



# THE CORPORATION OF THE TOWN OF WHITBY

## Public Nuisance By-law

A by-law to prohibit and abate nuisances within the Town of  
Whitby.

By-law # 6714-13

Consolidated Version

As Amended by By-laws:

| By-law Number: | Date Passed:      | Section(s) Amended:  |
|----------------|-------------------|--|
| 7818-21        | November 29, 2021 | Part I – Interpretation (Section 1), Part II – Restrictions (Sections 6, 7, and 8) |
| 7836-21        | December 13, 2021 | Part IV – Penalty (Section 16)   |

Individual copies of any of the above by-laws are available from the Office of the Town Clerk of the Town of Whitby. For legal purposes, copies of the original by-laws should be obtained.

# Public Nuisance By-law

Being a by-law to prohibit and abate nuisances within the Town of Whitby.

WHEREAS the *Municipal Act 2001, S.O. c.25* as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority and that it may do so by by-law;

AND WHEREAS section 128(1) of the *Municipal Act, 2001* provides that a local municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of Council, are or could become or cause public nuisances;

AND WHEREAS section 128(2) of the *Municipal Act, 2001* states that Council's determination of what constitutes a nuisance, where arrived at in good faith, is not subject to review;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF WHITBY HEREBY ENACTS AS FOLLOWS:

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## Part I – INTERPRETATION

### Definitions

1. In this by-law,
  - a) "defecate" means to discharge excrement from the human body;
  - b) "feed", in all of its forms, includes the regular or intermittent supply of food, but does not include baiting during lawful hunting and trapping activities;
  - c) "fixture" means any structure that the Town permits to be located within a highway including a boulevard tree, utility box, newspaper vending box, bench, transit shelter, telephone box, telephone booth, transformer box or vault, telephone pole, hydro pole, streetlight, stoplight pole, recycling waste module, mailbox, street sign, a Canada Post relay mailbox, permitted signs, or a blue box, green bin or other garbage container;
  - d) "highway" means a common and public highway (whether assumed or unassumed) and includes any bridge, trestle, viaduct or other structure forming part of the highway and includes the boulevard and other untraveled portions;
  - e) "littering" means throwing, dropping, placing or otherwise depositing or permitting to be deposited any garbage, paper, plastic, paper products, plastic products, cans, bottles, rubbish or other debris or objects on public or private property, unless so authorized by the property owner or the Town's Waste Management By-law;
  - f) "loitering" means to remain in a place without due cause;
  - g) "nuisance" includes;
    - i. soliciting, including and without limiting the generality of the foregoing,
      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 in or on a public transit vehicle;
  4. soliciting a person who is waiting at a taxi stand or a public transit stop;
  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 highway, soliciting a person who is in a stopped, standing or parked vehicle.
- ii. loitering after having been requested by an officer to move on;
  - iii. fighting, screaming, spitting, yelling or using profane or abusive language or gestures;
  - iv. carrying open liquor, except while on private property that is owned or occupied by the person who is carrying the liquor or an invited guest of the owner or occupant;
  - v. remaining in or refusing to leave a public place after it is closed and/or when ordered to leave by an officer;
  - vi. littering;
  - vii. defacing, damaging or vandalizing public or private property;
  - viii. obstructing an officer in the course of his or her duties;
  - ix. being intoxicated in a public place; and
  - x. any other activity or conduct that is disorderly or obnoxious.
- h) "officer" means a municipal law enforcement officer appointed to enforce the by-laws of the Town or a police officer while in the course of his or her duties;
- i) "person" means an individual, association, firm, partnership, corporation, trust, organization, trustee, or agent, and their heirs, executors, or legal representatives of the person to whom the context can apply according to law;

- j) "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, but does not include a washroom facility, whether or not the property is owned by the person contravening the by-law;
- k) "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;
- l) "Town" means The Corporation of the Town of Whitby;
- m) "urinate" means to discharge urine from the human body;
- n) "vehicle" includes an 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) "wildlife" means an animal that belongs to a species that is wild by nature, or an animal found to be running at large, but does not include:
  - i. an animal being kept in accordance with the Responsible Pet Ownership By-law;
  - ii. an animal that is permitted by the Prohibited and Regulated Animals By-law and is owned and kept as a domestic pet or as livestock; or,
  - iii. an animal being fed in accordance with:
    - (1) any by-law, statute or regulation; or
    - (2) research undertaken by a university, college or similar provincially or federally recognized research institution.

## **Interpretation**

- 2. When reading and interpreting this by-law,
  - a) this by-law shall be read with all changes in gender or number as the context requires;

- b) references in this by-law to items in the plural include the singular and references to the singular include the plural, as applicable; and
- c) the words "include", "includes" or "including" are not to be read or interpreted as limiting the words, phrases or descriptions that precede it.

### **Severability**

- 3. If a court of competent jurisdiction declares any section or any part of any section of this by-law to be invalid, or to be of no force or effect, it is the intention of the Town that every other provision of this by-law be applied and enforced in accordance with its terms to the extent possible according to law.
- 4. This by-law shall not be construed to reduce or mitigate any restrictions or regulations lawfully imposed by the Town or by any government authority having jurisdiction to make such restrictions or regulations.
- 5. If a provision of this by-law conflicts with the provision of any applicable by-law, the provision that establishes the higher or more restrictive standard to protect the health, safety and welfare of the general public shall prevail.

## **Part II – RESTRICTIONS**

### **Feeding Wildlife Regulations**

- 6. No person shall Feed or permit the Feeding of Wildlife.
- 7. Notwithstanding Section 6., a person may Feed or permit the Feeding of:
  - a. birds on private property using bird feeders that are suspended off the ground, which dispense commercially available bird food such as seeds and nectars;
  - b. songs birds where it is permitted by the Central Lake Conservation Authority on lands owned or managed by that Authority;

- c. a feral cat, if the feral cat belongs to a colony of stray or feral cats registered in accordance with the Responsible Pet Ownership By-law; or
  - d. waterfowl on Town property if he or she has been authorized in writing to do so by the Town in accordance with the Responsible Pet Ownership By-law.
8. No person shall fail to maintain the ground under underneath the bird feeder to remove the accumulation of feces or discarded grain and seeds.

## **Offences**

9. No person shall cause, create or permit a nuisance in any public place in the Town.
10. 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 reason or opportunity for an alternative course of action that does not contravene this by-law; or
  - 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.
11. No person shall knock over, attempt to knock over, deface, attempt to deface, remove, or attempt to remove or otherwise damage a fixture.

## **Part III – ENFORCEMENT**

### **Enforcement**



12. The provisions of this by-law may be enforced by an officer.
13. An officer may, at any reasonable time, enter upon any public place for the purpose of determining whether or not the provisions of this by-law have been complied with.
14. No person shall prevent, hinder or interfere or attempt to prevent, hinder or interfere with an officer, including refusing to identify themselves when requested to do so by an officer.

## **Part IV – PENALTY**

### **Penalty**

15. Every person who contravenes or fails to comply with any of the provisions of this by-law is guilty of an offence, and pursuant to section 429 of the Municipal Act, 2001, is liable to a maximum penalty of \$10,000.00 (ten thousand dollars) and a minimum penalty of not less than \$200.00 (two hundred dollars).
16. 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.

## **Part V – ENACTMENT**

### **By-law Enactment**

#### **Short Title**

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

#### **Repeal of Existing By-laws**

18. Town of Whitby Urinating in Public Places, By-law # 4189-98 is hereby repealed.

#### **Effective Date**

19. This by-law shall come into full force and effect on the day it is passed.

By-law read a first, second and third time, and finally passed, this 11<sup>th</sup> day of March, 2013.

Original Approved and Signed.

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Patricia Perkins, Mayor

Original Approved and Signed.

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Leigh Doughty, Deputy Clerk