



## The Corporation of the Town of Pelham

By-law No. 26-2024

### **Being a By-law to regulate the use of municipal parks in the Town of Pelham and to repeal By-law #1583(1993) and By-law No. 1608(1993).**

**WHEREAS** section 8 of the *Municipal Act, 2001*, S.O. 2001, c. 25 ("*Municipal Act, 2001*" or "the statute") provides that the powers of a municipality under the statute or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues;

**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 the statute or any other Act;

**AND WHEREAS** section 11 of the *Municipal Act, 2001* authorizes a lower-tier to pass by-laws respecting the public assets of the municipality, the economic, social and environmental well-being of the municipality, the health, safety and well-being of persons, and culture, parks and recreation;

**AND WHEREAS** section 40 of the *Liquor Licence Control Act, 2019*, S.O. 2019, c. 15, Sched. 22 ("*Liquor Licence Control Act, 2019*") authorizes the Council of a municipality to prohibit the possession of liquor in designated municipal recreational areas;

**AND WHEREAS** section 41 of the *Liquor Licence Control Act, 2019* authorizes the Council of a municipality to permit the possession or consumption of alcohol in a designated public place;

**AND WHEREAS** sections 425 and 429 of the *Municipal Act, 2001* authorize a municipality to create offences for the contravention of its by-laws and to establish a system of fines for offences under its by-laws;

**AND WHEREAS** section 434.1 of the *Municipal Act, 2001* authorizes a municipality to establish a system of administrative monetary penalties to assist the municipality in promoting compliance with its by-laws;

**AND WHEREAS** section 445 of the *Municipal Act, 2001* provides that a municipality, if satisfied that a by-law contravention has occurred, 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 do work to correct the contravention;

**AND WHEREAS** section 446 of the *Municipal Act, 2001* provides that if a municipality has authority to direct or require a person to do a matter or thing, the municipality may also provide that, in default of it being done by the person directed or required to do it, the matter of thing shall be done at the person's expense;

**AND WHEREAS** the Council of the Corporation of the Town of Pelham deems it necessary and desirable to regulate the use of parks and recreational areas in the Town of Pelham and to enact this By-law for that purpose;

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

**1. Purpose**

1.1. The purpose of this By-law is to regulate, control and prohibit certain activities at parks and recreational areas under the control of the Town to protect such facilities and promote their safe and enjoyable use by the public.

**2. Definitions**

2.1. In this By-law:

**“Administrative Penalty”** means an Administrative Penalty issued pursuant to Town of Pelham Administrative Penalty Process By-law for Non-Parking By-laws No. 68-2023, as amended from time to time.

**“Applicable Law”** means all applicable by-laws of the Town and Niagara Region and all applicable provincial and federal statutes and regulations.

**“Authorized Sign”** means any sign, placard, notice or informational device posted, placed or erected by the Town in, upon or in relation to any Park or Recreational Area.

**“Bicycle”** means a bicycle or motor assisted bicycle as defined in the *Highway Traffic Act*, R.S.O. 1990, c. H.8 (*“Highway Traffic Act”*).

**“By-law Enforcement Officer”** means a by-law enforcement officer of the Town and includes the Director.

**“Clerk”** means the Clerk of the Town or designate.

**“Council”** means the Council of the Town.

**“Director”** means the Director of Fire and By-law Services of the Town or designate.

**“Emergency Personnel”** means any Person(s) providing emergency response services including paramedics, firefighters and police officers.

**“Emergency Service Vehicle”** means an ambulance, a fire truck or other fire department vehicle, a police vehicle or a vehicle of the Ontario Ministry of Transportation.

**“Enforcement Authority”** means the Director, a By-law Enforcement Officer, and any Person appointed or otherwise delegated the authority to administer and enforce this By-law.

**“Liquor”** means spirits, wine and beer or any combination of them and includes any alcohol in a form appropriate for human consumption as a beverage, alone or in combination with any other matter.

**“Liquor Licence”** means a licence or permit issued by the Alcohol and Gaming Commission of Ontario in accordance with the *Liquor Licence and Control Act, 2019* for the purpose of serving liquor at a Special Event.

**“Motor Vehicle”** means a Motor Vehicle as defined in the *Highway Traffic Act*.

**“Niagara Region”** means the Regional Municipality of Niagara.

**“Nuisance”** means a Nuisance as defined and/or described in Town of Pelham Nuisance By-law No. 4253(2020), as amended from time to time.

**“Order”** means an Order issued to a Person under this By-law.

**“Organized Sporting Activity”** means a sport, game or similar activity pre-planned by or on behalf of a group or organization, whether or not formally constituted, including training and practices.

**“Owner”** means the registered owner of Private Property.

**“Park or Recreational Area”** means any land owned by or under the control of the Town that is established, dedicated, set apart or made available for public use and devoted to active or passive recreation and includes all buildings, structures, facilities and improvements thereon.

**“Permit”** means any permit or formal written permission or authorization issued by the Town, Niagara Region or any other government authority pursuant to and in accordance with any Applicable Law.

**“Person”** means an individual, corporation, partnership or association.

**“Private Property”** means Property owned by a Person other than the Town, Niagara Region, the Province of Ontario or Canada.

**“Property”** means any land or premises within the Town.

**“Public Place”** means a Park or Recreational Area designated under section 7 of this By-law as a Public Place where Liquor is permitted.

**“Special Event”** means a pre-planned event or function held at a Park or Recreational Area that is open to the public or to invitees including but not limited to a fair, exhibition, carnival, concert, festival, sporting event, film screening, theatre performance, assembly for political, religious or cultural purposes, wedding, or other similar event.

**“Town”** means the Corporation of the Town of Pelham or the geographic area of the municipality, as the context requires.

### **3. Application**

- 3.1. This By-law applies to all Parks and Recreational Areas in the Town of Pelham listed in Schedule “A”, as amended or updated from time to time, which is attached hereto and forms part of this By-law.
- 3.2. This By-law does not apply to cemeteries as defined in the *Funeral, Burial and Cremation Services Act, 2002*, S.O. 2002, c. 33.
- 3.3. This By-law does not apply to Private Property.

### **4. General Prohibition**

- 4.1. No Person shall use a Park or Recreational Area or cause or permit the use of a Park or Recreational Area except in accordance with this By-law and all Applicable Law.

### **5. Conditions of Entry**

- 5.1. All Persons who enter a Park or Recreational Area shall comply with this By-law, all Applicable Law, all Authorized Signs providing rules and regulations for use of the Park or Recreational Area, and the conditions of any applicable Permit.

- 5.2. No Person shall enter or be within any Park or Recreational Area between the hours of 11:00 p.m. and 5:00 a.m. without a Permit.
- 5.3. No Person shall enter or leave any Park or Recreational Area except through an established entrance or exit.
- 5.4. No Person shall enter or be within any prohibited or restricted area of any Park or Recreational Area without a Permit.
- 5.5. No Person shall enter or attempt to enter any building, facility or structure at any Park or Recreational Area that is sealed, locked or otherwise restricted from public access, without a Permit.
- 5.6. All Persons who enter a Park or Recreational Area are deemed to accept the conditions of entry set out herein and to enter the Park or Recreational Area at their own risk.

## **6. Prohibited Conduct in Parks and Recreational Areas**

- 6.1. While in a Park or Recreational Area, no Person shall:
  - (a) engage in riotous, threatening, violent or indecent conduct;
  - (b) use abusive, threatening or profane language;
  - (c) engage in conduct that may cause injury or damage to Persons or property;
  - (d) interfere with the use and enjoyment of the Park or Recreational Area by any other Person;
  - (e) disturb, disrupt or interfere with any event or activity for which a Permit has been issued;
  - (f) make, cause or permit any noise that contravenes Town of Pelham Noise Control By-law No. 4454(2022);
  - (g) cause, create or permit a Nuisance contrary to Town of Pelham Nuisance By-law No. 4253(2020);
  - (h) use any building, facility, structure or equipment for any purpose other than that for which it is obviously intended;
  - (i) climb any structure or equipment unless it is designed and intended for climbing;
  - (j) damage, destroy, deface, move or remove any building, facility, structure or equipment or any landscaping including but not limited to trees, shrubs, plants, flowers, soil, sand, rocks and wood;
  - (k) dig, construct upon or alter the grade of the Property;
  - (l) build, erect or install any temporary or permanent structure except as permitted under section 8 of this By-law;
  - (m) light, build or stoke any open fire or bonfire;
  - (n) use a barbecue with any fuel other than charcoal or propane in a tank not exceeding twenty (20) pounds capacity;
  - (o) leave a barbecue unattended at any time;
  - (p) disturb, touch or harm any wildlife or wildlife habitat;
  - (q) feed or attempt to feed any wildlife;
  - (r) deposit, provide or leave food that may attract or be used by wildlife or other animals;
  - (s) deposit, bury or scatter cremated human or animal remains;

- (t) dispose of refuse of any kind except that which is generated through the normal use of the Park or Recreational Area and is deposited in receptacles provided for such purpose;
- (u) throw or propel stones or other objects that may cause injury or damage to Persons or property;
- (v) possess or use a weapon of any kind including but not limited to any firearm, bow and arrow, or bladed weapon;
- (w) smoke, vape or use any tobacco or cannabis product contrary to Niagara Region By-law No. 112-2013;
- (x) possess or consume Liquor except as permitted under section 7 of this By-law; or
- (y) engage in any activity for which a Permit is required without having first obtained the said Permit.

## **7. Possession or Consumption of Liquor**

- 7.1. No Person shall sell, serve, possess or consume Liquor in any Park or Recreational Area unless authorized under a Liquor Licence.
- 7.2. Despite section 7.1, and subject to section 7.4, a Person who is at least 19 years of age may, without a Liquor Licence, possess an open container of Liquor and may consume Liquor in any Park or Recreational Area designated under this By-law as a Public Place.
- 7.3. The Park municipally known as Peace Park is hereby designated as a Public Place. For greater certainty, no other Park or Recreational Area listed in Schedule "A" is designated as a Public Place.
- 7.4. The exception prescribed by section 7.2 does not operate or apply at any time during which the Town is authorized under a Liquor Licence to sell or serve Liquor in a Public Place.
- 7.5. Sections 7.2 to 7.4 of this By-law shall be in effect commencing at 12:00 a.m. on May 1, 2024 and shall cease to be in effect at 11:59 p.m. on October 31, 2024.

## **8. Activities Prohibited Without a Permit**

- 8.1. No Person shall undertake, perform, cause or permit any of the following activities at any Park or Recreational Area without a Permit:
  - (a) arrange or participate in an Organized Sporting Activity;
  - (b) hold a Special Event;
  - (c) gather a group of more than twenty-five (25) Persons;
  - (d) convene, conduct or participate in any parade or procession;
  - (e) operate loudspeakers or sound amplification equipment;
  - (f) subject to section 7, possess or consume Liquor;
  - (g) sell or offer for sale any food, beverage or refreshment;
  - (h) sell or offer for sale any goods, merchandise or services;
  - (i) practice, carry on or conduct any trade, calling, business or occupation;
  - (j) solicit for any trade, calling, business, occupation or charity;
  - (k) play or bet at any game of chance for money or other value;
  - (l) distribute any handbill, notice, circular or advertisement;

- (m) operate any remote-controlled or other motor-driven aerial machine including model airplanes and drones;
- (n) take or permit to be taken for remuneration any photograph, film or digital recording unless an Authorized Sign permits such activities;
- (o) possess, ignite, discharge or set off any fireworks; or
- (p) place, construct, install or erect any temporary or permanent structure other than a tent commonly described as a pop-up tent or canopy, which is open on one (1) or more sides and has an area of no more than ten (10) square metres.

8.2. No Person shall undertake or participate in any activity for which a Permit is issued except in accordance with all terms and conditions of the Permit and in compliance with all Applicable Law.

## **9. Games and Sports**

- 9.1. No Person shall play or take part in any game, sport or similar activity at any Park or Recreational Area except in areas designated for such use and, where applicable, within sporting facilities that have been installed by the Town for such purposes.
- 9.2. No Person shall use a sports field, tennis court, pickleball court or other sporting facility at any Park or Recreational Area for a period of more than sixty (60) consecutive minutes at any time that another Person is waiting to use it.
- 9.3. No Person shall use a tennis court or pickleball court located in a Park or Recreational Area unless they are wearing rubber-soled, non-marking shoes.
- 9.4. No Person shall use golf clubs or equipment or strike a golf ball in any Park or Recreational Area.
- 9.5. No Person shall enter the waters of any fountain, ornamental pool, pond, lake or stream in any Park or Recreational Area unless such entry is permitted by an Authorized Sign.
- 9.6. No Person shall enter any swimming pool or splash pad area except during the times designated for use on an Authorized Sign.
- 9.7. No Person shall use a swimming pool in any Park or Recreational Area without being properly attired in appropriate swimwear.
- 9.8. No Person shall dress or undress adjacent to any swimming pool or splash pad area except in facilities provided for that purpose.
- 9.9. No Person shall fish in any Park or Recreational Area.
- 9.10. No Person shall ice skate in any Park or Recreational Area.
- 9.11. No Person shall camp, lodge or dwell in any Park or Recreational Area.

## **10. Motor Vehicles and Bicycles**

- 10.1. No Person shall operate a Motor Vehicle in any area of a Park or Recreational Area other than on a paved or gravel road or in a designated parking area.

- 10.2. No Person shall use a Bicycle in any area of a Park or Recreational Area where an Authorized Sign prohibits such use.
- 10.3. No Person shall operate a Motor Vehicle or Bicycle in any Park or Recreational Area at a speed in excess of twenty (20) kilometres per hour unless an Authorized Sign provides otherwise.
- 10.4. No Person shall operate Motor Vehicle or Bicycle in any Park or Recreational Area in a manner that obstructs, inconveniences or endangers any other Person or in contravention of the *Highway Traffic Act*.
- 10.5. No Person shall park or leave a Motor Vehicle in any area of a Park or Recreational Area other than a designated parking area.
- 10.6. No Person shall operate, park or leave a Motor Vehicle at any Park or Recreational Area between the hours of 11:00 p.m. and 5:00 a.m. without a Permit.
- 10.7. No Person shall operate, park or leave a Motor Vehicle at any Park or Recreational Area in a manner that contravenes Town of Pelham Town Property Parking By-law No. 4483(2022).
- 10.8. No Person shall wash, clean, polish, service, maintain or make non-emergency repairs to a Motor Vehicle at any Park or Recreational Area.
- 10.9. No Person shall use any part of a Park or Recreational Area for the purpose of teaching, coaching or instructing any Person on the use or operation of a Motor Vehicle.
- 10.10. Motorized vehicles that are primarily for leisure or recreational use, including but not limited to snowmobiles, mini-bikes, ATVs, dune buggies and similar vehicles, shall not be operated in any Park or Recreational Area unless an Authorized Sign permits such use.

## **11. Animals**

- 11.1. No Person shall bring any animal into a Park or Recreational Area except:
  - (a) a dog that is leashed and under the control of the Person in accordance with Town of Pelham Animals at Large By-law No. 97-2010; or
  - (b) a service animal as defined in the *Provincial Animal Welfare Services Act, 2019, S.O. 2019, c. 13*.
- 11.2. No Person shall cause or permit any animal, other than a service animal, to enter any swimming pool, splash pad, pond, garden, playground or sports field at a Park or Recreational Area or any other area of a Park or Recreational Area where such entry is prohibited by Authorized Signs.
- 11.3. Any Person who brings a leashed dog or service animal into a Park or Recreational Area shall ensure that it does not disturb or harm any wildlife.
- 11.4. Any Person who brings a leashed dog or service animal into a Park or Recreational Area shall ensure that animal waste is cleaned up immediately and deposited in an appropriate waste container or removed from the Park or Recreational Area.

## **12. Encroachments**

- 12.1. No Person shall cause or permit any encroachment of any kind upon a Park or Recreational Area including but not limited to the construction, installation or maintenance of any fence, building or structure, the storage or dumping of any organic or inorganic materials, and the planting or cultivation of trees, shrubs or flowers.
- 12.2. Where a Person causes or permits an encroachment upon a Park or Recreational Area from an adjacent or abutting Private Property, an Enforcement Authority may make an Order requiring the Person who caused or permitted the encroachment and/or the Owner of the Private Property to remove the encroachment within the time specified in the Order, which shall be not less than ten (10) days.
- 12.3. An Order made under section 12.2 may be served by regular mail, registered mail or hand delivered to the last known address of the Person(s) to whom it is issued or by email to the last known email address of the Person(s) to whom it is issued.
- 12.4. Where an Order is served pursuant to section 12.3 and the encroachment is not removed within the time specified therein, the Town may do any work necessary to remove the encroachment at the expense of the Person(s) in default of the Order.
- 12.5. The Town may recover the cost of any work done pursuant to section 12.4 of this By-law by adding the cost to the tax roll for the Private Property from which the encroachment originated and collecting it in the same manner and with the same priority as municipal taxes.

## **13. Exemptions**

- 13.1. This By-law does not apply to Emergency Personnel or Emergency Service Vehicles while carrying out their lawful duties.
- 13.2. This By-law does not apply to employees or agents of the Town while engaged in works or services undertaken for or on behalf of the Town.

## **14. Enforcement**

- 14.1. This By-law shall be administered and enforced by the Town and Enforcement Authorities.
- 14.2. An Enforcement Authority may, for the purpose of enforcing this By-law, exercise any power, authority or remedy granted to the Town pursuant to the *Municipal Act, 2001*.
- 14.3. No Person shall obstruct or hinder, or attempt to obstruct or hinder, any Enforcement Authority in the exercise of a power or the performance of a duty under this By-law.

## **15. Penalty**

- 15.1. This By-law shall be administered and enforced by the Clerk and Enforcement Authorities.
- 15.2. Every Person who contravenes any provision of this By-law is guilty of an offence and upon conviction is liable to such penalties as are provided for in the *Municipal Act, 2001* and the *Provincial Offences Act, R.S.O. 1990, c. P.33*.



- 15.3. Administrative Penalty Process By-law for Non-Parking By-laws No. 68-2023 applies to each administrative penalty issued pursuant to this By-law.
- 15.4. Every Person who contravenes any provision of this By-law shall, upon issuance of a penalty notice in accordance with Administrative Penalty Process By-law for Non-Parking By-laws No. 68-2023, be liable to pay to the Town an administrative penalty in accordance with that By-law.

## **16. General**

- 16.1. The short title of this By-law is the "Parks and Recreational Areas By-law".
- 16.2. If any provision of this By-law is found by any court or tribunal of competent jurisdiction to be illegal or inoperative, in whole or in part, the balance of the By-law shall not be affected and shall remain in full force and effect.
- 16.3. If there is a conflict between a provision of this By-law and a provision of any other By-law of the Town, the provision that establishes the higher standard shall prevail.
- 16.4. This By-law shall be read with all changes in number or gender as are required by context.
- 16.5. Any reference to legislation in this By-law includes the legislation and any amendment, replacement, subsequent enactment or consolidation of such legislation.
- 16.6. The Town Clerk is hereby authorized to effect any minor modifications or corrections solely of an administrative, clerical, numerical, grammatical, semantical or descriptive nature or kind to this By-law as are determined to be necessary.

## **17. Repeal and Enactment**

- 17.1. By-law #1583(1993), being a by-law to prohibit the possession of liquor in recreational areas, together with all amendments thereto, is hereby repealed and replaced.
- 17.2. By-law No. 1608(1993), being a by-law to regulate parks and facilities in the Town of Pelham, together with all amendments thereto, is hereby repealed and replaced.

## **18. Effective Date**

- 18.1. This By-law shall come into force on the date that it is enacted.

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Marvin Junkin, Mayor

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William Tigert, Town Clerk

## **SCHEDULE "A"**

### **Parks and Recreational Areas**

Centennial Park
Cherry Ridge Park
Harold Black Park
Harold S. Bradshaw Memorial Park
Hillcrest Park
Hurleston Community Park
Lookout Park
Leslie Hills Park
Marlene Stewart Streit Park
North Pelham Park
1120 Haist Street Park
Peace Park
Pelham Corners Park
Rolling Meadows Park
Weiland Heights Park
Woodstream Park
Steve Bauer Trail
Gerry Berkhout Trail
Jane Haist Trail
John Nemy Trail