



Corporation Of The City Of Kingston

Ontario

By-Law Number 2018-53

A By-Law to Regulate Nuisance Parties within the City of Kingston

Passed: March 20, 2018

(Office Consolidation)

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Whereas section 425 of the Municipal Act, 2001 provides that a municipality may pass By Laws providing that a person who contravenes a By-Law of the municipality passed under that Act is guilty of an offence; and

Whereas section 429 of the Municipal Act, 2001 provides that a municipality may establish a system of fines for offences under a By-Law of the municipality passed under that Act; and

Whereas section 10 of the Municipal Act, 2001 provides that a municipality may pass By-Laws respecting: economic, social and environmental well-being of the municipality; health, safety and well-being of person; the protection of persons and property; and structures, including fences and signs; and

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 sections 435 and 436 of the Municipal Act, 2001 provide for the exercise of powers of entry of a municipality; 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 section 431 of the Municipal Act, 2001 provides that if any By-Law of a municipality passed under that Act is contravened and a conviction entered, in addition to any other remedy and to any penalty imposed by the By-Law, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may make an order prohibiting the continuation or repetition of the offence by the person convicted; and

Whereas in the opinion of Council, the matters addressed in this By-Law are, or could become or cause public nuisances, and, notwithstanding the generality of the foregoing, Council is of the opinion that a Nuisance Party (as defined herein) is a public nuisance;

Therefore be it resolved that the Council of The Corporation of the City of Kingston enacts as follows:

1. Definitions:

In this By-Law,

"Chief of Police" means the Chief of Police of the Kingston Police, or his or her designate;

"City" means The Corporation of the City of Kingston;

"Highway" includes a common and public highway, 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 or persons, and includes the area between the lateral property lines thereof, including sidewalks and boulevards;

"Municipality" means the land within the geographic limit of the City of Kingston;

"Nuisance Party" means a gathering on Premises which, by reason of the conduct of any one or more of the Person(s) in attendance, is characterized by any one or more of the following elements:

- (a) public intoxication;
- (b) the unlawful sale, furnishing, or distribution of alcoholic beverages or controlled substances;
- (c) the unauthorized deposit of refuse on public or private property;
- (d) damage to public or private property;
- (e) the obstruction of vehicular or pedestrian traffic, or interference with the ability to provide emergency services;
- (f) sound that is unusual or excessive, or that is likely to be unwanted by or disturbing to persons, including but not limited to loud music or shouting;
- (g) unauthorized open burning or the display of unauthorized fireworks;
- (h) public fights;
- (i) outdoor public urination or defecation;
- (j) use of or entry upon a roof not intended for such occupancy;

"Officer" means a Provincial Offences Officer of the City who has been assigned the responsibility of administering or enforcing this By-Law, or an officer of the Kingston Police or other police force assisting the Kingston Police;

"Person" means a corporation as well as an individual;

“Premises” means any public or private place in the Municipality, including but not limited to Highways, parks, parking lots, yards appurtenant to a building or dwelling, or vacant lands.

2. Administration:

2.1 The City’s Licensing and Enforcement Division is responsible for the administration of this By-Law.

3. Interpretation:

3.1 This By-Law shall not be interpreted as exempting any Person from the requirement to comply with any other City By-Law. In the event of conflict between the provisions of this By-Law and any other City By-Law, the provisions which are more protective of the public assets of the City, the economic, social and environmental well-being of the City, the health, safety and well-being of persons in the City, and persons and property in the City, shall apply.

3.2 Any reference herein to any By-Law or Act of any government shall be construed as a reference thereto as amended or re-enacted from time to time or as a reference to any successor thereto then in force.

4. Regulation of Nuisance Parties:

4.1 A social gathering shall only be declared a Nuisance Party by the Chief of Police, or his or her designate.

4.2 Subject to the declaration of a Nuisance Party pursuant to Section 4.1 of this By Law, no Person shall create, cause, host, sponsor, conduct, continue, or permit a Nuisance Party.

4.3 Subject to the declaration of a Nuisance Party pursuant to Section 4.1 of this 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.

4.4 An Order under Section 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.

4.5 An Order under Section 4.3 of this By-Law may be given verbally or may be served personally on the Person(s) to whom it is directed.

4.6 No Person shall fail to comply with an Order issued pursuant to Section 4.3 of this By-Law.

- 4.7 As soon as is practicable following the declaration of a Nuisance Party pursuant to Section 4.1 of this By-Law, the Licensing and Enforcement Division shall send a Warning Notice to the owner(s) of the Premises at which the Nuisance Party has been declared.
- 4.8 A Warning Notice issued pursuant to Section 4.7 of this By-Law shall identify:
- (a) the date on which the contravention occurred;
 - (b) the Premises at which the contravention occurred; and
 - (c) the reasonable particulars of the contravention of this By-Law.
- 4.9 Receipt of a Warning Notice shall be deemed to have occurred:
- (a) On the date of delivery, if delivered personally;
 - (b) Three (3) business days after the date of mailing, if delivered by registered mail to an address within the City of Kingston;
 - (c) Five (5) days after the date of mailing, if delivered by registered mail to an address outside of the City of Kingston;
- 4.9.1 Receipt of a Warning Notice shall be deemed to have occurred if delivered personally or to the last known address of the owner of the property.
- 4.10 No Person who, individually or jointly with others, is an owner or who otherwise has rightful possession of or possessory control of any Premises, shall permit a subsequent Nuisance Party on said Premises after receipt of a Warning Notice.
- 4.10.1 For greater clarity, a subsequent Nuisance Party is a Nuisance Party that occurs within two (2) years after a declaration of a Nuisance Party pursuant to Section 4.1 of this By-Law, at the Premises identified in the Warning Notice.

5. Close Public Highway:

- 5.1 The Chief of Police, or his or her designate, may temporarily close any Highway or portion thereof to public travel where a Nuisance Party is occurring on or adjacent to the Highway, in accordance with the Highway Traffic Act.
- 5.2 Where a Highway or portion of a Highway has been closed, the common law right of passage by the public over the Highway and the common law right of access to the Highway by an owner of land abutting the Highway are restricted, as directed by the Chief of Police, or his or her designate.
- 5.3 No Person shall, without lawful authority, use a Highway or portion thereof that has been closed temporarily in accordance with Section 5.1 of this By-Law.

- 5.4 No Person shall, without lawful authority, remove or deface any barricade, flashing light, warning device, detour sign, notice or other device placed on a Highway that has been temporarily closed in accordance with Section 5.1 of this By-Law.

6. Enforcement and Inspection:

- 6.1 The provisions of this By-Law may be enforced by an Officer.
- 6.2 No Person shall obstruct or hinder or attempt to obstruct or hinder an Officer or other authorized employee or agent of the City in the exercise of a power or the performance of a duty under this By-Law.
- 6.3 Every Officer shall have the right to enter lands and Premises to conduct an inspection to determine whether the provisions of this By-Law and any order(s) issued hereunder are being complied with in accordance with the provisions of Sections 435 and 436 of the Municipal Act, 2001.
- 6.4 Where an Officer has reasonable grounds to believe that an offence under this By-Law has been committed by a Person, the Officer may require the name, address, and proof of identity of that Person.
- 6.5 Failure to provide proof of identification satisfactory to an Officer when requested to do so pursuant to Section 6.4 of this By-Law shall constitute obstruction of an Officer under Section 6.2 of this By-Law.

7. Penalty:

- 7.1 Every Person, other than a corporation, who contravenes any provision of this By Law is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 for a first offence and \$25,000 for any subsequent offence.
- 7.2 Every corporation that contravenes any provision of this By-Law and every officer or director of a corporation who knowingly concurs in such contravention is guilty of an offence and on conviction is liable to a fine of not more than \$50,000 for a first offence and \$100,000 for any subsequent offence.
- 7.3 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.

8. Validity:

8.1 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.

9. Short Title of By-Law:

9.1 This By-Law may be referred to as the "Nuisance Party By-Law".

10. Commencement:

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