
HALDIMAND COUNTY

Report BME-01-2021 Nuisance By-law

For Consideration by Council in Committee on March 30, 2021



OBJECTIVE:

To present a by-law that will regulate offensive, loud and generally disruptive congregations that interfere with the use of a public place.

RECOMMENDATIONS:

1. THAT Report BME-01-2021 Nuisance By-law be received;
2. AND THAT the by-law included as Attachment 1 to Report BME-01-2021 Nuisance By-law be presented for enactment.

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Approved: Craig Manley, MCIP, RPP, Chief Administrative Officer

EXECUTIVE SUMMARY:

Over the past few years, County Enforcement Services have attempted to deal with various public nuisance matters for which there are limited municipal regulatory tools. These have included street preaching, public protests, parties at abandoned quarries and other similar disruptive congregations. Staff have worked with the County's solicitor to develop, and are now recommending enactment of, a Nuisance By-law that will provide some level of regulatory control over these nuisance activities which have become a disturbance for residents and business owners.

BACKGROUND:

In the summer months of 2019, a small group of persons congregated weekly in downtown Dunnville disrupting residents, businesses and visitors by conveying verbal messages wherein the content was offensive, loud and generally disruptive. These 'street preachers' were deemed by many in the community as a nuisance, as interfering with personal enjoyment pursuits and generally offensive and intimidating. Subsequently, other situations have transpired that have been similarly disruptive to the community. Council met with staff and the County's solicitor to address concerns around these events and requested that staff (and the OPP) do whatever was possible with existing tools to ensure that nuisances were controlled and the public was not negatively impacted. To that end, the tools available to staff were/are limited, and consist primarily of the County's Noise By-law. While this regulatory instrument was helpful in quelling some nuisance activities relating to the street preaching, it had/has various limitations and is not sufficient on its own to equip County Enforcement Services to address public nuisance issues such as the street preaching in Dunnville.

Based on the foregoing, Council directed staff to work with the County's solicitor to develop a public nuisance by-law. The resolution of Council set out:

"THAT the County Solicitor be directed to work with County staff to develop a nuisance by-law for public spaces that will regulate personal and polarizing and/or divisive comments and/or limit the location of protest activities and/or require permits and report back to Council."

Staff and the County's solicitor have now developed a comprehensive by-law that will give more enforcement authorities to County staff to assist in quelling a variety of public nuisances – i.e. not just street preaching which was the impetus for this work. In addition to the street preaching, the draft public nuisance by-law also seeks to address other emerging public nuisance matters including the parties at the quarries in Hagersville and public protests on sensitive human rights matters. It is noted that other municipalities have recently moved in this same direction, including most recently the City of Hamilton in 2020. More and more municipalities are enacting nuisance by-laws to regulate certain nuisance activities in their respective communities to keep their communities safe and respectful.

ANALYSIS:

Legal Authority

Section 128 of the *Municipal Act, 2001* (Act) provides that, a local municipality may prohibit and regulate with respect to public nuisances. Public nuisance is not defined, but rather includes matters that, in the opinion of Council, are or could become or cause public nuisances. In this, there is some subjectivity but common municipal practices and experiences that would scope this to things such as vandalizing a public place, demeaning public protests, public gatherings/parties or indecent, or offensive acts. This is the basis of the development of the draft nuisance by-law included as Attachment 1.

Both the County solicitor and staff undertook best practice studies of a few municipalities that have enacted Nuisance By-laws, including London, Guelph and Oshawa. Also reviewed, were the County's current by-laws that impact the issue (e.g. Noise By-law), as well as case law and the freedom of expression provisions of the Charter of Rights and Freedoms.

County By-laws

In reviewing the County's by-laws that are currently available to respond to public nuisances, only the Noise By-law provides some regulatory control, for those loud and generally disruptive noise nuisances. That being said, the Noise By-law is limited to those noise issues where the sound is received at a residential point of reception. Yelling, shouting, hooting, whistling, singing or other vocal expression received at a point in a commercial establishment (e.g. a downtown commercial district) or received at a point in a public setting such as a road allowance, park or sidewalk is not regulated by the Noise By-law. In and of itself, this by-law does not give sufficient authorities to County staff to address the variety of public nuisances that can occur.

Municipal Review

In reviewing Nuisance By-laws from other municipalities, it is clear that there are wide variety of activities that can be regulated. Many of these – e.g. protests, public gatherings, indecent/offensive acts, public solicitation or carrying open alcohol have or could be expected to occur in Haldimand County and are recommended to be addressed as part of the draft by-law at Attachment 1.

Through the municipal review, it became clear that a nuisance by-law can provide some regulatory control for protest activities, which was the primary impetus for undertaking this work. However, it also was clear that a nuisance by-law could be used to regulate a wider variety of nuisance activities, including many that have been ongoing throughout the County for many years and have become a

disturbance for residents. Those are described in more detail in the section below entitled Nuisance Activities Experienced in the County.

Charter of Rights & Freedoms - Freedom of Expression

In considering how to approach Council's direction to draft a nuisance by-law to address personal and polarizing and/or divisive comments/language, both the content of the comments/language, the time, place and method of conveying the comments/language needed to be weighed against the freedom of expression found in Charter of Rights & Freedoms (Charter). The County solicitor has suggested to staff that abusive or insulting language as a personal invective, directed at either an individual or an identifiable group is not a freedom of expression protected under the Charter. As such the By-law will prohibit such abusive or insulting language when interfere with another person's use and enjoyment of a public place.

In addition, there is an opportunity for a nuisance by-law to also regulate other nuisance activities identified in this report, that have been generally disruptive, an annoyance and even had a negative affect on the quality of life for residents of the County for a number of years.

Nuisance Activities Experienced in the County

Enforcement Services, elected officials and other County Staff have over the years received complaints about a variety of nuisance activities occurring in the County with little or no ability to respond. These nuisance activities include:

- the summer parties at the quarries in Hagersville, where people attending these parties are intoxicated, or their actions amount to disorderly conduct;
- outdoor public urination or defecation in and around County parks or private property that is exposed to public view;
- loitering in the downtown cores;
- abusive or insulting language as a personal invective, directed at either an individual or an identifiable group;
- yelling, shouting or use of a sound amplification device on the Dunnville downtown sidewalks that is clearly audible to residents/visitors shopping or going about their daily routines (e.g. street preaching);
- protest or activist activities which physically block or impede the other person's ability to access or traverse the public place (e.g. anti-gay protests on Pride Day); and protest or activist activities which interfere with another Person's access to any private property.

The proposed Nuisance By-law will address each of these activities and give County Enforcement Services additional authorities to deal with the unruly and disruptive behaviors that can be associated with such activities. The proposed by-law would authorize our Officers or the OPP to enforce the By-law in any place to which the public has an express or implied right of access to (e.g. a highway, public park, public sidewalk, public beach), any premise and private property that is exposed to public view. In this regard, this is a very comprehensive by-law.

Mechanics of the By-law

The draft Nuisance By-law proposes to regulate the nuisances activities noted above by creating offences in 3 main areas:

1. Prohibiting a person from causing, creating, permitting or participating in a nuisance in any Public Place. The proposed definition of a nuisance encompasses a number of different activities to be included as a nuisance, including:
 - i. Loitering in any Public Place;
 - ii. fighting, or using profane or abusive language or gestures;

- iii. carrying open liquor;
- iv. remaining in or refusing to leave a Public Place after it is closed and/or when ordered to leave by an officer;
- v. littering;
- vi. putting up Graffiti;
- vii. defacing, damaging or vandalizing public or private property;
- viii. expectorating in a Public Place;
- ix. urinating or defecating in a public place;
- x. obstructing an officer in the course of his or her duties;
- xi. anything which is injurious to the health, or indecent, or offensive to the senses, or an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property; and
- xii. any other activity or conduct that is disorderly, annoying, unpleasant or obnoxious.

This section of the by-law would give authority to address such nuisances as those that have occurred at Esplanade Park in Port Maitland (e.g. overnight camping, urinating or defecating in the park), expectorating (forcibly spitting) on the sidewalk in the downtowns or people standing or waiting around idly in front of business.

2. Prohibiting a person from interfering with the use of a public place. In this approach the proposed regulations addresses:
 - i. using abusive or insulting language as a personal invective, directed at either an individual or an identifiable group;
 - ii. clearly audible sound created by yelling, shouting, hooting, whistling, singing or other vocal expression, or by the use of a sound amplification device;
 - iii. physically blocking or impeding the other Person's ability to access or traverse the Public Place;
 - iv. interfere with access to any private business, home or other private property through any of the actions described as described in 2. i, ii, and iii.

The above 4 points are particularly included in the proposed nuisance by-law to address and regulate personal and polarizing and/or divisive comments and actions associated with persons who intend to disrupt the public by conveying verbal messages wherein the content is offensive, loud and generally disruptive. By way of example, this section of the by-law would give authority to address nuisances such as street preachers, protests against minority/special interest groups, etc.

3. Nuisance parties. The draft regulations in this area, focus on those persons who are involved in the party, either by:
 - i. sponsoring, conducting, continuing, hosting, creating, attending, allowing, causing or permitting a Nuisance Party; or
 - ii. by being the owner and allowing, causing or permitting a nuisance party on private property under their possession or control.

A nuisance party means a social gathering which, by reason of the conduct of the persons in attendance, is annoying, unpleasant, indecent or offensive to the senses of another person, or otherwise interferes with the comfortable enjoyment of life and property by another person and includes but is not limited to:

- (i) disorderly conduct;
- (ii) public drunkenness or public intoxication;
- (iii) the unlawful sale, furnishing, or distribution of alcoholic beverages or controlled substances;

- (iv) the deposit of refuse on public or private property;
- (v) damage to or destruction of public or private property;
- (vi) pedestrian traffic, vehicular traffic, or illegal parking that obstructs the free flow of traffic or could interfere with the ability to provide emergency services;
- (vii) sound created by yelling, shouting, hooting, whistling, singing or other vocal expression, or by the use of sound amplification device that is Clearly Audible at a Point of Reception;
- (viii) unlawful open burning or fireworks;
- (ix) public disturbances, including public brawls or public fights;
- (x) outdoor public urination or defecation;
- (xi) use of or entry upon a roof not intended for such occupancy.

This section of the by-law would give authorities to address such nuisances as the summer parties at the abandoned quarries in Hagersville.

It is important to note that there will remain enforcement challenges and this by-law will not 'fix everything'. This by-law, like many of its kind, has enforcement limits based on the ability to witness. More specifically, an Officer needs to observe the infraction in order to act on it. Thus, enforcement activity would be tied to the Officer's availability to respond to/presence in a particular area and his/her working hours (which are typically regular day shifts). Anything outside of County staff availability would rely on the OPP and its agreement to enforce the by-law under the terms of the contract.

Next Steps

With a Nuisance By-law in place, Enforcement Services would be in a position to hold people accountable for their actions or lack of action in the case of permitting nuisance parties. Once a Nuisance By-law has been adopted, Staff will prepare an application to the Ministry of the Attorney General for set fines, which in other terms are out of court fine payments (i.e. tickets). Approval for set fine levels could be expected in the range between \$200 and \$300. For those occurrences where people are re-offenders or their action warrants a higher fine and/or additional legal remedies, charges can be laid by way of an information, which summonses the person before the courts, wherein a Justice of the Peace will upon conviction determine the appropriate fine, beyond the set fine up to and including the maximum prescribed for in the by-law being \$25,000.

FINANCIAL/LEGAL IMPLICATIONS:

The proposed Nuisance By-law was drafted by Sullivan, Mahoney with Staff's assistance. As a result the proposed Nuisance By-law reflects Sullivan, Mahoney's legal review, comments and recommendations.

Should the By-law be enacted by Council, staff will research set fines (tickets) approved by the Ministry of the Attorney General for other municipalities. Staff will then apply to the Ministry for approval of set fines for County.

The proposed Nuisance By-law is not on the agreed list of by-laws that the OPP has been contracted to enforce. While the By-law has been provided to the OPP for review, staff have not yet received any indication on whether the OPP will enforce.

STAKEHOLDER IMPACTS:

Not applicable.

REPORT IMPACTS:

Agreement: No

By-law: Yes

Budget Amendment: No

Policy: No

ATTACHMENTS:

1. Draft Nuisance By-law.