

**THE CORPORATION OF THE
MUNICIPALITY OF TEMAGAMI**

BY-LAW NO. 21- 1577

**Being a By-law for the Licensing of Mobile Portables Vendor Units and Refreshment
Carts. This By-law shall repeal By-Law 93-322, as amended.**

WHEREAS subsection 150 of the Municipal Act, 2001 S.O. 2001, c.25, provides that a local municipality may license, regulate and govern any business wholly or partly carried on within the municipality even if the business is being carried on from a Location outside the municipality;

AND WHEREAS a by-law licensing or imposing any condition on any business or class of business passed under this section comes into force shall include an explanation as to the reason why the municipality is licensing or imposing the condition and how the reason relates to the purpose;

AND WHEREAS the Council of the Municipality of Temagami considers it desirable and necessary to license, regulate and govern Refreshment Carts and Mobile Portable Vendors for the purposes of Health and Safety, to enhance and encourage safe maintenance and operational practices for Refreshment Carts and Mobile Portable Vendors and ensure accountability of industry participants for health and safety issues;

AND WHEREAS the Council of the Municipality of Temagami considers it desirable and necessary to license, regulate and govern Refreshment Carts and Mobile Portable Vendors for the purposes of Consumer Protection, to enhance and encourage equal, fair and courteous treatment of clients and Operators, ensure competence of Refreshment Carts and Mobile Portable Vendors services, promote accountability, ensure consistency and support proper and good business practices;

AND WHEREAS the Council of the Municipality of Temagami considers it desirable and necessary to license, regulate or govern Refreshment Carts and Mobile Portable Vendors for the purpose of Nuisance Control to promote professional behaviour, fair dealing amongst participants in the industry, ensure courteous treatment, and limit or mitigate unsightliness, unnecessary noise, nuisance or disruption for clients of Refreshment Carts and Mobile Portable Vendors, and the general public;

NOW THEREFORE the Council of the Municipality of Temagami ENACTS the following:

1. DEFINITIONS

In this By-law:

Articles for Sale: means goods, wares, merchandise, products, refreshments, foodstuffs or flowers held by a Person for subsequent sale to another Person;

Council: means the Council of The Municipality of Temagami;

Designated Location: means an area or site approved by the Municipality for the purpose of vending;

Licence: means the certificate issued under this By-law as proof of licensing under this By-law;

Location: means any area or site chosen by an applicant for the purpose of vending;

Mobile Portable Vendor: means a stand, container, cart, seat, display rack or other movable display unit and includes a motorized vehicle, used for the purpose of sales by retail from which goods, wares, merchandise, products, refreshments, foodstuffs or flowers are offered for sale by retail, sold, displayed for sale, or placed or exposed for sale and where the exchange of money for the Articles for Sale is intended to take place at the Designation Location;

Refreshment Cart: means a mobile cart used to sell refreshments including but not limited to hot dogs, sausages, roasted nuts, candied apples, candy floss and beverages, to the public;

Sell: includes display for sale, expose for sale and offer for sale;

2. LICENSING REQUIREMENT

- 1) Every Person who Sells or offers for sale by retail, displays or exposes for sale any goods, wares, merchandise, products, refreshments, food stuffs or flowers must do so from a licensed Portable Mobile Vendor's Unit or Refreshment Cart.
- 2) (1) A Licence is not required under this By-law in respect to Refreshment Carts and Portable Mobile Vendor's Unit if the Articles for Sale are hawked, peddled or sold:
 - a) are produce which is grown or produced by a farmer resident in Ontario who offers for sale or Sells only the produce of his/her own farm; or
 - b) if the goods, wares or merchandise are hawked, peddled or sold by a Person who pays business tax in the municipality or by his/her employee, or by his/her agent.
 - c) Those exempted from obtaining a Licence shall comply with all other provisions of this By-law.

3. REPRESENTATION

No Person shall publish or cause to be published any representation that he/she is licensed under this By-law if they are not.

4. ADMINISTRATION

1) The Municipality shall:

- a) Receive and process all applications for Licenses;
- b) Issue all Licenses when an application is made in accordance with the provision of this By-law and meets all requirements under this By-law;
- c) Impose terms and conditions where the Municipality is of the opinion that a term or condition of a licence should be imposed;
- d) Refuse to issue, renew a Licence or revoke or suspend a Licence, where the Municipality is of the opinion that the Applicant is disentitled to a Licence;
- e) Maintain complete records showing all applications received and licences issued;
- f) Enforce the provisions of this By-law and attached Schedules; and

5. LICENCE

(1) No Person shall be Licensed under this By-law unless he/she:

- a) is at least fifteen (15) years of age; and
- b) is a citizen of Canada or a landed Immigrant, or has a valid employment authorization issued by the Government of Canada.
- c) He/she files a certificate prepared by a duly qualified medical practitioner which states that the applicant is fit and free from communicable diseases, this provision applies to any individual who will vending products which require cooking or reheating
- d) a letter of authorization from the property owner including the following information:
 - (i) the name of the owner of the Refreshment Cart or Mobile Portable Display Unit;
 - (ii) a plan of the private property showing the Designation Location on the property where vendor will be Selling from the Mobile Portable Display Unit or Refreshment Cart;
 - (iii) a list of Articles for Sale from the Mobile Portable Display Unit or Refreshment Cart;
 - (iv) the hours and terms of operation;
- e) a copy of the current certificate of insurance for the Mobile Portable Display Unit or Refreshment Cart for which the applicant is the Owner, is produced and filed with the Municipality of Temagami and the insurance policy shall provide:

- (i) an endorsement to provide the Municipality with at least ten (10) days notice in writing of the cancellation or expiration of the policy, or of a variation in the amount of the policy; and
- (ii) general liability insurance for each Refreshment Cycle or Mobile Portable Display Unit in the amount of at least two million (\$2,000,000) against liability resulting from bodily injury to or the death of one or more persons and loss or damage to property;
- f) The Refreshment Cycle or Mobile Portable Display Unit is presented to the Municipality for inspection and approval;
- g) an approval from the Timiskaming Health Unit for the Refreshment Cycle or Mobile Portable Display Unit is produced and filed with the Municipality of Temagami;
- h) Every application to obtain a licence shall also include a completed application form;
- i) Every application shall include the names and addresses of all vendors who will be providing services;
- j) the address of the licensee, to which the Municipality may send or deliver any notice or other document required or authorized by law
- k) the telephone number used in connection with such business

6. THE MUNICIPALITY'S POWER TO REFUSE TO ISSUE A LICENCE OR REVOKE/SUSPEND A LICENCE

1) The authority to refuse to issue, cancel, revoke or suspend a Licence or to impose terms and conditions on a Licence, are hereby delegated to the Municipal Clerk and his/her delegates.

2) An applicant for a Licence who complies with the provisions of this By-law, is subject to the provisions of this By-law and is entitled to be issued a Licence, except where:

- (a) there are reasonable grounds for belief that any application or other document provided to the Municipality by or on behalf of the applicant contains a false statement or provides false information; or
- (b) there are reasonable grounds for belief that the carrying on of the said business will result in a breach of this By-law or any other law, including any applicable zoning requirement; or
- (d) the financial position of the applicant affords reasonable grounds to believe that the business will not be carried on in a financially responsible manner; or
- (e) there are reasonable grounds for belief that the application does not meet all the requirements of this By-law, hence the issuing of a Licence in respect of the business is not permitted by this By-law; or
- (f) the conduct of the applicant persons affords reasonable grounds for belief that the carrying on of the business in respect of which the Licence is sought would infringe on the rights or endanger the health or safety of the public; or
- (g) the amount payable in respect of the Licence applied for has not been paid.

7. ISSUANCE AND TERMS OF LICENCES

- 1) Every Licence issued to an Owner or an Operator, shall be valid for a period of one from the date of issue.
- 2) A Licence issued under this By-law is personal to the licensee, and cannot be transferred.
- 3) The rights granted by a Licence issued under this By-law apply only to the Designation Location for which the Licence is issued.
- 4) Where a Licence has been revoked, the licensee is entitled to a refund of a part of the Licence fee proportionate to the unexpired part of the term for which it was granted.

8. NOTICE

- 1) Any notice required to be given under this By-law is sufficiently given if delivered personally or sent by registered mail addresses to the Person to whom delivery is required to be made at the last address for delivery appearing on the records of the Licence Application.
- 2) Where service is effected by registered mail, it shall be deemed to be made on the seventh day after the date of mailing.

9. CHANGES IN INFORMATION

- 1) Every licensee shall notify the Municipality in writing within seven days after the event, of any change in any of the information contained in the application form.

10. RIGHT OF INSPECTION

- 1) A Municipal Law Enforcement Officer (MLEO) may at any reasonable time inspect the licensee to ensure that the provisions of this By-law have been complied with.
- 2) Upon an inspection under Subsection (1), the Person inspecting is entitled access to the invoices, vouchers, or like documents of the Person being inspected provided such documents are relevant for the purposes of the inspection and the Person inspecting may remove with the licensee's consent any of the aforementioned documents for the purpose of photocopying provided a receipt is given the licensee and the documents are returned to the licensee within forty-eight (48) hours of removal.

11. MOBILE PORTABLE DISPLAY UNIT OR REFRESHMENT CART INSPECTION

- 1) A MLEO may require an Owner to submit his Mobile Portable Display Unit or Refreshment Cart for inspection at any time and at an appointed place and the Owner shall submit each for inspection when required to do so by the MLEO.
- 2) When a Mobile Portable Display Unit or Refreshment Cart and its equipment have been examined by the Timiskaming Health Unit or other inspecting authority and the equipment is found to be defective, the Mobile Portable Display Unit or Refreshment Cart Owner shall not operate the Mobile Portable Display Unit or Refreshment Cart or permit it to be operated until the Mobile Portable Display Unit or Refreshment Cart has been re-inspected and approved by the Timiskaming Health Unit or other inspecting authority.
- 3) When a Mobile Portable Display Unit or Refreshment Cart is examined by an inspection authority and a report states that the Mobile Portable Display Unit or Refreshment Cart or

equipment is dangerous or unsafe, the Owner shall return the licence to the Municipality until the unit has been certified to be safe by an inspecting authority.

12. LICENCE PRODUCTION

- 1) Every Person licensed under this By-law, when requested by an Inspector, MLEO or a Peace Officer shall produce his/her Licence and other relevant documents required under this By-law.

13. OWNERS AND OPERATORS

- 1) Every Owner and Operator shall:

- (a) be civil and behave courteously;
- (b) keep the exterior of the Mobile Portable Display Unit or Refreshment Cart clean, in good repair and free from exterior damage;
- (c) keep the interior, where applicable, of the Mobile Portable Display Unit or Refreshment Cart clean, and in good repair;
- (d) only operate at the approved Designated Location for the Mobile Portable Display Unit or Refreshment Cart;
- (e) Sell only those items which were authorized through the issuance of a Licence for each Mobile Portable Display Unit or Refreshment Cart;
- (f) ensure that the Mobile Portable Display Unit or Refreshment Cart is equipped with a portable litter basket or refuse container which is readily accessible to persons making purchases;
- (g) ensure all equipment used for dispensing refreshments are kept in a clean and sanitary condition;
- (h) ensure condiments are only dispensed from containers approved by the Timiskaming Health Unit;
- (i) only operate a Mobile Portable Display Unit or Refreshment Cart for which a Licence has been issued;
- (j) only use single service disposable cups, plates, forks, spoons and serviettes which are individually wrapped or provided in dispensers approved by the Timiskaming Health Unit.

14. NEW OR REPLACEMENT PORTABLE DISPLAY UNIT OR REFRESHMENT CART

- 1) An Owner licensed under this By-law who disposes or otherwise ceases to use his Portable Display Unit, Refreshment Cart or Refreshment Cycle for the purpose permitted under this By-law, shall before using the newly acquired Mobile Portable Display Unit or Refreshment Cart under this By-law:

- (a) submit to the Municipality, a certificate of approval from the Timiskaming Health Unit if applicable; and
- (b) produce and file with the Municipality a copy of the current certificate of insurance for the Mobile Portable Display Unit or Refreshment Cart for which the applicant is the Owner and the policy shall:

- (i) be endorsed to provide the Municipality with at least ten (10) days' notice in writing of the cancellation or expiration of the policy, or of a variation in the amount of the policy; and
- (ii) general liability insurance for each Mobile Portable Display Unit or Refreshment Cart , in the amount of at least two million dollars (\$2,000,000) exclusive of interests and costs, against liability resulting from bodily injury to or the death of one or more Persons and loss or damage to property; and
- (c) submit the Mobile Portable Display Unit or Refreshment Cart for inspection and approval by the Municipality.

15. PENALTY

1) Fine - for contravention- Individual

Every Person who contravenes any provision of this By-law, and every director or officer of a Corporation who concurs in such contravention by the Corporation, guilty of an offence and on conviction is liable to a fine not exceeding \$25,000.00.

(2) Fine - for contravention - Corporation

Despite subsection (1) every Corporation which is convicted of an offence under the provisions of this By-law is liable to a fine not exceeding \$50,000.00.

16. SCHEDULES

- 1) The schedule referred to and attached to this By-law shall be deemed to be a part of the By-law.

17. VALIDITY

- 1) If a court of competent jurisdiction declares any provision or part of a provision of this By-law to be invalid or to be of no force and effect, it is the intention of the Council in enacting this By-law, that each and every other provision of this By-law authorized by law, be applied and enforced in accordance with the terms to the extent possible according to law.

18. REPEAL

- 1) That By-Law No. 93-322, included all amendments is hereby repealed.
- 2) That the Clerk of the Municipality of Temagami is hereby authorized to make minor modifications or corrections of a grammatical or typographical nature to the by-law and schedule, after the passage of this by-law, where such modifications or corrections do not alter the intent of the by-law.

This by-law shall come into force and take effect on the day of the final passing thereof:

TAKEN AS READ A FIRST time on this 19th day of August 2021;

READ A SECOND AND THIRD time and finally passed this 19th day of August 2021.

Mayor

Clerk

**Schedule “1” to By-law # 21-, as amended,
respecting: Vendor Licence Classes**

SCHEDULE 1

FEES

1. TYPE OF LICENCE

Refreshment Cart Operator \$100.00

Refreshment Cart Owner \$150.00

Mobile Portable Display Unit Operator \$100.00

Portable Display Unit Owner \$150.00