

BY-LAW NO. S-8

**A BY-LAW RESPECTING DANGEROUS OR UNSIGHTLY PREMISES
IN THE TOWN OF NACKAWIC**

WHEREAS SECTION 190 OF THE *MUNICIPALITIES ACT*, CHAPTER M-22, RSNB, 2003, c. 27, s. 59, WITH AMENDMENTS THERETO, PROVIDES AS FOLLOWS:

190 A municipality may by by-law provide that sections 190.01 to 190.07 apply to such areas of the municipality as the by-law prescribes.

1968, c.41, s.43; 1975, c.40, s.7; 1979, c.47, s.13; 1981, c.52, s.16; 1987, c.6, s.68; 1990, c.61, s.89; 2003, c.27, s.60.

190.01(1) No person shall permit premises owned or occupied by him or her to be unsightly by permitting to remain on any part of such premises

- (a) any ashes, junk, rubbish or refuse,
- (b) an accumulation of wood shavings, paper, sawdust or other residue of production or construction,
- (c) a derelict vehicle, equipment or machinery or the body or any part of a vehicle, equipment or machinery, or
- (d) a dilapidated building.

190.01(2) No person shall permit a building or structure owned or occupied by him or her to become a hazard to the safety of the public by reason of dilapidation or unsoundness of structural strength.

190.01(3) Where a condition mentioned in subsection (1) or (2) exists, an officer appointed by council may notify the owner or occupier of the premises, building or structure and the notice shall

- (a) be in writing,
- (b) be signed by the officer,
- (c) state that the condition referred to in subsection (1) or (2) exists,
- (d) state what must be done to correct the condition,
- (e) state the date before which the condition must be corrected, and

- (f) be served either by personal delivery on the person to be notified or by posting in a conspicuous place on the premises, building or structure.

2003, c.27, s.61.

190.02(1) Proof of the giving of notice in either manner provided for in paragraph 190.01(3)(f) may be by a certificate or an affidavit purporting to be signed by the officer referred to in subsection 190.01(3), naming the person to whom notice was given and specifying the time, place and manner in which notice was given.

190.02(2) A document purporting to be a certificate under subsection (1) shall be

- (a) admissible in evidence without proof of signature, and
- (b) conclusive proof that the person named in the certificate received notice of the matters referred to in the certificate.

190.02(3) In any prosecution for a violation of a by-law under section 190 where proof of the giving of notice is made as prescribed under subsection (1), the burden of proving that one is not the person named in the certificate or affidavit shall be upon the person charged.

190.02(4) A notice given under subsection 190.01(3) and purporting to be signed by an officer appointed by council shall be

- (a) received in evidence by any court in the Province without proof of the signature,
- (b) proof in the absence of evidence to the contrary of the facts stated in the notice, and
- (c) on the hearing of an information for a violation of a by-law under section 190, proof in the absence of evidence to the contrary that the person named in the notice is the owner or occupier of the premises, building or structure in respect of which the notice was given.

2003, c.27, s. 61.

190.03(1) A person who fails to comply with the terms of a notice under subsection 190.01(3) commits an offence punishable under Part II of the *Provincial Offences Procedure Act* as a category E offence and notwithstanding the provisions of any Act to the contrary, no judge of the Provincial Court may suspend the imposition of any penalty under this section.

190.03(2) A violation as provided for in subsection (1) is a continuing offence and a separate information may be laid for each day such offence continues and the penalty provided for in subsection (1) shall be imposed for each conviction resulting from the laying of each information.

190.03(3) The conviction of a person under this section does not operate as a bar to further prosecution for the continued neglect or failure on his or her part to comply with the provisions of a by-law under section 190.

2003, c.27, s.61.

190.04(1) If a notice has been given under subsection 190.01(3) and the owner or occupier does not comply with the notice within the time allowed, the municipality may, rather than commencing proceedings in respect of the violation or in addition to doing so,

(a) if the notice arises out of a condition existing contrary to subsection 190.01(1), cause the premises of that owner or occupier to be cleaned up, or

(b) if the notice arises out of a condition existing contrary to subsection 190.01(2), cause the building or structure of that owner or occupier to be demolished,

(c) and the cost of carrying out such work, including any related charge or fee, is chargeable to the owner or occupier and becomes a debt due to the municipality.

2003, c.27, s.61.

190.05(1) Where the cost of carrying out work becomes a debt due to a municipality under section 190.04, an officer of the municipality may issue a certificate stating the amount of the debt due and the name of the owner or occupier from whom the debt is due.

190.05(2) A certificate issued under subsection (1) may be filed in The Court of Queen's Bench of New Brunswick and a certificate so filed shall be entered and recorded in the Court and when so entered and recorded may be enforced as a judgment obtained in the Court by the municipality against the person named in the certificate for a debt of the amount specified in the certificate.

190.05(3) All reasonable costs and charges attendant upon the filing, entering and recording of a certificate under subsection (2) may be recovered as if the amount had been included in the certificate.

2003, c.27, s.61.

- 190.06(1) The cost of carrying out work under section 190.04 and all reasonable costs and charges attendant upon the filing, entering and recording of a certificate under section 190.05 shall, notwithstanding subsection 72(2) of the *Workers' Compensation Act* and until paid, form a lien upon the real property in respect of which the work is carried out in priority to every claim, privilege, lien or other encumbrance, whenever created, subject only to taxes levied under the *Real Property Tax Act* and a special lien under subsection 189(10).
- 190.06(2) The lien in subsection (1)
- (a) attaches when the work under section 190.04 is begun and does not require registration or filing of any document or the giving of notice to any person to create or preserve it, and
 - (b) follows the real property to which it attaches into whosever hands the real property comes.
- 190.06(3) Any mortgagee, judgement creditor or other person having any claim, privilege, lien or other encumbrance upon or against the real property to which is attached a lien under subsection (1)
- (a) may pay the amount of the lien,
 - (b) may add the amount to the person's mortgage, judgment or other security and
 - (c) has the same rights and remedies for the amount as are contained in the person's security.

2003, c.27, s.61.

- 190.07(1) A municipality shall not proceed to act under paragraph 190.04(b) unless it has a report from an architect, an engineer, a building inspector or the Fire Marshal that the building or structure is dilapidated or structurally unsound and such report is proof in the absence of evidence to the contrary that the building or structure is dilapidated or structurally unsound.

2003, c.27, s.61.

THEREFORE BE IT ENACTED BY THE COUNCIL OF THE TOWN OF NACKAWIC AS FOLLOWS:

1. Section 190 of the *Municipalities Act*, Chapter M-22, RSNB, 2003, with amendments thereto, apply to the whole area within the town limits of the Town of Nackawic.

2. Enforcement

2.01 Pursuant to section 14 of the *Police Act*, the By-law Enforcement Officer is duly appointed by resolution of Council to enforce the provisions of this by-law, and amendments thereto.

3. Penalty Provision

3.01 A person who fails to comply with the terms of a notice under subsection 190.01(3) commits an offence punishable under Part II of the *Provincial Offences Procedure Act* as a category E offence and notwithstanding the provisions of any Act to the contrary, no judge of the Provincial Court may suspend the imposition of any penalty under this section.

3.02 A violation as provided for in subsection (1) is a continuing offence and a separate information may be laid for each day such offence continues and the penalty provided for in subsection (1) shall be imposed for each conviction resulting from the laying of each information.

3.03 The conviction of a person under this section does not operate as a bar to further prosecution for the continued neglect or failure on his or her part to comply with the provisions of a by-law under section 190.

4. Repeal Provision

4.01 By-law No. 31, A By-law Respecting Unsightly Premises, passed by Town Council on December 22, 1975, is hereby repealed.

4.02 The repeal of By-law No. 27, A By-law Respecting Unsightly Premises, shall not affect any penalty, forfeiture or liability, incurred before such repeal or any proceeding for enforcing the same completed or pending at the time of repeal; nor shall it repeal, defeat, disturb, invalidate or prejudicially affect any matter or thing whatsoever completed, existing or pending at the time of repeal.

DULY PASSED AND ENACTED BY THE COUNCIL OF THE TOWN OF NACKAWIC ON
APRIL 18, 2006.

Robert G. Connors, Mayor

Nancy Cronkhite, Chief Administrative Officer

First Reading: April 3, 2006
Second Reading: April 18, 2006
Third Reading: April 18, 2006