

The Corporation of the City of Pembroke

By-Law Number 2019-56

A by-law to prohibit or regulate the obstructing, encumbering, injuring or fouling of highways, municipal and private properties within the City of Pembroke

Whereas, Section 9 of the Municipal Act, 2001, S.O. 2001, c. 25 as amended, states that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising the authority under this or any other act; and,

Whereas, Section 11 of the Municipal Act, 2001, S.O. 2001, c.25 as amended, provides that a municipality may pass by-laws respecting health, safety and well being of persons; and,

Whereas, Section 27(1) of the Municipal Act, 2001, S.O. 2001 c. 25 as amended, permits municipalities to pass by-laws in respect of a highway under the municipalities jurisdiction; and,

Whereas, Section 425 of the Municipal Act, 2001, S.O. 2001, c.25 as amended, states that a municipality may pass by-laws providing that a person who contravenes a bylaw of the municipality passed under this Act is guilty of an offence; and,

Whereas, Section 426 of the Municipal Act, 2001, S.O. 2001, c.25 as amended, states that no person shall hinder or obstruct, or attempt to hinder or obstruct any person who is exercising a power or performing a duty under a bylaw passed under this Act; and,

Whereas, Section 429 of the Municipal Act, 2001, S.O. 2001, c.25 as amended, states that a municipality may establish a system of fines for offences under a by-law of the municipality passed under this Act; and,

Whereas, Section 434.1 (1) of the Municipal Act, 2001, S.O. 2001, c.25 as amended states that a municipality may require a person to pay an administrative penalty if the municipality is satisfied that the person has failed to comply with a bylaw passed under this Act; and,

And Whereas, Section 181 of the Highway Traffic Act, 1990, R.S.O. 1990 c. H. 8 as amended, prohibits any person from depositing snow or ice on a roadway without permission in writing from the road authority responsible for the maintenance of the road.

Now Therefore the Municipal Council of the Corporation of the City of Pembroke enacts as follows:

1. Short Title:

- 1.1 This by-law shall be known and may be cited as the "Fouling of Highways, Municipal and Private Properties By-law". In the text of the by-law, it is referred to as "this by-law".

2. Definitions:

- 2.1 "Municipality or municipal" shall mean the Municipal Corporation of the City of Pembroke;
- 2.2 "City" shall mean the Corporation of the City of Pembroke;
- 2.3 "Council" shall mean the Council of the Corporation of the City of Pembroke;

- 2.4 “Officer” shall mean a Municipal Law Enforcement Officer, Ontario Provincial Police Officer, or any other person appointed by Council for means of enforcing this by-law;
- 2.5 “Person” shall mean any individual, owner or operator of a vehicle, corporation, partnership, company, association or party and their heirs, executors, administrators or other legal representative of such person to whom the context can apply according to laws; shall include any group of persons comprising a society or other organization and shall include the plural wherein the context requires;
- 2.6 “Highway” shall mean a common and public municipal highway, street, avenue, lane, parkway, driveway, sidewalk, square, place, bridge, viaduct, trestle, including the area between the lateral property lines that is intended for the use of the general public;
- 2.7 “Boulevard” shall mean the area of a highway between the edge of the pavement, curb or the roadway and the boundary of land adjacent to the highway, but excluding a sidewalk;
- 2.8 “Sidewalk” shall mean the portion of the boulevard of a highway that is set aside for the use of pedestrians.

3. General Prohibitions:

- 3.1 No person shall, unless otherwise authorized by the provisions of this or any other by-law of the City,
- a) Permit oils, chemicals or any other substances to be deposited or spilled on a municipal highway, boulevard or sidewalk, including such substances deposited as a result of vehicle maintenance activities, and/or;
 - b) Deposit, cast, throw, push or dump snow or ice onto or across any municipal highway, boulevard or sidewalk; and/or;
 - c) Deposit, cast, throw, push or dump snow or ice from a private property, highway, sidewalk or boulevard onto the private property of another person, and/or;
 - d) Deposit, cast, throw, push or dump snow, ice or any other material within 2 meters of any fire hydrant or emergency water stand within the municipality, and/or;
 - e) Deposit, cast, throw, push or dump, any other material onto a municipal highway, boulevard or sidewalk.
- 3.2 No person shall clear away or remove snow from a municipal highway, except as may be necessary to clear away snow that is blocking access to a private entrance or driveway;
- 3.3 No person shall deposit or permit the accumulation of snow, ice, or any other material on a property adjacent to a municipal highway in such a way as to;
- a) Cause a visual obstruction to oncoming traffic or pedestrian travel, and/or,
 - b) Encumber a sidewalk, municipal highway/ property, or drainage ditch, and/or,
 - c) Damage parking meters, highway signs, street name signs, light standards, hydrants, or any other such installation or utility located on a municipal highway
- 3.4 No person shall move, place, or operate any equipment, vehicle or other such material on any part of a highway, boulevard, sidewalk, ditch or other municipal property in a manner that creates damage to the road

surface, curb, sidewalk or any other municipal services resulting from their actions.

- 3.5 Any person who commits an offence listed under Section 2 of this by-law shall ensure that all snow, ice, machinery, equipment or any other material or item is removed forthwith, or immediately when directed by an Officer.

4. Exemptions:

- 4.1 The provisions of this by-law shall not apply to municipal snow clearing operations.

5. Administration and Enforcement:

5.1 Entry and Inspection

An Officer may, when an offence has been committed, enter upon land for the purpose of carrying out an inspection to determine compliance with this by-law.

5.2 Obstruction

No person shall hinder or obstruct, or attempt to hinder or obstruct, any officer exercising a power or performing a duty under this by-law.

6. Penalty:

- 6.1 Every person who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to a fine as provided for by the Provincial Offences Act, R.S.O. 1990, Chapter P.33, as amended.

- 6.2 Any person convicted of an offence under this by-law is liable:

- a) For a first offence, to a fine as set out under Schedule 'A' of set fines as imposed under this by-law; or,
- b) For every subsequent offence, to a fine no more than \$1,000.00 as imposed by the Justice of the Peace following a court proceeding.

7. Administrative Penalty:

- 7.1 As regulated under section 434.1 (1) of the Municipal Act, 2001, any person who fails to comply with any provision of this bylaw is subject to an administrative penalty. The administrative penalty shall include the costs of repairing damaged City highway, sidewalk or infrastructure and/or the removal and clean up of any snow, ice, or other material deposited.
- 7.2 In the case where damaged City property cannot be repaired by Municipal staff, a minimum of two (2) monetary quotes shall be acquired, whereas the lowest quote shall be contracted to complete the work.
- 7.3 The total administrative penalty owing shall be the accumulative monetary sum of the completed work invoice.
- 7.4 As per Section 434.2 (1) of the Municipal Act, 2001, all administrative penalties shall constitute a debt of the person to the municipality; and,
- 7.5 As per Section 434.2 (2) of the Municipal Act, 2001, if an administrative penalty imposed under section 434.1 is not paid within 15 days after the day that it becomes due and payable, the treasurer of a local municipality

may add the administrative penalty to the tax roll for any property in the local municipality for which all of the owners are responsible for paying the administrative penalty, and collect it in the same manner as municipal taxes. 2017, c. 10, Sched. 1, s. 75

8. Severability And Enactment:

- 8.1 If any court of competent jurisdiction declares any section or part of this By-law to be invalid, such section or part of a section 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 there from and to be enacted as such and the remainder of the By-law shall be valid and shall remain in force.
- 8.2 That By-Law 79-18 and any other By-law inconsistent with the provision contained in this By-law are hereby repealed.
- 8.3 This By-law shall come into force and take effect upon the date of the final passing thereof.

**Passed and Enacted
This 15th Day of October 2019**

Michael LeMay
Mayor

Terry Lapierre
Chief Administrative Officer/Clerk

The Corporation of the City of Pembroke

**Part 1 Provincial Offences Act
By-Law 2019–56: Fouling of Highways, Municipal and Private Properties
Schedule ‘A’ – Set fines**

Item Number	Column 1 Short Form Wording	Column 2 Provisions creating or defining offence	Column 3 Set Fines
1	Permits oils, chemicals or any other substance to be deposited on Municipal property	S. 3.1 (a)	\$150.00
2	Deposit/push snow or ice onto or across highway/boulevard/sidewalk	S. 3.1 (b)	\$85.00
3	Deposit/push snow or ice onto property for which it did not accumulate	S. 3.1 (c)	\$85.00
4	Deposit/push snow, ice or other material within 2 meters of a fire hydrant or other emergency water stand	S. 3.1 (d)	\$85.00
5	Deposit/push/dump any other material onto or across highway/boulevard/sidewalk	S. 3.1 (e)	\$85.00
6	Unlawfully remove snow from municipal highway/boulevard/sidewalk	S. 3.2	\$85.00
7	Deposit/permit the accumulation of snow/ice/any material on property which causes a visual obstruction	S. 3.3 (a)	\$85.00
8	Deposit/permit the accumulation of snow/ice/any material to encumber a highway/boulevard/sidewalk/drainage ditch	S. 3.3 (b)	\$85.00
9	Deposit/permit the accumulation of snow/ice/any material which damages municipal property/services	S. 3.3 (c)	\$300.00
10	Operate equipment on municipal highway/boulevard/sidewalk/ditch which causes damage	S. 3.4	\$300.00
11	Fail to remove item forthwith	S. 3.5	\$300.00
12	Obstruct officer in performance of duty	S. 5.2	\$300.00

Note: the penalty provision for the offences indicated above is Section 5.1 of City of Pembroke’s By-Law 2019-56 and section 61 of the Provincial Offences Act, R.S.O. 1990, c. P.33.