

THE CORPORATION OF THE CITY OF PORT COLBORNE

BYLAW NO.

Being a bylaw to prohibit the obstruction, encumbering, injuring or fouling of City Roads.

WHEREAS sections 8, 9 and 11 of the *Municipal Act, 2001*, S.O. 2001, c. 25 (“*Municipal Act, 2001*” or “the statute”), authorize a municipality to pass by-laws respecting the economic, social and environmental well-being of the municipality, the health, safety and well-being of persons, and the protection of persons and property;

AND WHEREAS sections 11 and 27 of the *Municipal Act, 2001* provide that a lower- tier municipality may pass by-laws respecting highways under its jurisdiction;

AND WHEREAS section 425 of the *Municipal Act, 2001* permits a municipality to pass by-laws providing that any person who contravenes any by-law of the municipality enacted under the statute is guilty of an offence;

AND WHEREAS section 426 of the *Municipal Act, 2001* provides that no person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty under a by-law enacted under the statute;

AND WHEREAS section 429 of the *Municipal Act, 2001* authorizes a municipality to establish a system of fines for offences under its by-laws;

AND WHEREAS section 434.1 of the *Municipal Act, 2001* authorizes a municipality to establish a system of administrative monetary penalties to assist the municipality in promoting compliance with its by-laws;

AND WHEREAS section 444 of the *Municipal Act, 2001* permits a municipality, if satisfied that a contravention of a by-law of the municipality passed under the statute has occurred, to make an order requiring the person who contravened the by-law or who caused or permitted the contravention to discontinue the contravening activity;

AND WHEREAS section 446 of the *Municipal Act, 2001* provides that if a municipality has authority to direct or require a person to do a matter or thing, the municipality may also provide that, in default it being done by the person directed or required to do it, the matter or thing shall be done at the person’s expense;

AND WHEREAS the Council of the Corporation of the City of Port Colborne considers it necessary and desirable to enact this by-law;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF PORT COLBORNE ENACTS AS FOLLOWS:

1. **SHORT TITLE**

1.1. This By-law shall be known as the “Fouling of Roads By-law”.

2. **DEFINITIONS**

2.1. For the purposes of this By-law:

“Administrative Monetary Penalty” means a monetary penalty administered pursuant to City By-law No. 6902/50/21, as amended from time to time.

“By-law” means this Fouling of Roads By-law.

“City” means the Corporation of The City of Port Colborne.

“City Road” means a Road under the jurisdiction of the City.

“Company” means any corporate or legal entity that is not an Individual and includes but is not limited to a company, corporation, cooperative, partnership, firm, sole proprietorship, association, society and/or, organization.

“Council” means Council of the City.

“Deposit” means to place, throw, spill, dump or otherwise cause or permit Material to be situated on a Road by any means whatsoever and, without limiting the generality of the foregoing, includes any Material that is moved, transported, carried or brought by any Person, animal, Vehicle, equipment, appurtenance or other conveyance and that becomes loose, detaches, blows, spills or falls on any Road.

“Foul” means to Deposit any Material on a City Road.

“Individual” means a natural person.

“Material” means any substance or material of any nature or kind whatsoever and, without limiting the generality of the foregoing, includes any dirt, filth, soil, mud, gravel, sand, clay, lime, fertilizer, manure, snow, ice, glass, metal, paper, hay, straw, coal, animal carcass, liquid waste, refuse or other matter.

“Officer” shall mean:

- i. a Police Officer employed by the Royal Canadian Mounted Police (RCMP), Ontario Provincial Police (OPP) or Niagara Regional Police Service (NRPS);
- ii. a Provincial Offences Officer of the City or other person appointed by or under the authority of a City by-law to enforce City by- laws including, but not limited to, an appointed Municipal Law Enforcement Officer for the City of Port Colborne or an employee of the Ontario Society for the Prevention of Cruelty of Animals (OSPCA).
- iii. a Peace Officer authorized to enforce the Highway Traffic Act.

“Operations Manager” means the Operations Manager of the City or his/her

designate.

“Owner” means any Person that is the registered owner of a Property.

“Person” includes an Individual and a Company.

“Property” means any land or premises within the City.

“Road” means a common and public highway and includes any street, bridge, trestle, viaduct or other structure forming part of a highway and includes the whole of the road allowance between the lateral property lines thereof.

“Sidewalk” means all parts of a Road as are set aside or improved for the use of pedestrians.

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

3. APPLICATION

3.1. This By-law shall apply to all City Roads and Sidewalks.

4. PROHIBITIONS

4.1. Without the prior written consent of Council or unless otherwise authorized by the provisions of a by-law of the City, no Person shall:

- (a) Foul, obstruct, encumber or injure, or cause or permit to be Fouled, obstructed, encumbered or injured, any City Road or any drain, ditch, or culvert thereupon.
- (b) Erect, install, place or maintain, or cause or permit to be erected, installed, placed or maintained, any pole, post, fence, hedge, awning, canopy, marquee, porch, doorstep, vehicle approach ramp, sidewalk, driveway, structure, firewood, material or other thing, either wholly or partly upon, in, under or over a City Road.
- (c) Hang or maintain, or cause or permit to be hung or maintained, any gate, door or other thing in such a manner as to allow it to swing over any part of a City Road.
- (d) Place or expose, or cause or permit to be placed or exposed, any merchandise or other articles of any kind upon a City Road outside of a building so that the same shall project over any part of a City Road; provided that this paragraph shall not prevent the use of a part of a Sidewalk for not more than one (1) hour at any one (1) time for the taking in, or delivery of merchandise or other articles, provided that sufficient space is left unencumbered for the use of pedestrians and that the

merchandise or articles are removed therefrom without unnecessary delay.

- 4.2. The Owner of any Property at or upon which any activity is undertaken that involves or requires the passage of Persons, animals, Vehicles, equipment, appurtenances or other conveyances to or from the Property and any other location within or outside the City shall not:
 - (a) Transport, drive, guide or operate any such animals, Vehicles, equipment, appurtenances or other conveyance in a manner that Fouls, obstructs, encumbers or otherwise injures a City Road or Sidewalk; and/or
 - (b) Cause or permit any such animals, Vehicles, equipment, appurtenances or other conveyances to be transported, driven, guided or operated in a manner that Fouls, obstructs, encumbers or otherwise injures a City Road or Sidewalk.

5. ADMINISTRATION AND ENFORCEMENT

- 5.1. For the purposes of enforcing this By-law, the Operations Manager or an Officer may exercise any power, authority or remedy granted to the City pursuant to the *Municipal Act, 2001* and the *Provincial Offences Act*, R.S.O. 1990, c. P. 33 ("*Provincial Offences Act*").
- 5.2. Where the Owner of a Property erects, installs, places, maintains or causes or permits to be erected, installed, placed or maintained any pole, post, fence, hedge, awning, canopy, marquee, porch, doorstep, vehicle approach ramp, sidewalk, driveway, structure, firewood, material or other thing wholly or partly upon, in, under or over a City Road or hangs or maintains or causes or permits to be hung or maintained any gate, door or other thing in such a manner as to allow it to swing over any part of a City Road, the City may issue an Order requiring the Owner to remove or cause the removal of the obstruction or encumbrance forthwith.
- 5.3. An Order made under section 5.2 of this By-law shall prescribe the time period for complying with the Order. Where the Owner fails to comply with an Order within the time period specified for compliance, the City may remove the obstruction or encumbrance at the expense of the Owner. The amount of such expense shall be paid to the City by the Owner of the Property forthwith upon demand.
- 5.4. Where a City Road is Fouled by reason of the passage of Persons, animals, Vehicles, equipment, appurtenances or other conveyances to or from a Property, the Owner of the Property shall forthwith remove or cause to be removed the Deposit and shall remedy the Fouling to the satisfaction of the City.
- 5.5. Where a City Road is obstructed, encumbered or otherwise injured by reason of the passage of Persons, animals, Vehicles, equipment,

appurtenances or other conveyances to or from a Property, the Owner of the Property shall forthwith remove or cause to be removed the obstruction or encumbrance and shall remedy the injury to the satisfaction of the City.

- 5.6. Where the Owner of a Property fails to forthwith remove or cause to be removed any Fouling, Deposit, obstruction or encumbrance or fails to forthwith correct an injury to a City Road, the City may, without notice, carry out any work necessary to remove the Fouling, Deposit, obstruction or encumbrance, to correct the injury to the City Road and/or to restore the City Road to its normal condition, at the expense of the Owner. The amount of such expense shall be paid to the City by the Owner forthwith upon demand.
- 5.7. No Person shall hinder or obstruct, or attempt to hinder or obstruct, the Operations Manager, an Officer, or any other employee or agent authorized to carry out work for the City from carrying out inspections of land or conducting any other duties required to give effect to this by-law, including the carrying out of work that may be required to remedy or correct a City Road that has been Fouled, obstructed, encumbered or otherwise injured.

6. PENALTIES

- 6.1. Every Person who contravenes any provision of this By-law is guilty of an offence and upon conviction is liable to such penalties as provided for in the *Municipal Act, 2001* and the *Provincial Offences Act*.
- 6.2. An Officer may issue an Administrative Monetary Penalty notice immediately upon evidence of a violation of this By-law to the Owner of a Property in accordance with City By-law No. 6902/50/21, as amended, Being a By-law to Establish a System for Administrative Penalties for Non-Parking Offences within The City of Port Colborne.
- 6.3. The Administrative Monetary Penalties for failures to comply with this By-law are set out in Schedule "B" of By-law 6902/50/21, as amended from time to time.
- 6.4. Where a contravention of a provision of this By-law or an Order is committed on or continues for more than one (1) day, the Person committing the contravention is liable to be convicted for a separate offence for each day that the contravention is committed or continued. For greater certainty, in the case of an Order, a contravention continues for every day or part of a day past the date set out in the Order by which the work must be completed, or action taken as the case may be.

7. GENERAL

- 7.1. If any part or provision 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 to

be inoperative in particular circumstances, this balance of the By-law, and/or its application in other circumstances, shall not be affected and shall remain in full force and effect.

- 7.2. If there is a conflict between a provision of this By-law and a provision of any other by-law of the City, the provision that establishes the higher standard shall prevail.
- 7.3. Any reference to legislation in this By-law includes the legislation referred to and any amendments, replacement, subsequent enactment or consolidation of such legislation.
- 7.4. This By-law shall come into force and take effect upon the date of its passage by Council.

BY-LAW READ AND PASSED THIS ____ DAY OF _____, 2024

MAYOR

CLERK