



City of  
**Peterborough**

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**To:** **Members of the Committee of the Whole**

**From:** **Patricia Lester, City Solicitor and Director of Legal Services**

**Meeting Date:** **September 21, 2015**

**Subject:** **Report OCS15-007**  
**A New By-law to Replace the Existing Public Nuisances**  
**By-law**

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## **Purpose**

A report to recommend that a new by-law be enacted to prohibit public nuisances in the City of Peterborough, and that the existing by-law be repealed.

## **Recommendations**

That Council approve the recommendations outlined in Report OCS15-007 dated September 21, 2015, of the City Solicitor and Director of Legal Services, as follows:

- a) That a new by-law be passed by City Council to prohibit public nuisances in the City of Peterborough, and
- b) That the existing Public Nuisances By-law, Chapter 696 of the Peterborough Municipal Code and By-law 1988-58 be repealed.

## **Budget and Financial Implications**

There are no budget or financial implications to receiving this report.

## Background

At the Committee of the Whole meeting of June 22, 2015, the following motion was passed under New Business:

Moved by Mayor Daryl Bennett

- (a) That staff provide a report and recommendations for an update of the municipality's public nuisance by-law, giving consideration to public nuisance by-laws of the City of London, the City of Guelph and any other municipality selected by staff to review methods of addressing activities such as public disorderly conduct, public intoxication, public disturbances and public urination; and
- (b) That staff provide a comparison of public nuisance fines for various offences in a selection of comparable municipalities.

## Current Public Nuisance By-law

In reviewing our current by-law, Legal Services has received correspondence from the Downtown BIA and has had discussions with the Peterborough Police Service. It is the intent of both parties to discourage large groups from gathering in public after downtown establishments close and after large events such as ones held at Del Crary Park. The only enforcement mechanism in place presently for causing a disturbance is to arrest a person and charge them under the *Criminal Code of Canada*. This is a lengthy procedure for the police and the courts and a procedure that may result in a criminal code conviction for a person charged.

The current Public Nuisance By-law only lists urination in public as an offence and does not address the multitude of other forms of public nuisance. Municipalities in Ontario and Alberta have similar nuisance by-laws, which prohibit the following actions in public: urinating, defecating, fighting, causing a disturbance, loitering, nuisance parties, spitting, vomiting and swearing in a public place.

## Best Practices

Staff looked at other Ontario and Alberta municipalities. The public nuisance by-law in London, Ontario was passed in May 2012. It includes offences such as public urination, defecation, knocking over mailboxes, disobeying an order to discontinue an activity and engaging in a "nuisance party". A nuisance party includes public drunkenness, public intoxication, unlawful open burning, public disturbances, and disorderly conduct. The set fines for London's by-law range from \$250 for urinating, defecating or knocking over a mailbox, to \$500 for all other offences.

The public nuisance by-law in Whitby, Ontario was passed in March 2013. It includes offences such as urinating, defecating or vomiting in public, activity or conduct that is disorderly or obnoxious, littering, carrying open liquor in public, knocking over fixtures and soliciting, fighting, loitering or screaming. The set fines for Whitby's nuisance by-law range from \$250 for urinating, defecating or vomiting in public to \$300 for all other offences.

The Community Standards By-law enacted in Taber, Alberta garnered national media attention and public outrage after it was passed in March 2015. Offences included in this by-law include swearing, and spitting and it imposed an 11:00 p.m. to 6:00 a.m. curfew on children and teenagers under 16. The authority to break up assemblies of three or more people in any public place angered the public the most, as they felt the by-law infringed upon a fundamental right to peaceful assembly set out in section 2(c) of the Canadian Charter of Rights and Freedoms. The fines in Taber's By-law for fighting in public are \$250 for a first offence, \$500 for a second offence, and \$750 for third and subsequent offences. To-date we are not aware of any Charter challenges to the by-law.

### **Revisions to Peterborough's By-law**

The new by-law for Peterborough, applicable only in a public place, defines a nuisance as causing a disturbance, loitering, obstructing Emergency Medical Services (EMS) staff, (defined as police, fire and paramedic staff) urinating or defecating, obstructing the free flow of traffic on a highway, fighting, remaining in a public place after being ordered to leave by EMS staff, and using projectiles in a manner that is dangerous to the public.

The Peterborough Police and the Municipal Prosecutor have reviewed the proposed by-law and have commented favourably on the wording and intent of the by-law.

The proposed set fine for offences under the new by-law are \$250 for loitering, urinating or defecating, and \$300 for all other offences, which is consistent with other municipalities. A Victim Fine Surcharge and costs would be added to each set fine. In addition, an application for short form wording and set fines has been prepared for the Chief Justice of the Ontario Court of Justice.

### **Summary**

The new Public Nuisance by-law greatly expands what constitutes a public disturbance and will allow the police to more effectively bring charges against offenders by writing Part I tickets under the *Provincial Offences Act*.

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Attachments:

Appendix A – Draft Public Nuisance By-Law

## **Appendix A**

### **The Corporation of the City of Peterborough**

#### **By-Law Number 15-xxx**

#### **Being a By-law to repeal Chapter 696 of the City of Peterborough Municipal Code – Public Nuisances, By-law 1988-58, and enact City of Peterborough - Public Nuisance By-law Number 15-xxx**

**Whereas** subsection 10(2) of the *Municipal Act, 2001, S.O. 2001, c.25* as amended (the “Act”), provides that a municipality may enact By-laws for the health, safety and well-being of persons and for the protection of persons and property;

**And Whereas** section 128 of the *Act* provides that a municipality may prohibit and regulate public nuisances in the municipality;

**And Whereas** the Council of the Corporation of the City of Peterborough considers it desirable to repeal Chapter 696 of the City of Peterborough Municipal Code - Public Nuisances and By-law 1988-58 and replace them with this Public Nuisance By-law;

**Now Therefore** the Corporation of the City of Peterborough enacts as follows;

#### **Article 1 - Definitions**

- 1.1 City, City of Peterborough or Peterborough** – means, as the context requires, The Corporation of the City of Peterborough or the municipal boundary of the City of Peterborough;
- 1.2 Defecate** – means to discharge waste matter from the bowels;
- 1.3 Disturbance** – means to disturb the peace and quiet by disorderly conduct, fighting, loitering or nuisance, and in any way obstructs the public in the exercise or enjoyment of any right that is common to all persons within the City of Peterborough;
- 1.4 EMS Staff (Emergency Medical Services Staff)** – means a person employed as a Fire Fighter, Police Officer or Paramedic who is engaged in performing their duties in the City of Peterborough;
- 1.5 Fight** – means any physical altercation between two or more persons, whether consensual or not, that could cause a reasonable person to have concern for injury to the participants or disturbance to the public, but shall not include:

- a. a boxing match, wrestling match or other competition organized by a recognized sporting organization;
- b. a physical altercation between participants of a sporting activity, ceremonial event, historical display or educational program, under the supervision of trained officials when the officials have the authority to sanction the altercation;
- c. a physical altercation between participants for the purposes of an authorized theatrical, film or television production.

**1.6 Highway** – means an avenue, bridge, common and public highway, driveway, parkway, place, square, street, trestle or viaduct, any part of which is designed for or used by the general public for the passage of pedestrians or vehicles;

**1.7 Loitering** – means:

- a. remaining in a Public Place after being asked to leave by an Occupier; or
- b. obstructing by rendering impassable any street, road, sidewalk or any other area of public passage after being asked to leave by a Police Officer;

**1.8 Occupier** – has the same meaning as contained in the *Trespass to Property Act*;

**1.9 Nuisance** – means interfering, without legal cause, the ordinary or customary use of a Highway, a Public Place by a member or members of the public by:

- a. Causing a Disturbance;
- b. Loitering;
- c. Obstructing EMS staff;
- d. Urinating or Defecating;
- e. Obstructing the free flow of traffic on a Highway;
- f. Fighting;
- g. Remaining in or refusing to leave a Public Place after being ordered to leave by EMS Staff;
- h. Throwing stones, balls of snow or ice, or using any projectile in any manner, which is dangerous to the public.

**1.10 Police Officer** – has the same meaning as contained in the *Police Services Act*;

**1.11 Public Place** – includes a Highway and any place to which the public has access as of right or invitation, express or implied, and private property that is exposed to public view, but does not include a washroom facility;

**1.12 Urinate** – means to discharge urine from the body.

## **Article 2 – General Prohibition**

**2.1** No person shall cause a Nuisance in a Public Place within the City of Peterborough.

## **Article 3 - Enforcement**

**3.1** This By-law may be enforced by a Police Officer.

## **Article 4 – Penalty**

**4.1** Every person who contravenes any provision of this By-law, is guilty of an offence and is liable to a fine, and such other penalties, as provided for in the *Provincial Offences Act*, R.S.O. 1990, c. P.33, and the *Municipal Act*, 2001, as each may be amended from time to time.

## **Article 5 – Short Title**

**5.1** This By-law may be referred to as the Public Nuisance By-Law.

## **Article 6 – Effective Date and Repeal**

**6.1** This By-law comes into effect on the day it receives third reading.

**6.2** Chapter 696 of the Peterborough Municipal Code and By-law 1988-58 are repealed on the date this By-law is read for a third time.

Daryl Bennett, Mayor

John Kennedy, City Clerk