



**City Of Kingston**

Ontario

**By-Law Number 2020-68**

**A By-Law for the Provision and Enforcement of Orders**

**During a Declared Emergency**

**(By-Law referred to as Emergency Orders By-Law)**

**Passed:** April 7, 2020

**As Amended By By-Law Number:**

<b>By-law Number</b>	<b>Date Passed</b>
By-Law Number 2020-137	September 15, 2020
By-Law Number 2021-113	July 13, 2021

**(Office Consolidation)**

**By-Law Number 2020-68**

**A By-Law for the Provision and Enforcement of Orders During a  
Declared Emergency**

**Passed:** April 7, 2020

**Whereas**, on the 26<sup>th</sup> day of March, 2020, the Head of Council of the Corporation of the City of Kingston declared that an emergency exists in the municipality pursuant to subsection 4(1) of the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9; and

**Whereas** subsection 4(1) of the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9 authorizes the head of council of a municipality that has declared an emergency to 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** subsection 10 of the *Municipal Act, 2001*, S.O. 2001, c. 25 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 the protection of persons and property; and

**Whereas** subsection 23.1 of the *Municipal Act, 2001*, S.O. 2001, c. 25 provides that a municipality may delegate to a committee of Council or to an employee of the municipality, subject to any conditions which the municipality may impose, the power to close a Highway or portion thereof temporarily for any purpose specified by by-law; and

**Whereas** subsection 429(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25 provides that a municipality may establish a system of fines for offences under a by-law of the municipality passed under the Act; and

**Whereas** subsection 434.1(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25 provides that a municipality may require a person, subject to such conditions as the municipality considers appropriate, to pay an administrative penalty if the municipality is satisfied that the person has failed to comply with a by-law of the municipality passed under this Act; and

**Whereas** Council deems it necessary and expedient to provide measures to allow for the administration and enforcement of the municipal declaration of emergency due to and during the current COVID-19 Coronavirus Pandemic;

**Therefore be it resolved that** By-Law Number 2020-068 “A By-Law for the Provision and Enforcement of Orders During a Declared Emergency” is hereby enacted as follows:

## **1. Definitions**

1.1. For the purposes of this By-Law:

“Act” means the *Municipal Act, 2001*, S.O. 2001, c. 25;

“Administrative Penalties” means those administrative penalties described in section 6.1 and administered pursuant to “By-law 2020-069 of the Corporation of the City of Kingston being “A By-Law to Establish a Process for Administrative Penalties”;

“Chief Administrative Officer” means the Chief Administrative Officer of the Corporation, or his or her designate;

“City” and “City of Kingston” means the geographic area under the jurisdiction of The Corporation of the City of Kingston;

“Corporation” means the Corporation of the City of Kingston;

“Council” and “City Council” mean the Council of The Corporation of the City of Kingston;

“Declared Emergency” means an emergency declared by the Head of Council pursuant to section 4(1) of the EMCPA;

“Director” means the Director of Planning, Building and Licensing Services for the City of Kingston, or his or her designate, or, in the event of organizational changes, the director of the appropriately titled department;

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

“Head of Council” means the Mayor of the City of Kingston;

“Municipal Emergency Plan” means the City’s emergency plan governing the provision of necessary services during an emergency and the procedures under and the manner in which employees of the municipality and other persons will respond to the emergency, formulated pursuant to subsection 3(1) of the EMCPA;

“Municipal Public Space” means property owned or operated by the Corporation and includes streets, lanes, laneways, sidewalks, green spaces, squares and any other space so designated by the Chief Administrative Officer from time to time;

“Officer” means any person who has been assigned the responsibility of administering and enforcing this By-Law and includes a Provincial Offences Officer, a Municipal Law Enforcement Officer, and an Officer of the Kingston Police or other police force assisting the Kingston Police.

“Order” means an Order made by the Head of Council pursuant to the declaration under subsection 4(1) of the EMCPA that an emergency exists in the City;

“Park” means any land, owned, leased or controlled by the City, designated or used as parkland or as a trail, including gardens, playgrounds, sport fields and beach area;

“Person” means an individual, a corporation, a partnership, a sole proprietorship or an association.

“Social Distancing” means such personal interaction practices as described in advisories issued by the applicable level of government or public health agency.

## **2. Administration and Application**

2.1. The City of Kingston’s Licensing and Enforcement Division is responsible for the administration of this By-Law.

2.2. This By-Law applies within the City of Kingston.

## **3. Interpretation**

3.1. This By-Law shall not be interpreted as exempting any Person from the requirement to comply with any other City By-Law or Federal or Provincial legislation.

3.2. In the event of conflict between an Order made under section 4.2 and any other rule, policy, by-law, other order or instrument of a legislative nature, including a licence or approval, made or issued under a statute or regulation, the Order made under section 4.2 prevails unless the rule, policy, by-law, other order or instrument of a legislative nature specifically provides that it is to apply despite this By-Law.

3.3. Any reference herein to any By-Law or Act of any government shall be construed as a reference thereto as amended or re-enacted from time to time or as a reference to any successor thereto then in force.

#### **4. Orders**

- 4.1. The purpose of making Orders under this By-Law is to promote the public good by protecting the health, safety and welfare of the people in the City of Kingston in times of a Declared Emergency in a manner that is subject to the Canadian Charter of Rights and Freedoms.
- 4.2. During a Declared Emergency, the Head of Council may make Orders that the Head of Council believes are necessary and essential in the circumstances to prevent, reduce or mitigate serious harm to persons, if in the opinion of the Head of Council it is reasonable to believe that,
  - a. the harm will be alleviated by an Order; and
  - b. making an Order is a reasonable alternative to other measures that might be taken to address the emergency.
- 4.3. Orders made under this By-Law are subject to the following limitations:
  - a. An Order shall only apply to the areas of the City of Kingston where it is necessary.
  - b. Subject to section 4.4, an Order shall be effective only for as long as is necessary.
- 4.4. Subject to this section:
  - a. an Order made under section 4.2 is revoked 28 days after it is made, unless:
    - (i) it is revoked sooner or;
    - (ii) otherwise stated in the Order.
  - b. During a Declared Emergency, the Head of Council may by Order, before it is revoked, extend the effective period of an Order made under section 4.2 for periods of no more than 28 days.
  - c. Despite the termination of a Declared Emergency, the Head of Council may by Order extend the effective period of an Order made under section 4.2 for periods of no more than 28 days where the extension of the Order is necessary to deal with the effects of the emergency and further the purposes of this By-law.
- 4.5. In accordance with section 4.2 and subject to the limitations in section 4.3, the Head of Council may issue Orders on any matter within the jurisdiction of the municipality, including but not limited to:

- a. Implementing any emergency plans formulated under subsection 3 of the EMCPA;
  - b. Establishing facilities for the care, welfare, safety and shelter of individuals, including emergency shelters and authorizing facilities under the control of the Corporation to operate as is necessary to respond to or alleviate the effects of the Declared Emergency;
  - c. Closing any public place, including any Municipal Public Space, Park, or other establishment or institution;
  - d. Designating a public place or part thereof as a place in which any activity is prohibited or restricted;
  - e. Constructing, repairing, removing, demolishing or disposing of any works or undertaking any actions to prevent, respond to or alleviate the effects of the Declared Emergency;
  - f. Identifying actions that constitute a public nuisance and making orders to specifically regulate or prohibit those actions in order to eliminate or ameliorate the impact of the public nuisance; and
  - g. Consistent with the powers authorized in this By-Law, taking such other actions or implementing such other measures as the Head of Council considers necessary in order to prevent, respond to or alleviate the effects of the Declared Emergency.
- 4.6. Despite any other remedy or any penalty, the contravention by any person of an Order made under section 4.2 of this By-Law may be restrained by order of a judge of the Superior Court of Justice upon application without notice by the Corporation, and the judge may make the order and it may be enforced in the same manner as any other order or judgment of the Superior Court of Justice.
- 4.7. An Order made under section 4.2 of this By-Law:
- a. takes effect immediately upon its making; or
  - b. if it so provides, may be retroactive to a date specified in the Order.
- 4.8. The Head of Council shall take steps to publish the order in order to bring it to the attention of affected persons pending publication.
- 4.9. An Order made under section 4.2 of this By-Law may be general or specific in its application.
- 4.10. An Order under section 4.2 of this By-Law shall be made in writing.

- 4.11. Every Person shall comply with an Order issued pursuant to section 4.2 of this By-Law.

## **5. Enforcement**

- 5.1. The provisions of this By-Law may be enforced by an Officer, or other authorized employee or agent of the City.
- 5.2. No Person shall obstruct or hinder or attempt to obstruct or hinder an Officer or other authorized employee or agent of the City in the exercise of a power or the performance of a duty under this By-Law.
- 5.3. Subject to section 5.6 below, every Officer shall have the right to enter lands to conduct an inspection to determine whether the provisions of this By-Law and any Order(s) issued hereunder are being complied with in accordance with the provisions of subsections 435 and 436 of the Act.
- 5.4. Where an Officer has reasonable grounds to believe that an offence under this By-Law has been committed by a Person, the Officer may require the name, address, and proof of identity of that Person.
- 5.5. Failure to provide proof of identification satisfactory to an Officer when requested to do so pursuant to section 5.4 of this By-Law shall constitute obstruction of an Officer under section 5.2 of this By-Law.
- 5.6. No Person exercising a power of entry on behalf of the City shall enter or remain in any room or place actually being used as a Dwelling Unit 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 subsection 438 of the Municipal Act, a warrant issued under subsection 439 of the Municipal Act or a warrant under subsection 386.3 of the Municipal Act;
  - b. an order issued under subsection 438 of the Municipal Act is obtained;
  - c. a warrant issued under subsection 439 of the Municipal Act is obtained;
  - d. a warrant issued under subsection 386.3 of the Municipal Act is obtained;
  - e. the delay necessary to obtain an order under subsection 438 of the Municipal Act, to obtain a warrant under subsection 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; or

- f. the City has given notice of its intention to enter to the occupier of the land as required under section 435(2) of the Municipal Act and the entry is authorized under subsections 79, 80 or 446 of the Municipal Act.
- 5.7. A refusal of consent to enter or to remain in a room or place actually used as a Dwelling Unit does not constitute hindering or obstruction within the meaning of section 5.2 unless the City is acting under an order under subsection 438 of the Municipal Act or a warrant under subsection 439 of the Municipal Act or in the circumstances described in clause 437 (d) or (e) of the Municipal Act.

## **6. Offence and Penalty Provisions**

- 6.1. Every Person who contravenes any provision of this By-Law shall, upon issuance of a penalty notice in accordance with Administrative Penalty Process By-Law 2020-69, be liable to pay to the Corporation an Administrative Penalty as set out in Schedule B of the Administrative Penalty Process By-Law 2020-69 for each day on which a contravention occurs, and the Administrative Penalty Process By-Law 2020-69 applies to each Administrative Penalty issued pursuant to this By-Law.
- (By-Law Number 2020-68; 2020-137; 2021-113)
- 6.2. Notwithstanding section 6.1 of this By-Law, every Person who contravenes any provision of this By-Law is guilty of an offence as provided for in the Provincial Offences Act R.S.O. 1990, c. p. 33.
- 6.3. Subject to section 6.4 of this By-Law, upon conviction, every Person who contravenes any provision of this By-law is liable to a minimum fine of not less than Five Hundred Dollars (\$500) and a maximum fine of not more than Ten Thousand Dollars (\$10,000) for a first offence and not more than Twenty-Five Thousand Dollars (\$25,000) for any subsequent offence.
- 6.4. A corporation that has contravened any provision of this By-law is guilty of an offence and is liable to a minimum fine of not less than One Thousand Dollars (\$1,000) and a maximum fine of not more than Twenty-Five Thousand Dollars (\$25,000) for a first offence and not more than Fifty Thousand Dollars (\$50,000) for any subsequent offence.
- 6.5. Where a corporation contravenes any provision of this By-law, every director or officer of the corporation who knowingly concurs in the contravention is guilty of an offence and is liable to a minimum fine of not less than Five Hundred Dollars (\$500) and a maximum fine of not more than Ten Thousand Dollars (\$10,000) for a first offence and not more than Twenty-Five Thousand Dollars (\$25,000) for any subsequent offence.



- 6.6. If a Person has been convicted of an offence under this By-Law, the Ontario Court of Justice or any court of competent jurisdiction thereafter may, in addition to any penalty imposed on the Person convicted, issue an order:
- a. prohibiting the continuation or repetition of the offence by the Person convicted; and
  - b. requiring the Person convicted to correct the contravention in the manner and within the period that the court considers appropriate.
- 6.7. If a Person is required to pay an Administrative Penalty under section 6.1 in respect of a contravention of this By-Law, the Person shall not be charged with an offence in respect of the same contravention.
- 6.8. In accordance with subsection 351 of the Municipal Act, the treasurer of the City may add unpaid fees, and charges and fines under this By-Law to the tax roll and collect them in the same manner as property taxes.

## **7. Validity**

- 7.1. If a Court of competent jurisdiction declares any provision, or any part of a provision, of this By-Law to be invalid, or to be of no force and effect, it is the intention of Council in enacting this By-Law that each and every provision of this By-Law authorized by law, be applied and enforced in accordance with its terms to the extent possible according to law.

## **8. Short Title of By-Law**

- 8.1. This By-Law may be referred to as the “Emergency Orders By-Law”.

## **9. Commencement**

- 9.1. This By-Law shall come into force and take effect on the date of its passing.

This By-Law was given Three Readings and Passed: April 7, 2020