

**THE CORPORATION OF THE  
TOWN OF PELHAM  
BY-LAW NO. 4228(2020)**

**A By-law to Promote and Regulate Physical Distancing during the  
COVID-19 Emergency and Establish a System of Administrative  
Penalties**

**WHEREAS** the World Health Organization has declared a worldwide pandemic regarding the Novel Coronavirus ("**COVID-19 Pandemic**");

**AND WHEREAS** on March 17, 2020, a Declaration of Emergency was made by the Province of Ontario pursuant to section 7.0.1 of the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E. 9 (the "**Act**") related to the COVID-19 Pandemic;

**AND WHEREAS** on March 27, 2020 the Province of Ontario granted power to municipal law enforcement officers to enforce Orders issued by the Province under the *Act* (the "**Provincial Orders**");

**AND WHEREAS** section 10(2) of the *Municipal Act, 2001*, S.O. 2001, c.25 (the "**Municipal Act, 2001**") provides that a municipality may pass by-laws respecting the health, safety and well-being of persons;

**AND WHEREAS** section 434 of the *Municipal Act, 2001* provides that a municipality may create a system for administrative penalties to be applied where a municipality is satisfied that a person has failed to comply with a by-law of the municipality;

**AND WHEREAS** the Town of Pelham has enacted By-Law 4221 (2020) – A By-law to enact an administrative monetary penalty system for non-parking related offences so as to adopt a consistent approach to bylaw enforcement;

**AND WHEREAS** the Town of Pelham considers it desirable to enact a by-law to support the intent and purpose of the Provincial Orders made under the *Act* in order to protect the health, safety and well-being of persons in the Town of Pelham by prohibiting certain activities and regulating physical distancing during the COVID-19 Emergency;

**AND WHEREAS** the Provincial Chief Medical Officer of Health has recommended physical distancing measures to prevent the spread of COVID-19, including maintaining a distance of at least two metres from other individuals who are not members of the same household;

**NOW THEREFORE** the Council of the Town of Pelham enacts as follows:

**PART 1- DEFINITIONS**

1.1 For the purposes of this By-law,

"**Authorized Staff**" means a Municipal Law Enforcement Officer, Police Officer, Provincial Offences Officer, Peace Officer and the Director of Fire and By-law Services;

"**By-law**" means this By-law;

"**Town**" means the Town of Pelham;

"**COVID-19 Emergency**" means the period of time commencing upon the

date of passing this By-law until the declaration of emergency made by the Province of Ontario under the *Act* in relation to the COVID-19 Pandemic has been terminated;

**“Director”** means the Director of Fire and By-law Services, or their respective designate, for the Town of Pelham;

**“Head of Council”** means the Mayor of the Town;

**“Person”** includes an individual, partnership, association, firm or corporation;

**“Police Officer”** includes an officer of the Niagara Regional Police;

**“Private Space(s)”** is any property owned by a non-governmental legal entity.

**“Proprietor”** means any person, company, governing body or agency which owns, controls, governs or directs activity carried on in a Public Space or Private Property and includes the person who is actually in charge thereof, but excludes the Corporation of the Town of Pelham;

**“Provincial Offences Act”** means the *Provincial Offence Act*, R.S.O. 1990, c. P33.

**“Public Space(s)”** means any outdoor or indoor space to which the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry.

## **PART 2 – GENERAL PROVISIONS**

2.1 Every person shall maintain a distance of at least two (2) metres from every other person who is not a member of the same household when in a Public Space or Private Space.

2.2 Proprietors shall take reasonable measures to ensure compliance with section 2.1 by:

- a) limiting the number of people allowed on their property;
- b) ensuring that the distancing measures specified in section 2.1 are being enforced on their property; and
- c) ensuring that people who refuse to comply with section 2.1 are promptly asked to leave their property and are reported to Authorized Staff upon failure to comply with this direction.

2.3 No person shall attend a social gathering of more than five (5) people, either in a Public Space or Private Space. Every owner or occupier of property shall ensure that no social gathering(s) of more than five (5) people occurs on their property.

2.4 For greater certainty, sections 2.3 and 2.4 do not apply to a gathering of members of a single household, or a gathering for the purpose of a funeral service that is attended by not more than 10 persons.

## **PART 3 – EXEMPTIONS**

3.1 This By-law does not apply to emergency services staff (fire, EMS, Police Officers), Town employees, Region of Niagara employees,

Provincial Government employees, their agents and assigns or persons hired or engaged by the Town to do work or perform services in a Public Space, while performing policing, municipal, or enforcement services, including but not limited to, the enforcement of this By-law.

#### **PART 4 - ADMINISTRATION AND ENFORCEMENT**

- 4.1 The Director is responsible for the administration and enforcement of this By-law and may appoint delegates or assign duties to Town staff under this By-law.
- 4.2 Town staff who carry out any action under this By-law are deemed to be Authorized Staff for the purposes of this By-law, in the absence of evidence to the contrary.
- 4.3 Authorized Staff may, at any reasonable time, enter and inspect all lands, buildings, structures or parts thereof that are subject to this By-law for the purposes of determining compliance with this By-law.
- 4.4 Despite section 4.3, inspections of any dwelling unit may only be performed in accordance with the *Municipal Act, 2001*.
- 4.5 For the purposes of this By-law, Authorized Staff may:
- a) require the production for inspection of documents or things relevant to the inspection;
  - b) inspect and remove documents or things relevant to an inspection for the purposes of making copies or extracts;
  - c) require information from any person concerning a matter related to an inspection; and
  - d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of an inspection.
- 4.6 Where any person contravenes any provision of this By-law, Authorized Staff may direct such person, verbally or in writing, to comply with this By-law. Every person so directed shall comply with such direction without delay.
- 4.7 No person shall prevent, hinder or obstruct, or attempt to hinder or obstruct any Authorized Staff in the exercise of any power or the performance of any activity or duty under this By-law.

#### **PART 5 – OFFENCES AND ADMINISTRATIVE PENALTIES**

- 5.1 Every Person who contravenes any provision of this By-law is guilty of an offence and is liable to pay a fine, and such other penalties, as provided for in the *Provincial Offences Act*.
- 5.2 If an offence under the By-law is continued on more than one day, the person who committed it is liable to be convicted for a separate offence for each day on which it is continued.
- 5.3 Each Person who contravenes any provision of this By-law shall, upon issuance of a Penalty Notice in accordance with the Administrative Penalty Process By-law 4228(2020), be liable to pay to the Town an Administrative Penalty in the amount of \$250.00 for each day on which

the contravention occurs or continues.

5.4 Administrative Penalty Process By-law 4228(2020) applies to each Administrative Penalty Notice issued pursuant to this By-law.

## **PART 6 – MISCELLANEOUS**

6.1 **Conflict:** In the event a discrepancy between this By-law and any statute, regulation, rule, by-law, order or instrument of the Province of Ontario or the Government of Canada, the provision that is the most restrictive prevails.

6.2 **Severability:** Should any section of this By-law be declared by a Court of competent jurisdiction to be ultra vires or illegal for any reason, the remaining parts shall nevertheless remain valid and binding, and shall be read as if the offending section or part had been struck out.

6.3 **Short Title:** This By-law may be referred to as the Pelham Physical Distancing By- law.

6.4 **Effective Date:** This By-law shall become effective on the date approved by Town Council and shall remain in force during the COVID-19 Emergency.

**PASSED** this 27th day of April, 2020

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Mayor Marvin Junkin

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Town Clerk Nancy Bozzato