



Corporation of the Town of Newmarket

By-law 2021-01

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 on January 12, 2021 a second Declaration of Emergency was made by the Province of Ontario pursuant to section 7.0.1 of the **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** and The Reopening Ontario (A Flexible Response to COVID-19) Act, 2020, S.O. 2020, c. 17 (“**ROA**”) 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** and **ROA**, in addition to public health restrictions imposed pursuant to Section 22 of the Health Protection and Promotion Act, R.S.O. 1990. c. H.7 ("**HPPA**"), 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 any **Order** or regulation imposed by the Province of Ontario under the **EMCPA**, **ROA**, **HPPA**, or any other legislation enacted with respect to the **COVID-19 Emergency**;

"**Face Covering**" means a cloth (non-medical) mask, medical mask, or other face covering such as a bandana or scarf, that securely covers the nose, mouth and chin, and is in contact with the surrounding face without gapping, and filters respiratory droplets;

"**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**;

"**HPPA**" means the Health Protection and Promotion Act, R.S.O. 1990. c.H.7;

“**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 issued, in-writing, by the **Mayor** and **CAO** that forms part of this By-law;;

“**Park**” means any land owned by or made available by lease, agreement, or otherwise to the **Town** excluding **Property** leased to a third party by the **Town**, that is or may be established, dedicated, set apart or made available for use as public space, accessory to the use of the public space as a **Park** including any and all buildings, structures, facilities, trails, and improvements located in or on the land;

“**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;

“**ROA**” means the Reopening Ontario (A Flexible Response to COVID-19) Act, 2020, S.O. 2020, c. 17;

“**Physical 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 Distance** from any other **Individual**, unless such **Individual** is a member of the same **Household**. In the interest of clarity, this section applies to both public or private **Property**.
- (4) Every **Person** shall wear a mask or **Face Covering** as prescribed by an **Emergency Order**.
- (5) Every **Guardian** shall ensure any **Individual** under the age of sixteen (16) years complies with all **EMCPA**, **ROA**, **HPPA**, or any other legislation as prescribed by an **Emergency Order**.
- (6) No **Business** shall permit more than the number of **Individuals**

prescribed by an **Emergency Order** to enter a storefront at any one time.

- (7) Every **Business** and **Person** shall comply with all federal, provincial, or public health regulations as prescribed by an **Emergency Order**.
- (8) Every **Person** shall comply with an **Order** issued pursuant to this By-law.
- (9) Every **Business** in the **Town** of Newmarket shall comply with all federal, provincial, and public health regulations as prescribed by an **Emergency Order**.

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 any **Officer** and an **Officer** is exempt from the provisions of this By-law.
- (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 any other legislation enacted pursuant to the **COVID-19 Emergency**.

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.

9. Repeal

- (1) Emergency Measures By-law 2020-20 is hereby repealed.

Enacted this 18th day of January, 2021.

John Taylor, Mayor

Lisa Lyons, Town Clerk