

BY-LAW NUMBER 76-2015

OF THE CORPORATION OF THE MUNICIPALITY OF CHATHAM-KENT

A By-law to prohibit and regulate serious public nuisances within the Municipality of Chatham-Kent

FINALLY PASSED this 25th day of May, 2015.

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AND WHEREAS section 128 of the *Municipal Act, 2001* provides that, without limiting sections 9, 10 and 11, 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 the opinion of Council under this section, if arrived at in good faith, is not subject to review by any court;

AND WHEREAS, in the opinion of Council, nuisance parties, the activities of nuisance parties in public places, littering, public urination, defecation and vomiting, and knocking over objects on the Highway are or could become or cause public nuisances;

AND WHEREAS section 425 of the *Municipal Act, 2001* establishes that any person who contravenes any by-law of the Municipality is guilty of an offence;

AND WHEREAS section 435 of the *Municipal Act, 2001* provides for the exercise of powers of entry by municipal law enforcement officers and police officers;

AND WHEREAS section 436 of the *Municipal Act, 2001* provides that a Municipality may, at any reasonable time, enter on land for the purpose of carrying out an inspection to determine compliance with the by-law, direction or order, a condition to a permit, or a court order;

AND WHEREAS section 444 of the *Municipal Act, 2001* provides that a Municipality may make an order requiring a person who contravened a 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;

NOW THEREFORE the Municipal Council of The Corporation of the Municipality of Chatham-Kent enacts as follows:

**1. Definitions**

In this By-law,

**“Building”** means any permanent structure consisting of a roof supported by walls or columns that is used or intended to be used for the shelter, accommodation or enclosure of persons, animals, goods, chattels or equipment;

**“Chatham-Kent”** means the geographic Municipality of Chatham-Kent;

**“Chief of Police”** means the Chief of Police of the Chatham-Kent Police Service, or designate;

**“Dwelling”** means a Building containing one or more dwelling units;

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

**“Municipality”** means the Corporation of the Municipality of Chatham-Kent;

**“Nuisance Party”** means a social gathering of two or more persons on Premises within Chatham-Kent and which, by reason of the conduct of the persons in attendance, results in any one or more Nuisance Party Activities;

**“Nuisance Party Activities”** means more than one of the following, in combination with others, activities occurring so as to constitute a public nuisance whether occurring on neighbouring public or private property:

- (a) public drunkenness or public intoxication;
- (b) the unlawful sale, furnishing, or distribution of alcoholic beverages or controlled substances;
- (c) the deposit of refuse on public or private property;
- (d) damage to or destruction of public or private property;
- (e) pedestrian traffic, vehicular traffic, or illegal parking that obstructs the free flow of traffic or could interfere with the ability to provide emergency services;
- (f) unreasonable noise, including loud music or shouting;
- (g) unlawful open burning or fireworks;
- (h) public disturbances, including public brawls or public fights;
- (i) outdoor public urination, vomiting or defecation.

**“Officer”** means a police officer and provincial offences officer as those terms are defined in section 1(1) of the Provincial Offences Act, R.S.O. 1990, Ch. P.33.

**“Premises”** means any public or private place in Chatham-Kent, including but not limited to Highways, parks, parking lots, yards appurtenant to a Building or Dwelling or vacant lands, but does not mean a Building or Dwelling.

## **2. Public Place Activities**

2(1) In Section 2 only, “Public Place” is defined as:

**“Public Place”** includes a Highway, public park, parking lot or other lands to which the public has access as of right or by invitation and includes private property that is exposed to public view.

2(2) No person shall sponsor, conduct, continue or cause Nuisance Party Activities in a Public Place.

## **3. Nuisance Parties**

3(1) No person shall sponsor, conduct, continue, host, create, attend, allow, cause or permit a Nuisance Party.

3(2) No person who, individually or jointly with others, is an owner, occupant, tenant, or who otherwise has rightful possession of or possessory control of any Premises, shall allow, cause or permit a Nuisance Party on said Premises under their possession or control.

#### **4. Orders**

4(1) Upon the order of an Officer, a Nuisance Party shall cease and all persons not residing on the Premises shall leave the Premises where it is occurring.

4(2) An order under this section shall identify:

- (a) the location of the land on which the contravention occurred;
- (b) the reasonable particulars of the contravention of the By-law; and
- (c) the date and time by which there must be compliance with the order.

4(3) An order under this section may be given verbally or 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.

4(4) 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.

4(5) Where an Officer has reasonable grounds to believe that a contravention of this By-law has occurred, an Officer may make an order requiring the person who contravened this 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. An order under this section shall identify:

- (a) the location of the land on which the contravention occurred;
- (b) the reasonable particulars of the contravention of the By-law; and
- (c) the date and time by which there must be compliance with the order.

If an order under this section is not complied with within the time specified, the Municipality may enter upon the land related to the order and do such things as required by the order pursuant to the Municipality's Remedial Action Bylaw, By-law no. 84-2007, as amended from time to time, and section 446 of the *Municipal Act, 2001*, S.O. 2001, c.25.

#### **5. Enforcement and Inspection**

5(1) The provisions of this By-law may be enforced by an Officer.

5(2) For the purposes of an inspection under this By-law, the 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) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.

5(3) Despite any provision of this by-law, a person exercising a power of entry shall not enter or remain in any room or place actually being used as a dwelling unless:

- (a) the consent of the occupier is obtained, the occupier first having been informed that the right of entry may be refused and, if refused, may only be made under the authority of an order issued under section 438 of the *Municipal Act*, or a warrant issued under section 439 of the *Municipal Act*;
- (b) an order issued under section 438 of the *Municipal Act* is obtained;
- (c) a warrant issued under section 439 of the *Municipal Act* is obtained; or
- (d) the delay necessary to obtain an order under section 438 of the *Municipal Act*, to obtain a warrant under section 439 of the *Municipal Act* or to obtain the consent of the occupier would result in an immediate danger to the health or safety of any person.

5(4) An Officer may enter on lands for the purpose of carrying out an inspection pursuant to an order issued by a provincial judge or justice of the peace under section 438 of the *Municipal Act*. An Officer may apply for an order under section 438 of the *Municipal Act* in the following circumstances:

- (a) the inspection is reasonably necessary; and
- (b) the inspection is to determine whether the following are being complied with:
  - (i) this by-law;
  - (ii) a direction or order under this by-law;
  - (iii) an order made under section 431 of the *Municipal Act*; and
- (c) the Officer has been prevented or is likely to be prevented from doing anything set out in sections 6(3) of this by-law.

5(5) Unless otherwise provided in the *Municipal Act*, in an order under section 438 of the *Municipal Act*, or in a warrant under section 439 of the *Municipal Act*, the following conditions apply to a power of entry under this by-law:

- (a) the Officer must on request display or produce proper identification;
- (b) the Officer may be accompanied by a person under his or her direction; and
- (c) the Municipality shall restore the land to its original condition in so far as is practicable and shall provide compensation for any damages caused by the entry or by anything done on the land except where the entry is under section 446 of the *Municipal Act*, or is under Part XI, if under that Part, the treasurer registers a notice of vesting, in the name of the Municipality, in respect of the land.

## **6. Penalty**

Every person who contravenes any provision of this By-law is guilty of an offence, and on conviction is liable to a maximum fine of \$10,000.

## **7. Severability**

If any provision or part of this By-law is declared by any court or tribunal of competent jurisdiction to be illegal or inoperative, in whole or in part, or inoperative in particular

circumstances, the balance of the By-law, or its application in other circumstances, shall not be affected and shall continue to be in full force and effect.

**8. Continuation – Repetition – Prohibited – By Order**

The court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted, and such order shall be in addition to any other penalty imposed on the person convicted.

**9. Short Title of By-law**

This By-law may be referred to as the “Public Nuisance By-law”.

**10. Force and Effect**

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

READ A FIRST, AND SECOND AND THIRD TIME this 25th day of May, 2015.

Original Signed By:

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Mayor – Randy Hope

Original Signed By:

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Clerk – Judy Smith

**MUNICIPALITY OF CHATHAM-KENT**

**PART I- PROVINCIAL OFFENCES ACT**

**By-law # 76-2015:**

A By-law to prohibit and regulate serious public nuisances

within the Municipality of Chatham-Kent.

<b>ITEM</b>	<b>COLUMN 1 Short Form Wording</b>	<b>COLUMN 2 Provision creating or defining offence</b>	<b>COLUMN 3 Set Fine</b>
1	Sponsor, conduct, continue, or cause Nuisance Party Activities in Public Place	2(2)	\$500.00
2	Sponsor, conduct, continue, host, create, attend, allow, cause or permit a Nuisance Party	3(1)	\$500.00
3	Allow, cause or permit a Nuisance Party on Premises under their possession or control	3(2)	\$500.00
4	Fail to leave the Premises after having been directed to leave the Premises	4(4)	\$500.00

NOTE: The general penalty provision for the offences listed above is section 8 of the By-law #76-2015, a certified copy of which has been filed.