

TOWN OF SWAN RIVER

BY-LAW NO. 6/2023

Being a by-law of The Town of Swan River to maintain property and to regulate nuisances, derelict, abandoned and unsightly property.

WHEREAS 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;
 - (f) property adjacent to highways or municipal roads, whether the property is publicly or privately owned;
 - (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;
 - (c) deal with any development, activity, industry, business, or thing in different ways, or divide any of them into classes and deal with each class in different ways;
 - (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;
 - (f) except where a right of appeal is already provided in this or any other Act, provide for an appeal and the body that is to decide the appeal, and related matters;
- 233 A by-law under clause 231(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 type 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 council are or could become a nuisance, which may include noise, weeds, odours, unsightly property, fumes and vibrations.

234

Without limiting the generality of clause 232(1)(f) (property adjacent to highways or municipal roads), a by-law passed under that clause may include provisions respecting signs, survey monuments, landscaping and setbacks, including

- (a) the growing of trees and shrubs and the construction of improvements;
- (b) the control and removal of trees, shrubs, weeds, grass, snow, ice and obstructions; and
- (c) the construction, repair and removal of fences and snow fences.

236(1)

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 for not more than six months for the commission of offences or non-payment of fines.

- 239(1) If this or any other Act or a 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, enforcement or action authorized or required by the Act or by-law;
 - (c) make copies of anything related to the inspection, remedy, enforcement or action.
- 239(3) In an emergency, or in extraordinary circumstances, the designated officer need not give reasonable notice or enter at a reasonable hour and may do the things referred to in clauses (1)(a) and (c) without the consent of the owner or occupant.
- 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.
- 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 within 90 days.

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.

246(3) The costs of an action or measure taken by a municipality under this section are an amount owing to the municipality by the person who was required to do something by the order under section 243.

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 Town of Swan River;

NOW THEREFORE the Council of the Town of Swan River, in Council assembled, enact the following policies and procedures which shall govern the inspection, remedy, enforcement or action respecting unsightly and/or unsafe property and/or structures or those which may cause a nuisance in the Town of Swan River.

Definitions

1. In this bylaw,
 - a) “**council**” means the council duly elected in the Municipality;
 - b) “**designated officer**” means a building inspector or other official appointed by council, from time to time, to enforce this by-law, or, in the absence of such an appointment, the Chief Administrative Officer;

- c) **“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;
- d) **“mortgagee”** in the case of any property means any person holding a registered real property mortgage against the property according to the records of the land titles office for the area within which the property is situated;
- e) **“Municipality”** means the Town of Swan River;
- f) **“occupier”** in the case of any property means any person in actual or constructive possession of the property pursuant to a lease, tenancy license or other right to occupy;
- g) **“owner”** in the case of any property means the registered owner of the property according to the current assessment records of the Municipality;
- h) **“person”** means an individual, firm, partnership or corporation and where the context requires it shall include the plural as well as the singular;
- i) **“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;
- j) **“dwelling”** means a building, any part of which is used or is intended to be used for the purposes of human habitation;
- k) **“driveway”** means the private road intended either as a parking spot or for giving access from a public way to a building;
- l) **“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;
- m) **“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;
- n) **“unsightly property”** means a property which in the opinion of the designated officer is detrimental to the surrounding area; this includes, but is not limited to, the growth of grass to a length which is unsightly, or the growth of weeds so that same become a nuisance to adjoining properties;

- o) “**Vehicle**” shall have the meaning ascribed to that term in *The Highway Traffic Act* and amendments thereto and shall include an off-road vehicle and any parts of any vehicle exceeding eighteen inches in length.

Application

- 2. This by-law applies to all property and to all owners and occupiers of property within the Municipality.

Standards

- 3. No owner or occupier of property shall permit on or in front of such property, and each owner and occupier of property shall keep such property free and clear of:
 - (a) rubbish;
 - (b) unsafe structure(s);
 - (c) unsightly property;
 - (d) the storage of household appliances, whether or not the same are capable of operation;
 - (e) the growth of weeds as defined in *The Noxious Weeds Act* so that the same become a nuisance to adjoining properties;
 - (f) the growth of grass to a length which exceeds five (5) Inches or 12.7 cm;
 - (g) the growth of vegetation (including, but not limited to trees, hedges, or vines) so that the same encroach on and become a nuisance to any neighbouring properties, sidewalks, fences, or buildings;
 - (h) regular outdoor burning as allowed by Bylaw, the smoke of which causes a nuisance to adjoining properties;
 - (i) snow on the sidewalks along the frontage and flankage of the property if, according to Clause XXII of the current Town of Swan River Snow Removal Policy the property owner or occupant is responsible for removing snow; and
 - (j) wrecked, dismantled, partially dismantled, inoperative, discarded, abandoned, or unused vehicles, except as permitted by 6.(d), and other machinery or any part thereof.

Pest Prevention

- 4. Every building shall be maintained 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 Town as determined by the Designated Officer.

Health Hazards

5. Regarding health hazards,
 - (a) no person shall commit any nuisance nor permit or maintain any health-hazard condition in any premises within his/her control or management, nor shall he/she permit the existence of any condition, matter or thing, which in the opinion of the Designated Officer, provides or may provide food or harborage for rodents, vermin or insects;
 - (b) no person shall occupy or let to another for occupancy, any dwelling unit or portion thereof which is not clean and sanitary;
 - (c) no dwelling, or any part thereof, or the lot upon which it is situated, shall be used as a place for storage, keeping or handling of any article dangerous or detrimental to life or health;
 - (d) the Designated Officer is authorized under Section 239 of the Municipal Act, with or without the consent of the owner or occupier, to enter upon and inspect the premises where there is, in the opinion of the Designated Officer, an emergency or extraordinary condition.

Storage of Vehicles

6. A person may park or store a vehicle on a property which is residential or commercially zoned provided that:
 - (a) the vehicle is registered for use pursuant to The Highway Traffic Act or The Off-Road Vehicles Act; or
 - (b) the owner can provide proof that the vehicle is currently under Lay-Up Coverage or has been registered for a minimum duration of 4 months pursuant to The Highway Traffic Act or the Off-Road Vehicles Act within the last 12 months; or
 - (c) the vehicle is wholly contained within a lawfully existing structure on the property; or
 - (d) the vehicle is parked or stored at the rear of any dwelling on the property so as to be entirely screened from public view in a tidy, well-maintained manner. No more than one vehicle may be parked or stored pursuant to this sub-paragraph unless specifically authorized in writing by Council.

For clarification, one unregistered vehicle is allowed to be stored in a back yard outside of a garage.

7. All vehicles parked on the front or side yard of a property must be parked on a built, designated driveway which shall be determined in the opinion of the Designated Officer.
8. Businesses which are legally zoned and lawfully licensed as a commercial automobile dealership or automotive repair shop are exempt from the provisions of sections 6 and 7 as required by the nature of their business.

Complaint

9. Any person may allege a violation of this by-law by filing a written complaint with the designated officer in such form and with such particulars as the designated officer may from time to time require.

Investigations

10. Investigations under this bylaw shall be completed by the Designated Officer who may investigate on a complaint basis and/or regular patrol of the Town. Upon discovering issues that need addressing, the Designated Officer may issue an Enforcement Notice asking for the issue to be rectified within the specified days.

Inspections

11. Upon receipt of a complaint, as aforesaid, the designated officer shall inspect all property alleged to be in violation of this by-law, in such manner as shall be reasonably necessary in order to determine whether or not there has been a violation of this by-law.

Warnings and Orders

12. Where inspections reveal a violation of any provision of this by-law, the designated officer:
 - (a) may in his or her discretion give written notice of the contravention to the owner and occupier of the property in person or by regular mail, substantially in the form attached as Schedule A.
 - (b) if the contravention continues following the warning notice, if any, provided under subsection 12 (a) above, or if in his or her discretion no such warning notice is provided, the designated officer shall issue a written order which shall:
 - (i) specify the time within which compliance shall be required;
 - (ii) advise that should compliance not be affected within the specified time, the Municipality may undertake the remediation at the expense of the owner of the property and that such expense may be collected in the same manner that a tax may be collected or enforced under The Municipal Act;
 - (iii) advise of the process of appeal; and
 - (iv) be substantially in the form attached as Schedule B.

Service of Notices or Orders

13. Any order issued by the designated officer under subsection 12(b) hereof of this by-law shall be served by personal service or by registered mail upon:
 - (a) the property owner,
 - (b) the occupier, if applicable, and

- (c) in respect to any order alleging a violation of subsection 3(b) (unsafe structures), the mortgagee, if applicable.
14. Service made personally shall be deemed to have been made on the date of such service and service made by registered, regular mail or electronic delivery shall be deemed to have been made 3 days after posting. In the case of service upon an occupier, the address for mailing shall be the address of the property. In the case of an owner, the address for mailing shall be as shown on the current assessment records of the Municipality. In the case of a mortgagee, the address for mailing shall be as shown according to the records of the Land Titles Office for the area within which the property is situated.

Appeal of an Order

15. Any interested person may appeal an order made by the designated officer by filing with the Chief Administrative Officer of the Municipality, at any time before the time for compliance with such order, an objection substantially in the form attached as Schedule C.
16. Upon receipt of an appeal in the required form, the Chief Administrative Officer of the Municipality shall cause a copy thereof to be forwarded to the council forthwith and the council shall entertain such appeal within forty days of receipt of same by holding a hearing. Council may hear the appeal as a committee of the whole or by subcommittee especially established for this purpose. A notice of hearing shall be issued by council and shall be served upon the persons and in the manner specified in section 13 and 14 no later than 5 days prior to the appeal hearing.
17. The council shall determine an appeal within 5 days of a hearing and shall serve a notice of disposition forthwith upon determination, upon the interested persons. The council may:
- (a) confirm the order of the designated officer;
 - (b) vary the order of the designated officer in any respect; or
 - (c) set aside the order of the designated officer.

Enforcement and Administrative Penalties

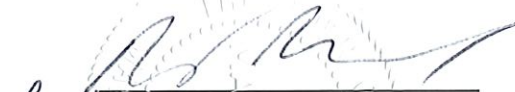
18. The costs of actions or measures taken by the Municipality to carry out the terms of an order issued by the designated officer are an amount owing to the Municipality by the owner of the property. In addition to all other rights of collection which the Municipality may have at law, such amounts may be collected by the Municipality in the same manner as a tax may be collected or enforced under The Municipal Act.

19. Additionally, any person who contravenes, disobeys, refuses, or neglects to obey or comply with any provision under this by-law is guilty of an offence and is liable to a penalty. Administrative penalties and appeals for the contraventions of this by-law shall be administered as set out in the most current Enforcement By-Law.
- (a) In addition to all other rights of collection which the Municipality may have at law, such amounts may be collected by the Municipality in the same manner as a tax may be collected or enforced under The Municipal Act.
 - (b) Where a corporation commits an offence under this by-law, each director or officer of the corporation who authorized, consented to, connived at, or knowingly permitted or acquiesced in the doing of the act or omission that constitutes the offence or offences, is likewise guilty of the offence.
 - (c) Where the 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.


Repeal

20. That By-law No. 6/2018 and 8/2001 be hereby repealed.

Done and passed in council assembled at the Town of Swan River in the Province of Manitoba this 2nd day of January, 2024.



Mayor



Chief Administrative Officer

Read the first time this 19th day of September 2023.

Read a second time this 5th day of December, 2023.

Read a third time this 2nd day of January, 2024

THE TOWN OF SWAN RIVER

PHONE (204) 734-4586 FAX (204) 734-5166
BOX 879 SWAN RIVER, MANITOBA ROL 1Z0

SCHEDULE "A" WARNING

Date

File: _____

Name and Address

Dear Sir/Madam:

Re: Town of Swan River Unsightly/Unsafe Property By-Law

Acting upon a written complaint, the designated officer had cause to inspect your property at _____ in the Town of Swan River
civic and legal address

Upon inspection of the property, it is apparent that a violation exists in accordance with the Town of Swan River By-law No. 6/2023 due to _____.

Therefore, the Municipality requests that you rectify the situation by (*describe violations/ describe remedy*) on or before _____.
(date)

In accordance with Section 239(1) of the Municipal Act, I will enter onto the property on _____ (date) to conduct a second inspection. If there has been no compliance with this notice, an Order may be issued authorizing the Municipality to take actions or measures necessary to bring the property into compliance with By-law No.6/2023 and the costs of such actions or measures are an amount owing to the Municipality by the owner of the property. Additionally, an administrative penalty (i.e., a fine) under our current Enforcement Bylaw may be given. In addition to all other rights of collection which the Municipality may have at law, such amounts may be collected by the Municipality in the same manner as a tax may be collected or enforced under *The Municipal Act*.

Your cooperation and assistance in this matter is appreciated.

If you have any questions, please contact the writer at _____.

Sincerely,

THE TOWN OF SWAN RIVER

PHONE (204) 734-4586 FAX (204) 734-5166
BOX 879 SWAN RIVER, MANITOBA ROL 1Z0

SCHEDULE "B" ORDER TO

Date:
Name and Address

File: _____

Dear:

Re: Town of Swan River Unsightly/Unsafe Property By-Law No. 6/2023 and/or Town of Swan River Fire Prevention and Emergency Services By-Law No. 5/2021

[Further to my letter of _____,] this is to advise you that an [a second]
(date)
inspection of your property at _____ conducted on _____
(Civic and Legal Address) (inspection date)
found that it is [continues to be] in violation of the Municipality of the Town of Swan River

Unsightly Property By-Law No. 6/2023 (the "By-Law") and/or Fire Prevention and Emergency Services By-Law No. 5/2021

Specifically, your property _____
(describe the contravention)

Under the authority of Section 242 (1) of The Municipal Act, you are hereby ordered to _____
_____ on or before _____. In the event that you do
(Describe Order/Remedy) (date)

not comply with this order, please note that section 18 of By-law No. 6/2023 and section 26.(g) of By-Law No. 5/2021 provides as follows:

18. The costs of actions or measures taken by the Municipality to carry out the terms of an order issued by the designated officer are an amount owing the Municipality by the owner of the property. In addition to all other rights of collection which the Municipality may have at law, such amounts may be collected by the Municipality in the same manner as a tax may be collected or enforced under The Municipal Act.
- 26.(g) ensure that the total costs shall be the responsibility of the owner. If the owner or occupier cannot be located to pay this bill then all costs may be added to the real property taxes for the premises and collected in the same manner as normal taxes.

You may appeal this order in writing by filing with the Chief Administrative Officer of the Municipality at any time before the time for compliance with such order has elapsed an objection substantially in the form attached to By-law No. 6/2023 as Schedule "C".

I trust you will govern yourself accordingly.

Sincerely,

By-Law Enforcement Officer

and/or

Fire Chief

SCHEDULE "C"

Unsightly Property By-law No. 6/2023 of the Town of Swan River

IN THE MATTER of the Unsightly Property By-law No. 6/2023 of the Town of Swan River

NOTICE OF OBJECTION

To: The Town of Swan River

PLEASE TAKE NOTICE that the undersigned Appellant hereby appeals to the Council

of the Town of Swan River from the Order to _____
(Name of Municipality) (Nature of Remedy/Repair)

made by _____ on the _____ day of
(name and title)
_____, 20___ respecting the premises known as _____.

Dated at _____, Manitoba, this _____ day of _____, 20___.

Signature of Appellant (Print Name)

Address