

THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE



BY-LAW

NO. 2022 - 062

A BY-LAW TO PROHIBIT OR REGULATE PUBLIC NUISANCES WITHIN THE MUNICIPALITY OF KINCARDINE

WHEREAS SECTION 5(3) of the *Municipal Act, 2001*, S.O. 2001, c25, as amended (*“the Act”*) provides that a municipal power shall be exercised by by-law;

AND WHEREAS the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, Section 8 (1) and 9 provides that 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 and a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act.

AND WHEREAS section 10 of *the Act*, provides that a Municipality may pass by-laws respecting: 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 128 of *the Act*, provides that, without limiting sections 9 and 10, 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, public nuisance, public urination and defecation, and knocking over objects on the Highway are or could become or cause public nuisances;

AND WHEREAS section 425 of *the Act*, established that any person who contravenes any by-law of the Municipality is guilty of an offence;

AND WHEREAS section 435 of *the Act*, provides the exercise of powers of entry by municipal law enforcement officers and police officers;

AND WHEREAS section 444 of *the 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 section 444 of *the 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;

NOW THEREFORE the Council of The Corporation of the Municipality of Kincardine **ENACTS** as follows:

1. **DEFINITIONS**

“Alcoholic Beverages” means any beverage that contains alcohol and includes beer, wine, spirits, seltzers, coolers, ciders, liqueurs or any other intoxicating beverage contained in a portable container such as, but not limited to, glass bottles, aluminum cans, plastic bottles or cups, or boxes containing a plastic bladder, consumed for recreational purposes;

“Bridge” means a structure spanning and providing passage across a waterway, road, walkway or other obstacle.”

“Building” means any permanent structure consisting of a roof supported by walls or columns that is used or intended to be used for the shelter, accommodation or enclosure of persons, animals, goods, chattels or equipment;

“By-law Enforcement Officer” means a commissionaire, assistant or any other officer or civilian person engaged by the South Bruce O.P.P. and/or appointed by the Municipality of Kincardine to enforce or carry out the provisions of this by-law or any parts thereof;

“Camping” means establishing temporary accommodation for sleeping and shall include by means of motor vehicle, recreational vehicle, motorized home, slide-in camper, chassis-mounted camper, camper, tent, tent trailer, or travel trailer, or any other temporary shelter;

“Detachment Commander” means the officer in charge of the South Bruce Detachment of the Ontario Provincial Police, or designate;

“Director” means the Director of Infrastructure and Development for the Municipality of Kincardine;

“Disorderly Conduct” means causing a public disturbance and without limiting the generality of the foregoing, includes yelling, screaming, shouting, singing, swearing, blocking aisles, blocking exits or blocking entrances, all of which are likely to disturb and interfere with the reasonable enjoyment of someone in a public place;

“Dwelling” means a building containing one or more dwelling units;

“Fight” means any confrontation involving physical contact between two or more people and includes shoving, pushing and rough-housing;

“Graffiti” means the act of painting, drawing or otherwise affixing or attaching to building, sidewalks, walls, fences, structures, posts, signs, banners, etc. words, initials, pictures, graphics, scribble etc.

“Highway” includes a common and public highway, street, avenue, parkway, square, place, bridge, viaduct, or trestle, designated and intended for, or used by , the general public for the passage of vehicles, and included the area between the lateral property lines thereof, including sidewalks and boulevards, and highways shall have the same meaning.

“Livestock” means fur or fibre bearing animals or any other domestic animal used for consumption, propagation, or for intended profit or gain, and without limiting the generality of the foregoing includes: dairy and beef cattle, lamas, alpacas, horses, swine, sheep, laying hens, chicken and turkey broilers, turkeys, goats, geese, mink and rabbits.;

“Loitering” means the lingering, hanging and sleeping about in a Public Place

without permission from the Municipality, obstructing or making difficult the passage of persons or vehicles in a Public Place, or failing to move on after having been requested to do so;

“Motorized Vehicle” means and includes an automobile, motorcycle, snowmobile, motor assisted bicycle, scooter, golf cart or any other vehicle propelled or driven otherwise than by muscular power but does not include a motor assisted wheelchair or motor assisted devices used for mobility;

“Municipality” means The Corporation of the Municipality of Kincardine;

“Person” means an individual, firm, corporation, partnership, association or organization, including a charitable organization;

“Public Nuisance” means on the premises within the Municipality and which, by reason of the conduct of the person in attendance, results in one of the following activities occurring so as to constitute a public nuisance whether occurring on neighbouring public or private property: disorderly conduct; public drunkenness or public intoxication; the unlawful sale, furnishing, or distribution of alcoholic beverages or controlled substances; the deposit of refuse on public or private property; damage to or destruction of public or private property; pedestrian traffic, vehicular traffic, or illegal parking that obstructs the free flow of traffic or could interfere with the ability to provide emergency services; unreasonable noise, including loud music or shouting; unlawful open burning or fireworks; public disturbances, including public brawls or public fights;

“Public Place” means

1.2 a place outdoors to which the public is ordinarily invited or permitted access and, for greater certainty, shall include sidewalks, streets, any portion of a road allowance, parking lots, swimming pools, conservation area, parks, and playgrounds;

1.3 school grounds; and

1.4 land, premises, or buildings owned, managed, or maintained by the Municipality;

“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, but does not mean a building or dwelling;

“Sidewalk” means that portion of the highway between the curb line and the property line of the lot abutting the highway improved for the use of pedestrians;

“Solicit” means to ask for money, sell a product, give or exchange an idea or opinion; seek to obtain something from a person or give something to a person;

“Tent” means any portable shelter that you are unable to see through, or has four sides, but does not include a sun canopy or kitchen tent that does not contain sides.

2. PROHIBITIONS

2.1 No person shall conduct the following activities so as to constitute a public nuisance whether occurring on neighbouring public or private property

- a) disorderly conduct;
- b) public drunkenness or public intoxication including having or consuming any beverage containing alcohol;
- c) the deposit of refuse on public or private property;
- d) damage to or destruction of public or private property;
- e) pedestrian traffic, vehicular traffic, or illegal parking that obstructs the free flow of traffic or could interfere with the ability to provide emergency services;
- f) unreasonable noise, including loud music or shouting;
- g) unlawful open burning or fireworks;
- h) public disturbances, including public brawls or public fights;
- i) loiter in or on a public place;
- j) ride or otherwise operate any motorized vehicle on or over any public place;

- k) be in a public place which has been closed or deemed by the Municipality not be occupied for any reason whatsoever;
- l) graffiti any public place;
- m) solicit in or on a public place without the express permission of the Municipality;
- n) use a public place for other than its intended purpose;
- o) remove flowers, plants or soil from Municipal property;
- p) remove benches, tables or other such amenities from a public place;
- q) permit livestock in a public place unless approved by the Municipality of Kincardine except the following: any highway or parking lot;
- r) camp in a public place without express permission of the Municipality;
- s) erect, have or occupy a tent on a public place without express permission of the Municipality;

3. PUBLIC URINATION / PUBLIC DEFECATION

3.1 In Section 3 only, "Public Place" is defined as:

"Public Place" includes a highway, public park, parking lot or other lands to which the public has access to, or right, or by invitation and includes private property that is exposed to public view, but does not include an enclosed washroom facility.

3.2 No person shall urinate or defecate in a Public Place.

4. MAILBOXES ETC. ON HIGHWAY

4.1 No person shall knock over or attempt to knock over a Canada Post mailbox, Canada Post relay box, newspaper box, blue box, or garbage container, lawfully located on a highway. This section shall not apply to Municipal employees, or any other person under contract with the Municipality while exercising their authorized duties on behalf of the Municipality.

5. PUBLIC NUISANCE

5.1 No person shall sponsor, conduct, continue, host, create, attend, allow, cause or permit a Public Nuisance.

5.2 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 Public Nuisance on said premises under their possession or control.

6. BRIDGES

6.1 No person shall jump, dive, leap, or throw any object off or from any bridge located within the boundaries of the Municipality.

7. ORDER TO DISCONTINUE ACTIVITY

- 7.1 Upon the order of the By-law Enforcement Officer appointed by the Municipality of Kincardine, the Detachment Commander or designate a Public Nuisance shall cease and all person not residing on the Premises shall leave the premises where it is occurring.
- 7.2 An order under this section shall identify:
 - a) the location of the land on which the contravention occurred;
 - b) the reasonable particulars of the contravention of the By-law; and
 - c) the date and time by which there must be compliance with the order.
- 7.3 An order under this section may be given verbally or may be served personally to the person whom it is directed/
- 7.4 No person shall fail to leave the Premises after having been directed to leave the Premises by an order to discontinue activity under this By-law.

8. Close Public Highways

- 8.1 The Detachment Commander or designate, or the Director or designate, may temporarily close any highway or portion thereof to public travel under this by-law where a Public Nuisance is occurring on or adjacent to the highway by placing a notice on the highway to be closed in accordance with the Municipal Act, 2001.
- 8.2 Where a highway or portion has been closed under this By-law, 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 Detachment Commander or designate, or the Director or designate.
- 8.3 No person shall use a highway or portion of a highway that has been closed under this By-law except with the lawful authority or in accordance with the direction of the Detachment Commander or designate, or the Director or designate.

9. ENFORCEMENT AND INSPECTION

- 9.1 The provisions of this By-law may be enforced by a By-law Enforcement Officer appointed by the Municipality of Kincardine, the Detachment Commander or designate, or other fully appointed person for the purpose of enforcing this By-law.
- 9.2 A By-law Enforcement Officer appointed by the Municipality of Kincardine, or the Detachment Commander or designate may carry out an inspection to determine whether the provisions of this By-law are being complied with in accordance with the Act.

10. PENALTY

- 10.1 Every person who contravenes any provisions of this By-law is guilty of an offence, and upon conviction is subject to the penalties as prescribed in the Provincial Offences Act, R.S.O 1990, c. P.33, as amended.

11. SEVERABILITY

- 11.1 If any provision or part of this By-law is declared by any court or tribunal or competent jurisdiction to be illegal or inoperative in whole or in part, or inoperative in particular 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. MISCELLANEOUS

- 12.1 This by-law will take effect on July 1, 2022 and will repeal and replace By-law No. 2002-145 the Prohibit Overnight Camping in Public Places and Municipal Parks amended by By-law No. 2021-106 and By-law No. 2013-073 the Public Nuisances By-law as amended by By-law No. 2019-148 and By-law No. 2021-107.

- 12.2 This by-law may be cited as the "Public Nuisance 2022 By-Law".

READ a FIRST and SECOND TIME this 4th day of April, 2022.

READ a THIRD TIME and FINALLY PASSED this 4th day of April, 2022.

Mayor

Clerk

THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE

PART I PROVINCIAL OFFENCES ACT

BY-LAW NO.

Being a By-law to Prohibit or Regulate Public Nuisances within the Municipality of Kincardine

ITEM	COLUMN 1 Short Form Wording	COLUMN 2 Provision creating or defining offence	COLUMN 3 Set fine
1	Disorderly Conduct	2.1 a)	\$300
2	Public drunkenness or public intoxication	2.1 b)	\$300
3	Have or consume any beverage containing alcohol	2.1 b)	\$300
4	Deposit of refuse on public or private property	2.1 c)	\$300
5	Damage to or destruction of public or private property	2.1 d)	\$300
6	Unreasonable noise	2.1 f)	\$300
7	Unlawful open burning	2.1 g)	\$300
8	Unlawful fireworks	2.1 g)	\$300
9	Public disturbances	2.1 h)	\$300
10.	Loiter in or on an public place	2.1 i)	\$300
11	Ride or otherwise operate any motorized vehicle on or over any Public Property	2.1 j)	\$300
12	Be in or on any Public Place which has been closed or deemed by the Municipality not be occupied for any reason whatsoever	2.1 k)	\$300
13	Graffiti any Public Place	2.1 l)	\$300

14	Solicit in or on a public place without the permission of the Municipality	2.1 m)	\$300
15	Use a public place for other than its intended purpose	2.1 n)	\$300
16	Remove flowers, plants or soil from Municipal Property	2.1 o)	\$300
17	Remove benches, tables or other such amenities from a Public Place	2.1 p)	\$300
18	Permit livestock in a public place	2.1 q)	\$300
19	Camp in a public place without permission of the Municipality	2.1 r)	\$300
20	Erect, have or occupy a tent on a public place without permission of the Municipality	2.1 s)	\$300
21	Urinate or defecate in a public place	3.2	\$300
22	Knock over or attempt to knock over mailboxes etc.	4.1	\$300
23	Sponsor, conduct, continue, host, create, attend, allow, cause or permit a public nuisance	5.1	\$300
24	Individually or jointly allow, cause or permit a Public Nuisance on premises under their possession or control	5.2	\$300
25	Jump, dive, leap or throw any object off or from a bridge	6.1	\$300
26	Failing to leave the premises after being directed to do so	7.4	\$300
27	Use of a highway that has been closed	8.3	\$300

Note: The penalty provisions for the offences indicated above is section 10.1 of By-law No., a certified copy of which has been filed.