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Consolidated Version

Last revised on March 12, 2024

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2024-026 (original)	March 11, 2024	-

Consolidated for Convenience Only

This is a consolidation copy of a City of Owen Sound By-law for convenience and information. While every effort is made to ensure the accuracy of this by-law, it is not an official version or a legal document. The original by-law should be consulted for all interpretations and applications on this subject. For more information or to view by-laws please contact the Clerks Department.

The Corporation of the City of Owen Sound

By-law No. 2024-026

A By-law to prohibit and regulate public nuisances

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

WHEREAS subsection 11(1) of the Municipal Act provides that a municipality may provide any service or thing that the municipality considers necessary or desirable for the public; and

WHEREAS section 11(2) of the Municipal Act provides that a municipality may pass by-laws respecting the economic, social and environmental well-being of the municipality; health, safety and well-being of persons; protection of persons and property; structures, including fences and signs; and

WHEREAS section 23.1 of the Municipal Act provides that a municipality may delegate its powers and duties under that Act; and

WHEREAS for the purposes of subsection 23.2(4) of the Municipal Act it is the opinion of Council that the powers delegated pursuant to this By-law are of a minor nature; and

WHEREAS section 128 of the Municipal Act provides that, without limiting sections 9 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; and

WHEREAS section 425 of the Municipal Act provides that any person who contravenes any by-law of the municipality is guilty of an offence; and

WHEREAS section 444 of the Municipal Act 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, Council deems it appropriate to prohibit or regulate matters that are, or could become or cause public nuisances; and

WHEREAS on February 26, 2024, the Council of The Corporation of the City of Owen Sound (the “City”) passed Resolution No. R-240226-014 directing staff to bring forward the subject by-law for approval and to repeal By-law No. 1999-178, in consideration of staff report CR-24-008 presented to the Corporate Services Committee on February 8, 2024;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF OWEN SOUND HEREBY ENACTS AS FOLLOWS:

Part I. Part I. Short Title, Purpose and Scope

Short Title

1. The by-law may be referred to as the "Nuisance By-law" and when so referenced includes all future amendments, unless otherwise specified.

Purpose

2. This by-law has been enacted to:
 - a. safeguard the quality of City communities and neighbourhoods;
 - b. protect the safety, health and well-being of the public; and
 - c. ensure the continued enjoyment of public and private property for residents, visitors and property owners in the City.

Scope

3. This by-law applies to all residents and visitors to the City; and to all public and private property in the City save and except:
 - a. the City;
 - b. the County of Grey;
 - c. the Province of Ontario;
 - d. the Dominion of Canada; or
 - e. any Public Utility in the performance of its duties.

Part II. Interpretation

Headings

4. The division of this by-law into parts and the insertion of headings are for convenient reference only and do not affect the interpretation of the by-law.

Gender and Number

5. In this by-law, unless the contrary intention is indicated, words used in the singular include the plural and words imparting a gender include all genders, where applicable.

References to Applicable Law

6. All references to applicable law are ambulatory and apply as amended, extended or re-enacted from time to time.

Severability

7. In the event any provisions of this by-law are deemed invalid or void, in whole or in part, by any court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

Definitions

8. For the purposes of this by-law:
 - "Bicycle" means a bicycle as defined under the *Highway Traffic Act*, R.S.O. 1990, c. H.8;
 - "City" means The Corporation of the City of Owen Sound or the geographical location as the context requires;
 - "Defecate" means to expel feces from a body;

“Graffiti” means one or more letters, symbols, figures, images, etchings, scratches, inscriptions, stains or other markings howsoever made or affixed to a property that disfigure, deface or otherwise mark the property;

“Officer” means a person appointed by Council as a Municipal Law Enforcement Officer, or a Police Officer, or other individual duly appointed to enforce this by-law;

“Person” means an individual, corporation, partnership, association or other legal entity, and the related heirs, executors, assignees and administrators;

“Public place” means:

- a. a place outdoors to which the public is ordinarily invited or permitted access and, for greater certainty, shall include highways, sidewalks, streets, any portion of a road allowance, parking lots, swimming pools, conservation areas, parks and playgrounds;
- b. school grounds;
- c. land, premises, or buildings owned, managed or maintained by the municipality;
- d. yards appurtenant to a building or dwelling or vacant lands but does not include a building or dwelling; and
- e. privately owned land which is visible from any public or private property.

“Public utility” means a company that provides a public service such as water, sewer, electricity, internet or telephone services;

“Reasonable excuse” means:

- a. the contravention of this by-law must be inevitable, unavoidable and afford no reason or opportunity for an alternative course of action that does not contravene this by-law;
- b. 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; or
- c. being exempt from the provisions of this by-law pursuant to any other City by-law or policy or provincial legislation or regulations as may be established and amended from time to time;

“Sidewalk” means that portion of a street or highway that lies between the roadway and the lateral property lines of the street or highway, and which may be paved, surfaced, or levelled, and is intended to be used as a pedestrian walkway;

“Spit” means to eject phlegm, saliva, chewing tobacco juice, or any other substance from the mouth;

“Urinate” means to discharge or pass urine from the body; and

“Vomit” means to discharge the contents of the stomach by mouth.

Part III. Prohibitions and Permits

Prohibitions

9. No person shall:

- a. without reasonable excuse, engage in outdoor public urination, defecation, spitting or vomiting;
- b. emit, cause or permit to be emitted, an excessive amount of smoke, dust or airborne particulate matter in a public place, except where permitted to do so by the City;
- c. emit, cause or permit to be emitted, an odour that, in the opinion of an Officer, is objectionable, in a public place, except where permitted to do so by the City;
- d. solicit or sell or attempt to solicit or sell any items, including but not limited to funds, in any public place unless authorized to do so by the City;
- e. block, interfere with or otherwise impede the passage of any pedestrian on any City sidewalk or other City pedestrian-way, or portion thereof, unless authorized by the City;
- f. ride a bicycle on a sidewalk or other City pedestrian way or portion thereof;
- g. knock over or attempt to knock over a Canada Post mailbox, newspaper box, bench, fence, blue box or garbage container, or any other structure or object located on any public place;
- h. loiter in any public place;
- i. participate in a fight in any public place;
- j. mark or apply graffiti on any public place or private property without authorization from the owner of the property to which the graffiti is being applied;
- k. leave, throw or deposit any refuse or litter on any public or private property without authorization from the owner;
- l. be in or on any public place which the City has closed or deemed not to be used by the public for any reason;
- m. enter into any City work area or approach any meeting table of Council or any Committee or local board without the express permission of the City;
- n. engage in any type of conduct or activity in any public place when the activity is prohibited or restricted by an authorized sign;
- o. engage in any type of disorderly conduct in any public place;
- p. damage or destroy or attempt to damage or destroy any public property;
- q. continue to engage in any type of activity prohibited by this by-law when requested to stop by an Officer or occupier of the property; or
- r. obstruct, hinder or otherwise interfere with an Officer while the Officer is carrying out an investigation, making inquiries, or performing an inspection for the purpose of enforcing this by-law.

Permits

10. Notwithstanding any other section of this by-law, any person may apply to the City Clerk, in writing, for a permit to engage in activity that would otherwise be deemed a public nuisance.

11. The City Clerk may consider a permit application or forward the application to Council to make the final decision on whether to grant or refuse the application and any conditions that may accompany the permit.
12. A permit application must be provided to the City Clerk at least forty-five (45) days prior to the date that the activity will begin, and the application must include:
 - a. the name and address of the applicant;
 - b. a description of the proposed activity;
 - c. the location at which the proposed activity will take place;
 - d. the period of time for which a permit is sought;
 - e. reason(s) why the permit should be granted; and
 - f. the applicable fee, pursuant to the City's Fees and Charges By-law.
13. Upon receiving a permit application, the City Clerk will notify any neighbours within a 60 m area of:
 - a. the proposed activity;
 - b. the ability to provide comments on whether a permit should be granted; and
 - c. the date that comments are due to the City.
14. In considering an application for a permit, the City Clerk or Council will have regard to the following:
 - a. the description of the proposed activity;
 - b. public comments relating to the proposed activity;
 - c. the location of where the proposed activity will take place;
 - d. the period of time for which the permit is being sought;
 - e. the reasons why the applicant thinks the permit should be granted; and
 - f. any applicable City by-laws or policies.
15. After considering the merits of a permit application, the City Clerk or Council may:
 - a. issue a permit;
 - b. issue a permit, subject to certain terms or conditions; or
 - c. refuse to issue a permit.
16. Where a permit is issued, the permit will specify any terms or conditions of the permit and the period of time during which the permit is effective.
17. A permit may be immediately revoked by the City Clerk if an applicant, or any person acting on the applicant's behalf:
 - a. provided false or misleading information on the permit application submitted to the City;
 - b. violates this by-law;
 - c. violates any other City by-law or policy; or
 - d. violates any of the terms or conditions of a permit.

Part IV. Investigations

Inspection

18. An officer may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:
 - a. this by-law; or
 - b. an order made under section 431 of the Municipal Act.
19. For the purposes of conducting an inspection pursuant to s. 18 of this by-law, the officer may, in accordance with the provisions of s. 436 of the Municipal Act:
 - a. require the production for inspection of documents or things relevant to the inspection;
 - b. inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
 - c. require information from any person concerning a matter related to the inspection; and
 - d. along with or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purpose of the inspection.
20. Every person who is required by an Officer to provide identification must identify themselves to the Officer by giving their full and correct name, date of birth and address.

Order to discontinue activity

21. Where an Officer has reasonable grounds to believe that a contravention of this by-law has occurred, the Officer may make an order requiring the person who contravened this 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.
22. An order under section 21 of this by-law must set out:
 - a. reasonable particulars of the contravention adequate to identify the contravention and the location of the land in which the contravention occurred; and
 - b. the date by which there must be compliance with the order.
23. Any person who contravenes an order under section 21 of this by-law is guilty of an offence.

Work Order

24. Where an Officer has reasonable grounds to believe that a contravention of this by-law has occurred, the Officer may make an order requiring the person who contravened this 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.
25. An order under section 24 of this by-law must set out:
 - a. reasonable particulars of the contravention adequate to identify the contravention and the location of the land in which the contravention occurred;

- b. the work to be done; and
 - c. the date by which the work must be done.
26. An order under section 24 of this by-law may require work to be done even though the facts which constitute the contravention of this by-law were present before this by-law came into force.
27. Any person who contravenes an order under section 24 of this by-law is guilty of an offence.

Notice

28. Any order issued pursuant to this by-law may be given in writing in any of the following ways and is effective:
- a. on the date on which a copy is delivered to the person to whom it is addressed;
 - b. on the fifth day after a copy is sent by mail to the person's last known address;
 - c. upon the sending of a copy by e-mail transmission to the person's last known email address; or
 - d. posting on the premises, on the date of posting.
29. For the purpose of section 28, a person's last known address and last known email address are deemed to include information on the last revised assessment roll and on a permit application submitted pursuant to this by-law.

Remedial action

30. If a person fails to do a matter or thing, including comply with an order under by-law, as directed or required by this by-law, the City may, in default of it being done by the person directed or required to do it, do the matter or thing at the person's expense. The City may recover the costs of doing a matter or thing from the person directed or required to do it by action or by adding the costs to the tax roll and collecting them in the same manner as municipal taxes.
31. The costs outlined in section 30 of this by-law shall include interest calculated at a rate of 15 per cent (15%) per annum, calculated for the period commencing on the day the City incurs the costs and ending on the day the costs, including the interest, are paid in full.
32. The amount of the costs, including interest, constitutes a lien on the land upon the registration in the proper land registry office of a notice of lien. The lien is in respect of all costs that are payable at the time the notice is registered plus interest accrued to the date the payment is made. Upon receiving payment, the City will register a discharge of the lien in the proper registry office.

Part V. Offence and Penalty

33. Every person who contravenes the provisions of this by-law is guilty of an offence and, upon conviction, is liable to a fine or penalty as provided for in the Provincial Offences Act.

Part VI. Repeal and Effective Date

Repeal

34. By-law No. 1998-178 is repealed.

Effective Date

35. The by-law shall come into full force and effect on the date that the set fine order is signed by the Regional Senior Judge of the Ontario Court of Justice at which time all by-laws, policies, and resolutions that are inconsistent with the provisions of this by-law are hereby repealed, revoked or rescinded, as the case may be, insofar as it is necessary to give effect to the provisions of this by-law.

FINALLY PASSED AND ENACTED this 11th day of March 2024.

Mayor Ian C. Boddy

Briana M. Bloomfield, City Clerk