

THE CORPORATION OF THE "MUNICIPALITY OF BROOKE-ALVINSTON"
BY-LAW NUMBER 35 of 2019

Being a By-Law to provide for the filling up, draining, cleaning and clearing of land, and clearing of refuse

"Tidy Yard By-Law"

WHEREAS Section 11(2) of the *Municipal Act, 2001* provides that a Municipality may pass by-laws respecting matters for purposes related to the health, safety, and well-being of the inhabitants of the Municipality, and Section 11(3) of the *Municipal Act, 2001* provides that a Municipality may pass by-laws respecting matters within the sphere of jurisdiction of drainage and flood control and waste management;

AND WHEREAS Section 127 of the *Municipal Act, 2001* provides that a municipality may require the owner or occupant of land to clean and clear the land, not including buildings, or to clear refuse or debris from the land, not including buildings;

AND WHEREAS Section 127 of the *Municipal Act, 2001* provides that a municipality may regulate when and how matters required under the by-law may be done;

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

AND WHEREAS Section 127 of the *Municipal Act, 2001* provides that a municipality may define "refuse" for the purpose of the by-law;

AND WHEREAS Section 127 of the *Municipal Act, 2001* provides that a Municipality may regulate when and how the owner or occupant of land cleans and clears the land or to clear refuse or debris from the land;

AND WHEREAS Section 128 of the *Municipal Act, 2001* provides that a municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of Council, are or become or cause public nuisances, and it is the opinion of Council that the failure to clear refuse and debris from land is a public nuisance and a contributor to the spread of vermin;

AND WHEREAS Section 425(1) of the *Municipal Act, 2001* provides that a Municipality may pass by-laws providing that a person who contravenes a by-law under this Act is guilty of an offence;

AND WHEREAS Section 446 (1) of the *Municipal Act, 2001*, provides that a Municipality has the authority to direct or require a person to do a matter or thing; the municipality may also provide that, in default of it being done by the person directed or required to do it, the matter or thing shall be done at the person's expense;

AND WHEREAS Section 446(2) of the *Municipal Act, 2001* provides that a Municipality may enter upon land at any reasonable time;

AND WHEREAS Section 446(3) of the *Municipal Act, 2001* provides that a Municipality may recover the costs of doing a matter or thing as provided for in Section 446(1) of the *Municipal Act, 2001* from the person directed or required to do it by action or by adding the cost/expenses to the tax roll and collecting them in the same manner as property taxes;

AND WHEREAS Section 15 of the *Police Services Act* R.S.O. 1990 c. P. 15 authorizes the Municipality to appoint persons to enforce the by-laws of the Municipality

NOW THEREFORE the Municipal Council of the Corporation of the Municipality of Brooke-Alvinston enacts as follows:

Part 1
DEFINITIONS

1. Definitions

In this By-Law, the following definitions shall apply:

Biosolids

Biosolids are primarily organic materials produced during wastewater treatment which may be put to beneficial use; an example of such use is the addition of biosolids to soil to supply nutrients and replenish soil organic matter; biosolids can be used on agricultural lands.

Building

"Building for the purposes of Graffiti cleaning and removal requirements of this By-Law, includes a building, structure, erection, object, fence, retaining wall, paved or similarly finished surface, vehicle, trailer and Waste container.

Cleared

"Cleared" means Lands:

- (a) free of weeds or grass more than 20 centimeters (8 inches) in height;
- (b) free 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;
- (c) free of water, by way of draining, disposal and/or treating, that is a health or safety hazard, or is malodorous or is a breeding place for mosquitoes; and
- (d) that are otherwise in full compliance with this By-Law.

Composting

"Composting" means the biological degradation or breakdown of organic material into a dark soil-like material called *humus*.

Composting Container

"Composting Container" means the holding unit used to store yard, garden and household waste for the purpose of Composting.

Costs/Expenses

"Costs/Expenses" means all costs and/or expenses (including labour, materials and disbursements) incurred by the Municipality in enforcing this By-Law (which, includes, for greater certainty, the Enforcement Officer's time, preparation and issuance of Notice(s), searching title, site visits, drafting correspondence, conducting title searches, searching sheriff certificates, and any other action taken to bring the Land into compliance with this By-law and the costs of the service of Servant/Agent retained to assist the Municipality in doing so).

Derelict Vehicle

Shall mean a Motor Vehicle as defined in the Highway Traffic Act, R.S.O. 1990 c.H.8, including but not limited to abandoned, inoperative, not in roadworthy condition, and/or in a state of repair

Domestic and/or Agricultural Waste

"Domestic Waste and/or Agricultural Waste" means any article, thing, matter or effluent belonging to or associated with a residence, household, farm or dwelling unit that appears to the Enforcement Officer to be waste material and includes but is not limited to any of the following:

- (a) grass clippings, tree cuttings, brush, leaves and garden refuse;
- (b) dead, dying or decaying trees, shrubs, bushes or vegetation;
- (c) paper, cardboard, clothing;
- (d) kitchen and table waste, of animal or vegetable origin resulting from the preparation or consumption of food except any material of vegetable placed in a Composting Container;
- (e) cans, glass, plastic containers, dishes;

- (f) new, used or decaying/decayed material resulting from or for the purpose of construction, alteration, repair or demolition of any building or structure;
- (g) refrigerators, freezers, stoves or other appliances and furniture;
- (h) furnaces, furnace parts, pipes, fittings to pipes, water or fuel tanks;
- (i) a Motor Vehicle that appears by reason of its age, appearance, mechanical condition or lack of current validated license plate to be inoperative;
- (j) inoperative mechanical equipment of any type, including agricultural equipment;
- (k) automotive and mechanical parts and accessories;
- (l) rubble, inert fill, fencing materials; and
- (m) sewage.

Enforcement Officer

"Enforcement Officer" means a Provincial Offences Officer as that term is defined in the Provincial Offences Act, R.S.O. 1990, c. P.33 and such other person appointed by the Municipality to enforce this By-Law.

Excavation

"Excavation" means any man-made opening or depression in the ground other than: (a) an Excavation conducted pursuant to a pit license issued under the *Aggregate Resources Act*; (b) an abandoned pit, (c) an irrigation pond, and (d) a fish pond or a water garden.

Graffiti

"Graffiti" means one or more letters, symbols, figures, etchings, scratches, inscriptions, stains or other markings that disfigure or deface a building, howsoever made, including but not limited to: initials, slogans, emblems, logos or drawings, either written in ink, spray paint, chalk, marker or any other writing implement on private property and visible to the public.

Industrial and/or Commercial Waste

"Industrial and/or Commercial Waste" means any article, thing, matter or effluent belonging to or associated with industry or commerce or any trade, business, calling or occupation that appears to the Enforcement Officer to be waste material and includes but is not limited to any of the following:

- (a) piping, tubing, conduits, cable fittings or other accessories, or adjuncts to the piping, tubing, conduits or cable;
 - (b) containers of any size, type or composition;
 - (c) rubble, inert fill;
 - (d) mechanical equipment, mechanical parts, accessories or adjuncts to mechanical equipment;
 - (e) articles, things, matter, effluent which are derived from or are constituted from or consist of,
 - (i) agricultural, animal, vegetable, paper, lumber or wood products; or
 - (ii) mineral, metal or chemical products;
- Whether or not the products are manufactured or otherwise processed;
- (f) bones, feathers, hides;
 - (g) dead, dying or decaying trees, shrubs, bushes or vegetation;
 - (h) paper or cardboard packaging or wrapping;
 - (i) material resulting from, or being part of, construction or demolition projects;

- (j) a Motor Vehicle, Inoperative, Derelict, Abandoned;
- (k) a Motor Vehicle, Unlicensed;
- (l) automotive and mechanical parts and accessories; and
- (m) Sewage.

Land

"Land" means real property and includes grounds, yards, vacant lots or any part of a lot that is not beneath a building.

Municipality

"Municipality" means The Corporation of the Municipality of Brooke-Alvinston

Owner

"Owner" includes the registered legal owner(s), lessee(s) and/or occupant(s) of the Land.

Perennial Garden

Perennial Garden shall mean a defined area deliberately planted to produce ground cover including wild flowers, shrubs, perennials, ornamental grasses or combinations of them, but does not include a Wildflower Meadow or a Naturalized Area.

Refuse

"Refuse" means Waste and also includes any article, thing, matter, substance or effluent that has been cast aside, discharged or abandoned or is discarded from its usual and intended use or is used up, in whole or in part, or expended or worn out in whole or in part, and such waste does not cease to be refuse by reason that it may be commercially saleable or recyclable.

Rubble

"Rubble" includes broken concrete, bricks, stones, broken asphalt, patio or sidewalk slabs.

Servant/Agent

"Servant/Agent" means any service provider who has been contracted or engaged to carry out the works necessary to bring property into compliance with this By-Law which may include but not limited to paid duty police officers, security personnel, property estimators, professional engineers, qualified tradespeople, and municipal employees.

Sewage

"Sewage" includes any liquid or pelletized Waste containing human, vegetable, or mineral matter but does not include roof water or storm run-off.

Waste

"Waste" means Domestic and/or Agricultural Waste and/or Industrial and/or Commercial Waste.

Woodlot

"Woodlot" has the meaning given to it in The Corporation of the County of Lambton *Woodlands Conservation By-Law*, as amended.

Yard

"Yard" means the land around and appurtenant to the whole or any part of a building and used or intended to be used or capable of being used in connection with that building and, notwithstanding the foregoing, includes Land.

Part 2

GENERAL PROVISIONS

2.1 Administration –

This By-Law is administered by the Municipality and any other person, including the corporation, appointed by the Municipality to administer this By-Law and/or any part thereof.

2.2 Land owner responsibility

Every Owner shall keep his Land free of standing water, clean and cleared up from conditions that might create a hazard

2.3 Excavations – filled – exception – enclosed by barrier

Every Owner shall fill in any Excavation on the Land to an adjacent grade with non-contaminated fill unless an exemption applies below:

- (a) the Excavation is enclosed completely by a fence having a minimum height of at least 122 centimeters or 48 inches in height; or
- (b) construction is proceeding on the Land where the Excavation is located for which a valid building permit has been issued by the Municipality.

2.4 Water – exceeding 30 cm – drained exception

Every Owner shall drain Land of the accumulations of water that exceeds 30 centimeters (12 inches) in depth unless the water:

- a) is completely enclosed by a temporary barrier of at least 122 centimeters (48 inches) in height;
- b) constitutes a storm water management pond approved by the Municipality;
- c) constitutes a natural body of water or results from the periodic flooding of a natural water course;
- d) constitutes a water garden or fish pond; or
- e) constitutes a private drain or a municipal drain or any part thereof.

2.5 Waste Material

Every Owner shall keep his Land clean, cleared and free of domestic waste, grass, weeds, industrial waste and/or refuse of any kind.

2.6 Dumping –

No Owner shall throw, place, dump or deposit domestic waste, industrial waste or Refuse on private property or municipal property without the lawful authority.

2.7 Swimming pool Maintenance–

Every Owner shall keep or maintain water in a swimming pool in a condition which is not: (a) a health or safety hazard, (b) foul-smelling, or (c) a breeding place for mosquitoes.

2.8 Land – removal of refuse

Every Owner shall remove Refuse from his Land.

2.9 Storm water run-off - drainage

Every Owner shall direct storm water run-off generated on his Land away from neighbouring lands. Every Owner shall grade and maintain his Land so as to prevent ponding or the entry of water onto any adjacent lands.

2.10 Ditches, private drains, swells and water courses

Every Owner shall maintain ditches, private drains, swells and water courses on his Land to facilitate the unimpeded flow of water and to prevent ponding.

2.11 Storm Water Drainage

No Owner shall discharge storm water or roof water on to a sidewalk, walkway, steps, porches or other pedestrian's access to a property that could be hazardous or result in a potential safety risk to any other person. Any stormwater discharge shall be directed away from any neighbouring properties

2.12 Weeping tile, foundation, drain, roof drain or land drain

No Owner shall connect or discharge a weeping tile, foundation, drain, roof drain or land drain into any sanitary sewage system or public storm drainage system.

2.13 Graffiti – removal

Every Owner shall clean and remove the Graffiti off of the exterior of any Building, structures, objects or property located on the Land in accordance with this by-law.

2.14 Biosolids can be used on agricultural land for farming practices. The amount of

biosolids allowed to be stored on a parcel of land may only be the amount used for that specific parcel of land; there shall be no stockpiling of biosolids for other farms on one parcel and the biosolids may only be stored up to three consecutive days.

Part 3
GENERAL PROHIBITIONS

- 3.1 Clearing -Refuse, Grass, Weeds**
No Owner shall fail to keep his Land Cleared and free of Refuse, grass and weeds.
- 3.2 Excavation –**
No Owner shall fail to enclose an Excavation with a temporary barrier of at least 122 centimeters or 48 inches in height.
- 3.3 Water – 30 cm deep – failure to drain – prohibited**
No Owner shall fail to drain an accumulation of water on his Lands exceeding 30 centimeters (12 inches) in depth, except as permitted in 2.4.
- 3.4 Private property**
No Owner shall deposit Refuse on private property without lawful authority.
- 3.5 Municipal property deposits**
No Owner shall deposit Refuse on public property without lawful authority.
- 3.6 Water in swimming pool**
No Owner shall fail to keep or maintain water in a swimming pool located on his Land in accordance with the provisions of this By-Law.
- 3.7 Land use –**
No Land shall be used as a place to store, keep, display, pile or accumulate in the open any Waste, scrap, iron or other scrap metals, used building materials, clothing or household goods, furnishings, fixtures, appliances, or any parts or portions thereof unless such lot is specifically zoned and approved by the Municipality for such purpose.
- 3.8 Land use**
Notwithstanding section 3.7 above, Lands may be used for the sale or display of household goods, furnishings, apparel and similar articles provided such sale and display is limited to not more than four (4) days in any calendar year.
- 3.9 Waste – Collection**
Waste shall be placed for collection in accordance with the Municipality's by-laws and shall be disposed of.
- 3.11 No obstruction of Enforcement Officer**
No Owner shall hinder or obstruct, or attempt to hinder or obstruct, an Enforcement Officer in the administration or enforcement of this By-Law.
- 3.12 Yards – Motor Vehicles**
All Yards shall be kept free and clear of Motor Vehicle, Inoperative, Derelict, Abandoned and Motor Vehicle, Unlicensed and all other dismantled, discarded, wrecked or abandoned vehicles, farm machinery and equipment, railway cars, trailers, boats and street-car bodies and kept free of Refuse and of parts of motor vehicles whether inoperative or not unless the Lands upon which the Yard is situated:
- (a) are licensed as a salvage yard in accordance with the Municipality's by-laws; or
 - (b) constitute a waste disposal site for which an environmental certificate of compliance has been granted pursuant to the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended; or
 - (c) is enclosed in a building; or
 - (d) constitutes a permitted use and is in conformity with the Municipality's zoning by-laws or otherwise constitutes a legal non-conforming use under the *Planning Act*, R.S.O. 1990, c. P.13.
- 3.13 Permitted Use**
Notwithstanding Section 3.12, the use of sea containers, railway cars, street cars, buses, trucks, trailers, vans and similar motor vehicles or parts thereof are permitted provided they satisfy the provisions of the Municipality's zoning by-laws for accessory buildings.

**Part 4
EXEMPTIONS**

4.1 Perennial Gardens This By-law does not apply to perennial gardens provided that the Perennial Gardens are managed in accordance with the Weed Control Act, R.S.O. 1990 c. W.5 and provided that there is no Waste deposited in the Perennial Gardens.

4.2 Collection of Waste – exemption
This By-Law does not apply to the placement or collection of Waste left at the curb in accordance with the Municipality's waste collection by-law(s).

**Part 5
INSPECTIONS AND NOTICES**

5.1 Enforcement Officer
The Enforcement Officer may, by written order ("Order") posted on the Land and either provided personally to the Owner or sent to the Owner by registered mail, require the Owner to take such action as may be necessary to bring the Land or structure in compliance with this By-Law within the time period specified in the Order.

5.2 Notice
An Order given by an Enforcement Officer to an Owner shall identify the Land or structure and provide reasonable particulars with respect to the contravention of the By-law

5.3 Address
Where an Order is to be sent by mail of any sort to an Owner, it shall be sent to the attention of the Owner of the Lands at the address shown on the most up-to-date tax assessment roll maintained by the Municipality.

5.4 Deadline
An Order to an Owner shall also define the deadline, being the date and time, for the Owner to comply with this By-Law, which deadline shall not be less than five (5) days excluding Saturday, Sunday and public statutory holidays in the Province of Ontario.

5.5 Cost/Expense Notification
An Order to an Owner may advise that unless the Owner brings the Land into compliance with this By-Law within the deadline stated in the Order, the Owner shall be liable for the Costs/Expenses incurred by the Municipality in accordance with Section 6.6 to bring the Land into compliance with this By-Law.

5.6 Service
An Order is deemed served upon the Owner as follows:

- (a) three (3) days after the Order is posted on the Lands or sent by registered mail; and
- (b) on the day the Order is served personally onto the Owner.

5.7 Inspection
The Enforcement Officer, with or without a Servant/Agent, may enter onto or inspect the use of any land for the purpose of determining whether the land complies with the terms and conditions and requirement of this By-Law.

5.8 Deface or Remove Notice
No Owner shall remove or deface an Order which has been posted on the Land pursuant to this By-Law.

**Part 6
ENFORCEMENT and OFFENCE**

6.1 Penalty for Contravention

Any person who contravenes any provisions of this By-Law is guilty of an offence and on conviction is liable to a fine and such other penalty as provided for in the *Provincial Offences Act*, R.S.O., 1990, c. P.33. Each day that such an offence is committed, or permitted to continue, shall constitute a separate offence and may be punishable as such.

6.2 Court Order Prohibiting Offence

The court in which a conviction has been entered and any court of competent jurisdiction thereafter may make an order prohibiting the continuation or repetition of the offence.

6.5 Enforcement Officer – entry to inspect

An Enforcement Officer with or without a Servant/Agent, may enter upon any Land at any reasonable time to inspect and enforce compliance with this By-Law.

6.6 Default –in Compliance

(a) Where an Owner has been by Order required to take such steps and actions to comply with the provisions of the By-Law and has not done so, the Municipality may, in default of it being done by the Owner as directed, cause it to be done at the Owner's costs/expenses.

(b) Where an Owner has defaulted in complying with the provisions of this By-Law, the Municipality may recover all Costs/Expenses incurred in bringing the Lands into compliance from the Owner by action or by adding the Cost/Expenses to the Land's tax roll and collecting them in the same manner as property taxes.

(c) Where any items are removed from the Land, the items shall be immediately disposed of by the Enforcement Officer and/or its Servant/Agent. The Municipality shall have no liability whatsoever to any person for any reason for any items so-disposed.

(d) Pursuant to Section 448 of the Municipal Act, no proceeding for damages or otherwise shall be commenced against a member of Council or an officer, employee or agent of a municipality or a person acting under the instructions of the officer, employee or agent for any act done in good faith in the performance or intended performance of a duty or authority under this Act or a by-law passed under it or for any alleged neglect or default in the performance in good faith of the duty or authority.

Part 7 APPEAL

7.1 If the recipient of an Order disagrees with all or any part of its content, the recipient may, within two (2) days after the date the recipient is deemed pursuant to section 223 above to have received the Order, excluding Saturday, Sunday and public statutory holidays in the Province of Ontario, file a written appeal to the Clerk-Administrator by completing the Notice of Appeal, attached as Schedule B to this By-Law. The recipient shall not be entitled to any hearing on his or her appeal. The enforcement of the Order shall be stayed until such date as the appeal is addressed and a decision on the Order is rendered pursuant to section 7.2 below.

*amended to
correct
wrongly named
section

7.2 The Clerk-Administrator shall review the recipient's completed Notice of Appeal and has the authority to modify, rescind or confirm all or any part of the content of the Order under appeal, and the Clerk-Administrator decision shall be final and not subject to any further appeal. The recipient shall comply with Clerk-Administrator's decision, if applicable, within the deadline stated in the decision to bring the Land into compliance with this By-Law, if applicable, failing which the Owner shall be in violation of this By-Law.

Part 8 GENDER

All references to the masculine gender shall, where appropriate, include references to the feminine gender and all references to the singular shall, where appropriate, include references to the plural.

Part 9
TITLE
The short title of this By-Law is the *Tidy Yard By-Law*.

Part 10 MUNICIPALITY NOT LIABLE

The Municipality shall assume no liability with respect to property damage and/or personal injury resulting from action and/or enforcement undertaken with respect to any person that is subject of this By-law

**Part 10
SEVERIBILITY**

If any section or sections of this By-Law or parts thereof are found by any court to be illegal or beyond the power of the Municipality to enact, such section or sections or parts thereof shall be deemed to be severable and all other sections or parts of this By-Law shall be deemed to be separate and independent therefrom and continue in full force and effect unless and until similarly found and this By-Law shall be enacted as such.

**Part 11
COMMENCEMENT**

This By-Law shall come into full force and effect upon passing hereof.

**Part 12
REPEAL**

By-Law No. 31 of 2009 is hereby repealed.

THIS BY-LAW read a first, second and third time and finally passed this 27 day of June, 2019.



Name David Ferguson
Mayor



Name Janet Denkers
Administrator-Clerk

Schedule "B"
Part 1 of 2
By-Law Number 35 of 2019
Municipality of Brooke-Alvinston

By-Law Reference:	Description of By-Law:

Note these references and list is not exhaustive.
Ensure your property is maintained within By-Law 35 of 2019.
Attached is a copy of the Tidy Yard By-Law 35 of 2019.

Schedule "B"
Part 2 of 2
By-Law Number 35 of 2019
Municipality of Brooke-Alvinston

DEFECIENCIES NOTED UPON INSPECTION

- Provide Bulleted Listing

REQUIRED ACTION

- Provide Bulleted Listing

REMINDER:

A re-inspection will take place on or after *Month, Day, Year, Time.*

As noted above, this Order will serve as the official notice to advise the Owner that the property brought into compliance and also serve as notice that the Municipality will undertake the necessary works should the property remain in contravention after the specified deadline as stated in the Order or in accordance with an Appeal deadline and the Owner shall be liable for all Costs/Expenses incurred by the Municipality in accordance with the Tidy Yard By-Law provisions.

No further notices will be provided.

The Municipality would appreciate your cooperation in this matter to avoid further legal action.

TIDY YARD BY-LAW
NOTICE OF APPEAL
In accordance with Part 7 of By-Law 35 of 2019

Date: _____, 20 _____.

TO: *To the Clerk-Administrator
The Corporation of the Municipality of Brooke-Alvinston
3236 River Street
Alvinston, ON N0N 1A0*

RE: Order to Remedy - Violation of the Tidy Yard By-Law at:

Municipal Address: _____

TAKE NOTICE of the appeal of the undersigned to the Clerk-Administrator because of dissatisfaction with the above referenced Order to Remedy Violation of the Tidy Yard By-Law served upon the undersigned.

Name: _____

Address: _____

Telephone Number: _____

Email Address _____

Nature of Appeal: _____

Signature of owner or authorized agent

Municipality Completion

Received By: _____

Date: _____

Clerk-Administrator Decision:

- Modify
- Rescind
- Confirm

