

## PART VII

### BY-LAWS

#### **Adoption procedure**

**168 (1)** A by-law shall be read twice.

**(2)** At least fourteen days before a by-law is read for a second time, notice of the council's intent to consider the by-law shall be published in a newspaper circulating in the municipality.

**(3)** The notice shall state the object of the by-law, the date and time of the meeting at which the council proposes to consider it and the place where the proposed by-law may be inspected.

**(4)** The council may require further advertising, including advertising by radio or television.

**(5)** The council may provide that advertising by radio and television replaces advertising in a newspaper, except in the case of advertising required pursuant to Parts VIII and IX.

**(6)** The council may, by policy, further determine the procedure to be followed and the notice to be given with respect to the introduction and passing of by-laws.

#### **Publication**

**169 (1)** A by-law has the force of law upon publication.

**(2)** A by-law is published when

**(a)** it is passed by the council in the manner provided in this Act;

**(b)** it is approved by a minister of the Crown whose approval is required; and

**(c)** a notice is published in a newspaper circulating in the municipality, stating the object of the by-law and the place where it may be read.

**(3)** When a by-law is published, the clerk shall file a certified copy of the by-law with the Minister.

(4) Failure to file with the Minister a copy of a by-law that is not subject to the approval of the Minister does not invalidate the by-law.

#### **Application area**

**170 (1)** A by-law

(a) made pursuant to this Act or another Act of the Legislature may apply to an area defined in the by-law;

(b) may set different charges for different areas;

(c) unless otherwise stated in the by-law, applies to the municipality.

(2) In addition to the powers specifically conferred pursuant to this Act or another Act of the Legislature, a municipality may provide, in a by-law, for matters incidental or conducive to the exercise of the specified powers.

#### **Power to regulate, license, prohibit**

**171 (1)** Subject to Part VIII, in this Act, the power to

(a) license, includes the power to regulate;

(b) regulate, includes the power to license; and

(c) regulate includes the power to prohibit.

(2) A by-law shall not be inconsistent with an enactment of the Province or of Canada.

#### **Power to make by-laws**

**172 (1)** A council may make by-laws, for municipal purposes, respecting

(a) the health, well being, safety and protection of persons;

- (b) the safety and protection of property;
- (c) persons, activities and things in, on or near a public place or place that is open to the public;
- (d) nuisances, activities and things that, in the opinion of the council, may be or may cause nuisances, including noise, weeds, burning, odours, fumes and vibrations and, without limiting the generality of the foregoing, by-laws
  - (i) prescribing a distance beyond which noise shall not be audible,
  - (ii) distinguishing between one type of noise and another,
  - (iii) providing that any noise or sound greater than a specific decibel level or other measurement of noise or sound is prohibited,
  - (iv) prescribing the hours during which certain noises, or all noise above a certain level, specified in the by-law is prohibited,
  - (v) authorizing the granting of exemptions in such cases as the by-law provides,
  - (vi) providing that it is an offence to engage in any activity that unreasonably disturbs or tends to disturb the peace and tranquility of a neighbourhood;
- (e) transport and transport systems;
- (f) businesses, business activities and persons engaged in business;
- (g) automatic machines;
- (h) the appointment of a day to be a civic holiday;

(i) a requirement that pawnbrokers report all transactions by pawn or purchase;

(j) regulation of the application and use of pesticides, herbicides and insecticides for the maintenance of outdoor trees, shrubs, flowers, other ornamental plants and turf on the part of a property used for residential purposes and on property of the municipality and, without restricting the generality of the foregoing, the by-law may

(i) require the posting of notices when pesticides, herbicides or insecticides are to be so used and regulate the form, manner and time of the notice and the area in which the notice must be posted,

(ii) establish a registration scheme, that is open to the public, in which a resident who has a medical reason for objecting to pesticides, herbicides and insecticides being so used may file with the clerk an objection to them being so used in the vicinity of the property on which the person resides,

(iii) require that notices be served on the residents of properties registered pursuant to the registration scheme within the distance specified in the by-law when pesticides, herbicides or insecticides are to be so used and regulate the form, time and manner of the notice, and

(iv) specify the circumstances in which the posting or serving of notices is not required,

but a by-law may not prohibit the use of pesticides, herbicides and insecticides and a by-law pursuant to this clause does not apply to property used for agricultural or forestry purposes;

***(ja) the condition or maintenance of vacant buildings, structures and properties and, without restricting the generality of the foregoing, may***

***(i) adopt property maintenance and***

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*performance standards,*

*(ii) prescribe the manner in which buildings or structures must be secured by owners or the municipality, and*

*(iii) limit the length of time that buildings or structures may remain boarded up;*

(k) services provided by, or on behalf of, the municipality;

(l) the enforcement of by-laws made under the authority of a statute, including

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(i) procedures to determine if by-laws are being complied with, including entering upon or into private property for the purposes of inspection, maintenance and enforcement,

(ii) remedies for the contravention of by-laws, including undertaking or directing the remedying of a contravention, apprehending, removing, impounding or disposing, including the sale or destruction, of plants, animals, vehicles, improvements or other things and charging and collecting the costs thereof as a first lien on the property affected,

(iii) the creation of offences,

(iv) for each offence, imposing a fine not exceeding ten thousand dollars or imprisonment for not more than one year or both, including the imposition of a minimum fine,

(v) providing for the imposition of a penalty for an offence that is in addition to a fine or imprisonment if the penalty relates to a fee, cost, rate, toll or charge that is associated with the conduct that gives rise to the offence,

(vi) providing for imprisonment, for not more than one year, for non-payment of a fine or penalty,

(vii) providing that a person who contravenes a by-law may pay an amount established by by-law and if the amount is paid the person will not be prosecuted for the contravention,

(viii) providing, with respect to a by-law, that in a prosecution for violation of the by-law, evidence that one person is disturbed or offended is *prima facie* evidence that the public, or the neighbourhood, is disturbed or offended.

(2) Without restricting the generality of subsection (1) but subject to Part VIII, a council may, in any by-law

(a) regulate or prohibit;

(b) regulate any development, activity, industry, business, animal or thing in different ways, divide each of them into classes and deal with each class in different ways;

(c) provide that in a prosecution for violation of a by-law, evidence that one neighbour is disturbed is *prima facie* evidence that the neighbourhood is disturbed;

(d) adopt by reference, in whole or in part, with changes that the council considers necessary or advisable, a code or standard and require compliance with it;

(e) provide for a system of licences, permits or approvals, including any or all of

(i) establishing fees for licences, permits or approvals, including fees for licences, permits and approvals that may be in the nature of a reasonable tax for the activity authorized or for the purpose of raising revenue, which fees may be set or altered by policy,

(ii) prohibiting any development, activity, industry, business or thing until a licence, permit or approval is granted,

(iii) providing that terms and conditions may be imposed on a licence, permit or approval, the nature of the terms and conditions and who may impose them,

(iv) setting out the conditions that shall be met before a licence, permit or approval is granted or renewed, the nature of the conditions and who may impose them,

(v) providing for the duration of licences,

permits and approvals and their suspension or cancellation for failure to comply with a term or condition or the by-law or for any other reason specified in the by-law;

(f) where decision making is delegated by by-law to a person or committee other than the council, provide for an appeal of the decision, the body that is to decide the appeal and related matters.

**Vending on streets**

**173** Without limiting the generality of Section 172, notwithstanding the *Motor Vehicle Act*, a council may, by by-law, regulate vending, any class of vending, mobile vendors and the placement of vending machines on the streets of the municipality.

**Power to make by-laws**

**174** Without limiting the generality of Section 172, a council may make by-laws respecting

- (a) the regulation and licensing of persons owning or operating rooming houses or boarding houses and regulating the maintenance, administration, operation and occupancy of buildings used as rooming houses or boarding houses and the land on which they are located;
- (b) the prevention and fighting of fires;
- (c) the firing of firearms;
- (d) fire and burglar alarms;
- (e) off-road vehicles on public or private property;
- (f) wild and domestic animals and activities in relation to them.

**Dog by-law**

**175 (1)** Without limiting the generality of Section 172, a council may make by-laws

(a) regulating the running at large of dogs, including permitting the running at large of dogs in certain places or at certain times;

(b) imposing a registration fee upon the owner of every dog, the amount to be set by policy, for such length of time as is specified in the by-law with the power to impose a larger fee for female dogs than for male dogs, or for unspayed or unneutered dogs than for spayed or neutered dogs;

(c) requiring tags for the identification of dogs registered under the by-law;

(d) exempting from any registration fee a dog that is a stray dog and is harboured for up to the maximum period of time set by by-law;

(e) defining fierce or dangerous dogs, including defining them by breed, cross-breed, partial breed or type;

(f) regulating the keeping of fierce or dangerous dogs;

(g) prohibiting the keeping of a dog that persistently disturbs the quiet of the neighbourhood by barking, howling, or otherwise;

(h) authorizing the dog control officer to impound, sell, kill or otherwise dispose of dogs

(i) that run at large contrary to the by-law,

(ii) in respect of which the fee or tax imposed by a by-law is not paid,

(iii) that are fierce or dangerous,

(iv) that are rabid or appear to be rabid or exhibiting symptoms of canine madness,

(v) that persistently disturb the quiet of a neighbourhood by barking, howling or otherwise;

(i) requiring the owner of a dog, other than a dog that is trained to assist and is assisting a person with a disability, to remove the dog's feces from public property and from private property other than the owner's;

(j) requiring the owner of a dog to provide a written statement of the number of dogs owned, harboured or that are habitually kept upon the premises occupied by the owner.

(2) A dog that is trained to assist and assists a person with a disability is exempt from any registration fee.

(3) Where a dog tag is required by by-law, the dog tag shall bear a serial number and the year in which it is issued and a record shall be kept showing the name and address of the owner and the serial number of the tag.

(4) The owner of a kennel of purebred dogs that are registered with the Canadian Kennel Club may, in any year, pay a fee set by council, by policy, as a tax upon the kennel for that year and upon payment of the amount, the owner of the kennel is exempt from any further fee regarding the dogs for that year.

(5) Where required by by-law to do so, the owner of a dog may enter upon private property to remove the dog's feces.

### **Dangerous dogs**

**176 (1)** Where a peace officer believes, on reasonable grounds, that a person is harbouring, keeping or has under care, control or direction a dog that is fierce or dangerous, rabid or appears to be rabid, that exhibits symptoms of canine madness or that persistently disturbs the quiet of a neighbourhood by barking, howling or otherwise *contrary to a by-law*, a justice of the peace may, by warrant, authorize and empower the person

named in the warrant to

- (a) enter and search the place where the dog is, at any time;
- (b) open or remove any obstacle preventing access to the dog; and
- (c) seize and deliver the dog to the pound and for such purpose, break, remove or undo any fastening of the dog to the premises.

(2) Where the person named in the warrant is unable to seize the dog in safety, the person may destroy the dog.

~~(3) The peace officer shall appear before, and satisfy, the justice of the peace of the grounds for belief before a warrant pursuant to this Section may be issued.~~

#### **Additional penalty**

**177** At the trial of a charge laid against the owner of a dog that is fierce or dangerous, *that persistently disturbs the quiet of a neighbourhood by barking, howling or otherwise or runs at large*, contrary to a by-law, in addition to the penalty, the judge may order that the

- (a) dog be destroyed or otherwise dealt with; and
- (b) owner pay any costs incurred by the municipality related to the dog, including costs related to the seizure, impounding, or destruction of the dog,

and it is not necessary to prove that the

- (c) dog previously attacked or injured a domestic animal, person or property;
- (d) dog had a propensity to injure or to damage a domestic animal, person or property; or
- (e) defendant knew that the dog had such propensity or was, or is, accustomed to doing acts causing injury or damage.

**Rabid animals**

**178** A person may kill or destroy a rabid dog or other rabid animal found at large and may secure and confine a dog or other animal at large and appearing to be rabid or exhibiting symptoms of canine madness.

**Proof at trial**

**179** Upon the trial of an action brought against the owner or harbourer of a dog for any injury caused, or damage occasioned by, such dog, it is not necessary to prove knowledge by, or notice to, the owner or harbourer of any mischievous propensity of the dog.

**Protected water supply area**

**180 (1)** The council may, by by-law, designate lands owned by a municipality as protected water supply areas.

**(2)** No person shall

(a) place, or permit to escape, any matter or thing of an offensive nature, deleterious nature or likely to impair the quality of water for use for domestic purposes, upon land in a protected water supply area;

(b) fish or bathe in a lake, or other body of water, in a protected water supply area;

(c) camp on land in a protected water supply area;

(d) cut wood or erect, construct or place a building or structure in a protected water supply area without the permission of the council.

**(3)** The *Angling Act* does not apply to a lake, river or stream forming part of a water supply area of a municipality or village or to the land surrounding or adjacent to them.

**Minimum standards by-law**

**181 (1)** Without limiting the generality of Section 172, a

council may make by-laws

(a) prescribing minimum standards of sanitation, plumbing, water supply, lighting, wiring, ventilation, heating, access, maintenance, appearance, construction and material for buildings, or parts thereof, occupied for residential purposes, whether the building, or part thereof, is erected, constructed or converted to residential purposes before or after the date of the making of the by-law;

(b) limiting the number of persons who may reside in a building or part thereof;

(c) imposing on the owner, tenant or occupant, or any one or more of them, the responsibility for complying with the by-law;

(d) providing for notice to an owner, occupant or tenant, or any one or more of them, to discontinue the residential use of a building, or part thereof, in contravention of the by-law; and

(e) prescribing penalties for such residential use after notice to discontinue the use is given.

**(2)** The council may make by-laws prescribing minimum standards of sanitation, plumbing, water supply, lighting, wiring, ventilation, heating, access, maintenance, appearance, construction and material for buildings, or parts thereof, occupied for commercial purposes.

**(3)** Where a person contravenes a by-law made pursuant to this Section, the administrator may apply to the Supreme Court of Nova Scotia for any or all of the remedies provided pursuant to this Section.

**(4)** The Supreme Court of Nova Scotia may hear and determine the matter at any time and, in addition to any other remedy or relief, may make an order

(a) restraining the continuance, or repetition of, a contravention and a new or further contravention in respect of the same building or structure;

(b) directing the removal or destruction of the building or structure, or part thereof, that is in contravention of, or fails to comply with, the by-law and authorizing the administrator, where an order is not complied with, to enter upon the land and premises with necessary workers and equipment and remove and destroy the building or structure, or part thereof, at the expense of the owner;

(c) regarding the recovery of the expense of removal and destruction, an order to enforce the by-law and an order as to costs, as the Court determines is proper,

and an order may be interlocutory, interim or final.

(5) Where there is another contravention of a by-law made pursuant to this Section by the same person after an application is made pursuant to subsection (3),

(a) it is not necessary to bring a further application;

(b) the original application may be amended from time to time, and at any time before final judgment so as to include the other offences; and

(c) the whole matter of the contraventions shall be heard, dealt with and determined.

(6) Where the administrator cannot find the owner of a building or structure in respect of which a contravention is taking place or has taken place, notice of the application may be posted upon the building or structure.

(7) The standards of a by-law passed pursuant to this Section shall be consistent with the standards prescribed pursuant to the *Building Code Act* and regulations.

#### **Offence**

**182** Every person who makes a false statement in an application

for a licence to be issued by a municipality is guilty of an offence.

**Recovery of penalties, fees and fines**

**183 (1) A**

- (a) penalty;
- (b) licence fee,

imposed pursuant to this Act may, unless otherwise provided, be recovered and enforced with costs on summary conviction.

**(2)** A penalty for a contravention of this Act or a by-law of the municipality made pursuant to this Act or another Act of the Legislature shall, when collected, be paid to the municipality.

**(3)** A penalty or fine pursuant to a by-law of the municipality, unless otherwise provided, belongs to, and forms part of, the general revenue of the municipality.

**Application for injunction**

**184** Where

- (a) a building is erected, being erected or being used in contravention of a by-law of the municipality;
- (b) land is being used in contravention of a by-law of the municipality;
- (c) a breach of a by-law is anticipated or is of a continuing nature; or
- (d) a person is carrying on business, or doing any thing, without having paid the licence or permit fee required,

the municipality may apply to a judge of the Supreme Court of Nova Scotia for an injunction or other order and the judge may make any order that the justice of the case requires.

**No liability for damages**

**185** A municipality and its officers and employees are not liable for damages caused by it in remedying or attempting to remedy a contravention unless the municipality was grossly negligent.

**Ministerial approval not required for by-laws**

**186** Unless otherwise provided in an enactment, a by-law made by a council pursuant to this Act or another Act of the Legislature is not subject to the approval of the Minister.

**Record of by-laws and policies**

**187 (1)** A council shall keep one copy of every by-law and one copy of every policy, certified by the clerk under the seal of the municipality that it was passed or made and, in the case of a by-law requiring the approval of a minister of the Crown, bearing the approval of the minister.

**(2)** The clerk shall file a certified copy of the notice of publication of the by-law with every by-law entered in the by-law records.

**(3)** The by-law records shall be maintained by the clerk.

**(4)** The original by-laws shall be open to inspection by any person at a reasonable time, but shall not be removed from the office of the clerk and the production of an original by-law in a court shall not be required on subpoena but only upon order of the court or a judge after satisfactory cause is shown.

**(5)** The clerk shall

**(a)** print all of the by-laws of the municipality from time to time in force;

**(b)** keep printed copies of the by-laws, amended to date, for sale; and

**(c)** provide a copy of a by-law, amended to date, to a person requesting one, at a reasonable price, having regard to the cost of printing the by-law.

**Prima facie proof**

**188 (1)** A copy of a by-law made pursuant to this Act or another Act of the Legislature purporting to be certified by the clerk, under the seal of the municipality, to

(a) be a true copy of a by-law passed by the council;

(b) have received all required approvals,

shall be received in evidence as *prima facie* proof of its passing, receipt of all required approvals, publication, being in force and the contents of it without further proof in any court, unless it is specially pleaded or alleged that the seal or the signature of the clerk was forged.

**(2)** Printed documents, certified by the clerk, purporting to be printed copies of any or all by-laws passed by the council shall be admitted in evidence in all courts in the Province as *prima facie* proof of the by-laws and of the due passing of them.

**Procedure for quashing by-law**

**189 (1)** A person may, by notice of motion which shall be served at least seven days before the day on which the motion is to be made, apply to a judge of the Supreme Court of Nova Scotia to quash a by-law, order, policy or resolution of the council of a municipality, in whole or in part, for illegality.

**(2)** No by-law may be quashed for a matter of form only or for a procedural irregularity.

**(3)** The judge may quash the by-law, order, policy or resolution, in whole or in part, and may, according to the result of the application, award costs for or against the municipality and determine the scale of the costs.

**(4)** No application shall be entertained pursuant to this Section to quash a by-law, order, policy or resolution, in whole or in part, unless the application is made within three months of the publication of the by-law or the making of the order, policy or resolution, as the case may be.