

THE CORPORATION OF THE TOWN OF LINCOLN

BY-LAW NO. 2018-92

A BY-LAW TO PROVIDE FOR THE MAINTENANCE OF
LAND IN THE TOWN OF LINCOLN, KNOWN AS THE
CLEAN YARDS BY-LAW, AND REPEAL BY-LAW 2018-
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WHEREAS Section 127 of the Municipal Act, S.O. 2001, c. as amended, provides that a local municipality may require an 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; to regulate when and how such matters shall be done; to prohibit the depositing of refuse or debris on land without the consent of the owner or occupant of the land; and to define refuse.

AND WHEREAS Section 128 of the Municipal Act, S.O. 2001, c. 25, as amended, provides that a local municipality may prohibit and regulate with respect to the public nuisances, including matters that, in the opinion of Council, are or become public nuisances;

AND WHEREAS Section 131 of the Municipal Act, S.O. 2001, c. 25, as amended, provides 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;

AND WHEREAS Section 8, 9 and 11 of the Municipal Act, S.O. 2001, c. 25, as amended, provides that a municipality may pass by-laws respecting, inter alia, waste management, drainage, flood control, structures and the health, safety and well-being of the inhabitants of the municipality;

AND WHEREAS Section 446 of the Municipal Act, S.O. 2001, c. 25, as amended, provides that where a municipality has authority by by-law or otherwise, to direct that a matter or thing be done, the municipality may direct that, in default of it being done by the person required to do it, such matter or thing be done by the municipality at the person's expense and the municipality may recover the expense incurred by action or by adding the cost to the tax roll and collecting the cost in the same manner as taxes;

AND WHEREAS the Council of the Corporation of the Town of Lincoln desires to pass a by-law;

- (a) For ensuring the maintenance of yards and lands by owners and occupants;
- (b) For ensuring the proper drainage of water and sewage;
- (c) For prohibiting standing water on lands;
- (d) For prohibiting the keeping of domestic and industrial waste on lands;
- (e) For prohibiting littering on public and private land;
- (f) For regulating the salvage of vehicles and their components;
- (g) For the limiting or eliminating of nuisances, including graffiti;
- (h) For the limiting and eliminating of other unhealthy practices and conditions arising from litter, refuse, neglect, improper drainage and standing water; and
- (i) Regulating the outdoor storage of materials on yards.

AND WHEREAS Council considers that reasonable notices of this by-law has been given, including notice of the holding of a public meeting on March 8, 2018;

NOW THEREFORE Council of the Corporation of the Town of Lincoln enacts as follows:

1. DEFINITIONS

In this by-law:

- 1.1. "Agricultural Operation" means an agricultural operation as defined by the Farming and Food Production and Protection Act, S.O. 1998, c. 1. As amended;
- 1.2. "Chief Building Official" means the Chief Building Official appointed by Council under the Building Code Act, S.O. 1992, c.23 as amended, or the person who is appointed to act in the capacity during his or her absence;
- 1.3. "Composting" means the biological decomposition of organic materials by micro-organisms under controlled, aerobic conditions to a relatively stable humus-like material;
- 1.4. "Debris" means any material whatsoever capable of holding water and without limiting the generality of the foregoing includes tires, cars, boats, garden fixtures and containers of any kind;
- 1.5. "Domestic Waste" means any debris, rubbish, refuse, sewage, effluent, discard or garbage arising from residential use, belonging to or associated with a house or use of a house or residential land, which for greater certainty includes all garbage, discarded material or things, broken or dismantled things, and materials or things exposed to the elements, deteriorating or decaying on land due to exposure or the weather;
- 1.6. "Graffiti" means one or more letters, symbols, figures, etching, scratches, inscriptions, stains, or other markings that disfigure or deface a structure or thing, howsoever made or otherwise affixed on the structure or thing but does not include:
 - (a) A sign or public notice authorized by the Town of Lincoln or by Provincial or Federal Legislation; or
 - (b) In the case of private property, real or personal, any one or more letters, symbols, figures etching, scratches, inscriptions, stains or other markings authorized by the owner of the property upon which the letters, symbols, figures, etching, scratches, inscriptions, stains, or other markings appear, that, in the opinion of the Officer, does not contribute to the unsightly nature of the property.
- 1.7. "Industrial Waste" means any debris, rubbish, refuse, sewage, effluent discard, or garbage of a type arising from industrial, manufacturing, commercial or construction operations or belonging to or associated with an industry or commerce or industrial or commercial land, which for greater certainty includes all garbage, discarded material or things, broken or dismantled things, and materials or things exposed to the elements, deteriorating or decaying on the land due to exposure to the weather, and for even greater certainty "industrial waste" includes but is not limited to the following classes of material regardless of the nature or condition of the material, article or thing:
 - (a) Debris, discarded things or matter, or effluent which in whole or in part are derived from or are constituted from or consist of,
 - (i) Animal or vegetable matter, lumber or wood;
 - (ii) Mineral, metal or chemicals, or fill contaminated with petrochemical or petroleum products;
 - (b) Piles of miscellaneous plastic, wood or metal parts, or combinations of such materials;
 - (c) Automotive parts not packaged for immediate shipment, inoperative vehicles, vehicle parts including tires, inoperative mechanical equipment, mechanical parts, accessories or adjuncts to the vehicles and mechanical equipment not contained in a legal salvage yard;
 - (d) Piping, ducting, tubing, conduits, cable, wire and fittings or related accessories with or without adjuncts, and not packaged for immediate shipment;

- (e) Material resulting from or as part of construction, demolition, repair or renovations projects including Debris and leftovers;
 - (f) Rubble or fill;
 - (g) Sewage;
 - (h) Ashes;
 - (i) Dust emanating from the operation of the enterprise;
 - (j) Broken bricks, concrete or asphalt; and
 - (k) Industrial Waste as defined by this by-law does not cease to be industrial waste by reason only that it may be commercially saleable or recyclable.
- 1.8. "Inspect" means to visually examine and view closely in critical appraisal, but such inspection does not include physical entry onto land or private property except where such physical entry is expressly granted by statute or in accordance with law or otherwise by an Owner or an Occupant of land or private property;
- 1.9. "Inoperative Motor Vehicle" means and includes any motor vehicle other than a motor vehicle which is currently licensed, and operable and regularly driven by an owner or occupant of the property on which it is stored, unless it is permitted for the operation of a business enterprise lawfully situated on the property;
- 1.10. "Motor Vehicle" means a motor vehicle as defined by the Highway Traffic Act, R.S.O. 1990, c.H.8, as amended;
- 1.11. "Naturalized Area" means a portion of a lot or yard containing vegetative growth which may or may not have been previously maintained by the owner, which has been allowed to, or has been deliberately implemented to, re-establish a reproducing population of native species, through natural regeneration and/or deliberate plantings of species or other species to emulate a natural area other than regularly mown grass.
- 1.12. "Occupant" means any person or persons over the age of 18 years in possession of the land;
- 1.13. "Officer" means a Municipal By-law Enforcement Officer, Chief Building Official, Deputy Chief Building Official, Building Inspector, Fire Chief, Deputy Fire Chief, Fire Prevention Officer, firefighter or health inspector or other person appointed or employed by the Town for the enforcement of by-laws and includes a police officer;
- 1.14. "Order" means any notice of non-compliance issued under this by-law;
- 1.15. "Owner" includes:
- (a) Both the owner and the beneficial owner of land;
 - (b) The person for the time being managing or receiving rent of the land or premises in connection with which the word is used, whether on the person's own account or as agent or trustee of any other person, who would receive rent if the land and premises were let; and
 - (c) A lessee or occupant of the land who manages or controls the condition of the land;
- 1.16. "Private Drain" means a drain or part thereof situated on private property;
- 1.17. "Refuse" means any article, thing, matter, substance or effluent that:
- (a) Has been cast aside, discharged, abandoned, or
 - (b) Is disused from its usual and intended use, or
 - (c) Is used up, in whole or in part, or expended or worn out, in whole or in part and
 - (d) Shall include domestic and industrial waste;

- 1.18. "Region" means the Regional Municipality of Niagara;
- 1.19. "Residential Lands" means any lands which are appurtenant to and used or associated with a dwelling;
- 1.20. "Sewage" includes any liquid waste containing human, vegetable or mineral matter or 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 runoff;
- 1.21. "Standing Water" means any water, other than Treated Water or a natural body of water that exists on a permanent basis or is contained within a municipally owned stormwater management facility, that is found either on the ground or in Debris as defined by this by-law;
- 1.22. "Town" means the Corporation of the Town of Lincoln or the geographic area of the municipality, as the context requires;
- 1.23. "Treated Water" means water that has been treated with a larvicide or otherwise so as to minimize any potential health, safety or medical hazard to any person and shall include water which is continuously passed through a filter system to remove contaminants or water which is continuously circulated by mechanical means;
- 1.24. "Turf Grass" means ground cover comprised of one or more species of growing grass with or without trees, shrubbery or maintained planting beds for other vegetation, which for greater certainty includes lawns;
- 1.25. "Used Motor Vehicles" means a Motor Vehicle other than a Motor Vehicle which has a valid permit and is operative and driven on a regular basis;
- 1.26. "Vehicle" includes a Motor Vehicle, trailer, boat, motorized snow vehicle and any mechanical equipment designed to be drawn, propelled or driven by any type of power, including muscular power;
- 1.27. "Watercourse" means an identifiable depression in the ground in which a natural flow of water occasionally, regularly or continuously flows.
- 1.28. "Weed" means a weed designated by or under the Weed Control Act, R.S.O. 1990, c. W.5, including any weed designated as a local or weed under a by-law of the Town under that Act.

2. LAND MAINTENANCE

- 2.1. Every Owner or Occupant of land shall keep vegetation on the land clean and cleared up of Weeds.
- 2.2. Every Owner or Occupant of land shall keep vegetation in Turf Grass areas (lawns) cleaned and cleared up. For the purposes of Subsection 2.1, clean and cleared up means:
 - (a) The removal of Weeds;
 - (b) The cutting of grass so that it is maintained at a height of not more than 20 centimetres;
- 2.3. Every Owner or Occupant of land shall keep vegetation in Naturalized Areas cleaned and cleared up. For the purposes of Subsection 2.3, clean and cleared up means:
 - (a) In a Naturalized Area on a residentially used parcel abutting another residential parcel, the cutting of vegetation other than trees or

shrubby so that its height is maintained below 20 centimetres along a minimum one metre wide strip immediately adjacent to the lot lines and along all boundaries of the whole yard, lot or parcel of land which strip is herein called a "buffer strip; or

- (b) In a Naturalized Area other than an area described by Subsection 2.3(c) the cutting of vegetation other than trees or shrubbery, so that its height is maintained below 20 centimetres, along a minimum ten-metre-wide strip immediately adjacent to the lot line where the lot line adjoins a roadway or an occupied property, which strip is herein called a "perimeter strip".
- (c) The removal of Weeds from all Naturalized Areas, buffer strips and perimeter strips.

2.4. A Naturalized Area with a perimeter strip maintained in compliance with Subsection 2.3(b) is exempt from the provisions of subsection 2.3(c) insofar as the Weeds within the Naturalized Area comply with the Weed Control Act and do not affect any Agricultural Operation. This exemption does not include Giant Hogweed nor any other Weed.

2.5. For the purpose of Section 2, every person shall ensure that Weeds are destroyed by the following means:

- (a) Pulling or otherwise removing the plants from the soil;
- (b) Cutting the roots or stalks of the plants before the seeds have dwelt sufficiently to ripen after cutting;
- (c) Turning the soil in which, the plants were growing so as to kill the Weeds; or
- (d) In the case of poison ivy, treating it with a herbicide that causes the plants to be destroyed, or which prevents the growth of plants or the ripening of their seeds, provided that nothing in this clause authorizes the use of any herbicide contrary to any other law in force in Ontario.

2.6. Subsections 2.1 through 2.4 of this by-law, do not apply to any Agricultural Operation.

3. DRAIN MAINTENANCE

3.1. Every Owner or Occupant of land on which there is a Private Drain shall keep the drain operational and in good repair;

3.2. No person shall obstruct or cause to permit the obstruction of a Private Drain on land, provided only that the subsequent connection of the land's private Sewage system to the municipal sanitary sewer in a manner approved by the Town, shall be permitted as a replacement to the private sanitary drain.

3.3. No person shall obstruct or cause to permit the obstruction of a Watercourse on any land.

4. STANDING WATER

4.1. No person shall keep a swimming pool, hot tub, wading pool or artificial pond or pool unless it is maintained in good repair and working condition.

4.2. No person shall permit a depression, excavation, swimming pool, hot tub, wading pool, artificial pond or Debris located on their land to contain Standing Water for a period in excess of three days.

5. DOMESTIC AND INDUSTRIAL WASTE

- 5.1. An Owner or Occupant of land does not breach this by-law by Composting in accordance with good Composting practices and which does not cause a nuisance or discomfort to Owners or Occupants of nearby lands.
- 5.2. Every Owner or Occupant of land shall keep their lands free of all Domestic Waste.
- 5.3. Every Owner or Occupant of land shall keep their lands free of all Industrial Waste.
- 5.4. No person shall cause, or permit to be caused, the dumping or disposing of Domestic Waste or Industrial Waste on any land or in any structure within the Town.
- 5.5. Subsection 5.4 does not apply to:
 - (a) Land or structures used by the Town or other municipal authority for the purpose of dumping or disposing of Domestic or Industrial Waste; or
 - (b) Land designated by by-law of the Town or other municipal authority for the purpose of dumping, disposing of Domestic or Industrial Waste.
- 5.6. Every Owner of land or structures on which Domestic or Industrial Waste has been thrown, placed, dumped or deposited shall immediately clean and clear the land or structure of the waste material.
- 5.7. Notwithstanding the provisions of this by-law, a person may store lumber, building materials, inoperative or derelict Vehicles, trailers, unused machinery, machinery parts and Vehicle parts on an Agricultural Operation provided that:
 - (a) Such material is stored in a suitable structure or is screened from the view of any Residential Land or public highway located within 150 metres of the lands of the Agricultural Operation; and
 - (b) The material is required for use as replacement parts, Vehicles or materials as part of the Agricultural Operation on the lands.

6. LITTERING PROHIBITED

- 6.1. No person shall throw, place or deposit Refuse on private land without the written authority of the Owner or Occupant of the land.
- 6.2. No person shall throw, place or deposit Refuse on Town land or Regional land without the written consent of the Town or Region, and where such land is occupied by a person other than the Town or the Region, without the written authority of the Owner or Occupant.
- 6.3. A person does not breach Subsections 6.1 or 6.2 by placing garbage out for collection on their land in accordance with municipal by-law and collection schedules, but no person shall leave garbage out contrary to such by-laws or schedules.

7. GRAFFITI

- 7.1. Every Owner shall remove all objectionable markings, graffiti, stains or other defacement on their property to restore the surface and adjacent areas to, as near as possible, their appearance before the markings, graffiti, stains or other defacement occurred.

8. ORDERS

- 8.1. An Officer may make an Order and placarding said Order in a conspicuous location on the property and/or sent by regular pre-paid mail, or delivered by hand, to the address of the Owner of the lands as shown on the last assessment roll, requiring the Owner or Occupant, by the date specified in the Order, to:
- (a) Clean and clear up any land and bring such land into compliance with any section of this by-law;
 - (b) Repair or remove obstructions from Private Drains and ensure drainage and proper connection of private drains to storm or Sewage systems of the Town or otherwise provide for the sanitary disposal of Sewage or drainage from the land;
 - (c) Clean, clear or remove from any land or structure any or all garbage, Refuse, fill, Inoperative Motor Vehicles, Sewage, long grass, Weed or Domestic or Industrial Waste of any kind;
 - (d) Cease the use of any land for the dumping or disposing of garbage, Refuse, Used Motor Vehicles, Inoperative Motor Vehicles, Motor Vehicle parts, Domestic or Industrial Waste;
 - (e) Remove obstructions from Watercourses;
 - (f) Remove Standing Water or Debris from any land.
- 8.2. Every Order pursuant to Subsection 8.1 shall identify the land that is the subject of the Order, the works necessary to bring the land into conformity with this by-law and shall indicate that in default of the Owner or Occupant undertaking the works necessary to bring the land into conformity with this by-law, such works may be done by the Town at the Owner's expense at any time after the compliance date specified in the Order and every Order served pursuant to Subsection 8.1 shall be deemed to be good and sufficient service of notice on the Owner.
- 8.3. An Officer may inspect the use of any land for purpose of determining whether:
- (a) The land is being maintained in accordance with the provisions of this by-law;
 - (b) The land is used for dumping or disposing of garbage, Refuse or Domestic or Industrial Waste;
 - (c) The land is used for storing of Used Motor Vehicles or Inoperative Motor Vehicles for the purpose of wrecking or dismantling them or salvaging in parts thereof for sale or disposal;
 - (d) The Owner or Occupant has complied with any notice sent pursuant to the provisions of this by-law.
- 8.4. Every Owner or Occupant shall permit an Officer to inspect the land for the purpose of this section.
- 8.5. Where an Owner or Occupant fails to comply with an Order issued under this by-law within the time specified for compliance, an Officer may, with such assistance by others as may be required:
- (a) Clean or clear up a property and bring it into compliance with any section of this by-law;

- (b) Repair, maintain or remove obstructions from a Private Drain, and ensure drainage and proper connection of Private Drains to storm or Sewage systems of the Town or otherwise provide for the sanitary disposal of Sewage or drainage from the land;
- (c) Clean, clear or remove from the land or structure any or all garbage, Refuse, fill, Sewage, Inoperative Motor Vehicles, long grass, Weed or Domestic or Industrial Waste of any kind;
- (d) Remove Used Motor Vehicles, Inoperative Motor Vehicles and other machinery, and any parts, stored for the purpose of wrecking or dismantling the materials or the salvaging parts thereof for sale or other disposal;
- (e) Alter or relay a Private Drain or fill up any property or part of a property;
- (f) Remove obstructions from Watercourses; and/or
- (g) Remove Standing Water or Debris from land.

8.6. The Town shall recover all costs and expenses associated with actions taken and work done to land under this by-law in a manner provided by statute, whether by action or by adding the costs to the tax roll and collecting the costs in the same manner as the taxes.

9. FEES AND CHARGES

9.1. The Owner of any land against which any proceedings are brought or against which any action is taken in accordance with this by-law shall pay the fees and charges in accordance with Schedules "A" and "B", attached hereto and forming part of this by-law.

9.2. An Owner shall pay the applicable fees and charges within thirty days of the date on which an Order becomes final or the date on which a conviction is pronounced or the date on which an action is taken.

9.3. Overdue fees and charges imposed in accordance with this by-law shall be added to the tax roll of the Owner and collected in the same manner and with the same priorities as municipal real property taxes.

10. OFFENCES

10.1. Subject to Subsections 10.2 and 10.3 below, every person who contravenes any provision of this by-law, is guilty of an offence and upon conviction is liable to the penalties prescribed under the Provincial Offences Act, R.S.O. 1990, c. P 33, as amended.

10.2. Every person who contravenes Subsections 5.2, 5.3, 5.4, 6.1 or 6.2 of this by-law is guilty of an offence and upon conviction is subject to a fine of not more than \$10,000 for a first conviction and \$25,000 for any subsequent conviction.

10.3. Where a corporation is convicted of an offence under Subsections 5.2, 5.3, 5.4, 6.1 or 6.2 of this by-law the maximum penalty that may be imposed on the corporation is \$50,000 for a first offence and \$100,000 for any subsequent offence of such Subsections.

10.4. No person shall hinder or obstruct an Officer appointed under this by-law or employed to enforce this by-law from carrying out an inspection of lands, nor shall any person obstruct any employee, agent or person authorized to carry out work for the Town specified in an Order issued hereunder.

11. GENERAL PROVISIONS

- 11.1. If any term of this by-law or the application thereof shall to any extent be invalid or unenforceable, the remainder of this by-law and/or the application of such term to circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term of this by-law shall be separately valid and enforceable to the fullest extent permitted by law so as to protect the public by ensuring that a minimum standard for maintenance and occupancy of land is maintained.
- 11.2. Where a form of words or expression are prescribed in this by-law, deviations therefrom not affecting the substance or calculated to mislead do not vitiate them.
- 11.3. In this by-law, unless the context otherwise requires, words imparting the singular number shall include the plural, and words imparting the masculine gender shall include the feminine, and further, the converse of the foregoing also applies where the context so requires.
- 11.4. References in this by-law to any legislation (including but not limited to regulations and by-laws) or any provision thereof include such legislation or provision thereof as amended, revised, re-enacted and/or consolidated from time to time and any successor legislation thereto.
- 11.5. In this event of a conflict between a provision of this by-law and the Town's Zoning By-law, the provision of the Zoning By-law shall apply.

12. REPEAL AND ENACTMENT

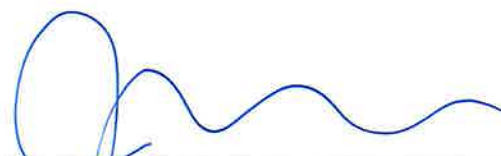
- 12.1. By-law No. 2018-50 of the Corporation of the Town of Lincoln is hereby repealed.
- 12.2. This by-law shall be known as the "Clean Yards By-law".
- 12.3. This by-law shall come into force and effect on the date of its passing and enactment.

READ A FIRST TIME THIS 1ST DAY OF OCTOBER, 2018.

READ A SECOND TIME THIS 1ST DAY OF OCTOBER, 2018.

READ A THIRD TIME AND FINALLY PASSED THIS 1ST DAY OF OCTOBER, 2018.


MAYOR: SANDRA EASTON


CLERK: JULIE KIRKELOS

SCHEDULE "A" TO BY-LAW NO. 2018-92

Service Fees and Charges

| Item | Service/Fine or Activity, Long Form Wording | Fee |
|------|--|---|
| 1. | For each Order issued pursuant to the by-law in respect of any land, where such Order is not entirely quashed on appeal. | \$200.00 |
| 2. | For each Officer who attends a hearing or a court appearance regarding an appeal of an Order, where such Order is not entirely quashed or appeal. | \$200.00 |
| 3. | For each Officer who attends a hearing or court appearance regarding a proceeding commenced pursuant to the by-law and resulting in a conviction registered for the breach of any provision of the by-law. | \$200.00 |
| 4. | For any works undertaken by the Town to complete works required to comply with any final Order. | 100% of the total cost of works plus an additional administrative fee of 20% of the total cost of the works with a minimum fee of \$120.00. |

SCHEDULE "B" TO BY-LAW NO. 2018-92

Part I Provincial Offences

| Item | Column 1 Description of Offence | Column 2 Provision Creating or Defining Offence | Column 3 Set Fine |
|-------------|---|--|------------------------------|
| 1. | (Owner/Occupant) fail to keep vegetation on land clean and cleared | 2.1 | \$200.00 |
| 2. | (Owner/Occupant) fail to keep lawn free of Weeds | 2.2(a) | \$200.00 |
| 3. | (Owner/Occupant) fail to keep lawn free of grass over 20 centimetres in height | 2.2(b) | \$200.00 |
| 4. | (Owner/Occupant) fail to keep Private Drain (operational/in good repair) | 3.1 | \$200.00 |
| 5. | (Obstruct/Permit the obstruction) of a Private Drain | 3.2 | \$200.00 |
| 6. | (Obstruct/Permit the obstruction) of a Watercourse | 3.3 | \$200.00 |
| 7. | Permit (depression/excavation/ swimming pool/hot tub/wading pool/ artificial pool or pond/Debris) to contain Standing Water for in excess of 3 days | 4.2 | \$200.00 |
| 8. | (Owner/Occupant) fail to keep lands free of Domestic Waste | 5.2 | \$200.00 |
| 9. | (Owner/Occupant) fail to keep lands free of Industrial Waste | 5.3 | \$300.00 |
| 10. | (Cause/Permit to be caused) the (Dumping/depositing) of (Domestic/Industrial) Waste (on any land/in any structure) | 5.4 | \$300.00 |
| 11. | (Throw/Place/Deposit) without authority Refuse on private land of (Owner/Occupant) | 6.1 | \$200.00 |
| 12. | (Throw/Place/Deposit) Refuse on public land without consent | 6.2 | \$200.00 |

Note: The general penalty provision for the offences listed above in Section 9 of By-law 2018-92, a certified copy of which has been filed