

TOWN OF FORT FRANCES

BY-LAW No. 45/13

Being a by-law to prohibit and abate nuisances within the Town of Fort Frances.

WHEREAS the Municipal Act 2001, S.O. c.25 as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority and that it may do so by by-law;

AND WHEREAS section 128(1) 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 WHEREAS section 128(2) of the Municipal Act, 2001 states that Council's determination of what constitutes a nuisance, where arrived at in good faith, is not subject to review;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF FORT FRANCES HEREBY ENACTS AS FOLLOWS:

PART I – Interpretation

Definitions

1. In this by-law:

- (a) **“Defecate”** means to discharge excrement from the human body;
- (b) **“Fixture”** means any structure that the Town permits to be located within a highway and/or any public place including but limited to, trees, utility boxes, benches, telephone boxes, telephone booths, transformer boxes, telephone poles, hydro poles, street lights, traffic control poles, traffic control components, recycling waste modules, mailboxes, street signs, a Canada Post relay mailbox, permitted signs, a blue box, or other garbage container, cemetery markers and monuments, or any equipment located in a park.
- (c) **“Highway”** means a common and public highway (whether assumed or unassumed) and includes any street, avenue, parkway, driveway, square, place, 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 lateral property lines thereof, including sidewalks and boulevards;
- (d) **“Littering”** means throwing, dropping, placing or otherwise depositing or permitting to be deposited any garbage, paper, plastic, paper products, plastic products, cans, bottles, rubbish or other debris or objects on public or private property, unless otherwise so authorized by the property owner or the Town of Fort Frances Waste Management by-law;
- (e) **“Loitering”** means to remain or linger in a public place without due cause;

- (f) **“Nuisance”** includes, but not limited to;
 - (i) soliciting, including, without limitation,
 - a) soliciting a person who is using, waiting to use, or departing from an automated teller machine;
 - b) soliciting a person who is using or waiting to use a pay telephone or a public toilet facility;
 - c) soliciting a person who is waiting at a taxi stand or a public transit stop;
 - d) while on a highway, soliciting a person who is in a stopped, standing or parked vehicle.
 - (ii) loitering after having been requested by an officer to move on;
 - (iii) fighting, screaming, spitting, yelling or using profane or abusive language or gestures;
 - (iv) carrying open liquor, except while on private property that is owned or occupied by the person who is carrying the liquor or an invited guest of the owner or occupant;
 - (v) remaining in or refusing to leave a public place after it is closed and/or when ordered to leave by an officer;
 - (vi) littering;
 - (vii) defacing, damaging or vandalizing public or private property;
 - (viii) obstructing an officer in the course of his or her duties;
 - (ix) being intoxicated in a public place; and
 - (x) any other activity or conduct that is disorderly or obnoxious.
- (g) **“Officer”** means a municipal law enforcement or police officer while in the course of his or her duties;
- (h) **“Person”** means an individual, association, firm, partnership, corporation, trust, organization, trustee, or agent, and their heirs, executors, or legal representatives of the person to whom the context can apply accordingly to law;
- (i) **“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, whether or not the property is owned by the person contravening the by-law;
- (j) **“Solicit”** means to request in person, the immediate provision of money or another thing of value, regardless of whether consideration is offered or provided in return, using spoken, written or printed word, a gesture or other means;

- (k) "Town" means the Corporation of The Town of Fort Frances;
- (l) "Urinate" means to discharge urine from the human body;
- (m) "Vehicle" includes an automobile, motorcycle, van, truck, trailer, bus, mobile home, traction engine, farm tractor, road-building machine, bicycle, motor-assisted bicycle, motorized snow vehicle, and any other vehicle drawn, propelled or driven by any kind of power including muscular power;
- (n) "Vomit" means to discharge the contents of the stomach by mouth.

2. When reading and interpreting this by-law,

- (a) this by-law shall be read with all changes in gender or number as the context requires;
- (b) references in this by-law to items in the plural include singular and references to the singular include the plural, as applicable; and
- (c) the words "include", "includes" or "including" are not to be read or interpreted as limiting the words, phrases or descriptions that precede it.

Severability

- 3. If a court of competent jurisdiction declares any section or any part of any section of this by-law to be invalid, or to be of no force or effect, it is the intention of the Town that every other provision of this by-law be applied and enforced in accordance with its terms to the extent possible according to law.

Conflict

- 4. This by-law shall not be construed to reduce or mitigate any restrictions or regulations lawfully imposed by the Town or by any government authority having jurisdiction to make such restrictions or regulations.
- 5. If a provision of this by-law conflicts with the provision of any applicable by-law, the provision that establishes the higher or more restrictive standard to protect the health, safety and welfare of the general public shall prevail.

Part 2 – Restrictions

Offences

- 6. No person shall cause, create or permit a nuisance in any public place in the Town.
- 7. (a) No person shall, without reasonable excuse, urinate, vomit or defecate in a public place.

(b) For the purposes of this section, reasonable excuse means;

- (i) 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; or
- (ii) 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.

8. No person shall knock over, attempt to knock over, deface, attempt to deface, remove, or attempt to remove or otherwise damage a fixture.

Part 3 – Enforcement

9. The provisions of this by-law may be enforced by an officer.
10. An officer may, at any reasonable time, enter upon any public place for the purpose of determining whether or not the provisions of this by-law have been complied with.
11. No person shall prevent, hinder or interfere or attempt to prevent, hinder or interfere with an officer, including refusing to identify themselves when requested to do so by an officer.

Part 4 – Penalty

Penalty

12. Every person who contravenes or fails to comply with any of the provisions of this by-law is guilty of an offence, and pursuant to section 429 of the Municipal Act, 2001, is liable to a maximum penalty of \$10,000 (ten thousand dollars) and a minimum penalty of not less than \$200.00 (two hundred dollars).

Part 5 – Enactment

Short Title

13. This by-law may be referred to as the Public Nuisance By-law.

Effective Date

READ THREE (3) TIMES and finally passed in open Council this _____ day of _____, 2013.

G. Paul Ryan, Deputy Mayor

K. Lawson, Deputy Clerk