

## **CITY OF HAMILTON**

### **BY-LAW NO. 22-**

#### **Being a By-law to Regulate Nuisance Parties in the City of Hamilton**

**WHEREAS** section 10 of the *Municipal Act, 2001*, S.O. 2001, c. 25, (the "*Municipal Act, 2001*") as amended provides that a Municipality may pass by-laws respecting: economic, social and environmental well-being of the Municipality; health, safety and well-being of persons; and the protection of persons and property;

**AND WHEREAS** the Council of the City of Hamilton deems it appropriate to enact a by-law to prohibit and regulate certain public nuisances within the City of Hamilton pursuant to sections 128 and 129 of the *Municipal Act, 2001*, S.O. 2001, c. 25, ("*Municipal Act, 2001*") as amended;

**AND WHEREAS** in the opinion of the Council for the City of Hamilton, certain large gatherings, as defined in this By-law, are or could become, or cause public nuisances;

**AND WHEREAS** section 444 of the *Municipal Act, 2001* authorizes municipalities to make orders 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;

**AND WHEREAS** sections 445 and 446 of the *Municipal Act, 2001* authorize municipalities to issue work orders and in default of a work order being completed by the person directed or required to do it, the work shall be done by the City at the person's expense by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes;

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

### **PART I - INTERPRETATION**

#### **Definitions**

1. In this By-law:

**"Administrative Penalty"** means an administrative penalty administered pursuant to By-law 17-225 of the Corporation of the City of Hamilton, being a By-law to Establish a System of Administrative Penalties;

**“By-law”** means this by-law to prohibit and regulate Nuisance Parties within the City of Hamilton;

**“City”** means the municipal corporation of the City of Hamilton;

**“Highway”** includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, part of which is intended for use 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;

**“Nuisance Party”** means a gathering on Premises which, by reason of the conduct of the persons in attendance, results in any one or more of the following activities occurring:

- (a) public disorderly conduct;
- (b) public drunkenness or public intoxication;
- (c) the unlawful sale, furnishing, or distribution of alcoholic beverages or controlled substances;
- (d) the deposit of refuse on public or private property;
- (e) damage to or destruction of public or private property;
- (f) pedestrian traffic, vehicular traffic, or illegal parking that obstructs the free flow of traffic or could interfere with the ability to provide emergency services;
- (g) unreasonable noise, including loud music or shouting that is of such a volume or nature that it is likely to disturb the inhabitants of the City;
- (h) unlawful open burning or fireworks;
- (i) public disturbances, including public brawls or public fights;
- (j) outdoor public urination or defecation;
- (k) use of or entry upon a roof not intended for such occupancy;

**“Officer”** means a police officer or a Municipal Law Enforcement Officer appointed under any federal or provincial statute or regulation or City by-law or any other person assigned or appointed by Council of the City to administer or enforce this By-law and includes a person employed by the City whose duties are to enforce this By-law;

**“Owner”** means the registered owner of a property and includes a property manager, occupant, tenant, or any Person who otherwise has rightful possession of or possessory control of any property;

**“Penalty Notice”** means a notice given pursuant to By-law 17-225 of the Corporation of the City of Hamilton, being a By-law to Establish a System of Administrative Penalties;

**“Person”** shall mean an individual, firm, corporation, association or partnership and includes an Owner; *and*

**“Premises”** means any public or private place in the city of Hamilton, including but not limited to Highways, parks, parking lots, yards appurtenant to a building or dwelling or vacant lands.

### **Application**

2. This By-law applies to all Persons, lands and properties in the City of Hamilton.

### **Interpretation**

3. This By-law shall not be interpreted as exempting any Person from the requirement to comply with any other City by-law. In the event of a conflict between the provisions of this by-law and any other City by-law, the provisions which are more protective of the public assets of the City, the economic, social and environmental well-being of the City, the health, safety and well-being of persons in the City, and persons and property in the City, shall apply.

## **PART II - RESTRICTIONS**

### **Nuisance Parties**

4. No Person shall sponsor, conduct, continue, host, create, allow, cause or permit a Nuisance Party.
5. No Person shall attend a Nuisance Party.
6. No Person who, individually or jointly with others, is an Owner, occupant, tenant or otherwise has rightful possession of or is in possessory control of any Premises, shall allow, cause or permit a Nuisance Party on said Premises.
7. Every Person who sponsors, conducts, continues, hosts, creates, allows, causes or permits a Nuisance Party shall take all reasonable and lawful actions to end a Nuisance Party.

## **PART III - ENFORCEMENT**

## **Closure of Roads**

8. A police officer may temporarily close any Highway or portion thereof to public travel where a Nuisance Party is occurring on or adjacent to the Highway, by placing a notice on the Highway to be closed in accordance with the *Municipal Act, 2001*.
9. Where a Highway or portion of a Highway has been closed under this By-law, the common law right of passage by the public and the common law right of access by an owner of land abutting the Highway or portion of the Highway are restricted.
10. No Person shall use a Highway, or portion of a Highway that has been temporarily closed under this By-law except with lawful authority or in accordance with the direction of an Officer.
11. No Person shall, without lawful authority, remove or deface any barricade, device, detour sign or notice placed on a Highway pursuant to this By-law.

## **Orders**

12. Upon the order of an Officer, every Person who is sponsoring, conducting, continuing, hosting, creating, causing, permitting or attending a Nuisance Party on specified Premises shall cease immediately.
13. Every Person not residing on such Premises shall leave such Premises after having been directed to leave by an order pursuant to this By-law.
14. An order under this By-law shall identify:
  - a) The location of the Premises on which the contravention is occurring;
  - b) The reasonable particulars of the contravention of this By-law; and
  - c) The date and time by which there must be compliance with the order.
15. An order under this section may be served personally on the Person to whom it is directed. If the order is given by regular mail to the last known address of that Person, and if given by registered mail, it shall be deemed to have been given on the third day after it is mailed. Service on a corporation can be effected by registered mail to the corporate mailing address.

## **Remedial Costs**

16. Where anything required to be done in accordance with this By-law is not done, the City may do such thing at the expense of the Person required to do it, and such expense may be recovered by action or by adding the costs to the tax roll

and collecting them in the same manner as property taxes. For the purposes of this section, the City may enter upon land at any reasonable time.

### **Enforcement**

17. The provisions of this By-law may be enforced by an Officer.
18. An Officer may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether any provision of this By-law or an order made under this By-law is being complied with.
19. For the purposes of conducting an inspection pursuant to this By-law, an Officer 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;
  - c) require information from any Person concerning a matter related to the inspection; and
  - d) alone, or in conjunction with a Person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purpose of the inspection.
20. Where an Officer has reasonable grounds to believe that an offence under this By-law has been committed by a Person, the Officer may require the name, address, and proof of identity of that Person.
21. No Person shall prevent, hinder or obstruct, or attempt to hinder or obstruct an Officer who is exercising a power or performing a duty under this By-law.

### **Offence and Penalty**

22. Every Person who contravenes any provision of this By-law is guilty of an offence and upon conviction is liable to a fine as provided for by the *Provincial Offences Act*, R.S.O. 1990, Chapter P.33, as amended.
23. Any person other than a corporation who contravenes any provision of this By-law or who fails to comply with an order made under this By-law or who obstructs or attempts to obstruct an Officer in carrying out his or her duties under this By-law is guilty of an offence and on conviction is liable to a minimum fine of \$500 and a maximum fine of \$10,000 for a first offence, and a maximum fine of \$25,000 for a subsequent offence.

### **Same re Corporations**

24. Any corporation which contravenes any provision of this By-law or who fails to comply with an order made under this By-law or who obstructs or attempts to obstruct an Officer in carrying out his or her duties under this By-law is guilty of an offence and on conviction is liable to a maximum fine of \$50,000 for a first offence and \$100,000 for any subsequent offence.

### **Other Remedies**

25. If a person or corporation is convicted of an offence under this By-law, in addition to any other remedy or any penalty imposed, the court in which the conviction has been entered, and any court of competent jurisdiction, may make an order prohibiting the continuation or repetition of the offence by the Person convicted.

### **Continuing Offence**

26. Each day or a part of a day that a contravention of this By-law continues is deemed to be a separate offence.

### **Administrative Penalties**

27. In the alternative to a charge for the offences described in this By-law every Person who contravenes any provision of this By-law shall, upon issuance of a Penalty Notice in accordance with By-law 17-225, be liable to pay to the City an Administrative Penalty in accordance with Schedule A of By-law 17-225 for each day on which the contravention occurs.
28. If a person is required by the City to pay an administrative penalty under this by-law in respect of a contravention, the person shall not be charged with an offence in respect of the same contravention.

## **PART IV – MISCELLANEOUS**

### **Severability**

29. Where a court of competent jurisdiction declares any provision of this By-law invalid, or to be of no force or effect, the provision shall be deemed conclusively to be severable from the By-law and every other provision of this By-law shall be applied and enforced in accordance with its terms to the extent possible according to law.

### **Short Title**

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

**Enactment**

31. This By-law comes into force and effect on the day it is passed.

**PASSED** this 14<sup>th</sup> day of September, 2022

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F. Eisenberger  
Mayor

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J. Pilon  
Acting City Clerk