

## The Corporation of the City of Pembroke

### By-law Number 2015-38

#### A by-law to prohibit the loitering of persons in public places

**Whereas** Section 130 of the *Municipal Act*, R.S.O. 1990, c. 25, as amended, henceforth referred to as the Act, provides that every council may pass such by-laws and make such regulations for the health, safety, morality and welfare of the inhabitants of the municipality in matters not specifically provided for the Act as may be deemed expedient and are not contrary to law,

**And Whereas** Section 128(1) of the 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 causes public nuisances,

**And Whereas** Section 427(2) of the Act provides that by-laws may be passed by council of local municipalities to authorized appointed officers to enter property to ascertain whether the by-law is obeyed and to enforce or carry into effect at the by-law;

**And Whereas** 100.1(1) of the Act provides that by-laws may be passed by the councils of municipalities to enact by-laws;

**And Whereas** the City of Pembroke deems it desirable to enact this by-law pursuant to the above-referenced statutory provisions to protect its inhabitants from other persons who may inflict injury or inconvenience upon them;

**Now Therefore** the Municipal Council of the Corporation of the City of Pembroke enacts as follows:

#### 1. Definitions

In this by-law,

“**beg**” means to go place-to-place or to remain stationary and, while there, to solicit donations for oneself or another person, but does not include the solicitation of donations on behalf of a bona fide charity.

“**cease**” means stop or refrain

“**city**” means the Corporation of the City of Pembroke

“**congregate**” means to collect, gather into a crowd, mass or assemblage of persons

“**disturbance**” means the interruption of the peace, quiet and good order of neighbourhood or community and includes, but is not limited to a single act or more of unnecessary and distracting noise, screaming, yelling, shouting, singing, profanity, or abusive language in a manner likely to disturb, cause discomfort, fear, confusion, or apprehension of members of the public.

“**highway**” includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, and part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof.

“**loiter**” means to linger, hand about, travel indolently, and includes to rest and to stand, sit or recline without a purpose relating to or any activity which is contrary to the property.

**“motor vehicle”** includes an automobile, motorcycle, motor assisted bicycle and any other vehicle or conveyance designed to be propelled or driven other than my muscular power but does not include the cars of electric or diesel railways, or other motor vehicle running only upon rails, or a traction engine, farm tractor, self-propelled implement of animal husbandry or road building machine within the meaning of the *Highway Traffic Act*, R.S.O. 1990, cH.8, as amended.

**“notice”** as being by sign as defined or any other forms of communication or direction whether verbal or written given by an officer.

**“obstruct”** means to hinder or block, or attempting to hinder or block, and includes impeding or retarding the passage or progress of persons intentionally or unintentionally.

**“occupier”** means any person or persons over the age of eighteen years in possession of property or residing therein or thereon.

**“officer”** means a police officer or a municipal by-law enforcement officer

**“owner”** includes the person for the time being, managing or receiving the rent of the land or premises, whether on his/her own account or as agent or trustee of any other person or who would so receive the rent if such land and premises were let, and shall also include a lessee or occupant of the property who, under the terms of a lease, is required to repair and maintain the property in accordance with the standards for the maintenance and occupancy of property, and shall include a Mortgage in possession of the property.

**“pedestrian”** means a person on any part of a highway who is on foot or a person in wheelchair which includes baby carriages or any similar, legally operated, ambulatory devices.

**“person”** means the individual, sole proprietorship, partnership, incorporated associated and includes a corporation and the heirs, executors, administrators or other legal representatives of a person to whom the context can apply according to law.

**“private property”** means land owned by private persons and generally whatever is erected or growing upon or affixed to land including tenements and hereditaments.

**“public place”** means any lands or buildings or structures or part thereof, whether privately or publicly owned, to which the public has access, whether or not a fee is charged for entry, and which may be utilized for the gathering of persons for the purposes of education, worship, business, recreation or entertainment, and includes billiard halls, bingo halls, bowling establishments, gaming center, public hall or restaurant, food courts, child care facilities, recreation centers, sport facilities, retail store, cinemas, theaters, concert halls, common areas, transit shelters, and public transit vehicles.

**“sign”** means a sign prescribed in Section 12 and Schedule “A” of this By-law.

**“solicit”** means to invite, approach, make appeals, request, canvas or petition persons for any purposes whether immoral or not.

**“vehicle”** includes a motor vehicle, trailer, traction engine, farm tractor, road building machine, bicycle and any vehicle drawn, propelled or driven by any kind of power, including muscular power

## **2. Application of By-law**

This by-law applies to all lands within the boundaries of the City of Pembroke

## **3. Short Title**

This by-law may be referred to as the Loitering By-law.

## **4. Scope of By-law**

4.1 In this by-law, unless the context otherwise requires, words imparting the singular number shall include the plural, and words imparting the masculine gender shall include the feminine, and, further, the converse of the foregoing also applies where the context so requires.

4.2 In the event of any conflict between the provisions of this by-law and the provisions of any statute or other by-law relating to loitering, then the provisions of those statutes, by-laws, plans and/or agreements with a higher standard shall prevail.

## **5. Loitering Prohibitions**

5.1 No person shall loiter or otherwise engage in an activity on public or on private property when the activity is prohibited by notice.

5.2 Subsection (1) of this section does not apply to a person who is acting under a right or authority conferred by law or who has the express permission of the owner or occupant of the property, the proof of which rests on the person so acting.

6.1 No persons shall congregate so as to obstruct the free passage of pedestrian or vehicular or vehicular traffic on any highway, or in any other public place or on private property.

6.2 Every person who congregates and obstructs the free passage of pedestrian or vehicular traffic under subsection (1) of this section shall, when directed to do so by an officer or owner or occupier of the private property where the obstruction occurred, immediately cease the obstruction.

## **7. Begging on Public Property**

7.1 No person shall beg on or near any highway or in any other public place.

7.2 The provisions of subsection (1) of this section do not apply to a person soliciting for donations on behalf of a bona fida charity or to a person acting under a right or authority conferred by law.

7.3 The provisions of subsection (1) of this section do not apply to a person who has express permission of the owner or occupant of the property, the proof of which rests on the person so acting, or who is acting under a right of authority conferred by law.

## **8. Causing a Disturbance to a Person**

No person shall conduct himself in such a manner as to be objectionable to others or cause a disturbance on any highway, pedestrian walkway or in any other public place by screaming, yelling, shouting, singing, or by using profane or abusive language in a manner which is likely to disturb pedestrians or other passersby.

9. No person shall conduct himself in such manner as to be objectionable to others or use any highway, pedestrian walkway or other public place in a

manner to crowd or jostle pedestrians, or to create discomfort, fear or confusion, or to cause apprehension for pedestrians or passersby.

## **10. Committed With Motor Vehicle**

Where an offence under this by-law is committed by means of a motor vehicle, the driver of the motor vehicle is liable to the fine established under this by-law. Where the driver cannot be identified, the owner of the motor vehicle is liable to the fine unless, at the time the offence was committed, the motor vehicle was in the possession of a person other than the owner without the owner's consent.

## **11. Notice**

11.1 Where a property owner intends to prohibit certain activities by giving notice of their lack of consent, notice shall be given.

- a. orally, or
- b. in writing, or
- c. by means of a sign, or
- d. by any combination of this section.

11.2 Where notice is given by means of a sign, the sign shall be clearly visible in daylight under normal weather conditions from the approach to each ordinary point of access to the property or premises to which it applies.

11.3 Substantial compliance with the posting provisions of subsection (2) of this section constitutes sufficient notice.

## **12. Sign**

12.1 Where a sign is posted under Section 11 of the by-law to provide notice that an activity is prohibited, the sign shall be a sign as described in Schedule "A" of this by-law.

## **13. Enforcement**

A Police Officer or a Municipal Law Enforcement Officer may be responsible for the enforcement of this by-law.

## **14. Penalty**

Every person who contravenes any provision of this by-law is guilty of an offence pursuant to Section 425 of the *Municipal Act*, 2001, S.O. 2001, c.25, as amended, and upon conviction therefore, shall, under the provisions, every person who contravenes any provision of the by-law is guilty of an offence and or conviction is liable to a fine as provided for in the *Provincial Offences Act*. The fines are listed in Schedule "B" of this By-law.

## **15. Severability**

In the event that a court of competent jurisdiction declares any section or part of a section of this by-law unlawful, the remainder of this by-law shall continue in force unless the court makes an order to the contrary.

## **16. Schedules**

Schedules "A" and "B" attached hereto form part of this by-law.

## **17. Force and Effect**

This by-law shall come into force and take effect upon the date of its passing and enactment.

18. This by-law shall come into force and take effect upon the date of the final passing thereof.

**Read a first and second time this 16<sup>th</sup> Day of June 2015**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Chief Administrative Officer/Clerk

**Read a third time and passed this 16<sup>th</sup> Day of June 2015**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Chief Administrative Officer/Clerk

## Schedule "A" – By-law 2015-38

### Signs

An annular red band with a diagonal red stroke running through the centre of the band and at 45 degrees to the horizontal, as illustrated in the following symbols or as close to as practical so as not to obliterate the symbol, the symbol signifies that loitering is prohibited.

Sign: 18" H x 18" W

Sides: 1

White.080 Aluminum

NO LOITERING

As per City of Pembroke By-law 2015-38

By-law Enforced



## Schedule "B" – By-law 2015-38

### Part 1 *Provincial Offences Act*

#### Offences and Set Fines Under By-law 2015-38, Prohibit Loitering

<b>Item</b>	<b>Column 1 – Short Form Wording</b>	<b>Column 2 – Offence creating provision or defining offence</b>	<b>Column 3 Set Fine</b>
1	Loiter on public property	Section 5.1	\$50
2	Loiter on private property	Section 5.1	\$50
3	Engage in prohibited activity on public property	Section 5.1	\$50
4	Engage in prohibited activity on private property	Section 5.1	\$50
5	Congregate obstruct traffic	Section 6.1	\$100
6	Congregate obstruct pedestrian on public property	Section 6.1	\$100
7	Congregate obstruct pedestrian on private property	Section 6.1	\$100
8	Fail to obey Officer	Section 6.2	\$300
9	Beg on highway	Section 7.1	\$75
10	Beg near highway	Section 7.1	\$75
11	Beg in public place	Section 7.1	\$75
12	Cause disturbance use profane language	Section 8	\$50
13	Cause disturbance shouting	Section 8	\$50
14	Cause disturbance screaming	Section 8	\$50
15	Conduct self in manner to be objectionable to others	Section 8	\$50
16	Crowd pedestrians in public place	Section 9	\$50
17	Create discomfort for pedestrian in public place	Section 9	\$50
18	Create fear for pedestrian in public place	Section 9	\$50
19	Cause apprehension for pedestrian in public place	Section 9	\$50

Note: The penalty provision for the offences indicated above is section 61 of the *Provincial Offences Act*, R.S.O. 1990, c. P. 33