

The Town of Niverville

By-law No. 685-10

BEING a By-law to maintain and to regulate nuisances or obstructions that impact the safety and ongoing operation and maintenance of municipal roads, drains and public places

WHEREAS The Municipal Act, C.C.S.M., cap. M225 reads in part as follows:

- 232(1) A council may pass by-laws for municipal purposes respecting the following matters:
- (a) the safety, health, protection and well-being of people, and the safety and protection of property;...
 - (b) people, activities and things in, on or near a public place or a place open to the public, including parks, municipal roads, recreation centres, restaurants, facilities, retail stores, malls and private clubs and facilities that are exempt from municipal taxations;
 - (c) subject to section 233, activities or things in or on private property;...
 - (d) municipal roads, including naming the roads, posting the names on public or private property, and numbering lots and buildings along the roads;
 - (e) private works on, over, along or under municipal roads;
 - (f) property adjacent to highways or municipal roads, whether the property is publicly or privately owned;
 - (h) drains and drainage on private or public property;
 - (o) the enforcement of by-laws.
- 232(2) Without limiting the generality of subsection (1), a council may in a by-law passed under this Division... .
- (d) establish fees or other charges for services, activities or things provided or done by the municipality or for the use of property under the ownership, direction, management or control of the municipality;... .
- 233 A by-law under clause 232(1)(c) (activities or things in or on private property) may contain provisions only in respect of
- (a) the requirement that land and improvements be kept and maintained in a safe and clean condition;
 - (d) activities or things that in the opinion of council are or could become a nuisance, which may include noise, weeds, odors, unsightly property, fumes and vibrations.
- 236(1) Without limiting the generality of clause 232(1)(o) (enforcement of by-laws), a by-law passed under that clause may include provisions
- (a) providing for procedures, including inspections, for determining whether by-laws are being complied with; and
 - (b) remedying contraventions of by-laws, including
 - (i) creating offences,
 - (ii) subject to the regulations, providing for fines and penalties, including the imposition of a penalty for an offence that is in addition to a fine or imprisonment, so long as the penalty relates to a fee, rate, toll, charge, or cost that is associated with the conduct that gives rise to the offence, or related to enforcing the by-law,
 - (iii) providing that an amount owing under sub clause (ii) may be collected in any manner in which a tax may be collected or enforced under this Act,
 - (iv) seizing, removing, impounding, confiscating and selling or otherwise disposing of plants, animals, vehicles, or other things related to a contravention,

- (v) charging and collecting costs incurred in respect of acting under sub clause (iv),
- (vi) imposing a sentence of imprisonment for not more than six months for the commission of offences or non-payment of fines.

242(1) If a designated officer finds that a person is contravening a by-law under this or any other Act that the municipality is authorized to enforce, the designated officer may by written order require the person responsible for the contravention to remedy it if, in the opinion of the officer, the circumstances so require.

242(2) The order may

- (a) direct a person to stop doing something, or to change the way in which the person is doing it;
- (b) direct a person to take any action or measure necessary to remedy the contravention of the Act or by-law, including the removal or demolition of a structure that has been erected or placed in contravention of a by-law and, if necessary, to prevent a reoccurrence of the contravention;
- (c) state a time within which the person must comply with the directions; and
- (d) state that if the person does not comply with the directions within a specified time, the municipality will take the action or measure at the expense of the person.

AND WHEREAS it is deemed expedient to pass a By-law for the purpose of maintaining municipal roads, drains and public places and regulating nuisances and/or obstructions that impact the safety and ongoing operation and maintenance of municipal roads, drains and public places located throughout the Town of Niverville;

NOW, THEREFORE, the Town of Niverville, in Council assembled, enacts the following by-law which shall govern the inspection, remedy, enforcement or action respecting nuisances and/or obstructions from adjacent properties to municipal roads, drains and public places:

1. Definitions

- a) **“council”** means the council, duly elected of the Town of Niverville.
- b) **“designated officer”** means a by-law enforcement officer, building inspector or other official appointed by council, from time to time, to enforce this by-law, or, in the absence of such an appointment, the Chief Administrative Officer is, by this by-law, appointed as the designated officer.
- c) **“interested person”** means the owner, occupier or mortgagee of property which is the subject of an order made under the authority of this by-law.
- d) **“mortgagee”** in the case of any property means any person holding a registered real property mortgage against the property according to the records of the land titles office for the area within which the property is located.
- e) **“Municipality”** means the Town of Niverville.
- f) **“municipal road”** means land that has been opened, dedicated or reserved under any Act as a road for public use and includes a road allowance, street, lane, thoroughfare, walkway, bridge and underpass for which the municipality is the owner and/or traffic authority as defined in The Highway Traffic Act.

- g) **“occupier”** means occupier as defined in *The Municipal Assessment Act* C.C.S.M.
- h) **“owner”** in the case of any property means the registered owner of the property according to the current assessment records of the Town.
- i) **“person”** means an individual, firm, partnership or corporation and where the context requires shall include the plural as well as the singular.
- j) **“property”** means real property as defined in *The Municipal Assessment Act* within the Town of Niverville whether or not there is situated thereon a dwelling house or any other building.
- k) **“rubbish”** means any garbage, trash, or junk including, but not limited to unwanted or discarded household items, waste from building construction, remodeling and repair, tree branches, grass and shrub clippings, leaves or other general yard and garden waste, motor vehicle parts or tires, newspapers, magazines, packaging materials, waste paper or cardboard, dead animal carcasses, and any other unsightly or discarded material which causes or is likely to cause a public hazard or nuisance, or is unacceptably offensive in light of community standards of cleanliness or generally accepted neighborhood aesthetics.
- l) **“structure”** means anything constructed, built or erected with a fixed location on or below the ground, or attached to something having a fixed location on the ground and includes buildings, walls, fences, signs, billboards, poster panels, light standards, and similar items.
- m) **“Town”** means the Town of Niverville.

Application

- 2. This by-law applies to all property and to all owners and occupiers of property within the Town.

Standards

- 3. No person shall:
 - a) obstruct, encumber, injure or foul any municipal road, drain or public place in the Town.
 - b) remove snow or other material from their property by any means and deposit such snow or other material or any part thereof upon a municipal road, drain or public place.
 - c) throw, place, deposit or leave any animal or vegetable substance, shells, shavings, dirt, rubbish or excrement, filth, manure, slops, unclean or nauseous water, hay, straw, paper, ashes, cinders, soot, offal, garbage or any other refuse or substance whatever on a municipal road, drain or public place.
 - d) erect any fences on any municipal road, drain or public place within the Town, without the prior written authority of the Council.

No owner or occupier:

- e) of lands bordering upon a municipal road within the Town shall obstruct the said road in any manner which causes the accumulation of snow, dirt, gravel or any other substance so as to impede or obstruct

- travel, the view of traffic or obstruct in anyway the movement of snow-clearing or other equipment under the jurisdiction of the Town.
- f) of lands adjacent to municipal roads, drains or public places shall deposit any rubbish or snow that shall or cause to obstruct any municipal road, drain or public place within the Town.

Any person, owner or occupier whose does or causes another person to obstruct in whole or in part a municipal road, drain or public place shall be under duty to remove the said obstruction within twenty four hours after having been requested to do so by a provincial authority or the Town. In the event the request referred to above is not undertaken, within 24 hours, the Town may remove any of the said obstruction or at the Town's option arrange for the said removal and in both instances the removal shall be at the expense of the person so requested. The Town may recover the expenses of the removal referred to above by levying against the property respecting which the matter or thing was done and recover the levy in like manner as taxes in arrears or as a debt due to the Town.

Temporary Permit

4.0 A temporary permit to obstruct a municipal road, drain or public place may be granted by the Town to a person subject to the following requirements:

a) No person shall carry out landscape work, excavate, make a municipal road or boulevard cut, repair or construct paved or unpaved road surfaces, approaches, sidewalks, or construct road grades, drainage ditches, or make repairs to water, sanitary sewer and storm sewer lines or any other work on a municipal road or deposit materials of any sort on a municipal road without a permit issued under this By-law, except as may be permitted otherwise under the terms and conditions of a private approaches permit issued by the Town.

b) No permit referred to in subparagraph (a) above, shall be issued to any person who, at the time of his application, fails to furnish a certificate of qualification satisfactory to the Town.

c) No permit referred to in subparagraph (a) shall be issued by the Town until the applicant has paid the required fee as set by resolution of Council. The Town's copy of the permit shall be signed by the applicant and will state that he will replace and restore the municipal road to a condition satisfactory to the Town, that he will keep barricades by day and barricades and lights by night at the location of all work in progress and maintain the same in good order to the satisfaction of the Town and that he will conform in all respects to the rules, regulations and by-laws of the Town and to any applicable statute of the Province of Manitoba pertaining to municipal roads or works done therein. The permit holder, for any particular work, must take all necessary actions to protect the public against any and all hazards.

d) Every permit issued under the provision of this By-law shall remain in force for 24 hours next succeeding the issuance thereof or as otherwise provided in that permit.

e) Every person to whom a permit is issued under this By-law shall provide evidence of current liability insurance to the Town or provide the Town a certified copy of his indemnity bond with both being in an amount acceptable to the Town and showing the Town to be an additional named insured or covered in the bond.

f) The Town may rescind any permit issued if it determines that the person is not performing the work in a good and workmanlike manner or is not satisfactorily complying with the requirement of this By-law or if the insurance requirements are not being met.

g) A temporary permit from the Town is required whenever equipment, materials, hoarding, or any other item obstructs a municipal road or

portion thereof by any means whatsoever. If an extension of time is required, a renewal permit must be obtained from the Town prior to the expiration date of the current permit.

Complaint

5. Any person may allege a violation of this By-law by filing a written complaint with the designated officer in such form and with such particulars as the designated officer may from time to time require.

Inspections

6. Upon receipt of a complaint, as aforesaid, the designated officer shall inspect all property alleged to be in violation of this By-law, in such manner as shall be reasonably necessary in order to determine whether or not there has been a violation of this By-law.

Warnings and Orders

7. Where inspections reveal a violation of any provision of this By-law, the designated officer:
 - (a) may in his or her discretion give written notice of the contravention to the owner or occupier, or both, of the property by regular mail; or
 - (b) may issue a written order without first issuing a written notice.
 - (c) if the designated officer chooses to proceed by issuing a warning notice, and if the contravention continues following the warning notice, the designated officer shall issue a written order which shall:
 - (i) direct a person to stop doing something, or to change the way in which the person is doing it; and/or
 - (ii) direct a person to take any action or measure necessary to remedy the contravention of the Act or By-law, including the removal or demolition of a structure that has been erected or placed in contravention of a By-law and, if necessary, to prevent a reoccurrence of the contravention; and
 - (iii) specify the time within which compliance shall be required;
 - (iv) advise that should compliance not be effected within the specified time, the Town may undertake the remediation at the expense of the owner of the property and that such expense may be collected in the same manner that a tax may be collected or enforced under The Municipal Act; and
 - (v) advise of the process of appeal.
 - (d) if the designated officer chooses to proceed directly to the issuance of a written order, the written order shall contain the information described in the preceding clause (c).

Emergency or Extraordinary Circumstance

8. Notwithstanding anything stated in this By-law, the Town may take whatever actions or measures are necessary to eliminate an emergency without notice to the owner or occupier.

Appeals

9. Any interested person may, within 14 days, request the Council to review the order made by the designated officer by filing a request in writing with the Chief Administrative Officer of the Town.

10. Upon receipt of a request to review, the Chief Administrative Officer of the Town shall cause a copy thereof to be forwarded to the council forthwith and the council shall entertain such appeal within 40 days of receipt of same by holding a hearing. A notice of hearing shall be issued by council and shall be served upon the persons and in the manner specified in section 12 below no later than 5 days prior to the review hearing.
11. The council shall determine a review within 5 days after a hearing and shall serve a notice of disposition forthwith upon determination, upon the interested persons.
The council may:
 - (a) confirm the order of the designated officer;
 - (b) vary or substitute the order of the designated officer in any respect; or
 - (c) set aside the order of the designated officer.

Service of Notices or Orders

12. Any order issued by the designated officer under subsection 7(b) and a notice of hearing issued under section 10 hereof of this by-law shall be served by personal service or by registered mail upon:
 - (a) the owner;
 - (b) the occupier, if any; and
 - (c) in respect to any order alleging a violation of subsection 3(b) (unsafe structures), the mortgagee, if any;

of the property affected by order.
13. Service made personally shall be deemed to have been made on the date of such service and service made by registered mail shall be deemed to have been made 3 days after posting. In the case of service upon an occupier, the address for mailing shall be the address of the property. In the case of an owner, the address for mailing shall be as shown on the current assessment records of the Town. In the case of a mortgagee, the address for mailing shall be as shown according to the records of the Land Titles Office for the area within which the property is situated.

Enforcement

14. The penalties and costs of actions or measures taken by the Town to carry out the terms of an order issued by the designated officer are an amount owing to the Town by the person who contravened a provision of this By-law. In addition to all other rights of collection which the Town may have at law, such amounts may be collected by the Town in the same manner as a tax may be collected or enforced under The Municipal Act.
15. If, on inspection by the designated officer, he determines that a person has violated a provision of this By-law, and he decides to issue a written notice to that person, that person shall pay a penalty of \$200.00 to the Town.
16. If, on inspection by the designated officer, or on further inspection after issuing a written notice, he determines that a person has violated or continues to violate a provision of this by-law, and he decides to issue a written order to that person, that person shall pay a penalty of \$200.00 to the Town.
17. Any person who contravenes or disobeys, or refuses or neglects to obey or comply with any order made under this By-law is guilty of an offence and is liable, on summary conviction, and in addition to costs and penalties, to a fine of not less than \$200.00 and not exceeding \$1,000.00, or in the case of an individual, to

imprisonment for a term not exceeding six months, or to both such a fine and such an imprisonment.

18. Where a corporation commits an offence under this by-law, each director or officer of the corporation who authorized, consented to, connived at or knowingly permitted or acquiesced in the doing of the act or omission that constitutes the offence or offences, is likewise guilty of the offence and is liable on summary conviction, to the fines for which provision is made in section 17 above.
19. Where the contravention, refusal, neglect, omission, or failure continues for more than one day, the person or corporation is guilty of a separate offence for each day it continues.
20. This By-law comes into force and takes effect on the day it receives final passage by Council and has been signed by The Head of Council and the Chief Administrative Officer.

DONE and PASSED by the Council of The Town of Niverville, in Council duly assembled, at the Council Chambers, at Niverville, in Manitoba in the Province of Manitoba this of , 2010.

Mayor

Chief Administrative Officer

READ a First time this 6th day of April, **A.D. 2010.**

READ a Second time this day of , **A.D. 2010.**

READ a Third time this day of , **A.D. 2010.**