

THE CORPORATION OF THE TOWN OF OAKVILLE

BY-LAW NUMBER 2023-105

Appendix B - A by-law to prohibit kite fighting on private property and public property.docx

WHEREAS subsection 8(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended (the “Municipal Act”) provides that powers of a municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on municipalities to enable them to govern their affairs as they consider appropriate, and to enhance their ability to respond to municipal issues;

WHEREAS subsection 11(2) of the Municipal Act provides that a municipality may 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;

WHEREAS section 128 of the Municipal Act provides that, without limiting sections 9 and 11, a local municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of Council, are or could become or cause public nuisances;

WHEREAS subsection 434.1(1) of the Municipal Act 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;

WHEREAS subsection 425(1) of the Municipal Act provides that a municipality may pass by-laws providing that a person who contravenes any by-law of the municipality passed under the Act is guilty of an offence;

WHEREAS it is the opinion of Council for the Corporation of the Town of Oakville (the “Council”) that kite fighting is or could become or cause a public nuisance;

WHEREAS Council deems it appropriate to prohibit kite fighting on private and public property within the Town of Oakville;

COUNCIL ENACTS AS FOLLOWS:

1. Definitions

(1) In this By-law:

“Administrative Penalties for Non-Parking Violations and Orders By-law” means the Town’s By-law 2021-038, or successor by-laws;

“Hazardous Material” means material that is abrasive, and includes but is not limited to metal, wire, piano wire, fishing line, or any type of nylon that can be or is chemically treated or coated with glass particles;

“Kite” means a light frame covered with paper, cloth, plastic, or other material and may include a stabilizing tail, and designed to be flown in the air at the end of a long string;

“Kite Fighting” means an activity where kites are flown with the aim of cutting an opponent’s kite string;

“Officer” means any person authorized by the Town to enforce by-laws and includes Municipal Law Enforcement Officers, police officers, and provincial offences officers;

“Penalty Notice” means a notice issued pursuant to the provisions of the Administrative Penalties for Non-Parking Violations and Orders By-law;

“Person” means an individual, corporation, unincorporated association or partnership;

“Private Property” means property that is not owned by the Town or any of its boards and agencies, Halton Region, Halton District and Halton Catholic School Boards, Conseil Scolaire Viamonde, Conseil Scolaire Catholique MonAvenir, the Crown in Right of Ontario or any of its agencies or the Crown in Right of Canada or any of its agencies;

“Public Property” means property that is owned by the Town or any of its boards and agencies, Halton Region, Halton District and Halton Catholic School Boards, Conseil Scolaire Viamonde, Conseil Scolaire Catholique MonAvenir, the Crown in Right of Ontario or any of its agencies or the Crown in Right of Canada or any of its agencies;

“Town” means The Corporation of the Town of Oakville or the geographic area of the Town of Oakville, as the context requires;

2. Interpretation

- (1) This By-law is a designated by-law under the Administrative Penalties for Non-Parking Violations and Orders By-law.
- (2) The use of headings in this By-law is for convenient reference only and shall not form part of this By-law.

3. Prohibitions

- (1) No person or group of persons shall engage in kite fighting on any private property or public property within the Town.
- (2) No person shall fly a kite with string made of hazardous material on private property or public property within the Town.
- (3) No person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty under this By-law.

4. Inspections

- (1) An Officer may enter on a property at any reasonable time for the purpose of conducting an inspection to determine whether or not this By-law is being complied with.
- (2) For the purposes of conducting an inspection pursuant to subsection 4(1) of 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.

5. Fees and Charges

- (1) Council may, from time to time, impose fees and charges to recover costs in relation to the administration and enforcement of this By-law.

6. Administrative Penalties

- (1) An Officer who finds or has reasonable cause to believe that a person has contravened any provision of this By-law, including any Schedules, may issue a penalty notice to the person in accordance with the provisions of the Administrative Penalties for Non-Parking Violations and Orders By-law.
- (2) Each person who has been issued a penalty notice shall, upon issuance of the penalty notice, be liable to pay an administrative penalty to the Town in the amount of \$300 or as revised in the Town's rates and fees schedule.
- (3) If an Officer has issued a penalty notice under subsection 20(1) of this By-law and has reasonable cause to believe that the same person has contravened the same provisions of this By-law for a second time within twenty-four (24) months of the date the first penalty notice is deemed to be served, the Officer may issue a second penalty notice to the person.
- (4) Upon issuance of the second penalty notice, the person shall be liable to pay an administrative penalty to the Town in the amount of \$400 or as revised in the Town's rates and fees schedule.
- (5) If an Officer has issued a penalty notice under subsection 20(3) of this By-law and has reasonable cause to believe that the same person has contravened the same provision of this By-law for a third or subsequent time within twenty-four (24) months of the date the second penalty notice is deemed to be served, the Officer may issue a third or subsequent penalty notice to the person.
- (6) Upon issuance of a third or subsequent penalty notice, the person shall be liable to pay an administrative penalty to the Town in the amount of \$500 or as revised in the Town's rates and fees schedule.
- (7) A person who has been issued a penalty notice under this By-law may request a review of the penalty notice in accordance with the Administrative Penalties for Non-Parking Violations and Orders By-law.

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7. Notices

- (1) Service of any penalty notice or any other notice may be given as specified in the Administrative Penalties for Non-Parking Violations and Orders By-law.

8. Penalties

- (1) Every person who contravenes any provision of 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*, R.S.O. 1990, c. P.33, as amended (the “Provincial Offences Act”) and the Municipal Act.
- (2) A director or officer of a corporation who knowingly concurs in the contravention of this By-law by the corporation 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.
- (3) Every person, excluding a corporation, who is convicted of an offence under this By-law is liable to a minimum fine of Three Hundred Dollars (\$300.00) and a maximum fine of Five Thousand Dollars (\$5,000.00) for the first offence and a maximum of Ten Thousand Dollars (\$10,000) for a subsequent offence.
- (4) Every corporation that is convicted of an offence is liable to a maximum fine of Fifty Thousand Dollars (\$50,000.00) for the first offence and One Hundred Thousand Dollars (\$100,000.00) for a subsequent offence.
- (5) 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.

9. References

- (1) References in this By-law to any legislation or by-law means as may be amended or successor by-laws or legislation, and includes any regulations thereunder.

10. Severability

- (1) In the event any provisions of this By-law are deemed invalid or void, in whole or in part, by any court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

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11. Title

- (1) This By-law may be known as the “Kite Fighting By-law.”

12. Effective Date

- (1) This By-law comes into force and effect on the date it is passed.

PASSED this 15th day of August, 2023

MAYOR

CLERK