

Authority: Item:
Report (PED16107(b))
CM:
Ward: City Wide

Bill No.

CITY OF HAMILTON

BY-LAW NO.

To repeal and replace By-law No. 05-114, being a by-law to regulate the discharge of firearms

WHEREAS subsection 10(1) of the *Municipal Act, 2001* provides that single-tier municipalities may provide any service or thing that the municipality considers necessary or desirable for the public; and pursuant to paragraphs 6 and 8, may pass by-laws respecting the health, safety and well-being of persons and the protection of and property;

WHEREAS pursuant to section 119 of the *Municipal Act, 2001*, a municipality is authorized to prohibit or regulate the discharge of guns or other firearms, air-guns, spring-guns, cross-bows, long-bows or any other weapon for the purpose of safety;

WHEREAS pursuant to subsection 23.1(1) of the *Municipal Act, 2001*, a municipality is authorized to delegate its powers and duties under the Act, subject to certain restrictions;

WHEREAS pursuant to section 425 of the *Municipal Act, 2001*, a municipality is authorized to pass by-laws providing that a person who contravenes a by-law of the Municipality passed under the *Municipal Act, 2001* is guilty of an offence;

WHEREAS pursuant to section 429 of the *Municipal Act, 2001*, a municipality may establish a system of fines for offences under a by-law of the Municipality passed under the *Municipal Act, 2001*;

WHEREAS pursuant to section 436 of the *Municipal Act, 2001*, a municipality may pass a by-law providing that the municipality may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether or not there is compliance with a by-law, direction, order, or condition of license passed or made under the *Municipal Act, 2001*;

WHEREAS sections 444 and 445 of the *Municipal Act, 2001* provides that if a municipality is satisfied that a contravention of a by-law passed under the *Municipal Act, 2001* has occurred, that the municipality may make an order requiring the person who contravened the by-law or caused or permitted the contravention or the owner or occupier of the land to discontinue the contravention or do work to correct the contravention of the by-law;

WHEREAS the Council for the City of Hamilton deems that the discharge of firearms could create a safety hazard for the public;

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

SHORT TITLE

1 This By-law may be cited as the Discharge of Recreational Firearms By-law.

DEFINITIONS

2 In this By-law,

“bow” means a curved or re-curved, stave of a resilient material strung taut from end to end and used to launch an arrow, a bolt, a quarrel, or any similar projectile and includes a crossbow, longbow, compound bow, re-curve bow, or any class thereof;

“City” means the City of Hamilton;

“Council” means the Council for the City of Hamilton;

“Committee” means the Planning Committee established by Council for the City of Hamilton;

“Director” means the City’s Director of Licensing and By-law Services and their designate or successor;

“firearm” means any type of gun or similar barrelled device from which any shot, bullet or other projectile can be discharged and that is capable of causing bodily injury or death, and includes air gun, spring-gun, pellet gun or paint ball gun;

“highway” means a common and public highway and includes a street, bridge or other structure forming part of a highway over or across which a highway passes, and includes the whole of a road allowance under the jurisdiction of the City;

“land” includes any public or private property, premises, grounds, yards or vacant lot and includes land owned by a Conservation Authority or agreement forest established by or under the *Conservation Authorities Act*;

“Officer” means a police officer, municipal law enforcement officer, officer appointed under the *Fish and Wildlife Conservation Act, 1997* or *Conservation Authorities Act*, or other person appointed to enforce the provisions of this By-law;

“person” includes a company, a corporation, a partnership, or an individual Person;

“park” means a private or public park or recreational area that is open to the general public for sports, recreational uses and like activities, and includes open space, campgrounds and picnic area;

“public centre” means a parcel of land on which is situated a cemetery, place of worship, public hall, community centre, day nursery, community sports facility, hospital, school or golf course; and

“public trail” means a managed pathway or designated travel corridor which is open to use by the general public for the purposes of walking, biking, hiking, cross country skiing or other means of recreational travel.

APPLICATION OF BY-LAW

3 This By-law does not apply to,

- (a) a peace officer, police officer or member of the Canadian Armed Forces in the performance of their duty;
- (b) a person appointed as an animal control officer, municipal law enforcement officer, or as an agent for the City or for a provincial or federal government agency for the purpose of destroying sick, injured or vicious animals as authorized by law in the performance of this stated duty;
- (c) a bona fide gun club or range, registered and regulated by the *Firearms Act* (Canada), the use and location of which is permitted pursuant to the applicable zoning by-law and building requirements and any other applicable federal, provincial and municipal laws;
- (d) a facility operated by or for a municipal, provincial or federal police force;
- (e) any device designed and intended by the person in possession therefore, for use exclusively for signalling, notifying of distress or firing stud cartridges, explosive-driven rivets or similar industrial ammunition, or firing blank cartridges;
- (f) the firing of blank ammunition which does not discharge a projectile for or in connection with lawful use in a motion picture, television and stage productions, ceremonial military memorial services, military re-enactments and historical displays or educational programs, or for the purpose of starting or controlling a sporting event.

GENERAL PROHIBITIONS

4 No person shall discharge a firearm or bow in the City except in accordance with this By-law.

5 No person shall discharge or cause to be discharged or allow to be discharged, a firearm or bow on any land except with the express consent of the owner of the land.

6 (1) No owner or occupier of land where the discharge of a firearm or bow is prohibited pursuant to section 8 shall knowingly allow any person to discharge a firearm or bow on such land.

(2) Where a contravention of this By-law has occurred, every owner of land shall take reasonable precautions to prevent the continuation or repetition of the contravention on such land.

7 No person shall discharge or cause to be discharged or allow to be discharged a firearm or bow between half an hour after sunset to half an hour before sunrise unless otherwise permitted under the *Fish and Wildlife Conservation Act, 1997*, or regulations thereunder.

8 (1) For the purposes of this section, a prohibited area is any of the following:

- (a) lands within the urban boundary as set out on Schedule D to the Rural Hamilton Official Plan;
- (b) lands within a rural settlement area, which are as shown as “Firearms & Bows Prohibited” on the maps in Schedule A, which forms part of this By-law;
- (c) lands zoned residential;
- (d) a park;
- (e) a public centre;
- (f) a public trail.

(2) No person shall discharge or cause to be discharged or allow to be discharged, a firearm or bow within any of the following locations:

- (a) a prohibited area;
- (b) within 300 m of the John C. Munro Hamilton International Airport or a registered aerodrome;
- (c) on or within any watercourse or body of water defined as navigable water pursuant to the *Navigable Waters Protection Act* (Canada);
- (d) on, over or across any highway, railway or portion thereof;
- (e) within an unopened road allowance.

(3) In addition to subsection (1), no person shall discharge or cause to be discharged or allow to be discharged,

- (a) a firearm within 100 m of any of the following locations:
 - (i) a prohibited area;
 - (ii) any occupied dwelling, building or structure except with the express consent of the owner or occupier of the dwelling, building or structure.
- (b) a bow within 50 m of any of the following locations:

- (i) a prohibited area;
- (ii) any occupied dwelling, building or structure except with the express consent of the owner or occupier of the dwelling, building or structure.

EXCEPTIONS

9 Sections 7 and 8 do not apply to:

- (a) a farmer or their agent discharging a firearm or bow on land owned by the farmer in order to scare or destroy animals that are found in the act of killing or injuring livestock or poultry or destroying their property, provided that such discharge complies with any of the following:
 - (i) *Migratory Birds Convention Act, 1994* (Canada);
 - (ii) *Fish and Wildlife Conservation Act, 1997*; or
 - (iii) *Protection of Livestock and Poultry from Dogs Act*;
- (b) a trapper licensed by the Ministry of Natural Resources in accordance with the *Fish and Wildlife Conservation Act, 1997* to hunt and trap fur-bearing mammals;
- (c) the discharge of a bow, air gun, spring-gun, pellet gun or paint ball gun provided that such discharge takes place within a secure indoor facility where there is no danger of any projectile fired or discharged therein passing out of the building or into any other part of the building;
- (d) the discharge of a bow at a competition, educational or recreational event sanctioned by a school board, the Federation of Canadian Archers, the Ontario Association of Archers, Ontario Federation of Anglers and Hunters, or the Rockton Agricultural Society; or
- (e) land owned by, or under the control of a Conservation Authority where the discharge of a firearm or bow is permitted.

PERMITS AND APPEAL

10 (1) Any person may apply for an exemption permit from this By-law or any provision of it.

(2) An application for an exemption permit shall be made at least sixty (60) days before the event for which the exemption is sought.

(3) The exemption permit application shall be made in writing to the Director, in the form prescribed by the Director, and shall contain the following:

- (a) the name, address and telephone number of the applicant and owner of the property where the event will occur;

- (b) the period of time for which the exemption is sought, including time of day and duration;
- (c) the reasons why the exemption is sought;
- (d) the type of firearm or bow to be used;
- (e) proof that the person seeking the exemption has notified, in writing, all owners of property within 100 m of the perimeter of the property where the event will take place, that an exemption to the By-law is being sought; and
- (f) a detailed map showing:
 - (i) the surrounding residential areas and properties;
 - (ii) the location and uses of all buildings and structures on and within 100 m of the subject lands;
 - (iii) the form and location of a safe backstop to be used where the discharge of firearm or bow will occur.

(4) An application for an exemption permit shall be accompanied by the fee as set out in the City's User Fees and Charges By-law, or as otherwise set and approved by Council from time-to-time.

11 (1) Upon receipt of a completed application for an exemption permit, the Director may:

- (a) issue the exemption permit subject to such conditions as the Director may determine; or
- (b) refuse the exemption permit.

(2) An application for an exemption permit for the discharge of a firearm or bow from an activity that is prohibited under any other by-law shall be refused by the Director.

(3) In considering an application for an exemption permit, the Director shall have regard to:

- (a) any negative effects the issuance of the exemption permit may have on neighbouring properties or on the City;
- (b) any previous violations of this By-law or an exemption permit by the applicant; and
- (c) any other factors that the Director considers relevant to the decision.

(4) Where the Director refuses the exemption permit, a notice including the date and grounds for the Director's refusal will be sent by regular or registered mail to the applicant to the last known address on file.

12 (1) An applicant for an exemption permit may appeal the decision of the Director to the Committee within ten (10) days of the Director's decision being made by sending a notice of appeal in writing to the Director, including the grounds for their appeal and accompanied by the fee as set out in the City's User Fees and Charges By-law.

(2) Upon receipt of a completed appeal and accompanied fee, the Director shall prepare a report to Committee with respect to the exception permit application and notify the applicant once an appeal date before the Committee has been set and if the applicant does not attend on the appeal date, the Committee may proceed in their absence and the applicant shall not be entitled to further notice in the proceeding.

(3) The Committee shall consider the Director's report and recommend to Council that an exemption permit be refused or issued, or that a condition imposed on an exemption permit.

(4) Council may uphold or vary the recommendation(s) of the Committee or do any act or make any decision it might have done had it conducted the appeal itself and the decision of Council is final.

13 Failure to comply with any of the terms or conditions of an Exemption Permit shall render the exemption null and void.

ADMINISTRATION

14 (1) The Director is authorized to administer and enforce this By-law including,

(a) arranging for:

- (i) the assistance or work of City staff, City agents or the assistance of police officers;
- (ii) the making of orders or other requirements and the imposition of conditions as authorized under this By-law;
- (iii) the obtaining of court orders or warrants as may be required;
- (iv) the commencement of such actions on behalf of the City to recover costs or restrain contravention of this By-law as deemed necessary;

(b) prescribing the format and content of any forms or other documents required under this by-law.

(2) The Director may assign Officers to enforce this By-law and Officers so assigned or appointed by Council to enforce this By-law shall have the authority to:

- (a) carry out inspections;
- (b) make orders or other requirements as authorized under this By-law; and
- (c) give immediate effect to any orders or other requirements made under this By-Law.

(3) The Director may assign duties or delegate tasks under this By-law to be carried out in the Director's absence or otherwise.

ENFORCEMENT AND PENALTIES

15 Every person who contravenes any of the provisions of this By-law is guilty of an offence and upon conviction is liable to a fine of not less than \$500 and not more than \$100,000.

16 (1) An Officer may enter upon land at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:

- (a) this By-law;
- (b) a direction or order made under the *Municipal Act, 2001* or this By-law.

(2) An Officer carrying out an inspection under subsection (1) may:

- (a) require the production for inspection of documents or things relevant to the inspection;
- (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts; and
- (c) require information from any person concerning a matter related to the inspection.

(3) A receipt shall be provided for any document or thing removed under subsection (2) and the document or thing shall be promptly returned after the copies or extracts are made.

17 (1) If an Officer is satisfied that a contravention of this By-law has occurred, 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:

- (a) discontinue the contravening activity, or
- (b) do work to correct or prevent the contravention.

(2) An order made under subsection (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.

(3) An order under subsection (1) may require work to be done even though the facts which constitute the contravention of the by-law were present before the by-law making them a contravention came into force.

(4) An order issued under subsection (1) shall be served personally or by registered mail to the last known address on the person whom the Officer believes is contravening this By-law.

18 (1) Any person who contravenes an order under section 17 is guilty of an offence.

(2) If a person fails to comply with an order under section 17, the City may do the things required by the order at the person's expense.

(3) The City may recover the costs of doing any thing or matter under subsection (2) by action or by adding the costs to the tax roll and collected in like manner as taxes.

(4) The costs in subsection (3) shall include interest calculated at a rate of 15 per cent, calculated for the period commencing on the day the City incurs the costs and ending on the day the costs, including the interest, are paid in full.

(5) For the purposes of subsection (2), the City may enter upon land at any reasonable time.

REPEAL AND ENACTMENT

19 The City of Hamilton By-law No. 05-114 is hereby repealed in its entirety.

20 This By-law comes into force on the day it is passed.

PASSED this _____, 2019.

F. Eisenberger
Mayor

J. Pilon
Acting City Clerk