



THE CORPORATION OF THE TOWN OF OAKVILLE

BY-LAW NUMBER 2020-058

A by-law to regulate discarding of Personal Protective Equipment ("PPE") during the COVID-19 Emergency

WHEREAS on March 11, 2020 the World Health Organization declared a worldwide pandemic regarding the Novel Coronavirus 19 ("COVID-19 pandemic");

AND WHEREAS on March 17, 2020 a Declaration of Emergency was made by the Province of Ontario pursuant to section 7.0.1 of the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9 (the "*Emergency Management Act*") related to COVID- 19;

AND WHEREAS section 4 of the *Emergency Management Act* provides that the head of council of a municipality may declare that an emergency exists in the municipality or in any part thereof and may take such action and make such orders as he or she considers necessary and are not contrary to law to implement the emergency plan of the municipality and to protect property and the health, safety and welfare of the inhabitants of the emergency area;

AND WHEREAS the Provincial Government's modelling and forecast projects that the State of Emergency will last months and will result in a severe and long term challenge to our health care system;

AND WHEREAS on March 24, 2020 The Corporation of the Town of Oakville and the Regional Municipality of Halton declared an emergency pursuant to section 4 of the *Emergency Management Act*;

AND WHEREAS COVID-19 is present within the Town of Oakville and is a disease that is readily communicable from person to person and carries a risk of serious complications and may result in death;

AND WHEREAS on March 27, 2020 the Province of Ontario granted power to municipal law enforcement officers to enforce Orders issued by the Province under the *Emergency Management Act*;

AND WHEREAS the Office of the Mayor and Council for the Town of Oakville and Oakville Town Councillors continue to receive disturbing reports of individuals discarding Personal Protective Equipment on both private and Public Property;

AND WHEREAS The Corporation of the Town of Oakville considers it necessary to enact a regulation to support the intent and purpose of the Provincial Orders made under the *Emergency Management Act* in order to protect property and the health, safety and welfare of the citizens of the Town of Oakville, by prohibiting certain activities;

AND WHEREAS section 11(2) of the *Municipal Act, 2001* 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 protection of persons and property, including consumer protection;

AND WHEREAS pursuant to Town of Oakville By-law 2014-114, Council has designated as Municipal Law Enforcement Officers, any Town employee whose responsibilities include the enforcement of a by-law, Act or regulation under an Act, while in the discharge of their duties;

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

AND WHEREAS pursuant to section 434.1 of the *Municipal Act, 2001*, Council considers it desirable to provide for a system of administrative penalties as an additional means of encouraging compliance with Town by-laws;

AND WHEREAS administrative penalties constitute a debt to the municipality and if not paid within 15 days, it can be added to the tax roll and collected in the same manner as municipal taxes

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;

AND WHEREAS on April 8, 2020, Council delegated authority to the Mayor during the COVID-19 Emergency pursuant to By-law 2020-057;

THEREFORE THE MAYOR ENACTS AS FOLLOWS:

Definitions

1. For the purposes of this By-law,

“By-law” means this By-law;

“COVID-19 Emergency” means the period of time commencing upon the date of passing of this By-law until the declaration of emergency made by the Head of Council under sections 4 of the *Emergency Management Act* in relation to the COVID-19 pandemic has been terminated;

“*Emergency Management Act*” means the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E. 9;

“Head of Council” means the Mayor of the Town;

“Hearing Officer” means a person from time to time appointed by the Town Solicitor pursuant to the Screening and Hearing Officer By-law;

“*Municipal Act, 2001*” means the *Municipal Act, 2001*, S.O. 2001, c. 25;
“Officer” means a Municipal Law Enforcement Officer, police officer or person hired by the Town to do work;

“Person” or any expression referring to a person, means an individual of any age;

“Personal Protective Equipment or PPE” means masks, gloves or any other material used as personal protective equipment in relation to infections;

“Private Property” means a building or structure or part of a building or structure, and includes the lands and premises appurtenant thereto;

“*Provincial Offences Act*” means the *Provincial Offences Act*, R.S.O. 1990, c.P. 33;

“Public Property” means any land, premises or buildings owned, managed, or maintained by the Town and, for greater certainty, shall include highways, sidewalks, streets, any portion of a road allowance, parking lots, swimming pools, recreation centers, parks and playgrounds;

“Screening Officer” means a person from time to time appointed by the Town Solicitor pursuant to the Screening and Hearing Officer By-law; and

“Town” means The Corporation of the Town of Oakville;

Regulations

2. No Person shall discard any Personal Protective Equipment on any Private Property or Public Property.

Administrative Penalties

3. Any Person who contravenes any provision of this By-law shall, upon issuance of a penalty notice be liable to pay to the Town an administrative penalty in the amount of \$300.00.
 - (1) An Officer who finds or has any reasonable cause to believe that a Person has contravened any provision of this By-law may issue a penalty notice addressed to the Person.
 - (2) The penalty notice shall be given to the Person to whom or to which it is addressed as soon as is reasonably practicable and shall include the following information:
 - a. date of the penalty notice;
 - b. the penalty notice number;
 - c. particulars of the contravention;
 - d. the amount of the administrative penalty;
 - e. information respecting the process by which the Person may exercise the Person’s right to request a review of the administrative penalty; and
 - f. a statement advising that an administrative penalty will, unless cancelled or reduced pursuant to the review process, constitute a debt of the Person to the Town.
 - (3) No Officer may accept payment of an administrative penalty.
 - (4) Any Person who is served a penalty notice may request a review by a Screening Officer within 15 days after the penalty notice date.
 - (5) Any Person may request that the Screening Officer extend the time to request a review within 45 days after the penalty notice date, failing which, the administrative penalty shall be deemed to be affirmed.

- (6) The Screening Officer may extend the time to request a review of the administrative penalty when the Person requesting the extension demonstrates extenuating circumstances that warrant the extension of time.
- (7) On a review of the administrative penalty, the Screening Officer may affirm the administrative penalty, or may cancel, reduce or extend the time for payment of the administrative penalty, including any additional administrative fees, on the following grounds:
 - a. where the Person establishes, on a balance of probabilities that the Person did not commit the act as described in the penalty notice; or
 - b. the cancellation, reduction or extension of the time for payment of the administrative penalty, including any administrative fees, is necessary to reduce hardship.
- (8) Every Person who has a review by the Screening Officer shall receive a screening decision.
- (9) Where the Person fails to appear/participate at the time and place scheduled for a review of the screening decision:
 - a. the Person shall be deemed to have abandoned the review;
 - b. the administrative penalty shall be deemed to be affirmed;
 - c. the administrative penalty shall not be subject to review; and
 - d. the Person shall pay the applicable fee.
- (10) Any Person who has received a screening decision may request a review of the screening decision by a Hearing Officer within 15 days after the screening decision was issued.
- (11) Any Person may request that the Hearing Officer extend the time to request a review within 45 days after the screening decision was issued, at which time the screening decision shall be deemed to be affirmed.
- (12) The Hearing Officer may extend the time to request a review of the screening decision when the Person requesting the extension demonstrates extenuating circumstances that warrant the extension of time.
- (13) The Person shall be issued or served notice of the date, time and place of the review by the Hearing Officer.

- (14) On a review of the screening decision, the Hearing Officer may affirm the screening decision, or may cancel, reduce or extend the time for payment of the administrative penalty, including any administrative fees, on the following grounds:
 - a. where the Person establishes, on a balance of probabilities that the Person did not commit the act as described in the penalty notice; or
 - b. the cancellation, reduction or extension of the time for payment of the administrative penalty, including additional administrative fees, is necessary to reduce hardship.

- (15) Where a Person fails to request a review of the screening decision or extension of time before the Hearing Officer in accordance with this By-law:
 - a. the Person shall be deemed to have waived the right to a hearing;
 - b. the screening decision and the administrative penalty shall be deemed to be affirmed; and
 - c. the screening decision and the administrative penalty shall not be subject to any further review.

- (16) Where a Person fails to appear/participate at the time and place scheduled for a review by the Hearing Officer:
 - a. the Person shall be deemed to have abandoned the hearing;
 - b. the screening decision and administrative penalty shall be deemed to be affirmed;
 - c. the screening decision and administrative penalty and associated fees shall not be the subject of any further review; and
 - d. the Person shall pay to the Town a fee in the amount of \$100.00.

- (17) Where an administrative penalty and any applicable administrative fees are not paid within 15 days after the date that it becomes due and payable, each Person to whom the penalty notice was issued or served shall pay to the Town a fee in the amount of \$50.00.

- (18) A Hearing Officer shall not make any decision respecting a review of the screening decision unless the Hearing Officer has given the Person and the Town an opportunity to be heard.

- (19) The decision of a Hearing Officer shall be final and is not subject to appeal or further review.

- (20) The Screening Officer and the Hearing Officer have no jurisdiction to consider questions relating to the validity of a statute, regulation or by-

law or the constitutional applicability or operability of any statute, regulation or by-law.

- (21) Any penalty notice pursuant to this By-law may be given in writing in any of the following ways and is effective:
- a. on the date on which a copy is delivered to the Person to whom it is addressed;
 - b. on the fifth (5th) day after a copy is sent by mail to the Person's last known address;
 - c. upon the conclusion of the transmission of a copy by facsimile transmission to the Person's last known facsimile transmission number; or
 - d. upon the sending of a copy by e-mail transmission to the Person's last known e-mail address.
- (22) The Person's last known address, last known facsimile transmission number and last known e-mail address shall be deemed to include those provided in any business licensing application.

Enforcement and Inspection

4. The provisions of this By-law may be enforced by an Officer.
5. 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 is being complied with.
6. 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 purposes of the inspection.

7. 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.

Orders

8. An Officer may order to a Person to appropriately discard any PPE left on Private Property or Public Property as a result of a contravention of this By-law.
9. An order under this section may be given verbally or in writing.
10. An order in writing shall identify:
 - a) the location where the contravention occurred;
 - b) the reasonable particulars of the contravention;
 - c) the date and time by which there must be compliance with the order;
and
 - d) shall be served personally to the Person to whom it is directed, or served by Registered Mail to the Person which shall be deemed to be on the fifth day after mailing.

Penalties

11.
 - (1) Every Person who contravenes any provision of this By-law, including failing to comply with an order made under this By-law, is guilty of an offence and is liable to a fine, and such other penalties, as provided for in the *Provincial Offences Act* and the *Municipal Act, 2001*.
 - (2) In addition to subsection 11(1), any Person who is charged with an offence under this By-law by the laying of an information under Part III of the *Provincial Offences Act* and is found guilty of the offence is liable, pursuant to the *Municipal Act, 2001*, to the following fines:
 - (a) the minimum fine for an offence is \$750 and the maximum fine for an offence is \$100,000;
 - (b) in the case of a continuing offence, for each day or part of a day

that the offence continues, the minimum fine shall be \$750 and the maximum fine shall be \$10,000 and the total of all daily fines for the offence is not limited to \$100,000; and

- (c) in the case of a multiple offence, for each offence included in the multiple offence, the minimum fine shall be \$1000 and the maximum fine shall be \$10,000 and the total of all fines for each included offence is not limited to \$100,000.

- (3) If a Person 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.

12.

- (1) Where a Person fails to pay any part of a fine for a contravention of this By-law and the fine is due and payable under section 66 of the Provincial Offences Act, including any extension of time to pay the fine provided under that section, the Town Treasurer, or the Treasurer's delegate may give the Person a written notice specifying the amount of the fine payable and the final date on which it is payable, which date shall not be less than 21 days after the date of the notice.
- (2) If any part of a fine or a contravention of this By-law remains unpaid after the final date specified in the notice provided under subsection 18(1), the outstanding fine is deemed to be unpaid taxes pursuant to section 351 of the *Municipal Act, 2001*.

Validity

13. In the event of conflict between this By-law and:

- a. an order made under subsection 7.0.2 (4) or 7.1 (2) of the *Emergency Management Act*; or
- b. any statute, regulation, rule, by-law, order or instrument of the Province of Ontario or the Government of Canada;

The specific provisions of this By-law that are in conflict with the above shall be of no force and effect to the extent of the conflict.

Interpretation

14.

(1) Wherever a word is used in this By-law with its first letter capitalized, the term is being used as it is defined in Part II of this By-law. Where any word appears in ordinary case, the commonly applied English language meaning is intended.

(2) All words importing the singular shall include the plural and the converse of this also applies.

15. If a court of competent jurisdiction declares any provision or part of a provision of this By-law to be invalid or to be of no force and effect, it is the intention in enacting this By-law that the remainder of this By-law shall continue in force and be applied and enforced in accordance with its terms to the fullest extent possible according to law.

16. This By-law is effective the date it is passed and shall remain in force and effect for the duration of the COVID-19 Emergency.

PASSED this 9th day of April, 2020.

Rob Burton

MAYOR

Vicki Tytaneck

CLERK