

Being a by-law to repeal By-Law No. 35-2017 to maintain property and to regulate nuisances, derelict, abandoned, unsightly property, and the storage of vehicles within the communities of Treherne, Rathwell and Lavenham.

WHEREAS The Municipal Act 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;
 - (c) subject to section 233, activities or things in or on private 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
- (a) regulate or prohibit;
 - (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;
 - (b) the parking and storing of vehicles, including the number and type of vehicles that may be kept or stored and the manner of parking and storing;
 - (c) the removal of top soil; and
 - (d) activities or things that in the opinion of council are or could become a nuisance, which may include noise, weeds, odours, 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 subclause (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 subclause (iv),
- (vi) imposing a sentence of imprisonment for not more than six months for the commission of offences or nonpayment of fines.

242(1) If a Designated Officer finds that a person is contravening a by-law or 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.

243(1) If, in the opinion of a Designated Officer, a structure, excavation or hole is dangerous to public safety or property, or because of its unsightly condition, is detrimental to the surrounding area, the Designated Officer may by written order

- (a) in the case of a structure, require the owner
 - (i) to eliminate the danger to public safety in the manner specified, or
 - (ii) remove or demolish the structure and level the site;
- (b) in the case of land that contains the excavation or hole, require the owner
 - (i) to eliminate the danger to public safety in the manner specified, or
 - (ii) fill in the excavation or hole and level the site;
- (c) in the case of property that is in an unsightly condition, require the owner
 - (i) to improve the appearance of the property in the manner specified, or
 - (ii) if the property is a building or other structure, remove or demolish the structure and level the site.

243(2) The order may

- (a) state a time within which the person must comply with the order; and
- (b) state that if the person does not comply with the order within the specified time, the municipality will take the action or measure at the expense of the person.

244 (1) A person who receives a written order under section 242 or 243 may request the council to review the order by written notice within 14 days after the date the order is received,

244 (2) After reviewing the order, the council may confirm, vary, substitute or cancel the order.

AND WHEREAS The Municipal Act, C.C.S.M. c. M225, Regulation 50/97 3 reads as follows:

For the purpose of subclause 236(1)(b)(ii) of the Act, the maximum fine that a council may impose in respect of a contravention of a by-law is \$1,000.

AND WHEREAS the definitions pertaining to this by-law are:

- a) **“Council”** means the council duly elected in the Municipality
- d) **“Designated Officer”** means a 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.
- c) **“Interested person”** means the owner, director, occupier or mortgagee of property which is the subject of an order made under the authority of this by-law.
- d) **“Municipality”** means the Municipality of Norfolk Treherne.
- e) **“Nuisance”** means any condition, matter, thing or activity, other than a noise nuisance or sound regulated by the Municipality of Norfolk Treherne Noise By-Law, which causes undue annoyance or offence to a reasonable individual of ordinary sensitivity occupying adjacent properties or dwelling units or living in the community or area
- f) **“Occupier”** in the case of any property means any person in actual or constructive possession of the property pursuant to a lease, tenancy license or other right to occupy.
- g) **“Officer”** means any member of the Royal Canadian Mounted Police and any other Police Officer, Police Constable, Peace Officer or Designated Officer employed by the Municipality of Norfolk Treherne for the preservation and maintenance of the public peace.
- h) **“Owner”** in the case of any property means the registered owner of the property according to the current assessment records of the Municipality.
- 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 any land as defined in *The Municipal Assessment Act* within the Municipality 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, remodelling 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 neighbourhood aesthetics.
- l) **“Store”** means to keep or allow to be kept
- m) **“Unsafe structure”** means any structure, whether a building, fence, excavation or hole, which in the opinion of the Designated Officer is at risk of collapse or otherwise dangerous to public safety or property.
- n) **“Unsightly property”** means a property which in the opinion of the Designated Officer is detrimental to the surrounding area, including but not limited to the growth of grass to a length which is unsightly or the growth of weeds so that same become a nuisance to adjoining properties.
- o) **“Urban Community”** means the Communities of Treherne, Rathwell and Lavenham
- p) **“Vehicles”** shall have the meaning ascribed to that term in *The Highway Traffic Act* and amendments thereto and shall include an off road vehicle and any parts of any vehicle exceeding 18” in length.

AND WHEREAS it is deemed expedient to pass a By-law for the purpose of maintaining property and regulating and abating nuisances and derelict, abandoned and unsightly property that are detrimental to the health, safety and comfort of the residents of the Municipality of Norfolk Treherne in the Urban Communities.

THEREFORE the Council of the Municipality of Norfolk Treherne, in Council assembled, enact as follows:

Standards

No owner or occupier of property within the Urban Community shall permit on such property:

- (a) rubbish;
- (b) unsafe structure(s);
- (c) unsightly property;
- (d) to store or keep on such property, vehicles capable of registration under the Highway Traffic Act or the Off-Road Vehicles Act, which are not registered under either of those statutes, unless the said property and / or structures are lawfully licensed as a commercial automobile dealership;
- (e) parking on any part of any residential property that is not normally designed and constructed as a drive way or parking pad surface being, concrete, asphalt, gravel or similar hard packed surface specifically utilized as a space for the parking of vehicles;
- (f) the storage of household appliances, whether or not the same are capable of operation;
- (g) the growth of weeds as defined in *The Noxious Weeds Act* so that the same become a nuisance to adjoining properties;
- (h) the growth of grass to a length which in the opinion of the Designated Officer is unsightly;
- (i) a tree that is destabilized or structurally compromised, or a tree with Pest infestation, that may cause damage or injury to life or property;
- (j) regular outdoor burning, the smoke of which causes a nuisance to adjoining properties.
- (k) any contravention of any other property standards that effect the health, safety and protection of property and because of its unsightly condition is detrimental to the surrounding area, that may be specified by way of any schedule, that may be attached to this By-Law and amended from time to time as required.

Exceptions

This By-Law shall not apply to property owned or under control of the Municipality of Norfolk Treherne.

Notwithstanding section Standards 1.(d) and (e), a person may park or store a vehicle on private property provided that the vehicle is wholly contained within a lawfully existing structure on the property and a maximum of two vehicles are allowed in the rear yard of a property provided that no part of any vehicle is visible from any public road and they are rodent free.

Complaint

Any Designated Officer of the Municipality may determine a violation of this by-law; or

Any person may allege a violation of the by-law by making a complaint with the Designated Officer or Municipal Office in such form and with such particulars as the Designated Officer may from time to time require.

Duty to Provide Information

A requirement to report or provide information under this By-Law applies even if:

- a) it requires the disclosure of personal information;
- b) it requires the disclosure of proprietary information or confidential information;
- c) disclosure of the information is restricted by legislation or otherwise

Inspection

Upon receipt of a complaint, as aforesaid, the Designated Officer shall inspect 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.

The Designated Officer may, on his own initiative, inspect any property in the Urban Community, in such manner as shall be reasonably necessary in order to determine whether or not there have been a violation of this By-law.

Warnings, Orders and Notices

Where inspections reveal a violation of any provision of this By-law, the Designated Officer; shall issue a written order to the owner of the property which shall:

- (a) Describe the contravention, the required remedy and specify the time within which compliance shall be required.
- (b) Advise that should compliance not be effected within the specified time the Municipality may undertake the remediation at the expense of the owner of the property; and such expenses may be collected in the same manner that tax may be collected or enforced under The Municipal Act;
- (c) advise of the process of appeal;

Appeals

Any owner and or occupier may appeal an order made by the Designated Officer by filing written notice with the Chief Administrative Officer of the Municipality at any time before the compliance with such order.

Upon receipt of an appeal in the required form, the Chief Administrative Officer of the Municipality shall cause a copy thereof to be forwarded to the council forthwith and the council shall entertain such appeal within forty days of receipt of same by holding a hearing. Council may hear the appeal as a committee of the whole or by subcommittee

especially established for this purpose. A notice of hearing shall be issued by council and shall be served upon the persons and in the manner specified in under Services of Notices or Orders below no later than 5 days prior to the appeal hearing.

The council shall determine an appeal within 5 days of a hearing and shall serve a notice of disposition forthwith upon determination, upon the interested persons. The council may; confirm, vary or cancel the order of the Designated Officer.

Service of Notices or Orders

Any order issued by the Designated Officer and a notice of hearing issued under Appeals section hereof of this By-law shall be served by personal service or by registered mail upon the owner, service by registered mail shall be conclusively deemed to have been served on the owner five (5) days after it is mailed.

A copy of said notice or order must be filed by the Designated Officer at the Municipal Office either in person, or by mail, fax or email within five (5) business days of serving or mailing said notice and or order.

Removal of Vehicles

In addition to the issue of an Offence Notice, any vehicle kept or stored in contravention of this By-law may be removed from the property, towed, impounded and stored by the Municipality.

Destruction or Sale of Vehicle

Any vehicle removed from property by the Municipality pursuant to this By-law may be destroyed or sold at any time thirty (30) days after the date of removal of the vehicle from the property. In the event that such vehicle is sold, the Municipality shall be entitled to recover from the sale price all fines, fees and charges permitted hereunder. In the event that the sale proceeds shall exceed the aggregate of all fines, fees and charges, any remainder shall be paid to the owner of the vehicle.

Redemption of Vehicle

A vehicle removed pursuant to this By-law may be released to the owner therefor, or to the owner, occupant or person in charge or control of the property from which the vehicle was removed, upon the payment in full of the Penalties prescribed in this By-law within thirty (30) days of the removal of the vehicle.

No Obstruction

No person shall interfere, resist, hinder, make a false or misleading statement to or otherwise obstruct a Designated Officer, or any other person who is authorized under this By-Law to carry out any authorized action in the performance of his or her duties.

Fines

Any person who does not comply with a written order from the Designated Officer or who contravenes any provision of this By-Law is guilty of an offense and is subject to the following fines:

- a) **1st offence - \$100.00**
- b) **2nd offence- \$300.00** for contravention of this By-law, by the same property owner and within a year of 1st offence.
- c) **3rd offence - \$500.00** for contravention of this By-law, by the same property owner and within a year of 2nd offence.

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.

Penalties and Charges

In addition to any fines imposed, the Municipality shall impose the following penalties and charges in respect of each vehicle removed in accordance with this By-Law

- (a) \$100.00 for the removal and towing of the vehicle; and
- (b) \$20.00 per day for the impoundment and storage; and
- (c) \$150.00 for the destruction and disposal of the vehicle.

Enforcement

The costs of actions or measures taken by the Municipality to carry out the terms of an order issued by the Designated Officer are an amount owing to the Municipality by the owner of the property. In addition to all other rights of collection which the Municipality may have at law, such amounts may be collected by the Municipality in the same manner as a tax may be collected or enforced under The Municipal Act.

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 offense and is liable, on summary conviction, to a fine not exceeding \$1000, 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.

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 offense or offenses, is likewise guilty of the offense and is liable on summary conviction, to the fines, penalties and charges for which provision is made above.

Repeal

THAT the Municipality of Norfolk Treherne's By-Law No. 35-2017 be repealed upon the passing of this By-law.

DONE AND PASSED in council assembled in the Municipality of Norfolk Treherne, in Treherne in the Province of Manitoba this 8 day of May 2018.



REEVE - Craig Spencer



CAO - Jackie Jenkinson

Read the first time this 1 day of May, 2018.

Read a second time this 8 day of May, 2018.

Read a third time this 8 day of May, 2018.