



CITY OF KINGSTON

Ontario

By-Law Number 2007-136

**A By-Law To Provide For Maintaining Land
In A Clean And Clear Condition**

Passed: July 10, 2007

As Amended By By-Law Number:

By-Law Number:

By-Law 2021-105

Date Passed:

July 13, 2021

(Office Consolidation)

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| <u>Index</u> | Section Number |
|--------------------------------|----------------|
| Definitions | 1. |
| Applications | 2. |
| Administration | 3. |
| Regulations | 4. |
| Enforcement | 5. |
| Offence and Penalty Provisions | 6. |
| Validity | 7. |
| Commencement | 8. |

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Passed: July 10, 2007

Whereas Section 127 of the Municipal Act, 2001, S.O. 2001, c.25, provides as follows:

that a local municipality may require the owner or occupant of land to clean and clear the land, not including buildings, or to clear refuse or debris from the land, not including buildings; regulate when and how land shall be cleared and cleaned; prohibit the depositing of refuse or debris on land without the consent of the owner or occupant of the land; and define “refuse” for the purpose of this By-law.

And Whereas Section 131 of the Municipal Act, 2001, S.O. 2001, c.25, provides as follows:

that a local municipality may prohibit and regulate the use of any land for the storage of used motor vehicles for the purpose of wrecking or dismantling them or salvaging parts from them for sale or other disposition.

Whereas section 434.1(1) of the Municipal Act, 2001, as amended from time to time, provides that a municipality may require a person, subject to such conditions as the municipality considers appropriate, to pay an administrative penalty if the municipality is satisfied that the person has failed to comply with a by-law of the municipality passed under this Act.

The Council of the Corporation of the City of Kingston therefore **Enacts** as follows:

1. Definitions:

In this By-law,

“Administrative Penalty” means an administrative penalty administered pursuant to “By-Law 2020-69 of The Corporation of the City of Kingston being “A By-Law to Establish a Process for Administrative Penalties”;

“City” means The Corporation of the City of Kingston;

“Designate” means a person who is an employee of the Corporation of the City of Kingston and who has been appointed by the Director to administer all or part of this By-law on behalf of the Director.

“**Director**” means the Director of Building and Licensing of the Corporation of the City of Kingston and includes their designate.

"inoperative motor vehicle" means a vehicle which is missing parts, including tires or which has a damaged or missing windshield or window or deteriorated or removed metal adjunctions, which prevent its mechanical function, and shall include unlicensed motor vehicles or motor vehicles without currently validated license plates issued for the vehicle by the Ministry of Transportation of Ontario.;

"officer" means a property standards officer employed by the City;

"owner" includes the person for the time being managing or receiving the rent of or paying the municipal taxes on the land or premises, in connection with which the word is used, whether on his own account or as agent or trustee of any other person or who would receive the rent if such land and premises were let, and shall also include a lessee or occupant of the property who under the terms of a lease is required to repair and maintain the property;

“**Penalty Notice**” means a notice given pursuant to sections 2.2 and 2.4 of “By-Law 2020-69 of The Corporation of the City of Kingston being “A By-Law to Establish a Process for Administrative Penalties”;

"refuse" means any article, thing, matter or any effluent belonging to or associated with a house or household or concerning or relating to the home or family and any article, thing, matter or any effluent belonging to or associated with industry or commerce or concerning or relating to manufacture or concerning or relating to any trade, business, calling or occupation that in the opinion of the Director or officer appears to have been cast aside or discarded or abandoned or appears to be worthless or useless or of no practical value or appears to be used up in whole or in part or expended or worn out in whole or in part and for greater certainty, but not so as to restrict the generality of the foregoing it is hereby declared that refuse extends to the following:

- (1) Accumulations, deposits, leavings, litter, remains, rubbish, trash;
- (2) Refrigerators, stoves, freezers or other appliance, any attached hinges or latching, locking or other closing mechanism or device;
- (3) Furnaces, furnace parts, pipes, fittings to pipes, water or fuel tanks;
- (4) *Inoperative motor vehicles*, vehicle parts and accessories;
- (5) Paper, cartons;
- (6) Interior Furniture;
- (7) Crockery;

- (8) Sewage.
- (9) Articles, things, matter, effluent which in whole or in part or fragments thereof, are derived from or are constituted from or consist of:
 - a) agricultural, animal, vegetable, paper, lumber, or wood products; or
 - b) mineral, metal, or chemical products, whether or not the products are manufactured or otherwise processed;
- (10) Mechanical equipment, mechanical parts, accessories or adjuncts to vehicles and/or mechanical equipment;
- (11) Piping, tubing, conduits, cable and fittings or other accessories, or adjuncts to the piping, tubing, conduits or cable;
- (12) Containers of any size, type or composition;
- (13) Material resulting from, or as part of, construction or demolition projects;
- (14) Rubble, inert fill;
- (15) Bones, feather, hides;
- (16) Sewage.

"sewage" includes any liquid waste containing human, vegetable, or mineral matter, waste that is in suspension whether domestic or industrial or any other waste whether in suspension or precipitated, but does not include roof water or storm run-off;

(By-Law 2007-136; 2021-105)

2. Applications:

- 2.1 The City and Utilities Kingston are exempt from the application of this By-law.
- 2.2 On lands zoned as industrial under the City Zoning By-law, and used for industrial purposes, equipment and materials directly related to the industrial use of the land may be stored on the land by the owner in a tidy and organized fashion and, if ordered by the Director, the equipment and materials shall be screened from view to the satisfaction of the Director.

2.3 Nothing in this By-Law shall be deemed to prevent “normal farm practice” associated with the operation of an “agricultural operation” both as defined by the *Farming and Food Production Act, 1998, S.O.1998, c.1*, for lands in Agricultural Zones as found in the Zoning By-law of the City.

3. Administration:

3.1 The Director of Building and Licensing is responsible for the administration of this by-law.

4. Regulations:

Hazards

4.1 Every owner, lessee or occupant shall keep his grounds, yard, or vacant land clean and cleared up and free from objects or conditions that might create a health, fire or accident hazard.

4.2 For the purpose of Subsection 4.1, "clean or cleared up" includes keeping the lands clear of long grass, brush and undergrowth by cutting regularly and removing the cuttings from the lands.

4.3 Garbage

4.4 Except as provided in Subsection 4.4, every owner, lessee or occupant shall keep their land free and clear of all *refuse* of any kind.

4.5 The occupant of a residential property may provide for the composting of plant matter on the land provided that the composting material is kept in a container satisfactory to the Director and provided that the container is no larger than six feet in height and provided that the container is retained on all sides.

4.6 No person shall place or permit composting material or a compost container to be placed in the front yard or an exterior side yard.

4.7 Containers for composting shall be designed, constructed and maintained so as to prevent the entry of rodents or other animals, and shall be provided with a tight fitting cover which shall be kept closed at all times except when material is being placed therein, and shall be maintained in a clean and sanitary condition to the satisfaction of the Director.

4.8 No person shall use any land or structure within the City for dumping or disposing of refuse of any kind.

- 4.9 Subsections 4.1 and 4.2 do not apply to:
- (a) land or structures used by the City for the purpose of dumping or disposing of refuse; or
 - (b) land designated by by-law of the City for the purpose of dumping or disposing of refuse.
- 4.10 Every owner, lessee or occupant shall, when required by the Director in writing, cover over any refuse of any kind in such a manner as may be prescribed by the Director.
- 4.11 No person shall place or permit the placing of any furniture that is manufactured for interior use outside of a dwelling.
- 4.12 No person shall place or permit the placement of any garbage and/or garbage receptacles or recycling boxes whether empty or not, in the front yard, front porch or front deck/balcony of any residential dwellings other than for immediate pick-up.

Wrecking Yards

- 4.13 Except as provided in the applicable Zoning By-Law, no person shall use any land or structure in the City for storing used motor vehicles for the purpose of wrecking or dismantling them or salvaging parts from them for sale or other disposition.

5. Enforcement

- 5.1 The Director or an officer may, by order, sent by registered mail to the owner, lessee or occupant of the land or structure, or by regular mail or by personal service, or by placing a placard containing the terms of the order in a conspicuous place on the property (and the placing of the placard shall be deemed to be sufficient service) require the owner, lessee or occupant within the time specified in the order:
- (1) to clean, clear or remove from the land or structure, refuse and waste material of any kind;
 - (2) to cease using the land or structure for the dumping or disposing of, refuse and waste material of any kind;
 - (3) to cover over, screen, shield or enclose the refuse in the manner prescribed by the Director.
 - (4) to remove any compost container, or compost, that is infested with rodents or which is otherwise found to be not maintained in a clean and sanitary condition to the satisfaction of the director.

- 5.2 Every order sent by an officer shall identify the land or structure.
- 5.3 Every order to an owner or lessee shall be sent to the address shown on the last revised assessment roll or to the last known address.
- 5.4 Every order sent to an occupant shall be to the address of the land or structure or to the last known address of the occupant.
- 5.5 Every order sent by registered mail shall be deemed to be served on the fifth day after the day of mailing.
- 5.6 Failure to comply with the requirements set out in an order is deemed to be a continuing offence on each day or part of a day that the order is not complied with.
- 5.7 The Director or an officer, along with any person necessary to assist the Director or officer with their duties, may, at any reasonable time, enter and inspect any land or structure for the purpose of determining whether:
- (1) the land or structure is used for dumping or disposing of refuse of any kind;
 - (2) the land or structure is used for the storing of used motor vehicles for the purpose of wrecking or dismantling them or salvaging parts thereof for sale or disposal;
 - (3) the owner, lessee or occupant has complied with any order sent by an officer or Director; and
 - (4) the grounds, yard or vacant land is being kept in a condition free from objects or conditions that might create a health, fire or accident hazard.
- 5.8 No person shall hinder or obstruct the Director or an officer who is carrying out an inspection of the land or structure for the purpose of enforcing this By-law, nor shall any person hinder or obstruct any employee or agent of the City directed to carry out work to bring the land or structure into compliance with any section of this By-law.
- 5.9 Where the owner, lessee or occupant is in default of doing the matter or thing required to be done in an order under this By-Law, in addition to any prosecution commenced for the infraction, the Director or an officer may direct an agent or employee to do any or all of the following in order to bring the land or structure into compliance with any section of this By-law:
- (1) clean or clear up the grounds, yard or vacant land;
 - (2) remove refuse;
 - (3) cover over, screen, shield or enclose refuse;

- (4) remove used motor vehicles stored for the purpose of wrecking or dismantling them or salvaging parts thereof for sale or other disposal; and
 - (5) clear the grounds, yard, or vacant land from objects or conditions that might create a health, fire or accident hazard.
- 5.10 Where any of the matters or things are removed in accordance with Subsection 5.9, the matters or things may be immediately disposed of by the officer.
- 5.11 The City shall recover the costs in doing a matter or thing referred to in Subsection 5.9 by action, or in like manner as municipal taxes from the person named in the order. The costs include interest calculated at a rate of 15 percent, calculated for the period commencing on the day the City incurs the costs and ending on the day the costs, including interest, are paid in full. The amount of costs, including interest, constitutes a lien on the land upon the registration in the land registry of an order of lien. The lien shall be in respect of all costs that are payable at the time the order is registered plus interest accrued at the rate of 15 percent to the date the payment is made in full.
- 5.12 Where an Officer has reasonable grounds to believe that an offence under this By-Law has been committed by a Person, the Officer may require the name, address, and proof of identity of that Person.
- 5.13 Failure to provide proof of identification satisfactory to an Officer when requested to do so pursuant to Section 5.12 of this By-Law shall constitute obstruction of an Officer under Section 5.8 of this By-Law.

(By-Law 2007-136; 2021-105)

6. Offence And Penalty Provisions:

- 6.1a Every owner, lessee, occupant or other person who contravenes any provision of this By-Law shall, upon issuance of a Penalty Notice in accordance with Administrative Penalty Process By-Law 2020-69, be liable to pay to the City an Administrative Penalty as set out in Schedule B of the Administrative Penalty Process By-Law.

(By-Law 2007-136; 2021-105)

6.1 Notwithstanding Section 6.1a of this By-Law, every owner, lessee, occupant or other person who contravenes any provisions of this By-Law is guilty of an offence and, upon conviction, is subject to a minimum fine of not less than \$500.00 and to any other applicable penalties. The maximum fine for an offence committed under this By-law for a first offence is \$50,000.00 and the maximum fine for a second or subsequent offence is \$100,000.00. If the offence is a continuing offence the total of all daily fines may exceed the maximum fines indicated.

(By-Law 2007-136; 2021-105)

6.2 Upon a conviction being entered, the Court in which the conviction was entered and any Court of competent jurisdiction thereafter may, in addition to any other remedy and to any penalty imposed in the By-Law, make an order prohibiting the continuation or repetition of the offence by the person convicted.

6.3 Every person who fails to comply with the terms of an order made by the Director or an officer under subsection 5.1 is guilty of an offence and on conviction, in addition to the penalties mentioned in subsections 6.1 and 6.2 is liable to a minimum fine of \$500.00 per day for every day the offence continues after the time given for complying with the order has expired. The maximum fine for each day the offence continues shall not exceed \$10,000.00 and the total of all daily fines may exceed \$100,000.00.

6.4 A director or officer of a corporation who knowingly concurs in the contravention of this By-law by the corporation is guilty of an offence and, upon conviction, is subject to the fines as set out in this By-law.

6.5 If a Person is required to pay an Administrative Penalty under section 6.1a in respect of a contravention of this By-Law, the Person shall not be charged with an offence in respect of the same contravention.

6.6 In accordance with section 351 of the Municipal Act, 2001, as amended from time to time, the treasurer of the City may add unpaid fees, charges and/or fines issued under this By-Law to the tax roll and collect them in the same manner as property taxes.

(By-Law 2007-136; 2021-105)

7. Validity:

7.1 If a court of competent jurisdiction declares any provision, or any part of a provision, of this by-law to be invalid, or to be of no force and effect, it is the intention of Council in enacting this by-law that each and every provision of this by-law authorized by law be applied and enforced in accordance with its terms to the extent possible according to law.

8. Commencement

8.1 This by-law shall come into force on the day it receives third reading and is passed.

8.2 This By-Law may be referred to as the Yards By-Law.

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