



Council Report

Report Number: **MLE2021-012**
Meeting Date: November 16, 2021
Title: **Refreshment Vehicle By-law Review**

Author and Title: Aaron Sloan - Manager

Recommendations:

That Report ML2021-012, **Refreshment Vehicle By-law Review**, be received; and

That a by-law substantially in the form attached as Appendix B to this report be forwarded to Council for adoption.

Department Head: _____

Chief Administrative Officer:_____

Background:

On June 1, 2021 at the Committee of the Whole meeting, Council received a memorandum identifying that, "2020 has created many new challenges for business owners. It has been extremely difficult for restaurants to survive. We need to support our brick and mortar businesses that pay ten's of thousands in commercial taxes yearly."

COW2021-07.9.6

Memorandum Regarding Larger Setbacks for Refreshment Vehicle Businesses Councillor Seymour-Fagan CW2021-185 Moved by Councillor Seymour-Fagan and Seconded by Councillor Yeo

That the Memorandum from Councillor Seymour-Fagan, regarding Larger Setbacks for Refreshment Vehicle Businesses, be received;

That staff review By-Law 2016-245, being the current By-law to Regulate to Regulate and Govern Refreshment Vehicles, and report back to Council by Q4, 2021;

That the setback requirements for Refreshment Vehicle Businesses be looked at, increasing from one hundred and fifty meters to one kilometer, as part of the review; and

That this recommendation be forwarded to Council for consideration at the next Regular Council Meeting.

This report addresses that direction

Rationale:

The municipality currently has 29 refreshment vehicles in various locations. These vehicles are primarily located on private property within our communities; however refreshment vehicles may be located on municipal properties, such as a park with proper authorization and a refreshment vehicle may also be mobile (without a fixed location) such as an ice-cream truck.

Refreshment Vehicles are regulated and licensed by By-Law 2016-245 being a By-Law to Licence, Regulate and Govern Refreshment Vehicle Businesses in Kawartha Lakes.

While the license is valid for one year, expiring on December 31, many of the refreshment vehicles are only operated seasonally (May to October).

In conjunction with the setback review, staff have reviewed and updated the Corporation of the City of Kawartha Lakes By-Law 2016-245 being a By-Law to License, Regulate and Govern Refreshment Vehicle Businesses in Kawartha Lakes. The unaltered by-law is attached as **Appendix A**. The reviewed (red lined updated draft version) by-law is attached as **Appendix B**.

A "Refreshment Vehicle" includes any vehicle (whether propelled by a motor or by the application of force by a person or animal) which is used for the storage or preparation of food or drink intended for immediate consumption by the public. The different types of refreshment vehicle licensed by the City are:

- (a) Class 1 - Chip Trucks - which are refreshment vehicles that are relatively stationary, and vend food and beverage stuffs;
- (b) Class 2 – Food Trucks - which are refreshment vehicles that are mobile and have the ability to vend food and beverage stuffs and sundry items from more than one location in any given day;
- (c) Class 3 – Other Refreshment Vehicles - which are smaller refreshment vehicles that contain barbeque or other cooking facilities for preparing sausages, frankfurters and/or similar hand-held sandwiches served and prepared at the refreshment vehicle and vend such food and beverage stuffs and also includes ice cream carts, portable barbeques and popcorn carts.

2.06 Proximity to Other Eating Establishments: No licence shall be issued to any person to operate a refreshment vehicle business from a location, which is within **one hundred (100m) metres** (328 feet) of an existing restaurant or other eating establishment, including another refreshment vehicle. Failure to comply with this section is an offence.

2.07 Exemption to Section 2.06: Exemption from this provision is available where the refreshment vehicle business is located on City property or in a City owned park where the owner of the eating establishment has given written permission. An exemption from section 2.06 may be granted if the applicant provides written permission, signed by the owner or operator of a restaurant, eating establishment or another refreshment vehicle, that they have no objection to the refreshment vehicle

operating within the **one hundred (100m) metre** (328 feet) distance of their business.

3.03 Additional Documents Required: In addition to the requirements prescribed in Sections 3.02, the applicant shall, at the request of the Licensing Enforcement Officer, or when application is being made for a new or altered business, provide the following:

- (G) documentation from an owner or operator of an existing restaurant or any other Eating Establishment or another refreshment vehicle within **one hundred (100m) metres** of the proposed location of the refreshment vehicle that they have no objection to the issuance of the licence.

7.12 No person shall vend from a refreshment vehicle from any location which is within **one hundred (100m) metres** of an existing restaurant or other eating establishment, including another refreshment vehicle, without the written consent of the owner or operator of that restaurant, eating establishment, or another refreshment vehicle.

COW2021-07.9.6 requests that the setback requirements for Refreshment Vehicle Businesses be reconsidered and that the setback or separation distance from other food locations increase from one hundred and fifty meters (150m) to one kilometer (1000m).

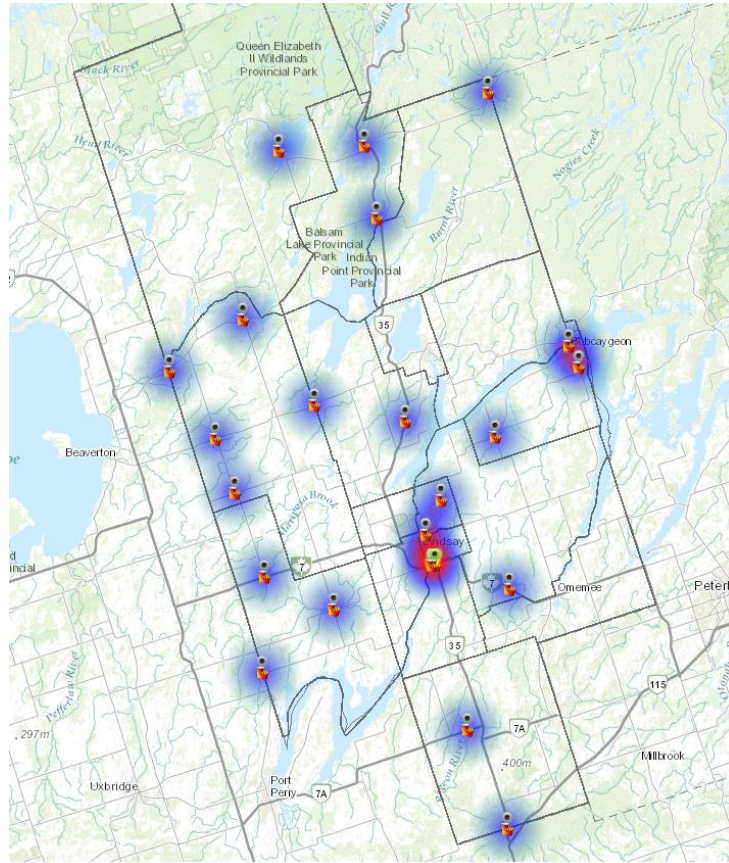
Staff have reviewed the current 2021 Refreshment Vehicle stationary locations. The locations are as follows:

Community (closest proximity)	Number of Refreshment Vehicles at a specific location.	Distance to nearest brick and mortar restaurant location.
Head Lake	1- 2412 Monck Rd.	11km
Norland	1- 7546 Hwy 35 N.	400m
Coboconk	1- 6694 Hwy 35 N.	230m
Kinmount	1- 4092 Hwy 121	15m (legally existing)
Bobcaygeon	1- (In town) 21 Canal St. 1- (Hwy 36 outside town limits) 3295 Hwy 36	50m (legally existing) 2.5km
Dunsford	1- 1972 Sturgeon Rd.	14km
Reaboro	1- (Hwy 7) 3407 Hwy 7	4km
Pontypool	1- (Hwy 35 S.) 6 Hwy 35	3km
7A (Pigeon River Area)	1- 509 Hwy 7A.	10km

Sonya	1- 10357 Simcoe St.	13km
Little Britain	1- 1051 Little Britain Rd.	176m
Manilla	1- 311 Hwy 7	3km
Woodville	1- (temporary 2 months) 105 King St.	220m
Argyle	1- 264 Glenarm Rd.	35m
Glenarm	1- (same lot as restaurant) 1401 Glenarm Rd.	10m (permission granted by owner)
Bolsover	1- 9 Portage Rd.	1.7km (in another municipality)
Kirkfield	1- 1720 Kirkfield Rd. 1- 1587 Kirkfield Rd.	400m 2.55km
Cameron	1- 4400 Hwy 35 N	6km
Rosedale	1- 5645 Hwy 35	10km
Lindsay	1- (In town) 18 King St. 1- (Outside of town) 31 Riverwood Park Rd. 1- (outside of town) 2318 Hwy 35 S.	325m 38m 5.69km

- ❖ This list does not include three refreshment vehicle licenses issued to vehicles without a fixed location.
- ❖ This list does not include two refreshment vehicle licenses for fixed locations where businesses have closed.

Location Map



Municipality set back distances - Comparators

Municipality	Setback Distance	Notes
City of Kawartha Lakes	100m (328 feet)	From an existing restaurant or other eating establishment (includes another refreshment vehicle)
Town of Aurora	0m	No setbacks, but very few vehicles (no enforcement issues/concerns)
Norfolk County's	3m	Only from a road allowance
City of Woodstock	300m	From the refreshment vehicle to the property line of the eating establishment
City of Orillia	90m	from any other food establishment
Township of Brock	50m	from any other food establishment
Municipality of Clarington	60m	from any other food establishment, play ground and school

Municipality of Chatham-Kent	300m	from any other food establishment or other refreshment vehicle
City of Woodstock	90m	from any other food establishment
City of Sarnia	90m	from and other food establishment
City of Burlington	50m	from any other food establishment or other refreshment vehicle
Town of Kincardine	12.5m	from and other food establishment

❖ Average: 95m

Setbacks:

Considering the current refreshment vehicle locations in the Municipality, the established setback of 100m and the average of 95m setback used by other municipal comparators, Staff note that (excluding any legally pre-existing locations), the separation of the refreshment vehicles in the Kawartha Lakes, from brick and mortar restaurants, is in some cases greater than 1000m with greatest distance being 14km. The least amount of separation occurs on a property that houses a brick and mortar restaurant and a refreshment vehicle (the menu items are not similar and property owner authorized the vehicle).

Creating a setback separation of 1000m will serve to limit the refreshment vehicles in some of the smaller communities, which will limit competition between the established restaurant and patrons. This may have the appearance of protecting the existing restaurants, but it may also limit people's choice generally when coming into the community who may be looking for a quick meal (chip truck fries) and who are seeking to shop at a local retailer or are a tourist in the area. A refreshment vehicle supports the quick meals and brings people into the communities. Further, staff are of the opinion that establishing a 1000m setback will limit/prohibit refreshment vehicle owners seeking to establish a new refreshment vehicle business in our small communities, where few single brick and mortar restaurant establishments exists. For example, Omemee does not have a refreshment vehicle, but does have a few restaurants, with one 330m from the west end of town and another few restaurants downtown, noting that these downtown locations are located 730m from the east end of town. Establishing a 1000m setback would restrict the addition of a future refreshment vehicle in the village core. Staff do not recommend that the setbacks be increased to 1000m.

Council may choose to consider the request that refreshment vehicles are setback a certain distance from other refreshment vehicles and brick and mortar, if Council desires that the distance be increased, staff will recommend that the distance be

increased to 300m. This increase aligns with the higher distances used by other municipal comparators but will still permit a refreshment vehicle in most communities.

Property Taxes and Refreshment Vehicle Licensing Fee.

Staff have considered that the refreshment vehicles do not pay commercial taxes similar to the brick and mortar restaurants as in the municipality. The Municipal Refreshment Vehicle licensing fee for each class (1, 2 & 3) is \$359.00/year.

Staff considered the question, “should license fees be increased to an amount comparable to commercial property tax amounts of an area restaurant?”

Refreshment vehicle owners do not directly pay a land tax, as they do not meet the definition of “land” under the Assessment Act; hence they are non-assessable. The property owners who permit the vehicle on their property pay the land tax and charge the refreshment vehicle owners rent for the location. An increase to the licensing fees to align with the amounts collected by municipal taxes for brick and mortar restaurants may serve to balance the perceived inequity between refreshment vehicles and bricks and mortar restaurants. While this would generate additional revenue for the municipality, the increased licensing fees may also have the opposite effect, causing refreshment vehicles owners to close and/or relocate outside of the municipality, resulting in loss of a community food vender and area job loss. The comparison would not be balanced, as the two business types do not have many similarities.

For example,

Restaurants:

- capable of operating year round,
- must comply with zoning requirements
- may be located directly beside another restaurant located on a separate property,
- adjacent locations may sell similar products (McDonalds and Wendy's),
- must have access to full municipal or private water, sewage and hydro services,
- dedicated parking and loading,
- indoor and outdoor seating capacity,
- have staff with the ability to serve many patrons at one time, with a higher level of service and with greater selection of products (may include alcohol).

Refreshment Vehicle:

- primarily a one or two-person operation (usually seasonal in nature),
- that has little or no access to dedicated services and utilities,
- may or may not offer parking,
- sitting area (if available) may be very limited,
- very limited menu (no alcohol served),
- limited onsite food storage capability,
- only able to serve one patron at a time,
- limited hours of service and often-limited seasonal service.

Staff is not recommending that brick and mortar restaurant taxes be used as a comparator for an increase to refreshment vehicle licensing fees.

Review of the Bylaw (Redline review attached as Schedule B)

A review of the By-Law 2016-245 being a By-Law to License, Regulate and Govern Refreshment Vehicle Businesses has occurred. The draft by-law changes are attached in Schedule B and include the following:

- Definitions - updated to reflect staff title changes with the addition of the Licensing Enforcement Officer, Senior Licensing Officer and the Manager of Municipal Law Enforcement and Licensing.
- Various sections changed to remove requirements for criminal record check and reporting of criminal charges.
- Section 2.10 - Temporary Licence increased from seven to ten days limits and added a yearly maximum of 3 licenses.
- Section 3.02 merged with 3.03 and 3.04 to remove duplication (3.03, 3.04 renumbered and updated)
- Section 3.02 (b) added copy of vehicle ownership
- Section 3.02 (d) wording changed to redirect to section 6.00
- Section 3.02 (f) added - have been inspected
- Section 3.04 (e) removed language regarding the Ontario Human Rights Code
- Section 4.03 removed Encroachments onto City property. Municipal property encroachments are now addressed using a separate process established by Encroachment By-Law.
- Section 7.01 removed sentence - No fee is refundable except in the event that a licence is revoked by reason of municipal staff error. In that case, the licensee is entitled to a refund of a part of the license fee proportionate to the unexpired part of the term for which it was granted. (would occur as customer service gesture)
- Section 7.20 added - **Removal Upon Request:** No person shall fail to remove a refreshment vehicle that is located on a municipal highway or other municipal

property when instructed to do so by a Licensing Enforcement Officer, Municipal Law Enforcement Officer, Police or other person designated to enforce this bylaw.

Inspections:

At the time of a new application, on site vehicle, inspections are required and the inspection may include internal and external resources. However, depending on the inspection type, such as a renewal of a licence or in response to complaint, the Licensing Enforcement Officer also has the ability to inspect and to contact other/additional resources to inspect. The additional resources may include the Electrical Safety Authority, Ministry of Transportation and the Technical Standards and Safety Authority.

Inspections are listed in 3.06 and 7.01 of the by-law.

- 3.06 **Inspection Requirement:** The Licensing Enforcement Officer or designate shall inspect any property where a refreshment vehicle is to operate prior to the issuance of any license.
- 7.17 **Inspections:** The Licensing Enforcement Officer, the Police, the Medical Officer of Health, Municipal Law Enforcement Officer, the Fire Chief or any person acting under those persons, or any person authorized by council may at reasonable times during business hours and upon producing proper identification, inspect:
- (a) any premises or place where a business is carried on or where there are reasonable and probable grounds to believe a business is being carried on;
 - (b) any goods or equipment, to be used by the applicant in connection with the business;

Staff have reviewed the current application/inspection process and have committed to a process improvement that provides a mandatory inspection by the Licensing Enforcement Officer and communication with the stakeholders listed in 7.00 of the by-law.

Application Process:

The application process is available to applicants online using the City website portal or by contacting Municipal Law Enforcement and Licensing. The overall application process has been streamlined by merging By-Law sections 3.02, 3.03 and 3.04. The merging has removed duplication from the by-law. The online form has been updated to include mandatory fields; this will allow all required documents to be received at first point of contact. This streamlined process will eliminate the need for staff to pursue applicants to request missing support documentation. Staff use CityWorks internally to process the application and issue the Refreshment Vehicle Licence.

Other Alternatives Considered:

Council may choose to consider the request that refreshment vehicles be setback 1000m from brick and mortar restaurant locations and limit the setback specifically to within the boundaries of the towns and villages. Staff considered that implementing this setback would result in one location being permitted in the larger communities and none in smaller communities that have a restaurant. Having a refreshment vehicle option in a smaller community may be desirable to individuals in that area.

Alignment to Strategic Priorities

Regulation of refreshment vehicles, recommendations in this report and the proposed by-laws align with the principle of fiscal responsibility, service excellence and good government.

Financial/Operation Impacts:

Following the review of the City of Kawartha Lakes By-Law 2016-245 being a By-Law to License, Regulate and Govern Refreshment Vehicle Businesses in Kawartha Lakes, municipal comparators, shifting safety standards and increase in frequency of inspections, staff is recommending that the standard Refreshment Vehicle licensing fee remain the same.

Staff is recommending the addition of an inspection fee (detailed below) effective 2022, to be used to offset compliance inspections. Further that all existing and associated Refreshment Vehicle fees continue to be increased yearly to meet the consumer price index as established in the fees by-law.

The fee for a Refreshment Vehicle License for each location or individual vehicle is listed in the Municipal Fees By-law as \$359.00/year; this fee has seen small increases since 2013 to the current amount. This licensing fee is used to offset various costs, including a primary site/vehicle inspection and database management.

In the Fees By-Law Schedule A-12 - General Inspections (complaints) relating to non-licensing regulatory by-laws provides the following chart:

First Occurrence Inspection	each	Free	
Second Occurrence Inspection	each	\$112.00	
Third Occurrence Inspection	each	\$225.00	
Fourth Occurrence Inspection	each	\$445.00	
Fifth Occurrence Inspection	each	\$894.00	
Subsequent offences	each	Fees double	
Order/Notice	each	\$110.00	
Certificate of Compliance (Includes Discharge from title / deed)	each	\$225.00	

Currently, the Refreshment Vehicle By-Law does not reference Schedule A-12 of the Fees By-Law as is established for by-law compliance inspections related to by-law complaints. The fee A-12 fee schedule is common in many of the enforcement by-laws. In order to establish a cost recovery option the following will need to be included in the by-law:

- 8.07 Where an owner and/or operator has received a second, third or for any subsequent occurrence/complaint for the refreshment vehicle, an inspection administration charge shall be applied as set out in the Consolidated Fees By-law, if not paid, the fee shall be invoiced to the Refreshment Vehicle business. Failure to pay the invoice within 45 days will result in the revocation of Refreshment Vehicle License and denial of any future license until the occurrence inspection fees are paid in full.

Consultations:

Licensing
Economic Development
Planning
Risk Management
Revenue and Taxation
Fire Prevention

Attachments:

Appendix A (Unaltered - By-Law 2016-245 being a By-Law to License, Regulate and Govern Refreshment Vehicle Businesses)



The Corporation of
the City of Kawartha L

Appendix B (Redline Draft to replace By-Law 2016-245 being a By-Law to License, Regulate and Govern Refreshment Vehicle Businesses)



Draft Amendments
to The Corporation of

Department Head email: rtaylor@kawarthalakes.ca

Department Head: Ron Taylor, Chief Administrative Officer