

# **TOWN OF SMITHS FALLS**

## **YARD BY-LAW NO. 10414-2023**

A By-law requiring yards to be maintained and safe

**WHEREAS** Section 9 of the Municipal Act, 2001, S.O. 2001, c.25, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purposes of exercising its authority under the Municipal Act, 2001 or any other Act; and

**WHEREAS** Sections 8, 9 and 11 of the Municipal Act, 2001 permit a municipality to pass by-laws necessary or desirable for municipal purposes, and in particular paragraphs 5, 6 and 8 of Subsection 11(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 permits a municipality to pass by-laws requiring an owner or occupant of land to clean and clear the land, not including buildings, to clear refuse or debris from the land, not including buildings, for regulating when and how such matters shall be done, for prohibiting the disposal of refuse or debris on land without the consent of the owner or occupant of the land, and for defining "refuse"; and

**WHEREAS** Section 128 of the Municipal Act, 2001 permits a municipality to pass by-laws to 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 129 of the Municipal Act, 2001 permits a municipality to pass by-laws to prohibit and regulate with respect to odour and dust; and

**WHEREAS** Section 131 of the Municipal Act, 2001, permits a municipality 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 permits a municipality to pass by-laws providing that any person who contravenes any by-law of the municipality passed under the Municipal Act, 2001 is guilty of an offence; and

**WHEREAS** Section 436 of the Municipal Act, 2001 permits a municipality to pass by-laws providing that the municipality may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether or not a by-law passed under the Municipal Act, 2001, or a direction or order made under such a by-law are being complied with; and

**WHEREAS** Subsection 444(1) of the Municipal Act, 2001 permits a municipality, if satisfied that a contravention of a by-law of the municipality passed under the Municipal Act, 2001 has occurred, to make an order requiring the person who contravened the by-law or who caused or permitted the contravention, or the owner or occupier of the land on which the contravention occurred, to discontinue the contravening activity; and

**WHEREAS** Subsection 445(3) of the Municipal Act, 2001 permits a municipality to require that work be done pursuant to Subsection 445(1) even though the facts which constitute the contravention of the by-law were present before the by-law making them a contravention came into force; and

**WHEREAS** Subsection 446(1) of the Municipal Act, 2001 provides that if a municipality has the authority under the Municipal Act, 2001 or any other Act, or under a by-law under the Municipal Act, 2001 or any other Act, 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; and

**WHEREAS** Subsection 446(2) of the Municipal Act, 2001 provides that a municipality may enter upon land at any reasonable time for the purposes of Subsection 446(1); and

**WHEREAS** Subsection 446(3) of the Municipal Act, 2001 permits a municipality to recover the costs of doing a matter or thing under Subsection 446(1) from the person directed or required to do it by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes.

**NOW THEREFORE** the Council of the Corporation of the Town of Smiths Falls enacts as follows:

### **SHORT TITLE**

1. This by-law may be cited as the "Yard By-law" or the "Town of Smiths Falls Yard By-law".

### **SCOPE**

2. The provisions of this by-law shall apply to all lands within the boundaries of the Town of Smiths Falls.

### **DEFINITIONS AND INTERPRETATIONS**

- 3.1 In this by-law:

"Committee" means the Property Standards Committee established by the Town of Smiths Falls Property Standards By-law;

"Corporation" means the Corporation of the Town of Smiths Falls.

"Debris" shall mean wreckage, ruins, litter, garbage, refuse, trash, scattered remains of something destroyed and includes, without limitation, disused materials, devices, parts and equipment of any kind whatsoever.

"Ditch" means that part of a Highway that was designed or exists for the purpose of storing or carrying storm water.

"Ground Cover" shall mean organic or non-organic material applied to prevent soil erosion in a yard.

"Habitat Log(s)" means coarse, dead wood specifically chosen and deliberately placed in a yard to provide ecological habitat or shelter to wildlife.

"Hardscaping" means any paving stone, boulder, stone, gravel, concrete, asphalt, rail, or any other hard material.

"Land(s)" means ground(s), yard(s) or vacant lot(s).

"Last Known Address" means the address which appears on the latest revised assessment roll of the Corporation.

"Landscaped Area" means land that has been deliberately modified through the inclusion of one or more species of plants, shrubs, hedges, trees, hardscaping or a combination thereof.

"Lot" means any parcel of land described in a registered deed or shown in a registered plan of subdivision which is capable of being legally conveyed from one (1) party to another and including any parts of the parcel which are subject to right of easement.

"Plant" means any vegetation that is not a shrub, hedge, or tree.

"Pest(s)" means rodents, vermin or insects that are detrimental to humans or damaging to human concerns such as structures, crops, livestock or food.

"Property Standards Officer" means a person appointed by by-law of the Corporation as a Property Standards Officer.

"Owner" includes:

- a. The person for the time being managing or receiving the 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, or who would receive the rent if the land and premises were let; and
- b. A lessee or occupant of the land who, under the terms of a lease, is required to repair and maintain the land.

"Refuse" means any article, thing, matter, substance or effluent that:

- a. Has been cast aside, discharged or abandoned;
- b. Is discarded 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 shall include domestic, construction, institutional or industrial waste, and provided further that waste does not cease to be refuse by reason that it may be commercially saleable or recyclable.

"Shrub" means a low woody perennial plant usually having several major branches.

"Town" means the Town of Smiths Falls.

"Turfgrass" means ground cover of various perennial grasses grown for lawns, or a type that forms a dense, uniform turf if mown.

"Yard" shall mean any open, uncovered, unoccupied space appurtenant to a building on a residential, non-residential, or vacant property used or capable of being used in connection with the property, and includes driveways, parking areas, walkways, gardens, playgrounds, swimming

pool areas, unenclosed decks unenclosed porches, unenclosed carports and unenclosed garages.

"Waste" has the same meaning as Refuse.

- 3.2 If a term is not otherwise defined in the Yard By-law then the definition in the Town of Smiths Falls Property Standards By-law shall apply.

### **GENERAL PROVISIONS**

- 4.1. No person shall make, permit to be made or have upon a Lot under their control any excavation without erecting a good and sufficient fence, railing or barrier completely around such excavation, and maintain the same so long as in the opinion of the Town, may be necessary for the protection and safety of the public, provided however that any such excavation shall not be permitted to remain for a period of longer than forty-five (45) days without written permission from the Town.
- 4.2. No person shall permit any Lot under their control to become a nuisance, unsanitary and/or dangerous owing to inadequate or improper drainage.
- 4.3. No person shall permit any Lot under their control to contain prohibited or noxious weeds, as listed in Schedule A.
- 4.4. No person shall permit any Lot under their control to become untidy, unsanitary and/or dangerous owing to the storage thereon of any matter or thing or to the deposit or storage thereon of any refuse, offal or excreta.
- 4.5. Notwithstanding the provisions of any part of Section 4, this By-law shall not be deemed to prohibit the temporary storing of automotive and mechanical equipment, salvage and similar material which is required for business purposes as part of an operating business for a maximum of forty-five (45) days.
- 4.6. All persons shall ensure that all steps, pedestrian walkways, driveways, parking spaces and other similar areas on a Lot under their control are maintained so as to afford clear, unobstructed and safe passage by pedestrians and vehicles at all times.
- 4.7. All persons shall ensure that any Lot under their control is graded, filled up or otherwise drained so as to prevent the recurrent ponding of storm water.

### **MAINTENANCE OF YARDS**

- 5.1. Yards shall be kept free and clear of any:
- a. Debris;
  - b. Wrecked, dismantled, inoperative, discarded, unused, or unlicensed vehicles or trailers, whether exposed to view or covered over by means of a tarpaulin or other cover, except in a licenced establishment authorized to conduct or operate a wrecking business;
  - c. Machinery or parts thereof, or other objects or parts thereof, or accumulation of material;
  - d. Holes that may create a health, fire, or accident hazard;

- e. Dilapidated, collapsed or unsafe structures;
  - f. Partially constructed structures which are not currently under construction;
  - g. Old or dilapidated furniture, vehicles, fixtures or any appliances; and,
  - h. Animal excrement.
- 5.2. Landscaped areas shall be kept trimmed and maintained as to not hinder pedestrian and vehicular traffic. Turfgrass shall be no excess of 20 centimetres in height, measured from grade to the topmost growth of the vegetation.
- 5.3. The Town may, in its sole discretion, have a yard inspected by a Landscape Architect having full membership in the Ontario Association of Landscape Architects, and require the Landscape Architect to prepare a written report giving details of the Landscape Architect's findings, to address a concern about the use of plants, shrubs, hedges, trees, commercially-available hardscaping materials, habitat logs, the presence of any noxious weeds or any other modifications to the yard.
- 5.4. A landscaped area shall:
- a. Not encroach onto any adjacent lot and;
  - b. Comply with the maximum height regulations respecting sight line triangles as defined by the Zoning By-law.
- 5.5. All hedges, shrubs, trees or other plants shall be planted and maintained in a manner that does not:
- a. Adversely affect the safety of pedestrians;
  - b. Adversely affect the safety of vehicular or pedestrian traffic;
  - c. Constitute an obstruction of view for vehicular or pedestrian traffic, but this does not prevent the existence of a hedge that is 1 metre or less in height within a sight triangle; or
  - d. Wholly or partially conceal or interfere with the use of any hydrant or water valves.
- 5.6. Yards with exposed soil shall be cultivated or protected by groundcover or hardscaping which prevents the erosion of the soil, accumulation of dust or dirt from spreading to neighbouring properties and unstable soil conditions.
- 5.7. Firewood shall be neatly piled in rear or interior side yards only.
- 5.8. Despite the requirements of this section, temporary storage of materials or debris resulting solely from the construction, demolition or alteration of a building or part thereof may be placed on the yard, provided that,
- a. It is removed in its entirety from the yard after construction, demolition, or alteration works have been completed;
  - b. It will not cause risk to the health or safety of any persons;

- c. It does not visually obstruct pedestrian and vehicle traffic; and
  - d. A proper containment device is used as to prevent dust or dirt from spreading to neighbouring properties.
- 5.9. Any furniture that is used outdoors shall be:
- a. Kept in a clean, neat and tidy condition; and
  - b. Maintained in good repair.
- 5.10. An owner shall not allow a yard to remain in a state causing inadequate or improper drainage for longer than seven (7) days unless the yard is:
- a. A construction site for which a site alteration permit and/or a building permit is in effect and a proper sediment control device is in use;
  - b. A yard being developed under a subdivision or registered site plan agreement with the Town; or,
  - c. A yard upon which material is being stored with the approval of the Town in connection with a public works contract.
- 5.11. An owner shall not allow a yard to be left in an uncovered state, meaning not covered by sod, seed or landscaping, for longer than thirty (30) days unless the yard is:
- a. A construction site for which a site alteration permit and/or a building permit is in effect;
  - b. A yard being developed under a subdivision or registered site plan agreement with the Town; or,
  - c. Being actively farmed.
- 5.12. A tree, shrub, hedge or other plant, or limb or branch of it, that is dead, diseased, decayed or damaged such that it could create an unsafe condition or cause harm to the public or property shall be removed from the yard or otherwise pruned to remove the dead, diseased, dying or dangerous portions.
- 5.13. Subsection 5.12 shall not apply to habitat logs deliberately placed in yards so as to provide additional wildlife shelter as long as habitat logs are:
- a. Placed in areas that do not hinder pedestrian traffic on a public sidewalk; and
  - b. Free of pests.
- 5.14. The Town may, by Council resolution, elect not to enforce section 5.1.b of this by-law during the month of May for the purposes of promoting environmental sustainability.

### **LANDSCAPING AND VEGETATION**

- 6.1. Where landscaping, parking areas, walkways, steps, hedges, trees, fences, curbs, or similar changes to a yard have been required by the Town as a condition of development or

redevelopment, such works shall be repaired and maintained so as to ensure continuous compliance with the Town's requirements.

- 6.2. All shrubs, hedges, trees, habitat logs, landscaped areas or hardscaping planted and/or constructed after the date of adoption of this By-law shall be placed at a minimum of 1.5 metres from the backside of the sidewalk, and/or 3 metres from the street or curb, unless specified otherwise.

### **ENFORCEMENT AND PENALTIES**

- 7.1. When any Lot is not maintained pursuant to the provisions of this By-law, the Property Standards Officer may send a notice by registered mail or delivered by hand to the owner's last known address requiring them to make the Lot conform to the requirements of this By-law. Such notice shall specify the infraction, the requirements to bring the Lot into compliance and the time allowed to achieve compliance.
- 7.2. If the owner disagrees with the notice in section 7.1, then:
- a. The owner may request a review of the notice by the Property Standards Committee;
  - b. The time period allowed for compliance does not begin until the decision of the Property Standards Committee is final;
  - c. The Town shall engage a Landscape Architect to prepare the report in section 5.3, where the disagreement pertains to the owner's use of plants, shrubs, hedges, trees, commercially-available hardscaping materials, and/or habitat logs, or the existence of prohibited or noxious weeds listed on Schedule A, in which case the report shall be provided to the owner and the Property Standards Committee no less than two (2) weeks before the meeting of the Property Standards Committee to conduct the review; and,
  - d. Once a decision is rendered by the Property Standards Committee then the time allowed for compliance begins, as appropriate.
- 7.3. If the owner fails to comply with the notice issued pursuant to section 7.1 within the specified time, subject to section 7.2, the Town, in addition to all other remedies:
- a. Shall have the right to restore the lands in accordance with the order and for this purpose may enter in and upon the Lot with its employees and agents from time to time to; and
  - b. Shall not be liable to compensate such owner or occupant or any other person having an interest in the Lot by reason of anything done by or on behalf of the Town under the provisions of this section.
- 7.4. Where the Town restores the lands pursuant to section 7.3 the Town may recover the expense incurred in respect thereof by any or all of the methods provided for in the Municipal Act.
- 7.5. Every person who contravenes any provision of this by-law is guilty of an offence as provided for in subsection 429(1) of the Municipal Act, 2001, and all such offences are designated as continuing offences as provided for in subsection 429(2)(a) of the Municipal Act, 2001.

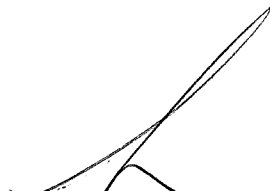
- 7.6. A person who is convicted of an offence under this by-law is liable, for each day or part of a day that the offence continues, to a minimum fine of \$500.00 and a maximum fine of \$10,000.00 and the total of all continuing offences is not limited to \$100,000.00 as provided for in subsection 429(3)2. of the Municipal Act, 2001.
- 7.7. When a person has been convicted of an offence under this by-law, the Provincial Offences Court or any court of competent jurisdiction thereafter may, in addition to any penalty imposed on the person convicted, issue an order:
- Prohibiting the continuation or repetition of the offence by the person convicted; and
  - Requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate.

### **REPEAL OF FORMER BY-LAW AND COMING INTO FORCE**

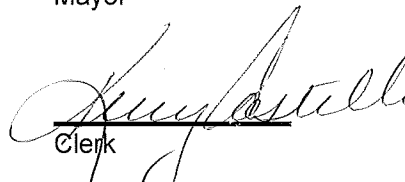
- 8.1. By-law 7122-96 is hereby repealed.
- 8.2. The provisions of this by-law shall come into force and take effect on the passing thereof.

Read a first and second time this 6 day of February, 2023

Read a third time and passed this 6 day of February, 2023



Mayor



Clerk

### **Schedule A**

#### **Prohibited and Noxious Weeds**

| Item | Common Name                | Scientific Name                       |
|------|----------------------------|---------------------------------------|
| 1    | Black Dog-strangling Vine  | <i>Vincetoxicum nigrum/rossicum</i>   |
| 2    | Buckthorn, European/Common | <i>Rhamnus cathartica</i> L.          |
| 3    | Buckthorn, Glossy          | <i>Frangula alnus</i>                 |
| 4    | Coltsfoot                  | <i>Coltsfoot tussilago farfara</i> L. |
| 5    | Common Barberry            | <i>Berberis vulgaris</i> L.           |
| 6    | Common Crupina             | <i>Crupina vulgaris</i> , Cass.       |
| 7    | Cypress Spurge             | <i>Euphorbia cyparissias</i> L.       |
| 8    | Dodder spp.                | <i>Cuscuta</i> spp.                   |
| 9    | Dog-strangling Vine        | <i>Cynanchum rossicum/louiseae</i>    |
| 10   | Garlic mustard             | <i>Alliaria petiolata</i>             |



|    |                    |   |
|----|--------------------|---|
| 11 | Giant Hogweed      | <i>Heracleum mantegazzianum</i> Sommier & Levier    |
| 12 | Hemlock, poison    | <i>Conium maculatum</i> L.                          |
| 13 | Jointed goatgrass  | <i>Aegilops cylindrica</i> Host                     |
| 14 | Japanese knotweed  | <i>Reynoutria japonica</i> var. <i>japonica</i>     |
| 15 | Knapweed spp.      | <i>Centaurea</i> spp.                               |
| 16 | Kudzu              | <i>Pueraria montana</i> (Lour.) Merr.               |
| 17 | Leafy Spurge       | <i>Euphorbia esula</i> L.                           |
| 18 | Phragmites         | <i>Phragmites australis</i> subsp. <i>australis</i> |
| 19 | Poison-ivy         | <i>Toxicodendron radicans</i> (L.) Kuntze           |
| 20 | Purple loosestrife | <i>Lythrum salicaria</i>                            |
| 21 | Ragweed spp.       | <i>Ambrosia</i> spp.                                |
| 22 | Serrated tussock   | <i>Nassella trichotoma</i> Hackel ex Arech.         |
| 23 | Smooth bedstraw    | <i>Galium mollugo</i> L.                            |
| 24 | Sow-thistle spp.   | <i>Sonchus</i> spp.                                 |
| 25 | Tansy Ragwort      | <i>Senecio jacobaea</i> L.                          |
| 26 | Thistle, Bull      | <i>Cirsium vulgare</i> (Savi) Tenore                |
| 27 | Thistle, Canada    | <i>Cirsium arvense</i> (L.) Scopoli                 |
| 28 | Wild chervil       | <i>Anthriscus sylvestris</i> (L.) Hoffmann          |
| 29 | Wild parsnip       | <i>Pastinaca sativa</i> L.                          |
| 30 | Woolly Cupgrass    | <i>Eriochloa villosa</i> (Thunb.) Kunth             |