

RURAL MUNICIPALITY OF WHITEHEAD
GENERAL ENFORCEMENT
BY-LAW NO. 2022-13

BEING A BY-LAW OF THE RURAL MUNICIPALITY OF WHITEHEAD to provide for general enforcement by the Municipality of its By-laws, provisions of *The Municipal Act*, *The Planning Act*, and any other Act the Rural Municipality of Whitehead is authorized to enforce, and any permits, authorizations or agreements issued by or entered into by the Municipality under the authority of such Act, By-laws or provision.

WHEREAS clause 231(a) *The Municipal Act* of Manitoba C.C.S.M. c. M225, and amendments thereto ("*The Municipal Act*") provides council of a municipality with the power to pass By-laws that give broad authority to the council and to respect its right to govern the municipality in whatever way the council considers appropriate, within the jurisdiction given to it under *The Municipal Act* and other Acts as to enhance the ability of the council to respond to present and future issues in the municipality;

AND WHEREAS subsection 85(1) of *The Municipal Act* authorizes a council to, by way of By-law, delegate any of its powers, duties or functions under a By-law, *The Municipal Act* or any other Act, to a designated officer, unless the By-law or *The Municipal Act* or another Act otherwise provides;

AND WHEREAS section 130 of *The Municipal Act* authorizes the establishment, by way of By-law, of a position to carry out the powers, duties and functions of a Designated Officer under a By-law, *The Municipal Act* or any other Act and allows for the municipality to title such position as it considers appropriate;

AND WHEREAS section 232(1)(a) of *The Municipal Act* authorizes a Municipality to pass By-laws for the safety, health, protection and well being of people and the safety and protection of property;

AND WHEREAS section 232(1)(c) of *The Municipal Act*, subject to section 233, authorizes a Municipality to pass By-laws respecting activities or things in or on private property;

AND WHEREAS clause 232(1)(0) and subsection 236(1) of *The Municipal Act* authorize a council to pass By-laws for municipal purposes respecting the enforcement of By-laws, which By-laws may include provisions for inspections and the remedying of By-law contraventions;

AND WHEREAS section 239 of *The Municipal Act* and section 175 of *The Planning Act* of Manitoba C.C.S.M. c P80, and amendments thereto ("*The Planning Act*") authorize a Designated Officer to, in accordance with *The Municipal Act*, enter onto land, or into buildings or other structures if *The Municipal Act*, *The Planning Act* or any other Act or a By-law authorizes or requires anything to be inspected, remedied, enforced or done by a municipality and the designated officer may carry out any such inspection, remedy, enforcement or action as required;

AND WHEREAS Section 240(1) of *The Municipal Act* and Section 177 of *The Planning Act* provide for a justice to issue a warrant to inspect and/or carry out enforcement upon an application by a designated officer of the Municipality;

AND WHEREAS sections 242 and 245 of *The Municipal Act* and subsections 178(1) and (2) of *The Planning Act* provide for making orders to remedy, and the remedying of, or to prevent the reoccurrence of, a contravention of a By-law, *The Municipal Act*, *The Planning Act* or any other Act that a municipality is authorized to enforce;

AND WHEREAS sections 243 and 246 of *The Municipal Act* provide for making orders to remedy, and the remedying of, dangers to public safety and property in an unsightly condition;

AND WHEREAS section 244 of *The Municipal Act* and subsection 178(3) & (4) of *The Planning Act* provide the means by which an order made under sections 242 and 243 of *The*

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Municipal Act and subsection 178(1) of *The Planning Act* can be reviewed by Council for a municipality;

AND WHEREAS sections 245 and 246 of *The Municipal Act* and subsection 179(1) of *The Planning Act* provide that where a contravention under *The Municipal Act*, *The Planning Act* or other Act the municipality is authorized to enforce is not remedied, the municipality may take any action or measure that is reasonable to remedy the contravention;

AND WHEREAS subsections 245(3) and 246(3) of *The Municipal Act* and subsection 179(2) of *The Planning Act* provide that the costs of an action or measure taken by a municipality under section 245 of *The Municipal Act* or clause 179(1)(a) of *The Planning Act* are a debt owing to the municipality by the person who contravened the By-laws;

AND WHEREAS section 232(1)(o), 236(1) and 249 of *The Municipal Act* and sections 181 and 182 of *The Planning Act* provide for the creation of an offence and the penalty provisions for an offence, including fines and imprisonment;

NOW THEREFORE, the Council of the Rural Municipality of Whitehead enacts as follows:

PART I - PURPOSE, DEFINITIONS, APPOINTMENTS

1.00 PURPOSE

1.1 This By-law provides for the enforcement of the Municipality's By-laws, *The Municipal Act*, *The Planning Act*, and any other Act the Municipality is authorized to enforce, as well as any permits, approvals, orders and agreements made or issued by the Municipality under authority of such By-laws, provisions and *The Municipal Act*, *The Planning Act* and any other Act the Municipality is authorized to enforce.

2.00 DEFINITIONS

2.1 In this By-law:

- (a) "building" means and includes a structure used or occupied or intended for supporting or sheltering or any use for occupancy;
- (b) "By-law or By-laws" means the By-laws of the Municipality;
- (c) "costs" shall include all costs related to the enforcement of the contravention or non-compliance and shall include all legal fees related to the costs of the enforcement;
- (d) "Council" means the duly elected council of the Municipality;
- (e) "emergency" means a present or imminent situation or condition that requires prompt action to prevent or limit:
 - (i) loss of life;
 - (ii) harm or damage to the safety health or welfare of people or animals; or
 - (iii) damage to property or the environment.
- (f) "Municipality" means the Rural Municipality of Whitehead;
- (g) "occupant" means any person in actual or constructive possession of property under a lease, tenancy license or other right to occupy;

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- (h) “owner” means a person with any right, title, estate or interest in land/property or improvements, including a person shown as owner on the most current assessment records of the Municipality;
- (i) “property” means real and/or personal property;
- (j) “structure” means a well, pipe, line, conduit , cut, excavation, fill, transmission line and any structure or erection (meaning anything that is erected , built or constructed of parts joined together or any such erection fixed to or soil structure construction and or supported by the soil or by any other structure), and any part of any of those things, and also includes an addition to or extension of any building or any of those things and a chattel that is attached to, or installed in or on, any building or any of those things.

3.00 APPOINTMENT AND POWERS OF DESIGNATED OFFICER (BY-LAW ENFORCEMENT OFFICER)

3.1 Under section 130 of *The Municipal Act*, Council establishes the position of Designated Officer and shall, by resolution, appoint persons to act as Designated Officers.

3.2 All Designated Officers appointed by Council to act under this By-law and/or any other By-Law, Act or Agreement the Municipality is entitled to enforce shall be referred to as “By-law Enforcement Officers”.

3.3 Persons appointed by Council as By-law Enforcement Officers are authorized to:

- (a) enforce the provisions of the By-laws, *The Municipal Act*, *The Planning Act*, and any other Act the Municipality is authorized to enforce;
- (b) enforce permits, approvals, orders and agreements made or issued under the by-laws, *The Municipal Act*, *The Planning Act* or any other Act the Municipality is authorized to enforce;
- (c) carry out inspections;
- (d) make orders for the remedying of contraventions, including making orders requiring persons responsible for the contravention of a By-law, *The Municipal Act*, *The Planning Act*, or any other Act the Municipality is authorized to enforce, and for the purpose of making orders with respect to dangers to public safety or property that is in an unsightly condition;
- (e) enforce contraventions through orders and notices;
- (f) apply for/obtain warrants; and
- (g) take remedial action as required in accordance with this By-law, *The Municipal Act*, *The Planning Act*, or any other Act the Municipality is authorized to enforce.

3.4 The By-law Enforcement Officer shall in consultation and with the approval of the Chief Administrative Officer be authorized to make any necessary expenditure on behalf of the Municipality and carry out the actions or measures stipulated in an Order to Remedy a Contravention or any variation or substitution thereof imposed following a review process without requiring the prior approval of Council.

PART II - ENFORCEMENT

4.00 INSPECTIONS

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4.1 The By-law Enforcement Officer may, after giving reasonable notice to the owner or occupant of land/property, building or structure, enter the land/property, building or structure at any reasonable time and carry out an inspection, enforcement or action authorized by By-law or an Act, or request that anything be produced to assist in the inspection, remedy, enforcement or action authorized, and may make copies of anything related to the inspection, remedy, enforcement or action.

4.2 The By-law Enforcement Officer shall display or produce upon request identification showing that the By-law Enforcement Officer is authorized to make the entry.

4.3 The By-law Enforcement Officer may take written notes of any violations that may exist, and may take photographic evidence, which will be kept on file.

4.4 In an emergency, or in extraordinary circumstances, the By-law Enforcement Officer need not give reasonable notice or enter at a reasonable hour and may do all things referred to in subsection (1) without the consent of the owner or occupant.

4.5 The By-law Enforcement Officer may conduct any further inspections necessary to determine whether the actions or measures set out in a Notice of Contravention or an Order to Remedy a Contravention have been taken to remedy the contravention or situation, or to prevent a reoccurrence of the contravention.

4.6 It shall be the By-law Enforcement Officer's opinion and discretion whether a Notice of Contravention or Order to Remedy a Contravention have been complied with.

5.00 DANGERS AND UNSIGHTLY PROPERTY

5.1 If, in the opinion of the By-law Enforcement 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 By-law Enforcement Officer may by written Order to Remedy a Contravention:

- (a) in the case of a structure, require the owner:
 - (i) to eliminate the danger to public safety in the manner specified in the Order to Remedy a Contravention; or
 - (ii) remove or demolish the structure and level the site;
- (b) in case of land/property that contains the excavation or hole, require the owner:
 - (i) to eliminate the danger to public safety in the manner specified in the Order to Remedy a Contravention; 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 in the Order to Remedy a Contravention; or
 - (ii) if the property is a building or structure, remove or demolish the building or structure and level the site.

5.2 Pursuant to Council's authority under clause 232(1)(a), of *The Municipal Act* to pass by-laws for the safety, health, protection and well-being of people and the safety and protection of property, and pursuant to Council's authority under clause 232(1)(c) of *The*

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Municipal Act to pass By-laws respecting activities on private property, owners and occupants of property shall keep and maintain their property in a safe and clean condition, which includes refraining from conducting activities on the property that may cause impairment of or damage to the environment, including negative effects on human, health, safety or property.

5.3 If, in the opinion of the By-law Enforcement Officer, an activity is being carried on a property, which activity may cause impairment or damage to the environment, including negative effects on human health, safety or property, the By-law Enforcement Officer by written Order to Remedy a Contravention:

- (a) require the owner of the property to eliminate the danger to the public safety in the manner specified in the Order to Remedy a Contravention;
- (b) require the property to be cleaned, including the removal of soil; and
- (c) require the owner to keep and maintain the property in a safe and clean condition.

6.00 NOTICE OF CONTRAVENTION

6.1 If the By-law Enforcement Officer determines that a violation or contravention of a By-law, *The Municipal Act*, *The Planning Act* or any other Act the Municipality may enforce, exists or has occurred, the By-law Enforcement Officer may issue a Notice of Contravention respecting the contravention and deliver a copy of the Notice to the owner and/or occupant of the property, which notice shall contain:

- (a) the name(s) of the owner and/or occupant of the property;
- (b) the civic and legal description of the property;
- (c) a description of the contravention of the of the By-law or Act and which section of the By-law or Act has been contravened;
- (d) the particulars of the contravention/non-compliance and any remedial work or actions required to be undertaken to achieve compliance;
- (e) the timeframe in which the non-compliance must be remedied which will not be less than 14 days; and
- (f) a warning that if the owner or occupant does not remedy the contravention, the Municipality may issue an Order to Remedy a Contravention requiring the owner/occupant to remedy the contravention, and failure to comply with such Order to Remedy a Contravention may result in:
 - (i) the owner/occupant being charged with an offence and subject to a fine, a penalty and/or imprisonment; and/or
 - (ii) the Municipality undertaking the work necessary to comply with the Order to Remedy a Contravention and the cost of such action (including legal costs incurred by the Municipality) will be a debt owing to the Municipality.

7.00 ORDER TO REMEDY A CONTRAVENTION

7.1 If the By-law Enforcement Officer:

- (a) determines that a person has not complied with a Notice of Contravention issued pursuant to section 6; or

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- (b) finds that a person and/or a corporation is contravening a By-law, *The Municipal Act*, *The Planning Act* or any other Act the Municipality is authorized to enforce, exists or has occurred;

then the By-law Enforcement Officer may issue an Order to Remedy a Contravention and shall serve a copy of the Order to Remedy a Contravention to the owner and/or the occupant of the property subject of the contravention, which Order to Remedy a Contravention shall contain:

- (i) the name(s) of the owner and/or occupant of the property;
- (ii) the civic and legal description of the property;
- (iii) a description of the contravention of the of the By-law or Act and which section of the By-law or Act has been contravened;
- (iv) the particulars of the contravention/non-compliance;
- (v) direction to the owner or occupant to stop doing something, or change the way in which the owner or occupant is doing it;
- (vi) direction to the owner or occupant to take any action or measure necessary to remedy the contravention including the removal or demolition of a structure that has been erected or placed in contravention of the By-law and, if necessary, to prevent a reoccurrence of the contravention ;
- (vii) the timeframe in which the non-compliance must be remedied which will not be less than 14 days from the date the Order to Remedy a Contravention is served;
- (viii) information how the owner/occupant may request Council to review the Order to Remedy a Contravention;
- (ix) a notice that if the owner/occupant fails to comply with the Order to Remedy a Contravention within the specified time:
 - A. the owner/occupant may be charged with an offence and subject to a fine, a penalty and/or imprisonment; and/or
 - B. the Municipality may take the action or measures to comply with the Order to Remedy a Contravention at the expense of the owner/occupant (including legal costs incurred by the Municipality).

7.2 When an Order to Remedy a Contravention is issued under section 7.1, the owner/occupant will be provided with a copy of the penalty provision of this By-law and any other information or direction as the Municipality deems appropriate, including reference to any surcharges or penalties (including legal costs incurred by the Municipality) that may apply.

8.00 SERVICE OF NOTICES AND ORDERS

8.1 Notices of Contravention may be served by personal service, posting, registered or by regular mail.

8.2 Orders to Remedy a Contravention shall be served by personal service, posting on the property or by sending a copy of it by registered or certified mail or by other type of mail, delivery or facsimile transmission or other type of communication facility for which confirmation of the notice having been sent may be obtained.

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8.3 Service on an occupant shall be made to the mailing address of the property subject of the Notice/Order.

8.4 Service on an owner shall be made to the mailing address for the owner of the property as shown on the current assessment records of the Municipality.

9.00 APPEAL/REVIEW OF ORDER TO REMEDY A CONTRAVENTION QUESTION

9.1 A person who receives an Order to Remedy a Contravention may, within fourteen (14) days of being served with the Order to Remedy a Contravention, appeal the Order to Remedy a Contravention by requesting Council to review the Order to Remedy a Contravention, by providing the Chief Administrative Officer with a Notice of Objection.

9.2 The Notice of Objection in section 9.1 shall:

- (a) provide the name and address of the party appealing the Order (the “Appellant”); and
- (b) be dated and signed by the Appellant.

9.3 Upon receiving a Notice of Objection, the Chief Administrative Officer of the Municipality shall, within 30 days of receipt of the Notice of Objection, set a date and time for the hearing of the appeal by Council and shall advise the Appellant of the date, time and place of the hearing.

9.4 The time specified for compliance in an Order to Remedy a Contravention is suspended from the date of receipt of a Notice of Objection by the Municipality until the date upon which Council makes its decision.

9.5 At the time and place set out in section 9.4, Council shall consider the appeal and may hear from the Appellant in person or through counsel.

9.6 A hearing may be adjourned at the discretion of Council.

9.7 Upon hearing the appeal or within a reasonable period thereafter, Council shall in writing, decide to:

- (a) confirm the Order to Remedy a Contravention;
- (b) provide additional time to comply with the Order to Remedy a Contravention;
- (c) substitute the Order to Remedy a Contravention;
- (d) vary the Order to Remedy a Contravention; or
- (e) cancel the Order to Remedy a Contravention.

9.8 If the Appellant fails to appear at the hearing, the appeal shall be dismissed, the Order to Remedy a Contravention shall be automatically affirmed, and no further time will be provided to comply with the Order to Remedy a Contravention.

9.9 The decision of Council is final and is not subject to further appeal.

PART III - REMEDIES BY MUNICIPALITY

10.00 REMEDYING CONTRAVENTIONS

10.1 The Municipality may take whatever action or measures are necessary to remedy a contravention of a By-law, *The Municipal Act*, *The Planning Act* or any other Act that the Municipality is authorized to enforce or to prevent a re-occurrence of the contravention, if:

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- (a) the By-law Enforcement Officer has issued a written Order to Remedy a Contravention in accordance with this By-law;
- (b) the Order to Remedy a Contravention directs the owner or occupant to take any actions or measures necessary to remedy the contravention of the By-law or Act, including the removal or demolition of a structure that has been erected or placed in contravention of a By-law and, if necessary, preventing a reoccurrence of the contravention;
- (c) the owner or occupant has not complied with the Order to Remedy a Contravention within the time specified in the Order to Remedy a Contravention; and
- (d) the appeal period respecting the Order to Remedy a Contravention has passed or, if an appeal has been made, the appeal has been decided, and it allows the Municipality to take the action or measures.

10.2 If the Order to Remedy a Contravention directs that a premise be put and maintained in a sanitary condition, the Municipality may close the premises and use reasonable force to remove occupants.

10.3 If a structure is being removed or demolished by the Municipality pursuant to this By-law, a derelict building bylaw or an Act, the Municipality may use reasonable force to remove the occupants.

11.00 REMEDY RE: DANGERS AND UNSIGHTLY PROPERTY

11.1 The Municipality may take whatever action or measures are necessary to eliminate a danger to public safety caused by a structure, excavation or hole or to deal with the unsightly condition of a property if:

- (a) the By-law Enforcement Officer has given a written Order to Remedy a Contravention in accordance with this By-law;
- (b) the Order to Remedy a Contravention contains a statement advising that if the owner or occupant does not comply with the Order to Remedy a Contravention within the specified time, the Municipality will take the action or measure at the expense of the owner or occupant;
- (c) the person to whom the Order to Remedy a Contravention was directed has not complied with the Order to Remedy a Contravention within the time specified in the Order to Remedy a Contravention; and
- (d) the appeal period respecting the Order to Remedy a Contravention has passed or, if an appeal has been made, the appeal has been decided, and it allows the Municipality to take the action or measures.

12.00 EMERGENCIES

12.1 In an emergency, the Municipality may take whatever actions or measures are necessary to eliminate the emergency.

12.2 The costs of any actions or measures taken to eliminate an emergency, including any remuneration referred to in subsection 247(4) of *The Municipal Act*, (including legal costs incurred by the Municipality) are an amount owing to the Municipality by the person who caused the emergency and may be collected by the Municipality in the same manner as a tax may be collected or enforced.

13.00 COSTS OF REMEDYING CONTRAVENTIONS

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13.1 The costs (including legal fees related to the enforcement) of an action or measure taken by the Municipality under this By-law are an amount owing to the Municipality by the Person who contravened the By-law, *The Municipal Act*, *The Planning Act*, or any other Act the Municipality is authorized to enforce.

13.2 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*.

14.00 GENERAL REMEDY

14.1 The Municipality may seize, remove, impound, confiscate, and sell or otherwise dispose of plants, animals, vehicles, equipment or other things related to a contravention and enforcement of the By-law, *The Municipal Act*, *The Planning Act*, or any other Act the Municipality is authorized to enforce.

14.2 The costs incurred by the Municipality associated with the actions in section 14.1 may be charged against the owner or occupant in contravention of the By-law or Act.

15.00 SALE OF PROPERTY

15.1 Any proceeds of sale recovered from a sale undertaken pursuant to this By-law, minus the Municipality's expenses related to the sale, shall be credited and offset against the Municipality's costs to enforce the non-compliance.

15.2 To the extent that the proceeds of a sale, minus the Municipality's expenses related to the sale, exceed the Municipality's enforcement costs, any surplus shall be paid:

- (a) if the owner of the property sold can be determined, to the owner of that property; or
- (b) if after giving notice to the owner and/or if the owner of the property sold cannot be determined, the proceeds shall be held by the Municipality in their general reserve account and after 7 years following the actual date of the enforcement the Municipality may transfer the funds to their general account.

15.3 If another person other than the owner claims the surplus of the sale, the proceeds shall be paid into court and paid out as the court determines.

15.4 If there is any deficit remaining after the sale of property under this By-law, the balance remaining shall become an amount owing to the Municipality and may be collected in any manner in which a tax may be collected or enforced by the Municipality.

PART IV - GENERAL

16.00 OFFENCES

16.1 Any person who contravenes a provision of a By-law, *The Municipal Act*, *The Planning Act*, or any other Act the Municipality is authorized to enforce, is guilty of an offence and, if the By-law contravened imposes no other penalty, is liable on conviction to a fine of:

- (a) if under *The Municipal Act*, not more than \$1,000.00 or to imprisonment for a term of not more than three months, or both;
- (b) if under *The Planning Act*, in the case of an individual, to a fine of not more than \$5,000.00, or imprisonment for a term of not more than six months, or both; and in the case of a corporation, to a fine of not more than \$20,000.

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16.2 Where the contravention of the By-law or Act continues for more than one day, the person is guilty of a separate offence for each day it continues.

16.3 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 guilty of the offence and is liable to the fine and/or penalty in this By-law.

17.00 PENALTY

17.1 Any person who contravenes a provision of a By-law, *The Municipal Act, The Planning Act*, or any other Act the Municipality is authorized to enforce, is liable to pay of the charges and costs (including legal fees related to the enforcement) related to enforcing the By-law.

17.2 The fines, penalties and costs (including legal fees related to the enforcement) pursuant to this By-law shall be paid to the Municipality.

18.00 VALIDITY OF THE BY-LAW

18.1 If any provision of this By-law is declared to be invalid by a court of competent jurisdiction, it is the intent of Council that it would have passed all other provisions of this By-law independent of the elimination of any such portion as declared invalid.

19.00 TRANSITIONAL

19.1 The Municipality may establish By-law enforcement under *The Municipal By-law Enforcement Act*, C.C.S.M. c. M245, of Manitoba, as amended from time to time, and those matters governed by that Act shall be excluded from this By-law.

20.00 COMING INTO FORCE

20.1 This By-law comes into force on the day of passage.

DONE AND PASSED as a By-law of the Rural Municipality of Whitehead by the Council, assembled in the Council Chambers this 9th day of January, 2023.

Originally Signed by Trevor Tuttosi

Reeve

Originally Signed by Danniele Carriere

Chief Administrative Officer

Read a first time this	12 th	day of	December	A.D.	2022
Read a second time this	9 th	day of	January	A.D.	2023
Read a third time this	9 th	day of	January	A.D.	2023

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