

Municipality of Brenda-Waskada

BY-LAW NO. 17-2015

BEING A BY-LAW TO MAINTAIN PROPERTY, TO REGULATE NUISANCES, DERELICT VEHICLES, ABANDONED AND UNSIGHTLY PROPERTY AND THE REMOVAL OF BELOW GROUND STRUCTURES.

WHERE AS, Section 232(1) of *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.

AND WHEREAS Section 232(2) of *The Municipal Act* provides in part as follows:

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

AND WHEREAS Section 233 of *The Municipal Act* provides as follows:

- 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 types 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 the council are or could become a nuisance, which may include noise, weeds, odours, unsightly property, fumes and vibrations.

AND WHEREAS Section 236 of *The Municipal Act* provides as follows:

- 236(1) Without limiting the generality of clause 232(1)(o) (enforcement of by-laws), a by-law passed under that clause include provisions
- (a) providing for procedures, including inspections, for determining whether By-laws are being complied with; and
 - (b) remedying contravention 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 non-payment of fines.

AND WHEREAS Section 242 of *The Municipal Act* provides as follows:

- 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.

AND WHEREAS Section 243 of *The Municipal Act* provides as follows:

- 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.

AND WHEREAS Section 247(1) of *The Municipal Act* provides as follows:

247(1) in an emergency, a municipality may take whatever actions or measures are necessary to eliminate the emergency.

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 Brenda-Waskada

NOW THEREFORE BE IT AND IT IS HEREBY ENACTED as a by-law of the Municipality of Brenda-Waskada in Council duly assembled as follows:

APPLICATION

1. This by-law applies to real and personal property within the Municipality of Brenda-Waskada. It is the intention of this by-law to establish and maintain minimum property maintenance standards for the purposes of protecting property values of residents of the municipality and to encourage and maintain the safety and protection of persons and property.

Definitions

2. In this by-law:

“**Building**” means any structure used or intended for supporting any use or occupancy.

“**Council**” means the council duly elected in the Municipality.

“**Designated Officer**” means a person appointed by resolution or by-law of the Council for the Municipality of Brenda-Waskada to carry out the powers, duties and functions under this by-law.

“**Interested Person**” means the owner, occupier or mortgagee of property which is the subject of an order made under the authority of this by-law.

“**Mortgagee**” in the case of real property, means any person holding a registered mortgage against the property according to the records of the Brandon Land Titles Office and, in the case of personal property, means any person holding a registered security interest in personal property according to the records of the Personal Property Security Registry of the Province of Manitoba.

“**Municipality**” means the Municipality of Brenda-Waskada.

“**Occupier**” means any person in actual or constructive possession of the property pursuant to a lease, tenancy license or other right to occupy.

“**Owner**” in the case of real property, means the registered owner according to the records of the Brandon Land Titles Office and, in the case of personal property, means the person in actual or constructive possession of such property.

“**Person**” means an individual, firm, partnership or corporation and where the context requires shall include the plural as well as the singular.

“**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.

“**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.

“**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.

“**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 becomes a nuisance to adjoining properties.

“**Derelict Vehicle**” means

- (i) any vehicle or part thereof which in order to be driven on a highway, must be registered under *The Highway Act*, and which is not so registered for the current year, and which is or appears to be inoperative for such purposes due to age or mechanical failure of the motor, transmission, assembly system, chassis, body or any other parts.
- (ii) any vehicle, dismantled, partially dismantled, inoperative, discarded, abandoned, or unused vehicles, trailers and other machinery or any part or parts thereof.

“**Dwelling**” includes any building, or part thereof, residence, shelter, mobile home,

trailer or other structures, the whole or part of which has been or is capable of being used for the purpose of human habitation.

“Inspector” means any person from time to time appointed by Council or its agents to enforce the provisions of this by-law.

“Non-Conformance” means a breach or an alleged breach of this by-law.

“Unregistered Vehicles” means cars, trucks, vans, motorcycles, trailers, snowmobiles, buses or any other object required by law to be licensed or registered in order to enter upon a public highway, street or road and which are not for the time being so licensed and includes each detached part or group of parts of any such car, truck, van, motorcycle, trailer, snowmobile, bus or object exceeding one foot in length, width or height.

“Yards” means privately owned real property around and appurtenant to a dwelling or other building used or reasonably capable of being used as a dwelling.

ADMINISTRATION & ENFORCEMENT

3. This by-law shall be administered and enforced by the designated officers or agents.
4. In reference to the administration and enforcement of this by-law, designated agents shall include:
 - (i) Designated Officers in the employ of the Municipality of Brenda-Waskada;
 - (ii) Building Inspectors, Fire Inspectors, Health Inspectors, Weed Inspectors and any other persons or agencies employed by or acting for the Municipality of Brenda-Waskada and partially or wholly responsible for fire and building safety and standards within the Municipality.
5. No person acting within the scope of their duty to administer and enforce this by-law shall be personally liable for any act or omission while so acting.

COMPLAINTS

6. Any person may allege a violation of this by-law by filing with the Municipality of Brenda-Waskada a complaint in writing and with such particulars as the Municipality of Brenda-Waskada from time to time may require.

INSPECTIONS

7. Upon receipt of a written complaint, a Designated Officer shall inspect the real and personal property identified in the complaint as shall be deemed reasonably necessary to determine whether or not there is or has been a violation of this by-law.
8. For the purpose of inspection under this by-law, a Designated Officer may enter upon, inspection and view any real or personal property at all reasonable times with or without the consent of any person.

ORDERS

9. If the Designated Officer is satisfied upon inspection that there is a violation of this by-law, the Designated Officer shall make an Order in the form attached hereto and marked as Schedule “A”.
10. There shall be attached to the Order a form of Notice of Objection, attached hereto and marked as Schedule “B”, which shall indicate the place to which the Notice of Objection shall be delivered.
11. Each Order made by the Designated Officer shall specify a time within which compliance shall be required, and the time for compliance shall be not less than twenty days or more than one hundred and fifty days from the date of the order.
12. The time for compliance with an Order may be postponed once by the Designated Officer for a period of not more than ninety days, only upon the owner showing that reasonable efforts to comply with the Order have been made but full compliance cannot be affected within the time provided because of technical difficulties, inability to obtain necessary labour, repairs or materials.
13. Except in the case of non-conformance posing an immediate danger to any person, the filing of an objection to an Order or any of the provisions of an Order shall operate as a stay of proceedings until consideration of the objection by the

municipality through the prescribed appeal process.

14. In the case of non-conformance posing an immediate danger to any person, the Designated Officer may, pursuant to Sections 7 & 8 of this By-law, order the owner to correct the non-conformance forthwith.
15. In the event the Designated Officer is unable to contact the owner either by attending at the site of the non-conformance or by telephoning at the residence of the owner, the Municipality may cause the non-conformance to be corrected with no further attempt to notify the owner and the cost thereof may be added to the real property taxes applicable to the property made subject to the order or collected in any other manner available to the municipality by law.
16. Each Order made under this by-law, excepting an Order issued in the case of non-conformance posing an immediate danger to any person referred to in Section 14, shall be in writing, and served in accordance with provisions 21 & 23 of this by-law.

APPEALS

17. An interested person may appeal an Order made by the Designated Officer by filing a Notice of Objection, in the form attached to this by-law and marked as Schedule any time before the time for compliance with such Order.
18. Upon receipt of a Notice of Objection in the required form, the municipality shall hold a hearing within forty days immediately following receipt of the Notice of Objection. Each interested person filing a Notice of Objection and the Designated Officer are entitled to attend the hearing with or without counsel and to present evidence and make submissions. The procedure to be used at the hearing shall be the procedure set out in the then current procedural by-law of the municipality for public hearings, supplemented and modified as the Council for the Municipality of Brenda-Waskada shall determine. The majority of the councillors currently holding office, including the Head of Council, shall constitute a quorum and the decision of the majority shall stand in the place of the Order in respect of which the Notice of Objection is made, for all purposes. The decision rendered at the hearing is final and no further appeal may be taken in respect of the subject matter of the Order.
19. If any person who has filed a Notice of Objections to an Order fails to appear at the hearing, either in person or by counsel to make representation, a decision may be made in their absence.
20. The Council for the Municipality may reserve their decision on appeal, however, they shall in any event, render a decision on an appeal within five days of the date of the hearing of the appeal and shall serve upon all interested persons a notice of disposition forthwith upon determination. The Council for the Municipality of Brenda-Waskada may:
 - (a) confirm the Order of the Designated Officer; or
 - (b) vary the Order of the Designated Officer in any respect;
 - (c) set aside the Order of the Designated Officer.

SERVICE

21. A copy of any Order or postponement thereof made by the Designated Officer shall be served by personal service or by registered mail upon
 - (a) the owner;
 - (b) the occupier, if any, and
 - (c) the mortgagee, if anyof the real or personal property affected by the Order and, if service cannot be by personal service or by registered mail, such Order or postponement of it may be posted on the property which is the subject of the Order or postponement.
22. A Notice of Hearing by the Council shall be served by personal service or by registered mail upon each person filing a Notice of Objection in the required form, and upon the Designated Officer. The Notice of Hearing shall state the time, date and place of the hearing. The Notice of Hearing shall state the time, date and place of the hearing. The Notice of Hearing shall be served no later than five days prior to the date set for the hearing.
23. Personal service shall be deemed to have been made on the date service is actually effected upon the person and service by registered mail shall be deemed to have

been made the day after posting.

24. Service upon deceased persons may be made by service upon any one of their heirs, executors or administrators and service upon corporations may be made by service upon any officer of the corporation as disclosed in its most current information on file with the Corporations Office or upon any adult person at the usual place of business of the corporation who appears to the person effecting service to be in charge.

STANDARDS

Maintenance of Real Property

25. (a) An owner or occupier of real property that includes buildings or dwellings shall
- (i) ensure, on a continuing basis, that all requirements are met in relation to the minimum standards of maintenance and occupancy in accordance with all codes and standards enforced by the Province of Manitoba and the Local Planning District.
 - (ii) maintain the appearance of buildings and other structures so not to become unsightly and a detriment to the surrounding areas.
26. (a) An owner or occupier of real property shall keep it free and clear from:
- (i) rubbish, garbage and other debris;
 - (ii) objects, conditions and substances that present a health, fire or accident hazard;
 - (iii) objects and conditions, including holes and excavations, that are health, fire or accident hazards;
 - (iv) objects, conditions and substances that contaminate or pollute the air or water;
 - (v) objects, conditions and substances that constitute a nuisance and may degrade the surrounding properties;
 - (vi) the growth of weeds so that the same become a nuisance to adjoining properties;
 - (vii) the growth of grass to a length which is unsightly;
 - (viii) the growth of vegetation to a length where it is overhanging onto roads, lanes and sidewalks
 - (ix) 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; and;
 - (x) the storage of motor vehicles that have been abandoned or derelict,
 - (xi) wrecked, dismantled, partially dismantled, inoperative, discarded, or any parts thereof.
 - (xii) no outdoor burning where the smoke of which causes a nuisance to adjoining properties
 - (xiii) no uncontained, open fires within residential communities

Drainage

27. No roof drainage or surface drainage shall be discharged on neighbouring property and all such drainage shall be conveyed so as not to cause dampness in the walls, ceilings, or floors of any portion of the building itself or any adjacent building.

Fences and Accessory Buildings

28. All fences and accessory buildings shall be kept weather resistant, in good repair, and free from health, fire and accident hazards.

Garbage Disposal

29. Garbage disposal shall be in accordance with the applicable municipal by-laws.

Removal of Basements/Below Ground Structures

30. The owner of a property that causes the above ground structure to be removed must ensure that all below ground material is also removed. This would include but not be limited to: concrete or wood basements, crawlspaces, footings etc. In keeping with 243(1)(b) any land that contains an excavation or hole, requires the owner to fill in the excavation or hole and level the site.

Health Standards

31. An owner or occupier of real or personal property shall keep it free of rodents, vermin, and insects at all times and methods used for exterminating rodents, vermin or insects shall conform with generally accepted practice in the Municipality of Brenda-Waskada, as determined by the Designated Officer.
32. All properties shall comply with the Public Health standards as determined by the Province of Manitoba.

Conflict with Other By-laws

33. Where a provision of this By-law conflicts with a provision of another By-law in force in the Municipality, or of any building, safety or Fire Code, the provision that establishes the higher standard to protect health, safety and welfare of the general public shall prevail.

ENFORCEMENT

34. Every person who omits, neglects or refuses to comply with an Order made under this by-law is guilty of an offence and liable on summary conviction to a fine not exceeding five hundred dollars (\$500.00) or to imprisonment for a term not exceeding thirty (30) days, or both.
35. Where the contravention, refusal, neglect, omission or failure continues for more than one day, the person is guilty of a separate offence for each day it continues.
36. Every person who obstructs or interferes with an inspection being conducted under the authority of this by-law is guilty of an offence and liable on summary conviction to a fine not exceeding five hundred dollars (\$500.00) or to imprisonment for a term not exceeding 30 days, or both.
37. Where an Order has not been complied with, the Designated Officer may take any lawful action and do all things necessary to effect compliance, and where the municipality incurs any costs as outlined in Schedule "C" hereto attached, to effect compliance, that cost may be added to the real property taxes applicable to the property made subject to the Order and may be collected in any other manner available to the municipality by law.
38. This By-law shall come into force and effect on the day it is passed by the Council of the Municipality of Brenda-Waskada.
39. This By-law shall apply retroactively to all dwellings, other structures, or parts thereof together with, and including, all surrounding lands.
40. That the following By-law's are hereby repealed:
By-Law 7-2000 Rural Municipality of Brenda
By-Law 7-2001 Rural Municipality of Brenda
By-Law 2-99 Village of Waskada

DONE AND PASSED by the Council of the Municipality of Brenda-Waskada in regular session assembled this 9th day of September, 2015

Head of Council

Chief Administrative Officer

Given First Reading this 12th day of August, 2015

Given Second Reading this 9th day of September, 2015

Given Third Reading this 9th day of September, 2015

SCHEDULE "A"

PROPERTY STANDARDS BY-LAW NO. 17-2015

ORDER TO MAINTAIN

TO: _____, as registered owner

AND TO: _____, as Mortgagee

FROM: _____, Designated Officer/Agent on behalf of
the Municipality of Brenda-Waskada.

PURSUANT to the Municipality of Brenda-Waskada Property Standards By-law No.17-2015, a Designated Officer/Agent for the Municipality of Brenda-Waskada has inspected the land, building and premises commonly known as :

{CIVIC ADDRESS}, in the Municipality of Brenda-Waskada, in Manitoba,

Being legally described as :

{LEGAL DESCRIPTION}

And as a result of this inspection, the Designated Officer/Agent is satisfied that the land, building, and premises do not comply with the standards prescribed in the By-law in that:

{LIST OF NON-COMPLIANCE ITEMS}

The above are contraventions of Section(s) {LIST SECTION NUMBERS OF BY-LAW CONTRAVENTIONS} (applicable by-law excerpts are attached).

PURSUANT to Sections 7 & 8 of the said By-law, the Municipality of Brenda-Waskada, by {NAME OF INSPECTOR}, being a Designated Officer/Agent of the Municipality of Brenda-Waskada, orders you to bring the property into conformity with the provisions of the said By-law and within _____ days of service of this Order.

{A BUILDING PERMIT MAY BE REQUIRED TO DO THE WORK NECESSARY TO COMPLY WITH THE PROPERTY STANDARDS BY-LAW}.

PURSUANT to SECTION 10 of the said By-law, the owner(s) or a person authorized in writing by him/her to act on his/her behalf, may appeal this Order or any of its provisions by filing with the Chief Administrative Officer of the Municipality of Brenda-Waskada, a NOTICE OF OBJECTION (attached herewith) within SEVEN (7) DAYS following the service of this Order.

SECTION 36 of the By-law provides:

"Where an Order has not been with, the Designated Officer may take any lawful action and do all things necessary to effect compliance, and where the municipality incurs any costs as outlined in Schedule "C" hereto attached, to effect compliance, that cost may be added to the real property taxes applicable to the property made subject to the Order and may be collected in any other manner available to the municipality by law.

SIGNED at the Municipality of Brenda-Waskada, this _____ of _____, 20__.

THE MUNICIPALITY OF BRENDA-WASKADA
Per:

(Designated Officer/Agent)

SCHEDULE "B"

PROPERTY STANDARDS BY-LAW NO. 17-2015

IN THE MATTER of the Property Standards By-law No. 17-2015 of the Municipality of Brenda-Waskada.

NOTICE OF OBJECTION

TO: Chief Administrative Officer
Municipality of Brenda-Waskada
Box 40
Waskada, Manitoba R0M 2E0

PLEASE TAKE NOTICE that the undersigned Appellant hereby appeals to the Council for the Municipality of Brenda-Waskada from the Order to

Repair or Demolish; Remove Derelict Vehicles; Vacate Dwelling; etc.

made by _____ (Name and Title)

on the ____ day of _____, A.D. 20__ respecting the residential premises or

non-residential property known as _____

on the following grounds:

Dated at _____, Manitoba, this ____ day of _____, A.D. 20__.

Signature of Appellant

Address

SCHEDULE "C"

PROPERTY STANDARDS BY-LAW NO. 17-2015

IN THE MATTER of the Property Standards By-law No. 17-2015 of the Municipality of Brenda-Waskada the following rates shall apply when the said Municipality is rectifying a violation.

NOTICE OF FEES

- a) For a lot in mowing condition, the grass cutting fee shall be \$75.00 per hour or any part thereof;
- b) For a lot which is not in mowing condition with rough terrain, and a weed eater must be used, the fee shall be \$125.00 per hour or any part thereof;
- c) For snow removal, the fee shall be \$125.00 per hour or any part thereof;
- d) For garbage pick up, the garbage truck fee charge shall be \$50.00 per hour or any part thereof;
- e) If municipal employees are required, the fee charged shall be \$50.00 per hour or any part thereof;
- f) When Contractors are required in the removal of derelict vehicles, demolition of buildings etc., the costs shall be as per Contractors price plus an administration fee of 25% of Contractors fee.