

★ Roll Call Number

Agenda Item Number

52

Date April 23, 2007

Informal hearing regarding vending on city streets and property.

(Council Communication No. 07-235)

Moved by _____ to receive and file comments and

APPROVED AS TO FORM:


Bruce Bergman
City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
TOTAL				

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

MOTION CARRIED APPROVED

Mayor

City Clerk

Date _____

Agenda Item 52

Roll Call # _____

ADOPTED BY THE
MAYOR AND COUNCIL

ORDINANCE NO. _____

RELATING TO BUSINESS LICENSES AND OCCUPATIONAL LICENSE TAX;
AMENDING CHAPTER 7 BY ADDING A NEW ARTICLE XXIII PROVIDING FOR
LICENSING AND OPERATIONAL REQUIREMENTS FOR ICE CREAM TRUCK
VENDORS; AMENDING SECTION 19-41 TO ADD AN OCCUPATIONAL
LICENSE TAX ON ICE CREAM TRUCK VENDORS; AND DECLARING AN
EMERGENCY

SECTION 1. The Tucson Code, Chapter 7, Businesses Regulated, is amended
to add a new Article XXIII as follows:

“ARTICLE XXIII. ICE CREAM TRUCK VENDORS

Sec. 7-490. Definitions.

As used in this Article, the following terms are defined as follows:

(1) “Chief” means the Chief of the Tucson Police Department or the Chief’s
designee.

(2) “Director” means the Director of the Department of Finance or the
Director’s designee.

(3) “Ice Cream” means any frozen dairy or water-based food product.

(4) “Ice Cream Truck” means any motor vehicle used for Ice Cream Truck
Vending.

(5) “Ice Cream Truck Vending” means the selling, displaying, or offering
to sell Ice Cream or any other prepackaged food product from an Ice Cream
Truck on a Street in a Residential Area or in a City park. Except for activities

licensed to occur in City parks, such term does not include an activity licensed pursuant to another provision of the Tucson Code or the selling, displaying, or offering to sell Ice Cream or other prepackaged food product from a motor vehicle where Ice Cream or other prepackaged food products are not the primary products offered or displayed for sale.

(6) "Ice Cream Truck Vendor" or "Vendor" means any person who owns or operates an Ice Cream Truck.

(7) "Residential Area" means any Street where over fifty percent of the front footage of either side of the block is devoted to single-family and multiple-family dwellings, dormitories, or mobile homes.

(8) "Street" means any public road, highway, avenue, boulevard, alley, or lane within the City.

Sec. 7-491. License Requirements and Application Procedures.

(a) In General. It shall be unlawful for a person to operate as an Ice Cream Truck Vendor in a Residential Area or a City park unless such person has received an Ice Cream Truck Vendor license from the Director.

(b) License Application. Any person desiring to obtain or renew an Ice Cream Truck Vendor's license shall file an application with the Director. Such initial or renewal application shall contain the following information:

(1) The full legal name, date of birth, and residence address of the applicant.

(2) A valid identification issued by any government that includes a photograph of the applicant.

(3) The year, make, model, and color of the motor vehicle the applicant intends on using as an Ice Cream Truck.

(4) A copy of a valid registration certificate issued by the Arizona Division of Motor Vehicles for the Ice Cream Truck identified in Paragraph (3).

(5) If employed by a business or other person, the name and address of such business or person.

(6) Any conviction of the applicant or Vendor for any of the following:

(A) any misdemeanor or felony within the previous 5 years if the offense involved sexual misconduct, prostitution, or any of the offenses

enumerated in Chapter 14, Title 13, Arizona Revised Statutes (Sexual Offenses) or Tucson Code § 11-28 and any such offense committed outside the State of Arizona that would have been classified as one of the above offenses if committed within the State of Arizona; or

(B) any felony at any time if the offense required registration as a sex offender under the laws of Arizona or of any other state, commonwealth, or possession of the United States.

(7) The applicant's complete fingerprints taken by the Tucson Police Department, along with written verification from the Police Department of having completed being fingerprinted.

(8) Proof of valid insurance for the Ice Cream Truck identified in Paragraph (3).

(9) Payment of the occupational license tax required by Section 19-41(f).

(c) Term of License. The license issued pursuant to Subsection B shall be valid for one year from the date of its issuance.

(d) Lost and Expired Licenses. The fee to replace a lost valid license shall be \$10.00. If a Vendor's license expires prior to filing for renewal, such Vendor must reapply for a license and pay any applicable fee or tax.

(e) Applicant Background Check. The Chief shall forward the fingerprints obtained pursuant to Paragraph (7), accompanied by the appropriate fees paid by the applicant, to the appropriate State and federal agencies to conduct a criminal history records check for the purpose of evaluating the fitness of the applicants as permitted under State and federal law. If the Chief determines, based on such background check, that the applicant has a conviction for any offense described in Subsection (b)(6), the Chief shall recommend to the Director that a Vendor license be denied or not renewed; otherwise the Chief shall recommend that such license be issued or renewed.

(f) License Issuance/Renewal or Denial. The Director shall issue an Ice Cream Truck Vendor license, or renew such license, upon filing of an application meeting the requirements of Subsection (b) and the affirmative recommendation of the Chief. If the Chief has not made a recommendation to the Director within 45 days after receiving the applicant's fingerprints, the Director may consider the application without reference to such a recommendation. If any requirement of Subsection (b) is not met or if the Chief recommends denial, the Director shall deny the applicant a Vendor's license or the renewal of such license. If a license is denied or not renewed, the applicant or Vendor may appeal pursuant to Section 7-492.

Sec. 7-492. Appeal Procedures.

(a) In General. An applicant for an Ice Cream Truck Vendor's license, or a Vendor seeking renewal thereof, who has been denied a license by the Director may appeal such denial as provided in Subsection (b).

(b) Appeal Requirements. The Director shall provide written notice of denial or nonrenewal to the applicant or Vendor stating the grounds thereof and the procedures to appeal the decision. The notice may be personally served or mailed, return receipt requested, to the address provided on the application. The applicant for a license, or a Vendor seeking renewal thereof, may file an appeal of the Director's decision in Tucson City Court, but such appeal must be filed within fifteen (15) days of receipt of the notice or from the date the notice is returned to the Director as undeliverable. A hearing shall be scheduled upon receipt of the filing of the appeal before a magistrate or special limited magistrate.

(c) Hearing. At the conclusion of the hearing, if the magistrate or special limited magistrate finds that the grounds for the denial or nonrenewal have been established by a preponderance of the evidence, the magistrate shall uphold the Director's decision. Either the City or the applicant or Vendor may appeal the ruling to the Pima County Superior Court in accordance with the Superior Court Rules of Appellate Procedure-Civil. If the Director's decision is upheld and the Vendor or applicant appeals to the Superior Court, such person may not operate unless and until such time as the Court orders the license issued or otherwise authorizes the person to operate.

Sec. 7-493. Display of License.

The Director shall issue a license to the applicant who shall conspicuously display such license on or within the applicant's Ice Cream Truck. A law enforcement officer may detain an individual operating an Ice Cream Truck in a Residential Area or City park who is actively engaged in offering for sale the food products located thereon for the limited purpose of determining the status of the individual's license issued under this Article.

Sec. 7-494. Penalties.

Any person who commits, causes, permits, facilitates, or aids or abets any violation of, or who fails to perform any act or duty required by this Article is guilty of a class one misdemeanor.

Sec. 7-495. Separate License Required to Operate in City Parks and Other City Property.

The license issued pursuant to Section 7-491 does not permit an Ice Cream Truck Vendor to operate in a City park or other City property (except City right of way in Residential Areas) unless such Vendor also has a license issued by the director of the department having control over such park or other City property.

Sections 7-496-499. Reserved.”

SECTION 2. Tucson Code § 19-41 is amended by adding at the end thereof a new Subsection (f) to read as follows:

“(f) Ice Cream Truck Vendors. Ice Cream Truck Vendors, as defined in Section 7-490(6), shall pay an annual occupational license tax of \$50.00.”

SECTION 3. (a) Except as provided in Subsection (b), Sections 1 and 2 are not effective until April 1, 2006.

(b) Between February 1, 2006, and April 1, 2006, the Director of the Department of Finance may accept applications for and issue or deny the licenses authorized by Section 1 and collect the occupational license fees authorized by Section 2.

(c) Any license issued pursuant to Section 1 between February 1, 2006, and April 1, 2006, shall be effective as of the date it is issued. Any business license issued to an individual for the operation of an ice cream truck prior to February 1, 2006, shall expire on February 1, 2006.

SECTION 4. If any of the provisions of this Ordinance or the application thereof to any person or circumstance is invalid, the invalidity shall not effect other provisions or applications of this ordinance which can be given effect without the invalid provision or circumstance and to this end the provisions of this Ordinance are severable.

SECTION 5. WHEREAS, it is necessary for the preservation of the peace, health, and safety of the City of Tucson that this ordinance become immediately

effective, an emergency is declared to exist and this Ordinance shall be effective immediately upon its passage and adoption.

PASSED, ADOPTED AND APPROVED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA, _____.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

REVIEWED BY:

CITY ATTORNEY

CITY MANAGER

DLD:tec
12/14/2005 10:30 AM



By-law Number 0523-2004

**A By-law to regulate and govern the
Owner and Drivers of Ice Cream Trucks
and to repeal By-law 189-99, as amended,
the Ice Cream Truck Vendor By-law**

WHEREAS section 150 of the *Municipal Act, 2001* S.O. 2001, c.25, provides that a local municipality may Licence, 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 the *City of Mississauga Act, 1994* enables Council of The Corporation of the City of Mississauga to pass by-laws regulating or prohibiting the Selling, offering to Sell or displaying any goods, merchandise, products, refreshments, foodstuffs or flowers on public Highways over which the Corporation has jurisdiction;

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 City of Mississauga considers it desirable and necessary to license, regulate and govern Owners and Drivers of Ice Cream Trucks for the purposes of Health and Safety, to enhance and encourage safe maintenance and operational practices for Drivers and Owners, ensure experienced and qualified Drivers are providing services and ensure accountability of industry participants for health and safety issues;

AND WHEREAS the Council of the City of Mississauga considers it desirable and necessary to license, regulate and govern Owners and Drivers of Ice Cream Trucks for the purposes of Consumer Protection, to enhance and encourage equal, fair and courteous treatment of customers;

AND WHEREAS the Council of the City of Mississauga considers it desirable and necessary to license, regulate and govern Owners and Drivers of Ice Cream Trucks for the purposes of Nuisance Control to promote professional behavior, fair dealing amongst participants in the industry, ensure courteous treatment, and limit or mitigate unsightliness, unnecessary noise, nuisance or disruption for passengers, Drivers, Owners and the general public;

AND WHEREAS a public meeting was held on December 8, 2004 at which time a report entitled Vehicle Licensing By-laws relating to the licensing of the business was presented and considered;

AND WHEREAS the Council of The Corporation of the City of Mississauga is desirous of enacting such by-laws;

NOW THEREFORE the Council of The Corporation of the City of Mississauga ENACTS as follows:

DEFINITIONS

1. In this by-law:

"Appeal Committee" means a committee of Council duly appointed by by-law to conduct hearings under this By-law;

"Applicant" means a Person who applies for a Licence or for the renewal of a Licence pursuant to this by-law;

"Articles for Sale" means ice cream, ice cream cones, iced milk or other iced confection, refreshments or foodstuffs offered for sale by retail;

"City" means The Corporation of the City of Mississauga and its physical boundaries as described in the *Regional Municipality of Peel Act*, R.S.O. 1990, c.R. 15, as amended;

"Clerk" means the Clerk of The Corporation of the City of Mississauga or her duly appointed Deputy;

"Council" means the Council of The Corporation of the City of Mississauga;

"Driver" means any Person who drives or operates an Ice Cream Truck;

"Driver's Licence" means the Licence issued under this By-law to a Driver of an Ice Cream Truck;

"Highway" means 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 Truck" means a Motor Vehicle from which Articles for Sale are sold or offered for sale to the public;

"Inspecting Authority" means the Ministry of Transportation, Peel Regional Police Services, the Ministry of Environment, Medical Officer of Health or an Inspector;

"Inspector" means an inspection officer duly appointed by Council;

"Licence" means a Driver's Licence, Owner's Licence or Special Event Licence issued under this by-law;

"Licence Manager" means the Manager of the Vehicle Licensing Section of the Corporation's Enforcement Division;

"Licence Renewal Sticker" means the coloured consecutively numbered sticker issued with the renewal of the Owner's Licence, to be attached to the Owner's Plate. The sticker indicates the expiry year of the Owner's Licence;

"Licence Sticker" means the stamp or seal issued to an Owner under this by-law;

"Licensee" means a Person licensed as a Driver or Owner or in receipt of a Special Event Licence under this By-law;

"Licensing Unit" means the Vehicle Licensing Unit of the By-law Enforcement Division in the Corporate Services Department of the City;

"*Medical Officer of Health*" means the Medical Officer of Health for the Regional Municipality of Peel, duly appointed under the *Health Protection and Promotion Act*, R.S.O. 1990, c.H.7, as amended, and includes any staff official acting on his behalf;

"*Motor Vehicle*" includes an automobile, truck, trailer, motorcycle and any other vehicle propelled or driven otherwise than by muscular power but does not include a motorized snow vehicle or motor-assisted vehicle;

"*Owner*" means the Person certified as the Owner of an Ice Cream Truck by the Registrar of Vehicles for the Province of Ontario or a Person who is a lessee of an Ice Cream Truck pursuant to a written lease agreement with the Owner of the Ice Cream Truck;

"*Owner's Licence*" means the Licence issued under this By-law to the Owner of an Ice Cream Truck;

"*Owner's Plate*" means a numbered plate issued to an Owner licensed under this By-law;

"*Permit*" means a Permit within the meaning of, and issued pursuant to, the Parks By-law 277-96 as amended;

"*Person*" includes a corporation and its directors and officers, and the heirs, executors, and administrators or other legal representatives of an individual and their respective successors and assignees;

"*Safety Standards Certificate*" means a Safety Standards Certificate issued by the Ministry of Transportation pursuant to the *Highway Traffic Act* and Regulations thereunder certifying that a Motor Vehicle has been inspected in accordance with the provisions of the *Highway Traffic Act* and that the Motor Vehicle meets the prescribed standard on the date of inspection;

"*Sell*" includes display for sale, expose for sale and offer for sale Articles for Sale to the public, and "Selling" shall have the corresponding meaning;

"*Special Event*" means an event which takes place on City property that requires City approval(s) in addition to the approval for the use of the property itself, and may require the approval of regulatory agencies other than the City of Mississauga (such as LLBO, Medical Officer of Health, Peel Regional Police Department).

LICENSING REQUIRED

2. (1) No Owner of an Ice Cream Truck shall operate or Permit the operation or use of the Ice Cream Truck in the City unless the Owner obtains an Owner's Licence under this by-law.
- (2) No Person shall drive or operate as the Driver of an Ice Cream Truck for the purpose of Selling Articles for Sale unless they obtain a Driver's Licence under this By-law.
- (3) No Person who is the Owner of more than one Ice Cream Truck shall require a separate Owner's Licence for each Ice Cream Truck which the Owner intends to use in the City.
- (4) No Person shall be licensed under this By-law unless they are at least eighteen (18) years of age and a citizen of Canada, a landed immigrant or has a valid employment authorization issued by the Government of Canada.

- (5) The issuance 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.

REPRESENTATION

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

APPLICATION FOR A LICENCE AND FOR RENEWAL OF A LICENCE

4. (1) An application for a Licence and an application for the renewal of a Licence shall be completed on the forms provided by the Licensing Unit.
- (2) Each completed application shall be submitted to the Licensing Unit accompanied by:
 - (a) the fee in the appropriate amount as set out in Schedule 1 to this By-law; and
 - (b) if the Applicant is a corporation, a copy of the incorporating document and a copy of the last annual information return as filed, if any, or if a registered partnership, a copy of the registered declaration of partnership.
- (3) Where an application for a Licence or for renewal of a Licence is refused, the Licence fee shall be fully refunded.

GROUND S FOR REFUSAL TO LICENCE, RENEW OR REVOKE

5. Council may refuse to issue a Licence or refuse to renew a Licence where:
 - (a) having regard to the Applicant's financial position the Applicant cannot reasonably be expected to be financially responsible in the conduct of their business;
 - (b) the past conduct of the Applicant affords reasonable grounds for belief that the issuance of a Licence would be adverse to the public interest;
 - (c) the Applicant is carrying on activities that are, or will be if licensed, in contravention of this by-law and the schedules or any other by-law or statute; or
 - (d) the Applicant is in default of payment of any fine or fines which have been imposed by a court as a sentence arising from a conviction for breach of a by-law enacted by the City, or arising from a conviction for breach of a law or regulation.
6. Council may revoke or suspend a Licence where the Licensee would be disentitled to the Licence under Section 5, and where the Licence is revoked, the Licensee is entitled to a refund or part of the Licence fee proportionate to the unexpired part of the term for which the Licence was granted.

LICENCE ON TERMS AND CONDITIONS

7. Notwithstanding any other provisions of this By-law, Council may impose conditions as a requirement of obtaining or renewing a Licence or may at any time impose conditions as a requirement of continuing to hold a Licence.

LICENSING UNIT

8. The Licensing Unit shall;
 - (a) receive and process all applications for Licences and for renewal of Licences;
 - (b) issue all Licences where an application is approved in accordance with the provisions of this by-law;
 - (c) maintain complete records showing all applications received and Licences issued; and
 - (d) generally perform all the administrative functions conferred upon it by this by-law and the attached schedules.

ICE CREAM TRUCK INSPECTION

9. The Licence Manager may require an Owner to submit his Ice Cream Truck for inspection at any time and at an appointed place and the Owner shall submit each Ice Cream Truck for inspection when required to do so by the Licence Manager.
10. Where following an inspection an Inspecting Authority does not approve an Ice Cream Truck as required under section 9, the Owner shall remove and return to the Licence Manager the Owner's Plate and the Owner shall not operate the Ice Cream Truck until the Owner obtains and produces evidence that approval by the applicable Inspection Authority has been given.
11. If an Ice Cream Truck and its equipment have been examined by an Inspecting Authority and the Ice Cream Truck or its equipment is found to be defective, the Ice Cream Truck Owner shall not operate the Ice Cream Truck or Permit it to be operated until the Ice Cream Truck or its equipment have been reinspected and approved by the Licence Manager.
12. When an Ice Cream Truck is examined by an Inspection Authority and a report states that the Ice Cream Truck or equipment in the Ice Cream Truck is dangerous or unsafe, the Owner shall remove and return to the Licence Manager the Owner's Plate to be held until an Inspection Authority certifies the Ice Cream Truck or its equipment to be safe.
13. No Person shall obstruct an Inspecting Authority conducting an inspection, or withhold, destroy, conceal or refuse to furnish any information or thing required by the Inspecting Authority for the purpose of the inspection.

DISPLAY OF OWNER'S PLATE

14. Every Owner shall prominently display the Owner's Plate at the rear of the Ice Cream Truck in a location approved by the Licence Manager.

LICENCE NON-TRANSFERABLE

15. A Licence issued under this By-law shall not be transferable.

CHANGE OF LICENCE

16. No Person to whom a Licence has been issued under this By-law shall alter, erase or modify or Permit the alteration, erasure or modification of that Licence or any part thereof, unless approved by the Licence Manager who has initialled such change.

TERM OF LICENCE

17. Every Licence issued to a Driver, shall be valid for a period of (1) one year effective from the first (1st) day of May up to and including the 30th day of April in the following year.
18. Where a completed application for the renewal of a Licence is not submitted to the Licensing Section within thirty (30) days after the expiry date for the current Licence, the Applicant shall be required to submit a new application together with the application fee for an original Licence.

CHANGES

19. (1) Every Licensee shall notify the Licensing Unit in writing within four (4) days after,
 - (a) any change in the Licensee's business address;
 - (b) any change in the number or composition of officers or directors, if the Licensee is a corporation, or any change in the number or composition of partners, if the Licensee is a partnership; or
 - (c) any change in the Licensee's business name.
- (2) Where a change has occurred and notification has been made in accordance with subsection (1), and if it is a change of business name or business address, every Licensee shall attend within four (4) days of the date of notification at the office of the Licensing Unit and produce the Licensee's Licence for amendment.
20. A Licensee shall carry on their business only in the name in which the Licensee is licensed.

OWNER DUTIES

21. Every licensed Ice Cream Truck Owner shall use only the services of a Driver who is licensed under this By-law.
22. Every licensed Ice Cream Truck Owner shall attach the Owner's Plate to the Ice Cream Truck for which it was issued in a manner and position approved by the Licence Manager.
23. Every licensed Ice Cream Truck Owner shall attach the Licence Renewal Sticker to the Owner's Plate
24. Every Owner shall submit to the Licence Manager a certificate of approval for a new or replacement Ice Cream Truck from the Medical Officer of Health.
25. Every Owner shall produce and file with the Licensing Unit a copy of the current certificate of insurance for a new or replacement Ice Cream Truck and the policy shall provide;
 - (a) an endorsement to provide the Licence Manager with a least ten(10) days notice in writing of a proposed cancellation or expiration of the insurance policies, or of a variation in the amount of the policies; and
 - (b) general liability insurance in the amount of at least two million dollars (\$2,000,000) for each Ice Cream Truck against liability resulting from bodily injury to or death of one or more Persons, any and all claims associated with the Selling of Articles for Sale and loss or damage to property.

26. Every Owner shall produce for each Ice Cream Truck, a current valid Motor Vehicle Permit issued by the Ministry of Transportation, or if an Ice Cream Truck is a leased Motor Vehicle, provide a copy of the lease agreement for the Ice Cream Truck.
27. Every Owner shall produce and file with the Licensing Unit a valid Safety Standards Certificate.
28. Every Owner shall submit the Ice Cream Truck for inspection and receive the approval of the Licence Manager for use of the Ice Cream Truck.

OWNERS PROHIBITION

29. No Owner shall Permit any Owner's Plate issued to the Owner under this By-law to be affixed to any Ice Cream Truck other than the one for which the Owner's Licence was issued.

DRIVER'S DUTIES

30. No Person shall be licensed as a Driver unless:
 - (a) the Person submits to the Licensing Unit evidence that an Owner licensed under this By-law is prepared to employ the Driver;
 - (b) the Person provides proof a current valid Class G Driver's Licence issued by the Province of Ontario;
 - (c) the Person files a certificate prepared by a duly qualified medical practitioner within one (1) month immediately prior to the application, which states that the Applicant is fit and free from communicable diseases and medically fit to perform the duties of a Driver; and
 - (d) the Person has their photograph taken by the Licensing Section.
31. Every Driver licensed under this By-law shall:
 - (a) be civil and behave courteously;
 - (b) keep the interior of the Ice Cream Truck clean, and in good repair;
 - (c) sell only Articles for Sale;
 - (d) ensure all equipment used for dispensing refreshments are kept in a clean and sanitary condition;
 - (e) ensure condiments are only dispensed from containers approved by the Peel Regional Health Unit;
 - (f) only operate an Ice Cream Truck for which a Licence has been issued;
 - (g) only use single service disposable cups, plates, forks, spoons and serviettes which are individually wrapped or provided in dispensers approved by the Peel Regional Health Unit;
 - (h) clean up any debris, refuse or garbage resulting from the operation of the Ice Cream Truck in the immediate vicinity of the serving location for the Ice Cream Truck;

- (i) make a complete safety tour around the Ice Cream Truck and check the mirror system around the Ice Cream Truck before departing from any stop made for the purpose of Selling Articles for Sale; and
- (j) refuse to serve any customer standing on a Highway.

DRIVERS' PROHIBITIONS

32. Every Driver licensed under this By-law shall not;
- (a) operate an Ice Cream Truck which is not licensed under this By-law;
 - (b) operate an Ice Cream Truck without the Owner's Plate attached;
 - (c) operate an Ice Cream Truck on the Highways of the City;
 - (d) operate an Ice Cream Truck in a City park without a Permit;
 - (e) operate an Ice Cream Truck on private property without written permission of the property Owner;
 - (f) re-visit the general serving area of a previous service call, within two (2) hours of the previous serving time;
 - (g) stop to Sell within thirty (30) metres of any intersection;
 - (h) stop to Sell within one hundred (100) metres of an entrance to any public park;
 - (i) stop to Sell within one hundred (100) metres of the property line of any land occupied by a public, separate or private school between the hours of 10:00 a.m. and 5:00 p.m. on any regular school day;
 - (j) stop to Sell within five hundred (500) metres of a business that Sells to the public products similar to those of the Ice Cream Truck vendor;
 - (k) stop to Sell any Articles for Sale within the boundaries of the Business Improvement Areas in the City as defined in Schedule 2;
 - (l) stop for longer than 10 minutes at any one serving location;
 - (m) ring bells or chimes or making any other recognizable sounds at any one location for more than twenty seconds or between the hours of 7 p.m. of one day and 10 a.m of the next day;
 - (n) Permit any Person not licenced under this By-law as a Driver or Owner, to assist in the driving of the Ice Cream Truck or to assist in or to engage in the Selling of Articles for Sale from the Ice Cream Truck; and
 - (o) operate an Ice Cream Truck between the hours of 10:00 p.m. of one day and 10:00 a.m. of the next day.
33. The provisions of subsections 32(f), 32(j) and 32(l) do not apply to a Driver with a Permit, while operating in a public park.

OWNER AND DRIVER DUTIES

34. Every Ice Cream Truck shall have:

- (a) attached at the top or near the highest point, at least two amber lights visible by a Person 1.52 metres in height at a distance of not more than 1.2 metres in front of or behind the Ice Cream Truck, and the Ice Cream Truck shall be equipped with a mechanical device causing such amber lights to flash alternately at all times when the Ice Cream Truck is stopped to Sell Articles for Sale and such device shall be so operated at all such times;
- (b) conspicuously displayed 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 22.8 centimetres;
- (c) a cover over each of its bumpers which shall be on a curve or angle to prevent a Person from standing, stepping on or hanging from the bumpers;
- (d) a "Mirror System" which makes it possible for the Driver to complete a 360° visual inspection of the area around the Ice Cream Truck;
- (e) body, doors and windows which are of sufficient sound construction to provide reasonable protection against dust, dirt, flies and other injurious matter or things;
- (f) a light colour in the interior which shall be repainted or refinished as often as required by the Licence Manager;
- (g) a floor made of a suitable impervious material, free of holes, cracks or crevices, and the surface thereof shall be readily washable and shall be kept clean and in good condition;
- (h) storage shelves painted or consisting of a suitable impervious material;
- (i) all parts and equipment thereof maintained in a clean and sanitary condition and in good repair;
- (j) a storage area for hard ice cream and related products maintained at a temperature no higher than -15 degrees Celsius and equipped with an accurate thermometer;
- (k) hard ice cream and related products maintained in a hard condition in the Ice Cream Truck at all times and no thawed, or partially thawed products shall be refrozen, stored or sold from the Ice Cream Truck;
- (l) adequate insulation to prevent fumes from the engine or engines from reaching the vending and dispensing section of the Ice Cream Truck;
- (m) a warning beeper device that is engaged when the Ice Cream Truck's transmission is placed in reverse gear; and
- (n) a music box with amplification of no greater than 8 watts.

OWNER AND DRIVER PROHIBITIONS

35. (1) No Owner or Driver shall operate or Permit to be operated an Ice Cream Truck unless all of the following equipment is present on or in the Ice Cream Truck and is in a good state of repair;

- (a) a portable litter basket which shall be carried inside the Ice Cream Truck while in motion and shall be suspended from the outside of the Ice Cream Truck in such a position so as to be easily accessible by Persons making purchases while the Ice Cream Truck is stopped for the purpose of Selling Articles for Sale;
- (b) two sinks of adequate size and non-corrodible material equipped with hot running water;
- (c) a tank to receive sink wastes;
- (d) a refrigerated cabinet for storage of ice cream mix and other milk products which cabinet shall be maintained at a temperature no higher than 5 degrees Celsius and shall be equipped with an accurate, indicating thermometer;
- (e) storage for dry products, sundae toppings, and syrups, which storage shall be easily cleanable and where necessary of a type readily dismantled for cleaning;
- (f) all dispensing equipment, whether for dry cones, single service containers, ice cream, syrups or toppings, of sanitary design and should be emptied and sterilized each night;
- (g) mechanical air-conditioning in the vending and dispensing part of the Ice Cream Truck;
- (h) screens or other devices to ensure adequate protection against flies and dust; and,
- (i) diesel generator for the refrigeration for the Ice Cream Truck.

NEW OR REPLACEMENT ICE CREAM TRUCK

36. If an Owner licensed under this By-law disposes or otherwise ceases to use their Ice Cream Truck, and acquires a new or replacement Ice Cream Truck for the purpose of operating under the Owner's Licence with the new or replacement Ice Cream Truck, the Owner shall not use the new or replacement Ice Cream Truck unless the Owner:
- (a) submits to the Licence Manager a certificate of approval for the new or replacement Ice Cream Truck from the Medical Officer of Health;
 - (b) produces and files with the Licensing Section a Motor Vehicle Liability Insurance Card and complies with section 25 of this By-law;
 - (c) produces for each new or replacement Ice Cream Truck, a current valid Motor Vehicle Permit issued by the Ministry of Transportation or if an Ice Cream Truck is a leased vehicle, provide a copy of the lease agreement for the Ice Cream Truck;
 - (d) produces and files with the Licensing Unit a valid Safety Standards Certificate;
 - (e) submits the new or replacement Ice Cream Truck for inspection;
 - (f) and receives the approval of the Licence Manager for use of the new or replacement Ice Cream Truck.

SPECIAL EVENT LICENCES

37. Where an Ice Cream Truck is required to be used at a Special Event, the Owner and where applicable, the Driver shall obtain a Special Event Licence.
38. An application for a Special Event Owner's Licence and a Special Event Driver's Licence shall be completed on the forms provided by the Licensing Unit and be accompanied by the fee set out in Schedule I.
39. The provisions of this By-law relating to an application for a Licence shall apply with necessary modifications to an application for a Special Event Owner's Licence and a Special Event Driver's Licence.
40. A Special Event Owner's Licence and a Special Event Driver's Licence issued under this By-law shall only be valid for the date(s) and location listed on the Licence.

ORDER TO COMPLY

41. Where a Licensee has contravened any provisions of this by-law, or where the Licensee has contravened any other City by-law relevant to the Licence, the Licence Manager may serve a written notice on the Licensee, advising of the contravention and directing compliance with the applicable by-law.

HEARING

42. (1) Before Council refuses to issue or to renew a Licence, or cancels, revokes or suspends a Licence, a written notice shall be given to the Applicant or Licensee advising them that a recommendation is to be made to Council with respect to their application, or with respect to their Licence, as the case may be.
- (2) The notice under subsection (1) shall inform the Applicant or Licensee that they are entitled to a hearing by the Appeal Committee if they deliver within seven (7) days after the notice under subsection (1) is served on the Applicant or Licensee, notice in writing requesting a hearing by the Appeal Committee and if they also deliver payment of the prescribed fee as set out in Schedule 1.
- (3) The notice under subsection (1) shall also inform the Applicant or Licensee that if they do not attend at the appointed time and place, the Appeal Committee may proceed in their absence and the Applicant or Licensee will not be entitled to any further notice in the proceedings.

APPEAL COMMITTEE - THE HEARING

43. (1) The provisions of Sections 5 to 15 and 21 to 24 of the *Statutory Powers Procedure Act* shall apply to all hearings conducted by the Appeal Committee under this by-law.
- (2) When a hearing date before the Appeal Committee has been fixed and the Applicant or Licensee who has been given notice of the hearing does not attend at the appointed time and place, the Appeal Committee may proceed in their absence and the Applicant or Licensee will not be entitled to any further notice in the proceedings.
- (3) At the conclusion of a hearing the Appeal Committee shall, as soon as practicable, make a written report to Council, which report shall:

- (a) summarize the evidence and the arguments presented by the parties;
 - (b) set out the findings of fact made by the Appeal Committee and its recommendation; and,
 - (c) set out the reasons for the recommendation on the merits of the Application;
- (4) Council may uphold or vary the decision of the Appeal Committee or do any act or make any decision that it might have done had it conducted the hearing itself and the Applicant or Licensee shall not be entitled to a further hearing on the matter before Council and the decision of Council shall be final.

LICENCE PRODUCTION

44. When requested by a Municipal Law Enforcement Officer, the Licence Manager, a Police Officer or a Police Cadet, every Person licensed under this By-law shall produce their Licence, photograph and any other documents required under this By-law.

RETURN OF LICENCE

45. (1) Where a Licence has been revoked, the Licensee shall return the Licence and where applicable the Owner's Plate to the Licence Manager within twenty-four (24) hours of receipt of notification of revocation and the Licence Manager may enter upon the premises of the Licensee for the purpose of receiving or taking the said Licence and where applicable the Owner's Plate.
- (2) No Person shall refuse to deliver to the Licence Manager, or in any way obstruct or prevent the Licence Manager from obtaining the Licence and where applicable the Owner's Plate.

NOTICE

46. (1) Any notice or order required to be given or served under this By-law is sufficiently given or served if delivered personally or sent by registered mail, addressed to the Person to whom delivery or service is required to be made at the last address for service appearing on the records of the Licensing Unit.
- (2) Where service is made by registered mail, the service shall be deemed to be made on the fifth day after the date of mailing, unless the Person on whom service is being made establishes that they did not, acting in good faith, through absence, accident, illness, or other cause beyond his control, receive the notice or order until a later date.

PENALTY

47. (1) Fine - for contravention

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, is 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.

VALIDITY

48. If a Court of competent jurisdiction declares any section or part of a section of this By-law invalid, it is the stated intention of Council that the remainder of the By-law shall continue to be in force.

SCHEDULES

49. All schedules attached to this By-law shall be deemed to be a part of this By-law.

INTERPRETATION

50. The provisions of the *Interpretation Act* R.S.O. 1990, c.I.11, shall apply to this By-law as required.

REPEAL

51. By-law 189-99 is hereby repealed

SHORT TITLE

52. This By-law shall be known as the Ice Cream Truck Vendors' By-law.

ENACTED AND PASSED this 15th day of December 2004.
Signed by: Nando Iannicca, Acting Mayor Crystal Greer, City Clerk

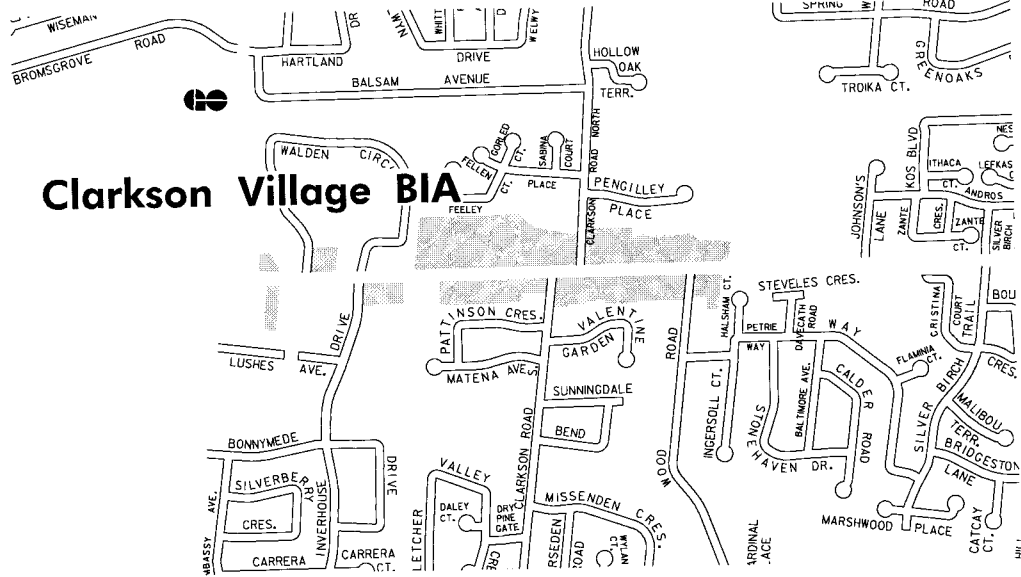
**Schedule 1 to By-law 523-04
relating to Fees**

<u>1. TYPE OF LICENCE</u>	2004*		2005*	
	<u>Original</u>	<u>Renewal</u>	<u>Original</u>	<u>Renewal</u>
Ice Cream Truck Driver	\$ 89.00	\$ 88.00	\$ 129.00	\$ 126.00
Ice Cream Truck Owner	\$ 152.00	\$ 144.00	\$ 177.00	\$ 169.00
Special Event Ice Cream Truck Driver	\$ 18.00		\$ 27.00	
Special Event Ice Cream Truck Owner	\$ 35.00		\$ 41.00	
<u>2. Other Fees</u>		<u>2004-2005*</u>		
Appeal Hearing Fee		\$ 334.00		
Driver's Photo Identification Card Replacement		\$ 12.00		
Photographs		\$ 20.00		
Replacement Fee For Loss Of Driver's or Owner's Licence		\$ 12.00		
Replacement Fee For Lost Owner's Licence Sticker		\$ 6.00		
Replacement Fee For Lost Owner's Licence Renewal Sticker		\$ 3.00		
Search of Ontario Driving Record		\$ 12.00		

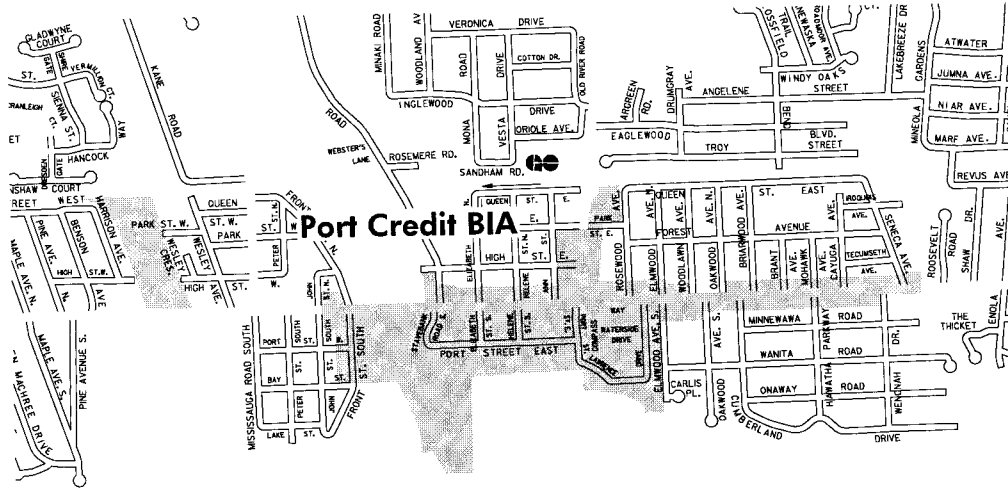
* NOTE: These rates shall automatically increase and be rounded to the nearest dollar on the first day of January in each year, starting in 2004, by the percentage increase in the All Items Index of the Consumer Price Index (not seasonally adjusted) for the Toronto Census Metropolitan Area, published by Statistics Canada, during the 12-month period ending on October 1 in the year immediately preceding the rate increase date.

SCHEDULE 2

CITY OF MISSISSAUGA
BIA BOUNDARIES



SCHEDULE 2 (cont)



LAKE ONTARIO

