

The Corporation of the City of Thorold

By-law No. 16-2017

A by-law to license, regulate and govern refreshment vehicles/carts/cycles

Whereas subsection 10(2) of the Municipal Act, 2001, S.O. 2001, c. 25 as amended, provides, in part, a municipality may pass by-laws respecting the health, safety and well-being of persons;

And whereas at its meeting of October 18, 2016 Thorold City Council approved the recommendations of Clerk's Report CC2015-30 to adopt a by-law to license, govern and regulate refreshment vehicles;

And whereas in the interest of streamlining the licensing process for refreshment vehicles/carts/cycles and provide clarification for requirements, Council deems it expedient to pass this by-law

Now therefore, the Council of The Corporation of the City of Thorold enacts as follows:

GENERAL PROVISIONS

1. DEFINITIONS

For the purposes of this By-law and Schedules attached hereto:

- (a) "applicant" means a person who is required to be licensed pursuant to this By-law, who has made application for a licence from the City Clerk.
- (b) "BIA" means Thorold Business Improvement Area and includes the Thorold Area Business Improvement Area Board of Management.
- (c) "By-law Enforcement Officer" means a By-law Enforcement Officer of The Corporation of the City of Thorold.
- (d) "Chief Building Official" means the Chief Building Official of The Corporation of the City of Thorold and shall include his designate.
- (e) "City" means The Corporation of the City of Thorold.
- (f) "Clerk" means the City Clerk of The Corporation of the City of Thorold and shall include the Deputy City Clerk.
- (g) "Council" means the Council of The Corporation of the City of Thorold.
- (h) "Fire Chief" means the Fire Chief of The Corporation of the City of Thorold and shall include his designate.
- (i) "highway" means a street or road which afford the principal means of access to abutting lots which has been adopted as part of the City's, Region's or Province's road system, or is dedicated as a street on a Registered Plan of Subdivision, or is a street or road open to the public for thoroughfare and upon which substantial improvement or labour has been done by the City, Region or Province.
- (j) "licence" includes a renewal licence.
- (k) "licencee" means a person, organization or business who has been issued a licence and holds a valid licence pursuant to this By-law.
- (l) "person" includes an individual, association, charter association, firm, partnership or corporation, or other entity.

- (m) “premises” means land including any and all buildings or other structures thereon and includes any vehicle of conveyance used in the operation of the business and shall include premise.
- (n) “Public Health Department” means the Niagara Region Public Health Department.
- (o) “refreshment cart” means a wheeled, transported, non-motorized refreshment vehicle, other than a refreshment cycle.
- (p) “refreshment vehicle” means a motorized vehicle which has equipment inside the vehicle for preparing food and requires the proprietor to be inside the vehicle to prepare the food for consumption by the public.
- (q) “refreshment cycle” means a non-motorized bicycle or tricycle from which ice cream, frozen desserts or other frozen confections, or other foods stuffs are sold.
- (r) the expression “carry on” and “carrying on” when referring to a trade, business, occupation, calling, object, amusement, vehicle, place or premises shall also include conducting, operating, maintaining or keeping any one or more of the same where such expressions apply.
- (s) the expressions “activity” or “activities” means and includes any trade, business, occupation, calling, object, vehicle, place or premises for which a licence is required by this by-law.

2. REQUIREMENT OF LICENCE

- (a) No person shall carry on, conduct, operate, maintain, or keep any business or occupation set forth in this By-law, unless the person first obtains a licence from the Clerk.
- (b) Every person engaging in any business for which he or she is required to be licensed by the provisions of this By-law shall comply with all applicable statutes, regulations and by-laws.
- (c) No such licence is required for selling goods, ware or merchandise:
 - (i) to wholesale or retail dealers in similar goods, wares or merchandise;
 - (ii) by a local farmer who offers for sale or sells only the produce of his own farm at his property or as a participant in a farmers market at a location established by the City;
 - (iii) by a person, business or organization who enters into a written agreement with the City of Thorold, the BIA or a registered non-profit charitable organization, to sell their goods, wares or merchandise at a special event, show or fund-raising event organized by the registered non-profit charitable organization and only during the hours of operation of the organization’s fund-raising event or show, provided such person(s) shall have obtained all relevant inspections and approvals including fire, building and health;
 - (iv) by a person(s) who participate in a consumer show open to the public or a trade show open by invitation or registrations only, the primary purpose of which is the display of goods, wares or merchandise, and also excludes a consumer show or trade show operating as an integral part of a convention or conference;

- (v) by a local retailer selling his goods, wares or merchandise or services from his place of business, zoned for the same, in the City.

3. EXEMPTION AND ONUS

The onus of proving that a person does not require a licence under this By-law for any of the reasons mentioned in Section 2(c) above shall be upon the person charged.

4. LICENCE AND INSPECTION FEES

Permanent Location Fee:

Refreshment Vehicle/ Cart/Cycle	\$200 licence annually and Fire Services Inspection Fee as per Fire Services Schedule of Fees
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Daily Licence Fee:

Refreshment Vehicle/ Cart/Cycle	\$50 licence fee per day, Fire Services fee is waived for a Daily Sales Licence
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Replacement of lost or damaged Licence \$10.00

Licence and inspection fees listed above must be submitted to the City at the time of application for a licence.

Any charges for inspections or service provided by other entities must be paid by the applicant directly to these agencies.

5. LICENCE FEE NON-REFUNDABLE

- (a) Where a licence granted is revoked, suspended or cancelled and where a fee has been paid for the granting of the licence, said fee or any part thereof is non-refundable.
- (b) Where a licensee ceases to operate and where a fee has been paid for the granting of the licence, said fee or any part thereof is non-refundable.
- (c) Where a licence has been applied for, but not approved, the application fee will be refunded. Fire Inspection fees are non-refundable once completed.

6. EXPIRATION OF LICENCES

- (a) Regardless of the date of issue, all annual licences issued under this By-law shall expire each year on December 31st.
- (b) All single day licences issued under this By-law shall expire at 11:59 p.m. on the day for which the licence is issued.
- (c) Inspection approvals given at the time of application do not extend beyond expiration of the licence.

7. SIGNS AND ADVERTISING DEVICES

No person shall erect, construct or otherwise display or cause to be erected, constructed or otherwise displayed any sign or other advertising device except in accordance with the City's sign by-law.

8. ZONING BY-LAWS

Nothing in this By-law shall be deemed to authorize any activity in any place where such activity is not permitted by the applicable zoning by-law.

9. HIGHWAYS

The sale of refreshments, confections, goods, wares, merchandise, or effects of any kind is prohibited upon any highway or part of a highway within the City without the written permission of Council or the written permission of a City Department Director who has been delegated such authority via by-law.

10. APPLICATION AND GRANTING OF LICENCE

- (a) Any person wishing to acquire a licence or renewal thereof under this By-law shall apply using the prescribed form provided by the Clerk and submit a site map identifying the location of the refreshment vehicle and shall pay the required fee(s) at the time of application.
- (b) The applicant shall complete a separate application, and pay the required fee(s), for each premise from which a business is to be operated.
- (c) The applicant shall submit written permission from the property owner stating there is no objection to the use of land the refreshment vehicle will be operating upon.
- (c) The Clerk shall not issue a licence until all fees are paid, the application has been fully completed and all other requirements and approvals have been received.
- (d) No licence shall be issued for any purpose which is contrary to any statute, regulation or by-law.
- (e) All applicants are required to submit their completed application to the Clerk 30 days prior to the anticipated start date.
- (f) If after making the inquiries required under this By-law, the Clerk is of the opinion that a licence should not be issued, the Clerk shall so advise the applicant in writing noting the deficiencies.

11. LICENCE

- (a) Every licence shall be in a form as the Clerk shall designate.
- (b) Every licence shall include the following information:
 - The type of licence granted (daily or annual);
 - The date of expiration;
 - The name of the licensee;
 - Address of the premises for which the licence is issued;
 - Original signature of the Clerk

12. NON-TRANSFERABLE

- (a) A licence issued under this By-law is non-transferable.

13. LICENCE TO BE POSTED

A licensee shall:

- (a) display the licence in a conspicuous place in or on said premises;
- (b) display the licence in a conspicuous place or on said vehicle;
- (c) maintain the licence on their person while conducting the activity for which the licence was issued.

14. INSPECTION

A Police Officer, Public Health Department Inspector, By-law Enforcement Officer, Fire Department or any person duly authorized by the City may at any reasonable time inspect the licence, premises or business.

15. CANCELLATION OR REVOCATION OF A LICENCE

- (a) Any licence may be revoked or suspended by the City by reason of a violation of this By-law, the failure of such licensee to comply with the provisions of this By-law or failure by such licensee to maintain the minimum standards and requirements necessary for licensing.
- (b) Upon cancellation or revocation of a licence, the licensee shall immediately return to the Clerk the licence issued by the City.

16. APPEAL OF REVOCATION OF A LICENCE

Upon revocation of a licence issued under this By-law the licensee may request an appeal of the Clerk's decision, in writing, to the City's Corporate Public Forum Committee, within fourteen (14) days of the date of revocation of the licence. Upon hearing the appeal, the Public Forum Committee shall make a recommendation to Council to uphold or reverse the Clerk's decision.

Council's decision shall be final.

17. RENEWAL OF LICENCE

- (a) Upon receipt of an Application to Renew of a Licence previously granted pursuant to this By-law, and upon receipt of applicable licence and inspection fees, the Clerk shall follow the same procedures as provided for an application for licence.

18. LOST OR DAMAGED LICENCE

- (a) The Clerk may issue a replacement licence to a licensee who has lost or damaged the original licence.

- (b) A fee of \$5.00 shall be charged for any replacement license issued.

19. PENALTIES

- (a) Any person contravening any of the provisions of this By-law is guilty of an offence and liable on conviction to a fine as provided under the Provincial Offences Act, R.S., 1990, c.P. 33.
- (b) For the purposes of this section, a separate violation shall be deemed to have been committed for each and every day during which such violation continues, and conviction in respect of a violation shall not operate as a bar to further prosecution if such violation continues.

20. INTERPRETATION

In this By-law, unless the context otherwise requires, words importing the singular member shall include the plural and words importing the masculine shall include the feminine.

21. SEVERABILITY

If any section, subsection, sentence, clause, phrase or provision of this By-law is for any reason held by court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of the By-law.

22. REPEAL

That By-law 92-2015 is hereby repealed.

23. EFFECTIVE DATE

This By-law shall come into force and take effect upon the passing thereof.

Read a first, second and third time and finally passed by Council this 7th day of February, 2017.

A. T. (Ted) Luciani, Mayor

Donna Delvecchio, City Clerk

SCHEDULE "A"

Refreshment vehicles/carts/cycles– Additional Provisions

1. Council may, by resolution, regulate the number of licences issued for refreshment vehicles/carts/cycles from time to time as it considers expedient.
2. No person shall own, operate or maintain a refreshment vehicle/cart/cycle from which refreshments are sold for consumption by the public within the boundaries of the City without first obtaining a refreshment vehicle/cart/cycle licence for the City in accordance with the provisions of this By-law.
3. The City cannot guarantee any application for a refreshment vehicle/cart/cycle licence will be processed prior to the intended start date for that refreshment vehicle/cart/cycle unless a complete application, with required documentation, and appropriate fee(s) plus H.S.T., (if applicable), are received by the Clerk at least 30 days prior to the intended opening.
4. A refreshment vehicle/cart/cycle licence issued for a permanent location under the by-law is valid for the use of one refreshment vehicle/cart/cycle in one location only.
5. A Refreshment vehicle/cart/cycle licence issued under this By-law does NOT extend to placement of signage to advertise the refreshments being offered for sale.
6. Every person holding a refreshment vehicle licence shall ensure that every licensed refreshment vehicle/cart/cycle owned or operated by such person shall continue to meet the requirements of this By-law.
7. No person shall use or permit the use of a refreshment vehicle situated, standing or parked on a public highway within the City without prior written permission of the Council or the written permission of the City Department Director who has been delegated such authority from Council by By-law.
8. When in use, the cooking appliance(s) must be supervised at all times by a person 16 years of age or older.
9. Any cooking that produces grease-laden vapours shall be protected by an automatic commercial cooking extinguishing system installed over the cooking area meeting N.F.P.A. 96 requirements.
10. Cylinders containing compressed gas shall be located at least 1.5 meters away from any building openings.
11. A person responsible for the exchange for propane cylinders must have documented proof of appropriate propane safety training available on site.
12. Any cooking appliance(s) must be kept clean by removing grease or fat buildup from the grills and trays below the grill.
13. Any cooking appliance(s) shall only be used for the purpose for which they were designed and as per manufacturer's instructions and in accordance with TSSA – MFSE – 2014.
14. The Clerk of the City may issue a refreshment vehicle/cart/cycle licence for a vehicle when the applicant submits to the Clerk:
 - (1) A complete application on such form provided by the Clerk;
 - (2) Applicable licence and inspection fees prescribed in the By-law;
 - (3) A clear photograph of the refreshment vehicle/cart/cycle;

- (4) A site plan (detailed sketch) showing the proposed location of the refreshment vehicle/cart/cycle, including measurements of setbacks to buildings and parking and any roads or highways;
- (5) Written permission, on the form provided by The Corporation of the City of Thorold, from the owner of the property upon which the refreshment vehicle/cart/cycle will operate;
- (6)
 - (a) A certificate of insurance confirming liability insurance in the amount of 2 million dollars (\$2,000,000) naming the City as an additional insured;
 - (b) Said certificate shall clearly acknowledge the vehicle is being used for the purpose of a refreshment vehicle/cart/cycle and shall include all necessary coverages as are reasonable for such use.

AND when the Clerk receives:

- (7) The report of the Public Health Department confirming or committing to confirm all health standards and regulations with respect to the refreshment vehicle/cart/cycle equipment and facilities and the operation thereof have been complied with;
 - (8) Where applicable, evidence that the refreshment vehicle complies with National Fire Protection Association (N.F.P.A.) #96 – “Standard for the Removal of Grease Laden Vapours and Smoke from Commercial Cooking Equipment”.
 - (9) Where applicable, evidence that the refreshment vehicle/cart/cycle provides proper and adequate fire extinguishers. A minimum of two (2) fire extinguishers will be required; being one (1) Class K and one (1) Class ABC fire extinguisher. Each extinguisher shall be rated 2A10BC. Extinguishers shall be located within three (3) feet or one (1) meter of every cooking appliance. The extinguisher(s) shall be clearly visible, easily accessible and ready for use at all times.
 - (10) Where applicable, evidence that the refreshment vehicle/cart/cycle complies with the requirements of the Technical Standards & Safety Authority (TSSA), Mobile Food Service Equipment (MFSE) – Food Trucks including, but not limited to, Field Approval issued by TSSA, bears prescribed safety labels, and is inspected annually and tagged by a certified technician.
 - (11) The reports from any other agency(s) deemed necessary by the Clerk and/or applicable city departments; and
 - (12) The refreshment vehicle/cart/cycle and its operation comply with all other applicable statute, regulation or By-law of the City.
15. After a refreshment vehicle/cart/cycle licence has been issued, where applicable, Thorold Fire and Emergency Services shall inspect the refreshment vehicle/cart/cycle to verify the vehicle/cart/cycle is compliant to clauses 14. (8), 15. (9) and 15. (10) above. In the event certifications are not valid or current, Thorold Fire and Emergency Services shall remove and automatically revoke, suspend or terminate the refreshment vehicle/cart/cycle licence issued by the City of Thorold.
 16. Every refreshment vehicle/cart/cycle licence shall automatically be revoked upon the cancellation, suspension or termination of the relevant policy(s) of insurance.

17. The owner, driver or operator of every refreshment vehicle/cart/cycle shall be responsible for providing litter receptacles at the site on which the refreshment vehicle/cart/cycle is situated, standing or parked and the owner, driver or operator of every refreshment vehicle/cart/cycle shall be responsible for ensuring the said site is maintained in tidy condition at all times and that the waste and litter is disposed of by the owner, driver or operator of every refreshment vehicle/cart/cycle in accordance with the applicable By-laws, regulations and requirements of the City, The Regional Municipalities of Niagara, and all other applicable legislation.
18. Every person owning or operating a refreshment vehicle shall maintain the refreshment vehicle/cart/cycle in a clean and sanitary condition which is free of any physical damage.
19. A refreshment vehicle/cart/cycle shall have a mandatory set back from the road, sidewalk and/or property line of no less than three (3) meters.
20. Where the licensee of a refreshment vehicle/cart/cycle licence fails to comply with the requirements of this By-law, the Clerk shall temporarily suspend the licence until the licensee has complied with the terms and conditions of the By-law.