



## The Corporation of the Town of Pelham

By-law No. 4496(2022)

### **Being a By-law to regulate the cleaning, clearing and maintenance of land in the Town of Pelham and to repeal By-law No. 4453(2022).**

**WHEREAS** section 8 of the *Municipal Act, 2001*, S.O. 2001, c. 25 ("*Municipal Act, 2001*" or "the statute") provides that the powers of a municipality under the statute or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues;

**AND WHEREAS** section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the statute or any other Act;

**AND WHEREAS** section 11 of the *Municipal Act, 2001* provides that a lower-tier municipality has the authority to pass 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* provides that a municipality may require the owner or occupant of land to clean and clear the land or to clear refuse and debris from the land and to regulate when and how these matters shall be done;

**AND WHEREAS** section 127 of the *Municipal Act, 2001* provides that a municipality may prohibit the depositing of refuse or debris on land without the consent of the owner or occupier of the land;

**AND WHEREAS** section 127 of the *Municipal Act, 2001* further provides that a municipality may define "refuse" for the foregoing purposes;

**AND WHEREAS** section 128 of the *Municipal Act, 2001* 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;

**AND WHEREAS** section 131 of the *Municipal Act, 2001* provides that a municipality may prohibit and regulate the use of 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 391 of the *Municipal Act, 2001* authorizes a municipality to impose fees and charges on persons for services or activities provided or done by or on behalf of the municipality;

**AND WHEREAS** section 425 of the *Municipal Act, 2001* provides that a municipality may pass by-laws providing that a person who contravenes a by-law of the municipality is guilty of an offence;

**AND WHEREAS** section 429 of the *Municipal Act, 2001* authorizes a municipality to establish a system of fines for offences under its by-laws;

**AND WHEREAS** section 434.1 of the *Municipal Act, 2001* authorizes a municipality to establish a system of administrative monetary penalties to assist the municipality in promoting compliance with its by-laws;

**AND WHEREAS** section 436 of the *Municipal Act, 2001* authorizes 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 compliance with a by-law, direction or order of the municipality;

**AND WHEREAS** section 444 of the *Municipal Act, 2001* provides that a municipality, if satisfied that a contravention of a by-law of the municipality has occurred, may 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** section 445 of the *Municipal Act, 2001* provides that a municipality, if satisfied that a contravention of a by-law of the municipality has occurred, may 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 do work to correct the contravention;

**AND WHEREAS** section 446 of the *Municipal Act, 2001* provides that if a municipality has 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 of thing shall be done at the person's expense;

**AND WHEREAS** the Council of The Corporation of the Town of Pelham deems it necessary and desirable to regulate the cleaning, clearing and maintenance of land in the municipality and to enact this By-law for that purpose;

**NOW THEREFORE** the Council of The Corporation of the Town of Pelham enacts as follows:

## **1. Purpose**

- 1.1. The purpose of this By-law is to regulate with respect to the cleaning, clearing and maintenance of land in the Town of Pelham, including refuse and debris, so as to prevent nuisances and to promote the well-being of the municipality and its inhabitants.

## **2. Definitions**

- 2.1. In this By-law:

**"Administrative Monetary Penalty"** means a monetary penalty issued pursuant to Town By-law #4353(2022), as amended from time to time.

**"Composting"** means the biological decomposition of organic materials by micro-organisms under controlled aerobic conditions to a dark soil-like material known as humus.

**"Dumpster"** means a type of moveable waste container to be used on a temporary basis and designed to be delivered and retrieved by a special collection vehicle and which may also be described or known as a lugger box, lugger bin, salvage bin and other similar terms.

**"Farm"** means a Property at which an agricultural operation as defined in the *Farming and Food Production Protection Act, 1998*, S.O. 1998, c. 1 ("*Farming and Food Production Protection Act*") is lawfully carried on.

**"Highway"** has the same meaning as in the *Highway Traffic Act*, R.S.O. 1990, c. H.8 ("*Highway Traffic Act*").

**"Inoperative Motor Vehicle"** means a Motor Vehicle that requires a current and valid license plate to operate on a Highway but that does not have a valid license plate attached to it or a Motor Vehicle with damaged, missing or deteriorated parts that are necessary for its safe operation, whether plated or unplated, but does not include:

- (a) in areas designated by the Town as urban, one (1) unplated Motor Vehicle per Property, if not enclosed within a building or permitted accessory structure, provided that the said Motor Vehicle:
  - i. is a hobby repair vehicle where hobby repair is being actively carried on; or
  - ii. is a historic vehicle, being a motor vehicle that is at least thirty (30) years old; or
  - iii. is a vehicle used seasonally and plated annually for a period of time less than a year; or
  - iv. is a motor vehicle used for dirt track or off road racing; and
  - v. is covered by a fitted vehicle cover approved by a By-law Enforcement Officer;
- (b) in areas designated by the Town as rural, up to three (3) unplated Motor Vehicles per Property, if not enclosed within a building or permitted accessory structure, provided that each of the said Motor Vehicles:
  - i. is a hobby repair vehicle where hobby repair is being actively carried on; or
  - ii. is a historic vehicle, being a motor vehicle that is at least thirty (30) years old; or
  - iii. is a vehicle used seasonally and plated annually for a period of time less than a year; or
  - iv. is a motor vehicle used for dirt track or off road racing; and
  - v. is covered by a fitted vehicle cover approved by a By-law Enforcement Officer;
- (c) a Motor Vehicle that is required for the operation of a salvage yard or similar business or enterprise lawfully situated on a Property;
- (d) a Motor Vehicle that is situated, stored or kept on a Farm and used for replacement parts in Farm operations and, where the said Motor Vehicle is located within one hundred and fifty (150) metres of any neighbouring dwelling, is adequately screened from such dwelling by fencing or landscaping on the Farm.

**"Motor Vehicle"** has the same meaning as in the *Highway Traffic Act*.

**"Naturalized Area"** means all or part of Property that contains or is covered by vegetation that has been allowed or deliberately implemented to establish a reproducing population of native plant species and/or to emulate a natural area.

**"Niagara Region"** means the Regional Municipality of Niagara.

**"Noxious Weed"** means a noxious weed designated by or under the *Weed Control Act*, R.S.O. 1990, c. W.5, including any weed designated as a local noxious weed under a by-law of the Town passed under that Act.

**"NPCA"** means the Niagara Peninsula Conservation Authority.

**"Occupant"** means a person that lawfully occupies a Property and includes Owners and lessees.

**"Officer"** means a By-law Enforcement Officer of the Town, a member of the Niagara Regional Police Service, a member of the Ontario Provincial Police and any other provincial offences officer designated under the *Provincial Offences Act*, R.S.O. 1990, c. P.33 ("*Provincial Offences Act*").

**"Order"** means any notice of non-compliance issued under this By-law.

**"Owner"** means the registered owner of Property.

**"Person"** means an individual, corporation, partnership or association.

**"Property"** means any land or premises within the Town and includes all buildings and accessory structures located on the said land or premises.

**"Refuse"** means any debris, article, thing, matter, substance or effluent that has been cast aside, discharged or abandoned, discarded from its usual and intended use, used up in whole or in part, expended or worn out in whole or in part and that appears to be of no worth or practical value. Notwithstanding the foregoing, Refuse does not cease to become Refuse by reason that it may be commercially saleable or recyclable or hold potential value. Without limiting the generality of this clause, Refuse includes but is not limited to the following classes of materials regardless of their nature, condition, value or potential:

- (a) accumulations of grass clippings, tree cuttings, brush, leaves and garden refuse;
- (b) paper, paper cartons and other paper products;
- (c) rotting food, vegetable matter or animal matter unless contained in an acceptable Composting container;
- (d) disconnected appliances including but not limited to refrigerators, stoves, microwaves, dishwashers, washers, dryers and any parts of such items;
- (e) electronic devices including but not limited to televisions, computers or tablets and related components, radios, speakers, amplifying devices, audio visual players and any parts of such items;
- (f) furnaces or furnace parts, air conditioners, ducting, pipes, heat pumps, fittings, pipes and wiring;
- (g) damaged or unusable water tanks, fuel tanks, rain barrels or totes;

- (h) Inoperative Motor Vehicles and any parts or accessories of such items;
- (i) inoperative bicycles, lawnmowers, engines and mechanical tools;
- (j) broken or discarded furniture;
- (k) crockery, dishes, pots and pans and small kitchen appliances;
- (l) discarded clothing;
- (m) Sewage;
- (n) animal waste products, hides and parts of carcasses other than those arising from industrial or agricultural businesses lawfully operating lawfully on the Property;
- (o) construction, demolition, repair or renovation material and/or debris accumulated or left over from such work;
- (p) broken concrete, pavement, bricks asphalt and other like materials; and
- (q) accumulations of miscellaneous plastic, wood or metal parts or any combination of such items.

**"Sewage"** means any liquid waste that contains human, animal, mineral or vegetable matter, waste that is in suspension whether domestic or industrial and any other liquid waste, whether in suspension or precipitated, but does not include roof water or storm runoff.

**"Standing Water"** means any water on a Property other than Treated Water, a natural body of water that exists on a permanent basis or water that is contained within a municipal stormwater management facility.

**"Town"** means The Corporation of the Town of Pelham or the geographic area of the municipality, as the context requires.

**"Town Clerk"** means the Clerk of the Town.

**"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.

**"Unsafe Condition"** means any object or condition that may create a health, fire, safety or accident hazard at a Property.

**"Unsightly Condition"** means any object or condition that is detrimental to the appearance of a Property.

### **3. General Provisions**

- 3.1. Every Owner and/or Occupant of Property shall keep and maintain Property in accordance with this By-law.
- 3.2. Every Owner and/or Occupant of Property shall keep and maintain Property in a clean and clear condition and free from Refuse and Unsightly Conditions.
- 3.3. Every Owner and/or Occupant of Property shall keep and maintain Property in a clean and clear condition and free from Unsafe Conditions.

#### **4. Refuse**

- 4.1. No Person shall place or deposit Refuse on Property in any manner whatsoever without the prior written consent of the Owner and/or Occupier of Property.
- 4.2. No Person shall place or deposit Refuse on Property owned by the Town, Niagara Region or NPCA in any manner whatsoever without the prior written consent of the Town, Niagara Region or NPCA, as the case may be.
- 4.3. No Owner and/or Occupant of Property shall cause or permit Refuse to accumulate or remain on Property.
- 4.4. Every Owner and/or Occupant of Property shall ensure that all Refuse that accumulates on Property, when not placed out for waste collection, is kept in one or more containers that are:
  - (a) made of rigid, watertight construction;
  - (b) equipped with a tight-fitting cover, which may be removed only when the container is empty or being actively loaded;
  - (c) maintained in good condition;
  - (d) arranged in a neat and orderly configuration; and
  - (e) if located on residential Property, placed in the front, side or rear yard against a building, permitted accessory structure, fence or retaining wall.
- 4.5. A Dumpster may be placed on residential Property to contain Refuse arising directly from demolition or construction at Property for a period of not more than ninety (90) consecutive days per calendar year commencing from the date on which the Dumpster was placed on Property.

#### **5. Vegetation**

- 5.1. Every Owner and/or Occupant of Property shall cut, trim or remove grass and weeds on Property, other than in a Naturalized Area, whenever the growth of the grass or weeds exceeds two hundred (200) millimetres in height.
- 5.2. Every Owner and/or Occupant of Property shall remove all Noxious Weeds from Property, including in a Naturalized Area.

#### **6. Standing Water**

- 6.1. Every Owner and/or Occupant of Property shall keep and maintain Property free from Standing Water.
- 6.2. Every Owner and/or Occupant of Property shall keep and maintain any swimming pool, hot tub, wading pool, fountain or artificial pond on Property in a good state of repair and in proper operating condition.
- 6.3. Every Owner and/or Occupant of Property shall keep and maintain any vessel, container or object on Property that is capable of holding water free from Standing Water.
- 6.4. No Owner and/or Occupant of Property shall cause or permit the obstruction of a private drain, swale or watercourse on Property in a manner that deposits and/or results in the presence of Standing Water on any Property.

## **7. Exemptions**

- 7.1. This By-law does not apply to Property owned by the Town, Niagara Region, NPCA, the Government of Ontario or the Government of Canada.
- 7.2. This By-law does not apply to prevent a Farm from carrying out a normal farm practice under the *Farming and Food Production Act*.
- 7.3. This By-law does not apply to construction materials and equipment on Property that are directly related to active construction at Property that is proceeding under a valid permit issued pursuant to the *Building Code Act, 1992*, S.O. 1992, c. 23 or other applicable law.

## **8. Enforcement**

- 8.1. This By-law shall be administered and enforced by the Town, an Officer and/or any Person appointed or otherwise delegated the authority of administration and enforcement.
- 8.2. An Officer and any Person appointed or otherwise delegated the authority to administer and enforce this By-law may, for the purpose of enforcing this By-law, exercise any power, authority or remedy granted to the Town pursuant to the *Municipal Act, 2001*.
- 8.3. An Officer and any Person appointed or otherwise delegated the authority to administer and enforce this By-law may, at all reasonable times, enter upon and inspect any land to determine if this By-law is being complied with.
- 8.4. For the purposes of an inspection under section 8.3 of this By-law, an Officer and any Person appointed or otherwise delegated the authority to administer and enforce this By-law may require the production for inspection of documents or things relevant to the inspection, inspect and remove relevant documents or things for the purpose of making copies or extracts, and/or require information from a Person concerning a matter related to the inspection.
- 8.5. An Officer and any Person appointed or otherwise delegated the authority to administer and enforce this By-law who is satisfied that there has been a contravention of this By-law may make an Order requiring the Person who contravened the By-law or caused or permitted the contravention and/or the Owner and/or Occupant of Property where the contravention occurred to bring Property into compliance with this By-law.
- 8.6. An Order made under section 8.5 shall set out the municipal address and/or legal description of Property, reasonable particulars of the non-compliance and the date(s) by which there must be compliance with the Order.
- 8.7. An Order made under section 8.5 may be served by regular mail, registered mail or hand delivered to the last known address of the Person to whom it is issued, by email to the last known email address of the Person to whom it is issued, or by posting the Order at Property where the contravention occurred.

- 8.8. Where any Person fails to comply with an Order made under section 8.5 by the prescribed date(s), the Town may do any matter or thing necessary to bring Property into compliance with this By-law at the expense of the Person in default of the Order.
- 8.9. The Town may recover the cost of any matter or thing done pursuant to section 8.8 of this By-law by adding the cost to the tax roll and collecting it in the same manner and with the same priority as municipal taxes.
- 8.10. Where any items, materials or things are removed from Property pursuant to this By-law, the Town may immediately dispose of them or it may store them. Where an item, material or thing has been removed and stored by the Town, its Owner may reclaim it upon payment to the Town of any costs incurred by the Town in so doing. Where an item, material or thing has not been reclaimed within thirty (30) days of its removal, the Town may dispose of it forthwith.
- 8.11. Where any items, materials or things are removed from Property pursuant to this By-law, the Town shall not be liable to compensate the Owner and/or Occupant of Property or any other Person by reason of anything done by or on behalf of the Town in the reasonable exercise of its powers under this By-law.
- 8.12. No Person shall obstruct or hinder, or attempt to obstruct or hinder, any Officer or Person appointed or otherwise delegated the authority to administer and enforce this By-law in the exercise of a power or the performance of a duty under this By-law.

## **9. Penalty**

- 9.1. Every Person who contravenes any provision of this By-law is guilty of an offence and upon conviction is liable to such penalties as are provided for in the *Municipal Act, 2001* and the *Provincial Offences Act*.
- 9.2. Administrative Penalty Process By-law #4352(2022), as amended, applies to each Administrative Monetary Penalty issued pursuant to this By-law.
- 9.3. Every Person who contravenes any provision of this By-law shall, upon issuance of a penalty notice in accordance with Administrative Penalty Process By-law #4352(2022), be liable to pay to the Town an Administrative Monetary Penalty in accordance with that By-law.

## **10. General**

- 10.1. The short title of this By-law is the "Clean Yards By-law".
- 10.2. If any provision of this By-law is found by any court or tribunal of competent jurisdiction to be illegal or inoperative, in whole or in part, the balance of the By-law shall not be affected and shall remain in full force and effect.
- 10.3. If there is a conflict between a provision of this By-law and a provision of any other By-law of the Town, the provision that establishes the higher standard shall prevail.
- 10.4. This By-law shall be read with all changes in number or gender as are required by context.



- 10.5. Any reference to legislation in this By-law includes the legislation and any amendment, replacement, subsequent enactment or consolidation of such legislation.
- 10.6. The Town Clerk is hereby authorized to effect any minor modifications or corrections solely of an administrative, clerical, numerical, grammatical, semantical or descriptive nature or kind to this By-law as are determined to be necessary.

**11. Repeal and Enactment**

- 11.1. By-law #4453(2022), being a by-law to regulate the keeping and maintenance of property within the Town of Pelham, known as the Clean Yards By-law, is hereby repealed and replaced.

**12. Effective Date**

- 12.1. This By-law shall come into force on the date that it is enacted.

Read, enacted, signed and sealed this 07th day of November, 2022.

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Marvin Junkin, Mayor

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Holly Willford, Town Clerk