

Authority: Item 5.4(e) (PED20076)
CM: April 22, 2020
Ward: City Wide
Bill No. 077

CITY OF HAMILTON

BY-LAW NO. 20-077

To Repeal and Replace By-law No. 09-110, being a By-law to Prohibit and Regulate Certain Public Nuisances within the City of Hamilton; and to Amend By-law No. 17-225, a By-law to Establish a System of Administrative Penalties

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 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;

AND WHEREAS in the opinion of the Council for the City of Hamilton, the following are or could become a public nuisance:

- (a) the act of urinating or defecating in public places;
- (b) the act of knocking over mailboxes, relay boxes, newspaper boxes, recycling boxes and other waste containers located on highways; or
- (c) odours and lighting from the cultivation of cannabis plants.

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

PART I - INTERPRETATION

Definitions

1. In this By-law:

"Act" means the *Cannabis Act* S.C. 2018, c. 16 and its regulations, and if applicable, any predecessor or successor acts and its respective regulations, all as amended;

"By-law" means this by-law to prohibit and regulate certain nuisances within the City of Hamilton;

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“Canada Post” means Canada Post Corporation established by the *Canada Post Corporation Act*, R.S.C., 1985, c. C-10;

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

“Cannabis Plant” means a plant that belongs to the genus *Cannabis* and, in the absence of evidence to the contrary, includes any plant described as cannabis or by a name that is commonly applied to cannabis;

“Cultivate, Cultivated, Cultivating or Cultivation” in respect of cannabis, means to grow, propagate or to harvest cannabis plants and includes the possession of cannabis plants;

“Defecate” means to discharge excrement from the human body;

“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” means anything that is injurious to health, indecent, offensive to any of the Senses, or results in the loss of enjoyment of normal use of property;

“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;

“Porta Potty” means a portable building containing a toilet;

“Public Place” includes a Highway and any place to which the public has access and private property that is exposed to public view, whether or not the property is owned by the person contravening the By-law, but does not include a Washroom Facility;

“Senses” means a faculty by which the human body perceives an external stimulus and includes one or more of the faculties of sight, smell, hearing, taste and touch;

“Urinate” means to discharge urine from the human body; and

“Washroom Facility” means a room inside a building that is equipped with toilet facilities and includes a Porta Potty.

Application

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

PART II - RESTRICTIONS

Urinating or Defecating in a Public Place

3. No person shall Urinate or Defecate in a Public Place.

Knocking over Personal and Public Property

4. No person shall knock over or attempt to knock over a Canada Post mailbox, Canada Post relay box, newspaper box, recycling container, garbage container or other similar waste container located on a Highway. This section shall not apply to:
 - (a) City employees or any person under contract to the City who is acting under the City's Solid Waste Management By-law;
 - (b) City employees or any person under contract to the City while performing work in the normal course of their duties; or
 - (c) Canada Post employees or any person under contract to Canada Post while performing work in the normal course of their duties.

Lighting from the Cultivation of Cannabis Plants

5. No person shall cause, create or permit light from the Cultivation of cannabis plants to shine upon the land of others so as to be or to cause a Nuisance to any person or to the public generally.
6. Every owner or occupier of land shall ensure that no light from the Cultivation of cannabis plants on his or her land shines upon the land of others so as to be or to cause a Nuisance to any person or to the public generally.
7. Outdoor lighting and indoor lighting from the Cultivation of cannabis plants that can be seen outdoors shall be operated, placed and maintained, or have a barrier placed and maintained, so as to prevent or block direct illumination of the interior of a building on adjoining land or lands regardless of whether such a building has or may have a barrier, shades, drapes or other interior window coverings.

Odours from the Cultivation of Cannabis Plants

8. No person shall cause, create or permit the emission of an odour from the Cultivation of cannabis plants so as to be or to cause a Nuisance to any person or to the public generally.
9. Every owner or occupier of land shall ensure that no emission of an odour from the Cultivation of cannabis plants on his or her land is or causes a Nuisance to any person or to the public generally.

PART III - ENFORCEMENT

Enforcement

10. The provisions of this By-law may be enforced by an Officer.
11. If an Officer is satisfied that a contravention of this By-law has occurred, he or she 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 discontinue the contravening activity.
12. An order under section 11 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 or dates by which there must be compliance with the order.
13. If an Officer is satisfied that a contravention of this By-law has occurred, he or she 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 do work to correct the contravention.
14. An order under section 13 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;
 - (b) the work to be completed;
 - (c) and the date by which the work must be complete.
15. An order under section 13 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.
16. An order made under sections 11 or 13 may be served personally or by registered mail to the last known address of:
 - (a) the person who caused, created or permitted the offence; and
 - (b) the owner or occupier of the lands where the contravention occurred.
17. Where an owner or occupier of the land on which the contravention occurred, who has been served with an order and fails to comply with the order, then an Officer, or any authorized agent on behalf of the City may enter on the land at any reasonable time

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and complete the work required to bring the land into compliance with the provisions of this By-law as set out in the order.

18. Where the work required to bring the land into compliance with the By-law has been performed by or for the City, the costs incurred in doing the work may be collected by action or the costs may be added to the tax roll for the land and collected in the same manner as taxes.
19. 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.
20. 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.
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. 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 maximum fine of \$5,000 for a first offence, and a maximum fine of \$10,000 for a subsequent offence.

Same re Corporations

23. 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

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24. 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

25. 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

26. In the alternative to a charge for the offences described in this By-law and listed in Schedule A of the City of Hamilton’s By-law 17-225, an Officer may issue an administrative penalty notice for the applicable contraventions.

PART IV – MISCELLEOUS

Severability

27. 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.

Administrative Penalty Table

28. Administrative Penalty By-law No 17-225 is amended by adding Table 23 to Schedule A:

TABLE 23: BY-LAW NO. 20-078 NUISANCE BY-LAW				
ITEM	COLUMN 1 DESIGNATED BY-LAW & SECTION		COLUMN 2 SHORT FORM WORDING	COLUMN 3 SET PENALTY
1	20-077	3	Urinate in public place	\$205.00
2	20-077	3	Defecate in public place	\$305.00
3	20-077	4	Cause to knock over a mailbox	\$205.00
4	20-077	4	Attempt to knock over a mailbox	\$155.00
5	20-077	4	Cause to knock over a relay box	\$205.00
6	20-077	4	Attempt to knock over a relay box	\$155.00
7	20-077	4	Cause to knock over a newspaper box	\$205.00
8	20-077	4	Attempt to knock over a newspaper box	\$155.00
9	20-077	4	Cause to knock over a waste container	\$205.00
10	20-077	4	Attempt to knock over a waste container	\$155.00

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Short Title

29. The short title of this By-law is the “Public Nuisance By-law”.

Proceedings and Other Actions Continued

30. Any proceeding being conducted, or other action being carried out under By-law No. 09-110 shall be deemed to continue under this By-law, and any reference to By-law 09-110 in such proceeding or other action shall be deemed to refer to this By-law.

Repeal

31. By-law No. 09-110 is hereby repealed.

Enactment

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

PASSED this 22nd day of April, 2020

F. Eisenberger
Mayor

A. Holland
City Clerk