



RURAL MUNICIPALITY OF SOUTH NORFOLK

PRIVATE WORKS BY-LAW

BY-LAW NO. 2509/2012 – amalgamated with
BY-LAW NO. 2514/2013

A BY-LAW OF THE RURAL MUNICIPALITY OF SOUTH NOROFLK to regulate the construction and use of private works on, over, along or under municipal roads and municipal right-of-ways.

WHEREAS Section 232 of The Municipal Act permits the Council of a Municipality to do the following:

232(1) A council may pass by-laws for municipal purposes respecting the following matters:

- (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;

232(2) Without limiting the generality of subsection (1), a council may in a by-law passed under this Division

- (a) regulate or prohibit;
- (b) adopt by reference in whole or in part, with any changes the council considers necessary or advisable, a code or standard made or recommended by the Government of Canada or a province or a recognized technical or professional organization, and require compliance with the code or standard;
- (c) deal with any development, activity, industry, business, or thing in different ways, or divide any of them into classes and deal with each class in different ways;
- (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;
- (e) subject to the regulations, provide for a system of licences, permits or approvals, including any or all of the following:
 - (i) establishing fees, and terms for payment of fees, for inspections, licences, permits and approvals, including fees related to recovering the costs of regulation,
 - (ii) establishing fees for licences, permits and approvals that are higher for persons or businesses who do not reside or maintain a place of business in the municipality,
 - (iii) prohibiting a development, activity, industry, business or thing until a licence, permit or approval is granted,

- (iv) providing that terms and conditions may be imposed on any licence, permit or approval, and providing for the nature of the terms and conditions and who may impose them,
- (v) providing for the duration of licences, permits and approvals and their suspension or cancellation or any other remedy, including undertaking remedial action, and charging and collecting the costs of such action, for failure to pay a fee or to comply with a term or condition or with the by-law or for any other reason specified in the by-law, and
- (vi) providing for the posting of a bond or other security to ensure compliance with a term or condition;

- 249 (1) A person who contravenes a by-law of a municipality is guilty of an offense and, if the by-law imposes no other penalty, is liable on summary conviction to a fine of not more than \$500.00 or to imprisonment for a term of not more than three months or both.
- 249 (2) Where a contravention continues for more than one day, the person is guilty of a separate offence for each day it continues.
- 249 (3) A fine imposed for contravening a by-law of a municipality must be paid to the municipality.

Title:

1. This By-law may be referred to as the Private Works By-law.

Definitions:

2. In this By-law:
 - a. "Adjoining Lands" means the lands that are owned by an Applicant for a licence regarding a Private Work and which benefit or may benefit as a result of the existence of the Private Work;
 - b. "Applicant" means the registered owner of Adjoining Lands, whether an application for a licence for a Private Work is made by the said registered owner or authorized agent;
 - c. "Municipal Road" means a municipal road as defined in section 285 of The Municipal Act;
 - d. "Private Work" means anything constructed, erected, installed or maintained by a non-government entity on or under a municipal road and includes private roadways, crossings, openings, pipelines, and pipes.

Prohibition

3. No person shall construct, erect, install, maintain or use any Private Work on Municipal property without first obtaining a licence for that purpose from the Municipality.

Application for Licence regarding a Private Work:

4. Every application for a Private Work shall be made in writing by the registered owner of the Adjoining Lands or authorized agent and shall include, at a minimum:
 - a. Particulars of the proposed Private Work and specifications for its construction;
 - b. A plan showing the proposed location of the Private Work in relation to the Municipal Road;
 - c. Where the use of the Private Work requires permission or a license from another Government or Agency, proof that the said permission or license has been issued;
 - d. Where the application is made by the agent of the registered owner of the Adjoining Lands, a letter or other form of authorization from the registered owner satisfactory to the Municipality; and
 - e. A non- refundable application fee of **\$250** or such other amount as may be set by Council by resolution from time to time.
 - f. An application may consist of several projects as long as they are submitted to be presented at the same council meeting. Applications to be included at an upcoming council meeting must be completed and received by the Municipal Office seven days prior to the meeting date.

5. Every license granted by the Municipality regarding a Private Work shall:
 - a. Be approved by council resolution.
 - b. Be limited in time to the term specified in the license;
 - c. Require the Private Work to be constructed, installed, maintained and used in conformance with any laws and regulations in governing similar facilities and, in any event, shall be installed and maintained to the satisfaction of the Municipality as per this by-law and Schedule "A" hereto attached;
 - d. Require payment to the Municipality of all costs associated with the approval of the license and enforcement of this By-Law;
 - e. Upon written notice from the Municipality, temporarily remove the Private Work to accommodate municipal works.

Default

6. If the Applicant defaults in the performance of any of the obligations contained in this By-Law or in any license issued hereunder, the Municipality may take any steps it deems necessary to remedy the default and the Applicant shall be liable for and pay to the

Municipality upon demand all of the costs and expenses incurred by the Municipality in so doing.

Liability

7. The Applicant shall reimburse the Municipality for all costs it incurs on account of damage caused to utilities or underground services owned by the Municipality or for which the Municipality is responsible, where such damage is caused by or related to the Private Work.
8. The Applicant releases the Municipality from any and all liability for damage caused to the Private Work or to any accessory or related property and for any consequential damage arising there from, by reason of any work carried out by the Municipality.

Indemnity

9. The Applicant shall indemnify the Municipality from and against all actions, claims and demands which may be made against the Municipality, and from all loss, costs, damages and expenses (which shall include all fees and expenses paid for professional advice including lawyers' fees on a solicitor and client basis) which may be sustained or incurred by the Municipality in consequence of the construction, installation, maintenance or use of the Private Work or of anything related thereto.
10. Before commencing the installation of any Private Work, the Applicant shall provide and, during the currency of the license and until the Private Work has been removed and the Municipality's property restored to its earlier condition, shall maintain in force comprehensive public liability insurance on an occurrence basis against claims for property damage and personal injury and death suffered by others in an amount specified in the licence in respect to the Private Work, indemnifying and protecting the Municipality, and specifically naming the Municipality as an insured party in respect to the Private Work.

Termination

11. The Municipality may by resolution require the Applicant to cease the use of, and to remove, the Private Work from the Municipal property.
12. Upon receipt of notice to terminate given by the Municipality, the Applicant shall forthwith stop using the Private Work and within thirty days of receipt of the Notice, remove the Private Work from the Municipal property and restore the Municipal property as nearly as possible to its original condition.
13. Should the Applicant fail to comply with a Notice to Terminate within the time allowed, the Municipality may take what steps it considers appropriate to remove the Private Work and restore its land to its original condition and shall be entitled to recover all costs and expenses arising from such work.

Fees and Costs

14. In the event the Municipality's own forces and equipment are used to implement or enforce any of the provisions of this By-Law or a license issued pursuant to it, the costs the Municipality shall be entitled to recover may include an amount equal to the standard market rates for such forces and equipment.
15. Any costs incurred by the Municipality pursuant to the provisions of this By-Law or any license issued pursuant to it, and any fees charged pursuant to this By-Law or a license issued pursuant to it, may be added to the tax roll for the adjoining lands and may be recovered in like manner as taxes or in any other manner permitted by law.

Offense under By-Law:

16. A person who;
 - a. Violates any provision of this By-Law, or does any act or thing which violates any provision of this By-Law, or allows any other person to do any act or thing which violates any provision of this by-Law;
 - b. Neglects to do or refrains from doing anything required to be done by any provision of this By-Law; or,
 - c. Allows any other person to fail to comply with an order, direction, or notice given under any provision of this By-Law;
is guilty of an offence against this By-Law, and liable to the penalties imposed under this By-Law.
17. Fine for offence:
 - a. Every person who commits an offence against this By-Law is liable on conviction by a fine of \$500.00 for each offence.

R.M. of South Norfolk

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SCHEDULE "A"

RURAL MUNICIPALITY OF SOUTH NORFOLK PRIVATE WORKS BY-LAW BY-LAW NO. 2509/2012 & 2514/2013

PROCEDURES:

Commencement of Work

Once a license has been issued by the Municipality 48 hours notice must be provided to the Municipal Office before commencement of work as an RM Public Works employee may attend jobsite to evaluate proceedings. Any pipes or other supplies delivered to the site must be placed on the edge of the easement away from the roadway.

Above Ground Objects

All above ground objects / facilities (valves, pedestals, flush outs, lying lines, outlets...etc.) are to be marked appropriately so that the object is clearly visible at all times. Above ground objects are to be located away from ditch bottoms and on the opposite embankment of the roadway or proposed road way where possible to avoid any disturbances with future road / ditch work.

Location of Facilities

Lines / pipes are to be installed away from the ditch bottom and on the opposite embankment of the road way or proposed road way where possible to avoid any disturbances with future road / ditch work.

Drain Tile lines must be installed either on private property or not more than 5' off of property on the municipal right-of-way. Lines are not permitted in ditch bottoms.

Depth

Facilities are to be installed to ensure the top of the line is a minimum of 1 meter below any existing ditch bottom. Under special circumstances, consideration may be given to reduce these minimum depths as mutually agreed upon between the Municipality and the Owner / Installer of the facility. To reduce the minimum depth this request must be included within the application and approved by council resolution.

Ditch Excavation:

Ditch excavation along a municipal ditch or right-of-way requires a permit from Water Stewardship and approval from the Municipality. Ditch excavations require a minimum of 4:1 slope; any variations from 4:1 need to be included in the applications. The Installer / Landowner is responsible to make suitable arrangements for handling the excess dirt material removed as part of a ditch excavation project. In situations where dirt excavation is required the Municipality is given first option to receive the excavated material.

Surface Restoration:

Surfaces that are in any way disturbed during any type of construction must be restored to the same or better condition they were in prior to construction. Any such restoration work shall be warranted by the Owner / Installer of the line for a period of 12 months from the date of such restoration work. If the Municipality determines that repairs are necessary within the warranty period, the Municipality shall give notice of such repairs and the repairs are to be made within 3 working days of giving of the notice.

All work which removes vegetation must be restored and seeded with grass to restore it back to its pre-construction levels.

Traffic Controls:

The Owner / Installer of the facility is responsible to perform any required traffic control measures which may include:

Contacting interested organizations of the road closure:

- Treherne Ambulance
- Treherne RCMP
- Treherne Fire Department
- School Division
- Municipal Office

Performing all traffic control procedures:

- Flagging
- Barricades
- Warning signs

Installation Plans:

These plans are to be submitted to the Municipality within 6 months of the completion of the work indicating all lines and crossings installed in the Municipality owned by the company or in a format as required by the Municipality.

Locates:

Facility Owner/Installer is responsible for completing all necessary locates.

Road Crossings:

Road crossings construction is to be completed during daylight hours only. All crossings are to be marked for at least a week in case of settlement. A culvert must be placed where the line crosses a road and the line must run through the culvert. In cases where open trenching is permitted, the following standards must be adhered to for backfilling:

- In accordance with MB Workplace Safety & Health regulations and other provincial rules if any.
- Entire trench to be backfilled with A base material.
- Backfill to be compacted in 6 inch layers.
- All road crossing are to be warranted for a period of 2 years.