

**The Corporation of the Township of
Smith-Ennismore-Lakefield**

By-law No. 2011 - 117

**Being a By-law for the Licensing and the Regulation of Refreshment
Vehicles in the
Township of Smith-Ennismore-Lakefield**

(Refreshment Vehicle Licensing)

Whereas the Ontario Municipal Act, 2001, S.O. 2001, c. 25, Section 2, as amended, states that municipalities are created by the Province of Ontario to be responsible and accountable governments with respect to matters within their jurisdiction, and as such, municipalities are given powers and duties under this Act, and many other Acts, for the purpose of providing good government with respect to those matters; and

And Whereas the Ontario Municipal Act, 2001, S.O. 2001, c. 25, Section 5.3, as amended, states that a municipal power shall be exercised by By-law unless the municipality is specifically authorized to do otherwise;

And Whereas the Ontario Municipal Act, 2001, S.O. 2001, c. 25, Section 151, as amended states a municipality may provide for a system of licenses with respect to a business;

And Whereas of the Municipal Act, 2001, S.O. 2001, c. 25, Section 441 permits municipalities to collect unpaid licensing fines. The fine is deemed to be unpaid taxes;

Now Therefore, the Township of Smith-Ennismore-Lakefield deems it advisable to enact a By-law to licence and regulate refreshment vehicles.

Purpose

The municipality is requiring the owners and/or operators of refreshment vehicles to obtain a license in order to contribute to the health and safety of Township residents and to ensure that the operation of the refreshment vehicles does not contribute or create nuisances for the travelling public, patrons and neighbouring property owners.

1. Definitions

For the purpose of this By-law, the following definitions shall apply:

- a) **Council:** shall mean the Council of The Corporation of the Township of Smith-Ennismore-Lakefield.
- b) **Hot Dog Cart:** shall mean a mobile trailer or cart from which hot dogs, sausages or similar food or refreshments are sold or offered for sale to the public.
- c) **Ice Cream Cart:** shall mean a manually propelled itinerant tricycle vehicle from which ice cream, ice cream cones, ice milk and other iced confectionery food items are offered for sale or sold to the public.
- d) **License, Annual:** shall mean a license to operate a Refreshment Vehicle at a designated location within the Township of Smith-Ennismore-Lakefield applied for and issued each year.
- e) **License, Temporary Event:** shall mean a license to operate a Refreshment Vehicle at an event at a designated location for a period of not more than 5 consecutive days.

- f) **Mobile Barbeque Facility:** shall mean an open air barbeque affixed to a cart which is on wheels or is capable of being moved from place to place by a person for the purpose of offering for sale or selling refreshments to the public.
- g) **By-law Enforcement Officer:** shall mean a Municipal By-law Enforcement Officer appointed by Council or any other person appointed or designated by Council to provide law enforcement services in the Township of Smith-Ennismore-Lakefield and shall mean a person appointed by Council for the purpose of processing and issuing Licenses under this By-law.
- h) **Operator:** shall mean a person who is licensed to operate a Refreshment Vehicle within the Township of Smith-Ennismore-Lakefield.
- i) **Owner:** shall mean the owner of a property located within the Township of Smith-Ennismore-Lakefield.
- j) **Person:** shall mean an individual human being, his/her personal agent, heir, successors and assigns and shall include a corporation with or without share capital.
- k) **Refreshment Vehicle:** Shall mean a vehicle or other itinerant food premises from which food prepared therein is offered for sale to the public and includes refreshments such as, but not limited to, french fries, hot dogs, hamburgers, sausage, fish, ice cream, beverages and similar items are sold or offered for sale, or a chip wagon, hot dog cart, ice cream cart or any other food trailer, including a mobile barbeque facility.
- l) **Refreshments:** shall mean, but shall not be limited to, such items as french fries, hot dogs, hamburgers, sausage, fish, ice cream, beverages and similar items which can be sold from a vehicle, which conforms with the requirements of this By-law and any other regulations that any other agency or Ministry may impose.
- m) **Structure:** shall mean anything constructed or erected, the use of which requires location on the ground, or which is attached to something having location on the ground.
- n) **Township:** shall mean The Corporation of the Township of Smith-Ennismore-Lakefield.
- o) **Zoning Administrator:** shall mean the person appointed by Council to administer the provisions of the Zoning By-law.

2. License Required for Refreshment Vehicles

- a) No person shall own, operate, or permit the operation of a Refreshment Vehicle within the Township without a license issued under the provisions of this By-law save and except for:
 - i) Charitable non-profit groups, associations or corporations who sell food and refreshments outdoors, to the general public, from barbeque-style cooking equipment, for the purpose of fund-raising as part of a special event; provided they have permission of the property owner, or of the Township in respect of public property, from which such sales are proposed to take place. Food served from a mobile barbeque-style apparatus, must be only 'pre-cooked' food in accordance with the Health Protection and Promotion Act O.Reg. 526 Section 5.

- ii) Those refreshment vehicles and concessions that operate at the Lakefield Fairgrounds for the exclusive duration of the Annual Lakefield Fair event.
- iii) A license shall not be required by the owners of eating establishment businesses located within the Township of Smith-Ennismore-Lakefield in order to conduct the sale of food and refreshments from a refreshment vehicle, including a barbeque-style stand where such operation is located externally to enclosed eating establishment premises on the same property.

3. Requirements for License

Issuance of License – Delegation of Authority

- a) Council shall delegate the authority to a By-law Enforcement Officer who may, where he/she deems it expedient and in the best interest of the residents of the Township, grant, refuse, revoke or suspend a license to an applicant in accordance with the provisions of this By-law.

Applications

- b) Every application for a license shall be made in writing upon a form provided, attached hereto, and shall be accompanied by:
 - i) The fee set out in Schedule “A” attached hereto; and
 - ii) An Annual Inspection Report from Peterborough County/City Health Unit confirming that the Refreshment Vehicle conforms to the requirements of the Health Protection and Promotion Act, that there are appropriate waste disposal facilities, and that any other pertinent laws and Regulations have been met; and
 - iii) A Semi Annual Inspection Report for Gas and/or Propane Installation by a Licensed Contractor, where applicable;
 - iv) An Annual Clearance from the Road Authority, where applicable, being:
 - a. Ministry of Transportation Ontario if the proposed location is on a Provincial Highway, or
 - b. Peterborough County Roads Department if the proposed location is on a County Road, or
 - c. Manager of Public Works if the proposed location is on a Township Road.
 - v) Proof of a minimum of \$2,000,000 (two million dollars) commercial general liability insurance naming the owner and operator of the establishment and including the Township of Smith-Ennismore-Lakefield as an additional insured.
 - vi) The Refreshment Vehicle Operator shall provide an indemnification to the Township prior to the issuance of a license, whereby the Operator agrees to indemnify and hold harmless the Township, its agents, servants, employees and officials from any claims, actions or suits which might be brought against the said Refreshment Vehicle Operator and the Township arising from the said operation of the Refreshment Vehicle in any manner whatsoever or any error, negligence or omission of the Refreshment Vehicle Operation, its agents, servants or employees.
 - vii) A site diagram, drawn to scale showing the location of the proposed Refreshment Vehicle on the property including zoning setbacks in accordance with the Township’s Zoning By-law and fire safety

setbacks in accordance with the National Fire Protection Association (NFPA) from the adjacent property line and the proposed location of all signage and garbage/recycling containers, seating and parking facilities. In the event of differing setbacks, the most restrictive of setback shall apply.

- viii) A letter of permission from the owner, where the operator is not the owner of the property.

Municipal Inspections

- c) Upon receipt of a complete application for a license, the By-law Enforcement Officer shall arrange for the following municipal clearances, as required:
 - i) Annual Inspection Report, that establishes conformity with the Fire Protection and Prevention Act and the Ontario Fire Code, from the Township Fire Department, including conformity with Section 4 (c) of this By-law where applicable; and
 - ii) Confirmation from the Township's Planning Department that the proposed location of the Refreshment Vehicle complies with the applicable Zoning By-law and NFPA with the most restrictive being applicable.

4. Regulations

Township Property

- a) No Refreshment Vehicle shall sell or offer for sale refreshments to the public while situated, standing or parked located in a Township park or on a public road allowance or other public property within the Township, unless in conjunction with a Council authorized special event and unless a temporary event license has been issued.

Ice Cream Cart Exemption: 4 (a)

- b) Notwithstanding Section 4 (a) above, an ice cream cart may sell or offer for sale refreshment to the public while situated, standing or parked located on a public road allowance provided that such activity does not take place on a traveled portion of the road and does not interfere with, or obstruct, traffic and providing that the cart does not operate in the same location for more than fifteen (15) consecutive minutes.

Cooking Equipment Requirements

- c) All refreshment vehicles containing commercial cooking equipment such as deep fryers shall be designed, constructed, installed and inspected in conformity with the current standards of the National Fire Protection Association (NFPA) and shall have an automatic fire suppression system, where applicable, in accordance with current NFPA standards and the Ontario Fire Code.

Fire Suppression Systems

- i) An automatic fire suppression system shall be maintained and inspected annually by a licensed contractor in accordance with the Ontario Fire Code, and the licensee shall supply a copy of the completed inspection record to the Fire Chief or his/her designate.

Refreshment Vehicle– Sanitary Considerations

- d) The licensee shall keep the Refreshment Vehicle and equipment in a clean and sanitary condition and shall comply with all applicable Provincial Regulations and legislation respecting the preparation and handling of food.

- i) The licensee shall provide suitable waste receptacles and keep the area surrounding the Refreshment Vehicle free of debris. Waste shall be disposed of regularly and properly.
- ii) The licensee shall ensure that wastewater from the Refreshment Vehicle is stored in an appropriate wastewater holding tank and that it is disposed of by a licensed wastewater disposal contractor.
- iii) The exterior of the Refreshment Vehicle shall be maintained in a clean and sanitary manner and must not distract from the physical amenities of the area or property at which it is located.

Signage

- e) Signage to advertise the location of the Refreshment Vehicle shall comply with all pertinent By-laws and regulations of the Township of Smith-Ennismore-Lakefield and the appropriate road authority.

License

- f) Every license issued under this By-law shall be displayed in a conspicuous location on the vehicle and shall be produced on demand for the Municipal By-law Enforcement Officer or an agent or inspector of any approval agency.
 - i) The License as granted and issued may not be transferred, assigned, conveyed or sold to another applicant or person.
 - ii) Licenses are valid for one (1) year from the date of issuance and re-application must be made 60 days prior to the expiration of the license.
 - iii) Only one Annual License for a Refreshment Vehicle may be issued for a property in the Township per licensing year.
 - iv) Notwithstanding Section 4(f)(iii) and the definition of “Annual License” herein, an annual license for an Ice Cream Cart may be issued for a designated area within the Township of Smith-Ennismore-Lakefield.

Attached Structures: Prohibited

- g) No structure, whether attached or unattached, shall be constructed immediately adjacent to a Refreshment Vehicle.

Attached Structures: Exemptions

- h) Notwithstanding Section 4 (g), an unattached deck may be constructed adjacent to a Refreshment Vehicle provided that:
 - i) such deck is less than 0.6 metres in height; and
 - ii) such deck is less than 10 square metres in area; and
 - iii) such deck does not extend beyond, or wrap around, the refreshment vehicle

Hours of Operations

- i) Refreshment vehicles shall not operate between the hours of ten (10) p.m. and six (6) a.m. of the following day.

Parking

- j) The Refreshment Vehicle location shall conform to all parking requirements and regulations now in force or to be construed in the future.

Seating

- k) Seating shall be restricted to a maximum of three (3) tables.

5. Special Conditions: Temporary Event License

Temporary License

- a) A Refreshment Vehicle operator may apply for a temporary event license to operate a Refreshment Vehicle at an event at a designated location for a period of not more than five (5) consecutive days.
- b) The operator may apply for a temporary event license by completing an application upon a form provided.
- c) The licensee shall comply with all applicable sections of the By-law.
- d) If an operator applies for a Temporary Event License for a Refreshment Vehicle that is currently subject to an Annual License or that has been previously subject to a Temporary Event License within the same calendar year, the operator may be exempted from the application requirements under Sections 3 (b) and 3 (c), with the exception of Subsection 3 (b)(i) if the approvals and clearances on file with the previous license application, remain valid.

6. Refusal and Revocation of License

Compliance with Applicable Laws

- a) No license shall be issued for a Refreshment Vehicle where the operation or location of the Refreshment Vehicle on the property thereon contravenes any By-law of the Township or any other applicable law.

Deficiencies – Specified – Notice to – Applicant

- b) Where any determination is made that a Refreshment Vehicle application does not receive the approvals required by this By-law, the reason for the lack of the required approvals shall be specified, and the By-law Enforcement Officer shall notify the applicant of all such reasons.

Refusal – Suspension – Revocation

- c) The By-law Enforcement Officer may suspend, revoke or refuse any license that may be issued under the provisions of any Part of this By-law for any of the following reasons:
 - i) Where the holder of the license is in breach of a condition of the license or of this By-law; or
 - ii) If a report is filed subsequent to the date of the issuance of the license or by any department or agency which provided its approval originally to the issuance of the license which indicates that a licensed premises no longer complies with certain provisions of this By-law.
 - iii) Notwithstanding Sections 6 (c), 6 (c)(i) and 6 (c)(ii), in accordance with the Health Protection and Promotion Act, the Health Unit may require the owner or occupier of a premises to close the premises where it is determined that a health hazard exists.

Refusal – Suspension – Revocation – Notice – of Proposal

- d) Where the By-law Enforcement Officer proposes to refuse, suspend or revoke any of the licenses issued pursuant to any Part of this By-law, it shall give notice of its proposal to the affected applicant or to the affected holder of the license, as the case may be, and to such other persons, civic departments, boards, commissions, authorities or agencies as appear to have an interest in the proposal.

Refusal – Suspension – Revocation – Notice – Content

- e) The notice under Section 6 (d) and 6 (e) of this By-law shall:
 - i) Contain the reason/s for the proposed refusal, suspension or revocation;

- ii) Give notice of the date that the proposed suspension or revocation of the license is to commence;
- iii) Specify the remedies that will be necessary, if any, that will result in the refusal, suspension or revocation of the license to be withdrawn and afford the affected applicant or the affected holder of the license a reasonable opportunity, to show or achieve compliance with all lawful requirements for the retention of the license; and
- iv) Inform the affected applicant or the affected holder of the license that he/she may attend a regularly scheduled Council meeting to appeal the proposed refusal, suspension or revocation provided, a written request is made to the Clerks department.

Expiry - Revocation – Removal of Refreshment Vehicle

- f) Upon the expiry or revocation of a license, the Refreshment Vehicle shall be removed from the site, except where the Refreshment Vehicle is owned by the property owner.

7. Administration and Enforcement

Administration of By-law

- a) Unless otherwise indicated, the administration of this By-law is assigned to the By-law Enforcement Officer who may delegate the performance of his/her functions under this By-law from time to time as occasion requires.

Enforcement – By-law Enforcement Officer

- b) The enforcement of this By-law is assigned to the By-law Enforcement Officer.

Information – Held by Clerk – Open to Inspection

- c) Any application, comment, recommendation, information, document or thing in the possession of the By-law Enforcement Officer, pursuant to the provisions of this By-law shall be made available through the Township Clerk, for an inspection, subject only to the limitations imposed by the Municipal Freedom of Information and Protection of Privacy Act:
 - i) By any person employed in the administration or the enforcement of this By-law, and
 - ii) By any other person upon the consent, satisfactory to the Clerk, of the person, civic department, board, commission, authority or other agency which produced or submitted the application, comment, recommendation, information, document or thing.

Inspections- By-law Enforcement Officer – Other Designated Persons

- d) Any person, agency or department having approval authority in accordance with this By-law may, at all reasonable times and upon producing proper identification, inspect a Refreshment Vehicle and the property upon which it is located.

No person – Obstruct- Person who Enforces

- e) No person shall obstruct, hinder or in any way interfere with any person designated to enforce this By-law.

Fines for Contravention: Person, Corporation

- f) In accordance with the Municipal Act anyone who contravenes this By-law may be liable to a fine.

Person

- i) Every person who contravenes this By-law and every director or officer of a corporation who concurs in such contravention by a corporation, is guilty of an offence and on conviction is liable to a fine not exceeding \$25,000.

Corporation

- ii) Where a corporation is convicted of an offence under this By-law, the maximum penalty that may be imposed on the corporation is \$50,000.

Premises Closed – Operating without License – Two Years

- g) Where an owner or operator is convicted of knowingly carrying on or engaging in a trade, calling, business or occupation on, in or in respect of any premises or part of any premises without a license required by this By-law, the court may order that the premises or part of the premises be closed to any use for any period not exceeding two years.

Premises Closed – Other Contraventions – Two Years

- h) Where a person is convicted of a contravention of this By-law, other than carrying on or engaging in a trade, calling, business or occupation without a license to do so, and the court decides that the owner or other person occupying the premises or part thereof in respect of which the conviction was made, knew or ought to have known of the conduct which formed the subject matter of the conviction or of any pattern of similar conduct, the court may order that the premises or part thereof be closed to any use for any period not exceeding two years.

Continuation – Repetition – Prohibited – By Order

- i) The court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted, and such order shall be in addition to any other penalty imposed on the person convicted.

Integrity of By-law - Severability

- j) Notwithstanding that any part or parts, or section or sections of this By-law, may be found by any court of law to be beyond the powers of the Council to enact, such part or parts, or section or sections thereof shall be deemed to be severable, and all other sections of this By-law, or parts thereof, are separate and independent therefrom and enacted as such.

Notice – Unpaid Licensing Fine

- k) If a fine for a contravention of this By-law remains unpaid after the fine becomes due and payable under Section 66 of the Provincial Offences Act, including any extension of time for payment ordered under the section, the By-law Enforcement Officer may give the person against whom the fine was imposed a written notice specifying the amount of the fine payable and the final date on which it is payable, which shall not be less than 21 days after the date of the notice, by delivering the notice or causing it to be delivered to that person at the person's residence or place of business.

Seizure – Unpaid Licensing Fine

- l) If the fine referred to in Section 7 (k) of this Part of this By-law remains unpaid after the final date on which it is payable as specified in the notice, the Treasurer may alone or by an agent, subject to the exemptions provided in Section 441 of the Municipal Act, as amended, seize property listed in Section 441 to recover the taxes and costs of the seizure according to the provisions of Section 441.

Defect in Notice – Not to Invalidate Subsequent Proceedings

m) No defect, error omission in the form or substances of the notice required by Section 7 (k) of this By-law invalidates any subsequent proceedings for the recovery of a fine.

n) License with Conditions

The Township has the authority to impose conditions on licenses under the Municipal Act, Section 151(1)(e) which states that conditions can be imposed, including special conditions, as requirement of continuing to hold a license at any time during the term of the license. The By-law Enforcement Officer may during the term of the license, impose special conditions, where warranted.

8. Repeal

That By-law 2005-41 of the Township of Smith-Ennismore-Lakefield is hereby repealed in its entirety.

That this By-law shall come into effect immediately upon the passing thereof.

Read a first, second and third time and finally passed this 13th day of December, 2011.

Reeve Mary Smith

Angela Chittick, Clerk

Corporate Seal

**Schedule "A" to By-law 2011-117
Refreshment Vehicle Licensing By-law**

Fees

Refreshment Vehicle - Annual: other than hot dog cart or ice cream cart:	\$600.00
Refreshment vehicle – Annual: hot dog cart or ice cream cart:	\$200.00
Event License – Daily	\$ 25.00