

AS AMENDED BY BY-LAWS NO. 2024-03

BEING A BY-LAW OF THE RURAL MUNICIPALITY OF WHITEHEAD to regulate and control mining and transportation of aggregates in the Rural Municipality of Whitehead and to be known as “The Aggregate Mining and Transportation By-Law”

WHEREAS THE MUNICIPAL ACT, in part, provides 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 centers, restaurants, facilities, retail stores, malls, and private clubs and facilities that are exempt from municipal taxation;
- (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;
- (m) local transportation systems;
- (n) businesses, business activities and persons engaged in business;
- (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
subject to the regulation, 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 cost 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 for 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 reason specified in the by-law and
 - (vi) providing for the posting of a bond or another security to ensure compliance with a term or condition.

239(1) If this or any other Act or by-law authorizes or requires anything to be inspected, remedied, enforced or done by a Municipality, a designated officer of the Municipality may, after giving reasonable notice to the owner or occupier of land or the building or other structure to be entered to carry out the inspection, remedy, enforcement or action,

- (a) enter the land or structure at any reasonable time, and carry out the inspection, remedy, enforcement or action; and
- (b) request that anything be produced to assist in the inspection, remedy, enforcement or action; and
- (c) make copies of anything related to the inspection, remedy, enforcement or action.

293 A Municipality must maintain

- (a) municipal roads within its boundaries; and
- (b) land within its boundaries that is shown on a plan of subdivision registered by an applicant at a land titles office under The Planning Act as dedicated for public use as a municipal

road, upon compliance by the applicant with any condition that is related to the road and required for approval of the plan.

294 A Municipality is required to construct or maintain a municipal road only to a standard that is appropriate to the use to which the Municipality expects the road to be put.

AND WHEREAS the Lieutenant Governor in Council has made regulation No. 48/97 under section 232(2)(e) of the Municipal Act for the purpose of regulating aggregate mining and transportation fees and agreements;

AND WHEREAS the Council of the Rural Municipality of Whitehead deems it is necessary to provide for the licencing of aggregate mining and transportation within the Municipality and to set fees payable in connection with such licencing;

NOW THEREFORE the Council of the Rural Municipality of Whitehead in Council duly assembled enacts as follows;

1.0 DEFINITIONS

1.1 In this by-law;

“AGGREGATE” means a quarry mineral that is used solely for construction purposes or is used as a constituent of concrete, other than in the manufacture of cement, and includes sand, gravel, clay and crushed stone or rock.

“AGGREGATE MINING AND TRANSPORTATION LICENCE” means a licence issued under paragraph 4.0 of this by-law.

“MINE, MINING OR MINED” means the removal of a substance to a place outside the boundaries of a parcel or tract of land from which such substance has been extracted by means of digging or excavation.

“MUNICIPALITY” means the Rural Municipality of Whitehead.

“MUNICIPAL ROAD” means a municipal road as defined in The Municipal Act and which is located within the Rural Municipality of Whitehead.

“OWNER” means the person having the right to remove and dispose of aggregate in, under or upon a parcel or tract of land r, where such right cannot be conveniently determined, the legal owner of such a parcel or tract.

“PERSON” means a natural person, a partnership, a firm, a business, an association, a credit union, a cooperative or a Municipality.

“PIT LOCATION” means the parcel or tract of land from which aggregate is mined and includes a pit location specified in an Aggregate Mining and Transportation licence.

“TRANSPORT, TRANSPORTING, OR TRANSPORTED” means the movement of a substance from one place to another place.

2.0 APPLICATION

2.1 Unless provided to the contrary herein, this by-law applies to every person mining or transporting aggregate within the Municipality.

2.2 This by-law does not apply to the Municipality

2.3 This by-law does not apply to the Crown or a Crown Agency, except to the extent provided in paragraph 5 hereof.

3.0 PROHIBITIONS

3.1 No person shall mine aggregate within the Municipality unless;

- (a) such person had a valid and subsisting Aggregate and Mining and Transportation licence for the pit location from which such aggregate was mined; or
- (b) the aggregate was mined from a pit location specified in a valid and subsisting Aggregate Mining and Transportation Licence issued to a licensee other than such person and such person has provided to the licensee the information specified in paragraph 3.4 hereof.

3.2 No person shall transport aggregate within the Municipality unless;

- (a) such aggregate was mined from a pit location specified in a valid and subsisting Aggregate Mining and Transportation Licence and such person has provided to the licensee the information specified in paragraph 3.4 hereof; or
- (b) such aggregate was obtained from a pit location outside the municipality or from a pit location owned by the Crown or a Crown Agency or such person pays to the Municipality prior to transporting such aggregate the amount of fees set forth in sub-paragraphs 5.1 (b) and (c); or
- (c) such person makes arrangements satisfactory to the Municipality, prior to transporting such aggregate, for the payment of fees that would be due to the Municipality if sub-paragraphs 5.1 (b) and (c) were applicable to such person.

3.3 No owner shall allow, suffer or permit the mining or transportation of aggregate from any land of the owner unless such land is specified as a pit location in a valid and subsisting Aggregate Mining and Transportation Licence.

3.4 Where a person transports aggregate that was mined from a location specified in a valid and subsisting Aggregate Mining and Transportation Licence or from a pit location for which such Licence should have been obtained, such person shall within reasonable time provide to the Licensee or to the person who should have obtained a Licence, the following information;

- (a) his full name and mailing address
- (b) the full name and address of his employer, if any; and
- (c) the quantity of aggregate transported by him from the pit location in question; and
- (d) the route over which aggregate has been or will be transported; and
- (e) any other information necessary to calculate fees due or the party from whom they are due in accordance with sub-paragraph 5.1 (b) and (c).

4.0 LICENCES

4.1 Aggregate Mining and Transportation Licences shall be in the form attached hereto as Schedule "A".

4.2 Aggregate Mining and Transportation Licences shall be valid and subsisting for a period of one year, commencing January 1 and ending December 31, notwithstanding the time of issuance.

4.3 Every owner of property from which aggregate is mined or transported shall obtain an Aggregate Mining and Transportation Licence prior to allowing any mining or transportation of aggregate from their property unless the person doing the mining or transporting has a valid and subsisting Aggregate Mining and Transportation Licence.

4.4 Every person requiring an Aggregate Mining and Transportation Licence shall make application for such licence at the Municipality and shall pay to the Municipality the fee for such licence at the time of application.

4.5 The fee for an Aggregate Mining and Transportation Licence shall be \$75.00

4.6 The holder of an Aggregate Mining and Transportation Licence shall produce such licence to a designated officer of the Municipality forthwith upon demand.

5.0 ADDITIONAL FEES

5.1 A person required to have an Aggregate Mining and Transportation Licence shall pay fees to the Municipality as follows:

(a) a fee based on the quantity of aggregate mined in the Municipality by that person which fee shall be the lesser of the amounts calculated as follows:

- (i) \$0.2915 per tonne; or
- (ii) \$0.5189 per cubic metre or

(b) a fee for the maintenance, repair and restoration of any Municipal Road used to transport aggregate mined by that person which fee shall be calculated as follows:

- (i) where the aggregate is transported during the period commencing March 1st. and ending November 30th. of a year, the product obtained when the number of kilometers of municipal road over which the aggregate is transported is multiplied by the lesser of \$0.0662 per tonne or \$0.1158 per cubic metre, and
- (ii) where the aggregate is transported during the period commencing December 1 of one year and ending the last day of February of the following year, the product obtained when the number kilometers of municipal road over which the aggregate is transported multiplied by the lesser of \$0.0330 per tonne or \$0.0580 per cubic metre, and

(c) a fee for the shortening of the lifetime of a municipal road resulting from the transportation of aggregate mined by that person which fee shall be calculated as follows:

- (i) where the aggregate is transported during the period commencing March 1st. and ending November 30th. of a year, the product obtained when the number of kilometers of municipal road over which the aggregate is transported is multiplied by the lesser of \$0.0662 per tonne or \$0.1158 per cubic metre; and
- (ii) where the aggregate is transported during the period commencing December 1st. of one year and ending the last day of February of the following year, the product obtained when the number of kilometers of municipal road over which the aggregate is transported is multiplied by the lesser of \$0.0330 per tonne or \$0.0580 per cubic metre.

[A.M. B/L 2024-03]

5.2 Notwithstanding that this by-law may be inapplicable to a particular person mining aggregate or to a particular pit location from which aggregate is mined, all persons transporting aggregate within the municipality shall pay to the municipality as and when due, the fees set forth in sub-paragraphs 5.1 (b) and (c).

5.3 Where a person is required to have an Aggregate Mining and Transportation Licence in any part of a calendar year, such person shall provide to the municipality on or before February 25th. in the ensuing year, a complete and accurate record in the form attached hereto as Schedule "B".

5.4 Where a person is required to have an Aggregate Mining and Transportation Licence in any part of a calendar year, such person shall maintain a complete and accurate record of all persons transporting aggregate obtained from the pit location specified in such licence, together with the amount and delivery route of such aggregate and such records shall be retained for at least six years.

5.5 Fees payable by a person required to have an Aggregate Mining and

Transportation Licence in any part of a calendar year, shall be remitted in full to the Municipality on or before February 25th in the ensuing year.

6.0 AGREEMENT IN LIEU OF FEES

- 6.1 In lieu of payment of fees referred to in sub-paragraphs 5.1 (b) and (c), or either of them, the Municipality may enter into agreements with a person required by this by-law to have an Aggregate Mining and Transportation Licence.
- 6.2 Any agreement made under the authority of this paragraph shall be in conformity with Manitoba Regulation 48/97, as amended from time to time and is subject to the approval of the Council of the Municipality.

7.0 ENFORCEMENT

- 7.1 Any person who contravenes any provision of this by-law is guilty of an offence and is liable to a fine in accordance with Schedule “A” in the Compliance By-law No. 2022-10.
- 7.2 Where any person contravenes any provision of this by-law for more than one day, such person is guilty of a separate offence for each day such contravention continues.
- 7.3 Upon reasonable notice, a person required to have an Aggregate Mining and Transportation Licence in any year shall permit a designated officer of the municipality to enter upon any premises where records required under this by-law are kept, to examine such records and to make copies thereof.
- 7.4 In the event that fees due and owing under this by-law are not paid by an owner or a person acquiring aggregate from an owner as and when due, the Municipality may add the amount thereof to the real property taxes of the owner and collect such fees in the same manner as taxes or take any other remedy available to the Municipality.

8.0 BOUNDARY ROADS

- 8.1 The Municipality may enter into an agreement with a neighbouring municipality for the maintenance, repair and restoration of a boundary road if said boundary road is the route over which aggregate has been or will be transported and stated in a valid and subsisting Aggregate Mining and Transportation Licence.

9.0 COMING INTO FORCE

- 9.1 This by-law comes into force and effect on the day that it received third reading.
- 9.2 That By-law No. 2022-11 is hereby now repealed.

DONE and passed by the Council of the Rural Municipality of Whitehead in regular session assembled this 15th day of May A.D. 2023

Originally signed
T. Tattasi

Reeve

Originally signed
D. Carriere

Chief Administrative Officer

Read a first time this 11th day of April A.D. 2023
Read a second time this 11th day of April A.D. 2023
Read a third time this 15th day of May A.D. 2023