



## THE CORPORATION OF THE TOWN OF AMHERSTBURG

### OFFICE OF PLANNING, DEVELOPMENT & LEGISLATIVE SERVICES

*MISSION STATEMENT: Committed to delivering cost-effective and efficient services for the residents of the Town of Amherstburg with a view to improve and enhance their quality of life.*

Author's Name: Nicole Rubli	Report Date: January 10, 2020
Author's Phone: 519 736-0012 ext. 2251	Date to Council: January 27, 2020
Author's E-mail: <a href="mailto:nrubli@amherstburg.ca">nrubli@amherstburg.ca</a>	Resolution #: 20190408-216 & 20190812-402

To: Mayor and Members of Town Council

Subject: Refreshment Vehicle By-law Amendments and Operation on Town-owned Parkland

#### 1. RECOMMENDATION:

It is recommended that:

1. The annual business licence fee for Refreshment Vehicles (All Classes) **BE APPROVED** at \$204 plus applicable taxes effective January 28, 2020 and that an amendment to By-law 2019-082 for 2020 User Fees and Charges be brought to a future Council meeting to reflect this change;
2. Refreshment Vehicles **BE PERMITTED** to operate on Town-owned land in accordance with the Park Permit regulations and that Administration **BE AUTHORIZED** to implement process to allow for refreshment vehicles on Town-owned property. as described in the report from the Manager of Licencing and Enforcement dated January 10, 2020;
3. An annual Park Permit fee for Refreshment Vehicles (All Classes) on Town-owned lands **BE APPROVED** at \$200 plus applicable taxes effective January 28, 2020 and an amendment to By-law 2019-082 for 2020 User Fees and Charges be brought to a future Council meeting to reflect this change; and
4. **By-law 2020-006** being a by-law to amend Business Licence By-law 2009-44 be taken as having been read 3 times and finally passed and the Mayor and Clerk **BE AUTHORIZED** to sign same.

## **2. BACKGROUND:**

At the April 8, 2019 Council meeting Mr. Camille Jabbour delegated before Council to request to operate a refreshment vehicle on Town property. As a result of the delegation the following motion was passed:

“Administration BE DIRECTED to provide a report to Council outlining discussions with local restaurants and/or interested food purveyors, and to establish suitable locations within the Town to accommodate qualified food purveyors.”

At the August 12, 2019 Council meeting Mr. Bill Deslippe delegated before Council to request an exemption to the 200 metre setback regulation to operate a refreshment vehicle at 229 Dalhousie Street. As a result of the delegation the following motions were passed:

“The Perch Pit Inc., BE EXEMPT from the 200 metre setback from licensed restaurants in By-law 2009-44; and,

The Perch Pit Inc., BE CLASSIFIED as a refreshment vehicle.”

The Town’s Business Licence By-law defines four classifications of refreshment vehicles:

**Class 1:** A motorized vehicle, other than a motor assisted bicycle or motorcycle, which sells food that is prepared and cooked on-site, e.g. a chip wagon;

**Class 2:** A motorized vehicle, other than a motor assisted bicycle or motorcycle, which sells food that is prepared and cooked off-site, e.g. a catering truck;

**Class 3:** A vehicle propelled by muscular power, motor assisted bicycle or motorcycle which sells food that is prepared and cooked on site, e.g. hot dog cart;

**Class 4:** A vehicle propelled by muscular power, motor assisted bicycle or motorcycle which sells food that is prepared and cooked off-site, e.g. ice cream bicycle cart.

Currently all refreshment vehicle operators must apply for a business licence annually and provide approval from the Windsor Essex County Health Unit (WECHU), the annual business licence fee is currently \$80 (eighty dollars, tax exempt). In addition, no refreshment vehicle may operate within 200 metres of a licensed restaurant or snack bar or within 400 metres of another refreshment vehicle.

## **3. DISCUSSION:**

The recent popularity of gourmet “food trucks” and residents’ desire to experience a greater diversity of food options has increased the number of requests from refreshment vehicle owners to operate in Town. The current distance setbacks regulated in the Town’s Business Licence By-law restrict the locations in which one may operate a refreshment vehicle.

Two public consultation meetings were held on August 22, 2019 at 9am and 6pm. The meetings were advertised in the River Town Times, the Town's website and social media platforms; additionally, letters were sent to the licenced restaurants, snack shops and refreshment vehicle owners. A public comment period was also open from August 14<sup>th</sup> to September 6<sup>th</sup>, 2019.

Representatives from four restaurants/refreshment vehicles attended the meetings. One letter was also received from a local restaurant owner. Feedback received from the businesses were mixed, half being in favour of a reduction in the distant setback and a little over half being opposed to reducing the current 200 metre setback. Restaurant operators feel they should not have to compete with refreshment vehicle operators as they have higher operating costs.

Administration reviewed other local municipal regulations as it pertains to refreshment vehicles. Of the seven municipalities polled, Leamington has a 91 metre setback from an eating establishment and Windsor has a 30 metre setback from a restaurant/concession facility; the remaining five municipalities either had no designated setback or do not currently regulate refreshment vehicles.

In the seven municipalities, business licence fees for refreshment vehicles range from \$80 to \$330 annually.

### **Proposed By-law Amendments**

As a result of the public and industry consultation process and a review of other municipal practices, Administration is proposing amendments that would introduce the following key changes to regulations surrounding refreshment vehicles under the attached proposed By-law amendments:

- No distance setback requirement to operate from restaurants, snack bars or other refreshment vehicles, except in the event that applicable setbacks are required pursuant to the Ontario Building Code and Fire Protection and Prevention Act.
- Approval is required from (WECHU), Fire Services and from the Technical Standards and Safety Authority (TSSA).
- A distance setback of 100 meters from a Public Event is required unless the event organizer has approved the Refreshment Vehicle as a vendor at the Public Event.
- Refreshment vehicles will not be permitted to operate in a residential zone.
- Setback requirements from intersections and driveways to manage traffic concerns.
- May operate between 7am-11pm.

- May only operate a Refreshment Vehicle on property owned or managed by the Town, if the Refreshment Vehicle has been awarded the rights to operate at that location by the Town.

In addition, amendment to the annual fee is recommended as follows:

- Annual licence fee increase to \$204.

The fee change is recommended to be effective immediately and if approved, will be included in a further report for amendment to the Town's User Fee and Charges By-law 2019-082, along with other, unrelated amendments affecting that By-law.

The two key changes proposed for the regulation of refreshment vehicles are the fee increase from \$80 to \$204 per year and the elimination of distance setbacks.

The fee increase aligns the fee for a refreshment vehicle licence with the fees for a restaurant business licence, which is consistent with the approach applied by comparator municipalities.

Eliminating the 200 metre setback from restaurants and snack bars provides more opportunity for operators to operate from private property locations providing their service in areas like the downtown core. A letter from the property owner authorizing the operator to operate from the private property will be required as part of the business licence application.

Administration reviewed reports regarding promoting fair competition in the restaurant and mobile food industry from the Competition Bureau of Canada. A part of the investigation by the Bureau looked into arguments presented by restaurant associations and owners that refreshment vehicles represent 'unfair competition' to restaurants that have high operating costs such as start-up costs, rent and property taxes. The restaurant industry feels that strict regulations should be placed on refreshment vehicles to avoid competition between the two industries. The Competition Act does not define "unfair competition" and the Bureau does not view competition from low cost business models as unfair.

The report indicates:

"The Bureau found no clear evidence that shows detrimental impacts of mobile food services on restaurants. Rather than being "unfair competition", mobile food services and restaurants largely reflect two different business models with different levels of investments and services."<sup>1</sup>

The Bureau also recommended that municipalities consider reducing or repealing setback requirements to promote competition between food service providers and provide consumers with more choices. It also suggests municipalities may limit operating hours. Administration's proposed by-law amendments are in line with the Bureau's recommendations. "Some evidence suggests that mobile food services may

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<sup>1</sup> "Promoting Fair Competition in the Restaurant and Mobile Food Industry." Competition Bureau Canada. 14 Feb. 2018, <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04260.html>.

be stimulating demand in the food service market by attracting new customers that would not have purchased food at all were it not for the food trucks.”<sup>2</sup>

### **Lottery for Use of Town- Owned Spaces for Refreshment Vehicles**

Administration has reviewed and recommends suitable locations within the Town to accommodate licensed refreshment vehicles as outlined below. Administration has identified the following parks that would allow a refreshment vehicle to operate from, this list will be subject to a yearly review and update by Administration:

- Toddy Jones Park on Laird in designated Refreshment Vehicle location;
- Malden Centre Park;
- Ranta Marina Park;
- Wigle Park on North Street in designated Refreshment Vehicle location;
- Centennial Park in designated Refreshment Vehicle location;
- Beaudoin Park
- Jack Purdie Park

Administration recommends that an annual lottery process be available to those wishing to locate refreshment vehicles on Town-owned property. Administration has developed a park permit procedure outlining the lottery, how Town-owned spaces would be allocated and when the lottery would be conducted. If use of Town-owned spaces and implementation of a lottery system for refreshment vehicles is approved by Council, the process would be communicated to refreshment vehicle operators and identified on the Town's website and River Town Times.

Administration has also identified rules and regulations that must be adhered to when operating from Town-owned lands including leaving the area in a clean, litter free, damage free condition. The Licensing and Enforcement Division would administer the program for refreshment vehicle operators. The permitted hours of operation, insurance requirements and utility requirements would also be prescribed.

An annual Refreshment Vehicle Park Permit fee of \$200 is recommended to be imposed, in addition to the annual business licence fee, for refreshment vehicles to operate on Town-owned lands. The new fee is recommended to be effective immediately and, if approved, would be included in a further report for amendment to the Town's User Fee and Charges By-law 2019-082, along with other, unrelated amendments affecting that By-law.

The proposed changes to the refreshment vehicle regulations are similarly aligned with various objectives in the Town's policy documents including the Strategic Plan and Park's Master Plan. Moreover, the proposed changes will support the vibrancy of the Town's downtown core, parks and public events. In addition, the Competition Bureau's report and recommendations are met with the proposed business licence amendments surrounding refreshment vehicles.

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<sup>2</sup> “Promoting Fair Competition in the Restaurant and Mobile Food Industry.” Competition Bureau Canada. 14 Feb. 2018, <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04260.html>.

The proposed amendments will streamline the licensing process for refreshment vehicles in a way that addresses consumer protection, public health and safety, and ensure that equitable standards are established for industry participants.

#### **4. RISK ANALYSIS:**

The elimination of the 200 metre setback from refreshment vehicles and restaurants may bring criticism from the restaurant industry. Administration could not find any research suggesting refreshment vehicles present a negative impact on local restaurants. In addition, business consultation was performed and Administration received feedback from only two businesses opposing the elimination of the distance setback.

Refreshment vehicle operators obtaining a Refreshment Vehicle Park Permit would be required to provide a Certificate of Insurance confirming they have insurance coverage of at least \$2,000,000 in General Liability Coverage naming the Town of Amherstburg as an additional insured. Operators who violate the rules and regulations of the Park Permit would have the permit revoked.

#### **5. FINANCIAL MATTERS:**

Administration reviewed licensing fees associated with refreshment vehicles and determined that a fee of \$204 (tax exempt) is appropriate and beneficial to harmonize with licensing fees for restaurants and snack bars as the Licensing Division is performing the same levels of licensing administration for each class of business.

As noted above, a new Park Permit fee for refreshment vehicles use of Town-owned lands, per a new lottery system, is recommended to be established at \$200 per annum plus applicable taxes. This fee would be in addition to the annual licensing fee.

The user fees and charges amendments outlined in this report are recommended to be effective January 28, 2020. These amendments would then be included in a future report to amend User Fee By-law 2019-082 along with other unrelated amendments proposed for that By-law.

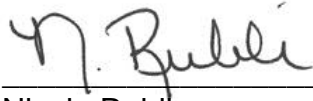
#### **6. CONSULTATIONS:**

The Director of Parks, Facilities, Recreation and Culture, Manager of Parks and Naturalized Areas, Tourism Division, Treasurer and Director of Corporate Services were consulted on this report.

Two public consultation meetings were held in August 2019. Four local businesses were represented at the meeting and one written comment was received.

## 7. **CONCLUSION:**

Administration conducted a review and public consultation of municipal standards required for refreshment vehicles. Based on the findings Administration is proposing changes which would permit refreshment vehicles to operate in more areas of the Town and on Town-owned land. The proposed amendments align with objectives and priorities identified in the Town's Strategic Plan and Parks Master Plan. Should Council approve the recommendations of this report, Administration will ensure the changes are communicated and properly implemented. Administration will also monitor the operation of refreshment vehicles and report back with amendments if necessary.



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Nicole Rubli

**Manager of Licensing and Enforcement**

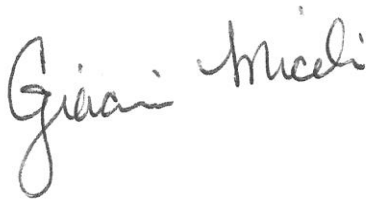
## Report Approval Details

Document Title:	Refreshment Vehicle Bylaw.docx
Attachments:	- 2019 09 16 Amended 2009-44 Business Licensing By-Law 74.pdf
Final Approval Date:	Jan 22, 2020

This report and all of its attachments were approved and signed as outlined below:



Cheryl Horrobin



John Miceli



Paula Parker