

The Corporation of the Township of Huron-Kinloss



BY-LAW

2021-38

Being a By-law to Authorize the Signing of a Memorandum of Understanding with the Point Clark Beach Association for the Maintenance of Flower Beds and use of the Point Clark Community Centre

WHEREAS the Municipal Act S.O. 2001, c 25, Section 5(1), as amended, provides that the powers of a municipal corporation are to be exercised by its Council;

AND WHEREAS the Municipal Act S.O. 2001, c 25, Section 5(3), as amended, provides that a municipal power, including a municipality's capacity rights, powers and privileges under Section 9; shall be exercised by By-Law;

AND WHEREAS The Council for The Corporation of the Township of Huron-Kinloss deems it expedient to enter into a Memorandum of Understanding with the Point Clark Beach Association with respect to the revitalization and maintenance of the flower beds at the Point Clark Lighthouse, Lighthouse Park, and the use of the Point Clark Community Centre for three to four executive meetings.

NOW THEREFORE the Council of The Corporation of the Township of Huron-Kinloss enacts as follows:

- 1.0 That the Corporation of the Township of Huron-Kinloss Council hereby enters into a Memorandum of Understanding with the Point Clark Beach Association which is attached as Schedule "A" and forms part of this By-Law.
- 2.0 That the Mayor and Clerk are hereby authorized to sign on behalf of the Council for The Corporation of the Township of Huron-Kinloss, any contracts and other documents required to authorize the agreement, and to affix the corporate seal of the Township of Huron-Kinloss.
- 3.0 This By-law shall come into full force and effect upon final passage.
- 4.0 This By-law may be cited as the "PCBA Maintenance of Flower Beds MOU By-Law".

READ a FIRST and SECOND TIME this 19th day of April, 2021.

READ a THIRD TIME and FINALLY PASSED this 19th day of April, 2021

Mitch Twolan, Mayor

Emily Dance, Clerk

THIS AGREEMENT is made the day of , 2021

BETWEEN:

The Corporation of the Township of Huron-Kinloss
Hereinafter called the "Township"
OF THE FIRST PART

AND

Point Clark Beach Association
Hereinafter called "The PCBA"
OF THE SECOND PART

WHEREAS the Township is the owner of the property located at Point Clark Lighthouse, Lighthouse Park (526 Lighthouse Road), and Point Clark Community Centre (344 Lakerange Dr) in the Township of Huron-Kinloss, in the County of Bruce;

AND WHEREAS the PCBA has been given permission by the Township to revitalize and maintain flower beds and associated seating/planting areas, hereinafter referred to as the "flower beds" on the above noted properties;

AND WHEREAS the PCBA has been given permission by the Township to use the basement of the Point Clark Community Centre for three to four executive meetings per year.

AND WHEREAS it is deemed expedient to outline the roles and responsibilities of each of the parties;

NOW THEREFORE WITNESSETH that for and in consideration of the premises and mutual covenants hereinafter set forth, the parties agree with the terms and conditions set out herein.

1. Term of Agreement

The maintenance agreement is for a term of ten (10) years from April 1st, 2021.

2. Maintenance

The PCBA is solely responsible for paying any and all costs associated with maintaining the flower beds. Should the PCBA cease to maintain the flower beds, it is the Township's sole discretion to either continue maintenance or remove the structures.

RESPONSIBILITIES OF PCBA

- a) Supply and install Flowers, and water as required
- b) Remove weeds from flower beds as required, and leave in bags at a designated location and notify Community Services for pick up and disposal as required
- c) Flower beds include the Point Clark Lighthouse, Lighthouse Park
- d) Any proposed flower bed must be approved by the Community Services Department
- e) Any proposed tree planting must be approved by the Community Services Department
- f) Any minor maintenance ie (painting) must be approved by the Community Services Department
- g) Any beach clean-up debris projects must be approved and coordinated by the Community Services Department
- h) It is the responsibility of the PCBA to set up chairs and tables and return to their original location. One key is provided to the PCBA, and one storage closet for their use. All

meetings must be booked with the Community Services Department, paying rentals will be given priority over the PCBA.

RESPONSIBILITIES OF Township

- a) Supply topsoil, and cedar mulch as required
- b) Pick up piles of refuse, debris at mutually agreed upon locations
- c) Provide access to water when possible

3. Scheduling of Maintenance

The PCBA shall inform the Township, in writing, when construction (modification of flower beds) is scheduled to take place on the flower beds and provide a description of the maintenance to be completed, and the names of the volunteers completing the maintenance. Maintenance does not include regular watering/weeding of garden beds.

4. Modifications to the Flower beds

Prior written approval by the Director of Community Services is required before any modifications are made to the built structures of the flower beds. Maintenance activities covered under this agreement shall be limited to maintaining the appearance of existing features and any additions.

5. Reporting

Any issues relating to the safety or structural integrity of the flower beds or facilities shall be reported to the Township immediately.

6. Insurance

Commercial General Liability Insurance

Commercial General Liability Insurance satisfactory to the Township and underwritten by an insurer licensed to conduct business in the Province of Ontario. The policy shall provide coverage for Bodily Injury, Property Damage and Personal Injury and shall include but not be limited to:

- (a) A limit of liability of not less than \$2,000,000/occurrence with an aggregate of not less than \$3,000,000
- (b) Add the Township as an additional insured with respect to the operations of the Named Insured
- (c) The policy shall contain a provision for cross liability and severability of interest in respect of the Named Insured
- (d) Non-owned automobile coverage with a limit not less than \$2,000,000 and shall include contractual non-owned coverage (SEF 96)
- (e) Products and completed operations coverage
- (f) Broad Form Property Damage
- (g) Contractual Liability
- (h) Work performed on Behalf of the Named Insured by Sub-Contractors
- (i) The policy shall provide 30 days prior notice of cancellation

7. Notice of Termination

If either the PCBA or the Township wishes to terminate this Agreement prior to the end of the term created by this Agreement, notice to that affect will be given in writing NOT LESS THAN SIXTY (60) DAYS. The PCBA agrees and acknowledges that a notice to terminate the Agreement as described above shall be delivered or mailed to the offices of the Township at:

The Township of Huron-Kinloss
21 Queen St Box 130
Ripley, Ontario N0G 2R0 Attention: Director of Community Services

The Township agrees that a notice to terminate the Agreement as described above shall be delivered or mailed to:

Point Clark Beach Association PCBA,
BOX RR# 1 Kincardine N2Z 2X3 Attention: John Harper Vice President

8. Indemnity

The PCBA agrees to indemnify and save the Township and the Township's employees, officers and agents harmless from any claims, prosecutions, actions, proceedings and judgments of any type relating to the use of the licensed area by the PCBA. The PCBA shall respond to any such matter by engaging legal counsel to represent the Township's interest and will promptly satisfy any settlement amount, fine, bill of costs or judgment imposed with respect to same.

The PCBA is required to indemnify the Township for expenses incurred. If a claim arises, the PCBA shall indemnify the Township to the extent that the Township has not acted with negligence or willful intent.

IN WITNESS WHEREOF the Parties hereto have hereunto caused to be affixed their respective seals, attested by the hands of their proper officers duly authorized in that behalf

SIGNED, SEALED AND DELIVERED

In the presence of

POINT CLARK BEACH ASSOCIATION

John Harper, Vice President
PCBA

Rob Foster, President
PCBA

THE CORPORATION OF THE TOWNSHIP OF HURON-KINLOSS

Emily Dance, Clerk
Township of Huron-Kinloss

Mitch Twolan, Mayor
Township of Huron-Kinloss