

THE CORPORATION OF THE TOWN OF CALEDON

BY-LAW NO. 2011-102

A by-law to license and regulate Ice Cream Vehicle
Owners and Operators

WHEREAS the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, authorizes Councils of municipalities to pass by-laws respecting business licensing, and to provide for a system of licences with respect to a business, including any business wholly or partly carried on within the municipality;

AND WHEREAS the Council of The Corporation of the Town of Caledon deems it desirable to enact a by-law to licence and regulate the operation of ice cream vehicles within the Town of Caledon;

NOW THEREFORE the Council of The Corporation of the Town of Caledon hereby enacts as follows:

DEFINITIONS

1. For the purposes of this by-law,

“**applicant**” means a person applying for a licence under this by-law;

“**collector road**” means a road under the jurisdiction of the Town of Caledon that serves low to moderate volumes of short distance traffic between local and arterial roads and provides individual property access with some limitations;

“**Council**” means the Council of The Corporation of the Town of Caledon;

“**highway**” includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof;

“**ice cream cart**” means a refreshment vehicle which is non-motorized and is exclusively used for the sale of factory pre-packaged frozen products;

“**ice cream truck**” means a motor vehicle as defined under the *Highway Traffic Act*, R.S.O. 1990, c. H.8 as amended, from which ice cream, ice cream products, iced or frozen confections or desserts are sold but which is not stationary in a permanent location;

“**ice cream vehicle**” means either an ice cream truck or an ice cream cart;

“**licence**” means a licence issued by the licence issuer pursuant to this by-law;

“**licensee**” means the holder of a licence;

“**licence issuer**” means the person or persons appointed by by-law to issue a licence;

“**officer**” includes a Municipal By-Law Enforcement Officer, public health inspector, fire safety officer, police officer or other person that Council may designate;

“**operate**” means to stop and offer for sale goods contained within the ice cream vehicle;

“**operator**” includes a person other than an owner who, alone or with others, operates, manages, supervises, runs or directs a business on an ongoing basis or from time to time, or who exercises control over a business on behalf of an owner and shall include a driver;

“**owner**” means a person who owns, keeps or leases an ice cream vehicle and does not include an operator;

“**person**” includes an individual, partnership, corporation, company, firm, association and includes the successors, assigns, heirs, executors, administrators, or other legal representative of a person according to the context;

“**regional road**” means a road under the jurisdiction of the Regional Municipality of Peel;

“**roadway**” means that part of the highway that is improved, designed or ordinarily used for vehicular traffic, but does not include the shoulder;

“**Town**” means The Corporation of the Town of Caledon.

GENERAL REGULATIONS

2. No person shall own or operate an ice cream vehicle in the Town of Caledon unless he has been issued a current valid licence.
3. The issuing of a licence pursuant to this by-law shall not relieve any person from the necessity of acquiring any other licence, permit or approval required for such activity by any governmental or public authority.
4. Every person licensed under this by-law:
 - (1) shall be a Canadian citizen;
 - (2) shall be a permanent resident of Canada;
 - (3) shall have proof of landed immigrant status; or
 - (4) shall have a valid employment authorization issued by the Government of Canada.
5. No person under fourteen (14) years of age shall be licensed under the provisions of this by-law.

APPLICATION REQUIREMENTS

6. An applicant for an operator’s licence shall provide the following to the licence issuer:
 - (1) a completed application in the form provided by the Town;
 - (2) payment of the fee set out in the Town’s Municipal Act Fees by-law;
 - (3) an original copy of a police criminal record search of the applicant issued within the previous sixty (60) days of the date of the application;
 - (4) two (2) copies of a current passport quality photograph of himself;
 - (5) the original of either his Canadian birth certificate or valid Canadian passport, or proof of landed immigrant status or a work permit approved by the Government of Canada;
 - (6) a letter from an owner licenced under this by-law indicating that he intends to employ the operator, once licenced; and
 - (7) if the operator is between the ages of fourteen (14) and eighteen (18) years of age, written consent from the applicant’s parent or guardian stating that he consents to the applicant operating an ice cream vehicle.

7. In addition to the requirements of Section 5, an applicant for an ice cream truck operator's licence shall provide the following:
 - (1) a valid Class "G" driver's licence issued by the Province of Ontario, which is in good standing according to the records of the Ministry of Transportation; and
 - (2) the original current driver's abstract from the Ministry of Transportation, dated within sixty (60) days of the date of the application for an ice cream truck operator's licence under this by-law.
8. An applicant for an ice cream truck owner's licence shall provide to the licence issuer:
 - (1) a completed application in the form provided by the Town;
 - (2) a copy of his or her business documents, including incorporation and business registration. This subsection only applies on the initial application for an owner's licence or if the information initially provided changes or expires;
 - (3) an original copy of a police criminal record search of the individual applicant, or of a partnership applicant, directors or officers of a corporate applicant; such record to have been issued within the previous sixty (60) days of the date of the application; and
 - (4) a copy of a current vendor's permit issued by the Province of Ontario.
9. In addition to the provisions of Section 8, an applicant for an ice cream truck owner's licence shall provide the following:
 - (1) a valid copy of a current Ontario Automobile Insurance Policy, in a form approved by the licence issuer, which insurance policy shall be endorsed to the effect that notice in writing at least twenty (20) days prior to cancellation, expiration or variation thereof will be given to the licence issuer and which certifies that the owner and any operator are insured in the case of bodily injury or death, to a limit of at least two million dollars (\$2,000,000.00) exclusive of interest and costs against all claims for personal injury, including injury resulting in death, and damage, with an inclusive limit of not less than two million dollars (\$2,000,000.00);
 - (2) proof of current valid ownership of the vehicle to be plated and in the case of a leased vehicle, the owner shall provide the licence issuer with an original copy of a lease agreement between himself and the vehicle's owner;
 - (3) a valid driver's licence issued by the Province of Ontario, which is in good standing according to the records of the Ministry of Transportation;
 - (4) a safety standards certificate of mechanical fitness issued under the *Highway Traffic Act* dated within sixty (60) days of the date the vehicle is produced for inspection; and
 - (5) if such vehicle is powered by propane, a certificate from an authorized propane inspection station, accounting for such vehicle's mechanical fitness.
10. An applicant for an ice cream cart owner's licence shall provide the following:
 - (1) the documents acquired in Section 7, and
 - (2) a valid copy of a current certificate of insurance for commercial general liability insurance, in a form approved by the licence issuer, to the amount of at least one million dollars (\$1,000,000.00) exclusive of interest and costs in respect to any one claim. Perils will include bodily injury, death of one or more persons, and loss or damage to property. At least twenty (20) days written notice will be provided to the Town of Caledon of cancellation, expiration or variation in the amount or conditions of the policy.

11. The issuance of an owner's licence shall be subject to:
- (1) the vehicle passing an inspection conducted by an officer; and
 - (2) written approval from the Region of Peel Health Department.

TERM OF LICENCE

12. (1) A licence is valid until it expires or it is revoked or suspended.
- (2) All licences issued under this by-law will expire on September 30th of each year.

CALCULATION OF FEE

13. When an initial application for a licence for a new business is received during the licence term,
- (1) a pro-rated fee may be calculated for every month remaining in the term of a licence until the expiry date but a minimum payment of one quarter of the yearly fee shall apply;
 - (2) a part of a month shall count as a full month; and
 - (3) every licence renewed thereafter shall be subject to the full annual fee as prescribed in the Town's Municipal Act Fees By-law.

NOTIFICATION OF CHANGE

14. A licensee shall notify the licence issuer within seven (7) days of any change of name, address or any other information related to the licence.
15. Where the licensee is a corporation, the licensee shall notify the licence issuer of any change in the names and addresses of officers and directors, the location of the corporate head office, and the name under which the business operates within seven (7) days of the change, and if necessary, the licence shall be returned immediately to the licence issuer for amendment.

LICENCE NON-TRANSFERABLE

16. A licence issued by the Town is not transferable and the fee is non-refundable.
17. No person shall use, or attempt to use either a fraudulent licence or a licence issued to another person under this by-law.
18. Every licence shall remain at all times the property of the Town and no person shall enjoy a vested right in any licence or the continuance of any licence.
19. No person shall transfer, or attempt to transfer, a licence issued in respect of an identified ice cream vehicle to an ice cream vehicle with a different identity.

POSTING OF LICENCE

20. Every licensee shall post its licence issued pursuant to this by-law in a conspicuous place clearly visible to the public.

RESPONSIBILITY OF LICENSEE

21. No licensee shall advertise or promote or carry on business under any name other than the name endorsed upon the licence issued by the Town.

OPERATOR DUTIES

22. Every operator licensed under this by-law shall:
- (1) be civil and behave courteously;
 - (2) keep the interior of the ice cream vehicle clean and in good repair;
 - (3) ensure all equipment used for dispensing consumable products are kept in a clean and sanitary condition;
 - (4) ensure that all containers, dispensers, storage equipment, utensil washing and hand washing facilities as applicable and necessary for food safety are approved by the Region of Peel Health Department;
 - (5) only operate an ice cream vehicle for which a licence has been issued;
 - (6) only use single service disposable cups, plates, forks, spoons and serviettes which are individually wrapped or provided in dispensers approved by the Region of Peel Health Department;
 - (7) clean up any debris, refuse or garbage resulting from the operation of the ice cream vehicle in the immediate vicinity of the serving location for the ice cream vehicle;
 - (8) make a complete safety tour around the ice cream vehicle before departing from any stop made for the purpose of selling consumable products;
 - (9) check the mirror system around the ice cream truck before departing from any stop made for the purpose of selling consumable products;
 - (10) refuse to serve any customer standing on a roadway;
 - (11) wear clean clothes, be clean and neat in appearance, and have clean hands; and
 - (12) conspicuously display on the rear, in black letters on a yellow background the words "Watch for Children" in letters at least 15 centimetres high and the vertical width of such yellow background shall be at least 22 centimetres.
23. No person shall operate an ice cream vehicle:
- (1) on a collector road;
 - (2) on a Regional Road within the Town of Caledon;
 - (3) in a Town park without written permission from the Town;
 - (4) on private property without written permission from the property owner and in compliance with applicable zoning by-law;
 - (5) within thirty (30) metres of any intersection;
 - (6) within one hundred (100) metres of any public or private school property during the hours of 9:00 a.m. and 5:00 p.m. on any regular school day;
 - (7) for more than fifteen (15) minutes at a time at any specific location;
 - (8) at a specific location within two (2) hours of a previous attendance at that same location;
 - (9) between the hours of 9:00 p.m. one day and 8:00 a.m. the following day;
or
 - (10) ring bells or chimes or make any other recognizable sounds at any one location for more than twenty seconds.

24. No owner shall permit or allow any person to operate an ice cream vehicle without a valid operator's licence issued under this by-law.
25. Every ice cream truck shall be equipped with:
 - (1) (a) a metal refuse container with a self-closing lid which shall be kept at all times in a clean and sanitary condition and emptied at least once daily; or
 - (b) a disposable litter container which shall be replaced daily, and such containers shall be used for the disposal of all refuse; and
 - (2) A separate holding tank for toilet and sink wastes; and
 - (3) An easily readable gauge for determining the waste or water level for every waste tank and water supply tank.
26. Every owner of an ice cream truck shall equip it with a device that issues an audible warning when the truck is placed in reverse gear and comply with the following provisions.
 - (1) No person shall disconnect or disable the device.
 - (2) No person shall drive an ice cream truck that is not equipped with the device.
27. All milk and any cold perishable foodstuffs sold from the vehicle shall be kept in dry storage at a temperature no higher than four (4) degrees Celsius and shall be sold only in individual, disposable containers.

ADMINISTRATIVE SUSPENSIONS

28. An administrative suspension of a licence without a hearing may be imposed for up to fourteen (14) days if the licence issuer is satisfied that the continuation of the business poses an immediate danger to health or safety of any person or to any property.
29. (1) Before any administrative suspension is imposed, the licence issuer shall provide written notice to the licensee by personal delivery or registered mail of:
 - (a) the reason(s) for the suspension;
 - (b) the proposed start date of the suspension; and
 - (c) the proposed length of time of the suspension; andshall provide the licensee with an opportunity to respond to the notice of suspension in writing to the licence issuer within three (3) business days of the service of the notice.
- (2) Such written notice shall be deemed to have been served on the seventh (7th) day after the day of mailing or on the date of personal delivery.
30. A licence issuer may impose conditions on the administrative suspension as the licence issuer considers appropriate.
31. The licence issuer shall reinstate any licence which has been suspended upon satisfactory proof that the requirements stated in the written notice of administrative suspension have been met.

GROUND FOR REFUSAL OF LICENCE

32. A licence or licence renewal may be refused, suspended or revoked on one or more of the following grounds:
- (1) the past or present conduct of any person, including the officers, directors, employees or agents of a corporation which affords reasonable cause to believe that the person will not carry on or engage in the business in respect of which the application is made in accordance with the law or with honesty and integrity;
 - (2) the applicant or licensee has past breaches of any law and any outstanding fines imposed by a court for the contravention of any provision of this by-law or any other municipal by-law or Provincial or Federal statute associated with the carrying on of such business;
 - (3) the issuing of a licence would be contrary to the public interest with respect to health and safety, consumer protection, or nuisance control;
 - (4) the financial position or history of the applicant affords reasonable grounds to believe that the business will not be carried on in a financially responsible manner;
 - (5) there are reasonable grounds to believe that an application or other documents provided to the Town by or on behalf of the applicant or licensee contain a false statement, incorrect, incomplete, or misleading information;
 - (6) the applicant or licensee is carrying on or engaging in activities that are, or will be, if the applicant or licensee is licenced, in contravention of this by-law, or any other applicable law;
 - (7) the equipment and other personal property used in connection with the carrying on of or engaging in the business licenced under this by-law is dangerous, or unsafe; or
 - (8) the applicant or licensee has not paid the required licence fee.

RIGHT TO A HEARING

33. Before a licence is refused, revoked, suspended, cancelled, or issued with conditions other than an administrative suspension, written notice shall be given to the applicant or licensee that a recommendation is to be made to Council with respect to the licence application or the licence.
34. The licence issuer shall serve notice upon the applicant or licensee by personal delivery or by registered mail to the applicant's or licensee's last known address filed with the licence issuer and shall:
- (1) contain sufficient information to specify the nature of, or reason for, any recommendation;
 - (2) inform the applicant or licensee of his entitlement to a hearing before Council if a request in writing for a hearing is returned to the licence issuer within fifteen (15) days after the date of service of the notice;
 - (3) inform the applicant or licensee that if no written request is received, Council may proceed and make any decision with respect to the licence in the absence of the applicant or licensee; and
 - (4) be deemed to have been served on the seventh (7th) day after the day of mailing or on the date of personal delivery.

35. On receipt of a written request for a hearing from an applicant or licensee and upon receipt of the fee as set out in the Municipal Act Fees By-law, the Town shall schedule:
- (1) a hearing before Council; and
 - (2) shall give the applicant or licensee notice of hearing at least twenty (20) days prior to the hearing date.

HEARING

36. The provisions of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended, shall apply to all hearings conducted under this by-law.
37. When an applicant or licensee who has been given written notice of the hearing does not attend at the appointed time and place, Council may proceed with the hearing in his absence, and the person shall not be entitled to any further notice of the proceedings.
38. The licence issuer shall send written notice of the decision of Council by registered mail or by personal delivery to the applicant or licensee within five (5) days of such decision.
39. Council may impose conditions as a requirement of continuing to hold a licence at any time during the term of the licence.
40. When Council has revoked, suspended, or cancelled a licence, the licensee shall return the licence to the licence issuer within two (2) days of service of the notice of decision of Council.
41. No person whose licence has been revoked or suspended shall refuse to deliver the licence to the licence issuer.
42. No person whose licence has been revoked or suspended shall in any way obstruct or prevent the licence issuer or officer from receiving or taking the licence.
43. An officer may enter upon the business premises of the licensee for the purpose of receiving, taking or removing the said licence.
44. An applicant or licensee whose licence has been refused or revoked, shall not be entitled to make a new application for a similar type of licence for a period of at least twelve (12) months from the date of the refusal or revocation.

POWERS OF ENTRY

45. In order to assess and determine compliance with the provisions of this by-law, including the determination of an unlicensed business, an officer may at any reasonable time enter and inspect any premises used for the business, and the equipment, vehicles, records, documents and other personal property used or kept for hire in the carrying on of the business, and may remove documents or things that are relevant to the licensed business for the purpose of making copies or extracts. An officer shall return such documents within twenty-four (24) hours of removal.
46. No person shall construct or equip any premises used for a business licensed under this by-law to as to hinder the enforcement of this by-law.
47. No person shall hinder or obstruct, or attempt to hinder or obstruct, any officer or person exercising a power or performing a duty under this by-law.

ORDERS AND REMEDIAL ACTIONS

48. For the purposes of an inspection made under this by-law an officer may:
- (1) require the production for inspection of documents or things relevant to the inspection;
 - (2) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
 - (3) require information from any person concerning a matter related to the inspection; and
 - (4) alone, or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.
49. Where a contravention of this by-law has occurred, an officer may make an order requiring the person who contravened the by-law or who caused or permitted the contravention to discontinue the activity.
50. Where a contravention of this by-law has occurred, an officer may make an order requiring the person who contravened the by-law or who caused or permitted the contravention to do work to correct the contravention.
51. Every person to whom an order is issued under this by-law shall comply with the order.

GENERAL PROHIBITIONS

52. No person shall alter a licence or permit the alteration of a licence.
53. Every person to whom a licence is issued under this by-law shall comply with the conditions of the licence.

OFFENCES

54. Every person who contravenes any provision of this by-law is guilty of an offence.
55. Every person who contravenes an order made under this by-law is guilty of an offence.
56. Every director or officer of a corporation who knowingly concurs in the contravention of any provision of this by-law by the corporation is guilty of an offence.
57. A person who is convicted of an offence is liable:
- (1) on a first offence, to a fine of not less than \$150.00 and to a fine of not more than \$50,000, and
 - (2) on a second and each subsequent offence, to a fine of not less than \$500.00 and a fine of not more than \$100,000.00.
58. Every person who fails to comply with an order made by an officer or who permits or causes a contravention of any provision of this by-law is guilty of an offence and, on conviction, is liable to a fine of not less than \$500.00 and to a fine of not more than \$10,000.00 per day for each day or part of a day that the offence continues after the time given for complying with the order has expired or that the offence is permitted or caused to be continued.
59. A person who is convicted of multiple offences is liable for each offence included in the multiple offence, to a fine of not less than \$500.00 and to a fine of not more than \$10,000.00.

SEVERABILITY

60. Should any section, clause or provision of this by-law be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this by-law as a whole or any part thereof, other than the part, which is declared invalid.

REPEAL

61. By-law 88-51 and By-law 2004-127 are hereby repealed.

EFFECTIVE DATE

62. This by-law shall come into force on the date of its enactment.

TITLE

63. This by-law shall be known as the Ice Cream Vehicle Licensing By-law.

**READ THREE TIMES AND
FINALLY PASSED IN OPEN COUNCIL
THIS 16TH DAY OF AUGUST 2011.**

Marolyn Morrison, Mayor

Karen Landry, Clerk