

The Corporation of the City of Kenora

By-law Number 122 - 2013

A By-law to regulate the Parking or Leaving of Motor Vehicles on Property without the Consent of the Owner

Whereas Sections 100 and 100.1 of the Municipal Act, 2001, S.O. 2001, c. 25 (the “Municipal Act”) authorizes municipalities to regulate or prohibit parking or leaving of motor vehicles without the owner’s consent on land not owned or occupied by the municipality; and

Whereas both Subsection 170(15) of the Highway Traffic Act, R.S.O. 1990, c. H.8 (the “Highway Traffic Act”), and Subsection 101(1) of the Municipal Act authorizes the removal and storage of any motor vehicle left in contravention of a municipal by-law; and

Whereas the Council of The Corporation of the City of Kenora (the “City”) wishes to enact a by-law to regulate the parking or leaving of motor vehicles on Private Property without the consent of the property Owner;

Now Therefore the Council of The Corporation of the City of Kenora enacts as follows:

Section 1: Interpretation

- 1.1 Highway Traffic Act Definitions: Unless a word is otherwise defined in Section 1.2 of this By-law, the definitions contained within the Highway Traffic Act apply in the interpretation of this By-law.
- 1.2 Definitions: Any word that is defined in this Section 1.2 that is used within the text of this By-law with its initial letters capitalized is intended to have the meaning that is assigned to it by this Section 1.2. If the word appears within the text in regular font, it is intended that its ordinary meaning in the English language will apply.
 - a) “By-law” means this by-law, unless the word is followed by a number. In that case, the term refers to the by-law of the City which has been assigned the number following the word.
 - b) “City” means The Corporation of the City of Kenora.
 - c) “Highway Traffic Act” has the meaning set out in the second recital to this By-law.
 - d) “Municipal Act” has the meaning set out in the first recital to this By-law.
 - e) “Officer” means a police officer, special constable, By-Law Enforcement Officer, Municipal Law Enforcement Officer and, in respect to specified certain Private Property, a person that has been specifically appointed by the Council of the City.
 - f) “Owner” means the registered owner of property.

- g) "Parking Lot" means an area of land or a physical structure located on Private Property which has been made available to members of the motoring public to park motor vehicles.
- h) "Private Property" means any land not owned by the City. The term includes land owned by other orders of government.

1.3 Interpretation Rules: The rules set out in this Section 1.3 apply to the interpretation of this By-law.

- a) Nouns: Reference to any noun is considered to be a reference to all or any part of that item. For example, reference to "a motor vehicle" should be interpreted as reference to "all or any portion of a motor vehicle".
- b) Gender: Words imparting the masculine, feminine or neutral gender shall be interpreted to refer to any gender, as applicable in the context.
- c) Acting Directly or Indirectly: Where this By-law prohibits an action, or requires a person to undertake an action, the prohibition or requirement applies both directly and indirectly. This means that a person prohibited from doing something is also prohibited from causing, allowing or permitting that action to be done. Likewise, a person may fulfill the requirements of this By-law to undertake a particular action by causing, allowing or permitting the action to be undertaken.
- d) Text Organization: The headings, 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.

1.4 Severability: Should any section or provision of this By-law be declared by a Court or tribunal of competent jurisdiction to be invalid, the ruling shall not affect the validity of the By-law as a whole. The only part affected will be the part which was declared to be invalid.

1.5 Independence of Zoning By-law: Nothing in this By-law shall be interpreted to allow parking on Private Property in contravention of the City's Zoning By-law (By-law 160-2010), even where the property Owner's consent or authority had been provided.

1.6 Sign Reference: Any reference to this By-law on a sign is considered to be a reference to this By-law as a whole.

1.7 Legislation References: Any reference to legislation in this By-law, whether the reference is to provincial legislation or municipal by-laws, is considered to be a reference to that legislation as it may be amended from time to time, and if that legislation is repealed and replaced, the reference is considered to be a reference to the replacement legislation.

Section 2: Parking Regulations on Private Property

- 2.1 Parking on Private Property Requires Permission: No person shall park or leave a motor vehicle on Private Property without authority from the Owner of that property.
- 2.2 Signs: The Owner of Private Property may indicate through the posting of signs the conditions under which authority is granted for parking motor vehicles on that property. For the purposes of Section 2.1, a parking space that is marked with appropriate signs to indicate that the space is reserved for use by specific drivers (such as persons with disabilities, families with small children or expectant mothers) indicates that the Private Property Owner grants authority to only those specific drivers to use those specifically marked spaces.
- 2.3 Parking Lot Spaces: Where a Parking Lot on Private Property has been laid out in a manner where individual parking spaces are specifically marked, no person may park a motor vehicle on that Private Property except wholly within an indicated parking space.
- 2.4 No Penalty Without Signs: Where Private Property is used as a Parking Lot, no person is liable to a penalty or to have a motor vehicle removed from that Private Property unless a sign is erected at each entrance to the Parking Lot which clearly indicates the conditions under which a motor vehicle may be parked on that property.
- 2.5 A Slight Contravention is a Contravention: Where any portion of a motor vehicle is parked in contravention of this By-law, the entire motor vehicle is considered to be parked in contravention of this By-law.

Section 3: Enforcement

- 3.1 Officers' Authority: The provisions of this By-law may be enforced by any Officer.
- 3.2 Entry on Private Property: An Officer may enter on Private Property at any reasonable time for the purpose of carrying out an inspection to determine whether or not this By-law is being complied with. The rules for entry to Private Property within the Municipal Act apply.
- 3.3 Offences Relating to Interference: No person shall interfere with an Officer who is lawfully conducting an investigation into an allegation that the provisions of this By-law are being contravened.
- 3.4 Penalties: Any person convicted of an offence under this By-law is subject to the penalties prescribed in the Provincial Offences Act, R.S.O. 1990, c. P.33.
- 3.5 Additional Penalties: In addition to any other penalties provided for in this By-law, an Officer (other than a specially appointed Officer) may, where a motor vehicle is parked in contravention of this By-law, cause that motor vehicle to be removed, taken away and stored in a suitable place. The owner of the motor vehicle may reclaim it only after paying prescribed towing and storage fees established by the towing company.
- 3.6 Lien: All costs and charges incurred for removing, caring for and storing a motor vehicle pursuant to Section 3.5 of this By-law are a lien upon the motor vehicle. That lien may be enforced in the manner provided for in the Repair and Storage Liens Act, R.S.O. 1990, c.R.25.

- 3.7 Owner of Motor Vehicle is Liable for Driver's Infractions: Where a motor vehicle has been parked in a contravention of this By-law, the owner of the motor vehicle, even though the owner was not the driver of the motor vehicle at the time of the contravention of the By-law, is guilty of the offence and is liable to the fine prescribed for the offence unless, at the time of the offence, the motor vehicle was in the possession of some person other than the owner without the owner's consent.
- 3.8 Enforcement Exemption: An Officer engaged in enforcing the provisions of this or other municipal By-laws is exempt from the provisions of this By-law as is reasonably necessary for the performance of the enforcement.
- 3.9 Enforcement of this by-law on private property is determined solely by the City of Kenora as deemed significant to the City. Enforcement will only be executed when such property has been specifically identified in accordance with this by-law as set out below:
- 3.9.1 Main entrance Paterson Medical Centre 45 Wolsley Street.

Section 4: General Provisions

- 4.1 Short Title: This By-law may be referred to as the City of Kenora Private Property Parking By-law.
- 4.2 Effective Date: This by-law will come into force and take effect on the date that it is passed.

By-law read a first and second time this 19th day of November, 2013

By-law read a third and final time this 19th day of November, 2013

The Corporation of the City of Kenora:-

David S. Canfield, Mayor

Heather Lajeunesse, Deputy Clerk

Schedule "A"
Set Fine Schedule to By-Law Number 122-2013

Part II Provincial Offences Act
Kenora Private Property Parking Bylaw

Item	Short Form Wording	Provision Under Bylaw	Voluntary Payment payable within 7 days	Set Fine
1	Park on Private Property without authority	2.1	25.00	30.00
2	Park on Private Property outside marked parking space	2.3	15.00	20.00
3	Interfere with Officer engaged in bylaw enforcement	3.3	45.00	50.00