

THE CORPORATION OF THE  
TOWN OF PELHAM  
BY-LAW NO. 4253(2020)

**Being a By-law to prohibit and abate public nuisances in public places within the Town of Pelham.**

**WHEREAS** section 128 of the *Municipal Act, 2001* provides that 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, Nuisance Parties, Public Urination and Defecation, Vomiting, Littering, Loitering, Vandalism, Graffiti, Hate Graffiti, knocking over objects on the Highway, unnecessary interference with use and enjoyment of Public Places, and nuisance feeding of wildlife are or could become or cause public nuisances;

**AND WHEREAS** section 425(1) 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 434.1(1) of the *Municipal Act, 2001* provides that a municipality may require a person to pay an administrative penalty if the municipality is satisfied that the person has failed to comply with a by-law;

**AND WHEREAS** section 435 of the *Municipal Act, 2001* provides 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;

**AND WHEREAS** it is the opinion of the Council of the Corporation of the Town that certain actions outlined in this by-law do constitute a public nuisance.

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

**1. Short Title**

1.1. The short title of this By-law is the "Nuisance By-law".

**2. Interpretation**

2.1. In this By-law:

- (a) "Town" means The Corporation of the Town of Pelham.
- (b) "Defecate" means to discharge excrement from the human body.
- (c) "Director" means the Director of Fire and By-law Services.
- (d) "Graffiti" means one or more letters, symbols, etchings, figures, inscriptions, stains howsoever made or otherwise affixed to a property or other markings that disfigure or deface a property but does not include a

mural authorized or permitted by the Town's Recreation, Culture and Wellness Department.

- (e) "Highway", for the purposes of this By-Law, includes a common and public highway, street, avenue, parkway, driveway, square, place, 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.
- (f) "Littering" means throwing, dropping, placing or otherwise depositing or permitting to be deposited any garbage, paper, plastic, paper products, plastic products, cans, rubbish, other debris or objects on public or private property, unless so authorized by the property owner.
- (g) "Loitering" means the lingering in a public place without due cause.
- (h) "Nuisance Party" includes:
  - (1) soliciting, including, without limitation,
    - (a) soliciting a person who is using, waiting to use, or departing from an automated teller machine;
    - (b) soliciting a person who is using or waiting to use a public toilet facility;
    - (c) soliciting a person who is waiting at a taxi stand or a public transit stop;
    - (d) soliciting a person who is in or on a public transit vehicle;
    - (e) soliciting a person who is in the process of getting in, out of, on or off a vehicle or who is in a parking lot;
    - (f) while on a roadway, solicit a person who is in or on a stopped, standing or parked vehicle.
  - (2) Loitering in any public place after having been requested by an officer to move on;
  - (3) fighting, screaming, yelling or using profane or abusive language or gestures;
  - (4) carrying open liquor or consuming liquor on Town property except where approved and permitted.
  - (5) obstructing, interfering with or otherwise impeding the movement of persons or vehicles;
  - (6) remaining in or refusing to leave a public place after it is closed and/or when ordered to leave by an officer;
  - (7) Littering;
  - (8) defacing, damaging or vandalizing public or private property;
  - (9) expectorating in a public place;
  - (10) obstructing an officer in the course of his or her duties;

- (11) 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
  - (12) any other activity or conduct that is disorderly, annoying, unpleasant or obnoxious.
- (i) “Nuisance Party” means a social gathering on Premises within the Municipality and which, by reason of the conduct of the persons in attendance, results in any one or more of the following activities occurring so as to constitute a public nuisance whether occurring on public or private property:
- (1) disorderly conduct;
  - (2) public drunkenness or public intoxication;
  - (3) the unlawful sale, furnishing, or distribution of alcoholic beverages or controlled substances;
  - (4) the deposit of refuse on public or private property
  - (5) damage to or destruction of public or private property
  - (6) pedestrian traffic, vehicular traffic, or illegal parking that obstructs the free flow of traffic or could interfere with the ability to provide emergency services;
  - (7) unreasonable noise, including loud music or shouting;
  - (8) unlawful open burning or fireworks;
  - (9) public disturbances, including public brawls or public fights;
  - (10) Public Urination or Defecation
  - (11) use of or entry upon a roof not intended for such occupancy;
- (j) “Officer” means a Municipal Law Enforcement Officer appointed to enforce the By-laws of the Town, a Police Officer or an Animal Control Officer employed by any local or provincial S.P.C.A.
- (k) “Owner” has the ordinary meaning and includes a Person who is for the time being managing or receiving the rent of the land or premises, whether on the Person’s own account or as agent or trustee of any other person, or who would receive the rent if the land and premises were let and also means the lessee or occupant of the property who, under the terms of a lease, is required to repair and maintain the property;
- (l) “Person” includes an individual, association, firm, partnership, corporation, trust, organization, trustee, or agent, and their heirs, executors, or legal representatives.

- (m) "Public Place" includes a Highway and any place to which the public has access as of right or invitation, express or implied, and private property that is exposed to public view, whether or not the property is owned by the person contravening the by-law.
- (n) "Solicit" means to request, in person, the immediate provision of money or another thing of value, regardless of whether consideration is offered or provided in return, using spoken, written or printed word, a gesture or other means.
- (o) "Urinate" means to discharge urine from the human body.
- (p) "Vehicle" includes automobile, motorcycle, van, truck, trailer, all-terrain vehicles (ATV), bus, mobile home, traction engine, farm tractor, road-building machine, bicycle, motor-assisted bicycle, motorized snow vehicle, street car and any other vehicle drawn, propelled or driven by any kind of power, including muscular power.
- (q) "Vomit" means to throw up the contents of the stomach by mouth.
- (r) "Young Person" means a person who is or, in the absence of evidence to the contrary, appears to be less than eighteen years old.

### **3. Prohibited Activity**

3.1 No Person shall cause, create or permit a nuisance in any public place in the Town.

(a) No Person shall, without reasonable excuse, urinate, vomit or defecate in a public place.

(b) For the purposes of this section, reasonable excuse means:

1. the contravention of this by-law must be inevitable, unavoidable and afford no reasonable opportunity for an alternative course of action that does not contravene this by-law; and
2. where the contravention of this by-law is the consequence of illness, the person did not contemplate or, acting reasonably ought not to have contemplated, that the person's actions would likely cause the illness or give rise to the contravention of this by-law.

3.2 No Person shall knock over, attempt to knock over, deface, attempt to deface, remove or attempt to remove a Canada Post mailbox, relay box, newspaper box, Blue Box, garbage container, traffic or street sign, utility pole or any other public or private property. This section shall not apply to Town employees, or any person under contract with the Town, acting under the Town's Waste Collection By-Law.

### **3.3 Graffiti**

3.3.1 This bylaw does not apply to an interior space or a public or private property or to a thin located entirely within the interior space on a property.

- 3.3.2 No person shall place or cause or permit graffiti to be placed on property.
- 3.3.3. No owner of property shall fail to maintain such property free of Graffiti
- 3.3.4. An Officer who finds Graffiti may give written notice to the Owner of the Property requiring compliance with this by-law within the time period specified in the notice but no sooner than 7 calendar days after the notice is given, unless the Graffiti includes obscene, offensive or hateful content, in which case the Graffiti must be removed within 5 calendar days.
- 3.3.5 No person shall fail to comply with a notice given under Section 6 of this by-law.
- 3.3.6. If the owner fails to comply with a notice, the Director of By-law and Fire Services or persons acting upon his or her instructions, may enter upon the lands at any reasonable time for the purposes of carrying out the work described in the notice.
- 3.3.7. Costs incurred by the Municipality in doing the work required to be done by the notice may be recovered by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes.

#### 3.4 Nuisance Parties

- 3.4.1 A social gathering shall only be declared a Nuisance Party by the Fire Chief, or his or her designate
- 3.4.2 Subject to the declaration of a Nuisance Party pursuant to Section 3.4.1 of this By-law, no Person shall create, cause, host, sponsor, conduct, continue, or permit a Nuisance Party.
- 3.4.3 Subject to the declaration of a Nuisance Party pursuant to Section 4.1 of the By-Law, an Officer may issue an Order directing that the Nuisance Party cease and that all Persons not residing at the Premises where the Nuisance Party has been declared shall immediately leave said Premises.
- 3.4.4. No Person who, individually or jointly with others, is an owner, occupant, tenant, or who otherwise has rightful possession of or possessory control of any Premises, shall allow, cause or permit a Nuisance Party on said Premises under their possession or control.
- 3.4.5. An Order under Section 3.4.3 of this By-Law shall identify:
  - (a) the Premises at which the contravention occurred; and
  - (b) the reasonable particulars of the contravention of this By-law
- 3.4.6 An Order under Section 3.4.3 of this By-Law may be given verbally or may be served personally on the Person(s) to whom it is directed.
- 3.4.6. No Person shall fail to comply with an Order issued pursuant to Section 4.3 of this By-law.

#### **4. Order to Discontinue Activity**

- 4.1 Where an Officer is satisfied that a person has contravened this By-law, the Officer may make an order requiring the Person who contravened the 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.
- 4.2 An order under subsection 4.1 shall set out:
- 4.2.1 reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred; and
  - 4.2.2 the date by which there must be compliance with the order.
- 4.3 Any Person who contravenes an order issued under subsection 4.1 is guilty of an offence.

#### **5. Administrative Penalties**

- 5.1 Administrative Penalty Process By-law 4221(2020) applies to each administrative penalty issued pursuant to this By-law.
- 5.2 Each person who contravenes any provision of this By-law shall, upon issuance of a penalty notice in accordance with Administrative Penalty Process By-law 4221(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.

#### **6. Offences**

- 6.1 Each Person who contravenes any provision of this By-law is guilty of an offence and on conviction is liable to a fine of:
- (c) not less than \$300 and not more than \$5,000;
  - (d) not less than \$400 and not more than \$10,000 for a second conviction of the same offence; and
  - (e) not less than \$500 and not more than \$25,000 for a third or subsequent conviction of the same offence.
- 6.2. Prosecution under this By-law shall not preclude any other legal actions required to recover damages required to repair, replace or restore damaged real or personal property, as the case may be.

#### **7. Notice**

- 7.1 Any notice or document respecting this By-law may be given in writing in any of the following ways and is effective:
- (a) when a copy is delivered to the Person to whom it is addressed;
  - (b) on the fifth (5th) day after a copy is sent by registered mail or regular mail to the Person's last known address;
  - (c) upon the conclusion of the transmission of a copy by facsimile transmission to the Person's last known facsimile transmission number; or
  - (d) upon the sending of a copy by e-mail transmission to the Person's last known e-mail address.

7.2. Subject to section 7.3, if a notice or any other document is issued in respect of a young person, the person who issued the notice or document shall as soon as possible give or cause to be given to a parent of the young person notice in writing of the notice or other document.

7.3. If the whereabouts of the parents of a young person are not known or it appears that no parent is available, a notice or any other document given under this By-law may be given to an adult relative of the young person who is known to the young person and is likely to assist the young person or, if no such adult relative is available, to any other adult who is known to the young person and is likely to assist the young person and who the person giving the notice considers appropriate.

## **8. Powers of Entry**

8.1 Pursuant to section 436 of the *Municipal Act, 2001* and in addition to any other powers of entry granted to the Town, an Officer may enter on the premises of any property at any reasonable time for the purpose of carrying out an inspection to determine whether or not any violation exists on the property in relation to any section of this By-law.

## **9. General**

9.1 For the purpose of section 23.2(4) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, it is the opinion of Council that the powers delegated to the Hearings Officer and to the Director pursuant to this By-law are of a minor nature.

## **10. Conflict**

10.1 This By-law shall not be construed to reduce or mitigate any restrictions or regulations lawfully imposed by the Town or by any governmental authority having jurisdiction to make such restrictions or regulations.

10.2 If there is a conflict between a provision of this By-law and a provision of any other Town By-law, the provision that establishes the higher standard to protect the health and safety of the public and to maintain clean and tidy condition on land shall apply.

## **11 Severability**

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

## **12 Effective Date**

12.1 This By-law is effective on the date of its passing.

12.2 By-law 2970 (2008) is hereby repealed.

12.3 By-law passed this 13<sup>th</sup> day of July, 2020

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Mayor, Marvin Junkin

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Nancy J. Bozzato, Town Clerk