



Memorandum

Corporate By-law Number BL 93/2022

TO: Office of the City Clerk **FILE:**

FROM: Doug Vincent
Development & Emergency Services - Licensing & Enforcement

DATE: 08/16/2022

SUBJECT: BL 93/2022 – Clean & Clear Yards

MEETING DATE: City Council – 09/12/2022 (mm/dd/yyyy)

By-law Description: A By-law authorizing the City of Thunder Bay to require Owners and Occupants of Land to clean and clear the Land, and to provide authority to authorize work to be undertaken by the City on the Land in certain circumstances and to repeal By-law 68-2008.

Authorization: Report R 106/2022 (Development & Emergency Services/Licensing & Enforcement) - Committee of the Whole - July 25, 2022 and Memorandum from Doug Vincent relative to Referral of Report R 106/2022 (Development & Emergency Services/Licensing & Enforcement) Committee of the Whole August 22, 2022

By-law Explanation: The purpose of this By-law is to ensure the maintenance of lands in a clean manner and clear of waste, litter, overgrowth, hazards and other unauthorized items and to provide authority to authorize work to be undertaken in certain circumstances.

Schedules and Attachments:

Schedule “A” - Prohibited Local Plants

Amended/Repealed By-law Number(s):



THE CORPORATION OF THE CITY OF THUNDER BAY
BY-LAW NUMBER BL 93/2022

A By-law authorizing the City of Thunder Bay to require Owners and Occupants of Land to clean and clear the Land, and to provide authority to authorize work to be undertaken by the City on the Land in certain circumstances and to repeal By-law 68-2008.

Recitals:

1. On June 9, 2008 City Council approved By-law 68-2008, being a by-law authorizing the City of Thunder Bay to require Owners and Occupants of Land to clean and clear the Land, and to provide authority to the General Manager to authorize work to be undertaken by the City on the Land in certain circumstances.
2. Section 10 (2) (6) of the *Municipal Act*, 2001, S.O. 2001, c.25, as amended, provides that a municipality may pass by-laws respecting the health, safety and well-being of persons;
3. Section 127 of the *Municipal Act*, 2001, S.O. 2001, c.25, as amended, provides that a municipality may require the owner or occupant of property to clean and clear the property, not including buildings, or to clear refuse or debris from the property, not including buildings;
4. Section 128 of the *Municipal Act*, 2001, S.O. 2001, c.25, as amended, provides that a 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;
5. Section 131 of the *Municipal Act*, 2001, S.O. 2001, c.25, as amended, provides that a local municipality may prohibit and regulate the use of any property 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;
6. Section 446 of the *Municipal Act*, 2001, S.O. 2001, c.25, as amended, provides that, where a municipality has the authority to direct or require a person to do a matter or thing, the municipality may also provide that, in default of it being done by the person directed or required to do it, the matter or thing shall be done at the person's expense;
7. It is now deemed appropriate to repeal and replace By-law 68-2008

ACCORDINGLY, THE COUNCIL OF THE CORPORATION OF THE CITY OF THUNDER BAY ENACTS AS FOLLOWS:

1. SHORT TITLE

That this By-law may be cited as the "Clean & Clear Yards By-law."

2. SCOPE OF THIS BY-LAW

That this By-law shall apply to all land within the geographic boundaries of the Corporation of the City of Thunder Bay, including residential, non-residential and vacant land, except those lands owned or controlled by the City that are not otherwise then leased or under control of another person(s) or party.

3. DEFINITIONS

In this By-law,

- a) "City" means the Corporation of the City of Thunder Bay;
- b) "Hazard" means a source or a situation with the potential for harm in terms of human injury or ill-health, damage to property, damage to the environment, risk of fire or a combination of these and includes unsafe containers with a closing or locking mechanism such that something or someone inside could be trapped and unable to be released without external assistance;
- c) "Highway" includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle under the jurisdiction of the City, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof;
- d) "Inoperative vehicle" means any vehicle, motor vehicle, vessel, trailer or camping trailer which, that appears by reason of its appearance, mechanical, functional or structural condition not to be operative and includes those vehicles that require a valid license plate be displayed to operate on a highway and have in existence proof of a valid and current registration, pursuant to the provisions of the Highway Traffic Act and amendments thereto, regardless of whether it is required at the time of inspection, and includes all vehicles or vessels that are wrecked, discarded, dismantled or abandoned, or a vehicle or vessel which has had part or all of its superstructure or motor power removed;
- e) "Land" includes a yard or vacant lot;
- f) "Motor vehicle" includes an automobile, motorcycle, snowmobile, off-road vehicle and any other vehicle or equipment propelled or driven otherwise than by muscular power;
- g) "Municipal Act 2001" means the Municipal Act, 2001 S.O. 2001, c. 25, as amended.
- h) "Manager" means the Manager of Licensing and Enforcement, including designated persons to act on behalf of the manager;
- i) "Natural Garden Area" means a yard, or any portion thereof, containing vegetative growth deliberately implemented to produce ground cover, including one or more species of wildflowers, shrubs, perennials, grasses or combinations of them, whether native or non-native consistent with a managed and natural landscape, other than Turfgrass;
- j) "Nuisance Litter" means any condition, including waste material, that is found or stored upon lands, that is likely to create an immediate hazard or nuisance to other persons or lands by entrapment, odour or by attracting animal/vermin; including natural or intentional accumulations of fruit, vegetables and other discarded materials, including compost, not kept in accordance with this By-law,

or other waste materials that migrate from the owners' lands onto other surrounding lands including public lands, by any reason including wind or other environmental factors;

- k) "Officer" means a Municipal Law Enforcement Officer for the City or a police officer;
- l) "Order" means an order to complete required work or to stop work from continuing, that is issued under this By-law;
- m) "Owner" means any person, firm, or corporation having control over all or any portion of the property under consideration and includes the persons present at the property;
- n) "Public land" means any land under the ownership, management or jurisdiction of the City or a provincial or federal government authority;
- o) "Turfgrass" means ground cover of various perennial grasses grown for lawns, of a type that forms a dense, uniform turf if mown;
- p) "Vacant land" means a lot that does not have a structure situated on it and/or does not contain an established principal use;
- q) "Waste material" includes refuse, garbage, debris, litter, domestic waste, industrial waste of any kind whatsoever and, without limiting the generality of the foregoing, includes:
 - (i) weighty or bulky items such as appliances or furniture;
 - (ii) vehicles, vessels, other motor-powered equipment and any parts thereof which, in its present state, appears discarded, inoperative, wrecked, partially or wholly dismantled, or not immediately available for the use it was originally manufactured for;
 - (iii) broken concrete, patio stones, bricks or pallets;
 - (iv) unused building material or material resulting from construction or demolition;
 - (v) yard waste, brush, fallen trees or tree limbs and branches except where integrated into a planned Naturalized Garden Area that does not otherwise create a nuisance litter or other hazard condition;
 - (vi) animal and human feces;
 - (vii) unused tire or accumulations of unused tires;
 - (viii) unused or derelict lawnmowers, lawn tractors or similar mechanical devices and mechanical or electrical parts;
 - (ix) any discarded item that is not specifically designed for outdoor use or storage.
- r) "Yard" means any open space on the same lot with a main building or structure, unoccupied and unobstructed from the ground to the sky.

4. MAINTENANCE OF LAND

- 4.1 Every owner of land shall keep the land clean and cleared of waste material at all time.
- 4.2 Subsection 4.1 does not apply to lands where construction or demolition work is actively proceeding under a building permit issued by the City and the waste materials are a direct result of those approved works, provided the waste material is contained to those portions of land reasonably necessary to support the active work currently being undertaken.
- 4.3 No person or Owner shall place or store, or permit to be placed or stored, any objects or material of any kind whatsoever, on vacant land within areas of the City that are zoned for residential purposes, except where expressly permitted, pursuant to City's applicable Zoning By-law and in accordance with any other applicable legislation.
- 4.4 Outdoor storage, when authorized by subsection 4.3 above, shall only be permitted in twenty-five percent (25%) of the rear-yard and/or side-yard(s) and must be neatly arranged or stored and in a manner that contains litter, does not attract vermin and is not degraded by exposure to the elements that could affect future use of the stored item, for its' original purpose.
- 4.5 No Owner shall fail to keep land clean and clear of waste material or store items contrary to this By-law.
- 4.6 No Owner shall cause or permit any nuisance litter to arise from the use of land.
- 4.7 Notwithstanding subsection 4.3 and 4.4 above, composting may occur when it is neatly contained in a purpose built or manufactured container and screened from view of adjoining lands, does not create offensive odours, attract vermin or other animals.

5. LITTERING AND DUMPING

- 5.1 No person shall throw, place, deposit or dump or permit or cause to be permitted, the throwing, placing, depositing or dumping of waste material on private land or public land.
- 5.2 Notwithstanding the above, nothing in this by-law shall be deemed to interfere with the filling or raising of land with earth or rock fill or with the disposal of waste on any lands which have been designated for that purpose by a by-law of the City, and in compliance with any other applicable legislation.

6. MAXIMUM GROWTH

- 6.1 No Owner shall permit the growth of Turfgrass on private land to exceed twenty (20) centimeters in height and shall cut the Turfgrass on their land whenever the growth of Turfgrass exceeds 20 centimeters in height or length.
- 6.2 Subsection 6.1 of this by-law does not apply to Land exceeding two and forty-three one hundredths hectares (2.43 ha) or six acres (6a) in size.

7. MAINTENANCE OF VEGETATIVE GROWTH

7.1 The Owner of private land shall maintain all vegetative growth on their land according to the following requirements:

- a) Private land shall be kept free of any prohibited local plant listed in Schedule A;
- b) Vegetative growth on private land shall not obstruct sidewalks or roadways;
- c) Vegetative growth on private land shall not restrict driver and pedestrian sight lines at intersections, driveways, sidewalks, walkways, or visibility to all traffic control devices; and
- d) Vegetative growth, which is not cultivated and maintained as part of a Natural Garden Area, shall be controlled so as to prevent a nuisance or hazard to develop or be created;
- e) Any other conditions respecting health and safety as the Manager considers advisable.

8. INOPERATIVE MOTOR VEHICLE STORAGE/END DATE JULY 1, 2025

- 8.1 No person or Owner shall permit the outdoor storage of more than one (1) inoperative motor vehicle on private land that is zoned and used for residential purposes.
- 8.2 It is a condition of storage of an inoperative vehicle permitted in subsection 8.1, that it be fully and completely covered with a weather-resistant canvas or similar opaque cover, specifically designed to properly fit and cover the vehicles or vessels, and that the cover is maintained from deterioration and secured from flapping in a windy environment that creates a noise nuisance.
- 8.3 Notwithstanding the above, subsection 8.1 shall not apply to the storage of motor vehicles and parts which are reasonably necessary for the conduct of a bona fide business lawfully conducted on the property.
- 8.4 Notwithstanding the above, subsection 8.2 and the requirements to completely cover an inoperative vehicle or vessel with a cover that is specifically designed to properly fit and cover the vehicles or vessels, such requirement for a specifically designed cover shall come into effect at a date one year after the date of passing of this By-law.
- 8.5 Notwithstanding subsection 8.1 above, no Owner shall permit the outdoor storage of any inoperative vehicle on any private land that is zoned for residential purposes after July 1, 2025, except under the authority of a short-term storage permit that will be enabled at that time.

9. GRADING AND FILLING OF LAND, HAZARDS

- 9.1 All lands shall be graded, filled up or otherwise drained so as to prevent recurrent pooling of storm water.

- 9.2 No Owner shall permit or allow any holes, pits, excavations, or trenches constituting a health, fire or safety hazard upon such land.
- 9.3 Every Owner of property shall prevent, correct, or remedy any conditions found thereon that could reasonably create a health, safety, or fire hazard to any persons who may enter that land or any users of adjacent City lands or highways.
- 9.4 Notwithstanding the above subsection 9.1, this requirement does not relieve the Owner from first obtaining any other regulatory approvals or complying with any other government legislation in fulfilling the section's requirements.

10. WORK ORDER

- 10.1 Where the Officer has reasonable grounds to believe that a contravention of this By-law has occurred, the Officer may make an Order requiring the person who contravened this By-law to do work to correct the contravention.
- 10.2 An Order under subsection 10.1 of this by-law shall set out:
- a) reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred; and
 - b) the work or remedial action required to be done and the date by which the work or remedial action must be done.
- 10.3 An Order under subsection 10.1 of this by-law may require work or remedial action to be done even though the facts which constitute the contravention of this by-law were present before this by-law came into force.
- 10.4 Any person who fails to comply with an Order issued under subsection 10.1 of this by-law, is guilty of an offence.

11. STOP WORK ORDER

- 11.1 Where the Officer has reasonable grounds to believe that a contravention of this by-law has occurred, the Officer may make an Order requiring the person who contravened this by-law to do work to discontinue the contravening activity.
- 11.2 An Order under subsection 11.1 of this By-law shall set out:
- a) reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred; and
 - b) the date by which there must be compliance with the order.
- 11.3 Any person who fails to comply with a stop work Order issued under subsection 11.1 of this By-law is guilty of an offence.

12. SERVICE OF ORDER

- 12.1 An Order may be delivered in person to an Owner, at the address of lands that are subject of the order or left with an inmate therein that is over that apparent age of eighteen years, or
- 12.2 An Order may be sent via e-mail or text to an e-mail address or phone number that has been supplied for a communication purpose and will be deemed served only

when such e-mail or text is acknowledged as being received and is not an auto-reply, or

- 12.3 An Order may be sent via registered mail to the last known address supplied to the City's tax office and shall be deemed to be delivered on the fifth (5th) day after the date mailed, or
- 12.4 An Order may be posted in a conspicuous place on the property or placed in any open mail receptacle in proximity to the main entrance and shall be deemed to be delivered on the seventh (7th) day after being affixed/deposited.
- 12.5 It is an offence for any person other than the Owner to remove, tear down, or interfere with any Notice or Order posted on the property.

13. WHERE ORDER TO FOLLOW COMPLIANCE ACTION

- 13.1 Where the condition of Land is such that it does, or is likely to, constitute a safety hazard to the public and/or a health hazard from nuisance litter or waste materials, the Officer may institute remedial actions, without first giving an order, and may pursue cost recovery in the same manner as if an order been issued in advance and not complied with.
- 13.2 Where remedial actions are carried out prior to an order being issued; the Officer shall at the earliest reasonable opportunity, issue and serve the order to the owner of property.

14. INSPECTIONS / ENTRY POWER

- 14.1 An Officer, in accordance with the powers of entry set out in subsection 435(1) and 436(1) of the Municipal Act 2001, may enter onto land at any reasonable time for the purpose of carrying out an inspection to determine whether or not compliance exists for:
 - a) any requirements of this by-law and/or the conditions of any permit issued thereunder;
 - b) any direction or order issued by the municipality, under this By-law;
 - c) any court order issued pursuant to subsection 431 of the Municipal Act 2001
- 14.2 An Officer conducting an inspection authorized in subsection 14.1, for the purposes of that inspection, may do the following:
 - 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 purposes of making copies or extracts;
 - c) require information from any person concerning a matter related to the inspection; and
 - 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.

15. OBSTRUCTION PROHIBITED

- 15.1 No person, including the Owner, shall impede, interfere, or obstruct an Officer in the execution of their duties and the inspection of property required under subsection 14, by doing any act or refusing an Officer direction, including any request for access to enter and inspect any property or structure thereon, except those actual areas used as a dwelling unit.
- 15.2 No person, including the Owner, shall obstruct an Officer by providing any false or misleading information.
- 15.3 It is an Offence for any person to obstruct an Officer in the discharge of their duties.

16. PENALTIES

- 16.1 Any person who fails to comply with any requirement of this By-law is guilty of an offence, and shall upon conviction be liable to a penalty as set out in section 61 of the Provincial Offences Act, R.S.O. 1990, c. P.33, as amended from time to time, or any successor thereof.
- 16.2 Any person who contravenes a provision of this By-law is also subject to a system of fines set out in section 429 of the Municipal Act, 2001, and all contraventions of this By-law are designated as continuing offences for each day they continue.
- 16.3 Every person who is convicted of an offence is liable to a minimum fine of three hundred dollars (\$300.00) and a maximum fine of five thousand dollars (\$5,000.00) for the first offence and a maximum fine of ten thousand dollars (\$10,000.00) for any subsequent conviction under the By-law, to the maximum prescribed in the Municipal Act 2001.
- 16.4 In addition to the fine amounts set out in subsection 16.1 and 16.3, for each day or part of a day that an offence continues, the minimum fine shall be three hundred dollars (\$300) per day or part day for the first conviction, but the total of all daily fines shall not exceed five thousand dollars (\$5,000) for the first conviction, where the convictions are registered to a person that is not a corporation.
- 16.5 Where a corporation is convicted of a second and subsequent conviction, the minimum fine shall not be less than five thousand dollars (\$5,000) for each subsequent conviction to a maximum fine of one hundred thousand dollars (\$100,000).
- 16.6 In addition to any monetary penalty any court of competent jurisdiction may, pursuant to section 431 of the Municipal Act, issue an order prohibiting the continuation or repetition of the offence by the person convicted.

17. REMEDIAL ACTION

- 17.1 If a person fails to do a matter or thing as directed or required by this By-law, including to comply with an order under this By-law, the City may, in default of it being done by the person directed or required to do it, do the matter or thing at the person's expense. The City may recover the costs of doing a matter or thing from

the person directed or required to do it by action or by adding the costs to the tax roll for the property and collecting them in the same manner as property taxes.

- 17.2 The costs outlined in subsection 18.1 of this By-law shall include any fees and charges imposed by the City in accordance with this By-law in relation to the matters identified in subsection 18.1.
- 17.3 The amount of the costs, including interest, constitutes a lien on the land upon the registration in the proper land registry office of a notice of lien. The lien is in respect of all costs that are payable at the time the notice is registered plus interest accrued to the date the payment is made. Upon receiving payment of all costs payable plus interest accrued to the date of payment, the City shall register a discharge of the lien in the proper land registry office.

18. EXEMPTIONS

18.1 Nothing in this By-law shall affect:

- a) Any right or duty of the City with respect to any highway right of way; or
- b) The application and enforcement of the Weed Control Act with respect to noxious weeds growing on land, including within a natural garden.

19. GENERAL PROVISIONS

- 19.1 In the event of any conflict between this By-law and any other By-law of the City, the more restrictive shall prevail unless the context requires otherwise.
- 19.2 Should any provision of this By-law be declared invalid by a court of competent jurisdiction, the same shall not affect the validity of the By-law as a whole or any part thereof, other than the part which was declared to be invalid.
- 19.3 By-law 068-2008, as amended, is repealed.
- 19.4 Despite subsections 19.3 and 19.5 of this By-law, after the passage of this By-law, By-law 068-2008 shall remain in effect for the purposes of concluding any legal and/or court processes that commenced under its provisions that had not been concluded upon enactment of this By-law.
- 19.5 This By-law shall come into force and take effect upon final passing thereof.

Enacted and passed this 12th day of September, A.D. 2022 as witnessed by the Seal of the Corporation and the hands of its proper Officers.

Bill Mauro

Mayor

Krista Power

City Clerk