

**THE CORPORATION OF THE CITY OF WELLAND**

**BY-LAW NUMBER 2011 -129**

**A BY-LAW TO PROHIBIT AND REGULATE PUBLIC NUISANCES "PUBLIC NUISANCE BY-LAW"**

**WHEREAS** the **Municipal Act, 2001 S.O. 2001, c.25**, as amended, provides that a municipality has the capacity, rights and powers and privileges of a natural person for the purpose of exercising its authority and that it may do so by by-law; and **Section 128** of the said **Municipal Act**, provides that a local municipality may prohibit and regulate with respect to public nuisance, including matters that in the opinion of Council, are or could become or cause public nuisances;

**AND WHEREAS** it is the opinion of the Council of the Corporation of the City of Welland that certain actions outlined in this by-law do constitute a public nuisance;

**AND WHEREAS Section 425** of the **Municipal Act**, establishes that any person who contravenes any by-law of the municipality is guilty of an offence;

**AND WHEREAS Section 429** of the **Municipal Act** provides that a municipality may establish a system of fines for offences under a by-law of the municipality;

**NOW THEREFORE** THE COUNCIL OF THE CORPORATION OF THE CITY OF WELLAND HEREBY ENACTS AS FOLLOWS:

**PART 1 - DEFINITIONS**

- 1.1. "bridge" means a structure spanning and providing passage over water and which forms part of a highway;
- 1.2. "Chief of Police" means the Chief of Police for the Niagara Regional Police Service, or designate;
- 1.3. "City" means The Corporation of the City of Welland;
- 1.4. "defecate" means to discharge waste matter from the bowels;
- 1.5. "fight" means any confrontation involving violent physical contact between two or more people;
- 1.6. "graffiti" means one or more letters, symbols, figures, images, etchings, scratches, inscriptions, stains or other markings howsoever made or affixed to a property that disfigure, deface or otherwise mar said property;
- 1.7. "highway" has the same meaning as in the **Highway Traffic Act, R.S.O. 1990, c. H.8**, as amended;
- 1.8. "litter" means the any cigarettes, paper, cardboard, bottles, glass or other such material or garbage;
- 1.9. "loiter" shall mean lingering on the way or travelling indolently with frequent pauses without any apparent destination;
- 1.10. "Municipal Law Enforcement Officer" means any person or persons appointed by Council to administer and enforce the provisions of this by-law;
- 1.11. "Municipality" means the area within the geographic limits of the City of Welland;

- 1.12. "Nuisance party" means a gathering of persons on a premises and 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 or illegal 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;
  - h) Unlawful open burning or fireworks;
  - i) Public disturbances, including public brawls, public fights or violence;
  - j) Outdoor public urination or defecation;
  - k) Use of or entry upon a roof not intended for such occupancy;
- 1.13. "Owner" means the registered owner, occupant or tenant of a property, or a person who, for the time being or permanently, is managing or receiving the rent from a property, whether on his or her own account or on account of an agent or trustee of any other person, or any one of the aforesaid or any mortgagee in possession or control of such property;
- 1.14. "Police Officer" means a police officer appointed by the Niagara Regional Police Service, the Ontario Provincial Police, or the RCMP;
- "premises" means any public place or private place in the Municipality;
- 1.15. "property" means a building or structure or part of a building or structure, and includes the lands and premises appurtenant thereto and all mobile homes, mobile buildings, signs, mobile structures, outbuildings, railway control boxes, traffic control boxes, fences and erections thereon whether heretofore or hereafter erected, and includes vacant property;
- 1.16. "public place" includes a highway, sidewalk, pedestrian walkway or trail, property and any place to which the public have access as of right or by invitation, expressed or implied and private property that is exposed to public view but does not include a washroom facility;
- 1.17. "spit" means to eject phlegm, saliva, chewing tobacco juice, or any other substance from the mouth;
- 1.18. "urinate" means to discharge urine from the body;
- 1.19. "vomit" means to eject matter from the stomach through the mouth.

## **PART 2 - PROHIBITIONS**

- 2.1 No person shall urinate, defecate, vomit or spit in a public place.
- 2.2 No person shall knock over or attempt to knock over a Canada Post mailbox, newspaper box, bench, fence, recycling box, organics bin, or garbage container, or any other structure or object, located in a public place. This section shall not apply to City employees or persons under contract with the City, acting under the jurisdiction of the City.
- 2.3 No person shall loiter in a public place whether signed or not.
- 2.4 No person shall throw, place or deposit any litter on public or private property (except if such litter is placed in garbage cans or in recycle boxes).
- 2.5 No person shall participate or be a spectator in a fight in any public place.
- 2.6 No person shall jump, dive or leap off or from any bridge located within the boundaries of the City of Welland.

### **PART 3 - GRAFFITI PROHIBITIONS**

- 3.1 No person shall mark or apply, or cause, or permit graffiti to be placed on any property.
- 3.2 No person shall mark or apply graffiti on any public place.
- 3.3 The Owner shall maintain the Owner's property free of graffiti.
- 3.4 The Owner of a wall, fence or other structure or thing, in a highway or other public place not included in the definition of property in Section 1.15, shall maintain the wall, fence, or structure or thing free of graffiti.
- 3.5 When there is any violation of Section 3.3 or 3.4 of this By-law, a Municipal Law Enforcement Officer or a Police Officer may give written notice to the Owner requiring the Owner to comply with Section 3.3 or 3.4 within the period specified in the notice.
- 3.6 The notice given under Section 3.5 may be served personally on the person to whom it is directed or by registered mail to the last known address of that person, in which case it shall be deemed to have been given on the third (3<sup>rd</sup>) day after it is mailed.
- 3.7 If there is evidence that the person in possession of the Property is not the registered property owner, the notice shall be served on both the registered property owner and the person in possession of the property.
- 3.8 If the address of the Owner is unknown, or the City is unable to effect service on the Owner or occupant under Section 4.2, a placard stating the terms of the notice and placed in a conspicuous place upon the land on or near the property, structure or thing shall be deemed to be sufficient notice.

### **PART 4 - FAILURE TO COMPLY; REMOVAL BY CITY; COSTS**

- 4.1 If an Owner fails to comply with a notice given under Part 3, the City's representative may enter upon the lands at any reasonable time for the purposes of doing the things described in the notice.
- 4.2 Costs incurred by the City in doing the work required to be done by the notice may be recovered by action or adding the costs to the tax roll and collecting them in the same manner as taxes.

### **PART 5 – NUISANCE PARTIES**

- 5.1 No person shall sponsor, conduct, continue, host, create, attend, allow, cause or permit a Nuisance Party.
- 5.2 No person, who individually or jointly with others, is an owner, occupant, tenant or who otherwise has rightful possession of or control of any premises, shall allow, cause or permit a Nuisance Party on the premises under their possession or control.
- 5.3 Order to Discontinue Activity:
- i) Upon the order of the Chief of Police or his/her designate a Nuisance Party shall cease and all persons not residing on the Premises shall leave immediately
  - ii) No person shall fail to leave the Premises after having been directed to leave the Premises by an order to discontinue activity under this By-law.

### **PART 6 - PENALTIES/OFFENCES**

- 6.1 Every person who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to a fine of not more than five thousand dollars (\$5,000.00) as prescribed in section 61 of the Provincial Offences Act, R.S.O. 1990, c. P.33, as amended, and regulations thereto.

**PART 7 - GENERAL**

- 7.1 Each provision of this by-law is independent of all other provisions, and if any provision is declared invalid for any reason by a Court of competent jurisdiction, all other provisions of this by-law remain in force.
- 7.2 Nothing in this by-law relieves any person from complying with any provision of a federal or provincial regulation or municipal by-law or any requirement of a lawful permit, order or licence.
- 7.3 The provisions of this by-law may be enforced by a police officer or a municipal law enforcement officer or other individual duly appointed for the purpose of enforcing this by-law.
- 7.4 A Municipal Law Enforcement Officer or Police Officer designated to perform inspections pursuant to this by-law may enter upon any land for the purpose of carrying out an inspection to determine whether or not this By-law is being contravened.

**PART 8 - SHORT TITLE OF BY-LAW**

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

**PART 9 - FORCE AND EFFECT**

- 9.1 This by-law shall come into force and take effect upon the date of approval of the set fines set out in Schedule "A" by the Chief Justice of Ontario.

Notes:

By-law No.: 2011-129: August 30, 2011

By-law Amendment No. 2018-102: September 25<sup>th</sup>, 2018

Signed Order and the Schedule of set fines for By-law No. 2011-129: January 22, 2019

**THE CORPORATION OF THE CITY OF WELLAND**  
**BY-LAW NUMBER 2011-129, as amended; Public Nuisances**

**SCHEDULE "A"**

**Set Fine Schedule**

**Part 1, Provincial Offences Act, R.S.O. 1990, c.P.33, as amended**

Item	<u>COLUMN 1</u> Short Form Wording	<u>COLUMN 2</u> Provision creating or defining Offence	<u>Column 3</u> Set Fine
1.	Urinate, Defecate, Vomit or Spit in a Public Place	Section 2.1	\$300.00
2.	Knock over or attempt to knock over a Canada Post mailbox, newspaper box, bench, fence, recycling box, organics bin or garbage container, or any other structure or object, located in a public place	Section 2.2	\$300.00
3.	Loiter in a Public Place	Section 2.3	\$300.00
4.	Throw, place or deposit any litter on public or private property	Section 2.4	\$300.00
5.	Participate or be a spectator in a fight in any public place	Section 2.5	\$300.00
6.	Jump, dive or leap off any bridge	Section 2.6	\$300.00
7.	Mark or apply, cause or permit graffiti to be placed on any property	Section 3.1	\$300.00
8.	Mark or apply graffiti on any public place	Section 3.2	\$300.00
9.	Participate in nuisance party	Section 5.1	\$300.00
10.	Allow, cause or permit a nuisance party	Section 5.2	\$300.00
11.	Fail to obey order to discontinue activity	Section 5.3	\$300.00

Note: The general penalty provision for the offence listed above in section 6 of by-law 2011-129, as amended, certified copies of which have been filed.