





CITY OF HAMILTON
PUBLIC WORKS DEPARTMENT
Environmental Services Division
and
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Transportation Planning and Parking Division

TO:	Chair and Members Public Works Committee
COMMITTEE DATE:	May 16, 2022
SUBJECT/REPORT NO:	Housekeeping Update to Parks By-law 01-219 (PW22032/PED22066) (City Wide)
WARD(S) AFFECTED:	City Wide
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SUBMITTED BY: SIGNATURE:	Cynthia Graham Acting Director, Environmental Services Public Works Department 
SUBMITTED BY: SIGNATURE:	Monica Ciriello Director, Licensing and Bylaw Services Planning and Economic Development Department 

RECOMMENDATION

- (a) That the amending By-law, being a By-law to amend the City of Hamilton Parks By-law 01-219, attached as Appendix "A" attached to Report PW22032/PED22066, which has been prepared in a form satisfactory to the City Solicitor, be enacted by Council be approved.

EXECUTIVE SUMMARY

The purpose of Report PW22032/PED22066 is to amend the City of Hamilton (City) By-law 01-219, being a By-law to Manage and Regulate Municipal Parks (the Parks By-law) to reinstate provisions relating to the restriction of consumption and possession of alcohol in City parks which were removed in 2005. The reinstatement of these provisions will make consumption and possession of alcohol in parks an offence.

Alternatives for Consideration – See Page 5

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: With the enactment of the recommendations of Report PW22032/PED22066, any fines collected through the enforcement of the Parks By-law would be collected by City's municipal By-law division. The total fine amount of \$3,939.50 collected under Section 13 of the Parks By-law between 2005 and 2021 will be refunded to the parties charged from the existing operating budget.

Staffing: n/a

Legal: n/a

HISTORICAL BACKGROUND

The City's current Parks By-law was approved by Council in 2001 and has been amended from time to time since then. By-laws and amendments are posted on the City's website, on the Frequently requested By-laws page. On this webpage, some by-laws are the original version, and some are consolidated versions. In October 2021, the Office of the City Clerk contacted the Parks and Cemeteries Section, requesting an office consolidation of the Parks By-law since it had not previously been provided to the Office of the City Clerk. In fulfilling this request, it was discovered that Subsections 13 (1) and (2), which dealt with the alcohol related offences in City parks were repealed in 2005 when several other amendments were enacted. Those provisions read as follows:

13. While in a park:

- (1) No person shall be in possession of, consume, serve or sell alcoholic beverages unless authorized by a permit issued by Council and with the approval of the Liquor Licence Board of Ontario.
- (2) Any person who serves or sells alcoholic beverages in a park pursuant to a permit issued by Council, shall obtain sufficient insurance to conform with current Council policy respecting liability insurance, and naming the City as an insured party and shall comply with all other terms and conditions of the permit.

It is unclear why the above provisions were repealed in 2005; however, City staff recommend reinstating those provisions. Without this section reinstated, Municipal Law Enforcement Officers do not have the authority to issue liquor related charges in City

Parks. However, Hamilton Police have the authority to issue liquor related charges under the *Liquor Licence and Control Act*, 2019, S.O. 2019, c. 15, Sched. 22.

In the research conducted by staff when reviewing this matter, it was identified that the version of the By-law on the City's website was not a consolidated one, rather the original By-law was available at the link and then all of the amendments were found under the year that those amendments were approved. A consolidated copy of the By-law has now been provided to Corporate Services Department, Clerks Section and posted on the City's website for ease of reading. A meeting between Parks and Cemeteries Section, Licensing and By-Law Services and the City Clerks has taken place to clarify how City Clerks post By-laws and amendments to the City's website and the requirement for operating departments to maintain a consolidated copy of their By-law for administrative purposes. Parks and Cemeteries Section and Licensing and By-law Services have agreed on process improvements to ensure that the most updated version of By-laws is being used for enforcement.

While the Parks By-law permits Parks Staff to enforce the By-law, there are currently no job positions in Parks and Cemeteries that are qualified and trained to do so. Parks and Cemeteries staff must rely on Licensing and By-law Services staff resources to enforce the By-law when violations are identified. Licensing and By-law Services responded to 850 Park By-law Complaints in 2019, 145 in 2020 and 1,780 in 2021.

Through the process of researching for Report PW22032/PED22066, both Sections have worked collaboratively together to identify problems and possible solutions. A positive working relationship between the Sections is critical for success in the future, and both groups are working together in a solutions-oriented manner for improvement.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

There are some instances where possession and consumption of alcohol in parks is permitted. The City has a Municipal Alcohol Policy that allows the use of City property for events with alcoholic beverages on site, where the event organizer assumes full responsibility. Event organizers are required to take necessary steps to offer a safe environment for the public where they are serving alcohol at the event, a Special Occasion Permit or sponsoring use of a Caterer's Endorsement from the Alcohol and Gaming Commission of Ontario is required. The reinstatement of alcohol related provisions in the Parks By-law will not affect the ability of event organizers to host events with alcohol.

RELEVANT CONSULTATION

The following groups have been consulted and are supportive of the recommendations:

- Corporate Services Department - Legal and Risk Management Services Division
– Legal Services Section
- Communications Department

ANALYSIS AND RATIONALE FOR RECOMMENDATION

Report PW22032/PED22066 recommends the reinstatement of Subsections 13(1) and (2) because when unauthorized drinking in City parks occurs; staff find this often leads to vandalism, physical altercations, dangerous and reckless behaviour and waste left in the parks. Therefore, staff would like the opportunity to issue alcohol related penalties on a go-forward basis.

Unfortunately, because the Parks By-law alcohol provisions were enforced after they were repealed in 2005, any tickets or penalty notices that were issued pursuant to sections 13(1) and (2) since that time, are of no force and effect. In order to rectify this error, staff took the following actions:

- i) Licensing and By-law Services immediately stopped enforcement of Section 13 (1) and (2) on a go-forward basis until further notice;
- ii) All tickets or penalties pending in the system were withdrawn; and,
- iii) A process was put in place to identify, attempt to contact and reimburse those who made payments for penalties issued under the deleted provisions for the period of 2005 to present.

In 2018, the Parks By-law was added to the City's Administrative Penalties By-law 17-225 and prior to 2018, alcohol related offences under the By-law were enforced pursuant to the *Provincial Offences Act*, R.S.O. 1990, c. P.33. Only 1 ticket was issued in 2017, and 72 administrative penalties were issued in 2021. This increase is directly related to COVID-19 increase in enforcement efforts by By-law, responding to complaints and observed violations within City Parks.

Year	Type	Number of Tickets Issued (Year)	Total Set Fine Amount (Year)	Total Paid (Year)	Total Outstanding (Year)
2005-2016	N/A	0	\$ -	\$ -	\$ -
2017	PON	1	\$105.00	\$ -	\$ 105.00
2018-2020	N/A	0	\$ -	\$ -	\$ -
2021	APS	72	\$5,400.00	\$3,939.50	\$2,729.01
Total		73	\$5,505.00	\$3,939.50	\$2,834.01

Parks By-law Charges
Provincial Offence Notices

- 1 PON was issued under Section 13 in 2017 for \$105.
- No payment was ever received by the City from the party charged.
- The payment was in collections and staff have since removed this outstanding fine from collections.

Administrative Penalty System (APS)

- 72 APS issued under Section 13 – in 2021.
 - 44 fines were paid
 - 14 fines were cancelled at a Screening Officer or Hearing Officer;
 - 14 fines were never paid to the City from the parties charged, the payments were in collection and staff have since removed the outstanding fine amount of \$2,729.01 from collections.

Staff have prepared a letter to be sent to the 44 individuals who paid the fine in 2021. Individuals will have two years to claim any reimbursement by contacting the City.

The amending By-law attached as Appendix “A” to Report PW22032/PED22066, reinstates the previous subsections 13 (1) and (2) so that Municipal Law Enforcement Officers may have the authority to issue charges again under those provisions.

ALTERNATIVES FOR CONSIDERATION

If Council does not reinstate the language, then Parks would need to rely on Hamilton Police to issue tickets under the *Liquor Licence and Control Act, 2019 (LLCA)*. Any enforcement of the LLCA would be low priority for Police in relation to the other calls for Police services. Staff do not recommend this alternative because enforcement by staff has worked well in the past and would be the consistent approach for violations of other sections of the Parks By-law.

Financial: The financial implications include any penalties enforced by Police Services under the LLCA would be collected and kept by Hamilton Police and the associated shifting demand of resources to Police Services.

Staffing: n/a

Legal: n/a

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Healthy and Safe Communities

Hamilton is a safe and supportive City where people are active, healthy, and have a high quality of life.

Our People and Performance

Hamiltonians have a high level of trust and confidence in their City government.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report PW220032/PED22066 – To Amend By-law 01-219, a By-law to
Manage and Regulate Municipal
Parks