



TOWN OF DIGBY

Public Places By-Law # 2009-05

Title

1. This By-Law is entitled the "**Public Places By-Law**"
2. Nothing in this By-Law shall be construed as authorizing non-compliance with any other laws, regulations, by-laws, lawful orders or directives pursuant to any statute, regulation or statutory or regulatory authority respecting the use of particular public places or particular types of public places.

Definitions

3. In this By-Law:
 - (1) "**abutter**" means the owner, lessee or occupier of any premises which abut a sidewalk;
 - (2) "**aggressive or persistent begging**" means any begging except passive begging as defined in this By-Law
 - (3) "**begging**" means soliciting or requesting a donation and includes providing a service without being expressly requested to do so in the expectation or hope of obtaining a donation or payment for that service;
 - (4) "**crosswalk**" means that portion of a roadway ordinarily included within the prolongation or connection of curb lines or the edge of a roadway and property lines at intersections or any portion of a roadway clearly indicated for pedestrian crossings by lines or other markings on the road surface;
 - (5) "**loiter**" *without limiting its ordinary meaning*, shall include loafing, wandering, lingering, stand idly around either alone or in concert with others or to impede passage of other persons.
 - (6) "**mobile canteen**" means a vehicle used for the display, storage, transportation or sale of food or beverages by a mobile vendor;
 - (7) "**mobile vendor**" means a person who vends from a mobile canteen or a stand;

- (8) **"passive begging"** means begging
- (a) in a non-threatening manner;
 - (b) by an individual, not in the company of other persons;
 - (c) when the begging individual is standing, sitting or lying in a stationary position, without physical approach towards or touching a person from whom a donation is sought;
 - (d) when the individual begging does not make more than one request or solicitation for a donation from any person;
 - (e) in a place in which the begging individual can be circumnavigated by a pedestrian, without having to step into a roadway, with a clearance of not less than 1 meter from the begging individual; and
 - (f) if the begging individual is playing a musical instrument or otherwise performing a service, and a container is placed on the ground, not passed for donations.
- (9) **"public places"** means
- (a) streets, sidewalks;
 - (b) public parks and trails, monuments (including any structure, statue, memorial, cenotaph, marker and surrounding area);
 - (c) property owned by the Town of Digby;
 - (d) recreation facilities funded or partially funded by the Town of Digby; and
 - (e) places designated by Council resolution as a public place for purposes of this By-Law provided that such place is posted as a designated public place in accordance with this By-Law.
- (10) **"roadway"** means that portion of a street between the curb lines or the travelled portion of a street designed for vehicular traffic and, except where the context indicates otherwise, includes a crosswalk;

- (11) *"sidewalk"* means that portion of a street between the curb line and the adjacent property line or any pan of a street especially set aside for pedestrian travel and separated from the roadway;
- (12) *"Special Event"* means a public gathering for any public purpose not contrary to any other By-Law of the Town of Digby, or any Federal or Provincial, statute, regulation or law, for the purpose of, but not necessarily limited to, entertainment, religious, cultural or community festivity, or any other peaceful and lawful activity, of a temporary nature which might interfere with the lawful use and enjoyment of a Public Place by other persons.
- (13) *"Special Events Permit"* means a license or permit that may be issued subject to terms and conditions by either Council or the Chief Administration Officer (CAO) and is required in advance by any individual or group wishing to hold or conduct a Special Event.
- (14) *"street"* means a public street, highway, road, lane, sidewalk, thoroughfare, bridge, square and the curbs, gutters, culverts and retaining walls in connection therewith and, without restricting the generality of the foregoing, includes the full fight-of-way width and includes streets not owned by the Town of Digby;
- (15) *"vending"* means the sale, or offering for sale, of
- (a) food, beverages or other merchandise unless they are immediately delivered to a residence or shop by the person selling them; or
 - (b) services, unless they are provided in a building; and includes vending by a mobile vendor.

Designation of Public Places

4. Upon application made by the owner of any property in the Town of Digby, Council may designate a property or portion of a property as a Public Place for purposes of this By-Law if the property or portion of a property is in, on or near a place that is open to the public.
5. The owner of a property or portion of a property designated by Council as a Public Place under section 4 shall keep posted at a prominent location thereon a sign bearing the words "This property has been designated a Public Place by the Town of Digby for purposes of the Public Places By-Law" in letters at least 2.5 cm. in height in a contrasting colour to the background of the sign, and containing such other information concerning this By-Law as the Clerk may authorize.

6. At the request of the owner, Council shall revoke the designation of a property or portion of a property designated as a public place pursuant to section 4.
7. Council may, on its own initiative and in its own discretion, revoke a designation made pursuant to section 4.

Interfering with Use and Enjoyment

8. No person shall unreasonably interfere with the lawful use and enjoyment of a public place by other persons.
9. Without limiting the generality of section 8:
 - (1) no person shall use obscene language in a public place;
 - (2) no person shall expectorate in a public place;
 - (3) no person shall light or have a fire in a public place; (notwithstanding the provisions contained in the Town of Digby Bylaw #2000-02 (Amended) A Bylaw Respecting Open Burning).
 - (4) no person shall camp or tent in a public place;
 - (5) no person shall sleep in a public place after dark;
 - (6) no person shall engage in aggressive or persistent begging in a public place;
 - (7) no person shall engage in passive begging within the Town of Digby.
 - (8)
 - (a) no person shall skateboard, roller blade, scooter or roller-skate in or on any part of Digby Centre Parking Lot and/or the Farmer's Market Parking Lot, the Digby Tourist Bureau, the Digby Band Stand and the Digby Boardwalk and Promenade - including sidewalks and curbs.
 - (b) no person shall bicycle, skateboard, in-line skate, roller-blade, roller-skate or scooter in or on any part of the Town of Digby sidewalks - including curbs - within the following designated area:

- (1) Water Street from Church Street - north to Birch Street at Prince William Street intersection.
- (2) Montague Row from Water Street south to Warwick Street.
- (c) no person shall bicycle on the Digby Waterfront Boardwalk and Promenade.
- (9) no person shall bicycle on any sidewalk within the Town of Digby or in a public place except
 - (a) on a roadway in accordance with other applicable laws;
 - (b) in areas or upon trails posted by or on behalf of the Town Of Digby or the owner as an authorized place in which to bicycle;
- (10) no person shall bring into or possess in a public place any animal except:
 - (a) dogs kept under control by means of a harness or leash or otherwise complying with provisions in the Town of Digby's Dog By-Law;
 - (b) cats or other domestic pets kept under control by means of a harness or leash or carried in a cage;
 - (c) horses in trails or parks posted by or on behalf of the Town of Digby or the owner as an authorized place in which to ride horses, provided however, that the horse is under the continuous physical restraint and control of a rider or handler;
 - (d) horses being used for law enforcement purposes by or under the direction of a peace officer;
 - (e) animals being transported in a vehicle; and
 - (f) other animals pursuant to a Special Events Permit;
- (11) no person shall litter or deposit or leave waste in a public place except in a designated waste receptacle;

- (12) no person shall use motorized vehicles or apparatuses in a public place except:
 - (a) wheelchairs or scooters for disabled persons;
 - (b) motorized vehicles or apparatuses otherwise lawfully in use on a roadway, driveway or parking lot; or
 - (c) off-highway vehicles lawfully in use in accordance with the *Off-Highway Vehicles Act*;
- (13) except in accordance with a Street Disturbance Permit issued under the Town of Digby Streets and Sidewalks By-Law or a Special Events Permit, no person shall obstruct the use by others of public places, including but not restricted to, causing or permitting an impediment to the traffic of pedestrians, infant strollers and wheelchairs on sidewalks, crosswalks or paths, and causing an impediment to vehicular traffic in roadways;
- (14) no person shall carry on public entertainment events, exhibitions, parades or circuses except as expressly authorized by or pursuant to a Special Events Permit;
- (15) no person shall deface, damage or destroy municipal property in a public place, and, in addition to any penalty upon a prosecution for contravention of this provision, the Town of Digby may recover the expense incurred in remediating the damage, together with costs and pre-judgment interest, by action in any court of competent jurisdiction.
- (16) no person shall loiter in a public place.
- (17) no person shall engage in vending in a public place except as expressly authorized by the Vending By-Law.

Special Events

10. A person wishing to carry out a Special Event in a Public Place shall apply for a Special Events Permit a minimum of **45** days in advance of the proposed date for the Special Event.
11. Application for a Special Events Permit shall be made:
 - (1) to the Council, when a Special Events Permit has not been granted to the applicant or a predecessor organization within the previous five (5) years for an event substantially of the same nature;

- (2) to the CAO, when a Special Events Permit has been granted to the applicant or a predecessor organization within the previous five (5) years for an event substantially of the same nature.
12. Upon receipt of an application under section 11(2), the CAO may
- (1) subject to subsection (2), issue a Special Events Permit on the same terms and conditions and for the same fee, as Council set on the most recent occasion of its granting of such Special Events Permit for such organization; or
 - (2) refer the application to Council:
 - (a) when the applicant requests a variation in the terms and conditions and the fee previously set by Council;
 - (b) when a Noise By-Law exemption is concurrently sought; or
 - (c) when the CAO, in his or her discretion, otherwise deems it appropriate.
13. Upon receiving an application, Council may by resolution refuse to grant the Special Events Permit, or may grant the Special Events Permit with such conditions and terms as it deems, at its sole discretion, to be fit and appropriate. Any Permit so granted shall:
- (1) specify the time period, the public places and the activities for which the Permit shall be effective;
 - (2) specify whether a Noise By-Law exemption is being concurrently granted by Council and, if so, identify any related terms or conditions
 - (3) be confirmed in writing by the Clerk before becoming effective;
 - (4) include such terms and conditions as Council deems appropriate;
 - (5) be subject to the provision of an indemnity in favour of, and in form satisfactory to, the Town of Digby for the defence and indemnification of any claims arising out of or in relation to the proposed event and related activities; and
 - (6) be subject to the payment of the Special Event Permit fee, set by Council pursuant to section 15.

14. In deciding whether or not to grant a Permit or in determining terms or conditions of the Permit, Council shall give consideration to:
- (1) the social or economic benefit of the proposed event to the municipality;
 - (2) the volume, nature, duration and consistency of disturbance to the use and enjoyment of public places from the proposed event;
 - (3) the proximity and nature of abutting or adjacent land uses and the effect upon them of granting the Permit;
 - (4) whether the proposed event would also require the granting of an exemption from the Noise By-Law, and, if so, whether it is appropriate to grant such an exemption having regard to the requirements in that By-Law; and
 - (5) any other factor relevant to balancing the interests of the applicant, the Town of Digby and others in relation to the proposed event.
15. When granting a Special Events Permit, Council may set a fee of:
- (1) when the event is carried on for profit or gain by or for an entity not registered with Revenue Canada as a charitable organization:
 - (a) **\$500.00** (five hundred dollars) per event activities for which a Permit is required; plus
 - (2) an amount estimated as required to defray any extraordinary, police, fire or clean-up expenses of the Town of Digby associated with or arising from the event.
16. Notwithstanding sections 11 to 15 of this By-Law, when an event for which a Special Events Permit is required would result in an obstruction of a street, the approval of the Traffic Authority is required prior to issuance of a Special Events Permit.

Penalties

17. (a) Any person who contravenes any provision of this By-Law (notwithstanding Subsection (b) below) is punishable on summary conviction by a fine of not less than **one hundred (\$100.00) dollars** and to imprisonment of not more than **30 (thirty) days** in default of payment thereof.
- (b) Any person who contravenes Section 9 sub. (14); Section 10; of this By-Law is punishable on summary conviction by a fine of not less than **five hundred (\$500.00) dollars** and to imprisonment of not more than **30 (thirty) days** in default of payment thereof.

18. Any person who contravenes Sections 8, 9 sub (1) to (13) & (15 - 17) inclusive; Section 9 sub: (14) offences governed by Payment in Lieu of Prosecution Policy of this By-Law, and who is given notice of the contravention may pay to the Town of Digby, at the place specified in the notice, the sum of *fifty (\$50.00) dollars and* for Section 9 sub: (14) *two hundred fifty (\$250.00)* within 14 days of the date of the notice and shall thereby avoid prosecution for that contravention.
19. The Town of Digby Public Places Bylaw #2006-07 is hereby repealed.

Clerk's Annotation For Official By-Law Book

Date of first reading: 04 August 2009

Date of advertisement of Notice of Intent to Consider: 20 August 2009

Date of second reading 08 September 2009

*Date of advertisement of Passage of By-Law: 17 September 2009

Date of mailing to Minister a certified copy of By-Law: 17 September 2009

I certify that this **PUBLIC PLACES BY-LAW** was adopted by Council and published as indicated above.

E. Thomas Ossinger, Clerk

17 September 2009

Date

* Effective Date of the By-Law unless otherwise specified in the text of the By-Law