

# The Corporation of the Township of Huron-Kinloss



## BY-LAW

2020-44

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### Being a By-law for the Provisions and Enforcement of Orders During a Declared Emergency for the Township of Huron-Kinloss

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**WHEREAS**, on the 23<sup>rd</sup> day of March, 2020, the Head of Council of the Corporation of the Township of Huron-Kinloss 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, as amended (the "EMCPA");

**AND WHEREAS** subsection 4(1) of the EMCPA 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** section 10 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended (the "Municipal Act") 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 429(1) of the *Municipal Act* 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** The Council of the Township of Huron-Kinloss deems it necessary and expedient to provide measures to allow for the administration and enforcement of the municipal declarations of emergency;

**NOW THEREFORE** The Council of the Corporation of the Township of Huron-Kinloss for the Provision and Enforcement of Orders During a Declared Emergency enacts as follows:

## **1. Definitions**

1.1. For the purposes of this By-Law:

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

“Council” means the Council of The Corporation of the Township of Huron-Kinloss

“Declared Emergency” means an emergency declared by the Head of Council pursuant to section 4(1) of the EMCPA with respect to all or part of the Township;

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

“Head of Council” means the Mayor of the Township of Huron-Kinloss;

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

“Municipal Emergency Plan” means the Township’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 the EMCPA;

“Municipal Public Space” means property owned, operated or controlled by the Township and includes streets, lanes, laneways, sidewalks, green spaces, parks, and any other space so designated by the Township 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 South Bruce OPP;

“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 Township;

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

“Township” means the Township of Huron-Kinloss.

## **2. Application**

2.1. This By-Law applies within the geographic limits of Township of Huron-Kinloss and with respect to any Township-owned property or municipal system outside of the Township’s geographical limits.

## **3. Interpretation**

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

3.2. In the event of conflict between an Order made under section 4.1 of this By-law 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 4.1 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. During a Declared Emergency, the Head of Council 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 Township and to protect property and the health, safety and welfare of the inhabitants of the emergency area.
- 4.2. Without limiting the generality of section 4.1, the Head of Council may issue Orders on any matter within the jurisdiction of the Township, including but not limited to:
- a. Implementing any emergency plans formulated by the Township under 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 Township 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, or other establishment or institution;
  - d. Designating a public place or part thereof as a place in which any specified 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.
- 4.3. 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.
- 4.4. An Order made under section 4.1 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.
- 4.5. The Head of Council shall take steps to publicize the order in order to bring it to the attention of affected persons pending publication.
- 4.6. An Order made under section 4.1 of this By-Law may be general or specific in its application.
- 4.7. An Order under section 4.1 of this By-Law shall be made in writing.
- 4.8. Every Person shall comply with an Order issued pursuant to section 4.1 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 Township.
- 5.2. No Person shall obstruct or hinder or attempt to obstruct or hinder an Officer or other authorized employee or agent of the Township 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 Municipal 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 Township 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 Township 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 Township 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 is guilty of an offence as provided for in the Provincial Offences Act, R.S.O. 1990, c. P.33, as amended.
- 6.2. 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 Twenty-Five Thousand Dollars (\$25,000) for a first offence and not more than One Hundred Thousand Dollars (\$100,000) for any subsequent offence.
- 6.3. 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 Twenty-Five Thousand Dollars (\$25,000) for a first offence and not more than One Hundred Thousand Dollars (\$100,000) for any subsequent offence.
- 6.4. 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.
- 6.5. In accordance with section 441.1 of the Municipal Act, the treasurer of the Township may add unpaid 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**

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

**READ a FIRST and SECOND TIME this 15<sup>th</sup> day of April, 2020.**

**READ a THIRD TIME and FINALLY PASSED this 15<sup>th</sup> day of April, 2020.**



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Mitch Twolan, Mayor



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Emily Dance, Clerk