

Municipality Of Chatham-Kent
Community Development
Building Development Services

To: Mayor and Members of Council
From: Paul Lacina, C.B.O.
Director, Building Development Services
Date: June 8, 2020
Subject: Derelict Vehicles By-law and Clean and Clear By-law

Recommendation

It is recommended that:

1. The attached by-laws to repeal and replace Clean and Clear By-law No. 152-2015 and Derelict Vehicle By-law No. 42-2010 be approved.

Background

Councilors Thompson and McGregor were each successful in having Motions approved at Municipal Council. The Motions were as follows:

- Councilor Thompson 2017: “That a report outlining property standards best practices be drafted with recommendations to improve the current property standards process and reduce the current backlog.”
- Councilor McGregor 2018: “Administration be directed to prepare a report outlining the number and frequency of repeat property standards offenders. This report should provide information on how repeat offenders are managed presently and any recommendations on how to manage repeat offenders in the future.”

Comments

Data shows that some of the highest numbers of by-law complaints arise from the provisions of the Clean and Clear and Derelict Vehicle By-laws. A substantial number of repeat offences also arise out of these two by-laws.

Typically, repeat offenders to a by-law will comply with an Order, then within weeks, or in some cases days, a new complaint is received and the process will start again. This is infuriating to the complainant, but also frustrating for the inspector who has to start the process over.

The proposed by-laws introduce set fines to address contravention, and to deter repeated contravention, of the Clean and Clear and Derelict Vehicle By-laws. The proposed set fines are not final until approved by the Regional Senior Justice, in accordance with the *Provincial Offences Act*.

In reviewing these By-laws, it has come to the attention of administration that neither by-law includes an appeal process for property owners who wish to appeal a notice given under the by-laws. The proposed by-laws resolve this issue by creating a right of appeal to the By-law Appeal Committee, with the intent of ensuring procedural efficiency.

Conclusion

The proposal has been reviewed by the Community Development Leadership Team. It is the department's position that this initiative will help with the reduction of repeat offences of these By-laws.

Areas of Strategic Focus and Critical Success Factors

The recommendations in this report support the following areas of strategic focus:

Economic Prosperity:

Chatham-Kent is an innovative and thriving community with a diversified economy

A Healthy and Safe Community:

Chatham-Kent is a healthy and safe community with sustainable population growth

People and Culture:

Chatham-Kent is recognized as a culturally vibrant, dynamic, and creative community

Environmental Sustainability:

Chatham-Kent is a community that is environmentally sustainable and promotes stewardship of our natural resources

The recommendations in this report support the following critical success factors:

Financial Sustainability:

The Corporation of the Municipality of Chatham-Kent is financially sustainable

Open, Transparent and Effective Governance:

The Corporation of the Municipality of Chatham-Kent is open, transparent and effectively governed with efficient and bold, visionary leadership

Has the potential to support all areas of strategic focus & critical success factors

Neutral issues (does not support negatively or positively)

Consultation

Internal

Community Development Leadership Team

The Community Development Leadership Team has reviewed the report and is in support of the introduction of set fines in respect of these by-laws.

Financial Implications

There are no financial implications resulting from the recommendation.

Prepared by:

Reviewed by:

Paul Lacina
C.B.O., Director
Building Development Services

John Norton
General Manager
Community Development

Reviewed by:

Emily Crawford
Solicitor
Legal Services

Attachment: Appendix A – Proposed Clean and Clear By-law

Appendix B – Proposed Derelict Vehicles By-law

By-law Number _____
Of The Corporation
of the Municipality of Chatham-Kent

A By-law to provide for the maintenance of land in a clean and clear condition

Finally Passed the ____ day of _____, 2020.

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 Whereas Section 128 of the *Municipal Act, 2001*, 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 425(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 *Municipal Act, 2001*, S.O. 2001, c.25, as amended, is guilty of an offence;

And Whereas Section 429(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipality may establish a system of fines for offences under a By-Law passed under the *Municipal Act, 2001*, S.O. 2001, c.25, as amended;

And Whereas Section 446 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipality may direct that where an owner has defaulted, the municipality may have the default remedied at the owner's expense and add the cost to the tax roll in the same manner as municipal taxes;

And Whereas Council of the Corporation of the Municipality of Chatham-Kent

("Council") so passed By-law No. 152-2015, being a by-law to provide for the maintenance of land in a clean and clear condition;

And Whereas Council deems it advisable to amend certain provisions of By-law 152-2015;

And Whereas it is deemed more expedient to repeal said by-law and replace it with a new consolidated document which incorporates the sought amendments;

Be it Therefore Enacted by the Municipal Council of the Municipality of Chatham-Kent as follows:

1. DEFINITIONS: In this By-law:

1.1 "*By-law*" shall mean this by-law.

1.2 "*infestation*" shall mean the overrunning of a property by vermin, rodents and insects;

1.3 "*land*" shall not include buildings for the purpose of this *By-law*;

1.4 "*Municipal By-law Enforcement Officer*" shall mean (i) a Municipal By-law Enforcement Officer as appointed by Council or (ii) Chatham-Kent Police Officer;

1.5 "*Municipality*" shall mean the Corporation of the Municipality of Chatham-Kent;

1.6 "*owner*" shall mean the registered owner, occupant, tenant, person for the time being managing or receiving the rent of the property, whether on his or her account or on account of an agent or trustee of any other person, or any one of the aforesaid;

1.7 "*refuse*" shall mean any article, matter or thing that appears to be waste material, and shall include but not be limited to the following:

- a) articles, things, matter, effluent, which in whole or in part or fragments thereof, are derived from or are constituted from or consist of:

Appendix A

- i. agricultural, animal, vegetable, paper, lumber, or wood products; or
 - ii. mineral, metal, steel, aluminum, or other ferrous or non-ferrous material or alloy, or chemical products, whether or not the products are manufactured otherwise processed, or are products or by-products, products manufactured or otherwise processed;
- b) automotive parts, batteries, vehicle parts, mechanical equipment, mechanical parts, accessories or adjuncts to the vehicles and mechanical equipment, or any part thereof;
- c) piping, tubing, conduits, cable and fittings or other accessories, or adjuncts to the piping, tubing, conduits or cable;
- d) refrigerators, freezers or other appliances, any attached hinges or latching, locking or other closing mechanism or device, or any part thereof;
- e) paper, cartons;
- f) containers of any size, any type or any composition;
- g) material resulting from, or as part of, construction or demolition projects;
- h) rubble, inert fill;
- i) bones, feather, hides;
- j) accumulations, deposits, leavings, litter, remains, rubbish, trash;
- k) furniture;
- l) crockery;
- m) sewage;
- n) salvage materials; and

o) waste material.

2. PROPERTY MAINTENANCE

2.1. No *owner* shall fail to keep his or her land free and clear of *refuse* or anything that is an eyesore, unless specifically permitted to have such *refuse* or things on their land pursuant to a Federal, Provincial or Municipal law or approval.

2.2. No *owner* shall fail to keep his or her land free and clear of *infestation*.

3. ENFORCEMENT

3.1. This By-law shall be enforced by *Municipal By-law Enforcement Officers*.

3.2. A *Municipal By-law Enforcement Officer* may enter on land at any reasonable time for the purpose of carrying out an inspection for the purpose of enforcing this By-law, including for the purposes of making a determination of whether or not this By-law or notice of violation made under this By-law are being complied with.

3.3. For the purpose of conducting an inspection under 3.2, a power of entry may be exercised by a *Municipal By-law Enforcement Officer* to carry out an inspection and the *Municipal By-law Enforcement Officer* may:

- 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 for any person related to a matter relevant to the inspection; and
- d) alone or in conjunction with any person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.

3.4. No person shall hinder or obstruct, or attempt to hinder or obstruct, a *Municipal By-law Enforcement Officer* from carrying out inspections of land to ensure compliance with this *By-Law*.

4. NOTICE OF VIOLATION

4.1. If a *Municipal By-law Enforcement Officer* is satisfied that a violation or contravention of the *By-Law* has occurred, the *Municipal By-law Enforcement Officer* may serve written notice upon the *owner* of the property, directing that the violation be remedied within a specific period. Such notice shall contain reasonable particulars of the violation adequate to identify same and the location of the property as well as the date by which compliance must be effected.

4.2. In the event that the violation in the notice is not remedied within the aforesaid period of time, the *Municipal By-law Enforcement Officer* may cause the violation to be remedied at the expense of the owner. The Municipality shall not be responsible for any damage or loss that may be sustained by the *owner* as a result.

4.3. Where a *Municipal By-law Enforcement Officer* deems a violation of this *By-Law* to constitute an emergency or danger to the public, the *Municipal By-law Enforcement Officer* may, without notice, cause the violation to be remedied at the expense of the *owner*. The Municipality shall not be responsible for any damage or loss that may be sustained by the *owner* as a result. Where a violation is remedied without prior notice to the *owner*, the *Municipal By-law Enforcement Officer* shall serve written notice upon the *owner* of the property describing the particulars of the violation adequate to identify same and the location of the property as well as the date on which the remedial action was taken.

4.4. Any notice given under this *By-Law* may be given by regular mail or personal delivery. Delivery by regular mail shall be deemed to have been affected three (3) days after mailing.

4.5. The Municipality may recover its costs of remedying a violation of this *By-Law* by invoicing the *owner*, by instituting court proceedings or by adding the cost to the tax roll in the same manner as municipal taxes. The exercise of any such remedy shall not preclude the exercise of any other available remedy.

4.6. APPEAL

- a) An appeal of a notice given pursuant to this By-law shall lie to the Municipal By-law Appeal Committee.
- b) A person who appeals a notice given pursuant to this By-law shall submit a Request for a Hearing in the time frame and in the manner prescribed in By-law Number 22-2015 and the By-Law Appeal Committee Rules of Procedure, both as amended, and shall submit any applicable fees established under the Municipality's User Fees By-law, as amended, for the processing of the Appeal.
- c) Every decision or order of the By-Law Appeal Committee is final, without any further right of appeal.

5. PENALTY

5.1. Any person who contravenes any provision of this by-law is guilty of an offence and, upon conviction, is liable to a set fine pursuant to the *Provincial Offences Act*, as set out in Schedule "A" attached hereto.

5.2. If a notice of contravention has been issued under this By-law or by the court,

and has not been complied with, the contravention shall be deemed to be a continuing offence for each day or part of a day that the order is not complied with.

5.3. The court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted, and such order shall be in addition to any other penalty imposed on the person convicted.

6. SEVERABILITY

6.1. If a court of competent jurisdiction declares any section or part of this *By-Law* invalid, the remainder of this *By-Law* shall continue in force unless the court makes an order to the contrary.

7. REPEAL

7.1. By-Law 152-2015 and any amendments thereto are hereby repealed.

This By-law shall come into full force and effect upon the final passing thereof.

Read a First, Second and Third Time this ____ day of _____, 2020

Mayor – Darrin Canniff

Clerk - Judy Smith

Schedule "A"

THE CORPORATION OF THE MUNICIPALITY OF CHATHAM-KENT

PART I – *Provincial Offences Act*

By-law Number _____

Being a By-law to provide for the maintenance of land in a clean and clear condition

Item #	COLUMN 1 Short Form Wording	COLUMN 2 Provision for creating or defining offence	COLUMN 3 Set Fine
1	Fail to keep land free and clear of refuse or anything that is an eyesore	2.1	\$200.00
2	Fail to keep land free and clear of infestation	2.2	\$200.00
3	Hinder or obstruct, or attempt to hinder or obstruct, inspection	3.4	\$200.00

By-law Number _____
Of The Corporation
of the Municipality of Chatham-Kent

A By-law respecting derelict or unlicensed vehicles

Finally Passed the ____ day of _____, 2020.

Whereas Council of the Corporation of the Municipality of Chatham-Kent (“Council”) may pass by-laws to prohibit and regulate public nuisances, including matters that, in the opinion of Council, are, or could become or cause public nuisances under Section 128 of the *Municipal Act 2001*, S.O. 2001,c.25 as amended;

And Whereas it is the opinion of Council that derelict or unlicensed vehicles are or could become or cause a public nuisance;

And Whereas section 446 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, permits Council to enact by-laws that provide that where the Municipality may lawfully direct or require that a matter or thing be done, the Municipality may do such matter or thing at the expense of the person directed or required to do it if that person is in default of such direction or requirement;

And Whereas Council so adopted By-law No. 42-2010, being a by-law respecting derelict or unlicensed vehicles on private property;

And Whereas Council deems it advisable to amend certain provisions of By-law 42-2010;

And Whereas it is deemed more expedient to repeal said by-law and replace it with a new consolidated document which incorporates the sought amendments;

Be it Therefore Enacted by the Municipal Council of the Municipality of Chatham-Kent as follows:

1. SHORT TITLE

1.1. This by-law may be cited as the “Derelict or Unlicensed Vehicle(s) By-law”.

2. DEFINITIONS AND INTERPRETATION

2.1. In this by-law,

- a) “**Agricultural equipment**” means implements and machinery commonly used for farming;
- b) “**Building**” includes a garage, shed, barn, or similar enclosed structure but does not include a carport, tarp or covering for a vehicle;
- c) “**Derelict vehicle**” means a motor vehicle, tractor, trailer, truck, camper, boat, motorcycle, demolition endurance vehicle, motorized snow vehicle, mechanical equipment, machinery or parts thereof, or any vehicle drawn, propelled or driven by any kind of power or any part thereof, but does not include agricultural equipment that is not in an operating condition and is discarded, rusted, deflated tires, wrecked or partly wrecked, or is dismantled or partly dismantled;
- d) “**Municipality**” means either The Corporation of the Municipality of Chatham-Kent or the Municipality of Chatham-Kent, whatever the context requires;
- e) “**Occupant**” means any person or persons over the age of eighteen years in possession of a property;
- f) “**Owner**” means the registered owner or any person, firm or corporation having control over, or possession of any portion of the

building or property and includes the persons occupying the building or property;

- g) “**Person**” includes an individual, firm, proprietorship, partnership, association, syndicate, trust, corporation, department, bureau and agency;
- h) “**Private property**” means any privately-owned land, including vacant property, within the Municipality of Chatham-Kent except a property that is licensed or authorized to conduct or operate a scrap yard or used material yard, and then only in an arrangement such as to prevent an unsafe or unsightly condition;
- i) “**Property Standards Officer**” means a person designated as such by a resolution or bylaw of Council of the Municipality of Chatham-Kent;
- j) “**Unlicensed vehicle**” means a motor vehicle, tractor, trailer, truck camper, boat, motorcycle, demolition endurance vehicle, motorized snow vehicle, or any vehicle drawn, propelled or driven by any kind of power or any part thereof, that is not insured and registered in accordance with *The Highway Traffic Act* and does not have a current, valid license plate attached to it, but does not include a derelict vehicle.

3. APPLICATION

3.1. This by-law shall apply to all lands within the geographic limits of the Municipality.

4. STORING DERELICT VEHICLES

Appendix B

4.1. No person shall park, store or leave a derelict vehicle(s) on private property, except as provided in Section 4.4.

4.2. No owner or occupant of private property shall permit a derelict vehicle(s) to be parked, stored or left on his or her private property, except as provided in Section 4.4.

4.3. No person shall park, store or leave a derelict vehicle (s) on vacant property, except as provided in Section 4.4.

4.4. There is no limit to the number of derelict vehicles that may be parked or stored in a building on private property.

5. STORING UNLICENSED VEHICLES

5.1. An owner or occupant of private property may permit one (1) unlicensed vehicle to be parked, stored or left on his or her property in a designated driveway or parking space.

5.2. No person shall park, store or leave an unlicensed vehicle(s) on vacant property, except as provided in Section 5.3.

5.3. There is no limit to the number of unlicensed vehicles that may be parked or stored in a building on private property.

6. NOTICE TO COMPLY

6.1. A Property Standards Officer who finds a contravention of this by-law shall give written notice to the owner or occupant of the property requiring compliance with this by-law within fourteen (14) days after the notice is given.

6.2. The notice may be served personally on the person to whom it is directed or by registered mail to the last known address of that person, in which case the notice shall be deemed to have been given on the third day after it is mailed.

6.3. If there is evidence that the person in possession of the property is not the registered property owner, the notice shall be served on both the registered property owner and the person in possession of the property.

6.4. If there is evidence that the owner of the derelict or unlicensed vehicle(s) is not the registered property owner or occupant of the property, the notice shall be served on the registered property owner, the person in possession of the property and the owner of the derelict or unlicensed vehicle(s). In the case of the owner of the derelict or unlicensed vehicle(s), the notice shall be forwarded to the last address registered for that vehicle at the Motor Vehicle Branch.

6.5. If the address of the owner is unknown or the Municipality is unable to effect service on the owner or occupant under subsection 6.3, a placard stating the terms of the notice and placed in a conspicuous place upon land on or near the property shall be deemed to be sufficient notice to the owner.

7. FAILURE TO COMPLY

7.1. If an owner or occupant fails to comply with a notice given under Section 6.0, the Municipality may enter upon the owner's property or occupant's property at any reasonable time for the purpose of removing the derelict or unlicensed vehicle(s).

7.2. Costs incurred by the Municipality in removing the derelict or unlicensed vehicle(s) will be recovered through means as provided for in Section 446 of the *Municipal Act, 2001* as amended.

8. OFFENCES

8.1. Any person who contravenes any provision of this by-law is guilty of an offence and, upon conviction, is liable to a set fine pursuant to the Provincial Offences Act, as set out in Schedule "A" attached hereto.

8.2. If a notice to comply has been issued under this by-law or by the court, and has not been complied with, the contravention shall be deemed to be a continuing offence for each day or part of a day that the order is not complied with.

8.3. The court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted, and such order shall be in addition to any other penalty imposed on the person convicted.

9. NOTICE OF REMOVAL

9.1. Within 72 hours after removing the derelict or unlicensed vehicle(s), the Property Standards Officer or designate shall notify in writing

- a) the owner of the derelict or unlicensed vehicle(s), if known, and
- b) the owner or occupant of the private property on which the derelict or unlicensed vehicle(s) was situated,

of the removal. Notification will be delivered in person or by registered mail or regular mail delivery to the last known address.

9.2. The notice of the removal of the derelict or unlicensed vehicle(s) shall

- a) describe the derelict or unlicensed vehicle(s) and the location from which it was removed; and

- b) identify the location to which it has been removed.

10. REDEMPTION OF DERELICT OR UNLICENSED VEHICLE(S)

- 10.1. The owner of the derelict or unlicensed vehicle(s) may redeem it by providing proof of ownership to the location to which it has been removed.

11. APPEAL

- 11.1. An appeal of a notice given pursuant to this By-law shall lie to the Municipal By-law Appeal Committee.

- 11.2. A person who appeals a notice given pursuant to this By-law shall submit a Request for a Hearing in the time frame and in the manner prescribed in By-law Number 22-2015 and the By-Law Appeal Committee Rules of Procedure, both as amended, and shall submit any applicable fees established under the Municipality's User Fees By-law, as amended, for the processing of the Appeal.

- 11.3. Every decision or order of the By-Law Appeal Committee is final, without any further right of appeal.

12. VALIDITY AND SEVERABILITY

- 12.1. If a court of competent jurisdiction should declare any section or part of a section of this By-law to be invalid, such section or part of a section shall not be construed as having persuaded or influenced Council to pass the remainder of the By-law, and it is hereby declared that the remainder of the By-law shall be valid and shall remain in force.

- 12.2. 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.

13. REPEAL

13.1. By-law No. 42-2010 and any amendments thereto are hereby repealed.

This By-law shall come into full force and effect upon the final passing thereof.

Read a First, Second and Third Time this ____ day of _____, 2020

Mayor – Darrin Canniff

Clerk – Judy Smith

Schedule "A"

Set Fine Schedule

THE CORPORATION OF THE MUNICIPALITY OF CHATHAM-KENT

PART I – *Provincial Offences Act*

By-law Number _____

Being a By-law respecting derelict or unlicensed vehicles

Item #	COLUMN 1 Short Form Wording	COLUMN 2 Provision for creating or defining offence	COLUMN 3 Set Fine
1	Park, store, or leave a derelict vehicle(s) on private property	4.1	\$200.00
2	Permit a derelict vehicle(s) to be parked, stored or left on private property	4.2	\$200.00
3	Park, store or leave a derelict vehicle(s) on vacant property	4.3	\$200.00
4	Permit unlicensed vehicle(s) to be parked, stored or left on property	5.1	\$200.00
5	Park, store or leave unlicensed vehicle(s) on vacant property	5.2	\$200.00