

**By-Law 65-2009  
of The Corporation of the City of Oshawa**

Being a By-law to prohibit and abate public nuisances in public places within the City of Oshawa.

**Now therefore** the Council of The Corporation of the City of Oshawa enacts as follows:

**1. Short Title**

1.1. The short title of this By-law is the “Nuisance By-law”.

**2. Interpretation**

2.1. In this By-law:

- (a) **City** means The Corporation of the City of Oshawa.
- (b) **Defecate** means to discharge excrement from the human body.
- (c) **Director** means the City’s Director, Municipal Law Enforcement and Licensing Services, or his or her designate.
- (c.1) **Donation Box** means a container used for the purpose of the collection of used goods or clothing. (37-2020)
- (d) **Highway**, for the purposes of this By-Law, includes a common and public highway, street, avenue, parkway, driveway, square, place, 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.
- (e) **Littering** means throwing, dropping, placing or otherwise depositing or permitting to be deposited any garbage, paper, plastic, paper products, plastic products, cans, rubbish, other debris or objects on public or private property, unless so authorized by the property owner or the City’s Waste Collection By-Law.
- (f) **Loitering** means the lingering in a public place without due cause.
- (g) **Nuisance** includes:
  - (i) soliciting, including, without limitation,
    - (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 waiting at a taxi stand or a public transit stop;
    - (4) soliciting a person who is in or on a public transit vehicle;
    - (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 roadway, solicit a person who is in or on 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;
  - (v) obstructing, interfering with or otherwise impeding the movement of persons or vehicles;
  - (vi) remaining in or refusing to leave a public place after it is closed and/or when ordered to leave by an officer;
  - (vii) littering;
  - (viii) defacing, damaging or vandalizing public or private property;
  - (ix) expectorating in a public place;
  - (x) obstructing an officer in the course of his or her duties;
  - (xi) anything which is injurious to the health, or indecent, or offensive to the senses, or an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property; and
  - (xii) any other activity or conduct that is disorderly, annoying, unpleasant or obnoxious.
- (h) Officer means a Municipal Law Enforcement Officer appointed to enforce the By-laws of the City.
- (i) Deleted by By-law 63-2013.
- (j) Person includes an individual, association, firm, partnership, corporation, trust, organization, trustee, or agent, and their heirs, executors, or legal representatives.
- (k) 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.
- (l) 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.
- (m) Urinate means to discharge urine from the human body.
- (n) Vehicle includes 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.
- (o) Vomit means to throw up the contents of the stomach by mouth.
- (p) **Wild Animal** means an animal that belongs to a species that is wild by nature, but does not include:
- (i) an animal permitted to be kept in accordance with the Responsible Pet Owners By-law 14-2010, as amended; and,
  - (ii) a Feral Cat that is part of a registered Feral Cat Colony as defined in the Responsible Pet Owners By-law 14-2010, as amended. (78-2021)

(q) Young Person means a person who is or, in the absence of evidence to the contrary, appears to be less than eighteen years old. (78-2021)

2.2. The Nuisance described in clause 2.1(g)(viii) of this By-law does not include artwork, including graffiti, that is authorized pursuant to a program administered by the City's Community Services Department. (37-2017)

### 3. Prohibited Activity

3.1. No person shall cause, create or permit a nuisance in any public place in the City.

3.2.

(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 reasonable 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.

3.3. No person shall knock over, attempt to knock over, deface, attempt to deface, remove or attempt to remove a Canada Post mailbox, relay box, newspaper box, Blue Box, garbage container, traffic or street sign, utility pole or any other public or private property. This section shall not apply to City employees, or any person under contract with the City, acting under the City's Waste Collection By-Law.

3.4. No person shall place or cause to be placed any donation box on a property without the express permission of the property owner. (37-2020)

3.5. No person shall feed a Wild Animal or leave food or attractants of any type or in any form in any place in such a manner as to attract, or be accessible by a Wild Animal, feral or stray domestic animal which results in one or more of the following occurring so as to constitute a public nuisance:

(a) excessive accumulation of food, including bird seed and seed casings;

(b) accumulation of wildlife excrement;

(c) unreasonable interference with the normal use and enjoyment of nearby premises;

(d) attraction of rodents (including mice or rats) or predatory wildlife (including coyotes) to the premises. (78-2021)

3.6. Section 3.5 does not apply in the following situations:

(a) the leaving of food as bait in a trap by a property owner to capture a nuisance animal inhabiting or habituating their property; or

(b) baiting by pest control companies (78-2021)

### 4. Order to Discontinue Activity

4.1. Where an officer is satisfied that a person has contravened this By-law, the officer may make an order requiring the person who contravened the 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.

- 4.2. An order under subsection 4.1 shall set out:
- (a) reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred; and
  - (b) the date by which there must be compliance with the order.
- 4.3. Any person who contravenes an order issued under subsection 4.1 is guilty of an offence.
- 4.4. Where a person contravenes an order an Officer may, without notice or compensation to any person, cause any donation box placed contrary to section 3.4 to be removed from a property and disposed of by the City. (37-2020)

## 5. Administrative Penalties

- 5.1. Administrative Penalty Process By-law 63-2013 applies to each administrative penalty issued pursuant to this By-law. (104-2020)
- 5.2. Each Person who contravenes any provision of this By-law shall, upon issuance of a penalty notice in accordance with Administrative Penalty Process By-law 63-2013, be liable to pay to the City an administrative penalty. If a Person receives a penalty notice in accordance with the City's Administrative Penalty Process By-law for a contravention of the Nuisance By-law, and the Person has not received a penalty notice for the same contravention within one (1) calendar year or less, the Person shall be liable to pay to the City a tier one (1) administrative penalty amount for that contravention in the amount of \$250. If a Person receives an additional penalty notice for the same contravention of the Nuisance By-law within one (1) calendar year or less from the date of the penalty notice containing a tier one (1) administrative penalty amount, the Person shall be liable to pay to the City a tier two (2) administrative penalty amount for that contravention in the amount of \$350. If the Person receives a subsequent penalty notice for the same contravention of the Nuisance By-law within one (1) calendar year or less from the date of the penalty notice containing a tier two (2) administrative penalty amount, the Person shall be liable to pay to the City a tier three (3) administrative penalty amount for that contravention in the amount of \$450. If the Person receives any subsequent penalty notices for the same contravention of the Nuisance By-law within one (1) calendar year or less from the date of the penalty notice containing a tier three (3) administrative penalty amount, the Person shall be liable to pay to the City a tier three (3) administrative penalty amount for that offence in the amount of \$450. (104-2020)
6. Deleted by By-law 63-2013.

## 7. Offences

- 7.1. Each Person who contravenes any provision of this By-law is guilty of an offence and on conviction is liable to a fine of:
- (a) not less than \$300 and not more than \$5,000;
  - (b) not less than \$400 and not more than \$10,000 for a second conviction of the same offence; and
  - (c) not less than \$500 and not more than \$25,000 for a third or subsequent conviction of the same offence.
- 7.2. Prosecution under this By-law shall not preclude any other legal actions required to recover damages required to repair, replace or restore damaged real or personal property, as the case may be.

## **8. Notice**

- 8.1. Any notice or document respecting this By-law may be given in writing in any of the following ways and is effective:
- (a) when a copy is delivered to the Person to whom it is addressed;
  - (b) on the fifth (5th) day after a copy is sent by registered mail to the Person's last known address;
  - (c) upon the conclusion of the transmission of a copy by facsimile transmission to the Person's last known facsimile transmission number;  
(37-2020)
  - (d) upon the sending of a copy by e-mail transmission to the Person's last known e-mail address; or  
(37-2020)
  - (e) when the notice or document relates to a donation box, when a copy is posted on the donation box.  
(37-2020)
- 8.2. Subject to section 8.3, if a notice or any other document is issued in respect of a young person, the person who issued the notice or document shall as soon as possible give or cause to be given to a parent of the young person notice in writing of the notice or other document.
- 8.3. If the whereabouts of the parents of a young person are not known or it appears that no parent is available, a notice or any other document given under this By-law may be given to an adult relative of the young person who is known to the young person and is likely to assist the young person or, if no such adult relative is available, to any other adult who is known to the young person and is likely to assist the young person and who the person giving the notice considers appropriate.

## **9. General**

- 9.1. For the purpose of section 23.2(4) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, it is the opinion of Council that the powers delegated to the Hearings Officer and to the Director pursuant to this By-law are of a minor nature.

## **10. Conflict**

- 10.1. This By-law shall not be construed to reduce or mitigate any restrictions or regulations lawfully imposed by the City or by any governmental authority having jurisdiction to make such restrictions or regulations.
- 10.2. If there is a conflict between a provision of this By-law and a provision of any other City By-law, the provision that establishes the higher standard to protect the health and safety of the public and to maintain clean and tidy condition on land shall apply.

## **11. Severability**

- 11.1. If any provision or part of a provision of this By-law is declared by any court or tribunal of competent jurisdiction to be illegal or inoperative, in whole or in part, or inoperative in certain 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. Effective Date**

- 12.1. This By-law is effective on the date of its passing.
- 12.2. By-laws 61-79, 72-94 and 32-2002 are hereby repealed.

By-law passed this eighth day of September, 2009.

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Mayor

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City Clerk

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