

# THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE



## BY-LAW

### NO. 2025 –

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Being a By-law to Manage and Regulate Parks Within the  
Municipality of Kincardine

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**Whereas** sections 8(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, herein referred to as “the Act”, provides that the powers of a municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality’s ability to respond to municipal issues; and

**Whereas** Section 11(2) of the Act provides that a municipality may pass by-laws respecting the health, safety and well-being of persons; and

**Whereas** Section 11(3) of the Act provides that a Municipality may pass by-laws respecting culture, Parks, recreation and heritage; and

**Whereas** Section 128(1) of the Act, provides that, 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; and

**Whereas** Section 429 of the Act authorizes a municipality to establish a system of fines for offences under a by-law; and

**Whereas** Council deems it necessary and expedient to pass a By-law to manage and regulate Parks and recreational areas within the Municipality of Kincardine;

**Now Therefore be it Resolved that** the Council of The Corporation of the Municipality of Kincardine enacts as follows:

#### 1. Definition

“Applicable Law” means all statutes, laws, By-laws, regulations, ordinances, orders and requirements of all government authorities dealing with the use of and activities taking place in a Park, including the ownership, use and operation of a Watercraft in a Park;

“Authorized” means an event or state of usage for which prior approval was granted specifically by the Municipality of Kincardine;

"Barbeque" means a portable or fixed device designed and intended solely for the cooking or reheating of food in the open air;

"Beach" means any municipally owned beach, and includes all walkways, Park areas and any other built environment associated with the beach;

"Bicycle" includes a tricycle, unicycle and a Motor Assisted Bicycle (MAC). A Bicycle does not include an internal combustion motor-assisted Bicycle or Limited Speed Motorcycle (LSM).

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“By-law” means this By-law, as amended from time to time. The term includes its recitals and schedules, which are integral parts of it, unless otherwise stated;

“By-law Enforcement Officer” means a Municipal By-law Officer, Police Services including Ontario Provincial Police (OPP), or Person(s) appointed by the Municipality to carry out the provisions of this By-law;

“Camp” means establishing temporary accommodation for sleeping and shall include but is not limited to by means of motor vehicle, recreational vehicle, motorized home, slide-in camper, chassis-mounted camper, camper, camper, tent, tent trailer, or travel trailer, or any other temporary shelter;

"Council" means the Council of The Corporation of the Municipality of Kincardine;

"Designated Area" means an area in a Park defined or constructed for a specific use or activity which may include posted conditions;

"Director" means the Director of Community Services for the Municipality of Kincardine, or their designate or successor;

"Dock" means a Structure extending alongshore or out from the shore into a body of water;

“Drone” means an unmanned aerial vehicle (UAV) operated without a human pilot on board other than a balloon, rocket, or kite;

“Emergency Vehicle” means a police, fire, search and rescue, ambulance, municipal law enforcement vehicle or other Municipal vehicles or other vehicles authorized by the Municipality;

“Fee” means a Fee for the use of a Park or part thereof, or any services provided by the Municipality as set out in the Consolidated Rates and Fees By-law;

“Laneway” means a road, path or entrance in a Park;

“Low-powered motorcycle” or “LSM” means a moped or scooter that relies on motor power and is generally not equipped with Bicycle style pedals;

“Mobility Assisted Device” means a device that is designed for use, and used by, a person whose mobility is limited by one or more conditions or functional impairments this includes motorized wheelchairs and mobility scooters.

“Motor assisted bicycle” means a “motor assisted bicycle” as defined in the *Highway Traffic Act*, R.S.O. 1990, c. H.8.;

“Motor Vehicle” means a vehicle that is capable of being propelled or driven by an engine or motor, including but not limited to an automobile, a motorcycle, a recreation vehicle, motor assisted bicycle and any other vehicle propelled or driven otherwise than by muscular power other than a Mobility Assisted Device;

“Municipality” means The Corporation of the Municipality of Kincardine or the geographic area of the Municipality of Kincardine as the context requires;

“Municipal Employee” means any person employed full time, part time, or by contract with the Municipality of Kincardine;

“Organized Sport or Activity” means a sport, game or activity pre-planned by a group or organization whether or not formally constituted and whether or not the players or members wear uniforms;

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“Park” means land, water and land abutting a body of water and all portions thereof, including Trails, Parks, Beaches, inland lakes, watercourses, retention ponds, road allowances and Waterfront that is owned by the Municipality, or is leased by the Municipality and that is made available for use as a public open space or public recreation purposes including any Structures located on such land; but does not include the Bluewater Trailer Park.

“Parking Area” means a Designated Area for the Parking of vehicles;

“Permit” means any written permission or authorization issued by the Municipality for a Person to use a Park or part of a Park for an activity, for a period of time specified on the permit;

“Person” means any individual, firm, corporation, partnership, association or organization, including a charitable organization, and in the case of a minor, the person having custody of the minor;

“Shelter” means something that covers or affords protection;

“Special Event” means an event held either as a community, social, sporting, family, cultural group celebration, public meeting, or other organized gathering including parades, processions, of more than 100 persons, and which shall require additional permission from the Director in order to proceed;

“Sports Field” means an area in a Park set aside for use in sports, such as but not limited to football, soccer, or baseball, requiring open space;

“Structure” means any and all buildings as defined by the Ontario Building Code and includes; benches, walkways, waste disposal containers, playground apparatus, splash pad, Skateboard Park apparatus, Shelters, fencing, lighting, Parking Area(s) or other such buildings that may be placed or erected in or on a Municipal Park;

“Tent” means any portable Shelter that you are unable to see through, or has four sides, but does not include a sun canopy or kitchen Tent that does not contain sides.

“Trail” means that part of or a Park that has been marked, posted, or blazed for the purpose of hiking and/or cycling by the public;

“Waste” means paper, bottles, broken glass, cans, cigars, cigarettes, rags, garbage, rubbish, debris or refuse of any kind;

“Watercraft” is a water-borne vessel that is either self-propelled, motorized or travels by sail;

## **2. Scope and Administration**

- 2.1 This By-law applies to any Park under the control and management of the Municipality.
- 2.2 The Director shall be responsible for the administration of this By-law.
- 2.3 The provisions of this by-law shall not apply to the Municipality of Kincardine or its agents, employees or contractors during the course of performing their duties in relation to Park construction, maintenance or other necessary activities.
- 2.4 The provisions of this by-law shall not apply to By-law Enforcement Officers and other bonafide emergency services providers during the course of performing their duties.

### **3. Hours of Operation**

- 3.1 All Parks and sports field areas shall close at 12:00 a.m. (midnight) and shall remain closed 4:00 a.m. the following day, unless otherwise posted or specified in this by-law.
- 3.2 Municipal Trails are not maintained November 1<sup>st</sup> through to April 30<sup>th</sup> of each year.

### **4. Prohibited Entry**

- 4.1 No Person shall, without the prior, written approval of the Director:
- a. enter or remain in a Park after it has been closed;
  - b. enter or remain in a Park where admission is prohibited or restricted without a Permit;
  - c. Enter or access through a Park for the purpose of conducting any work or activity on private property or Park property without a Permit.

### **5. Waste and Pollution**

- 5.1 While in a Park, no Person, shall without the prior written approval of the Director:
- a. leave or deposit any waste, except in a receptacle provided for that purpose;
  - b. dispose of or dump fish remains, except in a receptacle provided for the purpose;
  - c. deposit, dump or dispose of any household waste unless such waste was generated from permitted use at the Park.

### **6. Encroachment**

- 6.1 No Person shall encroach upon or take possession of any Park by any means whatsoever including, without limitation:
- a. construction of any fence, storage shed, retaining wall, docking system, pool or other structure of any kind;
  - b. keeping of any refuse or composting receptacle or pile;
  - c. placing of any string, wire, chain, rope or similar material;
  - d. planting of any hedge, tree, shrub, garden, or plant or any kind;
  - e. disturbing or manipulating the natural environment.

### **7. Park Use**

- 7.1 General
- a. While in a Park, no Person, shall without the prior written approval of the Director:
    - i. use a generator;
    - ii. fly a Drone;
    - iii. undertake any maintenance activities or alter existing grounds;
    - iv. enter into the grounds with machinery, equipment or other vehicles;

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- v. enter or access through a Park for the purpose of conducting any work on private property or Park property without a permit;
- vi. undertake any maintenance activities or alter existing grounds or facilities;
- vii. discharge, dump or leave any construction material, earth, dirt, rock, snow, stone, or any other materials in a Park or other land access way to a Park.
- viii. wash, clean, polish, service, maintain, or repair any motorized vehicle;
- ix. fish or erect fishing hut structures in areas of a Park where this activity has been prohibited;
- x. engage in any horse race or ride a horse in a Park in an area not designated for the purpose by the Director;
- xi. erect, have or occupy a tent in a Park without express permission of the Director
- xii. engage in riotous, boisterous, violent, threatening or illegal activity, or use profane or abusive language;
- xiii. consume, serve, or sell alcoholic beverages
- xiv. engage in any activity that in the opinion of the Director creates a nuisance or that interferes with the use and enjoyment of the Park by other persons;
- xv. engage in any activity that may cause injury or damage to any person, animal, vegetation, property, or Park amenity;
- xvi. plant, prune, or damage any vegetation;
- xvii. defecate or urinate except in a designated washroom facility;
- xviii. fire or set off any fireworks without a valid Permit;
- xix. erect, place, install, or cause the erection, placing or installation of any permanent or temporary structure, tent or booth, without a Permit;
- xx. camp;
- xxi. possess any bows or arrows or discharge arrows in or into a Park;
- xxii. possess any pellet guns and discharge in or into a Park;
- xxiii. all persons using a Park for any purpose or activity shall comply with all Applicable Law.

## 7.2 Fire and Barbeques

- a. No Person, in a Park, shall without the permission of the Director:
  - i. use fuel other than charcoal or briquettes in a Barbeque provided by the Municipality;
  - ii. dispose of charcoal or briquette coals in a garbage container or any other manner, which may result in fire;
  - iii. use or have any type of barbeque or device for the purpose of cooking or reheating food in an area other than designated areas for this purpose, or without a Permit;

- b. No Person, shall without a permit from the Municipality light any open air fire in any Park, except in accordance with the Open Air Buring By-law 2017-136, as amended or any successor by-law.

### 7.3 Organized Gatherings and Picnics

- a. No Person, in a Park, shall:
  - i. hold a Special Event for 100 people or more without first obtaining a Permit from the Director and paying the applicable Fee(s);
  - ii. interfere with a permitted Special Event.

### 7.2 Organized Sports or Activities

- a. While in a Park, no Person, shall:
  - i. hold an organized Sport or Activity without first obtaining a permit from the Director;
  - ii. interfere with a permitted organized Sport or Activity occurring within a designated area;
  - iii. play golf, drive a golf ball or use golf clubs or other like equipment or drive a golf cart except in an area designated by the Director;

### 7.4 Bicycles, roller skates, skateboards, segways, and scooters

- a. The Director may designate a Park or part thereof as a place in which the use of devices relying on muscular power including roller skates, in-line roller skates, skateboards, bicycles, and segways are prohibited and shall provide signage to indicate the Park or part thereof to which the designation applies.
- b. No Person, in a Park, shall
  - i. operate or utilize roller skates, in-line roller skates, skateboards, bicycles unless in a Permitted Area, that may be posted from time to time;
  - ii. obstruct, inconvenience or endanger other users of the Park while operating devices of muscular power such as roller skates, in-line roller skates, skateboards, bicycles, segways, or like conveyances;

### 7.5 Sports Fields

- a. The Director may restrict or permit access, at any time to any Park, ball diamond, or sports field, on the basis of ground conditions of the Park, ball diamond or sports field.
- b. While in a Park, no person shall:
  - i. use a sports field on any day between the thirty-first (31<sup>st</sup>) day of October until the first (1<sup>st</sup>) day of May of any year without the prior written approval of the Director;
  - ii. use or access a Park, ball diamond, or sports field which has been restricted by the Director;
  - iii. use sport field lights outside of the permitted time posted from time to time.

## 8. Vehicles

- 8.1 No Person, in a Park, shall unless authorized by the Director in writing:

- a. Drive a motorized vehicle, except in areas and during hours designated by the Director;
  - b. leave a vehicle in a designated Parking Area, except in a Parking space in accordance with posted conditions;
  - c. spin tires or rev engines causing unnecessary noise or damage.
- 8.2 No Person shall drive, Park, or stop a motorized snow vehicle in a Park except as designated by the Director.
- 8.3 The Municipality may have the vehicle removed that is stopped, Parked or left in contravention of this by-law with no notice to the owner and/or occupant and at the owner's expense.

## **9. Swimming and Watercraft**

- 9.1 The Director may designate a Park or part thereof as a place in which to launch watercraft and shall provide signage to indicate the Park or part thereof to which the designation applies.
- 9.2 The Director may designate swimming areas in a Park, or part thereof.
- 9.3 Notwithstanding any designated swimming area that may be designated from time to time, no person shall jump, dive, or enter the water in any other manner from a pier structure.
- 9.4 The Director has designated the following as part of Parks to launch watercraft:
- a. Kincardine Marina Boat Launch;
  - b. Kincardine Fish Hatchery Boat Launch;
  - c. Baie du Dore Boat Launch.
- 9.5 No Person shall, unless authorized by the Director:
- a. operate, drive or ride any watercraft in an area posted to prohibit or restrict the type and allowable watercraft;
  - b. transport across, launch, moor, dock, store, or operate a watercraft in any Park except in areas of the Parks specified for such purposes and authorized by the Director;
- 9.6 In addition to any other remedy available to it, the Municipality may have the offending Watercraft removed, without notice to the owner and/or occupant and at the owner's expense.

## **10. Permits Required**

- 10.1 While in a Park, no Person shall, without Permit:
- a. sell, or offer, expose or advertise for sale any:
    - i. food or drink;
    - ii. newspaper, magazine or publication;
    - iii. goods, wares or merchandise;
    - iv. art, skill or service.
  - b. use a public address system or other device or equipment for amplifying sounds, provided that this shall not prohibit the use of a personal portable radio or audio device which does not disturb any

other person or otherwise interfere with any other person's enjoyment of the Park.

- c. hold a Special Event;
- d. ignite, discharge or set off fireworks;

10.2 Permits issued for activities authorized by the Municipality may be subject to an applicable Fee(s).

10.3 Permits issued for activities authorized by the Municipality may include conditions as but not limited to time, area, equipment, number of participants, type of activities, release, indemnity, and insurance coverage.

10.4 All Persons making application for a permit shall:

- a. Provide in writing and to the satisfaction of the Director, all necessary approvals when required from the Municipality regarding a rental agreement, Special Event permits, a Refreshment Vehicle Licence, and Paddleboard/Surf or Other Mobile Watersport Rental Licence;
- b. Provide in writing and to the satisfaction of the Director, all necessary approvals when required by any Applicable Law for the activity or the business for which the Person is applying for a permit;
- c. Comply with any other conditions of the permit required by the Director.

10.5 A permit issued by the Director is not transferable.

10.6 The issuance of a permit shall not relieve any person from complying with all federal or provincial law, municipal law or policy including the Municipal Alcohol Policy.

10.7 The applicant for a permit to access any Park shall indemnify and save harmless the Municipality of Kincardine, its employees, the Mayor, Councillors, officers and agents from and against any and all claims, demands, causes of action, losses, costs or damages that the Municipality may suffer, incur or be liable for resulting from the use of the Park, whether with or without negligence on part of the applicants or the applicants employees, directors, contactors and agents.

## **11. Authority of the Director**

11.1 The Director is authorized to post signage of permission, regulation, restriction, warning or prohibition with respect to use of activities in any Park

11.2 The Director may, at any time and at their discretion, temporarily close to the public a Park, or a portion of a Park due to inclement weather, in response to an emergency or other circumstances deemed appropriate by the Director.

11.3 The Director may make incidental rules and regulations that are consistent with this by-law.

## **12. Enforcement**

12.1 No Person shall remain on the Park premises after being issued a fine for either a provincial or by-law infraction, or being requested to leave by By-Law Enforcement.

12.2 The Director and By-Law Enforcement has the authority to trespass patrons as necessary from any and all Parks and facilities for a period deemed appropriate by the Director.

12.3 Upon the default of any person to do anything required to be done under the provisions of this By-law, or to repair any damage caused by any action prohibited by this By-law the By-Law Enforcement Officer may, upon giving



five days notice in writing to the said person, do the work required to be done, or repair damages caused by the said person, at the expense of the said person. All expenses incurred by the Municipality in doing the said works, including but without limiting the generality of the foregoing materials, labour, equipment, administration and legal expenses shall be paid by the said person and may be recovered by action in any competent court.

12.4 A By-law Enforcement Officer may enter onto any lands at any time for the purpose of carrying out an inspection to determine compliance with the following:

- a. this by-law;
- b. an Order made under this By-law;
- c. a term or condition of a Permit; or
- d. any Order made pursuant to the *Municipal Act, 2001*.

### **13. Order to Discontinue Activity**

13.1 Where the Director or By-law Enforcement Officer is satisfied that a contravention of the By-law has occurred, the Director or By-law Enforcement Officer may make an Order requiring the Person who contravened this By-law, or who has caused or permitted the contravention, or the owner of the land on which the contravention occurred, to discontinue the contravening activity.

13.2 An Order issued under this section shall set out:

- a. the reasonable particulars of the contravention adequate to identify the contravention and the location of the Property on which the contravention occurred or is occurring; and
- b. the date by which there must be compliance with the Order.

13.3 Any Person who fails to comply with an Order issued under this section of the By-law is guilty of an offence and, upon conviction, is liable to the penalties prescribed in this By-law.

### **14. Remedial Action**

14.1 If a Person is order to do work under Section 13 of this By-law and that Person defaults in complying with that Order, the Municipality may take steps to remediate the contravention, and any damages caused by the contravention, at expense of the Person directed or required to do the work by the Order.

14.2 The Municipality may recover the costs of doing any remedial work from the Person directed or required to do the work by either action or by adding the costs to the tax roll of that Person and collecting in the same matter as municipal property taxes.

14.3 The costs outlined in this section shall include interest calculated at a rate of fifteen (15) per cent per annum, calculated for the period commencing on the first day the Municipality incurs the costs and ending on the day the costs, including the interest, are either paid in full or added to the tax roll.

### **15. Offences and Penalties**

15.1 Every Person who contravenes any of the provisions of this by-law is guilty of an offence and shall, upon conviction be liable to a fine as provided for under the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended.

15.2 The Court in which the conviction has been entered, and any Court of competent jurisdiction thereafter, may make an Order prohibiting the continuation or repetition of the offence by the Person convicted and such order shall be in addition to any other penalty imposed.

15.3 Every person who acts in contravention of this by-law so as to cause the Municipality to incur costs due to his or her actions shall, in addition to any penalty herein, be liable to the Municipality for all expenses incurred for the purposes of repairing or replacing damaged property or removing unauthorized materials, vehicles or watercraft and such expense may be recovered by court action or in a like manner as municipal taxes.

## **16. Fees and Charges**

16.1 Council may impose fees and charges to recover its cost in relation to the administration and enforcement of this By-law through the Rates and Fees By-law.

16.2 Any fees due to the Municipality as a consequence of this By-law. , including any costs payable in accordance with section 15.3 above, and not paid within 30 days shall be deemed to be like taxes and such fees may be added to the municipal tax roll and collected in the same manner as taxes.

## **17. Severability/Conflict**

17.1 The terms and provisions of this By-law shall be severable and should any term or provision be found by a court of competent jurisdiction to be legally enforceable, inoperative or invalid, the remainder of the By-law shall continue to be in full force and effect.

17.2 In the event of any conflict between the provisions of this by-law and any other by-law regarding the regulation of Parks, the provisions of this by-law shall prevail, but nothing in this by-law shall invalidate the enforceability of other provision of those by-laws.

## **18. Miscellaneous**

18.1 That this By-law shall come into full force and effect upon its final passage.

18.2 That this By-law may be cited as the "Park By-law".

**Read a First, Second and Third Time and Finally passed** this ?? day of ??, 2025.

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Mayor

Clerk

