
HALDIMAND COUNTY

Report PED-BC-08-2017 Regulating Loitering

For Consideration by Council in Committee on October 3, 2017



OBJECTIVE:

To report back to Council on the options and implications of enacting a by-law that would regulate loitering within Haldimand County.

RECOMMENDATIONS:

1. THAT Report PED-BC-08-2017 Regulating Loitering be received as information.

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Respectfully submitted: Craig Manley, MCIP, RPP, General Manager of Planning and Economic Development

Approved: Donald G. Boyle, Chief Administrative Officer

EXECUTIVE SUMMARY:

Haldimand County has the ability to regulate loitering under the *Municipal Act* and Council would be within its rights to pass a Loitering By-law.

The report identifies major challenges with enforcement.

Given the points discussed within the report, and the fact there are other tools available to address real concerns of nuisance or safety created by loitering, it is not guaranteed that the Ontario Provincial Police (OPP) would agree to append this by-law for after-hours enforcement, and therefore, staff are recommending that no further action be taken.

BACKGROUND:

This issue stems from a constituent complain about loitering in a portion of the downtown of Dunnville and the perceived negative impact to the business from this activity. On November 21, 2016, Council passed the following motion:

“THAT pursuant to the authority of the *Municipal Act*, staff be directed to report back on the options and implications of enacting a by-law that would regulate loitering within Haldimand County.”

ANALYSIS:

Authority:

The *Municipal Act* provides the authority to a local municipality to prohibit and regulate with respect to public nuisances, including matters that, in the opinion of Council, are or could become or cause public nuisances. As such, Haldimand County has the ability to regulate this type of conduct under the *Municipal Act* and Council would be within its rights to pass a Loitering By-law. Should Council decide to pass a by-law in this regard, it could apply to all public or private property when such activity is prohibited by notice. Alternatively, Council could scope a Loitering By-law to apply to only the downtown cores.

Staff's research indicates that there are municipalities in Ontario that have enacted Loitering By-laws or have enacted Public Nuisance By-laws with regulations regarding loitering within by-laws that enacted to regulate activities related to public nuisances. As an example, the municipalities of Thorold and St. Catharine's have passed Public Nuisance By-laws which include a prohibition against loitering. The Thorold and St. Catharine's by-laws were specifically put into place to deal with student issues such as intoxication and include loitering. These by-laws are enforced largely by the Niagara Regional Police. To the best of our knowledge no charges relating specifically to loitering have been issued.

Issues & Implications:

1. Challenges with Enforcement

From an enforcement perspective, it would require the ability to clearly define that an individual is in fact contravening the by-law and the definition of loitering. In 2015, the City of Pembroke passed a Loitering By-law. In Pembroke's Loitering By-law, they defined loiter in the following manner: *"Loiter" means to linger, hang about, travel indolently, and includes to rest and to stand, sit or recline without purpose relating to or any activity which is contrary to the property.* In the City of St. Catharine's, their Public Nuisances By-law *"Loiter" was defined: shall mean lingering on the way, to travel indolently with frequent pauses without any apparent destination.* An enforcement officer would need to observe the activity over an extended timeframe and be of the opinion that the individual in question had no other purpose that could explain why they are just hanging around. For example, what happens if the individual does not stay in one place but remains in a general area? Secondly, it depends on the nature and the scope of the problem. Before you could demonstrate an offense, you would have to really be able to prove someone is creating some kind of actual versus perceived nuisance through their loitering. This entails gathering evidence that would, depending upon the facts in each case, demonstrate to the courts a loitering, which also constitutes a nuisance, such as, obstructing or blocking the passage of pedestrians on a sidewalk, or otherwise, is interfering with another's lawful activity. This standard of proof would be required in order to obtain a conviction. It must be noted that an individual has the right to carry on an activity unless it constitutes an offence in itself. In the County's downtown cores, there are benches for the general use of persons. A person is not guilty of the offence merely because he or she is "hanging around" or sitting on the benches.

Finally, a further enforcement challenge would be to ensure that it cannot be construed as targeting a particular group of people such as those who may have financial disadvantages, addictions or mental health issues without compromising the Canadian Charter of Rights and Freedoms – a significant legal issue. So while Council has the authority to pass a by-law and such a by-law may act as a deterrent, there are some substantive challenges in terms of the ability to implement it.

2. Application

A key matter to be evaluated is whether the by-law would apply to specific geographic areas within the County (i.e. downtowns) or not. There are many circumstances where people may linger in a public place with no specific intent (i.e. public parks) where time limits on use (other than hours of operation)

are simply not reasonable to impose. Applying a by-law to the downtown core could have the effect of pushing individuals into other areas such as parks or residential areas. There would also be the issue of determining when the individual is just passing through an area where loitering is prohibited, or if they leave the area then to return at another time, which would add to the enforcement complexity.

3. Need

Other than the one constituent who has raised this concern with the Ward Councillor, Staff are unaware of any other complaints or requests in this regard. Given that the concern seems to be limited to a specific location within the County and that the BIA has recently requested that the benches be removed for the downtown area of Dunnville, the question remains, does the County need a Loitering By-law?

The issue of loitering can also be addressed through the Criminal Code of Canada. Currently, the Criminal Code of Canada, Section 175 makes it an offence for people who loiter in a public place and in any way obstruct persons who are in that place.

The OPP suggest that a better solution would be to deal with these individuals on a case by case basis. If these people are committing a mischief in any way, then the Police will deal with it. The service contract with the OPP provides that enforcement of any municipal by-law must be agreed to by the OPP and are enforced subsequent to the *Highway Traffic Act* and Criminal Code matters in terms of priority. Currently, the by-laws that have been agreed to are as follows:

- General Parking By-law
- Winter Control By-law
- Noise By-law
- Public Parks and Facilities By-law
- Open Air Fire By-law

The parameters that have been used to identify which by-laws are enforced are as follows:

- The by-law addresses health, safety or nuisance matters.
- The issues typically have an urgency or immediacy concern requiring a response.
- The by-law is necessary to provide the appropriate tool to address the concern – i.e. the OPP don't have other/more effective tools.
- The by-law is harmonized across the County.

Given these criteria and the fact there are other tools available to address real concerns of nuisance or safety created by loitering, it is not guaranteed that the OPP would agree to add this by-law for after-hours enforcement.

Staff have reviewed this with the County solicitor who concurs with the contents of the report, and it is staff's opinion, the above information will address Council's direction and that no further action will be taken.

FINANCIAL/LEGAL IMPLICATIONS:

Not applicable.

STAKEHOLDER IMPACTS:

Not applicable.

REPORT IMPACTS:

Agreement: No

By-law: No

Budget Amendment: No

Policy: No