

Corporation of the Town of Newmarket

By-law 2020-20

A By-law to regulate activities deemed to have a potentially adverse impact on the health, safety, and wellbeing of the public during the COVID-19 Emergency.

WHEREAS the World Health Organization has declared a worldwide pandemic regarding the Novel Coronavirus 19 (“COVID-19 pandemic”);

WHEREAS on March 17, 2020 a Declaration of Emergency was made by the Province of Ontario pursuant to section 7.0.1 of the Emergency Management and Civil Protection Act, R.S.O. 1990, c. E.9 (“EMCPA”) related to COVID-19;

WHEREAS section 4 of the EMCPA provides that the head of council of a municipality may declare that an emergency exists in the municipality or in any part thereof and 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 municipality and to protect property and the health, safety and welfare of the inhabitants of the emergency area;

WHEREAS on March 18, 2020 the Corporation of the Town of Newmarket declared an emergency pursuant to section 4 of the EMCPA;

WHEREAS the Province of Ontario has issued Orders under the EMCPA to prohibit and regulate certain activities in the interest of public health, safety and wellbeing during the COVID-19 declared emergency;

WHEREAS on March 27, 2020 the Province of Ontario granted power to municipal law enforcement officers to enforce Orders issued by the Province under the EMCPA;

WHEREAS section 11(2) of the Municipal Act provides that a municipality may pass bylaws respecting: Economic, social and environmental well-being of the municipality; Health, safety and well-being of persons; and Protection of persons and property, including consumer protection;

WHEREAS section 425 of the Municipal Act provides that any person who contravenes any by-law of the municipality is guilty of an offence;

WHEREAS section 429 of the Municipal Act provides for a municipality to establish a system of fines for offences under a by-law of the municipality passed under the Act;

WHEREAS The Corporation of the Town of Newmarket considers it desirable to enact regulations to support the intent and purpose of the Provincial orders made under the EMCPA in order to protect the health, safety and wellbeing of all persons within the jurisdictional boundaries of the Town of Newmarket, by prohibiting or regulating certain activities of individuals and businesses during the COVID-19 Emergency;

Therefore be it enacted by the Council of the Corporation of the Town of Newmarket as follows:

1. Title

This By-law may be known and cited for all purposes as the “Emergency Measures By-law”.

2. Definitions

In this By-law:

“Business” means any business, or Individual operating a business, wholly or partly carried on within a municipality even if the business is being carried on from a location outside the municipality;

“CAO” means the Town of Newmarket Chief Administrative Officer;

“Council” means Council for the Town of Newmarket;

“COVID-19 Emergency” means the period of time commencing upon the date of passing of this By-law until the declaration of emergency made by Council for the Town of Newmarket in relation to the COVID-19 pandemic has been terminated;

“Declared Emergency” means the declaration of a state of emergency made by Council for the Town of Newmarket;

“Dwelling Unit” means a room or group of rooms to be used by one family that functions as a single independent housekeeping unit in which cooking facilities, living quarters, and sanitary facilities are provided for the exclusive use of those residing within the unit only, and with a private entrance from outside the building or from a common hallway or stairway inside;

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

“Emergency Order” means an order issued by the Province of Ontario under the EMCPA with respect to COVID-19 Emergency;

“Guardian” means a Person who has custody, care, and control of an Individual who is a member of the same Household and includes a parent as defined in the Family Law Act, R.S.O. 1990, c. F.3;

“Household” means Individuals living together in and sharing a Dwelling Unit;

“Individual” means a natural person of any age;

“Mayor” means the Mayor elected for the Town of Newmarket;

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

“Officer” means a provincial offences officer or municipal law enforcement officer of the Town, or any other person appointed by or under the authority of a Town by-law to enforce this By-law, and shall include a police officer appointed by York Regional Police, the Ontario Provincial Police, or the Royal Canadian Mounted Police;

“Order” means a direction by the Mayor and CAO, including an order under the authority of sections 444 or 445 of the Municipal Act requiring a Person to cease a contravening activity or correct a contravention, but shall not include an Emergency Order;

“Person” means a natural person who is at least eighteen (18) years of age;

“Property” means a building or structure or part of a building or structure, and includes the lands and premises appurtenant thereto and all mobile homes,

mobile buildings, mobile structures, outbuildings, fences, and erections thereon, and includes vacant property;

“Provincial Offences Act” means the Provincial Offences Act, R.S.O. 1990, c.P. 33, as amended;

“Social Distance” means a physical separation distance between Individuals or Persons;

“Town” means the Town of Newmarket.

3. General Regulations

- (1) No Person shall permit or allow gatherings of more than the number of individuals prescribed by an Emergency Order, unless such Individuals are members of a single Household.
- (2) No Person shall enter or remain in any Park that has been deemed closed or temporarily closed by the Town of Newmarket.
- (3) Every Person shall maintain a two meter (2m) physical Social Distance from any other Individual, unless such Individual is a member of the same Household.
- (4) No Guardian shall permit or allow any Individual under the age of sixteen (16) years from not maintaining a two meter (2m) physical Social Distance from any other Individual, unless such Individual is a member of the same Household.
- (5) No Business shall permit more than fifty (50) customers to enter a storefront at any one time.
- (6) Every Business shall require a staff member to restrict and permit access into the Business to ensure section 3(5) of this By-law is adhered to.
- (7) Every Business shall require staff enforce and promote a two meter (2m) physical Social Distance of customers while within the Business.
- (8) Every Person shall comply with an Order issued pursuant to this By-law.

4. Delegated Authority to the Mayor

- (1) Subject to the provisions established under Section 4 of this By-law, Council for the Town delegates its statutory authority under the Municipal Act, and under any other legislation, to the Mayor, in conjunction with the CAO, exclusively for the period over which this By-law is in force.
- (2) The authority delegated in Section 4(1) may only be exercised in accordance with the following criteria:
 - (a) It is necessary to utilize the authority to address a situation in a timely manner;
 - (b) In the opinion of the Mayor, it is reasonable to believe that the harm or damage will be alleviated by the exercise of the delegated authority and exercising the delegated authority is a reasonable alternative to other measures that might be taken to address the situation;
 - (c) The actions authorized under the delegated authority are exercised in a manner which, consistent with the objectives, reasonably limits their intrusiveness;

- (d) The exercise of the delegated authority only applies to the areas of the Town where it is necessary; and
 - (e) The exercise of the delegated authority is effective only for as long as is reasonably necessary.
- (3) The Mayor, in conjunction with the CAO, shall advise the members of Council of any exercise of authority delegated under this By-law within 24 hours of the date of exercise of the authority.
- (4) The delegation of authority under Section 4 of this By-law shall only be effective for 30 days from the first exercise of the authority in response to an emergency, unless Council authorizes an extension of such delegated authority.
- (5) The Mayor, in conjunction with the CAO, may make Orders that are believed to be necessary and essential in the circumstances to prevent, reduce, or mitigate serious harm to Persons, believing:
 - (a) the harm will be alleviated by an Order; and
 - (b) making an Order is a reasonable alternative to other measures that might be taken to address an emergency.
- (6) Orders made under this By-law:
 - (a) shall only apply to the areas of the Town where it is necessary;
 - (b) shall be effective for as long as is necessary, but in no event shall be extended beyond the termination of a Declared Emergency;
 - (c) shall be revoked 30 days after it is made, unless it is revoked sooner or it is otherwise stated in the Order;
 - (d) takes effect immediately upon its making;
 - (e) shall be posted on the Town's website in order to bring it to the attention of affected Persons pending publication;
 - (f) may be general or specific in its application; and
 - (g) shall be made in writing.

5. Administration and Enforcement

- (1) The provisions of this By-law may be enforced by an Officer.
- (2) In accordance with subsections 435 and 436 of the Municipal Act, 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 herein are being complied with.
- (3) No Person shall prevent, hinder or obstruct, or attempt to hinder or obstruct, an Officer who is exercising a power or performing a duty under this By-law or the EMCPA.

6. Offences

- (1) Every Person who contravenes any provision of this By-law is liable to the fines and administrative fees set out under the Administrative Monetary Penalty System By-law 2019-62, as amended, and each day shall constitute a new and separate offence.

- (2) Every Person who is in contravention of the provisions of this By-law may request a review of the matter in accordance with the Administrative Monetary Penalty System By-law 2019-62, as amended.
- (3) Any Person who contravenes a provision of this By-law is guilty of an offence and upon conviction is liable to a fine as provided for by the Provincial Offences Act, R.S.O. 1990, Chapter P.33, as amended.
- (4) Where an Individual is under the age of sixteen (16) years, the Guardian or Guardians of the Individual shall be deemed to have allowed the contravention and be guilty of the offence.
- (5) Notwithstanding the repeal of this By-law, any enforcement, legal, or collection actions arising from this By-law while this By-law was in effect shall survive its repeal.

7. Penalties

- (1) Where a fine is in default, the Town may proceed with civil enforcement against the Person upon whom the fine has been imposed, pursuant to the Provincial Offences Act.
- (2) The Town may make a request to the treasurer of a local municipality to add any part of a fine that is in default to the tax roll for any property in the local municipality for which all of the owners are responsible for paying the fine, and to collect it in the same manner as municipal taxes.

8. Severability

- (1) Where a court of competent jurisdiction declares any section of this By-law to be invalid, or to be not in force, or without effect, it is the intention of the Council in acting this By-law that the remainder of this By-law shall continue to be in force and applied and enforced in accordance with its terms to the fullest extent possible according to law.

Enacted this 27th day of April, 2020.

John Taylor, Mayor

Lisa Lyons, Town Clerk