

RURAL MUNICIPALITY OF WHITEHEAD  
BY LAW NO. 2143

BEING A BY-LAW OF THE RURAL MUNICIPALITY OF WHITEHEAD  
RESPECTING UNSAFE OR UNSIGHTLY PROPERTY WITHIN THE  
MUNICIPALITY

WHEREAS section 232(1) of the Municipal Act provides in part:

*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.*

AND WHEREAS section 232(2) of the Municipal Act provides in part:

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

- a. *regulate or prohibit;*
- ...

AND WHEREAS section 233 of the Municipal Act provides:

*A by-law under clause 232(1)(c) (activities or things in or on 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;*
- d. *activities or things that, in the opinion of the Council are or could become a nuisance, which may include noise, weeds, odors, unsightly property, fumes and vibrations."*

AND WHEREAS section 236(1) of the Municipal Act provides in part:

*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...”*

AND WHEREAS section 242(1) of the Municipal Act provides:

*If a designated officer finds a person is contravening a by-law of 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.*

AND WHEREAS section 242(2) of the Municipal Act provides in part:

*The order may:*

- a. *direct a person to stop doing something...*
- 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 demolishing of a structure that has been erected or placed in contravention of a by-law...*
- c. *state a time within which the person must comply with the directions; and*
- d. *state that if a 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 section 243(1) of the Municipal Act provides:

*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.*

AND WHEREAS section 243(2) of the Municipal Act provides:

*The Order may:*

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

AND WHEREAS section 247(1) of the Municipal Act provides:



*Despite sections 243, 245 and 246, in an emergency a municipality may take whatever actions or measures are necessary to eliminate the emergency.*

AND WHEREAS the Council of the Rural Municipality of Whitehead deems it necessary to pass a by-law prohibiting and providing for remedial requirements to unsafe or unsightly property;

NOW THEREFORE the Council of the Rural Municipality of Whitehead in open council assembled, enacts as follows:

#### Application and Definitions

1. This by-law shall apply to the building safety and maintenance of dwellings, non-residential property, and other structures or property, or parts thereof, together with surrounding land.
2. In this by-law:
  - a. *"Designated Officer"* shall mean a building inspector or other official appointed by Council, from time to time, to enforce this by-law, or in the absence of such appointment, the Chief Administrative Officer for the municipality;
  - b. *"Non-conformance"* shall mean a condition which does not comply with the standards established by this by-law;
  - c. *"Immediately Dangerous Non-conformance"* means a condition which does not comply with the standards established by this by-law and which in the opinion of the Designated Officer is unsafe or dangerous or injurious to health or safety.
  - d. *"Occupier"* means the person in occupation or having the charge, management or control of any building or land, whether on his own account or as an agent, and may include but is not limited to a tenant under a commercial or residential tenancy agreement affecting the subject land;
  - e. *"Owner"* means the registered owner of the land and premises and includes:
    - i. The person that for the time being is managing or receiving the rent of the land or premises, whether on his own account or as agent or trustee of any other person;
    - ii. The vendor of such land under an unsatisfied or undischarged Agreement for Sale; and
    - iii. In the case of a registered owner who is deceased, the executor, administrator, personal representative or assignee of the deceased.

#### Administration

3. The Designated Officer who is authorized to enforce the within by-law shall not thereby render himself personally liable, and he is hereby relieved from all personal liability for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of his official duties. Any suit instituted against any officer or employee because of an act performed by the Designated Officer in the lawful discharge of his duties and under the provisions of this by-law shall be represented by the



municipality until the final determination of the proceedings. In no case shall the Designated Officer be liable for costs in any action, suit or proceeding that may be instituted in pursuance of the provisions of this by-law, and any officer or employee acting in good faith and without malice, shall be free from personal liability for any acts performed under any of its provisions or by reason of any act or omission in the performance of his official duties in connection therewith.

4. The Designated Officer or any inspector, duly appointed and authorized for the purpose, may, at all reasonable times, without the consent of the Owner or Occupier and upon production of the necessary authority, if demanded, enter upon any land, building or premises in the municipality for the purpose of:
  - a. inspecting any vehicle, appliance or equipment;
  - b. examining any dwelling or other building thereon or anything appurtenant to any such dwelling or building;
  - c. ascertaining whether compliance is being made in relation to this by-law;
  - d. carrying into effect, or enforcing the terms of this by-law or completing remedial work to ensure compliance with the terms of this by-law or any order issuing hereunder.
5. If, as a result of the inspection of any land, building or premises, the Designated Officer is satisfied that the land, building or premises does not comply to required standards, he may make an Order, a copy of which shall be served on the Owner and/or Occupier by personal service or by registered mail mailed to the Owner and/or Occupier at the addressed indicated on the latest assessment roll for the municipality. Service by registered mail shall be effective when signed for at Canada Post by the Owner and/or Occupier, or their respective agent. If service cannot be effected either personally or by registered mail within 7 days of mailing, then such Order may be posted on the property that is the subject of the Order.
6. The Order shall contain:
  - a. a description of the land, building or premises sufficient to identify it;
  - b. the particulars of each non-conformance and the date by which it must be corrected;
  - c. except in the case of an Immediately Dangerous Non-Conformance, the final date for the giving notice of objection from the Order; and
  - d. the deadline by which the non-conformance must be remedied by the Owner; and
  - e. A copy of this by-law.

The Order may also contain an outline of what action may be taken to make the land, building or premises conform to the standards and any other information that the Designated Officer deems necessary.

7.
  - a. In the case of Immediately Dangerous Non-Compliance, the deadline (if deemed appropriate) by which the non-conformance shall be remedied shall be determined by the Designated Officer having consideration for the nature of the dangerous or unsafe circumstances and the nature of the work required to remedy same.
  - b. In the case of Immediately Dangerous Non-Compliance which the Designated Officer deems to be an emergency, the Designated Officer may immediately take action without notice to remedy the default at the cost of the Owner and/or Occupier.



- c. In the case of all other non-conformance, the deadline by which the non-conformance shall be remedied shall be not less than 3 weeks from the date of service of the Order.
- 8. Service of the Order shall be effective as of:
  - a. in the event of personal service, on the date of personal service;
  - b. in the event of service by registered mail, on the date that the Owner/Occupier or his/her agent acknowledges receipt by signing for the registered mail at Canada Post; and
  - c. in the event of posting the Order on the subject property, on the fifth day following the date on which the Order is so posted, not including the date of posting, such service to be effective as against both the Owner and the Occupier.
- 9. The Designated Officer may extend the deadline as to when a non-conformance must be remedied by the Owner/Occupier, if and only if the Owner/Occupier can demonstrate that he/she is making reasonable efforts to correct the non-conformance, but that full correction cannot be completed within the time provided because of technical difficulties, inability to obtain necessary materials or labour, or inability to gain access to the area wherein the non-conformance occurs. Any extension of the deadline shall not operate to affect or extend in any way the time limitation for appeal of an Order under this by-law.
- 10. Except in the case of an Immediately Dangerous Non-Conformance:
  - a. the Owner/Occupier, or a person authorized by the Owner/Occupier in writing to act on his/her behalf, may appeal any provision or an Order issued pursuant to this by-law by filing a Notice of Appeal and delivering same to the municipal office within fifteen (15) days of having been served with the Order; and
  - b. the filing of a Notice of Appeal shall operate as a stay of proceedings until Council has considered and ruled on the said appeal.
- 11. A Notice of Appeal shall clearly identify:
  - a. the party launching the appeal including full name, address, telephone numbers and any other contact information available; and
  - b. the Order being appealed; and
  - c. a general statement providing the grounds for the appeal.
- 12. Where an Owner/Occupier has failed to comply with an Order, then the Designated Officer may cause the non-conformance to be corrected without any further notice to the Owner. The entire costs of correcting the non-conformance, which can and may include, but are not limited to: costs of remedial work undertaken by the Designated Officer in his sole discretion, legal fees and disbursements, municipal administrative fees, shall be considered an amount owing to the municipality pursuant to the Municipal Act and may be collected or enforced by the municipality in accordance with the Municipal Act.
- 13. In the case of an Immediately Dangerous Non-Conformance, the Designated Officer may take whatever immediate actions or measures are necessary to eliminate the non-conformance pursuant to section 247 of the Municipal Act.

#### Standards

- 14. All buildings or structures, existing or new, and all parts thereof shall be maintained in a safe and slightly condition. The Owner and Occupier (if



applicable) of the land shall be jointly and severally responsible for compliance with the terms of this by-law.

15. No person, being an Owner or Occupier of land within the Rural Municipality of Whitehead, shall permit on such land:
  - a. unless the property is used as a properly zoned and permitted commercial automobile dealership, the storage of motor vehicles in a place which is visible from any public street, road or lane, whether such vehicles are capable of registration under The Highway Traffic Act or the Off-Road Vehicles Act or not, excepting only those vehicles that are used by the Owner or Occupier either personally or in the business operations of the Owner or Occupier; or
  - b. the storage of household appliances, whether or not the same are capable of operation, in a place which is visible from any public street, road or lane; or
  - c. any structure which is dangerous or at risk of collapse; or
  - d. any hole or excavation which is dangerous or is a safety or accident hazard.
16. A yard shall be kept free and clear from:
  - a. rubbish, garbage, recycling and other debris; and
  - b. wrecked, dismantled, partially dismantled, salvaged or scrapped vehicles, trailers, boats, campers or other vehicles or equipment; and
  - c. any objects or conditions that are health, fire or accident hazards; and
  - d. overgrown and unsightly vegetation, grass or weeds.
17. No person, being an Owner or Occupier of land within the Municipality, shall permit regular outdoor burning of vegetation, garbage, or debris which causes a nuisance to adjoining properties.

#### Penalties

18. Every person who contravenes, disobeys, refuses or neglects to obey any provision of this by-law is guilty of an offence and is liable, on summary conviction, pursuant to section 249(1) of the Municipal Act:
  - a. to a fine not exceeding \$500 per offence; or
  - b. in the case of an individual, to imprisonment for a term not exceeding six months; or
  - c. to both such fine and such imprisonment as aforesaid.
19. Where a corporation contravenes, disobeys, refuses or neglects to obey an Order made under this by-law is guilty of an offence, each director who authorized, consented to, connived at or knowingly permitted or acquiesced in the doing of the act or omission that constitutes the offence, is likewise guilty of the offence and is liable, on summary conviction, to the penalties as set forth in paragraph 18 above.
20. Pursuant to section 249(2) of the Municipal Act, where a 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.

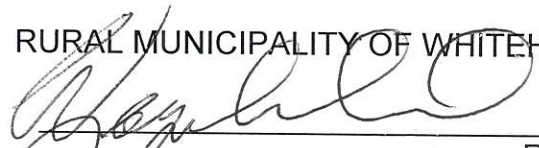
21. Every person who obstructs or interferes with the Designated Officer in the performance of his duties under this by-law is guilty of an offence and is liable, on summary conviction, to the same penalties as set forth in paragraph 18 herein.


Repeal

22. Upon enactment of this by-law, Rural Municipality of Whitehead By-Law No. 2064 enacted January 8, 2001 be and is hereby repealed in its entirety.

DONE AND PASSED in Council assembled at the Council Chambers of the Rural Municipality of Whitehead in the Province of Manitoba, this 12<sup>th</sup> day of September, 2011.

RURAL MUNICIPALITY OF WHITEHEAD

  
\_\_\_\_\_  
Reeve

  
\_\_\_\_\_  
Chief Administrative Officer

Read a first time this 8th day of August, 2011.  
Read a second time this 8th day of August, 2011.  
Read a third time this 12th day of September, 2011.