation* may operate only within the following zones, as established by the *Zoning By-Law*:
- (a) Urban Commercial (UC);
 - (b) Urban Industrial (UI)
 - (c) Dry Industrial (DI); or
 - (d) Settlement Commercial (SC).

- 6.2 The location of a *Mobile Food Vending Operation* shall comply with the parking setbacks outlined in the *Zoning By-law*, but no closer to the street line than 1 metre.

Minimum Distance Separation

- 6.3 No *Food Truck* or *Food Cart* will be allowed within 90 metres of an existing restaurant.

Special Events

- 6.5 Notwithstanding any other provision of this by-law, a licensee may be permitted to carry on a *Mobile Food Vending Operation* on Public Property during a *Special Event*, if permitted by the *Clerk*, and after paying the applicable fee.

7. EXEMPTIONS

- 7.1 Exemptions from the provisions of this by-law may be granted from time to time as authorized by *Council*.
- 7.2 Lawfully operating local retailers are exempt from obtaining a *license* under this by-law and from paying the applicable fee for day sales or seasonal sales if the temporary selling activity is an extension of the existing business at that location.
- 7.3 On-farm produce outlets as defined in the *Township Zoning By-law* are exempt from the provisions of this by-law;
- 7.4 One day auction sales in residential and agricultural zones are exempt from the provisions of this by-law.

8. INSPECTIONS

- 8.1 A *Municipal Law Enforcement Officer, Police Officer, Public Health Inspector, Fire Chief, Chief Building Official*, or any other duly appointed person, may, at all reasonable times, inspect or cause to be inspected, facilities, vehicles or equipment used or kept in connection with the operation of a *Mobile Food Vending Operation* that is licensed, or is required to be licensed, pursuant to this by-law.
- 8.2 No person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty under this by-law.

9. INSURANCE

- 9.1 No person shall operate a *Mobile Food Vending Operation* without obtaining, and keeping in force, a comprehensive policy of public liability insurance and property damage insurance, in a form and in an amount, either stipulated in this by-law, or acceptable to the *Clerk*;
- 9.2 If a *Mobile Food Vending Operation* is situated on public property, the required insurance policy shall:
- (a) name the Township as an additional insured;
 - (b) indemnify the Township so that if a lawsuit is filed against the Township, notwithstanding that the licensee had general liability insurance, the licensee will be required to pay all of the costs incurred or losses suffered by the Township as a result of any legal proceeding being commenced against it;
 - (c) contain a cross-liability of interest clause protecting the Township against any actions, causes of actions, claims and demands whatsoever which may arise resulting from the Township's issuance of the *Mobile Food Vending Operation* permit; and
 - (d) include a provision that the *Clerk* shall be given at least thirty (30) days' notice in writing of any cancellation, expiration or variation of the insurance policy.
- 9.3 Every licensee shall provide proof of insurance while operating a *Mobile Food Vending Operation* immediately upon request by a *Municipal Law Enforcement Officer, Police Officer, Public Health Inspector* or the *Clerk*.

10. ENFORCEMENT

- 10.1 This by-law may be enforced by a *Municipal Law Enforcement Officer, Police Officer or Public Health Inspector*.

11. OFFENCE AND PENALTY PROVISIONS

- 11.1 Every person who contravenes any of the provisions of this by-law, or any director or officer of a corporation who concurs in such contravention by a corporation, is guilty of an offence and, upon conviction, shall be liable to a fine as provided under the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended.

12. SEVERABILITY

- 12.1 If a court of competent jurisdiction declares any provision, or any part of a provision, of this by-law to be invalid, or to be of no force and effect, the validity of the remainder of this by-law shall not be affected.

13. COMING INTO FORCE

- 13.1 This by-law shall come into force and effect on April 1, 2017.

Read a first and second time this **31st day of January, 2017.**

Mayor Joe Nowak

Deputy Clerk, Amy Black

Read a third and final time and passed this 31st day of January, 2017.

Mayor Joe Nowak

Deputy Clerk, Amy Black