

THE CORPORATION OF THE TOWN OF MARATHON

BY-LAW NO. 1905

Being a by-law to establish standards respecting the maintenance of land within the municipal boundaries of the Town of Marathon.

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 purpose of exercising its authority under this or any other Act;

AND WHEREAS Section 127 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, provides that a municipality may require the owner or occupant of land to clean and clear the land, not including buildings, or to clear refuse or debris from the land, not including buildings and for regulating when and how such matters shall be done, and to prohibit the depositing of refuse or debris on land without consent of the owner or occupant of the land, as well as to define 'refuse' for the purpose of this by-law;

AND WHEREAS Section 131 of the Municipal Act, 2001, 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 425 subsection (1) of the Municipal Act, 2001, S.O. 2001, c.25, as amended, provides that a municipality may pass by-laws providing that a person who contravenes a by-law of the municipality passed under the Act is guilty of an offence;

AND WHEREAS Section 436 (1) subsection of the Municipal Act, 2001, S.O. 2001, c. 25 provides that a municipality may enter on land at any reasonable time for the purpose of carrying out inspections to determine compliance with the by-law;

AND WHEREAS Section 445 subsection (1) of the Municipal Act, 2001, S.O. 2001, c.25, as amended, provides that where a municipality is satisfied that a contravention of a by-law has occurred, the municipality 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 subsection (1) of the Municipal Act, 2001, S.O. 2001, c.25, as amended, provides that a municipality may pass a by-law directing or requiring that a matter or thing be done and in default of it being done by the person directed or required to do it, such matter or thing shall be done at the person's expense;

AND WHEREAS Section 446 of the Municipal Act, 2001, S.O. 2001, c.25 subsection (2) provides that a municipality may enter upon land at any reasonable time for the purpose set out in Section 446 subsection (1);

AND WHEREAS Section 446 subsection (3) of the Municipal Act, 2001, S.O. 2001, c.25, as amended provides that a municipality may recover the cost of doing a thing or matter required under Section 446 subsection (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 MARATHON HEREBY ENACTS AS FOLLOWS:

1.0 Short Title

1.1 This by-law may be cited as the "Yard Maintenance" or "Clean Yard" By-Law.

2.0 Interpretation

2.1 In this by-law:

- (a) words importing the singular number only, include more persons, parties or things of the same kind than one and the converse; and
- (b) a word interpreted in the singular number has a corresponding meaning when used in the plural;
- (c) "may" shall be construed as permissive;
- (d) "shall" shall be construed as imperative;
- (e) "includes": the words – "include – includes – including and included" are not to be interpreted as restricting or modifying the words or phrases which precede them.

2.2 It is declared, if any section, subsection, part or parts thereof be declared by any court of law to be bad, illegal or ultra vires, such section, subsection, part or parts shall be deemed to be severable and all parts hereof are declared to be separate and independent and enacted as such.

2.3 All words and personal pronouns relating to words contained in this by-law include the male and female gender.

2.4 Article, section and paragraph headings are inserted solely for ease of reference.

2.5 References within this by-law to the titles of the Corporation's employees are references to the positions that held those titles at the time this by-law was enacted. Where a corporate restructuring has occurred such that there is no longer a person within the organization who holds a referenced title, the reference is to the person who undertakes the duties of the title holder at the time this by-law was enacted. In any case of doubt, the Chief Administrative Officer for the Corporation shall delegate the authority to the appropriate person and direct this by-law be amended to reflect the new title.

2.6 In the event of any conflict between this by-law and any other by-law of the Corporation of the Town of Marathon, the more restrictive provision shall prevail unless the context requires otherwise.

2.7 This by-law applies to all land within the Municipality of Marathon, excluding land that is owned or occupied by the Corporation, the Province of Ontario or the Federal Government of Canada; whether the land is occupied or not.

3.0 Definitions

For the purposes of this by-law:

Boat – means any vessel which floats on the surface of the water and is capable of carrying people or material whether motorized or not and includes, but not limited to, pleasure craft, scows, personal water craft, canoes, row boats, pontoon boats and commercial boats when on the water or on land.

Boulevard – means public property as part of the highway, between the private property line and the edge of the travelled roadway and may or may not contain a sidewalk or driveway.

Clean or Cleared – means the removal of domestic waste and the removal of stock piles of soil or other aggregate material not required to complete the grading of the lot on which the stock pile is located.

Corporation – means the Corporation of the Town of Marathon.

Curb – means the concrete or asphalt edge of a roadway or the division point between the roadway and a boulevard or sidewalk.

Domestic Waste - means any debris, rubbish, refuse, sewage, effluent, discard or garbage of a type arising from a residence, belonging to or associated with a house or use of a house or residential property, which for greater certainty includes all garbage, discarded material or things, broken or dismantled things and materials or things exposed to the elements, deteriorating or decaying on a property due to exposure or the weather, and for even greater certainty it is hereby declared that '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) grass clippings, weeds, garden cuttings, leaves and garden refuse except as may be placed in a composting container;
- b) twigs, tree cuttings or cut limbs and bark from any shrub or tree and waste lumber with the exception of cut and stacked firewood for use in a wood burning appliance on the property;
- c) all organic waste of animal or vegetable origin resulting from the preparation or consumption of food except as may be placed in a composting container;
- d) paper, paper cartons, cardboard or other paper products, clothing, fabrics or carpets except as may be placed in a recycling container for regular pickup;
- e) cans, glass and plastic containers except as may be placed in a recycling container for pickup;
- f) used material resulting from or once used for the purpose of the construction, alteration, renovation, repair or demolition of any building or structure;
- g) discarded or abandoned refrigerators, freezers, stoves or any other appliance or furniture, part or parts thereof;
- h) discarded or abandoned furnaces, furnace parts, duct work, pipes, fittings to pipes, water or fuel tanks;
- i) fill, sand, soil, rock or rubble, including concrete, bricks, asphalt, patio or sidewalk slabs;

- j) inoperative motor vehicles, boats or trailers, parts and accessories, vehicle tires mounted or unmounted on rims, mechanical equipment, discarded bicycles, tricycles and their parts and accessories except as provided in Section 5.0 of this by-law; and
- k) any articles, thing, matter, substance or effluent that is or appears to be cast aside, discharged or abandoned, discarded from its usual and intended use, used up in whole or in part or is expended or worn out in whole or in part.

Fence – means a structure or screen that acts as a barrier and which is other than an essential component to a building and includes a hedge or thick growth of shrubs or trees or any other wall.

Ground Cover - means material applied to prevent the erosion of the soil and/or the accumulation of mud. The term includes: materials such as concrete, flagstone, gravel, asphalt, grass or other forms of landscaping such as patios and parking areas.

Highway – means property owned by the Municipality of Marathon and includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, laneway, via duct or trestle and part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof.

Inoperative Boat – means a boat having missing bodywork components or parts, or damaged components, parts, bodywork, glass or deteriorated or removed metal adjunctions which prevent it from functioning in the way for which it was originally designed.

Inoperative Motor Vehicle – means a motor vehicle which may not be lawfully operated upon a highway pursuant to the Highway Traffic Act, R.S.O. 1990, c.H.8, as amended, for any of the following reasons:

- a) there is not in existence a currently validated permit for the vehicle;
- b) there is not displayed on the vehicle, in the prescribed manner, number plates issued in accordance with the Highway Traffic Act, R.S.O. 1990, c.H.8, as amended, showing the permit number issued for the vehicle;
- c) there is not affixed to a number plate displayed on the vehicle evidence of current validation of the permit; or
- d) a licenced or unlicensed vehicle having missing, damaged, deteriorated or removed parts of including but not limited to, wheels, motor, transmissions, doors, glass or other parts or mechanical equipment necessary for its safe operation.

Land – means property, whether or not it contains buildings or structures and whether it is vacant or occupied. Reference to 'Land' in this by-law includes all buildings, structures and vegetation.

Motor Vehicle – means an automobile, motorcycle, motor-assisted bicycle, trailer, boat, motorized snow vehicle, mechanical equipment and any vehicle drawn, propelled or driven by any kind of power, excluding muscular power, unless otherwise indicated in the Highway Traffic Act, R.S.O. 1990, c.H.8, as amended.

Natural Garden – means a defined area of vegetation that has been deliberately planted or cultivated with species of wildflowers, shrubs,

perennials, ornamental grasses or combinations of them, consistent with a managed and natural landscape.

Occupant – means a person other than the owner, who exercises rights in respect of land, including:

- a) a person for the time being managing the land;
- b) a person for the time being receiving the rent from the land, whether on his or her own account or as agent or trustee of any other person;
- c) a tenant or lessee;
- d) a licensee; or
- e) an occupier

Officer – means an employee of the Municipality of Marathon who has been appointed and assigned the responsibility of administering and enforcing this by-law.

Owner – means the registered owner, owner in trust, a mortgagee in possession, a person who is managing or receiving the rent of the property and includes a person, firm, partnership, corporation, company, association or organization of any kind and its principals.

Perennial Garden – means a yard or a portion of a yard containing an area deliberately developed to produce ground cover, including wildflowers, shrubs, perennials, ornamental grasses or combinations of them.

Property – means a building or structure or part of a building or structure and includes the lands and premises appurtenant thereto and all mobile homes, mobile buildings, mobile structures, outbuildings, fences and erections thereon whether heretofore or hereafter erected and includes vacant property.

Refuse – means all manner of waste or debris as provided for or defined in this by-law, but does not include a building or buildings on a property, but does include parts or pieces of such structure on the property that are dismantled or are rubble, or which have become detached from a building, whether by construction, demolition, damage or deterioration.

Sidewalk – means that portion of a highway between the curb lines and the property line of the lot abutting the highway, adjacent to the travelled roadway which has been improved for the use of pedestrians.

Yard – means the open space on the same lot as a building or structure. For the purposes of this by-law, the term also includes patios, decks, balconies, verandas, porches and similar structures.

4.0 Clean and Clear Land

4.1 Every owner or occupant shall keep his/her residential property, grounds, yard or vacant land clear of garbage, waste material, refuse, or domestic waste.

4.2 Every owner or occupant shall ensure grass and weeds are kept trimmed so as not to exceed twenty (20) centimetres (approximately eight (8) inches) in height.

- 4.3 No person shall permit the growth of grass and/or weeds on residential or vacant land in excess of twenty (20) centimetres (approximately eight (8) inches).
- 4.4 Provisions of Section 4 subsections (2) and (3) do not apply to:
- a) perennial gardens;
 - b) natural gardens;
 - c) naturalized or underdeveloped areas in relationship to the surrounding area;
 - d) areas zoned 'Open Space' (OS) under the Corporation of the Town of Marathon Zoning By-Law.
- 4.5 Owners or occupants shall safely remove from residential property, grounds, yard or vacant land any dead, decayed or damaged trees, branches and limbs or other natural growth which creates or may create an unsafe condition in relation to their environment.
- 4.6 Owners, occupants or persons in control of private lands shall not deposit the cuttings of hedges, shrubs, trees or other natural growth on or adjacent to said private lands in such a manner as to interfere with the use of or obstruct a municipal sidewalk, roadway, path, trail, land or highway.
- 4.7 Every owner or occupant shall remove animal waste from their property so as to minimize significant accumulation.
- 5.0 Inoperative Motor Vehicle(s), Boat(s) and Trailer(s)
- 5.1 Except as provided in the Town of Marathon Zoning By-Law, as amended or otherwise permitted by law, no person shall use any land or structure in the municipality for storing used and/or inoperative motor vehicles, boats or trailers for the purpose of wrecking or dismantling them or salvaging parts thereof for sale or other disposal.
- 5.2 No owner or occupant shall use land for the storage of inoperative motor vehicles, boats or trailers or parts thereof except in accordance with the following:
- a) the inoperative motor vehicle(s), boat(s) or trailer(s) and/or parts are stored in an enclosed building; or
 - b) the inoperative motor vehicle, boat or trailer and/or parts are fully and completely covered with a canvas or similar opaque, weather-resistant tarpaulin in good repair, in which case no more than one (1) such covered vehicle shall be permitted in any yard;
 - c) the active restoration of not more than one motor vehicle, boat and/or trailer provided the vehicle(s) is located in a manner so as to be screened from view by neighbouring residents or from adjacent sidewalks and roadways.
- 5.3 Section 5 subsection (2) does not apply to the storage of motor vehicles, boats or trailers and parts which are reasonably necessary for the conduct of a bona fide business, lawfully conducted on the property.

6.0 Landscaping

All property owners shall ensure that:

- 6.1 all lands are graded, filled or otherwise drained so as to prevent recurrent ponding of storm water.
- 6.2 storm water and pumped discharge is drained from yards so as to prevent recurrent ponding or the entrance of water into a building and in a manner that will minimize erosion of adjacent properties.
- 6.3 suitable ground cover is provided to prevent erosion of the soil.
- 6.4 where grass forms a part of the ground cover, and such grass has been killed, such dead areas are re-sodded or seeded as often as required so as to restore the grass to a living condition.
- 6.5 areas within the yard not covered by buildings or structures, sidewalks, driveways and parking areas are maintained to a standard at least compatible with the abutting and adjoining properties.
- 6.6 retaining walls are maintained in good repair, capable of performing their intended function.

7.0 Unsafe or Hazardous Conditions

- 7.1 No person shall cause or permit on property owned or occupied by such person any holes, pits, trenches, excavations or other declivity which constitutes a health, fire or safety hazard on said property.
- 7.2 Every owner shall fill in any excavation on their land unless it is enclosed completely by a barrier no lower than 1.2 metres (3'-11") in height and sufficient to prevent a person from falling into the excavation.
- 7.3 A barrier described in Section 7 subsection 2 is not required by this by-law where the excavation is related to active demolition or construction.
- 7.4 Every property owner/occupant shall ensure that all fences and barriers are kept in good repair and free from accident hazards.
- 7.5 Every owner or occupant shall keep their property clear of objects or conditions that create or might create a health, fire or accident hazard.
- 7.6 Every property owner/occupant shall ensure that dilapidated, collapsed structures or partially constructed structures that are not currently under construction or erection or unsafe or in unsightly condition, are remedied, repaired or removed from any yard.
- 7.7 No person shall set out a refrigerator, freezer, stove, clothes washer, clothes dryer, dishwasher or any other large appliance on residential land pending immediate removal and disposal as domestic waste unless the door of such appliance is removed or secured in such a way as to prevent the door from being opened or shut so as to prevent any person from being trapped in such appliance.

8.0 Littering

- 8.1 No person shall permit or cause to be permitted the throwing, placing or depositing of domestic waste on private or public lands or lands owned by the Corporation of the Municipality of Marathon.
- 8.2 No person shall throw, place or deposit domestic waste on any private or public lands or lands owned by the Corporation of the Town of Marathon.
- 8.3 Notwithstanding Section 8 subsections 1 and 2, nothing in this by-law shall be deemed to interfere with the filling or raising of land with earth or rock fill or with the disposal of domestic waste on any lands which have been designated for that purpose by by-law of the Town of Marathon.

9.0 Snow and/or Ice

- 9.1 No person shall move or deposit or cause to be moved or deposited, any snow or ice from privately owned lands onto lands owned by the Corporation of the Town of Marathon including any boulevard, sidewalk, roadway, highway or ditch within the municipality.
- 9.2 No person shall remove, or cause to be removed any snow or ice in a manner which would damage any sidewalk, boulevard, curb or highway.
- 9.3 No person shall pile, redistribute, relocate snow or ice on or from any highway within the Municipality of Marathon in such a manner as:
 - a) to encroach on the cleared portion of the street allowance intended for vehicular and pedestrian traffic;
 - b) to result in the obstruction of normal visibility of the safe movement of vehicular and pedestrian traffic; or
 - c) to obstruct in any way the movement of snow clearing/removal equipment operated under the jurisdiction of the Department of Works and Operations of the Corporation of the Town of Marathon.
- 9.4 During snow removal operations any Town of Marathon employee designated by the Works and Operations Department and/or municipally contracted persons specifically contracted for the clearing and/or removal of snow are exempt from Section 9 subsections 1, 2, 3 (a)(b)(c).
- 9.5 The manager of the Works and Operations Department or his/her designate may, upon written request, exempt with or without conditions any person(s) from the requirements of Section 9.0.

10.0 Right of Entry and Inspection

- 10.1 Except as provided in subsection 10.2 and pursuant to Sections 435 and 436 of the Municipal Act 2001, S.O. 2001, c.25, as amended, an officer may enter upon any land or property, at any reasonable time, for the purpose of carrying out inspections of or on such land or property to determine whether or not the provisions of this by-law are being complied with.

- 10.2 An officer shall not enter an occupied dwelling unit without first obtaining the informed consent of the occupant(s) who must be of legal age to provide the said consent.
- 10.3 Pursuant to Section 426 subsection (1) of the Municipal Act 2001, S.O. 2001, c.25, as amended, no person shall hinder, interfere with, or otherwise obstruct, with directly or indirectly, an officer in the lawful exercise of a power or performing a duty under this by-law.
- 10.4 Section 10 subsection (3) includes any employee or agent authorized by the Corporation of the Town of Marathon to carry out any work under the authority of this by-law.

11.0 Administration and Enforcement

- 11.1 If an officer is satisfied a contravention of this by-law has occurred, the Officer may make a 'Discontinue Activity 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.
- 11.2 Pursuant to Section 11 subsection (1) the 'Discontinue Activity Order' shall set out:
- a) reasonable particulars of the contravention adequately identifying the contravention;
 - b) the location of the land on which the contravention occurred;
 - c) the work to be done in order to comply with the by-law; and
 - d) the date by which the work must be done;
- 11.3 The 'Discontinue Activity Order' may be preceded by a 'First Notice to Comply', which shall set out the particulars outlined in Section 11 subsections 2 (a)(b)(c) and (d).
- 11.4 No person shall fail to comply with a 'Discontinue Activity Order' issued pursuant to Section 11.
- 11.5 A 'First Notice to Comply' shall be in the form as set out in Appendix 'A' and a 'Discontinue Activity Order' shall be found in the form as set out in Appendix 'B' to this by-law.

12.0 Service

- 12.1 A 'Discontinue Activity Order' and 'First Notice To Comply' may be:
- a) personally served on the owner, occupier, tenant or the person responsible for the property; or
 - b) sent by registered mail to the last known address of the owner as shown on the last revised assessment rolls of the municipality.
- 12.2 If served by registered mail, the 'Discontinue Activity Order' and/or the 'First Notice To Comply' under Section 12 subsection 1 (b) shall be deemed to have been served on the fifth business day following mailing.

- 12.3 In the event an officer is unable to serve a 'First Notice To Comply' and/or 'Discontinue Activity Order' by registered mail or personally, the 'First Notice To Comply' and/or the 'Discontinue Activity Order' may be posted in a conspicuous place on the property, and the placing of the 'First Notice To Comply' and/or the 'Discontinue Activity Order' shall be deemed to be sufficient service on the property owner, occupier, tenant or the person responsible for the property.
- 12.4 The owner of the land or property is ultimately responsible for the condition of the land or property whether or not the owner is also the occupant.
- 12.5 Where the condition of the land or property is such that it constitutes a hazard to members of the public, the municipality is authorized to follow the provisions of Section 13 subsection 0 of this by-law, without having first issued a 'First Notice To Comply' or a 'Discontinue Activity Order'.

13.0 Failure to Comply

13.1 Where the owner, tenant or occupant fails to comply with a 'Discontinue Activity Order' issued under this by-law within the time specified for compliance, an officer or the municipality's employees or agents authorized for this purpose, upon producing appropriate identification when requested; in addition to all other remedies:

- a) shall have the right to enter upon lands and to restore the lands and carry out remedial action specified in the 'Discontinue Activity Order' at the owner's expense; and
- b) shall not be liable to compensate such owner, tenant, occupant or any other person having interest in the property by reason of anything done by or on behalf of the municipality under the provisions of this section; and
- c) where any material or things are removed in accordance with this section, the materials or things may be immediately disposed of by the officer; and
- d) where a vehicle has been removed, impounded, restrained or immobilized, pursuant to Section 170 subsection 15 of the Highway Traffic Act, R.S.O. 1990, as amended, in violation of this by-law, all costs associated with the removal, impoundment, restrained or immobilization will be the responsibility of the owner of the property and/or vehicle.

13.2 Where the Town, its employees or authorized agents have performed the work required to bring the land or property into compliance with this by-law, all expenses incurred by the Town in doing the work, as well as, any related fees, shall be deemed to be taxes and may be collected by action or the costs may be added to the tax roll for the property and collected in the same manner as taxes.

13.3 The municipal service fees for the administration and enforcement of this by-law shall be in accordance with the Town of Marathon 'Fees and Charges By-Law' and any revisions thereto.

13.4 Service fees for the administration and enforcement of this by-law may be applied when a contravention has been confirmed by an officer.

14.0 Penalties

14.1 Every person who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to a fine and any other penalties as provided for in the Provincial Offences Act, R.S.O. 1990, c.P.33 and the Municipal Act 2001, as amended, as applicable and any such successor to each of those statutes.

15.0 Repeals

Be it further enacted that the following by-law hereinafter set forth is hereby repealed; 1036 and all subsequent by-laws that amended By-Law 1036.

This by-law shall come into force on the date of its final passing.

READ A FIRST AND SECOND TIME THIS ____ DAY OF ____, A.D., 2017.

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Mayor

(SEAL)

.....
Clerk

READ A THIRD TIME AND FINALLY PASSED THIS ____ DAY OF ____,
2017, A.D.

.....
Mayor

(SEAL)

.....
Clerk