

THE CORPORATION OF THE CITY OF WELLAND

BY-LAW NUMBER 2019 – 135

A BY-LAW TO PROVIDE REGULATIONS FOR MAINTAINING LAND IN A CLEAN AND CLEAR CONDITION (CLEAN YARDS BY-LAW) AND TO REPEAL BY-LAW 10727

WHEREAS the Municipal Act, S.O. 2001, c.25 as amended (the "Act") section 128 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 128(2) of the Act states that the opinion of Council under Section 128 of the Act, if arrived at in good faith, is not subject to review by any court;

AND WHEREAS Section 127 of the Act provides that the municipality may, among other things, require the owner or occupant of land to clean and clear the land, not including buildings and regulate when and how these matters shall be done and to prohibit the depositing of refuse or debris on land, and to define refuse for the purposes of this section;

AND WHEREAS Section 446 of the said Act, among other things, authorizes municipal remedial action, entry onto land, recovery of costs and addition of costs to the tax roll;

AND WHEREAS Section 391 of the Act provides that a municipality may impose fees or charges on persons for services or activities provided or done by or on behalf of it, and which by-law may provide for interest charges and other penalties, including the payment of collection costs, for fees and charges that are due and unpaid;

AND WHEREAS the Council of the Corporation of the City of Welland deems it necessary and expedient to use the powers granted to it pursuant to the aforementioned Sections of the Municipal Act:

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF WELLAND ENACTS AS FOLLOWS:

SECTION 1 - SHORT TITLE

1.1 This By-law may be referred to as the Clean Yards By-law.

SECTION 2 - DEFINITIONS

For the purposes of this By-law all words shall have their normal and customary meaning save and except for those hereinafter defined:

2.1 "By-Law Enforcement Officer" means a person appointed by The Corporation of the City of Welland for the purposes of enforcement of its By-laws.

2.2 "City" means The Corporation of the City of Welland.

2.3 "Inoperative Motor Vehicle" means any vehicle which does not, display a vehicle permit number plate with evidence of the current validation of the permit affixed to it, issued under the Highway Traffic Act, but does not include:

- (a) one (1) un plated vehicle per premises, owned by the Owner, provided the vehicle is:
 - I. a "hobby repair vehicle" where hobby repair is being actively carried on; or
 - II. a "historic vehicle", being an automobile that is at least thirty (30) years old; or
 - III. a vehicle used seasonally and plated annually for a period of time less than a full year;
- (b) a vehicle in a salvage yard and the like where an un plated vehicle is an integral component of a legally operating business.

2.4 "owner" means and includes an owner, lessee or occupant.

- 2.5 "person" means an owner, individual, corporation or other entity.
- 2.6 "property" means and includes yards, vacant lands, or any part of a lot not occupied by a principal building, if any, and includes the space within or upon unenclosed decks, unenclosed porches, unenclosed carports and unenclosed accessory structures;
- 2.7 "Region" means The Regional Municipality of Niagara.
- 2.8 "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.
- 2.9 "Refuse" means any debris, article, thing, matter or effluent that: has been cast aside, discarded or abandoned; or is used up in whole or in part, or expended or worn out in whole or in part; or appears to be worthless, or useless or of no practical value; and for greater certainty, but not so as to restrict the generality of the foregoing terms of this clause it is hereby declared that refuse extends to the following classes:
- (a) Branches, brush or tree clippings;
 - (b) Paper, paper cartons, and other paper products;
 - (c) Rotting vegetable matter, or rotting animal matter, unless it is contained in an appropriate composting container;
 - (d) Appliances, including refrigerators, stoves, dishwashers, microwaves, freezers, washers, dryers or any part or parts of such things;
 - (e) Electronic devices, including televisions, computers and related components, radios, amplifying devices, speakers, audio and visual players and any parts of such things;
 - (f) Furnaces or furnace parts, air-conditioners, ducting, pipes, heat pumps, fittings and wire;
 - (g) Water or fuel tanks;
 - (h) Inoperative motor vehicles, and parts or accessories of such items;
 - (i) Inoperative bicycles, lawnmowers, engines and mechanical tools;
 - (j) Accumulations, deposits, leavings, litter, remains, rubbish or trash of any sort, whether animal, mineral or vegetable;
 - (k) Broken or discarded furniture;
 - (l) Crockery, dishes, pots and pans, and small kitchen appliances;
 - (m) Sewage;
 - (n) Animal waste products, hides, parts of carcasses other than those arising from industrial or agricultural businesses legally operating on the land;
 - (o) Construction, demolition, repair or renovation debris;
 - (p) Accumulation of broken concrete, asphalt pavement, brick pavers and sidewalk slabs;
 - (q) articles, things, matter, effluent which in whole or in part or fragments thereof, are derived from or are constituted from or consist of:
 - I. agricultural, animal, vegetable, lumber or wood products; or
 - II. mineral, metal, or chemical products, whether or not the products are manufactured or otherwise processed;
 - (r) Piles of miscellaneous plastic, wood or metal parts, or combinations of such materials; and
 - (s) Discarded clothing;

Refuse as defined in this by-law does not cease to become refuse by reason only that it may be commercially saleable or recyclable.

- 2.10 "Standing Water" means any still water found upon any privately owned property in the City between April 1 and October 31 of each year other than:
- (a) A natural, moving body of water;
 - (b) A body of water effectively maintained and treated to prevent the breeding or larval existence of mosquitos;
 - (c) A body of water containing live fish;
 - (d) Storm water management ponds and catch basins on private property;
 - (e) A body of water which is a natural pond, bog, marsh or wetland; and
 - (f) A body of water contained for less than four (4) days.

SECTION 3 - GENERAL PROVISIONS APPLICABLE TO ALL PROPERTIES

Refuse

- 3.1 Every owner of property in the City of Welland shall keep and maintain the same in a clean and clear condition and free from refuse of any kind.
- 3.2 No person shall throw, place or deposit by any means any refuse on private property without the written authority of the owner or occupant of the property.
- 3.3 No owner shall permit refuse to remain on any property within the City.
- 3.4 No person shall throw, place or deposit any refuse on City property or Region property without the written authority of the City or Region and where such property is occupied by a person other than the owner, without the written authority of the occupant.
- 3.5 Every owner shall, in accordance with the provisions of the Environmental Protection Act, dispose of refuse at a site approved by the Ministry of Environment and Energy.

Health and Safety

- 3.6 No person shall put, permit to be put, or permit to remain in an unsafe condition:
- (a) any property;
 - (b) any excavation or opening on any property;
 - (c) any septic tank, cistern or well located on any property.
- 3.7 Every owner of property in the City of Welland shall keep and maintain the same in a clean and clear condition and free from the following:
- (a) Injurious insects, termites, rodents, vermin or other pests;
 - (b) Refrigerators, freezers, appliances, and other containers that could trap a child;
 - (c) Syringes, needles and other sharps.

Vegetation

- 3.8 Every owner of property in the City of Welland shall cut, trim or remove the grass and weeds whenever the growth of the grass or weeds exceeds six (6) inches in height.

Bird Feeders

- 3.9 No person shall be permitted to have more than three (3) bird feeders located on any property, excluding hummingbird feeders containing nectar.

January 1, 2020

- 3.10 Every owner shall maintain the ground underneath the bird feeder by regularly removing and disposing of the bird food/ birdseeds.
- 3.11 No person shall throw or place, or permit to be thrown or placed, any type of food, on a property for the purposes of feeding any birds.
- 3.12 Section 3.11 of this By-law shall not apply to bird feeders that are suspended off the ground and dispense commercially available bird food such as seeds.

Refuse Containers

- 3.13 Every owner shall ensure that all refuse which accumulates on their property and when not placed out for collection is:
 - (a) In containers:
 - I. Made of rigid, watertight construction;
 - II. Provided with a tight fitting cover, which may be removed only when the container is empty or is being actively loaded;
 - III. Maintained in good condition;
 - IV. Located in the side or rear yard against a building, structure, fence or retaining wall and arranged in an orderly manner.
 - (b) Not permitted to accumulate longer than 7 days.

Standing Water

- 3.14 Every owner shall keep and maintain any property free from standing water.
- 3.15 Every owner shall maintain every swimming pool, hot tub, wading pool and artificial pond within on any property in a safe and proper manner and in a good state of repair.
- 3.16 No owner shall obstruct or cause or permit the obstruction of a private drain, swale or watercourse in a manner which causes the holding or ponding of standing water on any property.
- 3.17 Every owner shall keep and maintain all vessels, containers, statuary or objects on any property, which are capable of holding standing water, free from standing water.

SECTION 4 – WORK ORDER

- 4.1 Where a By-law Enforcement Officer is satisfied that an owner has failed to comply with any provision of this By-law, the By-law Enforcement Officer may issue an Order requiring the owner to correct the contravention.
- 4.2 An Order shall set out:
 - (a) The municipal address and/ or the legal description of the property;
 - (b) Reasonable particulars of the contravention adequate to identify the contravention;
 - (c) The date by which there must be compliance with the order.
- 4.3 Every owner who contravenes an order is guilty of an offence.
- 4.4 Any order issued under this by-law may be given by ordinary mail, registered mail or hand delivered to the address of the owner according to the last revised assessment roll of the subject property or the notice may be posted at the subject property, and such service shall be deemed good and sufficient service.
- 4.5 Only one (1) order per calendar year is required for any contravention of section 3.8. If, after an order has been served in accordance with this by-law, the By-law Enforcement Officer, determines that a subsequent violation has occurred, the Municipality may proceed with the remedy set forth in Section 4.7 without further notice. In addition the City shall publish annual notice once in a local newspaper of general circulation advising residents of the requirements of section 3.8.

- 4.6 Every owner shall comply with any order issued under the authority of this by-law.
- 4.7 Where the owner is in default of an order, the By-law Enforcement Officer may, without notice and in addition to any other action, cause the work to be done at the owners expense. Without limitation, the City, its employees, agent or contractor may enter upon the land and remove such things or carry out the work required to make the property comply with this By-law. The City's rights pursuant to this section are in addition to the penalty provisions contained in section 6 and the City shall have the option to exercise the rights contained herein as well as the rights contained in section 6.
- 4.8 Any thing removed may be immediately disposed of or deposited elsewhere on the property on which it is located, or may be stored by the City, its employees, agent or contractor. Where a thing has been removed and stored, the owner or person may reclaim such thing upon payment to the City any costs incurred by the City, its employees, agent or contractor in the removal of such thing. Where the thing has not been reclaimed within thirty (30) days of its removal, such thing may be forthwith destroyed or otherwise disposed of by the City, its employees, agent or contractor.
- 4.9 Where any of the matters or things are done in accordance with Subsection 4.7, the expense of having the thing done shall be recovered in a like manner as municipal taxes, in accordance with Section 446 of the Act.

SECTION 5 - ADMINISTRATION, ENFORCEMENT AND RIGHT OF ACCESS

- 5.1 This By-law shall be administered and enforced by the City, the By-law Enforcement Officer or anyone appointed or otherwise delegated the authority of administration and enforcement.
- 5.2 If there is a conflict between a provision of this By-law and a provision of any other City By-law, the provision in this By-law shall apply.
- 5.3 It is hereby declared that notwithstanding that any part of this By-law, or parts thereof, may be found by any Court of law to be invalid or beyond the power of Council to enact such section or sections or parts thereof shall be deemed to be severable and that all other sections or parts of this By-law are separate and independent there from and enacted as such.
- 5.4 Pursuant to the provisions of Sections 23.1 to 23.5 of the Act, 2001 the Clerk of the City of Welland is hereby authorized to effect any minor modifications or corrections of an administrative, numerical, grammatical, semantical or descriptive nature or kind to this By-law as may be necessary after the passage of this By-law.
- 5.5 A By-law Enforcement Officer designated to perform inspections pursuant to this by-law may at all reasonable times, enter upon any land for the purpose of carrying out an inspection to determine whether or not this By-law is being contravened and/ or to determine if an order has been complied with.
- 5.6 A By-law Enforcement Officer may, for the purposes of the inspection under section 5.5, alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.
- 5.7 Any cost incurred by the City in exercising its authority to inspect under section 5.6, including but not limited to the cost of examination, test, sample or photograph necessary for the inspection, shall be paid by the owner of the property where the inspection takes place.
- 5.8 The By-law Enforcement Officer shall have inspection powers described in Section 436 of Act.
- 5.9 No person shall obstruct or hinder, or attempt to obstruct or hinder, a By-law Enforcement Officer, in the exercise of a power or the performance of a duty under this by-law.
- 5.10 No person shall refuse to produce any documents or things required by a By-law Enforcement Officer under Sections 5.5 and 5.8 of this By-law, and every person shall assist any entry, inspection, examination, or inquiry by a By-law Enforcement Officer.
- 5.11 No person shall knowingly furnish false information in any form to the By-law Enforcement Officer with respect to this by-law.

SECTION 6 - PENALTY

- 6.1 Any person who contravenes any provision of this By-law is guilty of an offence.
- 6.2 A person convicted of an offence contrary to a provision of this By-law in a proceeding commenced under Part III of the Provincial Offences Act, R.S.O. 1990, c. P. 33, is liable to a fine of no more than Ten Thousand Dollars (\$10,000.00).
- 6.3 Administrative Penalty By-law 2019-134 applies to each administrative penalty issued pursuant to this By-law.
- 6.4 Any person who contravenes any provision of this By-law shall, upon issuance of a penalty notice in accordance with Administrative Penalty By-law 2019-134, be liable to pay to the City an administrative penalty in accordance with the penalties set out in Schedule "A" attached.

SECTION 7 – TRANSITION, REPEAL, FORCE AND EFFECT

- 7.1 All prosecutions and other enforcement processes commenced under By-law 10727, as amended, which have not been completed on the day this By-law comes into force shall be completed under By-law 10727, as amended, as if it had not been repealed.
- 7.2 By-law 10727, as amended, is repealed as of the day this By-law comes into force and effect.
- 7.3 This By-law comes into force and effect on January 1, 2020.

SECTION 8 – EXEMPTIONS

- 8.1 This By-law does not apply to the Federal Government of Canada, the Province of Ontario, the Regional Municipality of Niagara or the City of Welland.
- 8.2 This by-law does not apply so as to prevent a farm, defined as an "agricultural operation" under the Farming and Food Production Protection Act, from carrying on a normal farm practice as defined in that Act.
- 8.3 Section 3.6 of this By-law does not apply to land on which construction is proceeding under a valid building permit or Municipal Consent.
- 8.4 Section 3.8 of this By-law does not apply to a bog, marsh, forested area or wetland.

READ A FIRST, SECOND AND THIRD TIME AND PASSED BY COUNCIL THIS **19TH** DAY
OF **NOVEMBER, 2019**.

Mayor

City Clerk

SCHEDULE "A"

THE CORPORATION OF THE CITY OF WELLAND

SET FINE SCHEDULE

BY-LAW 2019-135, BEING A BY-LAW TO PROVIDE REGULATIONS FOR MAINTAINING LAND IN A CLEAN AND CLEAR CONDITION WITHIN THE CITY OF WELLAND

ITEM	COLUMN 1 Short Form Wording	COLUMN 2 Provision Creating or Defining Offence	COLUMN 3 First Penalty	COLUMN 4 Second Penalty or Subsequent Penalty
1.	Fail to keep property in a clean and clear condition	Sec. 3.1	\$400.00	\$800.00
2.	Fail to keep property free from refuse	Sec. 3.1	\$400.00	\$800.00
3.	Throw refuse on private property without written authority	Sec. 3.2	\$400.00	\$800.00
4.	Place refuse on private property without written authority	Sec. 3.2	\$400.00	\$800.00
5.	Deposit refuse on private property by any means without written authority	Sec. 3.2	\$400.00	\$800.00
6.	Owner permit refuse to remain on a property	Sec. 3.3	\$400.00	\$800.00
7.	Throw refuse on public property without written authority	Sec. 3.4	\$400.00	\$800.00
8.	Place refuse on public property without written authority	Sec. 3.4	\$400.00	\$800.00
9.	Deposit refuse on public property by any means without written authority	Sec. 3.4	\$400.00	\$800.00
10.	Fail to dispose of refuse at an approved site	Sec. 3.5	\$400.00	\$800.00
11.	Permit property to remain in an unsafe condition	Sec. 3.6 (a)	\$400.00	\$800.00
12.	Permit an excavation to remain in an unsafe condition	Sec. 3.6 (b)	\$400.00	\$800.00
13.	Permit an opening on a property to remain in an unsafe condition	Sec. 3.6 (b)	\$400.00	\$800.00
14.	Permit a septic tank to remain in an unsafe condition	Sec. 3.6 (c)	\$400.00	\$800.00
15.	Permit a cistern to remain in an unsafe condition	Sec. 3.6 (c)	\$400.00	\$800.00
16.	Permit a well to remain in an unsafe condition	Sec. 3.6 (c)	\$400.00	\$800.00

17.	Fail to keep property free from Injurious insects, termites, rodents, vermin or other pests	Sec. 3.7 (a)	\$400.00	\$800.00
18.	Fail to keep property free from refrigerators, freezers, appliances, and other containers that could trap a child	Sec. 3.7 (b)	\$400.00	\$800.00
19.	Fail to keep property free from syringes, needles and other sharps	Sec. 3.7 (c)	\$400.00	\$800.00
20.	Fail to cut/trim/remove grass/weeds more than six inches in height	Sec. 3.8	\$400.00	\$800.00
21.	Fail to remove a bird feeder	Sec. 3.9	\$400.00	\$800.00
22.	Fail to maintain the ground underneath a bird feeder	Sec. 3.10	\$400.00	\$800.00
23.	Throw any type of food, on a property for the purposes of feeding any birds	Sec. 3.11	\$400.00	\$800.00
24.	Place any type of food, on a property for the purposes of feeding any birds	Sec. 3.11	\$400.00	\$800.00
25.	Permit any type of food, on a property for the purposes of feeding any birds	Sec. 3.11	\$400.00	\$800.00
26.	Fail to keep refuse in containers	Sec. 3.13 (a)	\$400.00	\$800.00
27.	Permit refuse to accumulate longer than 7 days	Sec. 3.13 (b)	\$400.00	\$800.00
28.	Fail to keep property free of standing water	Sec. 3.14	\$400.00	\$800.00
29.	Fail to maintain swimming pool/ hot tub/ wading pool/ pond	Sec. 3.15	\$400.00	\$800.00
30.	Obstruct private drain/ swale/ watercourse	Sec. 3.16	\$400.00	\$800.00
31.	Cause/ Permit the obstruction of private drain/ swale/ watercourse	Sec. 3.16	\$400.00	\$800.00
32.	Fail to maintain container/ object free of standing water	Sec. 3.17	\$400.00	\$800.00
33.	Fail to comply with an order	Sec. 4.3	\$400.00	\$800.00
34.	Obstruction	Sec. 5.9	\$400.00	\$800.00
35.	Fail to produce any documents or things required by a By-law Officer	Sec. 5.10	\$400.00	\$800.00
36.	Furnish false information to a By-law Officer	Sec. 5.11	\$400.00	\$800.00