

THE CORPORATION OF THE MUNICIPALITY OF KILLARNEY

BY-LAW NO. 2018-36

BEING A BY-LAW TO PROVIDE FOR THE MAINTENANCE OF LAND (CLEAN YARD BY-LAW) WITHIN THE MUNICIPALITY OF KILLARNEY

WHEREAS Section 127 of the Municipal Act, S.O. 2001, c 25, as amended, provides that a municipality may require the 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;

AND WHEREAS Section 128 of the Municipal Act, 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;

AND WHEREAS Section 131 of the Municipal Act, S.O. 2001, c 25, as amended, provides that a 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 through 11 of the Municipal Act, S.O. 2001, c 25, as amended, provide that a municipality may pass by-laws respecting, waste management;

AND WHEREAS Section 426 of the Municipal Act, S.O. 2001, c 25, as amended, provides that no person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty under this Act or under a by-law passed under this Act;

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 Section 429 of the Municipal Act, S.O. 2001, c 25, as amended, may establish a system of fines for offences under a by-law of the municipality passed under this Act: designate an offence as a continuing offence and provide for a minimum and maximum fine for each day or part of a day that the offence continues; designate an offence as a multiple offence and provide for a minimum and maximum fine for each offence included in the multiple offence; establish escalating fines for a second and subsequent conviction for the same offence; and establish special fines in addition to the regular fines for an offence which are designed to eliminate or reduce any economic advantage or gain from contravening the by-law.

AND WHEREAS Council desires to pass a by-law:

- (a) for the maintenance of yards by owners and occupants;
- (b) prohibiting standing water on lands;
- (c) prohibiting the keeping of domestic and industrial waste on lands;
- (d) prohibiting littering on public and private land;
- (e) regulating the salvage of motor vehicles and their components with the intent of promoting proper recycling and reuse of resources, the limiting of waste and wasteful practices, the limiting or eliminating of nuisances, particularly from waste and naturalized areas to other properties in the municipality, and the limiting and eliminating of other unhealthy practices and conditions arising from litter, refuse, neglect or standing water.

NOW THEREFORE the Council of The Municipality of Killarney hereby enacts the following:

SECTION I - DEFINITIONS

In this by-law:

1.01 “Agricultural Operation” means an agricultural operation as defined by the Farming and Food Protection Act, S.O. 1998, c.1 as amended;

1.02 “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 that capacity during his or her absence;

1.03 “Continuing Offence” means an offence that continues to occur by the half/hour, hourly, daily, or for a partial day;

1.04 “Debris” shall mean, but is not limited to, garbage, rubbish, refuse or wrecked, decayed, dilapidated, or inoperative motor vehicles, vehicles or machinery and parts thereof;

1.05 “Domestic Waste” means any debris, rubbish, refuse, sewage, effluent, discard or garbage arising from residential household 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 items, broken or dismantled items, and materials or items exposed to the elements, deteriorating or decaying on land due to exposure or the weather, and for even greater certainty “domestic 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. Broken or torn bits of twigs, splinters or rags, tree cuttings or cut limbs and brush from any shrub or tree, and waste lumber, excepting only cut and stacked;
- b. Paper, paper cartons and other paper products;
- c. Rotting vegetable matter, or rotting animal matter;
- d. Disconnected appliances, including refrigerators, stoves, freezers, or any part or parts of such items;
- e. Furnaces or furnace parts, ducting, pipes, fittings to pipes and wire;
- f. Water or fuel tanks;
- g. Inoperative machinery, inoperative motor vehicles, and parts or accessories of such items including tires, building or construction materials, other than those on site for ongoing construction;
- h. Accumulations of broken concrete or asphalt pavement, brick pavers, sidewalk slabs and used building materials;
- i. Materials resulting from the alteration, repair or demolition of any building or structure;
- j. Sewage;
- k. Containers such as crockery, dishes, glassware, pots and pans and cans.

Domestic Waste as defined in this by-law does not cease to become domestic waste by reason only that it may be commercially saleable or recyclable.

1.06 “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 items, broken or dismantled items, and 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 items:

- a. Debris, discarded items 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, paper, lumber or wood; or
 - 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, inoperative mechanical equipment, mechanical parts, accessories or adjuncts to the vehicle 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 renovation 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.

Industrial Waste as defined by this by-law does not cease to be industrial waste reason only that it may be commercially saleable or recyclable.

1.07 “Lagoon” means a Ministry of Environment approved waste stabilization pond consisting of an earthen basin designed and built for wastewater treatment to reduce the organic content and remove pathogens from wastewater.

1.08 “Multiple Offence” means an offence in respect of two or more acts or omissions each of which separately constitutes an offence and contravention of the same or separate provisions of a by-law;

1.09 “Municipality” means the Corporation of the Municipality of Killarney;

1.10 “Municipal Law Enforcement Officer” means the officer in charge of the By- law Enforcement of the Corporation of the Municipality of Killarney or his or her authorized subordinates or assistants;

1.11 “Naturalized Area” means land or a portion of lands covered by vegetation which is landscaped and maintained with a variety of flowers or plants, with or without grasses, or left to grow a variety of indigenous plants;

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 law enforcement officer, a building inspector, a fire prevention officer, a fire fighter, a health inspector, a weed inspector appointed under the Weed Control Act or any other person appointed or employed by the municipality for the enforcement of by-laws and includes a peace officer;

1.14 “Owner” includes:

- a. Both the owner in trust 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 the 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;

1.15 “Person” means an individual, firm, corporation, association or partnership.

1.16 “Refuse” means any article, thing, matter, substance or effluent that:

- a. Has been cast aside, discharged or abandoned, or
- b. Is disused from its usual and intended use, or
- c. Is used up, in whole or in part, or expanded or worn out, in whole or in part; and
- d. Shall include domestic and industrial waste;

1.17 “Residential property” means any lands or portion thereof which are appurtenant to and used or associated with a dwelling;

1.18 “Sewage” includes any liquid waste containing human, vegetable or mineral matter, 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 run-off;

1.19 “Standing Water” means any water on property other than:

- a. A natural, moving body of water that exists on a permanent basis;
- b. A body of water that is maintained in such a way so as to prevent the breeding of and/or larvae growth of mosquitoes, through the operation of a re-circulation and filtration system and/or the additive of an approved substance that will prevent the breeding of and/or larvae growth of mosquitoes;
- c. Any body of water containing live fish;

- d. Any body of water natural to its surrounding environment including natural ponds, bogs, marshes and wetlands;
- e. Any body of water within a municipally owned storm water management or lagoon facility; and;
- f. Any body of water contained for less than four (4) days.

1.20 “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;

1.21 “Used Motor Vehicles” means a motor vehicle other than a motor vehicle which has visual proof of current validation and is operative and driven on a regular basis;

1.22 “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;

1.23 “Weeds” means a noxious weed designated by or under the Weed Control Act, R.S.O. 1990, c. W5, as amended, including any weed designated as a local or noxious weed under a by-law of the municipality passed under that Act.

SECTION II - LAND MAINTENANCE

2. (a) All property owners shall maintain and keep trimmed their lawns, hedges and bushes. Grass shall not exceed 8” in height.
- (b) All properties shall be kept clear of debris, domestic waste or industrial waste and no person shall dump, throw, place, or deposit any debris, refuse, domestic waste or industrial waste material on any private property or cause such material to remain thereon without prior written consent of the property owner.
- (c) No person shall dump, throw, place, or deposit any waste material, refuse or debris on any property belonging to the Municipality without prior written approval of the Council or the Municipality.
- (d) No person shall cause or permit or allow any snow or ice to be dumped, thrown, placed, pushed or deposited onto any property within the municipality without prior written authority from the Municipality/owner/occupant of such property.
- (e) All residential property owners/occupants shall maintain lands free from dead, diseased, decayed, and damaged trees;
- (f) All residential property owners/occupants shall maintain lands free from injurious insects/rodents/vermin/termites

SECTION III - MOTOR VEHICLE SALVAGE

3. (a) No person shall store or keep inoperative, unlicensable vehicles, vehicles without visual proof of current validation, boats, trailers or aircraft or any other mechanical equipment or waste material in such manner that might create a fire, accident, health hazard, or unsightly appearance.
- (b) No person shall use any land within the municipality for storing used motor vehicles for the purpose of wrecking or dismantling them or salvaging parts thereof for sale or other disposal including the purposes of repair of other vehicles.
- (c) Section 3 (a) and (b) does not apply if:
 - (i) zoning by-law permits the land to be used as an automotive recycling facility; and
 - (ii) the Owner or Occupant holds current validation on the vehicle issued by the Ministry of Transportation.
- (d) No person shall store a vehicle, boat, trailer, recreational vehicle on an area not properly surfaced/covered to accommodate same

SECTION IV - DOMESTIC AND INDUSTRIAL WASTE

4. (a) Every owner or occupant of land shall keep the land free of all Domestic Waste.
- (b) Every owner or occupant of land shall keep the land free of all Industrial Waste.
- (c) No person shall use any land or structure within the municipality for dumping or disposing of Domestic Waste or Industrial Waste.
- (d) Section 4 (c) does not apply to:
 - (i) land or structures used by the municipality for the purpose of dumping or disposing of Domestic or Industrial Waste.
 - (ii) land designated by by-law of the municipality or other municipal authority for the purpose of dumping or disposing of Domestic or Industrial Waste.
- (e) the owner of land on which Domestic or Industrial Waste has been thrown, placed, dumped or deposited shall immediately clean and clear the land of the waste material.

SECTION V - STANDING WATER

5. (a) Every owner or occupant of land shall keep the land free of Standing Water.
- (b) Every owner or occupant of land shall keep the land free of containers or debris capable of holding standing water in such a manner as to be exposed to the breeding of and/or larvae growth of insects.
- (c) Every owner or occupant of land shall ensure that a swimming pool, hot tub, wading pool, or artificial pond is maintained in proper operating condition, and in good repair.

SECTION VI - APPLIANCES

6. (a) All refrigerators, freezers or similar appliances which are stored or left on porches, decks, or in any rear yard, side yard or similar areas shall not have a self- locking or self-latching device and shall be:
 - (i) in working order;
 - (ii) secured with an external locking device; and/or
 - (iii) locked at all times except when actually being used and supervised.
- (b) Refrigerators, freezers or similar appliances which are placed out for disposal shall have removed all doors including all sliding, swinging, spring loaded and pull-to-open doors or doors should be secured such that they cannot be opened without the aid of a tool.

SECTION VII - ORDERS

7. (a) The Municipal Law Enforcement Officer may make an order that shall be served on the owner of the property and such other persons affected by it as the officer determines as described in the Ontario Building Code Act as amended requiring the owner or occupant within the time specified in the order to:
 - (i) clean and clear up the land and bring the land into compliance with any section of this by-law; and/or
 - (ii) remove or dispose of Standing Water on land including draining, filling of excavations and depressions in which standing water has or may collect, the screening or netting of containers or debris so as to prevent the breeding of mosquitoes; and/or
 - (iii) clean, clear or remove from the land or structure any or all garbage, refuse fill, inoperative motor vehicles, sewage, long grass (longer than 8”), weed, appliances or domestic or industrial waste of any kind;
- (b) Where an owner or occupant fails to comply with an order issued under this by- law within the time specified for compliance, the officer, with assistance by others as required and upon reasonable notice, may use one of the following methods as required:

- (i) clean or clear up a property and bring it into compliance with any section of this by-law;
- (ii) remove or dispose of standing water on land including draining, filling of excavations and depressions in which standing water has or may collect, the screening or netting of containers or debris so as to prevent the breeding of mosquitoes;
- (iii) clean, clear or remove from the land or structure any or all garbage, refuse, fill, sewage, inoperative motor vehicles, long grass (longer than 8”), weeds, appliances or domestic or industrial waste of any kind; or
- (iv) remove used 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.

(c) Upon completion of the work, repairs or demolition by or on behalf of the Municipality, the municipality shall have a lien on the land for the amount spent on the repair or demolition, and the amount shall be deemed to be municipal real property taxes and may be added by the Clerk of the municipality to the tax roll and collected in the same manner and with the same priority as municipal real property taxes as provided for by statute.

SECTIONS VIII - OFFENCES

8. (a)-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.

(b) Every person who contravenes sections 4 (a), (b), (c) and (d) of this by-law is guilty of an offence, and upon conviction is subject, pursuant to Part III of the Provincial Offences Act, to a fine of not more than \$10,000 for a first Offence and \$25,000 for any subsequent offence of such subsections.

(c) Where a corporation is convicted of an offence under sections 4 (a), (b), (c) and (d) 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 offences of such subsections.

(d) 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 or agent authorized to carry out the work for the municipality in an order issued hereunder.

SECTION IX – VALIDITY

9. (a) Should a court of competent jurisdiction declare a part or whole of any provision of this bylaw to be invalid or of no force and effect, the provision or part is deemed severable from this bylaw, and it is the intention of Council that the remainder survive and be applied and enforced in accordance with its terms to the extent possible under the law so as to protect the public by ensuring a minimum standard for maintenance and occupancy is maintained.

(b) Where a provision of this by-Law conflicts with the provision of another by-law in force within the municipality, the provisions that establish the higher standards to protect the health, safety and welfare of the general public shall prevail.

SECTION X - ENACTMENT

9.

10. (a) This by-law shall be known as the “**Clean Yard By-law**”.

(b) This by-law comes into force and effect on the date of its passing and enactment.

(c) That By-Law No. 2018-19 and 2018-32 and all by-laws on the same subject matter which is inconsistent with this by-law are hereby repealed.

(d) The attached Schedule “A” and Schedule “B” form part of this By-law.

**READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED IN OPEN COUNCIL THIS
14th DAY OF NOVEMBER, 2018.**

ORIGINAL DOCUMENT SIGNED

Virginia Rook, Mayor

ORIGINAL DOCUMENT SIGNED

Candy Beauvais, Clerk-Treasurer

SCHEDULE “A” of BY-LAW 2018-36

CLEAN YARD POLICY

All property owners are required to maintain their property according to standards set in the “Clean Yard By-law”, including owners of rental residential properties. (This is unless there is a specific agreement between the property owner and the lessee or occupants that assigns maintenance of the property.)

The By-law Enforcement Officer will act not only on written complaints but will use a common-sense approach to the application of the clean yard by-law.

When a complaint is received, an Officer will investigate to determine if a violation exists. This by-law will not be used to resolve issues between neighbors. If a violation is found, the officer can issue an Order advising the owner of the violation and requiring that it be remedied within a specified time period.

In view of the fact that the Municipality of Killarney has many diverse properties such as village areas, waterfront residential, waterfront commercial, farmland, and rural residential, enforcement will have to be done with some discretion taking into consideration the complainant, the geographic location of the property in question, the size of the property in question (farmland versus urban lot), the condition of the adjacent properties, and the effect of the infraction on adjacent properties and the general well-being of the residents of the area, and the Municipality. As the complaints and the investigations become more numerous, past practice data as well as the consistent application of the policy will become more evident and will act as a guide in the application of the by-law.

If you are a tenant that has concerns regarding ill-maintenance of your home or apartment building, first advise the landlord of your concerns in writing. This gives the landlord an opportunity to address the issue. If these concerns are not adequately addressed, register a complaint with the By-law Enforcement office.

This information is for convenience and quick reference only. For specific information, contact the By-law Enforcement Officer.

SCHEDULE “B” of BY-LAW 2018-36

THE CORPORATION OF THE MUNICIPALITY OF KILLARNEY

**BEING A BY-LAW TO PROVIDE FOR THE MAINTENANCE OF LAND (CLEAN YARD BY-LAW)
WITHIN THE MUNICIPALITY OF KILLARNEY**

Items	Column 1 Short Form Wording	Column 2 Provision creating or defining offence	Column 3 Set Fine
1.	Fail to maintain and keep trimmed their lawns, hedges and bushes	2 (a)	\$80
2.	Throw/place/deposit waste material/refuse on private property without the written consent of the property owner/occupant	2 (b)	\$350
3.	Throw/place/deposit waste material/refuse on Municipal property without the written consent from the Municipality	2 (c)	\$350
4.	Throw/place/deposit snow/ice on property without the written consent of the property owner/occupant	2 (d)	\$150
5.	Fail to maintain residential land free from dead/diseased/decayed/damaged trees	2 (e)	\$250
6.	Fail to maintain residential land free from injurious insects/rodents/vermin/termites	2 (f)	\$150
7.	Fail to maintain land free from inoperative/unlicensed vehicles, boats, trailers, aircraft or mechanical equipment.	3 (a)	\$450
8.	Keeping/maintaining an illegal wrecking yard and or salvage operation	3 (b)	\$450
9.	Store a vehicle/boat/trailer/recreational vehicle on an area not properly surfaced/covered	3 (d)	\$350
10.	Fail to maintain land free from domestic waste	4 (a)	\$350
11.	Fail to maintain land free from industrial waste	4 (b)	\$450
12.	Using any land or structure within the municipality for dumping or disposing of Domestic Waste or Industrial Waste.	4 (c)	\$500
13.	Fail to maintain land free from standing water	5 (a)	\$150
14.	Hinder/ obstruct officer	8 (d)	\$125

Note: The general penalty provision for the offences listed above is s.61 of the Provincial Offences Act, R.S.O. 1990 c. P. 33, as amended.