

TOWN OF SMITHS FALLS

YARD BY-LAW NO. XXXX-2022

A By-law requiring yards to be clean 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 permits 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".

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:

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

"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.

"Hard Landscaping" 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.

"Lot" means a parcel of land in the Town.

"Naturalized Area" means a landscape area that has been deliberately implemented to produce ground cover which consists of one or more species of wildflowers, annuals, perennials, shrubs and grasses or a combination thereof.

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

"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.

"Pests" means rodents, vermin or insects that are detrimental to humans or damaging to human concerns such as crops, livestock or food supplies

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

- c. has been cast aside, discharged or abandoned;
- d. is discarded from its usual and intended use; or
- e. is used up, in whole or in part, or expended or worn out in whole or in part, and shall include domestic, construction 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, of a type that forms a dense, uniform turf if mown.

"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 within the boundaries of the Town permit any lands under their control to become unhealthy, unsanitary or dangerous owing to any excavation therein and such person shall, upon written demand and to the satisfaction of the Town Engineer, immediately fill any excavation.

- 4.2. No person shall make, permit to be made or have upon lands under their control any temporary excavation near or adjacent to any street within the Town without erecting a good and sufficient protection fence, railing or barrier completely around such excavation, and maintain the same so long as in the opinion of the Town Engineer, may be necessary for the protection and safety of the public, provided however that any such temporary excavation shall not be permitted to remain for a period of longer than forty-five (45) days.
- 4.3. No person shall have upon any lands any pit which may be dangerous to any person entering upon the said lands unless the same is, in the opinion of the Town Engineer, effectively protected by a fence, barrier or railing and such person shall, upon demand and to the satisfaction of the Town Engineer, fill any excavation or erect such protective fence, barrier or railing.
- 4.4. No person shall permit any lands under their control to become unhealthy, unsanitary or dangerous owing to inadequate or improper drainage, the same shall upon demand and to the satisfaction of the Town Engineer be adequately and properly drained by the owner or occupier thereof, and for the purposes of this section the Town Engineer may order any private drain be altered, re-laid or repaired.
- 4.5. No person shall permit any lands under their control to become unhealthy, unsanitary, dangerous, or unsightly owing to the growth of weeds or vegetation other than lawful and properly cultivated crops, proper gardens, and proper landscaping in accordance with this By-law, the same shall upon demand and to the satisfaction of the Property Standards Officer, be cleared by the owner or occupier thereof.
- 4.6. No person shall permit any land under their control to become untidy, unsightly, unsanitary, unhealthy or dangerous owing to the storage thereon of any matter or thing or to the deposit thereon any waste, junk, debris, rubble, rubbish, litter, trash, refuse, garbage, offal or excreta, the same shall upon the demand and to the satisfaction of the Property Standards Officer, be cleaned.
- 4.7. 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.
- 4.8. Any business temporarily storing automotive and mechanical equipment, salvage and similar material which is required for business purposes shall be situated in a zone which permits such business, provided buffering acceptable to the Council of the Corporation when the lands are adjacent to any residential zone and complies to the Town's zoning regulations.
- 4.9. All steps, pedestrian walkways, driveways, parking spaces and other similar areas on their land are maintained so as to afford clear, unobstructed and safe passage by pedestrians and vehicles.
- 4.10. All lands shall be 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. rubbish, garbage, refuse, salvage, or other debris;

- b. growth of turfgrass and/or weeds as listed in Schedule A in excess of 20 cm, measured from grade to the topmost growth of the vegetation;
 - c. plant, hedge, tree and/or branch located on private property that is likely to hinder pedestrian traffic on a public sidewalk which could create an unsafe condition;
 - d. plant, hedge, shrub and/or tree that restrict driver and pedestrian sight lines at intersections, driveways, sidewalks, walkways, or visibility to all traffic control devices;
 - e. 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 or authorized to conduct or operate a wrecking business;
 - f. machinery or parts thereof, or other objects or parts thereof, or accumulation of material that creates an unsafe condition or which is not in keeping with the neighbouring properties;
 - g. holes and excavations that may create a health, fire, or accident hazard;
 - h. dilapidated, collapsed or partially constructed structures which are not currently under construction;
 - i. old or dilapidated furniture, fixtures or any appliances;
 - j. animal excrement.
- 5.2. Yards shall be kept trimmed and not be overgrown or in an unsightly condition out of character with the surrounding environment.
- 5.3. Subsection 5.2 shall not apply to yards which have been landscaped or maintained with materials such as:
- a. trees, shrubs, ornamental grasses or flowers;
 - b. decorative stonework, walkways or screening;
 - c. any commercially-available horticultural or landscape architectural elements.
- 5.4. If there is any question about the suitability of the landscaping materials in Section 5.2, then the Town may have the yard inspected by a Landscape Architect having full membership in the Ontario Association of Landscape Architects, and a written report giving details of the Landscape Architect's findings be submitted to the Town.
- 5.5. A landscaped area purposefully designed to appear as naturalized area on private land shall:
- a. not encroach onto any adjacent property and;
 - b. comply with the maximum height regulations respecting sight line triangles as defined by the Zoning By-law.
- 5.6. All hedges, shrubs, trees or other plants shall be planted and maintained in a manner that does not:

- a. adversely affect the safety of the public;
 - 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.
- 5.7. Yards with exposed soil shall be cultivated or protected by groundcover which prevents the erosion of the soil, accumulation of dust or dirt from spreading to neighbouring properties and unstable soil conditions.
- 5.8. No person shall permit any land under their control to become untidy, unsightly, unsanitary, unhealthy or dangerous owing to the storage thereon of any matter or thing or to the deposit thereon any rubbish, garbage, refuse salvage, debris, offal or excreta, the same shall upon the demand and to the satisfaction of the Property Standards Officer, be cleaned.
- 5.9. Firewood shall be neatly piled in rear or interior side yards only.
- 5.10. Despite the requirements of this section, temporary storage of materials or refuse resulting solely from the construction, demolition or alteration of a building or part thereof may be placed on the property, provided that,
- a. it is removed frequently and in its entirety from the property;
 - b. it will not cause risk to the health or safety of any persons; and
 - c. it is not stored in an unsightly manner.
- 5.11. Any furniture that is used outdoors shall be:
- a. kept in a clean, neat and tidy condition; and
 - b. maintained in good repair.
- 5.12. An owner shall not allow a property to remain in an unlevelled state on for longer than seven (7) days unless the lot is:
- a. A construction site for which a site alteration permit and/or a building permit is in effect;
 - b. A lot being developed under a subdivision or registered site plan agreement with the Town; or,
 - c. A lot upon which material is being stored with the approval of the Town in connection with a public works contract.
- 5.13. An owner shall not allow a lot to be left in an uncovered state, meaning not covered by sod, seed or agricultural crop, for longer than thirty (30) days unless the lot is:
- a. A construction site for which a site alteration permit and/or a building permit is in effect;

- b. A lot being developed under a subdivision or registered site plan agreement with the Town;
or,
 - c. Being actively farmed.
- 5.14. A tree or other plant, or limb or branch of it, that is dead, diseased, decayed or damaged shall be removed from the property or otherwise pruned to remove the dead, diseased, dying or dangerous portions of the tree or plant so as to prevent an unsafe condition or damage to any building.

LANDSCAPING AND VEGETATION

- 6.1. Where landscaping, parking areas, walkways, steps, hedges, trees, fences, curbs, or similar changes to a property 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 requirements.
- 6.2. All shrubs, hedge, trees or hard landscaping shall be placed at a minimum 1.5 metres from the backside of the sidewalk, and/or 3 metres from the street or curb.

Vegetation

- 6.3. Every owner or occupant of property shall, keep vegetation in the yard of their property clean and cleared up.
- a. Paragraph 6.3 does not apply to:
 - i. crops being grown on a farm; or
 - ii. a property located outside the urban boundary as delineated in the Town's Official Plan.
 - b. For the purposes of paragraph 6.3, to "clean" or "clear up" means:
 - i. for property located inside the urban boundary that is equal to or less than 0.4 ha in area, to keep all plants cut to a height of equal to or less than 20 cm, except:
 - 1. ornamental plants;
 - 2. hedges, shrubs or trees;
 - 3. cultivated fruits or vegetables; or
 - 4. plants buffering or otherwise protecting a natural feature such as a watercourse;
 - ii. for property located inside the urban boundary that is greater than 0.4 ha in area, to keep all plants with 10 m of any property line cut to a height of equal to or less than 20 cm, except:
 - 1. ornamental plants;

2. hedges, shrubs or trees;
 3. cultivated fruits or vegetables; or
 4. plants buffering or otherwise protecting a natural feature such as a watercourse;
- iii. removal of weeds by the following means:
1. pulling or otherwise removing the plants from the soil;
 2. cutting the roots or stalks of the plants before the seeds have developed sufficiently to ripen after cutting;
 3. turning the soil in which the plants were growing so as to bury and kill the weeds;
 4. in the cases of poison ivy and giant hogweed, treating it with 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 that is contrary to any other law in force in Ontario; or
 5. in a manner consistent with targeted and established provincially endorsed weed management strategies.; and
- iv. to maintain the yard so as to prevent instability including but not limited to the erosion of the soil.
- 6.4. Every owner or occupant of property located within the urban boundary, shall keep any trees in the yard of their property free from dead, decayed or damaged limbs or branches.

ENFORCEMENT AND PENALTIES

- 7.1. When any lands and buildings are not maintained pursuant to the provisions of this by-law, the Property Standards Officer shall send a notice by registered mail or delivered by hand to the owner's last known address requiring them to make the lands and buildings conform to the requirements of this by-law. Such notice shall specify the time allowed for compliance.
- 7.2. If the owner fails to comply with the notice issued pursuant to section 7.1 within the specified time, the Town in addition to all other remedies:
- a. shall have the right to restore the lands accordingly and for this purpose with its employees and agents from time to time to enter in and upon the lands; and
 - b. shall not be liable to compensate such owner or occupant or any other person having an interest in the property by reason of anything done by or on behalf of the Town under the provisions of this section.
- 7.3. Where the Town restores the lands pursuant to section 7.2 the Town may recover the expense incurred in respect thereof by any or all of the methods provided for in the Municipal Act.

- 7.4. 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.
- 7.5. 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 daily fines for the offence is not limited to \$100,000.00 as provided for in subsection 429(3)2. of the Municipal Act, 2001.
- 7.6. When a person has been convicted of an offence under this by-law, the Superior Court of Justice or any court of competent jurisdiction thereafter may, in addition to any penalty imposed on the person convicted, issue an order:
- a. prohibiting the continuation or repetition of the offence by the person convicted; and
 - b. 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 XXth day of MMMM, 2022.

Read a third time and passed this XXth day of MMMM, 2022.

Mayor

Clerk

PROVINCIAL OFFENCES ACT

Part I

IT IS ORDERED pursuant to the provisions of the *Provincial Offences Act* and the rules for the Ontario Court of Justice that the amount set opposite each of the offences in the schedules of offences under the Provincial Statutes and Regulations thereunder and Municipal By-law No. XXXX-XX of the **Town of Smiths Falls** attached hereto are the set fines, including costs, for those offences. This Order is to take effect ____ 2022.

Dated at Ottawa this ____ day of ____ 2022.

_____, Regional Senior Justice
Ontario Court of Justice
East Region

SET FINES FOR INFRACTIONS: Part 1 Provincial Offences

Act TOWN OF SMITHS FALLS

BY-LAW NO. XXXX--XX

TITLE: YARD BY-LAW

ITEM	COLUMN 1 SHORT FORM WORDING	COLUMN 2 PROVISION CREATING OR DEFINING OFFENCE	COLUMN 3 SET FINE
1	Failure to fill excavation	4.1	\$300.00
2	Failure to provide protective fence around excavation	4.2	\$300.00
3	Unhealthy/dangerous yard due to inadequate drainage	4.4	\$100.00
4	Unhealthy/dangerous yard due to weed/vegetation growth	4.5	\$100.00
5	Unhealthy/dangerous yard due to storage of junk/debris	4.6	\$100.00

Note: The penalty provision for the offences listed above are in Section [redacted] of By-law [redacted] a certified copy of which have been filed.

Schedule A

Prohibited Local Weeds

Item	Common Name	Scientific Name
1	Black Dog-strangling Vine	<i>Vincetoxicum nigrum/rossicum</i>
2	Buckthorn, European/Common	<i>Rhamnus cathartica L.</i>
3	Buckthorn, Glossy	<i>Frangula alnus</i>
4	Coltsfoot	<i>Coltsfoot tussilago farfara L.</i>
5	Common Barberry	<i>Berberis vulgaris L.</i>
6	Common Crupina	<i>Crupina vulgaris, Cass.</i>
7	Cypress Spurge	<i>Euphorbia cyparissias L.</i>
8	Dodder spp.	<i>Cuscuta spp.</i>
9	Dog-strangling Vine	<i>Cynanchum rossicum/louiseae</i>
10	Garlic mustard	<i>Alliaria petiolata</i>
11	Giant Hogweed	<i>Heracleum mantegazzianum Sommier & Levier</i>
12	Hemlock, poison	<i>Conium maculatum L.</i>
13	Jointed goatgrass	<i>Aegilops cylindrica Host</i>
14	Japanese knotweed	<i>Reynoutria japonica var. japonica</i>
15	Knapweed spp.	<i>Centaurea spp.</i>
16	Kudzu	<i>Pueraria montana (Lour.) Merr.</i>
17	Leafy Spurge	<i>Euphorbia esula L.</i>
18	Phragmites	<i>Phragmites australis subsp. australis</i>
19	Poison-ivy	<i>Toxicodendron radicans (L.) Kuntze</i>
20	Purple loosestrife	<i>Lythrum salicaria</i>
21	Ragweed spp.	<i>Ambrosia spp.</i>
22	Serrated tussock	<i>Nassella trichotoma Hackel ex Arech.</i>
23	Smooth bedstraw	<i>Galium mollugo L.</i>
24	Sow-thistle spp.	<i>Sonchus spp.</i>
25	Tansy Ragwort	<i>Senecio jacobaea L.</i>
26	Thistle, Bull	<i>Cirsium vulgare (Savi) Tenore</i>
27	Thistle, Canada	<i>Cirsium arvense (L.) Scopoli</i>
28	Wild chervil	<i>Anthriscus sylvestris (L.) Hoffmann</i>
29	Wild parsnip	<i>Pastinaca sativa L.</i>
30	Woolly Cupgrass	<i>Eriochloa villosa (Thunb.) Kunth</i>