

REPORT

COMMUNITY SERVICES COMMITTEE

MEETING DATE: DECEMBER 7, 2015

FROM: Engineering and Construction Department

DATE: November 11, 2015

SUBJECT: Prohibiting Urination on Public Property within the Town

LOCATION: Road Allowances

WARD: Town wide

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RECOMMENDATION:

That the staff report *Prohibiting Urination on Public Property within the Town*, from the Engineering and Construction Department dated November 11, 2015, be received.

KEY FACTS:

The following are key points for consideration with respect to this report:

- Staff were directed to report back on applicable town by-laws to prohibit individuals from urinating on public property.
- The Town's *Use of Road By-law* (2009-072) and *Use of Municipal Rights of Ways and Municipal Parking Lots* policy (MS-PER-004) regulates/facilitates the use of town road corridors; they do not adequately address the issue of public urination.
- Halton Regional Police Service would use an incident of public urination to assess whether there was a more significant underlying cause to the situation like intoxication; incidents involving a person who had to "relieve" themselves would most likely never result in a charge being laid.
- Some municipalities have addressed the issue of public urination in their Nuisance By-laws; the town could amend its Nuisance By-law (2007-143) to include specific violation of public urination on town property.
- The Parks and Open Space Department has initiated a progressive discipline process for sportsfield permit holders; the process addresses a variety of inappropriate behaviours during the use of sportsfields, including public urination.

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BACKGROUND:

In September of 2013, Council provided the following direction to staff:

That staff, in consultation with the Halton Regional Police Service, be requested to provide a report on potential applicable town by-laws to prohibit individuals from urinating on public property within the town.

The direction provided to staff outlined a broad area of public property. Public property includes road corridors, parks and recreation facilities. Staff interpreted the concern from Council to be those instances where public urination is occurring within parks and road corridors. The Parks & Open Space Department is responsible to manage activities within the town's park system; the Engineering & Construction Department is responsible for the overall management of the town's road corridors.

Since the direction provided by Council, the town has made some progress in dealing with public urination within town parks. In 2014, the Parks & Open Space Department presented a report to Community Services Committee entitled: *Progressive Discipline Procedure for Sportsfield Permit Holders*. That report outlined a procedure to address incidents of inappropriate behaviour during the use of outdoor sportsfields, including incidents of users urinating within the park. Prior to 2014, there was no prescribed procedure to address issues with specific leagues or teams. Issues had been addressed on a "one off" basis with mixed success.

In spring 2014 staff brought together all minor and adult sportsfield user groups who represented the majority of the users of outdoor fields. In consultation and collaboration with the groups, a progressive discipline program was developed on the principles of the R-Zone program. R-Zone has been implemented in Oakville for many years and in fact become the model used by many communities across the province. Based on discussion with minor and adult user groups it was agreed a progressive discipline process would be developed. Council approved the process.

COMMENT/OPTIONS:

Engineering & Construction manages/regulates activities within the town's road corridors allowance through:

1. By-Law 2009-072, a by-law to regulate the use of a municipal right-of-ways (Use of Roads By-law)
2. Town Policy MS-PER-004 *Use of Municipal Rights of Ways and Municipal Parking Lots*

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The Use of Roads By-law prescribes what activities are not allowed on the town's roads. Generally, the by-law regulates:

- use of equipment,
- placement of materials/objects,
- discharging of oils/chemicals or substances,
- unauthorized closures,
- placement of graffiti,
- removing of or damage to road features,
- placement/storage of snow,
- display of merchandise,
- soliciting or selling of merchandise,
- placement of newspaper boxes,
- driveway entrances,
- encroachments,
- private trees,
- boulevard gardens,
- discharge of water onto the right-of-way.

The *Use of Municipal Rights of Ways and Municipal Parking Lots* policy facilitates the use and occupation of our roads and municipal parking lots. Procedures are in place where property owners can apply for a permit for various things such as: closing a road for a street party, widening their driveway entrance, or for a boulevard garden; merchants can apply to display their merchandise on the boulevard.

The types of infractions listed under the Use of Roads By-law are generally things that staff can only deal with after they have occurred. For example, if a property owner widened their driveway without permission, staff could deal with the matter at any time after it was discovered.

There are no specific clauses in the by-law dealing with public urination on town's roads. Clause 1c) of the by-law; however, states:

1. *No person shall, unless otherwise authorized by by-law or a permit issued by the Town in accordance with the Use of Municipal Rights of Ways and Municipal Parking Lots Policy as may be amended or replaced:*
 - c) *undertake any activity that negatively impacts the use and function of a municipal right-of-way.*

While staff could possibly interpret this clause as a means to regulate public urination within road allowances; advice from the town's Legal Department indicates that this clause is likely not strong enough to successfully prosecute a charge (i.e.

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while public urination would be viewed as a negative activity, the municipal right-of-way would still function as a right-of-way).

The town could amend the Use of Roads By-law to include a specific violation regarding public urination (and defecation); however, doing so would make the violation specific to roads only. To make the coverage of the issue more broad, the town could amend its Nuisance By-law 2007-143 to include this violation – in doing so, the violation would apply all public property (e.g. not just roads), including parks and also could apply on private property.

Municipalities that have included public urination as part of their respective nuisance by-laws include:

- City of Waterloo
- City of Hamilton
- City of Guelph
- City of London
- City of Niagara Falls
- City of Barrie
- City of Cambridge
- City of Vaughan
- Town of Whitby

Regardless of which by-law the violation is included in, the issue will be the level/expectation for enforcement. Staff would estimate that instances of public urination are likely infrequent and the chances of a by-law enforcement officer witnessing a violation would be low. In order to enforce this type of by-law, a by-law control officer would be required to physically stop and obtain identification from the alleged violator – and the violator may not be cooperative. In this regard, it would be more appropriate for a police officer to stop the individual and obtain the required identification.

Staff from Engineering & Construction and Parks & Open Space met with Halton Regional Police Service (HRPS) to discuss the issue of public urination and how the police deal with it presently. HRPS advised that if an officer witnesses an incident of public urination, they would assess whether there was a more significant underlying cause to the situation like intoxication, and, they would use the incident to support a potential charge for public intoxication. Incidents involving a person who may have to simply “relieve” themselves would not most likely not result in a charge being laid – unless the incident also involved other more serious issues.

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However, if the town amended its Nuisance By-law to incorporate public urination, this would provide the police an opportunity, using their discretion, to issue a charge under the town's by-law.

Should Council wish to have the Nuisance By-law amended as described above, staff from Legal and Clerk's department would bring an amendment forward during Q2 of 2016.

CONSIDERATIONS:

(A) PUBLIC

This staff report was posted on the agenda on the town's website.

(B) FINANCIAL

N/A

(C) IMPACT ON OTHER DEPARTMENTS & USERS

This report was reviewed with the Legal Department as well as the By-law and Licensing Services division of the Clerks Department.

(D) CORPORATE AND/OR DEPARTMENT STRATEGIC GOALS

This report addresses the corporate strategic goal to:

- provide outstanding service to our residents and businesses

(E) COMMUNITY SUSTAINABILITY

Maintaining a clean park and road system is an important pillar of social sustainability.

Submitted by:

D. M. Cozzi, P.Eng.

Director,

Engineering & Construction Department