

Authority: Item 12, Public Works, Infrastructure,
and Environment Committee
Report 05-007 (PW05046)
CM: April 27, 2005

Bill No. 099

CITY OF HAMILTON

BY-LAW NO. 05-099

To Amend City of Hamilton By-Law 01-219, as amended, Being a By-law To Manage and Regulate Municipal Parks

WHEREAS Section 11(1)5 of the Municipal Act, 2001, S.O. 2001, Chapter 25, as amended, provides that single tier municipalities may pass by-laws respecting matters within the sphere of jurisdiction including; "Culture, parks, recreation and heritage";

AND WHEREAS the Council for the City of Hamilton, on the 18th day of September 2001, did pass and enact City of Hamilton By-law 01-219, being a by-law Manage and Regulate Municipal Parks, pursuant to Section 191(6) of The Municipal Act, R.S.O. 1990, Chapter M.45, as amended;

AND WHEREAS it is necessary to amend by-law 01-219, as amended.

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. By-law 01-219, as amended, is hereby amended by repealing subsections (j) and (k) of Section 1 thereof and substituting in the place and stead of such subsections the following:
 - "(j) "General Manager" means the General Manager of the Public Works Department for the City of Hamilton and includes his or her designate or designates and successor;
 - (k) "Leash Free Park" means a park, or a designated area within a park, or a public open space set aside as an area where dogs are not required to be leashed or otherwise restrained;"
2. By-law 01-219, as amended, is hereby further amended by repealing Section 3 thereof and substituting in the place and stead of such Section the following:
 - "(1) No person shall enter into or be in any park, except during the times the park is open to the public or during such times as otherwise expressly authorized by permit.

(2) A park shall only be open to the public:

- (a) where there is displayed at, within or adjacent to a park a posted sign or notice as to the times such park is open to the public, during the times so indicated on such sign or notice; or
- (b) in the absence of a posted sign or notice as referred to in subsection 3(2)(a), a park shall only be open to the public each day from six o'clock in the forenoon (6:00 a.m.) until eleven o'clock in the afternoon (11:00 p.m.)."

3. By-law 01-219, as amended, is hereby further amended by repealing Section 6 thereof and substituting in the place and stead of such subsection the following:

"6. While in a park, no person shall be in possession of or use any firearm, air gun, bow and arrow, axe or offensive weapon of any kind unless expressly authorized by permit, provided that this prohibition shall not apply to a Police Officer, an employee of the City, or such other persons as are providing contractual services to the City requiring the use of such weapons, while engaged in the performance of their duties."

4. By-law 01-219, as amended, is hereby further amended by repealing subsections (a), (b), (c), (d), (e) and (f) of Section 8 thereof and substituting in the place and stead of such subsection the following:

"8. No person shall, in any park, unless expressly authorized by permit:

- (a) climb or descend any natural formation, including but not limited to a cliff, precipice, rock face, overhang, or gorge, or any building, structure or equipment, unless such equipment or structure is specifically created, designed or erected for the purpose of climbing;
- (b) break, injure, deface, move or remove the whole or any part of any flowers, plant material, trees or other vegetation or any building, structure, equipment or other property of the City;
- (c) move, remove, excavate, disturb, alter, damage, or cause the deterioration or erosion of, the whole or any part of rocks, boulders, rock faces, soil, sand, wood, or like substance, or any other property or thing;
- (d) in any manner, disturb ground which is under repair, prepared for planting, has been newly seeded or sodded, or is in an area posted to that effect;

- (e) conduct archaeological research, or remove any relic, artifact or natural object;
 - (f) drive, park or walk in any area posted to prohibit same.”
- 5. By-law 01-219, as amended, is hereby further amended by repealing subsection (d) of Section 9 thereof and substituting in the place and stead of such subsection the following:
 - “(d) dispose of, cause the release of, dump, drain or discharge any material or substance, whether solid or liquid and whether toxic, hazardous (as defined by the *Environmental Protection Act*, R.S.O. 1990, as amended) or otherwise, on or into any soil or the waters of any pool, pond, lake, stream, fountain or watercourse, regardless of the place of origin and the means of transmission or transportation of said material or substance, unless expressly authorized by permit;”
- 6. By-law 01-219, as amended, is hereby further amended by repealing Section 10 thereof and substituting in the place and stead of such Section the following:
 - “10. While in any park, unless expressly authorized by permit, no person shall:
 - (a) subject to the provisions of Section 22, kill, attempt to kill, maim, injure, trap, remove or disturb any animal, bird, waterfowl, worm, or other wildlife; or
 - (b) touch, disturb, injure or remove any nest, or any egg therefrom;”
- 7. By-law 01-219, as amended, is hereby further amended by repealing Section 12 thereof and substituting in the place and stead of such Section the following:
 - “12. (a) Unless expressly authorized by permit, no person shall encroach upon or take possession of any park, or any part or area within a park, by any means whatsoever, including but not limited to the placing, construction, installation or maintenance of any fence, structure or other thing, the dumping or storage of any materials, or by planting any plant or otherwise cultivating, grooming or landscaping any part of the grounds thereof;
 - (b) Where the Director determines that an encroachment upon a part or area of a park will be reasonable in the circumstances and will not be detrimental to the interests of the City, the Director may authorize by permit an encroachment upon a part or area of a park, upon such terms and conditions as the Director may deem appropriate in the circumstances, and may take or require to be taken such measures or actions as the Director deems reasonable to ensure that any

authorized encroachments are and continue to be satisfactory to the City;

- (c) The Director is authorized to remove or cause to be removed, and to dispose of or cause to be disposed of, any unauthorized or no longer authorized encroachment from any park by any means and in any manner whatsoever, as the Director may, in the exercise of an absolute discretion, deem appropriate in the circumstances, including but not limited to the issuance of an order to remove an encroachment against the person or persons responsible for the encroachment.
- (d) No person, responsible for an authorized encroachment, shall fail to comply with the terms and conditions of the permit authorizing such encroachment
- (e) No person responsible for an encroachment shall fail to remove an encroachment, when directed or ordered by the Director, where such encroachment is not authorized or no longer authorized by permit.
- (f) In the event that a person or persons, against whom an order to remove an encroachment from a park has been made or issued by the Director, fails to comply with said order within the time indicated on the order, the Director may cause the encroachment to be removed and disposed of, all at the expense of such person or persons and the amount of such expense may be recovered by the City by action or may be added by the City Clerk to the collector's roll against any lands within the City of Hamilton owned by such person or persons and collected in a like manner as municipal taxes. "

8. By-law 01-219, as amended, is hereby further amended by repealing subsections (1) and (2) of Section 13 thereof;

9. By-law 01-219, as amended, is hereby further amended by repealing Section 14 thereof and substituting in the place and stead of such Section the following:

"14. While in any park, unless expressly authorized by permit or in a permitted area designated by posted signs, no person shall;

- (a) light, build or stoke an open fire or bonfire or move, alter, or expand authorized fire pit locations;
- (b) use any solid, liquid or gas fuelled portable barbecue, and, under no circumstances shall the fuel tank, cylinder or container for use with a liquid or gas fuelled barbecue exceed twenty (20) pounds capacity;

- (c) use fuel other than charcoal or briquettes in any stationary barbecue; or,
- (d) leave a barbecue or fire unattended without first extinguishing the barbecue or fire and ensuring that any remaining embers, coals, ashes or other residue, are fully extinguished and cold."

10. By-law 01-219, as amended, is hereby further amended by repealing Section 15 thereof and substituting in the place and stead of such Section the following:

"Organized Gatherings, Picnics, and Group Photography

15. Unless expressly authorized by permit, no person while in any park shall:

- (a) hold a picnic, public meeting, or other organized gathering or event of more than twenty persons; or
- (b) interfere with a picnic, organized gathering or event authorized by permit; or
- (c) engage in group photography involving more than ten persons."

11. By-law 01-219, as amended, is hereby further amended by repealing Section 29 thereof and substituting in the place and stead of such Section the following:

"29. No person shall enter, walk, or play upon or otherwise use any area or part thereof in any park, designated for the purpose of playing tennis, or any area enclosed as a tennis court or tennis courts, except in accordance with the posted rules and regulations, unless otherwise expressly authorized by permit."

12. By-law 01-219, as amended, is hereby further amended by repealing subsections (2), (8) and (11) of Section 32 thereof and substituting in the place and stead of such subsections the following:

- "(2) Park or leave a vehicle, except during the times the park is open to the public, as defined in Section 3 of By-Law 01-219 as amended herein, or in a designated area allowing for such overnight parking, or during such times otherwise expressly authorized by permit, provided that such authorization is clearly displayed in the driver's side front windshield of the vehicle in such a manner as to be readable from the exterior of the vehicle;
- (8) Park or stop a vehicle in any area or parking space except while actively using the park, or unless expressly authorized by permit, provided that such authorization is clearly displayed in the driver's side front windshield of

the vehicle in such a manner as to be readable from the exterior of the vehicle;

- (11) Park a vehicle for a period of time longer than the posted time limit, if any, unless expressly authorized by permit, provided that such authorization is clearly displayed in the driver's side front windshield of the vehicle in such a manner as to be readable from the exterior of the vehicle."
13. By-law 01-219, as amended, is hereby further amended by repealing subsection (1) of Section 33 thereof and substituting in the place and stead of such subsections the following:

"33(1) washing, cleaning, servicing, maintaining or, except in the event of an emergency, the repair of any vehicle, unless expressly authorized by permit."
14. By-law 01-219, as amended, is hereby further amended by repealing Section 35 thereof and substituting in the place and stead of such subsections the following:

"35. No person shall ride, drive, park or be in possession or control of a motorized recreational vehicle in any park except in a designated area or when expressly authorized by permit."
15. By-law 01-219, as amended, is hereby further amended by repealing subsections (3), and (4) of Section 40 thereof and substituting in the place and stead of such subsections the following:

"(3) A dog within a designated "Leash Free Park" shall be deemed not to be at large.

(4) The provisions of subsections (1)(a) and (2)(a) of Section 40 shall not apply to a Police work dog under the control of a Police Officer, or to a working dog under the control of an employee of the City, or under the control of such agents or contractors as may be providing contractual services to the City, which services require dogs to run off leash, and only while engaged in the performance of the duties required by the agreement with the City."
16. By-law 01-219, as amended, is hereby further amended by repealing subsection (2) of Section 41 thereof and substituting in the place and stead of such subsections the following:

"(2) Subject to Sections 39 and 40, no person shall bring or permit to be brought any livestock into any park, except where expressly authorized by and in accordance with the terms and conditions of the permit authorizing such livestock to be upon specified park lands."

17. By-law 01-219, as amended, is hereby further amended by repealing subsections (b) and (d) of Section 43 thereof and substituting in the place and stead of such subsections the following:
 - “(b) for a period longer than one (1) hour;
 - (d) without prior payment of the requisite fee or fees, if any, approved by Council”

18. By-law 01-219, as amended, is hereby further amended by repealing subsections (2) and (3) of Section 44 thereof and substituting in the place and stead of such subsection the following:
 - “(2) While in any park, no person shall practise, carry on, conduct or solicit for any trade, occupation, business or profession, unless expressly authorized by permit;
 - (3) No person shall, in any park, place, maintain or allow to remain any coin operated vending machine or game of any nature except when expressly authorized by permit.”

19. By-law 01-219, as amended, is hereby further amended by repealing Section 45 thereof and substituting in the place and stead of such Section the following:

“45. While in a park, no person shall beg, panhandle, solicit or invite subscriptions or contributions, unless expressly authorized by permit.”

20. By-law 01-219, as amended, is hereby further amended by repealing Section 48 thereof and substituting in the place and stead of such Section the following:
 - “48 (1) The authority to issue permits referred to in the by-law is delegated to the Director.”
 - (2) The Director may issue a permit on such terms and conditions as the Director considers in the best interests of the City taking into account the general use of the park, the proposed use, the degree of interference or incompatibility that the proposed use may have with other uses or other users of the park, matters of health and safety, the effect the proposed use may have on flora and fauna and such other circumstances that the Director may consider appropriate.
 - (3) The Director may impose such terms and conditions on the issuance of a permit as the Director considers appropriate in the circumstances including but not limited to: restrictions as to uses; time and location restrictions; indemnification, insurance and security for injury to persons or damage to property; protective measures for flora and fauna; and payment of permit and other costs associated with the permit and use.

- (4) The Director may refuse to issue a permit or revoke immediately a permit issued: where the applicant or permit holder has breached or failed to comply with any term or condition of the permit or issuance thereof; for non-payment of any fee or cost required to be paid by the applicant or permit holder; the breach or failure to comply with any City policy or by-law; the breach of any federal or provincial law; where the use by the permit holder is causing or has caused a disturbance; where the proposed use or current use unreasonably interferes with the use of the park by the public; and where it otherwise is in the best interests of the City that the application for a permit be denied or permit revoked.
- (5) A permit authorized under this By-Law is non-transferable.
- (6) The issuance of a permit pursuant to this by-law shall not relieve any person from the necessity of acquiring any other licence or permit required for such activity by any governmental or public authority.
- (7) All permits issued for activities contemplated in this by-law remain the property of the City."

21. By-law 01-219, as amended, is hereby further amended by repealing subsection (2)(b) of Section 52 thereof and substituting in the place and stead of such subsection the following:

"(b) employees, agents or contractors of the City while engaged in works or services undertaken for or on behalf of the City; or"

22. By-law 01-219, as amended, is hereby further amended by repealing Section 56 thereof and substituting in the place and stead of such Section the following:

"56. The schedules attached to this by-law and listed below shall have the same force and effect as if the provisions contained therein were contained in the body of this by-law:

Schedule "A" - Release of Balloons
Schedule "B" - Filming
Schedule "C" - Mooring"

23. By-law 01-219, as amended, is hereby further amended by repealing Schedule B thereof and substituting in the place and stead of such Schedule the following:

"Schedule "B":

All commercial or private film and television production activity in the City of Hamilton, prior to the commencement of same, must be reported to and coordinated through the Hamilton Film Liaison Office, Economic Development. All film and television activities are subject to the

guidelines and regulations listed in the "Policy for Filming on Streets and Properties under the Jurisdiction of the City of Hamilton".

24. By-law 01-219, as amended, is hereby further amended by repealing Schedule C thereof and substituting in the place and stead of such Schedule the following:

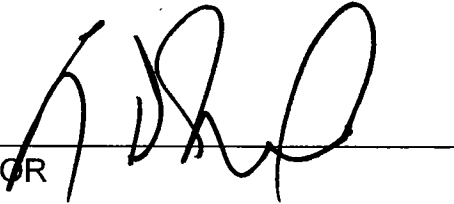
"SCHEDULE "C":

Unless expressly authorized by permit no operator or owner of a boat or other watercraft shall moor, allow to be moored, or operate such a boat or watercraft within Bayfront Park or Pier 4 Park or along the Sea Walls located within Bayfront Park or Pier 4 Park or within the waters of any marina owned or operated by the City of Hamilton."

25. In all other respects, By-law No. 01-219, as amended, is hereby confirmed in full force and effect.
26. This By-law shall come into force and effect on the day of its passing and enactment.

PASSED and ENACTED this 27th day of April, 2004.

MAYOR



AT CLERK

