

Report To: Mayor and Council

From: Patrick Briere, By-Law Enforcement Officer

Re: Nuisance By-Law Request.

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Council will recall at their meeting on March 25, 2013 that a request was received from Mr. Doug Anderson, Chairman of BIA in regards to Council's consideration for implementation of a Nuisance By-Law similar to The Town of Whitby's by-law. Council referred this matter to Planning & Development Executive Committee for recommendation.

The Planning & Development Executive Committee referred this item to the Police Services Board for their input.

On May 28, 2013 the Police Services Board recommended to Council that a Public Nuisance By-Law be prepared as an additional enforcement tool for the OPP. It was noted at the Planning & Development Executive Committee meeting that a review of the OPP policy in regards to the enforcement of the Town's Municipal By-Laws is necessary, as the last review was conducted on April 10, 2008.


On June 17, 2013 the Planning & Executive Committee reviewed the Police Services Board recommendation and is recommending the following to Council:

- 1) To direct the appropriate town departments to begin researching all Town of Fort Frances Municipal By-Laws along with neighbouring by-laws which would/could be implemented in a nuisance by-law.
- 2) Direct that the appropriate stakeholders begin the process of examining all of the necessary elements to have a draft nuisance by-law created.
- 3) Direct that once a draft by-law is created that a public communications plan be implemented. This will allow the public to provide staff with valuable feedback regarding the draft by-law, the scope of the bylaw, etc.
- 4) Once these steps are created a report be submitted to the Planning & Development Executive Committee for their final recommendation on a nuisance by-law to Council.

Attached for your reference is:

- a) Copy of the original request from Mr. Anderson, Chairman BIA.
- b) Copy of petition that was submitted to Club 88.
- c) Copies of Police Services Board recommendation and referral of petition from Clerk.
- d) Copy of the referral letter to BIA.
- e) Copy of Town of Whitby recommendation report & draft by-law.

Respectfully submitted

A handwritten signature in black ink, appearing to read 'Patrick Briere', with a stylized, flowing script.

Patrick Briere  
By-Law Enforcement Officer

**Council approval of this report will:**

- 1) To direct the appropriate town departments to begin researching all Town of Fort Frances Municipal By-Laws along with neighbouring by-laws which would/could be implemented in a nuisance by-law.
- 2) Direct that the appropriate stakeholders begin the process of examining all of the necessary elements to have a draft nuisance by-law created.
- 3) Direct that once a draft by-law is created that a public communications plan be implemented. This will allow the public to provide staff with valuable feedback regarding the draft by-law, the scope of the bylaw, etc.
- 4) Once these steps are created a report be submitted to the Planning & Development Executive Committee for their final recommendation on a nuisance by-law to Council.

March 20 / 13

AGENDA ITEM #3.4

To Mayor + Council  
Town of Fort Frances  
with the petty vandalism  
occurring throughout the  
town

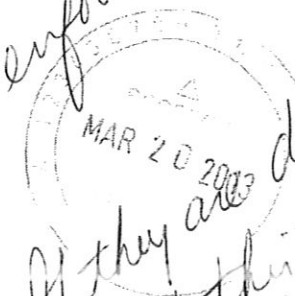
This might be a  
solution or partial solution

Thank you for your  
consideration

Doug Anderson  
Chairman  
BIA

279-9568

Police enforce  
By-laws that constitute  
safety violations / concerns.  
Don't know if nuisance  
would be enforced.

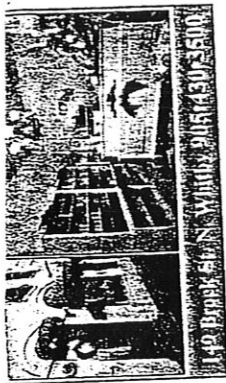


If they are downtown  
would this by-law be a  
tool they could use  
to move people  
along?

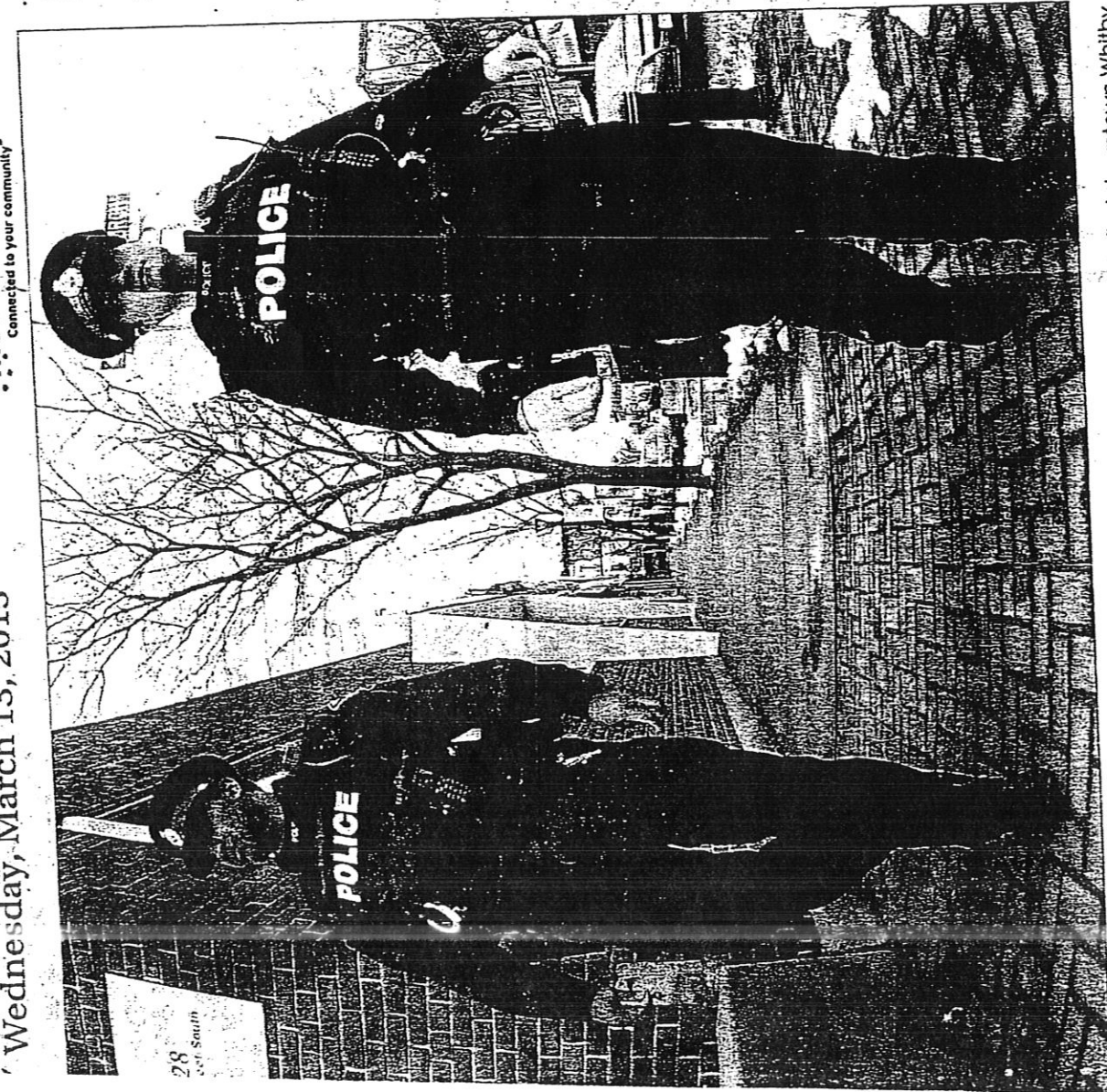
# WHITBY THIS WEEK

Wednesday, March 13, 2013

metrolandmedia  
Connected to your community



Join us Good Friday for Dinner  
OPEN FROM 4PM TILL CLOSE  
843 King St. W. Oshawa  
(Thornton & King) 905.725.7500  
www.shrimpcracktailcafe.com



Police patrol downtown Whitby.

# GOPS have eyes on Whitby

New public nuisance bylaw won't  
replace Criminal Code charges

PARVANEH PESSIAN  
ppessian@durhamregion.com

**WHITBY** -- Durham police have a new tool in their arsenal to address unruly behaviour in highly concentrated areas of Whitby, such as the downtown.

Town council approved a public nuisance bylaw that prohibits a variety of rowdy and undesirable activities, including urinating in public, use of profane language, fighting, carrying open liquor, damaging property, littering and public intoxication.



Insurance markets, we can

## Bylaw another tool for police to use in controlling downtown crime

From page 1

"In the last several years, downtown Whitby has seen a large rise in evening population and a large rise in crime and disorder that would occur when you increase the population and the consumption of alcohol," says Sergeant Ron Kapuscinski of Durham Regional Police.

The bylaw, passed by members of Whitby council at a public meeting on March 11, was brought forward by staff as a result of concerns raised by police regarding disruptive, destructive and occasionally violent behaviour occurring in the downtown core. These problems typically take place on Thursdays, Fridays and Saturdays during the late evening and early morning hours.

Sgt. Kapuscinski says he's spoken to many residents and business owners in downtown Whitby who are fed up with the ongoing problems.

"A lot of them have been increasingly frustrated with the activity that happens in the evenings and the mess, or the incidents of vandalism, or urination or whatever that they're finding in the morning when they return to their shops or they're leaving their apartment," he says.

"So this is just an extra tool that will assist us in keeping the incidence of those type of activities down."

The new bylaw will provide officers with an enforcement option that can be used to quell unwanted behaviours that may not necessarily cross the criminal threshold. Police can now more efficiently address indiscretions by issuing a ticket under the Municipal Act that carries a monetary fine. The City of Oshawa has had a similar bylaw in place since 2009 with favourable results.

The tool is not intended to replace charges for offences under the Criminal Code, which police will continue to enforce.

"If there are people assaulting each other or doing damages and there are criminal activities going on, the police will enforce the Criminal Code," says Bob Petrie, Whitby's chief administrative officer.

"This is meant for those instances where perhaps people aren't exactly breaking the law or don't have intent to break the law, and are doing inappropriate things in public that are more a nuisance than any Criminal Code violation."

Town staff will submit proposed fines to be enacted under the new bylaw to the Ministry of the Attorney General for approval.

Twitter.com/newsdurham

durhamregion.com

April 03/2013

To Club 88 and the patrons of Club 88

This is to advise you that if we are called one more time, <sup>in the wee hours</sup> ~~in the wee hours~~ in the morning because of broken windows or other disturbances we will do everything <sup>that we can</sup> ~~that we can~~ to ensure that Club 88 loses its liquor license.

Also the patrons of Club 88 are asked to please refrain from urinating and peeing on the fronts of our buildings. <sup>and ripping out flowers</sup> ~~and ripping out flowers~~ <sup>sp + Spitting</sup> ~~sp + Spitting~~

Also the patrons of Club 88 are asked to please stop from screaming and shouting loudly in the wee hours of the morning as there are tenants who are trying to sleep. <sup>Fighting</sup> ~~Fighting~~

If the above is not respected ~~again~~ <sup>+ one more incident</sup> ~~again~~ we will do everything that we can to ensure that Club 88 loses its liquor licence. <sup>occurs</sup> ~~occurs~~

Also Club 88 and its patrons are asked to please pay the appropriate business owners for any damages <sup>the</sup> ~~which have~~ occurred in the last few months. <sup>Such as broken windows, etc.</sup> ~~Such as broken windows, etc.~~

We are sure that if the above is adhered to ~~that~~ we can all get along and the young people will have a good place to go to.

Respectfully Yours

*[Signature]*

*[Signature]*

*[Signature]*

*[Signature]*

*[Signature]*

*[Signature]*

*[Signature]*

Betty Rehr  
Debbie Hallikas

*[Signature]*

Duelyn Fraser

Brian Wilson

John Hudson

J. Kuimaki

Samuel H. Hant

Patricia Herin

Allison Ogilvie

Ken Snider

Nathalie Donaldson

Russ Joseph

Dawn Cousnean  
Steno Kierzycki

T. Martinson



Administration & Finance Division  
Civic Centre

Operations & Facilities Division  
Fifth Street & Wright Avenue  
Phone: 807-274-9893  
Fax: 807-274-7360

Civic Centre  
320 Portage Avenue  
Phone: 807-274-5323  
Fax: 807-274-8479  
email: town@fort-frances.com



Planning & Development Division  
Civic Centre

Community Services Division  
740 Scott Street P9A 1H8  
Phone: 807-274-4561

Mailing Address:  
320 Portage Avenue  
Fort Frances, Ontario  
P9A 3P9

www.fort-frances.com

## POLICE SERVICES BOARD

June 6, 2013

Town of Fort Frances  
320 Portage Avenue  
Fort Frances, ON  
P9A 3P9

Attention: Mayor and Council

Dear Sirs:

At the regular meeting of the Police Services Board held May 28, 2013, the following resolution was approved:

"That the Police Services Board recommend to Council that a Public Nuisance By-law be prepared as an additional tool for the OPP as part of the By-law review the OPP."

We are enclosing the by-law from the Town of Whitby as a reference.

Yours truly

  
for Glenn Witherspoon  
Vice-Chair

GW/elh  
Encl.



Administration & Finance Division  
Civic Centre

Operations & Facilities Division  
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8 April 2013



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Fort Frances, Ontario  
P9A 3P9

www.fort-frances.com

Loreen Holt, Secretary  
Town of Fort Frances Police Services Board  
1628 Colonization Road W.  
Fort Frances, ON P9A 2V1

Dear Loreen,

Subject: Memorandum Received April 3, 2013 from Blair Anderson addressed to Club 88  
& its Patrons

I have attached a copy of a memorandum the Town received from Blair Anderson, addressed to Club 88 and its patrons, signed by a number of persons.

This is being forwarded because of the nature of the complaint(s) embodied in the memorandum and for any further action deemed appropriate in the circumstances by the Police Services Board.

Yours truly,

ADMINISTRATION AND FINANCE DIVISION

Glenn W. Treflin, A.M.C.T.

Town Clerk

Enclosures (1)

GT

cc: Blair Anderson





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Phone: 807-274-4561

Mailing Address:  
320 Portage Avenue  
Fort Frances, Ontario  
P9A 3P9

www.fort-frances.com

March 27, 2013

Business Improvement Area Board  
of Management  
Attn: Doug Anderson, Chairperson  
c/o Shelley Wepruk, Board Secretary  
335 Scott Street  
Fort Frances, Ontario  
P9A 1H1

Dear Sir:

At their meeting March 25, 2013, Council referred the request dated March 20, 2013 from D. Anderson, Chair Business Improvement Area Board of Management re: Consideration of a Public Nuisance By-Law to Planning and Development Executive Committee for recommendation.

By copy of this letter, your request has been referred as directed.

Please direct any questions you may have to Ms. Faye Flatt, Municipal Planner/Planning and Development Executive Committee Secretary and/or Mr. M. McCaig, CAO, at 274-5323.

Yours very truly,

ADMINISTRATION & FINANCE DIVISION

Kathryn M. Lawson, Deputy Clerk

/kl

813-0007  
c.c. Planning and Development Executive Committee  
Attn: F. Flatt, Municipal Planner/Executive Committee Secretary  
M. McCaig, CAO (att'd)



INCORPORATED 1855

# TOWN OF WHITBY REPORT

## RECOMMENDATION REPORT

REPORT TO: Operations Committee		REPORT NO: PW 41-12
DATE OF MEETING: December 3, 2012		FILE NO(S):
PREPARED BY: Public Works		LOCATION:
REPORT TITLE/SUBJECT:	Public Nuisance By-law	

### 1.0 RECOMMENDATION:

1. That Council direct staff to invite public review and feedback on the draft Public Nuisance By-law (**Attachment 1**) and post the draft by-law on the Town's website for a minimum period of 30 days.
2. That Council direct staff to circulate the draft Public Nuisance By-law to all bars and pubs in downtown Whitby and to members of the Downtown Development Steering Committee and Durham Regional Police Service for their review and comment over the same 30 day review period.

### 2.0 EXECUTIVE SUMMARY:

A Public Nuisance By-law prohibits a wide-variety of nuisance activities that may include urinating in public, profane language, fighting, carrying open liquor, damaging property, littering and other undesirable activities. Public Nuisance By-laws provide police services with an enforcement tool used to quell undesirable behaviours that may not cross the criminal threshold. Through the enactment of a Public Nuisance By-law and the subsequent submission of set fines to the Ministry of the Attorney General, police officers will be able to issue Part I Provincial Offence Notices to defendants who contravene the provisions of the by-law. A Part I ticket can be issued efficiently and carries a monetary fine set by a Senior Justice of the Peace. Issuing Part I tickets for offences such as those described above will allow police officers to conduct enforcement in Whitby in a more expeditious manner. Enforcement of this by-law would be the responsibility of members of the Durham Regional Police Service. This by-law is not intended to be regularly enforced by the Town's Municipal Law Enforcement Officers.

### **3.0 ORIGIN:**

Town of Whitby staff have been contacted by representatives from the Durham Regional Police Service regarding concerns about unruly, destructive and occasionally violent behaviour in Whitby's downtown. These concerns appear to be specific to Thursday, Friday and Saturday nights when the downtown is frequented by a large number of patrons to licensed establishments. The police have indicated that the occurrences of unruly behaviour peak after the licensed establishments in the downtown close as there is a sudden influx of patrons onto the streets of downtown. The police have further suggested that the Town enact a Public Nuisance By-law so that officers are provided with an additional tool to address undesirable behaviour in Whitby's downtown.

### **4.0 BACKGROUND:**

In recent years, many local municipalities have either considered or enacted public nuisance by-laws in response to concerns brought forward by police services and residents in their communities. Public nuisance by-laws typically attempt to regulate and prohibit a wide-variety of nuisance activities that may include, urinating in public, profane language, fighting, damaging property, carrying open liquor and littering.

In 2009, The City of Oshawa passed a public nuisance by-law that prohibits loitering, fighting, yelling, open liquor, obstructing vehicle traffic and refusing to leave an area when directed by a police officer. The Council of the City of Oshawa decided to implement a public nuisance by-law in response to a number of concerns raised by residents with respect to student parties and licensed establishments located in the City's downtown. While a number of the provisions contained in Oshawa's by-law are already governed by Federal and Provincial legislation such as the Criminal Code of Canada, the Trespass to Property Act and the Provincial Offences Act, Oshawa City Council decided to replicate these provisions in their public nuisance by-law in order to provide law enforcement officials with an additional enforcement tool. In addition to Oshawa, the City of Kitchener enacted a public nuisance by-law in 2007. Kitchener's by-law prohibits fighting, profane language in a public place and damaging or vandalizing property. City of Oshawa staff have indicated that they have been pleased with the results achieved through their public nuisance by-law. They have indicated that providing a comprehensive and consolidated source for nuisance activities has been very helpful.

Criminal charges and the associated penalties are much more severe than the majority of other types of charges available to a police officer. As such, an officer must be certain that his or her evidence proves beyond a reasonable doubt, that the



defendant's actions were indeed criminal in nature. The burden of proof that police officers are tasked with means that often times unruly or disruptive behaviour does not cross the criminal threshold, and perhaps would be better addressed through either Provincial or Municipal legislation. Without the alternative of a public nuisance by-law, law enforcement officials are often left with no other option but to caution an unruly person about their actions.

By-law enforcement does not carry the same evidentiary requirement as enforcement of the Criminal Code. In fact, by-law infractions are considered strict liability offences, meaning that the prosecution is only required to prove that an act contrary to the by-law took place. When prosecuting a criminal offence, the prosecution is required to prove that not only did the act take place, but that the defendant had the mental intent to commit the offence. This difference between a by-law infraction and a Criminal Code infraction allows law enforcement officials to use the provisions of a by-law to address minor issues related to unruly behaviour while conducting enforcement more expeditiously.

## 5.0 **DISCUSSION/OPTIONS:**

Through a review of the public nuisance by-laws of neighbouring municipalities along with those municipalities that have a similar population to the Town of Whitby, it seems that the majority of public nuisance by-laws contain provisions prohibiting public urination, littering and the use of profane language.

At present, the Town of Whitby has the following by-laws in place which contain provisions which mirror similar provisions found in the public nuisance by-laws of other municipalities:

### **Boulevard By-law 6456-11**

- The by-law does not permit residents to leave obstructions on the boulevard or highway
- The by-law prohibits the placement of skateboard wax on curbs
- The by-law prohibits the placing of debris, snow or the blowing of leaves on any highway

### **Littering By-law 3163-92**

- The by-law prohibits the throwing or placing of refuse or debris on both public and private property

### **Noise By-law 292-70**

- The by-law restricts the emission of disturbing noise, including shouting



<ul style="list-style-type: none"><li>• The by-law prohibits soliciting via amplified sound</li></ul>
<b>Parks By-law 5066-02</b> <ul style="list-style-type: none"><li>• The by-law prohibits persons in municipal parks and park buildings from conducting themselves in an obnoxious manner or using profane or abusive language</li></ul>
<b>Street Vendor By-law 4224-98</b> <ul style="list-style-type: none"><li>• The by-law prohibits the sale of goods from highways and from vacant land adjacent to highways</li></ul>
<b>Urinating in Public By-law 4189-98</b> <ul style="list-style-type: none"><li>• The by-law prohibits persons from urinating in public</li></ul>
<b>Waste Management By-law 5795-06</b> <ul style="list-style-type: none"><li>• The by-law does not permit persons to pick over, interfere with or collect garbage and debris including refundable bottles and scrap metal from curbside waste bins which are set out in accordance with the Town's collection schedule</li></ul>

While some of the provisions contained in the draft Public Nuisance By-law are already contained in other Town by-laws, providing law enforcement officials with a consolidated by-law for all nuisance activities will make enforcement simpler and more effective. Staff will bring forward a subsequent report with any necessary by-law revocations at the time of consideration of the Public Nuisance By-law.

## 6.0 PUBLIC COMMUNICATIONS/PLAN:

Staff would like to initiate a public review and comment period for the draft by-law for a minimum period of 30 days. In addition, the draft by-law will be posted on the Town's website for public review and feedback. Lastly, the draft by-law will be circulated to bars and pubs in downtown Whitby along with members of the Downtown Development Steering Committee and Durham Regional Police Service for their review.

## 7.0 CONSIDERATIONS:

### A. PUBLIC

As this by-law will create a new set of regulations in the Town of Whitby, it is recommended that public comment and involvement be sought.

**B. FINANCIAL**

N/A

**C. IMPACT ON & INPUT FROM OTHER DEPARTMENTS/SOURCES**

The draft Public Nuisance By-law has been provided to the Municipal Solicitor for review and comment.

**D. CORPORATE AND/OR DEPARTMENT STRATEGIC PRIORITIES**

The establishment of a Public Nuisance By-law will help to ensure that Whitby remains a safe and healthy community.

**8.0 SUMMARY AND CONCLUSION**

By providing direction to initiate a public review period, staff will be able to receive public input and comment regarding the draft Public Nuisance By-law. Further, involvement from stakeholders such as the downtown Whitby bars and pubs along with the Downtown Development Steering Committee and Durham Regional Police Service will provide staff with valuable feedback regarding the draft by-law. Once public comment has been received and reviewed, staff will be able to report back to the Operations Committee with a completed by-law.

**9.0 ATTACHMENTS**

**Attachment 1 – Draft Public Nuisance By-law**

For further information contact:  
Kevin Narraway, Supervisor of By-law Services, Ext. 2349

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Suzanne Beale, Commissioner of Public Works, Ext. 4311

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Robert Petrie, Chief Administrative Officer, Ext. 2211

**DRAFT**



# The Corporation of the Town of Whitby

## Public Nuisance By-law By-law XXXX-12

This by-law is printed under and by authority  
of the Council of the Town of Whitby, Ontario.



THE CORPORATION OF THE TOWN OF WHITBYBY-LAW XXXX-12

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

**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 public nuisances;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF WHITBY 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 including a boulevard tree, utility box, newspaper vending box, bench, transit shelter, telephone box, telephone booth, transformer box or vault, telephone pole, hydro pole, streetlight, stoplight pole, recycling waste module, mailbox, street sign, a Canada Post relay mailbox, permitted signs, or a blue box, green bin or other garbage container;
- (c) “highway” means a common and public highway (whether assumed or unassumed) and includes any bridge, trestle, viaduct or other structure forming part of the highway and includes the boulevard and other untraveled portions;
- (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, other debris or objects on public or private property, unless so authorized by the property owner or the Town’s Waste Management By-law;
- (e) “loitering” means to remain in a public place without due cause;
- (f) “nuisance” includes;
  - (i) soliciting, including and without limiting the generality of the foregoing,
    - (1) soliciting a person who is using, waiting to use, or departing from an automated teller machine;

- (2) soliciting a person who is using or waiting to use a pay telephone or a public toilet facility;
    - (3) soliciting a person who is in or on a public transit vehicle;
    - (4) soliciting a person who is waiting at a taxi stand or a public transit stop;
    - (5) soliciting a person who is in the process of getting in, out of, on or off a vehicle or who is in a parking lot;
    - (6) while on a highway, solicit a person who is in a stopped, standing or parked vehicle.
  - (ii) loitering in any public place after having been requested by an officer to move on;
  - (iii) fighting, screaming, 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;
  - (ix) obstructing an officer in the course of his or her duties; and
  - (x) any other activity or conduct that is disorderly or obnoxious.
- (g) "officer" means a municipal law enforcement officer appointed to enforce the by-laws of the Town or a 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 according 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 Whitby;
  - (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, street car 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 the 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 II – RESTRICTIONS

### Offences

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

### 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 property 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.

## PART IV – 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 \$10,000.00 (ten thousand dollars) and a minimum penalty of not less than \$200.00 (two hundred dollars).



PART V – ENACTMENT

Short Title

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

Effective Date

14. This by-law shall come into full force and effect on the day it is passed.

By-law read a first, second and third time, and finally passed, this XX day of XXXXX, 2012.

---

Debi A. Wilcox, Town Clerk

---

Patricia Perkins, Mayor



# The Corporation of the Town of Whitby

## Public Nuisance By-law By-law No. 6714-13

This by-law is printed under and by authority  
of the Council of the Town of Whitby, Ontario.

THE CORPORATION OF THE TOWN OF WHITBYBY-LAW 6714-13

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

**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 WHITBY 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 including a boulevard tree, utility box, newspaper vending box, bench, transit shelter, telephone box, telephone booth, transformer box or vault, telephone pole, hydro pole, streetlight, stoplight pole, recycling waste module, mailbox, street sign, a Canada Post relay mailbox, permitted signs, or a blue box, green bin or other garbage container;
- (c) "highway" means a common and public highway (whether assumed or unassumed) and includes any bridge, trestle, viaduct or other structure forming part of the highway and includes the boulevard and other untraveled portions;
- (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 so authorized by the property owner or the Town's Waste Management By-law;

- (e) "loitering" means to remain in a place without due cause;
- (f) "nuisance" includes;
  - (i) soliciting, including and without limiting the generality of the foregoing,
    - (1) soliciting a person who is using, waiting to use, or departing from an automated teller machine;
    - (2) soliciting a person who is using or waiting to use a pay telephone or a public toilet facility;
    - (3) soliciting a person who is in or on a public transit vehicle;
    - (4) soliciting a person who is waiting at a taxi stand or a public transit stop;
    - (5) soliciting a person who is in the process of getting in, out of, on or off a vehicle or who is in a parking lot;
    - (6) 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 officer appointed to enforce the by-laws of the Town or a 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 according 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, but does not include a washroom facility, 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 Whitby;
- (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, street car 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 the 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 II – 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 III – ENFORCEMENT

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 IV – 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 \$10,000.00 (ten thousand dollars) and a minimum penalty of not less than \$200.00 (two hundred dollars).

PART V – ENACTMENT

Short Title

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

Repeal of Existing By-laws

14. Town of Whitby Urinating in Public Places By-law No. 4189-98 is hereby repealed.

Effective Date

15. This by-law shall come into full force and effect on the day it is passed.

By-law read a first, second and third time, and finally passed, this 11<sup>th</sup> day of March, 2013.



Leigh Doughty, Deputy Clerk



Patricia Perkins, Mayor