

Harvey Rural Community

By-law No. 2023-11

A By-law Respecting Dangerous or Unsightly Premises Within Harvey Rural Community

WHEREAS: Sections 130 to 143 of the Local Governance Act provides as follows:

130 The following definitions apply in the Part.

“dwelling” means a building, any part of which is used or is intended to be used for the purposes of human habitation. (habitation)

“dwelling unit” means one or more rooms located within a dwelling and used or intended to be used for human habitation. (lodgement)

Offences and penalties relating to dangerous or unsightly premises

131(1) No person shall permit premises owned or occupied by him or her to be unsightly by permitting to remain on any part of the 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.

131(2) No person shall permit a building or other structure owned or occupied by the person to become a hazard to the safety of the public by reason of being vacant or unoccupied.

131(3) No person shall permit a building or other structure owned or occupied by the person to become a hazard to the safety of the public by reason of dilapidation or unsoundness of structural strength.

131(4) A person who violates or fails to comply with subsection (2) or (3) commits an offence that is, subject to subsections (5) and (6), punishable under Part 2 of the *Provincial Offences Procedure Act* as a category F offence.

131(5) Despite subsection 56(6) of the *Provincial Offences Procedure Act*, if a person who is leasing a dwelling or dwelling unit to another person commits an offence under subsection (4) in relation to the dwelling or dwelling unit, the minimum fine that may be imposed by a judge under that Act in respect of the offence shall be \$1,000.

131(6) If an offence under subsection (4) continues for more than one day,

(a) if the offence was committed in relation to a dwelling or dwelling unit by a person who is leasing the dwelling or dwelling unit to another person,

(i) the minimum fine that may be imposed is the sum of

(A) \$1,000, and

(B) the minimum fine set by the *Provincial Offences Procedure Act* for a category F offence multiplied by the number of days during which the offence continues after the first day, and

- (ii) the maximum fine that may be imposed is the maximum fine set by the *Provincial Offences Procedure Act* for a category F offence multiplied by the number of days during which the offence continues, and
- (b) in any other case,
 - (i) the minimum fine that may be imposed is the minimum fine set by the *Provincial Offences Procedure Act* for a category F offence multiplied by the number of days during which the offence continues, and
 - (ii) the maximum fine that may be imposed is the maximum fine set by the *Provincial Offences Procedure Act* for a category F offence multiplied by the number of days during which the offence continues.

Notice to owner or occupier

132(1) If a condition referred to in subsection 131(1), (2) or (3) exists, a by-law enforcement officer may notify

- (a) the owner or occupier of the premises, building or other structure,
- (b) the person managing or receiving the rent for the premises, building or other structure, whether on the person's own account or as agent or trustee of any other person, or
- (c) the person who would receive the rent if the premises, building or other structure were let.

132(2) A notice referred to in subsection (1) shall be in the form prescribed by regulation which shall

- (a) be in writing,
- (b) be signed by the officer,
- (c) state the condition in subsection 131(1), (2) or (3) that exists,
- (d) state what must be done to correct the condition,
- (e) state the date before which the condition must be corrected, and
- (f) if an appeal may be brought under subsection 134(1), state the date for giving notice of the appeal.

132(3) A notice referred to in subsection (1) may be given in the following ways:

- (a) if the person to be notified is an individual,
 - (i) by personal delivery to the individual,
 - (ii) by registered mail to the individual's latest known address, or
 - (iii) by posting the notice in a conspicuous place on the premises, building or other structure,
 and
- (b) if the person to be notified is a corporation,
 - (i) by personal delivery to an officer, director or agent of the corporation or to a manager or person who appears to be in control of any office or other place of business in the Province where the corporation carries on business,
 - (ii) by registered mail to the corporation's registered office, or
 - (iii) by posting the notice in a conspicuous place on the premises, building or other structure.

132(4) A notice that is posted in a conspicuous place under subparagraph (3)(a)(iii) or (b)(iii) shall be deemed to have been given to an individual or corporation on the day it was posted.

132(5) A notice given to a person referred to in paragraph (1)(b) or (c) shall be deemed to have been given to the owner of the premises, building or other structure.

Evidence

133(1) Proof of giving a notice in a manner provided for in subsection 132(3) may be made by a certificate or an affidavit purporting to be signed by the by-law enforcement officer referred to in subsection 132(1) naming the person named in the notice and specifying the time, place and manner in which notice was given.

133(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.

133(3) In a prosecution for a violation of a by-law made under paragraph 10(1)(d) in which proof of the giving of the notice is made in accordance with subsection (1), the onus is on the accused to prove that the accused is not the person named in the certificate or affidavit.

133(4) A notice given under section 132 and purporting to be signed by a by-law enforcement officer 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) in a prosecution for a violation of a by-law made under paragraph 10(1)(d), 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 other structure in respect of which the notice was given.

Appeal

134(1) An owner or occupier of premises or a building or other structure who has been given a notice under section 132, other than a notice prepared and signed under subsection 139(1), and who is not satisfied with the terms or conditions set out in the notice may appeal to the appropriate committee of council by sending a notice of appeal by registered mail to the clerk of the local government within 14 days after having been given the notice.

134(2) A notice that is not appealed within the time referred to in subsection (1) shall be deemed to be confirmed and is final and binding on the owner or occupier who shall comply within the time and in the manner specified in the notice.

134(3) On an appeal, the committee of council shall hold a hearing into the matter at which the owner or occupier bringing the appeal has a right to be heard and may be represented by counsel.

134(4) On an appeal with respect to a notice under section 132 arising out of a condition referred to in subsection 131(2), the onus is on the local government to prove that the building or structure has become a hazard to the safety of the public by reason of being vacant or unoccupied.

- 134(5) On an appeal, the committee of council may confirm, modify or rescind the notice or extend the time for complying with the notice.
- 134(6) The committee of council shall provide a copy of its decision to the owner or occupier who brought the appeal within 14 days after making its decision.
- 134(7) If a notice that is confirmed or modified by a decision of the committee of council under subsection (5) is not appealed within the time referred to in subsection (8), it shall be final and binding on the owner or occupier who shall comply within the time and in the manner specified in the notice.
- 134(8) The owner or occupier who is provided with a copy of a decision under subsection (6) may appeal the decision to a judge of The Court of King's Bench of New Brunswick within 14 days after the copy of the decision was provided to the owner or occupier on the grounds that
- (a) the procedure required to be followed by this Act was not followed, or
 - (b) the decision is unreasonable.
- 134(9) On an appeal, the judge of The Court of King's Bench of New Brunswick may confirm, modify or rescind the whole or any part of the decision of the committee of council, and the decision of the judge under this subsection is not subject to appeal.
- 134(10) A notice that is confirmed or modified by a judge of The Court of King's Bench of New Brunswick under subsection (9) shall be final and binding on the owner or occupier who shall comply within the time and in the manner specified in the notice.
- 134(11) An appeal does not prevent a further notice from being given under section 132 or from being prepared and signed under subsection 139(1) in relation to a condition referred to in the notice that is the subject of the appeal, if there has been a change in the condition.

Registering a notice

- 135(1) In this section "land registration office" means a registry office established under the *Registry Act* or a land titles office established under the *Land Titles Act*.
- 135(2) A notice given under section 132 may be registered in the appropriate land registration office and, on registration, any subsequent owner of the premises, building or other structure in respect of which the notice was given shall be deemed, for the purposes of sections 137 and 139, to have been given the notice on the day on which the notice was given under section 132.
- 135(3) Section 44 of the *Registry Act* and section 55 of the *Land Titles Act* do not apply to a registration under subsection (2).
- 135(4) Within 30 days after the terms of a notice have been complied with or a debt due to a local government under subsection 137(3) or 139(4) or due to the Minister of Finance and Treasury Board under subsection 143(3), as the case may be, is discharged, the local government shall provide a certificate in the form prescribed by regulation to that effect to the person to whom the notice was given under section 132 or was deemed to have been given under subsection (2), as the case may be, and the certificate shall operate as a discharge of the notice.

135(5) A person to whom a certificate is provided under subsection (4) may register the certificate in the appropriate land registration office, and, on registration of the certificate, the appropriate registrar of the land registration office shall cancel registration of the notice in respect of which the certificate was provided.

2019, c.29, s.83

Offence and penalty for failure to comply with a notice

136(1) A person who fails to comply with the terms of a notice given under section 132 commits an offence that is, subject to subsections (2) and (3), punishable under Part 2 of the *Provincial Offences Procedure Act* as a category F offence.

136(2) Despite subsection 56(6) of the *Provincial Offences Procedure Act*, if a person who is leasing a dwelling or dwelling unit to another person commits an offence under subsection (1) in relation to a notice given under section 132 with respect to the dwelling or dwelling unit, the minimum fine that may be imposed by a judge under that *Act* in respect of the offence is \$1,000.

136(3) If an offence under subsection (1) continues for more than one day,

- (a) if the offence was committed by a person in relation to a notice given under section 132 with respect to a dwelling or dwelling unit the person is leasing to another person,
 - (i) the minimum fine that may be imposed is the sum of
 - (A) \$1,000, and
 - (B) the minimum fine set by the *Provincial Offences Procedure Act* for a category F offence multiplied by the number of days during which the offence continues after the first day, and
 - (ii) the maximum fine that may be imposed is the maximum fine set by the *Provincial Offences Procedure Act* for a category F offence multiplied by the number of days during which the offence continues, and
- (b) in any other case,
 - (i) the minimum fine that may be imposed is the minimum fine set by the *Provincial Offences Procedure Act* for a category F offence multiplied by the number of days during which the offence continues, and
 - (ii) the maximum fine that may be imposed is the maximum fine set by the *Provincial Offences Procedure Act* for a category F offence multiplied by the number of days during which the offence continues.

136(4) The conviction of a person under this section does not operate as a bar to further prosecution for the continued neglect or failure on the person's part to comply with the provisions of this Part.

Power to clean, repair or demolish

137(1) If an owner or occupier does not comply with a final and binding notice given under section 132 within the time set out in the notice, the local government may, rather than commencing proceedings in respect of the violation or in addition to doing so,

- (a) cause the premises of that owner or occupier to be cleaned up or repaired if the notice arises out of a condition contrary to subsection 131(1),
- (b) cause the building or other structure of that owner or occupier to be repaired or demolished if the notice arises out of a condition contrary to subsection 131(2), or

(c) cause the building or other structure of that owner or occupier to be demolished if the notice arises out of a condition contrary to subsection 131(3).

137(2) Subsection (1) does not apply in respect of a notice prepared and signed under subsection 139(1).

137(3) The costs of carrying out any work set out in subsection (1), including any associated charge or fee, is chargeable to the owner or occupier and becomes a debt due to the local government.

137(4) For the purpose of subsection (1), the by-law enforcement officer who gave the notice in respect of the premises, building or other structure and the authorized employees of the local government or other persons acting on behalf of the local government may, at all reasonable times, enter the premises, building or other structure in order to clean up or repair the premises or repair or demolish the building or other structure, as the case may be.

137(5) A local government or a person acting on its behalf is not liable to compensate an owner or occupier or any other person by reason of anything done by or on behalf of the local government in the reasonable exercise of its powers under this section.

Report required before demolition

138 A local government shall not proceed to act under paragraph 137(1)(c) 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 that report is proof in the absence of evidence to the contrary that the building or structure is dilapidated or structurally unsound.

2020, c.8, s.32

Emergency

139(1) If, on inspection of a property under section 144, the by-law enforcement officer referred to in that section is satisfied that there is nonconformity with the provisions of this Part to such an extent as to pose an emergency, the by-law enforcement officer may prepare and sign a notice referred to in section 132 requiring the owner or occupier of the premises, building or other structure in respect of which the notice is prepared to immediately carry out work to terminate the danger.

139(2) After having prepared and signed a notice referred to in subsection (1), the by-law enforcement officer may, either before or after the notice is given, take any measures necessary to terminate the danger giving rise to the emergency, and, for this purpose, the by-law enforcement officer who prepared the notice and the authorized employees of the local government or other persons acting on behalf of the local government may, at any time, enter the premises, building or other structure in respect of which the notice was prepared.

139(3) A local government or a person acting on its behalf is not liable to compensate an owner or occupier or any other person by reason of anything done by or on behalf of the local government in the reasonable exercise of its powers under this section.

139(4) The cost of taking measures under subsection (2), including any associated charge or fee, is chargeable to the owner or occupier and becomes a debt due to the local government.

139(5) If the notice referred to in subsection (1) was not given before measures were taken under subsection (2) to terminate the danger, the by-law enforcement officer shall give a copy of the notice as soon as the circumstances permit after the measures have been taken, and the copy of the notice shall have attached to it a statement by the by-law enforcement officer describing the measures taken by the local government and providing details of the amount spent in taking the measures.

139(6) If the notice referred to in subsection (1) was given before the measures were taken under subsection (2), the by-law enforcement officer shall give a copy of the statement referred to in subsection (5) in the same manner as a notice is given under subsection 132(3) as soon as the circumstances permit after the measures have been taken.

Offence and penalty for obstruction

140(1) No person shall refuse entry to or obstruct or interfere with a by-law enforcement officer, an authorized employee or other person referred to in subsection 137(4) or 139(2) who under the authority of that subsection is entering or attempting to enter premises or a building or other structure.

140(2) A person who violates or fails to comply with subsection (1) commits an offence that is, subject to subsections (3) and (4), punishable under Part 2 of the *Provincial Offences Procedure Act* as a category F offence.

140(3) Despite subsection 56(6) of the *Provincial Offences Procedure Act*, if a person who is leasing a dwelling or dwelling unit to another person commits an offence under subsection (2) in relation to the dwelling or dwelling unit, the minimum fine that may be imposed by a judge under that Act in respect of the offence is \$1,000.

140(4) If an offence under subsection (2) continues for more than one day,

- (a) if the offence was committed by a person in relation to a dwelling or dwelling unit the person is leasing to another person,
 - (i) the minimum fine that may be imposed is the sum of
 - (A) \$1,000, and
 - (B) the minimum fine set by the *Provincial Offences Procedure Act* for a category F offence multiplied by the number of days during which the offence continues after the first day, and
 - (ii) the maximum fine that may be imposed is the maximum fine set by the *Provincial Offences Procedure Act* for a category F offence multiplied by the number of days during which the offence continues, and
- (b) in any other case,
 - (i) the minimum fine that may be imposed is the minimum fine set by the *Provincial Offences Procedure Act* for a category F offence multiplied by the number of days during which the offence continues, and
 - (ii) the maximum fine that may be imposed is the maximum fine set by the *Provincial Offences Procedure Act* for a category F offence multiplied by the number of days during which the offence continues.

Recovery of local government's costs – filing of certificate

141(1) If the cost of carrying out work or the cost of taking measures becomes a debt due to a local government under subsection 137(3) or 139(4), an officer of the local government 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.

141(2) A certificate issued under subsection (1) may be filed in The Court of King's Bench of New Brunswick and the filed certificate shall be entered and recorded in the Court and may then be enforced as a judgment obtained in the Court by the local government against the person named in the certificate for a debt in the amount specified in the certificate.

141(3) All reasonable costs and charges associated with filing, entering and recording a certificate under subsection (2) may be recovered as if the amount had been included in the certificate.

2023, c.17, s. 146

Lien

142(1) Despite subsection 72(2) of the *Workers' Compensation Act*, the cost of carrying out work under subsection 137(1) or of taking measures under subsection 139(2), as the case may be, and all reasonable costs and charges associated with filing, entering and recording a certificate under section 141 shall, until they are paid, form a lien on the real property in respect of which the work is carried out or the measures are taken in priority to every claim, privilege, lien or other encumbrance, whenever created, subject only to taxes levied under the *Real Property Tax Act* and to a special lien under subsection 117(9).

142(2) The lien in subsection (1)

- (a) attaches when the work under subsection 137(1) begins or the measures under subsection 139(2) begin, as the case may be, and does not require registering or filing any document or giving notice to any person to create or preserve it, and
- (b) is not defeated by a change in the ownership of the real property.

142(3) A mortgagee, judgment creditor or other person having a claim, privilege, lien or other encumbrance on or against the real property to which a lien under subsection (1) is attached

- (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 that are contained in the person's security.

Debts paid by the Minister of Finance and Treasury Board

2019, c.29, s.83

143(1) If a debt due to a local government under subsection 137(3) or 139(4) remains unpaid in whole or in part and the Minister of Finance and Treasury Board is of the opinion that the local government has made reasonable efforts to recover the unpaid amount, the Minister of Finance and Treasury Board shall, if the local government requests the Minister to do so before December 31 in any year, pay to the local government the following amounts in the following year:

- (a) the unpaid amount of the debt; and
- (b) interest on the unpaid amount of the debt
 - (i) calculated at the same rate that is applied in determining the amount of a penalty under subsection 10(3) of the *Real Property Tax Act*, and
 - (ii) accruing from the day the local government completes the work or measures in respect of which the debt arose to the day the local government makes a request under this subsection for payment in respect of the debt.

143(2) A local government shall make a request under subsection (1) by submitting to the Minister of Finance and Treasury Board a statement of the expenditures of the local government that gave rise to the debt.

143(3) Subject to subsection (4), if a debt due to a local government under subsection 137(3) or 139(4) in relation to work carried out or measures taken with respect to premises or a building or other structure remains unpaid, in whole or in part, by the person liable to pay the debt and the Minister of Finance and Treasury Board has made a payment under subsection (1) in respect of the debt,

- (a) any part of the debt that remains unpaid by the person liable to pay the debt becomes a debt due to the Minister of Finance and Treasury Board, and
- (b) the Minister of Finance and Treasury Board shall collect the following amounts from the owner of the premises, building or other structure in the same manner that taxes on real property are collected under the *Real Property Tax Act*:
 - (i) any part of the debt under subsection 137(3) or 139(4) that remains unpaid by the person liable to pay the debt; and
 - (ii) interest on the unpaid part of the debt
 - (A) calculated at the same rate as is applied in determining the amount of a penalty under subsection 10(3) of the *Real Property Tax Act*, and
 - (B) accruing from the day the local government completes the work or measures in respect of which the debt arose to the day the local government makes a request under subsection (1) for payment in respect of the debt.

143(4) Subject to subsections (5) and (6), for the purposes of subsection (3), the following provisions of the *Real Property Tax Act* apply with the necessary modifications:

- (a) section 7,
- (b) section 10, except for subsection (2),
- (c) section 11,
- (d) section 12,
- (e) sections 13 to 16, and
- (f) sections 19 to 25.

143(5) If the amounts referred to in paragraph (3)(b) remain unpaid, those amounts and any penalty added to them under subsection (4) constitute a lien on the real property in respect of which the work was carried out or the measures were taken, and the lien ranks equally with a lien under subsection 11(1) of the *Real Property Tax Act*.

143(6) If the real property is sold under any order of foreclosure, seizure and sale, execution or other legal process or a power of sale under a debenture or mortgage or under subsection 44(1) of the *Property Act*, the amount of a lien referred to in subsection (5) constitutes a charge on the proceeds that ranks equally with a charge under subsection 11(1) of the *Real Property Tax Act*.

2019, c.29, s.83

BE IT ENACTED: by the Council of Harvey Rural Community as follows:

- 1. This by-law may be cited as the Unsightly Premises and Dangerous Buildings By-law.
- 2. The Council of Harvey Rural Community hereby declares that sections 130 to 143 of the Local Governance Act and amendments thereto, shall apply to the entire area within the municipal limits of Harvey Rural Community.
- 3. This By-law comes into force on the date of final passing thereof.
- 4. By-Law No. 81-1, "A by-Law of the Village of Harvey Respecting Dangerous or Unsightly Premises within the Village of Harvey" enacted the 4th day of November 1996, is hereby repealed.

In Witness whereof the Harvey Rural Community has caused its corporate seal to be hereunto affixed to this By-Law the 10th day of January 10, 2024.

First Reading: November 15, 2023
 Second Reading: January 10, 2024
 Third Reading: January 10, 2024

Clerk: _____
 Katherine Henry

Mayor: _____
 Richard Corey

Seal