



CITY OF KINGSTON

REPORT TO ADMINISTRATIVE POLICIES COMMITTEE

Report No.: AP-10-005

TO: Chair and Members of the Administrative Policies Committee

FROM: Hal Linscott, City Solicitor and Director of Legal Services

RESOURCE STAFF: Mark McLaughlin, Associate Legal Counsel
Terry Willing, Director, Building and Licensing
Kim Leonard, Manager, Licensing and Enforcement
Inspector Brian Cookman, Kingston Police
Inspector Antje McNeely, Kingston Police

DATE OF MEETING: March 11, 2010

SUBJECT: Public Nuisance By-Law

EXECUTIVE SUMMARY:

At the regular meeting of City Council on September 1, 2009, Council approved a motion directing staff to further review the proposed Public Nuisance By-law. In particular, City staff was directed to consider the following:

1. Definition of "nuisance"; and
2. Provide a draft of the "short form wording provision"

RECOMMENDATION:

THAT the Committee review and recommend adoption by Council of the following:

1. Proposed Public Nuisance By-Law, a copy of which is attached as Exhibit "A".
2. Draft short form wording and set fine application is attached as Exhibit "B".

AUTHORIZING SIGNATURES:

ORIGINAL SIGNED BY DIRECTOR OF LEGAL SERVICES

Hal Linscott, City Solicitor and Director of Legal Services

ORIGINAL SIGNED BY CHIEF ADMINISTRATIVE OFFICER

Gerard Hunt, Chief Administrative Officer

CONSULTATION WITH THE FOLLOWING COMMISSIONERS:

Commissioner Beach, <i>Sustainability & Growth</i>	N/R
Acting Commissioner Willing, <i>Community Development Services</i>	√
Commissioner Leger, <i>Corporate Services</i>	N/R
Jim Keech, President, <i>Utilities Kingston</i>	N/R

(N/R indicates consultation not required)

OPTIONS/DISCUSSION:

The *Municipal Act, 2001* provides broad powers to the City to regulate and prohibit activities within its boundaries. Included in these powers is the ability to pass by-laws to prohibit and regulate and to create offences for contraventions of the by-law. The relevant sections of the *Municipal Act, 2001* are reproduced below.

**PART II
GENERAL MUNICIPAL POWERS**

Scope of powers

8. (1) The powers of a municipality under this 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. 2006, c. 32, Sched. A, s. 8.

Public nuisances

128. (1) Without limiting sections 9, 10 and 11, 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. 2001, c. 25, s. 128 (1); 2006, c. 32, Sched. A, s. 68.

The types of behavior the proposed by-law would regulate include spitting and urinating in public as well as littering and interfering with items left out for re-cycling and garbage collection. These behaviors have been identified as a nuisance and worthy of sanctions that might be provided for in a by-law framework as opposed to using sanctions provided for in the Federal criminal statutes. The proposed by-law contains, in Section 1, a list of defined terms including "Nuisance". For greater clarity the proposed by-law has been amended to expand the Whereas clauses to include the following:

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

Set fines and short form wording are not included in the proposed by-law. A draft of the set fine and short form wording application has been included with this report. Once the by-law has been passed the application for approval of the draft short form wording and suggested set fine amounts will be forwarded to the Regional Senior Justice of the Ministry of the Attorney General. If the Regional Senior Justice approves the set fines and short form wording, City By-Law Enforcement and Kingston Police may deal with offenders by issuing a Part I Provincial Offence Notice. Offenders have the option of paying the set fine out of Court or attending Court to deal with the matter.

If persons charged with an offence under a City by-law choose to have a trial, the Officer who issued the ticket may be required to attend court to give evidence.

EXISTING POLICY/BY LAW:

N/A

NOTICE PROVISIONS:

N/A

ACCESSIBILITY CONSIDERATIONS:

N/A

FINANCIAL CONSIDERATIONS:

N/A

CONTACTS:

Terry Willing, Director, Building and Licensing	(613) 546-4291, ext 3240
Kim Leonard, Manger, Licensing and Enforcement	(613) 546-4291, ext 3222
Mark McLaughlin, Associate Legal Counsel	(613) 546-4291, ext 1385
Inspector Antje McNeely, KPD	(613) 549-4660
Inspector Brian Cookman, KPD	(613) 549-4660

OTHER CITY OF KINGSTON STAFF CONSULTED:

N/A

EXHIBITS ATTACHED:

Exhibit "A" – Draft Nuisance By-Law
Exhibit "B" – Draft short form wording and set fine application
Exhibit "C" – Report of August 13, 2009 to Administrative Policies Committee

BY-LAW NO. 2010-

A BY-LAW OF THE CORPORATION OF THE CITY OF KINGSTON TO REGULATE THE USE OF PROPERTIES RELATIVE TO PUBLIC NUISANCE

PASSED: , 2010

WHEREAS Section 8(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that the powers of a municipality under any Act shall be interpreted broadly so as to confer broad authority on municipalities to enable municipalities to govern their affairs as they consider appropriate and enhance their ability to respond to municipal issues;

AND WHEREAS the *Municipal Act, 2001*, S.O. 2001, c. 25, Section 9, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the Act;

AND WHEREAS the *Municipal Act, 2001*, S.O. 2001, c. 25, Section 127(c), as amended, provides that Council may prohibit the depositing of refuse or debris on the land without the consent of the owner or occupant of the land;

AND WHEREAS the *Municipal Act, 2001*, S.O. 2001, c. 25, Section 128(1), as amended, 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 public nuisances;

AND WHEREAS it is the opinion of the Council of the Corporation of the City of Kingston that certain actions outlined in this by-law do constitute a public nuisance;

NOW THEREFORE the Council of the Corporation of the City of Kingston hereby enacts as follows:

1. DEFINITIONS

In this By-Law, the following definitions apply:

“Boulevard” shall mean that part of a highway, other than a sidewalk, that lies between the shoulder or curb and the boundary of the adjoining property;

“City” shall mean the Corporation of the City of Kingston;

“Foul” or “Fouling” shall mean and includes spitting, urinating, defecating or any other act of defacing property;

“Highway” shall include a common and public highway, common and public walkway, 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 and includes the area between the lateral property lines thereof;

“Litter” shall mean to throw, drop, place, or otherwise deposit or permit to be deposited any garbage, paper, plastic, paper products, plastic products, cans, glass, rubbish, or other debris on property, but does not including items placed in a garbage or recycling container as long as the items remain in said containers;

“Nuisance” shall mean:

- (i) Littering by a person on any City property, including but not limited to vacant or other lands owned by the City, a highway, roadway, sidewalk, water feature, or boulevard, unless so authorized by the City;
- (ii) Littering by a person on any private property not owned by such person;
- (iii) The picking over, interference with, disturbing, removing or scattering of any material placed on property or in a receptacle for the purpose of the collection of refuse or recyclable materials;
- (iv) Fouling or permitting the fouling of any property; or
- (v) Blocking, interfering with or otherwise impeding the passage of any pedestrian on any City sidewalk or portion thereof, unless he or she is the driver of an emergency vehicle as defined within the Highway Traffic Act, R.S.O. 1990, c.H.8, as amended, or a vehicle otherwise engaged in works undertaken for or on behalf of the City or Utilities Kingston.

“Person” shall mean and include any individual, corporation, partnership, company, association or party and the heirs, executors, administrators, or other legal representative of such person, to whom the context can apply according to law; and shall include any group of persons comprising a society or other organization and shall include the plural wherein the context requires;

“Roadway” shall mean the portion of a highway that is improved, designed or ordinarily used for vehicular traffic, but does not include the shoulder;

“Sidewalk” shall mean that portion of the City’s right-of-way that is intended or used by the general public for the passage of persons, including a boulevard;

“Water feature” includes rivers, lakes, streams, creeks, storm water management ponds, locks, reservoirs, estuaries, swales, man made or natural streams, man made ditches, and other geographical features containing water at some time during the year but does not include private or municipal swimming pools or decorative man made, self-contained garden ponds on private residential property.

2. REGULATIONS

2.1 No person shall cause a nuisance.

3. ENFORCEMENT

- 3.1 The provisions of this By-Law shall be enforced by the By-Law Enforcement Officer, Police Officer, Peace Officer, or other individual duly appointed for the purpose of enforcing this by-law.
- 3.2 No person shall obstruct, hinder or otherwise interfere with any By-Law Enforcement Officer, Police Officer, Peace Office, or other individual duly appointed while carrying out an investigation, making inquiries, or performing their duties for the purposes of enforcing this by-law.

4. OFFENCE AND PENALTY PROVISIONS

- 4.1 Any person who contravenes any provision of this By-Law is guilty of an offence and, upon conviction, is subject to a fine as provided in the Provincial Offences Act as amended, and to any other applicable penalties.
- 4.2 If this by-law is contravened and a conviction entered, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may, in addition to any other remedy and to any penalty that is imposed, make an order prohibiting the continuation or repetition of the offence by the person convicted.

5. VALIDITY

- 5.1 If a court of competent jurisdiction declares any provision, or any part of a provision, of this by-law to be invalid, or to be of no force and effect, it is the intention of Council in enacting this by-law that each and every provision of this by-law authorized by law be applied and enforced in accordance with its terms to the extent possible according to law.
- 5.2 The short title of this By-Law is the "Public Nuisance By-Law".

6. COMMENCEMENT

- 6.1 This By-Law shall come into force and take effect on the date of its passing.

GIVEN FIRST AND SECOND READINGS

GIVEN THIRD READING AND PASSED

CITY CLERK

MAYOR

THE CORPORATION OF THE CITY OF KINGSTON

PART I Provincial Offences Act

By-Law No. 2010-____, “A By-Law of the Corporation of the City of Kingston to Regulate the Use of Properties Relative to Public Nuisance”

ITEM	COLUMN 1 Short Form Wording	COLUMN 2 Provision Creating Or Defining Offence	COLUMN 3 Set Fine
1.	causing a nuisance by littering City property	2.1	\$180.00
2.	causing a nuisance by littering private property	2.1	\$180.00
3.	causing a nuisance by interfering with material placed in receptacle for collection	2.1	\$180.00
4.	causing a nuisance by fouling of property	2.1	\$180.00
5.	causing a nuisance by impeding pedestrian passage on a sidewalk	2.1	\$180.00

Note: Penalty provision for the offences indicated above is Section 4.1 of By-Law No. 2010-____, a certified copy of which has been filed.



Report No.: AP-09-008

TO: Chair and Members of the Administrative Policies Committee
FROM: Hal Linscott, City Solicitor and Director of Legal Services
RESOURCE STAFF: Mark McLaughlin, Associate Legal Counsel
Terry Willing Director Building and Licensing
Kim Leonard, Manager Licensing and Enforcement
Inspector Brian Cookman, Kingston Police
Inspector Antje McNeely, Kingston Police
DATE OF MEETING: August 13, 2009
SUBJECT: Public Nuisance By-Law

EXECUTIVE SUMMARY:

At the regular meeting of City Council on November 25, 2008, Council approved a motion directing staff to research Public Nuisance By-laws. In particular, City staff was directed to consider the following:

1. Similar By-Laws adopted in other Ontario municipalities;
2. Determine whether or not a Public Nuisance By-Law would be practical and reasonable in terms of implementation and deterrence; and
3. Review existing City of Kingston By-Laws containing provisions to regulate or prohibit public nuisances and consider the feasibility of consolidation of those provisions into one By-Law;

- and further-

City staff was directed to consult with members of the Kingston Police.

RECOMMENDATION:

THAT the Committee review and recommend adoption by Council of the following:

1. Proposed Public Nuisance By-Law, a copy of which is attached as Exhibit "A".

AUTHORIZING SIGNATURES:

 _____ Hal Linscott, City Solicitor and Director of Legal Services
 _____ Gerard Hunt, Chief Administrative Officer

CONSULTATION WITH THE FOLLOWING COMMISSIONERS:

Commissioner Beach, <i>Sustainability & Growth</i>	N/R
Commissioner Thurston, <i>Community Development Services</i>	
Commissioner Leger, <i>Corporate Services</i>	N/R
Jim Keech, President, <i>Utilities Kingston</i>	N/R

(N/R indicates consultation not required)

OPTIONS/DISCUSSION:

1. General

The *Municipal Act, 2001* provides broad powers to the City to regulate and prohibit activities within its boundaries. Included in these powers is the ability to pass by-laws to prohibit and regulate and to create offences for contraventions of the by-law. The relevant sections of the *Municipal Act, 2001* are reproduced below.

Municipal Act, 2001

Powers exercised by council

5. (1) The powers of a municipality shall be exercised by its council. 2001, c. 25, s. 5 (1).

2. PART II GENERAL MUNICIPAL POWERS

3. Scope of powers

4. **8. (1)** The powers of a municipality under this 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. 2006, c. 32, Sched. A, s. 8.

Public nuisances

128. (1) Without limiting sections 9, 10 and 11, 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. 2001, c. 25, s. 128 (1); 2006, c. 32, Sched. A, s. 68.

Other Municipalities in Ontario, including London, Waterloo, Cambridge and Kitchener, have implemented Public Nuisance By-Laws.

Kingston Police advise that enforcement agencies outside the Kingston area have responded positively to the introduction of a separate Public Nuisance By-Law. A Public Nuisance By-Law was viewed as another tool for curbing inappropriate behaviour without imposing criminal sanctions. The types of behavior the proposed by-law would regulate include, spitting and urinating in public as well as littering and interfering with items left out for re-cycling and garbage collection. These behaviors have been identified as a nuisance and worthy of sanctions that might be provided for in a by-law framework as opposed to using sanctions provided for in the Federal criminal statutes.

Once the Regional Senior Justice of the Ministry of the Attorney General approves set fines and short form wording for by-law offences, City By-Law Enforcement staff or Kingston Police may deal with offenders by issuing a Part I Provincial Offence Notice. Offenders have the option of paying the set fine out of Court or attending Court to deal with the matter.

If persons charged with an offence under a City by-law choose to have a trial the Officer who issued the ticket might be required to attend court to give evidence.

A review of other City of Kingston by-laws by City Staff and the Kingston Police representatives revealed that a wide variety of "nuisance" behaviours are identified in current City by-laws. The proposed Nuisance By-Law will regulate some of the same behaviours found in other City of Kingston by-laws. In order to bring this by-law forward in the time frame suggested, it is recommended that consideration be given to the proposed Nuisance By-Law that incorporates some of the nuisance behaviours

identified in other by-laws without attempting to consolidate all the other nuisance type regulations found in other by-laws. The proposed Nuisance By-Law focuses on behaviours that have been identified by City Staff and Kingston Police as worthy of inclusion in a stand alone Nuisance By-law.

EXISTING POLICY/BY LAW:

The following is a list of Kingston by-laws and legislation which contain provisions to regulate or prohibit activities which could be viewed as public nuisances:

By-Law No. 2004-52, Noise By-Law;

By-Law No. 2004-190, Streets By-Law;

By-Law No. 93-343, A By-Law to Prohibit the Throwing, Placing or Depositing of Debris on any Private Property or Municipal Property within the City of Kingston;

By-Law No. 181, A By-Law to Provide for the Collection, Removal and Disposal of Garbage, Ashes and other Refuse;

By-Law No. 25, A By-Law Relating to Public Health;

By-Law No. 578, A By-Law for the Preservation of Order and Public Morals;

Specific sections of the by-laws are attached to this report as Exhibit "B"

NOTICE PROVISIONS:

N/A

ACCESSIBILITY CONSIDERATIONS:

N/A

FINANCIAL CONSIDERATIONS:

N/A

CONTACTS:

Terry Willing, Director, Building and Licensing	(613) 546-4291, ext 3240
Kim Leonard, Manger, Licensing and Enforcement	(613) 546-4291, ext 3222
Mark McLaughlin, Associate Legal Counsel	(613) 546-4291, ext 1385
Inspector Antje McNeely, KPD	(613) 549-4660
Inspector Brian Cookman, KPD	(613) 549-4660

OTHER CITY OF KINGSTON STAFF CONSULTED:

N/A

EXHIBITS ATTACHED:

Exhibit "A" – Draft Nuisance By-Law

Exhibit "B" – Existing City of Kingston By-Laws



MEMORANDUM
City Clerk's Department

TO: Hal Linscott, Director, Legal Services

FROM: John Bolognone, Acting City Clerk

DATE: February 3, 2010

SUBJECT: PUBLIC NUISANCE BY-LAW

I would confirm that at the regular meeting of Kingston City Council held on February 2, 2010, the following resolution, being Clause 3., Report No. 28, was LOST:

3. *THAT* no action be taken on the following motion:

THAT the Committee review and recommend adoption by Council of the following:

1. *Proposed Public Nuisance By-Law.*
2. *Draft short form wording and set fine application.*

LOST

At the same meeting, the following Motion was approved:

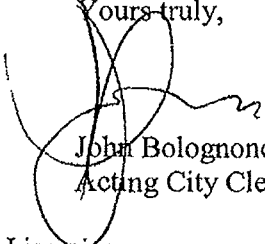
Moved by Councillor Hutchison

Seconded by Councillor MacLeod-Kane

THAT the proposed Public Nuisance By-Law and draft short for wording and set fine application as set out in Report No. AP-10-005, dated January 15, 2010, be referred back to the Administrative Policies Committee in order to re-examine the proposed by-law with particular attention to the broadness of the by-law's language and the amounts and appropriateness of the fines to the particular offenses.

CARRIED

Yours truly,


John Bolognone
Acting City Clerk

/ki

Cc: T. Willing, Director, Building and Licensing
K. Leonard, Manger, Licensing and Enforcement
M. McLaughlin, Associate Legal Counsel, Legal Services
Inspector Antje McNeely, Kingston Police Department
Inspector Brian Cookman, Kingston Police Department
J. Thompson, Committee Clerk (Admin. Policies)

Our File No.