

THE CORPORATION OF HALDIMAND COUNTY

By-law Number /21

Being a by-law to regulate nuisances, interferes with another Person's use and enjoyment of a Public Place and nuisance parties.

WHEREAS section 5(3) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended ("the *Municipal Act, 2001*") provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a Municipality has the capacity, rights, powers and privileges of a natural *Person* for the purpose of exercising its authority under this or any other Act;

AND WHEREAS section 8 of the *Municipal Act, 2001* provides that the powers of a Municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on municipalities to enable them to govern their affairs as they consider appropriate, and to enhance their ability to respond to municipal issues;

AND WHEREAS section 10 of the *Municipal Act, 2001* provides that a Municipality may pass by-laws respecting: Economic, social and environmental well-being of the Municipality; Health, safety and well-being of *Persons*; Protection of *Persons* and property; Structures, including fences and signs;

AND WHEREAS Haldimand *County* is a single tier municipality and therefore falls within the definition of local municipality in accordance with S. 1 (1) of the *Municipal Act, 2001*;

AND WHEREAS section 128 of the *Municipal Act, 2001* provides that, without limiting sections 9 and 10, a local Municipality may prohibit and regulate with respect to public *Nuisances*, including matters that, in the opinion of Council, are or could become or cause public *Nuisances*, and the opinion of Council under this section, if arrived at in good faith, is not subject to review by any court;

AND WHEREAS, in the opinion of Council, the activities prohibited by this by-law are or could become or cause public *Nuisances*;

AND WHEREAS section 425 of the *Municipal Act, 2001* establishes that any *Person* who contravenes any by-law of the Municipality is guilty of an offence;

AND WHEREAS section 435 of the *Municipal Act, 2001* and By-law A-30 provide for the exercise of powers of entry by *Municipal Law Enforcement Officers* and police officers;

AND WHEREAS section 444 of the *Municipal Act, 2001* provides that a municipality may make an order requiring a *Person* who contravened a by-law or who caused or permitted the contravention or the *Owner* or occupier of the land on which the contravention occurred to discontinue the contravening activity;

NOW THEREFORE the Municipal Council of The Corporation of Haldimand *County* enacts as follows:

1. DEFINITIONS

In this By-law,

- a) “**Building**” means any permanent structure consisting of a roof supported by walls or columns that is used or intended to be used for the shelter, accommodation or enclosure of *Persons*, animals, goods, chattels or equipment;
- b) “**Clearly Audible**” means sound that can be heard, and in the case where multiple sounds are heard, the most dominant sound;
- c) “**County**” means the Corporation of Haldimand *County* and the land within its geographic limits;
- d) “**Detachment Commander**” means the *Detachment Commander* of the Haldimand *County* Detachment of the Ontario Provincial Police, or designate;
- e) “**Dwelling**” means a *Building* that is a house in which a person or persons reside, or that contains one or more apartments or other places of residence in which one or more persons reside;
- f) “**Graffiti**” mean images or lettering, scratched, scrawled, painted or applied by any form of marking on property that does not belong to the artist;
- g) “**Highway**” includes 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 or *Persons*, and includes the area between the lateral property lines thereof, including sidewalks and boulevards, and *Highways* shall have a corresponding meaning;
- h) “**Interference With The Use of a Public Place**” includes any of the actions described in Section 3 of the By-law;
- i) “**Loiter**” means to stand or wait around idly or without apparent purpose, or to travel indolently with frequent pauses without apparent destination;
- j) “**Municipal Law Enforcement Officer**” means a *Person* or *Persons* appointed by Council to enforce the provisions of the *County’s* By-laws;

- k) “**Nuisance**” includes:
- (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;
 - (xii) any other activity or conduct that is disorderly, annoying, unpleasant or obnoxious;
- l) “**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;
- m) “**Owner**” means the registered *Owner* of a Lot and includes, occupant, tenant, or any person who otherwise has rightful possession of or possessory control of any *Premises*;
- n) “**Person**” shall mean an individual, firm, corporation, association or partnership and includes an *Owner*;

- o) "**Point of Reception**" means any point on the *Premises* of a *Person* where sound or vibration originating from other than those *Premises* is Clearly Audible to that *Person*, or any point in a *Public Place* where sound is Clearly Audible to a *Person* located more than 6 meters from the source of the sound;
- p) "**Premises**" means any *Public Place* or private property in the *County*, including but not limited to *Highways*, parks, parking lots, beaches, quarries, fields, yards appurtenant to a *Building* or *Dwelling* or vacant lands, but does not mean a *Building* or *Dwelling*;
- q) "**Public Place**" means any place to which the public has an express or implied right of access' including but not limited to *Highway*, public park, parking lot, common, public square, public plaza, public sidewalk or public beach, and includes private property that is exposed to public view, but for the purposes of public urination and defecation, does not include a public washroom facility.

2. PROHIBITED ACTIVITY

- 2.1 No *Person* shall cause, create, permit or participate in a *Nuisance* in any *Public Place* in the *County*.

3. INTERFERENCE WITH USE OF PUBLIC PLACE

- 3.1 No *Person* shall interfere with another *Person's* use and enjoyment of a *Public Place* by using abusive or insulting language as a personal invective, directed at either an individual or an identifiable group.
- 3.2 No *Person* shall while in a *Public Place* emit, cause or permit to be emitted or caused any sound created by yelling, shouting, hooting, whistling, singing or other vocal expression, or by the use of a sound amplification device that is Clearly Audible at a *Point of Reception*.
- 3.3 No person shall interfere with another *Person's* use and enjoyment of a *Public Place* by physically blocking or impeding the other *Person's* ability to access or traverse the *Public Place*.
- 3.4 No person shall interfere with another *Person's* access to any private business, home or other private property through any of the actions described 3.1, 3.2 or 3.3 above.

4. DEEMED EXCEPTIONS

4.1 The following are deemed not to constitute an *Interference with use of a Public Place* or a *Nuisance* under this By-law:

- i. actions taken by a government during an emergency involving the health, safety or welfare of the public;
- ii. situations where the *County*, its servants, employees, contractors or agents are carrying out *County* operations or operating, maintaining or installing municipally-owned infrastructure, facilities or the like, except for the detonation of explosives;
- iii. situations where contractors or property *Owners* are carrying out construction projects;
- iv. noise created by the activity of snow removal;
- v. road or bicycle races, parades, circuses, entertainment activities in *Public Places* or neighbourhood social activities when such events are approved by the *County* and such activity or event is in compliance with the conditions set by the *County* in approving such activity or event;
- vi. lawful use of a public park for organized and unorganized sport and recreational activities, with or without a permit as permitted by County By-law 1534/15, being the Public Parks and facilities By-law;
- vii. other organized public events in *Public Places* where a permit has been issued by the *County* authorizing such event and the event complies with all of the conditions of such permit;
- viii. to the use of implements of husbandry in the operation of agricultural endeavours;
- ix. to the operation of excavation equipment when used in a cemetery in conjunction with interment services.

5. NUISANCE PARTIES

5.1 No *Person* shall sponsor, conduct, continue, host, create, attend, allow, cause or permit a *Nuisance Party*.

5.2 No *Person* who is an *Owner* shall allow, cause or permit a *Nuisance Party* on a *Premise* under their possession or control.

6. ORDER TO DISCONTINUE NUISANCE PARTY

- 6.1 Upon the order of the *Detachment Commander* or his or her designate or *Municipal Law Enforcement Officer* or his or her designate, a *Nuisance Party* shall cease and all *Persons* not residing on the *Premises* shall leave the *Premises* where it is occurring.
- 6.2 An order under this section shall identify:
- a. the location of the land on which the contravention occurred;
 - b. the reasonable particulars of the contravention of the By-law; and
 - c. the date and time by which there must be compliance with the order.
- 6.3 An order under this section may be given verbally or may be served personally on the *Person* to whom it is directed. If the order is given by regular mail to the last known address of that *Person*, and if given by registered mail, it shall be deemed to have been given on the third day after it is mailed. Service on a corporation can be effected by registered mail to the corporate mailing address.
- 6.4 No *Person* who does not reside on the *Premises* shall fail to leave the *Premises* after having been directed to leave the *Premises* by an order to discontinue activity under this By-law.

7. CLOSE PUBLIC HIGHWAY

- 7.1 The *Detachment Commander*, an Ontario Provincial Police Officer, or a *Municipal Law Enforcement Officer* may temporarily close any *Highway* or portion thereof to public travel under this By-law where a *Nuisance Party* is occurring on or adjacent to the *Highway* by placing a notice on the *Highway* to be closed in accordance with the *Municipal Act, 2001*.
- 7.2 Where a *Highway* or portion of a *Highway* has been closed under this By-law, the common law right of passage by the public over the *Highway* and the common law right of access to the *Highway* by an *Owner* of land abutting the *Highway* are restricted, as directed by the *Detachment Commander*, an Ontario Provincial Police Officer, or a *Municipal Law Enforcement Officer*.
- 7.3 No *Person* shall use a *Highway*, or portion of a *Highway* that has been closed under this By-law except with lawful authority or in accordance with the direction of the *Detachment Commander*, an Ontario Provincial Police Officer, or a *Municipal Law Enforcement Officer* pursuant to this section.
- 7.4 No *Person* shall, without lawful authority, remove or deface any barricade, device, detour sign or notice placed on a *Highway* pursuant to this By-law.

8. ENFORCEMENT AND INSPECTION

- 8.1 The provisions of this By-law may be enforced by a *Municipal Law Enforcement Officer*, an Ontario Provincial Police Officer, or a Municipal Law Enforcement Officer, or other individual duly appointed for the purpose of enforcing this By-law.
- 8.2 For the purpose of ensuring compliance with this by-law, a *Municipal Law Enforcement Officer* or Ontario Provincial Police Officer may at all reasonable times, pursuant to the *Municipal Act, 2001*, enter upon and inspect any land to determine whether or not the following are being complied with:
- a. this by-law;
 - b. a direction or order made under this by-law; or
 - c. a prohibition order made under s. 431 of the *Municipal Act, 2001*.

9. PENALTY

- 9.1 Every *Person* who contravenes any provision of this by-law is guilty of an offence, and upon conviction is liable to a fine, and such other penalties, as provided for in Part 1 the *Provincial Offences Act*.
- 9.2 Otherwise, every *Person* who contravenes any provision of this By-law is guilty of an offence, and on conviction is liable to a maximum fine of \$25,000.

10. SEVERABILITY

- 10.1 If any provision or part of this By-law is declared by any court or tribunal of competent jurisdictions to be illegal or inoperative, in whole or in part, or inoperative in particular circumstances, the balance of the By-law, or its applications in other circumstances, shall not be affected and shall continue to be in full force and effect.

11. CONTINUATION - REPETITION - PROHIBITED - BY ORDER

- 11.1 The court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the *Person* convicted, and such order shall be in addition to any other penalty imposed on the *Person* convicted.

12. SHORT TITLE OF BY-LAW

- 12.1 This By-law may be referred to as the "Public *Nuisance* By-law".

13. FORCE AND EFFECT

13.1 This By-law shall come into force and effect on the day it is passed.

READ a first and second time this 6th day of April, 2021.

READ a third time and finally passed this 6th day of April, 2021.

MAYOR

CLERK