

The Corporation of the City of Kenora

By-law Number 49 - 2017

A By-law Respecting Yard Maintenance, Storage and Litter on Property Being a by-law to regulate yard maintenance, storage and litter on property and to repeal By-law No. 76-2005, as amended

Whereas sections 8, 9 and 10 of the *Municipal Act, 2001* authorize the City of Kenora to pass by-laws necessary or desirable for municipal purposes, and in particular paragraphs 5, 6 and 8 of subsection 10(2) authorize by-laws respecting the economic, social and environmental well-being of the municipality; the health, safety and well-being of persons; and the protection of persons and property; and

Whereas section 127 of the *Municipal Act, 2001* authorizes the City of Kenora to require the owner or occupant of land to clean and clear the land, not including buildings, and to clear refuse or debris from the land, not including buildings; and

Whereas section 127 of the *Municipal Act, 2001* further authorizes the City of Kenora to prohibit the depositing of refuse or debris on land without the consent of the owner or occupant of the land; and

Whereas section 128 of the *Municipal Act, 2001* authorizes the City of Kenora to prohibit and regulate with respect to public nuisances, including matters that, in the opinion of the Council of the City of Kenora, are or could become or cause public nuisances; and

Whereas section 131 of the *Municipal Act, 2001* authorizes the City of Kenora to 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; and

Whereas section 425 of the *Municipal Act, 2001* authorizes the City of Kenora to pass by-laws providing that a person who contravenes a by-law of the City of Kenora passed under that Act is guilty of an offence; and

Whereas the *Municipal Act, 2001* further authorizes the City of Kenora, among other things, to delegate its authority, to impose fees or charges on persons for services or activities provided or done by or on behalf of it, to provide for inspections and inspection orders, and to make orders to discontinue activity or to do work;

Now Therefore, the Council of the City of Kenora enacts as follows:

PART I – APPLICATION AND INTERPRETATION

Short Title

1. This By-law may be referred to as the "Yard Maintenance, Storage and Anti-littering By-law".

Definitions

2. In this By-law,

- a) "building" means any structure used or occupied or intended for supporting or sheltering any use or occupancy;
- b) "City" means The Corporation of the City of Kenora or the geographic area of the City of Kenora as the context requires;
- c) "commercial waste" is waste generated as a result of carrying out a business and includes garbage and rubbish produced by customers of the business;
- d) "deposit" means to throw, dump, place or set down;
- e) "domestic waste" means waste comprising of garbage and rubbish such as bottles, cans, clothing, compost, disposables, food packaging, food scraps, newspapers, magazines, yard trimmings, cleaning solvents, paint, and pesticides that originate from a private home or apartment;
- f) "excavation" means an area where soil has been removed thereby leaving a depression or hole within the surrounding land, and includes, without limiting the generality of the foregoing, uncovered wells and cisterns;
- g) "farm" means an agricultural operation as defined in the *Farming and Food Production Protection Act, 1998* and includes such an operation that is not carried on with the expectation of gain but otherwise meets the definition in that Act;
- h) "front yard" means the area of the yard that is between the front wall of the main building on the property and the front property line; the front yard extends across the entire width of the property, extending to the boundary out from the building wall;
- i) "highway" includes a common and public highway, street, avenue, parkway, driveway access, square, place, bridge, viaduct or trestle designed and intended for or used by the general public for the passage of vehicles and includes the grassed areas, boulevards, ditches, curbs, gutters and sidewalks and all other areas between the lateral property lines thereof;
- j) "inoperative machinery" includes but is not limited to machinery that is unable to be operated as a result of being dismantled, broken or incomplete, decayed or dilapidated;
- k) "inoperative vehicle" includes but is not limited to a motor vehicle that:
 - (i) is unable to be operated as a result of being dismantled, broken or incomplete, decayed or dilapidated, in particular with missing wheels, tires, body components or windows; or
 - (ii) does not have affixed to it a number plate with a current permit validation as required under the *Highway Traffic Act*;

- l) "land" includes land covered by water;
- m) "natural garden" means a defined area of vegetation that has been deliberately planted or cultivated with species of wildflowers, shrubs, perennials, ornamental grasses or combinations of them, consistent with a managed and natural landscape;
- n) "normal farm practices" means normal farm practices as defined in the *Farming and Food Production Protection Act, 1998*;
- o) "noxious weed" means a noxious weed designated under the *Weed Control Act* including any weed designated as a local or noxious weed under a by-law of the City passed under that Act;
- p) "officer" means a person appointed by the City of Kenora to enforce this By-law and any police officer;
- q) "ornamental plant" means a plant deliberately grown for beautification, screening, accent, specimen, colour or other aesthetic reasons but does not include any variety of turf grass;
- r) "owner" means the registered owner, owner in trust, a mortgagee in possession, a person who is managing or receiving the rent of the property, a lessee or a person who is in control of the property and includes a person, firm, partnership, corporation, company, association, or organization of any kind and its principal(s);
- s) "property" means land, buildings or structures or any combination of these;
- t) "rear yard" means the yard that is between the rear wall of the main building on the property and the rear property line; the rear yard extends across the entire width of the property, extending to the boundary out from the building wall;
- u) "residential property" means property that is occupied by at least one person as his or her residence;
- v) "side yard" means the yard that is between any side wall of the main building on the property and the side property line that wall faces; the side yard is contained between the rear yard and the front yard;
- w) "unsafe container" means any container having a volume of greater than 0.5 m³ which has a closing or locking mechanism such that something or someone inside could be trapped and unable to be released without external assistance;
- x) "waste" means garbage, refuse, debris, litter, yard waste or any materials or substances that appear to be discarded or abandoned and for greater certainty, includes, whether of value or not:
 - i) accumulations of litter, remains, rubbish, trash;

- ii) weighty or bulky items such as: appliances, furnaces, furnace parts, pipes, pipe-fittings, water or fuel tanks, placed in a condition or location where they cannot be used for their intended purposes;
 - iii) paper;
 - iv) cartons;
 - v) dilapidated furniture or any indoor furniture;
 - vi) crockery, dishes, pots, pans, glass, cans, containers;
 - vii) garden refuse and trimmings;
 - viii) material from or for construction and demolition projects;
 - ix) domestic waste;
 - x) commercial waste;
 - xi) dead or dying trees, branches or shrubs;
 - xii) tree cuttings or twigs, branches and brush cut or otherwise severed from any shrub or tree;
 - xiii) waste lumber, excepting only cut and stacked firewood for use in a fireplace on the property;
 - xiv) inoperative motor vehicles or machinery;
 - xv) motor vehicle parts or machinery parts;
 - xvi) mechanical equipment or equipment parts placed in a condition or location where they cannot be used for their intended purposes;
 - xvii) earth or rock fill;
 - xviii) clothing or other household linens lying in an unprotected condition;
 - xix) objects or conditions that may create a health, fire or accident hazard; and
 - xx) animal waste products, animal feces, hides, parts or carcasses other than those arising from industrial or agricultural businesses legally operated on the land;
- y) "watercourse" means an identifiable depression in the ground in which a natural flow of water occasionally, regularly or continuously occurs, but does not include a swale shaped or graded in earth materials and stabilized with site suitable vegetation for the conveyance of storm water runoff; and

z) "yard" means an area of land on a property over which no building is erected.

Specific Interpretation Rules

3. The captions, article and section names and numbers appearing in this By-law are for convenience of reference only and have no effect on its interpretation
4. References to items in the plural in this By-law include the singular, as applicable, and vice versa.
5. Unless the context otherwise demands, words importing any gender shall be interpreted to mean any or all genders.
6. The words "include", "includes" and "including" are not to be read as limiting the words or phrases which precede or follow them.
7. The term "used" when referring to land, buildings or structures is interpreted as including "intended to be used".
8. Reference to a building, structure, yard or land includes that building, structure, yard or land in whole or in part.
9. In this By-law, the word "metre" may be represented by the abbreviation "m" and the word "centimetre" may be represented by the abbreviation "cm".
10. Where this By-law prohibits a person from doing something, the prohibition also includes causing, allowing or requiring that thing to be done.
11. Where this By-law requires a person to do something, the requirement can be fulfilled by causing another person to do that thing.
12. If any section, paragraph, clause, sentence or word in this By-law is declared by any court or tribunal of competent jurisdiction to be void or illegal, that particular portion of the By-law shall be deemed to be severable from the balance of the By-law, and the remainder of the By-law shall continue to be considered valid and binding.

Legislation

13. References to legislation in this By-law are printed in italic font and are references to Ontario Statutes. Where the year of the statute appears as part of its name, the reference is to the Statutes of Ontario for that year, and the chapter bearing the same name. Where the year of the statute does not appear as part of its name, the reference is to the Revised Statutes of Ontario, 1990 version. In both cases, however, this By-law is considered to speak to the law as amended from time to time, including successor legislation, and including all regulations passed in accordance with the statute. For example, a reference to the *Municipal Act, 2001* incorporates a reference to Ontario Regulation 584/06 passed under that statute.

Part II – Vegetation

14. Every owner shall keep grass, weeds and other vegetation in their yard clean and cleared up.
15. Every owner shall maintain all hedges, bushes and shrubs in their yard from becoming overgrown and unkempt.
16. For the purpose of section 14, to “clean” or “clear up” means:
 - i) to keep all grass and other plants cut to a height of equal to or less than 20 cm, except:
 1. ornamental plants;
 2. trees or shrubs;
 3. cultivated fruits and vegetables; or
 4. plants buffering or otherwise forming part of a natural feature such as a watercourse.
 - ii) to remove all noxious weeds, provided that nothing in this subparagraph authorizes the use of any herbicide contrary to any other law in force in Ontario; and
 - iii) to maintain the yard so as to prevent instability including but limited to the erosion of soil.
17. Sections 14 and 15 do not apply to:
 - a) crops being grown on a farm;
 - b) a natural garden; or
 - c) a property located in any of the following zones under the City of Kenora Zoning By-law:
 - i) RU (rural);
 - ii) OS (open space);
 - iii) (WD) (waste disposal);
 - iv) (EP) (environmental protection); and
 - v) (HL) (hazard land).

18. Every owner shall eliminate vegetation or unnatural landscaping features in their yard which:
- (a) adversely affect the safety of the public;
 - (b) adversely affect the safety of vehicular or pedestrian traffic;
 - (c) constitutes an obstruction of view for vehicular or pedestrian traffic;
 - (d) wholly or partially conceal or interfere with the use of any fire hydrant or municipal facilities, including water valves; or
 - (e) interfere with the use of a highway, public sidewalk or lane.

Part III – Ponding

Ponding of Water

19. Every owner shall keep their yard graded, filled up or otherwise drained so as to prevent excessive or recurrent ponding of water on their property.

Part IV - Waste

20. Every owner shall keep their yard free and clear of all waste.
21. No person shall use a yard for the depositing of waste.
22. Subject to section 23, sections 20 and 21 do not apply to:
- a) property used by the City for the purpose of depositing waste; or
 - b) property used for the purpose of depositing waste under federal, provincial or municipal authority.
23. No person other than the City or a person with prior federal, provincial or municipal authority shall deposit waste on property described in section 22.
24. Every owner shall ensure that all waste which accumulates on their property is:
- a) when not placed out for collection in accordance with applicable City by-laws, in containers:
 - i) provided with a tight fitting cover, which may be removed only when the container is empty or is being actively loaded;
 - ii) maintained in good condition without holes or spillage;

- iii) closed or emptied, rinsed and cleaned when not in use, to prevent the escape of offensive odour or waste; and
 - b) not allowed to accumulate for longer than 10 days.
25. Every owner of a property where an exterior bulk or roll-off container disposal system is used shall ensure that the containers are:
- a) equipped with covers or similar devices which shall be readily operable but not left open except when actively being loaded;
 - b) large enough to contain all waste generated between collections by the owner and any occupants served; and
 - c) not loaded beyond the top of the container.
26. Every owner of property, with the exception of an owner of property in the RU (Rural) or RR (Rural Residential) zone under the City of Kenora Zoning Bylaw, shall:
- a) have not more than 2 compost heaps on their property; and
 - b) ensure that each compost heap in the yard of their property:
 - (i) has a maximum size of 1 m³;
 - (ii) is located a minimum of 1 metre from any property line;
 - (iii) is enclosed on all sides by concrete blocks or lumber, or be maintained within a 205 litre or smaller container, a metal frame building with a concrete floor, or a commercial plastic enclosed container designed for composting; and
 - (iv) is stored and kept neatly and in a contained manner so as not to allow offensive odours to affect the surrounding neighbourhood, or to attract vermin or other animals to the compost.

Part V – Inoperative Vehicles And Machinery

27. Subject to sections 28 and 29, no person shall use a property for the storage of an inoperative vehicle or inoperative machinery, or parts of a vehicle or machinery.
28. Section 27 does not prohibit the storage of an inoperative vehicle or inoperative machinery, or parts of a vehicle or machinery, where:
- a) the storage is reasonably necessary for the conduct of a business or trade lawfully conducted on the property;
 - b) the inoperative vehicle, inoperative machinery or parts of a vehicle or machinery are stored in an enclosed building for a purpose other than:

- (i) wrecking or dismantling of them or salvaging parts from them for sale or other disposition; or
 - (ii) a vehicle repair or machinery repair business purpose; or
- c) the storage in a yard is of a single vehicle which is fully and completely covered with a canvas or similar opaque, weather-resistant tarpaulin in good repair.
29. Section 27 does not prohibit the keeping of inoperative agricultural machinery and inoperative agricultural vehicles on a farm provided that the inoperative agricultural machinery or inoperative agricultural vehicles are placed or arranged so as not to create a safety or health hazard to persons on the property, and, in particular, so as not to block emergency access to or from the property.

Part VI – Residential Storage

Rules for Domestic Storage of Materials on Residential Property

30. No owner shall undertake or allow the domestic storage of materials in the front yard of their residential property.
31. Domestic materials other than waste may be stored in a rear yard or a side yard of a residential property subject to the following rules:
- a) the storage of these materials shall not exceed 25% of the area of the side or rear yard in which it is being stored;
 - b) the storage shall be undertaken through the use of neat piles; and
 - c) the storage shall be undertaken in a manner which does not create an unsafe condition.
32. No owner shall undertake or allow the domestic storage of materials in a side yard or a rear yard on their residential property in a manner contrary to that prescribed in section 31.
33. Sections 30 - 32 do not apply to residential property exceeding 1.67 hectares in size.
34. Sections 30 - 32 do not apply to prevent the temporary storage of materials or debris on a residential property resulting solely from the construction, demolition or alteration of a building, provided that:
- (a) it is removed frequently and in its entirety from the property; and
 - (b) it does not cause an unsafe condition.

Storage of Boats, Recreational Vehicles, Trailers or Similar Vehicles on a Residential Property

35. No boats, recreational vehicles, trailers or similar vehicles shall be parked or stored in any portion of a front yard of a residential property.
36. Despite section 35 or any other by-law, parking and storage of any boats, recreational vehicles, trailers and similar vehicles not exceeding a total length of eleven (11) metres shall be permitted in a front yard:
- a) in a residential driveway between May 1st and October 31st; or
 - b) in a residential driveway at any time of the year in the case of a property where:
 - a. there is no reasonable place to park or store such vehicle or combination of vehicles in either a side yard or a rear yard due to the severity of yard slopes or due to natural features such as watercourses, wetlands, cliffs or rock cuts in such yards;
 - b. it is not possible to park or store such vehicle or combination of vehicles in either a side yard or a rear yard without such vehicle or combination of vehicles being within .6 metres of a lot line; or
 - c. it is not possible to park or store such vehicle or combination of vehicles:
 - i. in a side yard without such vehicle or combination of vehicles being within .6 metres of a lot line; and
 - ii. it is not possible to park or store such vehicle or combination of vehicles in a rear yard because:
 1. there is no public road or laneway which provides access to the rear yard; and
 2. the side yard is too small in size to permit such vehicle or combination of vehicles to be transported through the side yard to the rear yard.

Part VII – Unsafe Containers

37. No owner shall place, keep or store an unsafe container in their yard.
38. No person shall place or discard an unsafe container on any public or private property.

Part VIII – Litter

39. No person shall deposit waste on any public or private property without authority from the owner of the property.

40. No person shall deposit waste on a highway except in accordance with the City's by-laws respecting garbage collection or other authority received from the City.

Part IX – Drains And Watercourses

41. Every owner of a property on which there is a private drain shall keep such drain operational and in repair.
42. No owner shall obstruct or permit the obstruction of a private drain on their property, provided only that the subsequent connection of their property's private sewage system to the City's sanitary sewer in a manner approved by the City shall be permitted as a replacement to a private sanitary drain.
43. No owner of property shall obstruct, or cause or permit the obstruction of a watercourse on their property.

Part X – Health And Safety

44. Every owner shall ensure that any well, cistern, cesspool, privy vault, pit or excavation on their property:
 - a) in active use, is secured by a fence with warning signs;
 - b) not in active use, is permanently sealed or secured by a fence, cover or other means.
45. Every owner shall keep the yard of their property clean and free from any objects or conditions that might create a health, fire or accident hazard or an unsafe condition.

Part XI – Administration and Enforcement

46. The City Clerk is assigned the responsibility of administering and enforcing this By-law and may assign duties to such persons as are necessary to carry out the provisions of this By-law.
47. Persons appointed or assigned for the purposes of administering or enforcing this By-law are officers, have the authority to carry out the duties assigned to officers under this By-law, and may enforce the provisions of this By-law.
48. An officer may enter on property at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:
 - a) this By-law;
 - b) a direction or order made under this By-law; or
 - c) a prohibition order made under s. 431 of the *Municipal Act, 2001*.

49. An officer may, for the purposes of an inspection under section 48:
- a) require the production for inspection of documents or things relevant to the inspection;
 - b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
 - c) require information in writing or otherwise as required by the officer from any person concerning a matter related to the inspection; or
 - d) 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.
50. An officer may undertake an inspection pursuant to an order issued by a provincial judge or justice of the peace under section 438 of the *Municipal Act, 2001* where he or she has been prevented or is likely to be prevented from carrying out an inspection under sections 48 and 49;
51. If an officer is satisfied that a contravention of this By-law has occurred, the officer may make an order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner of the property on which the contravention occurred to discontinue the contravening activity.
52. An order under section 51 shall set out:
- a) reasonable particulars of the contravention adequate to identify the contraventions and the location of the property on which the contravention occurred; and
 - b) the date or dates by which there must be compliance with the order.
53. If an officer is satisfied that a contravention of this By-law has occurred, he or she may make an order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner of the property on which the contravention occurred to do work to correct the contravention.
54. An order under section 53 shall set out:
- a) reasonable particulars of the contravention adequate to identify the contravention and the location of property on which the contravention occurred;
 - b) the work to be completed; and
 - c) the date or dates by which the work must be completed.
55. An order to discontinue contravening activity made under section 51 or an order to do work made under section 53 may be served:

- a) by regular, registered or certified mail to the last known address of, as the case may be, the person who contravened the By-law or who caused or permitted the contravention or the owner of the property on which the contravention occurred, in which case it shall be deemed to have been given on the third day after it was mailed;
 - b) by an officer placing a placard containing the order in a conspicuous place on the property where the contravention occurred, in which case it shall be deemed to have been given on the day of the placement of the placard on the property; or
 - c) personally, as the case may be, on the person who contravened the By-law or who caused or permitted the contravention or the owner of the property on which the contravention occurred.
56. Where a person does not comply with a direction, an order or a requirement under this By-law to do a matter or thing, the City Clerk, with such assistance by others as may be required, may carry out such direction, order or requirement at the person's expense.
57. Without limiting its right to pursue other remedies, the City may recover the costs of doing a matter or thing under section 56 by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes and such costs shall include an interest rate of 15 per cent per year commencing on the day the City incurs the costs and ending on the day the costs, including the interest, are paid in full.
58. Any person who contravenes an order made under section 444 of the *Municipal Act, 2001* is guilty of an offence.
59. Any person who contravenes an order made under section 445 of the *Municipal Act, 2001* is guilty of an offence.
60. Any person who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to a fine or other penalty as provided for in the Provincial Offences Act, R.S.O. 1990, c. P. 33, as amended.

Part XII - Repeal, Coming Into Force, Etc.

61. By-law No. 76-2005, and all by-laws which amended By-law No. 76-2005, are repealed as of the day this By-law comes into force.
62. This By-law comes into force on the date of its passing.

By-law read a First and Second Time this 18th day of April, 2017

By-law read a Third and Final Time this 18th day of April, 2017

The Corporation of the City of Kenora:-

David S. Canfield, Mayor

Heather Kasprick, City Clerk