

Nuisance Parties Bylaw

Bylaw #: 2018-53

Description: Regulate nuisance parties within the City of Kingston

Date passed: March 20, 2018

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Introduction

Whereas section 425 of the Municipal Act, 2001 provides that a municipality may pass By Laws providing that a person who contravenes a Bylaw 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 Bylaw of the municipality passed under that Act; and

Whereas section 10 of the Municipal Act, 2001 provides that a municipality may pass Bylaws 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 section 391 of the Municipal Act, 2001 provides that a municipality may impose fees or charges on persons for services provided or done by or on behalf of it, including costs incurred by the municipality related to enforcement, whether or not it is mandatory for the municipality to provide or do the service; 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 Bylaw or who caused or permitted contravention, or the owner or occupier of the land on which the contravention occurred to discontinue the contravening activity; and

Whereas section 434.1(1) of the Municipal Act, 2001 provides that a municipality may require a person, subject to such conditions as the municipality considers appropriate, to pay an administrative penalty if the municipality is satisfied that the person has failed to comply with a bylaw of the municipality passed under this Act; and

Whereas section 431 of the Municipal Act, 2001 provides that if any Bylaw 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 Bylaw, 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 Bylaw 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:

Part 1 - Definitions

For the purposes of this Bylaw:

Administrative Penalty means an administrative penalty administered pursuant to "Bylaw 2020-69 of the Corporation of the City of Kingston being "A Bylaw to Establish a Process for Administrative Penalties";

Chief of Police means the Chief of Police of the Kingston Police, or their 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 Bylaw, or an officer of the Kingston Police or other police force assisting the Kingston Police;

Penalty Notice means a notice given pursuant to sections 2.2 and 2.4 of "Bylaw 2020-69 of the Corporation of the City of Kingston being "A Bylaw to Establish a Process for Administrative Penalties";

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.

Part 2 - Administration

2.1 The City's Licensing and Enforcement Division is responsible for the administration of this Bylaw.

Part 3 - Interpretation

3.1 This Bylaw shall not be interpreted as exempting any Person from the requirement to comply with any other City Bylaw. In the event of conflict between the provisions of this Bylaw and any other City Bylaw, 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 Bylaw 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.

Part 4 - Regulation of Nuisance Parties

4.1 No Person shall create, cause, host, sponsor, conduct, continue, or permit a Nuisance Party.

4.2 Upon the Order of the Chief of Police, a Nuisance Party shall cease and all Persons not residing at the Premises where the Nuisance Party is occurring shall immediately leave the Premises.";

4.3 An Order under section 4.2 of this Bylaw shall identify:

- a. the Premises at which the contravention occurred; and
- b. the reasonable particulars of the contravention of this Bylaw.

4.4 An Order under section 4.2 of this Bylaw may be given verbally or may be served personally on the Person(s) to whom it is directed.

4.5 No Person shall fail to comply with an Order issued pursuant to section 4.2 of this Bylaw.

4.6 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 or allow a Nuisance Party to

occur on said Premises by failing to take reasonable steps within such Person's control to mitigate the occurrence of a Nuisance Party on their Premises.

Part 5 - Close Public Highway

5.1 The Chief of Police, 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.

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 Bylaw.

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 Bylaw.

Part 6 - Additional Fees and Charges

6.1 Any Person who creates, causes, hosts, sponsors, conducts, continues or permits a Nuisance Party in contravention of this Bylaw, and any Person who permits or allows a Nuisance Party to occur on their Premises in contravention of section 4.6 of this Bylaw, shall be required to pay the fees and charges specified in Bylaw Number 2005-10, A Bylaw to Establish Fees and Charges to be Collected by The Corporation of the City of Kingston, as amended from time to time, for the attendance of an Officer, and/or an officer of Kingston Fire & Rescue, at the scene of a Nuisance Party.

6.2 Fees and charges imposed on a Person pursuant to section 6.1 constitute a debt of the Person to the City.

6.3 Where the owner of the Premises at which the Nuisance Party occurs is responsible for paying the fees and charges set out in section 6.1, the City may add such fees and charges to the tax roll for the Premises and collect them in the same manner as property taxes.

Part 7 - Enforcement and Inspection

7.1 The provisions of this Bylaw may be enforced by an Officer.

7.2 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 Bylaw.

7.3 Every Officer shall have the right to enter lands and Premises to conduct an inspection to determine whether the provisions of this Bylaw 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.

7.4 Where an Officer has reasonable grounds to believe that an offence under this Bylaw has been committed by a Person, the Officer may require the name, address, and proof of identity of that Person.

7.5 Failure to provide proof of identification satisfactory to an Officer when requested to do so pursuant to section 6.4 of this Bylaw shall constitute obstruction of an Officer under section 6.2 of this Bylaw.

Part 8 - Penalty

8.1a Every Person who contravenes any provision of this Bylaw shall, upon issuance of a Penalty Notice in accordance with Administrative Penalty Process Bylaw 2020-69, be liable to pay to the City an Administrative Penalty in accordance with Schedule B of Administrative Penalty Process Bylaw 2020-69 for each day on which the contravention occurs, and the Administrative Penalty Process Bylaw 2020-69 applies to each Administrative Penalty issued pursuant to this Bylaw.

8.1 Notwithstanding section 8.1a of this Bylaw, every Person, other than a corporation, who contravenes any provision of this Bylaw 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.

8.2 Notwithstanding section 8.1a of this Bylaw, every corporation that contravenes any provision of this Bylaw 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.

8.3 If this Bylaw 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.

8.4 If a Person is required to pay an Administrative Penalty under section 8.1a in respect of a contravention of this Bylaw, the Person shall not be charged with an offence in respect of the same contravention.

8.5 In accordance with section 351 of the Municipal Act, 2001, the treasurer of the City may add unpaid fees, charges and/or fines issued under this Bylaw to the tax roll and collect them in the same manner as property taxes.

Part 9 - Validity

9.1 If a court of competent jurisdiction declares any provision, or any part of a provision, of this Bylaw to be invalid, or to be of no force and effect, it is the intention of Council in enacting this Bylaw that each and every provision of this Bylaw authorized by law be applied and enforced in accordance with its terms to the extent possible according to law.

Part 10 - Short Title of Bylaw

10.1 This Bylaw may be referred to as the "Nuisance Party Bylaw".

Part 11 - Commencement

11.1 This Bylaw shall come into force and take effect on the date of its passing.