

Authority: Item 9, Planning and Economic
Development Committee
Report: 10-011
(PED10112)
CM: May 26, 2010

Bill No. 118

CITY OF HAMILTON

BY-LAW NO. 10- 118

YARD MAINTENANCE BY-LAW

Being a by-law to regulate exterior property maintenance including vegetation, waste and graffiti and to repeal By-law No. 03-118.

WHEREAS sections 8, 9 and 10 of the Municipal Act, 2001 authorize the City of Hamilton to pass by-laws necessary or desirable for municipal purposes, and in particular paragraphs 5, 6 and 8 of subsection 10(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 authorizes the City of Hamilton to require the owner or occupant of land to clean and clear the land, not including buildings, and to clear refuse or debris from the land, not including buildings;

AND WHEREAS section 127 of the Municipal Act, 2001 further authorizes the City of Hamilton to prohibit the depositing of refuse or debris on land without the consent of the owner or occupant of the land;

AND WHEREAS section 128 of the Municipal Act, 2001 authorizes the City of Hamilton to prohibit and regulate with respect to public nuisances, including matters that, in the opinion of the City of Hamilton's Council, are or could become or cause public nuisances;

AND WHEREAS section 425 of the Municipal Act, 2001 authorizes the City of Hamilton to pass by-laws providing that a person who contravenes a by-law of the City of Hamilton passed under that Act is guilty of an offence;

AND WHEREAS the Municipal Act, 2001 further authorizes the City of Hamilton, amongst other things, to delegate its authority, to impose fees or charges on persons for services or activities provided or done by or on behalf of it, to provide for inspections and inspection orders, and to make orders to discontinue activity or to do work;

NOW THEREFORE, the Council of the City of Hamilton enacts as follows:

SHORT TITLE

1. This By-law may be referred to as the "Yard Maintenance By-law" or the "Hamilton Yard Maintenance By-law".

DEFINITIONS

2(1) In this By-law:

“**City**” means the municipality of the City of Hamilton or the geographic area of the City of Hamilton as the context requires;

“**Director**” means the City’s Director of Parking and By-law Services and his or her designate or successor;

“**farm**” means an agricultural operation as defined in the Farming and Food Production Protection Act, 1998 and includes such an operation that is not carried on with the expectation of gain but otherwise meets the definition in that Act;

“**graffiti**” means any words, figures, letters, numbers or drawings sprayed, scribbled, scratched, etched or otherwise applied on a surface;

“**inoperative machinery**” includes but is not limited to machinery that is unable to be operated as a result of being dismantled, broken or incomplete, decayed or dilapidated;

“**inoperative vehicle**” includes but is not limited to a motor vehicle that:

- (i) is unable to be operated as a result of being dismantled, broken or incomplete, decayed or dilapidated, in particular with missing wheels, tires, body components or windows; or
- (ii) does not have affixed to it a number plate with a current permit validation as required under the Highway Traffic Act;

“**normal farm practices**” means normal farm practices as defined in the Farming and Food Production Protection Act, 1998;

“**noxious weed**” means a noxious weed designated under the Weed Control Act including any weed designated as a local or noxious weed under a by-law of the City passed under that Act;

“**occupant**” means a person over the age of 18 in possession of a property;

“**officer**” means a person appointed by the City of Hamilton or assigned by the Senior Director to enforce this By-law;

“**ornamental plant**” means a plant deliberately grown for beautification, screening, accent, specimen, colour or other aesthetic reasons but does not include any variety of turf grass;

“**owner**” includes each owner and occupant of a property;

“property” means land including a building or structure, or part of a building or structure;

“urban boundary” means the urban boundary of the City as defined in the Official Plan or Official Plans for the City;

“waste” means a substance or material that is unusable or unwanted and includes but is not limited to:

- (i) animal feces;
- (ii) broken or discarded material;
- (iii) disconnected appliances and parts of such appliances;
- (iv) firewood not stacked neatly;
- (v) indoor furniture;
- (vi) inoperative machinery, inoperative vehicles, parts of such machinery not packaged for immediate shipment or parts of vehicles not packaged for immediate shipment;
- (vii) material resulting from construction, demolition, repair or renovation projects,
- (viii) piping, ducting, tubing, conduits, cable, wire and fittings or related accessories not packaged for immediate shipment;
- (ix) torn or cut twigs or branches;
- (x) waste lumber,

and does not include waste that is contained, in compliance with all applicable laws and by-laws, in a salvage yard with a current and valid licence under the City’s Licensing By-law;

“watercourse” means an identifiable depression in the ground in which a natural flow of water occasionally, regularly or continuously occurs, but does not include a swale shaped or graded in earth materials and stabilized with site suitable vegetation for the conveyance of storm water runoff; and

“yard” means the land within the boundary lines of a property not occupied by a principal building, if any, and includes grounds or vacant property.

VEGETATION

3(1)(a) Every owner or occupant of property shall keep vegetation in the yard of their property clean and cleared up.

(b) Paragraph (a) does not apply to:

- (i) crops being grown on a farm; or
- (ii) a property located outside the urban boundary.

(c) For the purposes of paragraph (a), 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 21 cm, except:
 - 1. ornamental plants;
 - 2. 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 21 cm, except:
 - 1. ornamental plants;
 - 2. shrubs or trees;
 - 3. cultivated fruits or vegetables; or
 - 4. plants buffering or otherwise protecting a natural feature such as a watercourse;
- (iii) to remove all noxious weeds and, in the case of poison ivy, to treat the poison ivy with an herbicide that causes it to be destroyed or which prevents the growth of the poison ivy or the ripening of its seeds, provided that nothing in this subparagraph authorizes the use of any herbicide contrary to any other law in force in Ontario; and
- (iv) to maintain the yard so as to prevent instability including but not limited to the erosion of the soil.

WASTE

- 4(1) Every owner or occupant of property shall keep the yard of their property free and clear of all waste.
- 4(2) No person shall use the yard of any property within the City for depositing of any waste.
- 4(3) Subject to subsection 4(4), subsections 4(1) and 4(2) do not apply to:
 - (a) property used by the City for the purpose of depositing waste; or
 - (b) property used for the purpose of depositing waste under federal, provincial or municipal authority.

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- 4(4) No person other than the City or a person with prior federal, provincial or municipal authority shall deposit waste on property described in subsection 4(3).
- 4(5) Every owner or occupant of property shall ensure that all waste which accumulates on their property is:
- (a) when not placed out for collection in accordance with applicable City by-laws, in containers:
 - (i) made of rigid, watertight construction;
 - (ii) provided with a tight-fitting cover, which may be removed only when the container is empty or is being actively loaded;
 - (iii) maintained in good condition without holes or spillage; and
 - (iv) closed, or emptied, rinsed and cleaned when not in use, to prevent the escape of offensive odour or waste; and
 - (v) kept in a rear yard located against a building, structure, fence or retaining wall and arranged in an orderly manner; and
 - (b) not allowed to accumulate for longer than 10 days.
- 4(6) Every owner or occupant of a property where an exterior bulk or roll-off container disposal system is used shall ensure the containers are:
- (a) equipped with covers or similar devices which shall be readily operable but not left open except when actively being loaded;
 - (b) large enough to contain all waste generated between collections by the occupants served; and
 - (c) not loaded beyond the top of the container.
- 4(7) Every owner or occupant of a property shall:
- (a) have not more than 2 compost heaps on their property; and
 - (b) ensure that each compost heap:
 - (i) has a maximum size of 1 m³;
 - (ii) is located a minimum of 1 m from any property line; and
 - (iii) is enclosed on all sides by concrete blocks, a lumber structure, a metal frame, or a commercial plastic compost container.

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- 4(8) For the purposes of section 4, “yard” includes but is not limited to an exterior porch or similar erection.

GRAFITTI

- 5(1) Every owner or occupant of property shall clean the exterior of any building, structure, erection or object on their property of graffiti, except any graffiti applied with the prior written authority of the owner or occupant of the property.
- 5(2) For the purposes of section 5, “building, structure, erection or object” includes but is not limited to a fence, retaining wall, paved or similarly finished surface, vehicle, trailer or waste container.

LITTER

- 6(1) No person shall deposit waste on property without the prior written authority of the owner or occupant of the property.
- 6(2) No person shall deposit waste on property owned or occupied by the City or a local board of the City without the written authority of the City or the local board, or, where such property is occupied by a person other than the City or the local board, without the written authority of the occupant.
- 6(3) A person does not breach subsections 6(1) or 6(2) merely by placing waste out for collection on their property in accordance with applicable City by-laws, but no person shall leave out waste contrary to such City by-laws.

DRAINS

- 7(1) Every owner or occupant of property on which there is a private drain shall keep their drain operational and in repair.
- 7(2) No owner or occupant of property shall obstruct or permit the obstruction of a private drain on their property, provided only that the subsequent connection of their property’s private sewage system to the City’s sanitary sewer in a manner approved by the City shall be permitted as a replacement to a private sanitary drain.
- 7(3) No owner or occupant of property shall obstruct, or cause or permit the obstruction of a watercourse on their property.

FARMS

- 8(1) Despite section 4, a farm may keep inoperative agricultural machinery and inoperative agricultural vehicles in a yard provided that the inoperative agricultural machinery or inoperative agricultural vehicles are placed or arranged so as not to

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create a safety or health hazard to persons on the property, and in particular so as not to block emergency access to or from the property, and:

- (a) the inoperative agricultural machinery or inoperative agricultural vehicles are kept in an area screened from view from outside the property lines by a fence, wall or other solid structure including a hedge at least 2 m high that complies with all other applicable by-laws or laws;
- (b) the inoperative agricultural machinery or inoperative agricultural vehicles are set back from the property lines by at least 100 m; or
- (c) the inoperative agricultural machinery or inoperative agricultural vehicles are temporarily not in use in accordance with normal farm practices.

HEALTH AND SAFETY

- 9(1) Every owner or occupant of property shall ensure that any well, cistern, cesspool, privy vault, pit or excavation:
 - (a) in active use, is secured by a fence with a warning signs;
 - (b) not in active use, is permanently sealed or secured by a fence, cover or other means.
- 9(2) Every owner or occupant of property shall keep the surfaces of steps, walks, driveways, parking spaces and similar areas of their property maintained so as to afford safe passage under their normal use.
- 9(3) Every owner or occupant of property shall keep the yard of their property clean and free from any objects or conditions that might create a health, fire or accident hazard or an unsafe condition.

ADMINISTRATION AND ENFORCEMENT

- 10(1) The Senior Director is assigned the responsibility of administering and enforcing this By-law and may so assign duties to such persons as necessary to carry out the provisions of this By-law.
- 10(2) Persons appointed or assigned for the purposes of administering or enforcing this By-law are officers, have the authority to carry out the duties assigned to officers under this By-law, and may enforce the provisions of this By-law.
- 10(3) An officer may enter on property at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:
 - (a) this By-law;

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- (b) a direction or order made under this By-law; or
 - (c) a prohibition order made under s. 431 of the Municipal Act, 2001.
- 10(4). An officer may, for the purposes of the inspection under subsection 10(3):
- (a) require the production for inspection of documents or things relevant to the inspection;
 - (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
 - (c) require information in writing or otherwise as required by the officer from any person concerning a matter related to the inspection; or
 - (d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.
- 10(5) Any cost incurred by the City in exercising its authority to inspect under paragraph 10(4)(d), including but not limited to the cost of any examination, test, sample or photograph necessary for the purposes of the inspection, shall be paid by the owner or occupant of the property where the inspection takes place.
- 10(6) An officer may undertake an inspection pursuant to an order issued by a provincial judge or justice of the peace under Section 438 of the Municipal Act, 2001 where he or she has been prevented or is likely to be prevented from carrying out an inspection under subsections 10(3) and 10(4).
- 10(7) If an officer is satisfied that a contravention of this By-law has occurred, he or she may make an order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner or occupant of the property on which the contravention occurred to discontinue the contravening activity.
- 10(8) An order under subsection 10(7) shall set out:
- (a) reasonable particulars of the contravention adequate to identify the contravention and the location of the property on which the contravention occurred; and
 - (b) the date or dates by which there must be compliance with the order.
- 10(9) If an officer is satisfied that a contravention of this By-law has occurred, he or she may make an order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner or occupant of the property on which the contravention occurred to do work to correct the contravention.

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- 10(10) An order under subsection 10(9) shall set out:
- (a) reasonable particulars of the contravention adequate to identify the contravention and the location of property on which the contravention occurred;
 - (b) the work to be completed; and
 - (c) the date or dates by which the work must be complete.
- 10(11) An order to discontinue contravening activity made under subsection 10(7) or an order to do work made under subsection 10(9) may be served:
- (a) by regular mail to the last known address of the owner or occupant of the property where the contravention occurred;
 - (b) by an officer placing a placard containing the order in a conspicuous place on the property where the contravention occurred; or
 - (c) personally on the owner or occupant of the property where the contravention occurred.
- 10(12) Where a person does not comply with a direction, an order or a requirement under this By-law to do a matter or thing, the Director, with such assistance by others as may be required, may carry out such direction, order or requirement at the person's expense.
- 10(13) The City may recover the costs of doing a matter or thing under subsection 10(12) by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes and such costs shall include an interest rate of 15 per cent per year commencing on the day the City incurs the costs and ending on the day the costs, including the interest, are paid in full.
- 10(14) The Director is authorized to give immediate effect to any direction or requirement where the costs of carrying out the direction or requirement do not exceed \$10,000 and, where the costs do exceed \$10,000, as the City's Council may authorize.
- 10(15) Every person who contravenes any provision of this By-law or fails to comply with an order made under this By-law is, upon conviction, guilty of an offence and is liable:
- (a) on a first conviction, to a fine of not more than \$10,000; and
 - (b) on any subsequent conviction, to a fine of not more than \$25,000.
- 10(16) Despite subsection 10(15), where the person convicted is a corporation:

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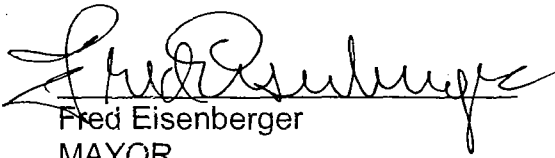
- (a) the maximum fine in paragraph 10(15)(a) is \$50,000; and
- (b) the maximum fine in paragraph 10(15)(b) is \$100,000.

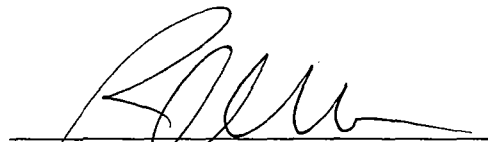
10(17) Where a person has been convicted of an offence, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may, in addition to any other remedy and to any penalty imposed by this By-law, make an order prohibiting the continuation or repetition of the offence by the person convicted.

TRANSITION, REPEAL, COMING INTO FORCE, ETC.

- 11(1) All measurements in this By-law are given the metric short form.
- 11(2) If a court of competent jurisdiction declares any provision or provisions of this By-law invalid, it is the intention of Council that the remainder of the By-law shall continue to be in force.
- 11(3) All prosecutions and other enforcement processes commenced under By-law No. 03-118 which have not been completed on the day this By-law comes into force shall be completed under By-law No. 03-118 as if it had not be repealed.
- 11(4) By-law No. 03-118 is repealed as of the day this By-law comes into force.
- 11(5) This By-law comes into force on the date of its passing.

PASSED this 26th day of May, 2010


Fred Eisenberger
MAYOR


Rose Catefini
CITY CLERK