

ROSSBURN MUNICIPALITY

BY-LAW NO. 2015-0020

Being a by-law of the Rossburn Municipality to govern certain aspects of drains and drainage on public or private property.

WHEREAS Section 232(1)(h) of The Municipal Act, S.M. 1996, c.58 (the “Act”) states as follows:

232(1) A council may pass by-laws for municipal purposes respecting the following matters”:

... (h) drains and drainage on private or public property.

AND WHEREAS Section 239(1) and (3) of the Act provides for entering onto private lands to enforce by-laws as follows:

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;
- (b) request that anything be produced to assist in the inspection, remedy, enforcement or action; and
- (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.

AND WHEREAS Section 294.1 of the Act states as follows:

294.1(1) In this section, “drain” means a culvert, drain, drainage ditch, dyke or floodway, constructed or maintained by a municipality but does not include a provincial waterway as defined by The Water Resources Administration Act.

294.1(2) Subject to the rights vested in any other party under The Water Resources Administration Act or The Water Rights Act, a municipality has jurisdiction over every drain within its boundaries.

294.1(3) A municipality must maintain every drain within its boundaries to a standard that is appropriate for the use to which the municipality expects the drain to be put.

294.1(4) A municipality may require a person who without written authority from the municipality obstructs a drain to remove the obstruction, and if the person fails to do so, the municipality may remove the obstruction and recover any expense it incurs from the person who caused the obstruction

- (a) by levying and collecting the amount of the expense as a tax; or
- (b) by any other means.

AND WHEREAS the Council of the Rossburn Municipality deems it expedient and in the best interest of the municipality to pass a by-law to regulate and control certain aspects of drains and drainage on private and public property with the municipality;

NOW THEREFORE the Council of the Rossburn Municipality enacts as follows:

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1. *Title:*

This by-law shall be referred to as “the Drainage By-law”.

2. *Definitions:*

Where used in this By-law, the following terms shall have the following meaning:

- (a) “Act” means The Municipal Act, S.M. 1996, c.58 as amended from time to time
- (b) “Drain” means a culvert, drain, drainage ditch, dyke or floodway, constructed or maintained by the Municipality but does not include a Provincial Waterway.
- (c) “Municipality” means the Rossburn Municipality.
- (d) “Person” means and includes any individual, corporation, partnership, firm, joint venture, syndicate, association or trust, and any other form of entity or organization, and includes both the plural and singular.
- (e) “Provincial Waterway” means a Provincial Waterway as defined by The Water Resources Administration Act, C.C.S.M. c. W70 as amended from time to time.

3. *Interference With Drains*

- (a) Where any Person deposits or puts into any Drain any soil, stones, refuse, waste, brush, trees or other matter whatsoever, the Municipality may require that Person to remove the soil, stones, refuse, waste, brush, trees or other matter; and, if the Person fails to do so, the Municipality, at the expense of the Person in default, may remove the soil, stones, refuse, waste, brush, trees or other matter and, if necessary to do so, may enter onto any lands in accordance with the powers and procedures set out under the Act.
- (b) Where any Person deepens, widens, alters, diverts or stops-up in any way interferes with any Drain the Municipality may require that Person to return the said Drain to its previous state, and if the Person fails to do so, the Municipality, at the expense of the Person in default, may return the municipal drain to its previous state and, if necessary to do so, may enter onto any lands in accordance with the powers and procedures set out under the Act.
- (c) Where any Person causes the diversion or discharge of water or other liquid into a drain without being licensed to do so under The Water Rights Act, the Municipality may require such Person to stop the discharge of water or other liquid into the Drain, and if the Person fails to do so, the Municipality, at the expense of the Person in default, may stop the discharge of water or liquid into the Drain and, if necessary to do so, may enter onto any lands in accordance with the powers and procedures set out under the Act.
- (d) Where any Person tampers with control gates by opening or closing them, the Person, if found guilty, is liable to penalties as found in Section 4 (Penalties) of this by-law. A municipal employee or designate only shall have the authority to open and/or close culvert gates or to cut municipal roads to control the flow of water.

4. *Penalties*

In accordance with Section 249(1) and (2) of the Act

- i) Any person who violates, contravenes, or refuses, neglects, omits or fails to obey or observe any provision of this By-law is guilty of an offence and liable, on summary conviction to a fine not exceeding \$500.00 and costs or to imprisonment for a term not exceeding one (1) month, or to both such fine and imprisonment.
- ii) Where the contravention, refusal, neglect, omission or failure, including failure, including failure to comply with a notice, order or direction given him by the Council or Designated Officer, continues for more than one day, the person is guilty of a separate offense for each day that it continues.

5. *Municipalities Power to Recover Expenses*

The Municipality may recover any expense that it incurs under Section 3 above from the Person who is in default:

- By levying or collecting the amount of the expense as a tax; or
- By any other means.

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6. *Overriding Jurisdiction of the Water Rights Act*

Nothing herein shall effect the rights granted to any Person by license granted under The Water Rights Act, and the Municipality in enforcing its rights under section 3 herein, shall act in accordance with any policy directives, protocols, memorandums of understanding or any other procedures that may be binding upon a Municipality that are established by or in consultation with the Province of Manitoba from time to time for the purpose of complying with The Water Rights Act.

7. *Driveway and Culvert Policy*

The Municipality shall follow the guidelines as outlined in the policy as outlined in Schedule "A".

8. *Application for Drainage Works*

The Municipality may consider entering into an agreement to allow a landowner to undertake drainage work subject to the terms and conditions attached hereto as Schedule "B"

9. *Violations against this By-Law and any related policy*

No individual Council Member, Council at large or staff member can contravene this by-law after enacted without Council passing a resolution explicitly stating that in a particular case the policy will not be adhered to for a specific reason that has to be stated in the resolution. In addition if an individual councilor is giving instructions in violation of this By-Law or its related policies Council deems it to be warranted that the Municipal Act Section 84.1(3) will be enforced.

10. All other By-Laws dealing with drainage matters are hereby repealed.

DONE AND PASSED by Council assembled in the Council Chambers of the Rossburn Municipality at Rossburn in the Province of Manitoba, this 13th day of July, A.D., 2015.

MAYOR BRIAN BROWN
Rossburn Municipality

Pamela Pannagl
Interim Chief Administrative Officer
Rossburn Municipality

READ a first time this 8th day of June, A.D., 2015.

READ a second time this 13th day of July, A.D., 2015.

READ a third time and passed this 13th day of July, A.D., 2015.

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SCHEDULE "A"

Rosburn Municipality Drainage Policy

1. Purpose and Policy Statement:

To ensure that any work conducted within the Municipal Right of Way for the purpose of a drainage improvement is:

- Designed and constructed to be safe with vehicular traffic;
- Constructed so as to not be a nuisance for the municipality or adjacent/affected landowners; and,
- Conforms to provincial legislation and municipal by-laws;

The Public Works Supervisor shall review and approve works in accordance with this policy and consult with Council as deemed appropriate.

2. Background:

Periods of excessive snowmelt or high rainfall have demonstrated how the cumulative effects of alterations to natural drainage patterns made by agricultural, residential and municipal development, have impacted overland drainage water flows and the velocity that it moves across both private and public lands. Examples of alterations to drainage patterns include:

- Additional farmland drainage work which have altered timing and volume of water flow following high rainfall or snow melting events;
- Installation by private parties, unapproved approach culverts that are insufficiently sized or unapproved approaches that have no culvert installed;
- The effect that issues such as soil drifting and the cultivation of road allowance back slopes are having with respect to their impact on the rate, timing and volume of drainage flow of drainage water;
- Construction of public and private structures that have altered drainage patterns including roads, road approaches, dwellings etc.

3. Definition of Drainage Works:

Drainage Works means a natural or artificial channel or drain tile providing a means of flowing water away from a particular property on an intermittent or continuously basis.

Drainage Works also includes the construction of any dyke, dam, surface or subsurface drain, drainage, improved natural waterway, canal, tunnel, bridge, culvert, borehole or contrivance for carrying or conducting water that

- (a) Temporarily or permanently alters or may alter the flow or level of water, including but not limited to water in a water body, by any means, including drainage, or
- (b) Changes or may change the location or direction of flow of water, including but not limited to water in a water body, by any means, including drainage.

For the purposes and intent of this policy, removal of plugs in a drain up to a maximum length of 25 feet shall not be considered drainage works and may be approved upon inspection by Public Works Supervisor without an application.

4. Application:

All proposed works on, over, or along a Municipal Right of Way, that provides for the draining of surface water away from a property, will require an application form to be completed and filed prior to being reviewed and approved.

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- Refer to the “Drainage Works in Municipal Right of Way Application Filing Fee of \$25.00;
- The Municipality shall review and obtain the necessary information required to make a decision on the application. This work is included in the \$25.00 filing fee. The Municipality will do its best to obtain required information and make a decision on the application in a timely manner (weather and work schedule permitting).
- If a person does not make an application and goes ahead in violation of this policy and Drainage By-law 2015-0020, the municipality shall give notice that an application must be submitted within 14 days along with the application fee. If the application is not received within 14 days the Municipality shall process an application and the filing fee shall be 4x the amount of the regular fee. The Public Works Supervisor and or designated officer shall inspect the work to determine if the work is acceptable to municipal standards. The Supervisor shall consult with Council on the work and the Municipality may decide on the following actions and in accordance with the Drainage By-Law:
 - (a) If the Work is unacceptable the Municipality shall order the following:
 - The person to restore or improve the work to Municipal Standards or the Municipality will perform the work and the landowner shall be responsible for the remedial costs incurred by the Municipality in addition to the municipal inspection and review costs incurred by the Municipality.
 - (b) If the Municipality determines that work performed is acceptable and conforms to Municipal Standards:

The person shall be responsible for the Municipal Inspection and Review Costs incurred by the Municipality.

The Municipality may proceed with enforcement and/or penalties in addition to this policy in accordance with the Drainage By-Law.

Farmland Drainage:

Alteration of farmland drainage that results in additional water flowing into the municipal road allowances will not be permitted without receiving a duly approved application to complete the proposed work by the municipality. The application may only be approved only after receiving formal approvals of Manitoba Conservation.

The Rossburn Municipality has established a process by which landowners can undertake drainage modifications to their property. The landowner must first obtain approval as provided in the “Application” Section of this policy.

The applicant will also be responsible for all costs associated with the improvements of the municipal road allowances, for installing as necessary correctly sized drainage culverts, and if necessary to construct works that will regulate the flow of water of the land to ensure that the drainage system is not overwhelmed and landowners flooded out as a result. Council has determined that facilitating the drainage of private land is not a public responsibility and as such any necessary modifications to the public road allowance will be at the landowner’s sole expense.

Private Field Approaches – Refer to Private Approach Policy & Application

Unauthorized field approaches located in the wrong location and with no or improperly sized culverts exacerbate overland flooding. The municipality will review culvert sizes and conditions as well as the location of both approved and unapproved private field approaches beginning in the areas that exhibited overland flooding. Should the municipality identify private approaches that have not been approved by the municipality, one of the following will occur:

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- If the privately installed field approach is located in a practical location with a suitable culvert size and with acceptable invert elevations the previously unapproved approach will be accepted by the Municipality;
- As the Municipality typically approves only one field approach off of a municipal road, the municipality will critically evaluate the necessity of all second and subsequent approaches and may, following notice and consultation with the landowner, remove them at the landowners expense;
- If a privately installed field approach is located within a practical location but does not contain either a culvert or a suitably sized culvert the landowner will be required to have a suitably sized culvert installed at the landowner's expense.

Right of Way

Council has established a right-of-way procedure to enforce the rights of the municipality upon municipal roads and right-of-ways governing municipal lands under its control and management. Enactments of the provisions are in accordance with the agreement adopted under the "Works in RM Right Of Way Procedure".

Procedure for Drainage Work Approval

The landowner is required to make written application to the municipality with respect to drainage improvement plans and requests that involve the movement of water onto, through or along municipal right-of-way.

The municipality will review the potential impact of the proposed drainage improvements and determine the extent of consultations and approvals that will be necessary as well as the stakeholders that will be impacted.

The applicant shall complete the Works in RM Right-Of-Way application and should submit not later than April 1st to be considered for that year's drainage plan.

- Drainage Plan shall be approved by Council following April 1st for upcoming construction season;
- The municipality shall notify landowners adjacent to the municipal right of way where drainage work is proposed prior to work commencing. Notification shall also include spreading of material requirements from approved drainage works.
- No person, persons, or public corporation shall undertake to construct or improve any municipal or provincial drainage without first receiving written permission from all required government agencies.
- Material resulting from the physical excavation of soil from the approved drainage works site is to be spread over the adjacent landowner's field. The municipality shall level the material enough for the landowner to spread. The landowner may request the municipality to spread the material in accordance with the terms and rates as set out in the private works policy.
- The landowners benefiting from the drainage works are encouraged to share in the spreading costs.
- The spreading requirement may be waived under special qualifying circumstances, however must be approved by the Council of the municipality, as detailed in the application filed for consideration to the municipality.

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SCHEDULE "B"

**APPLICATION TO
CONSTRUCT OR REQUEST DRAINAGE WORK
IN THE ROSSBURN MUNICIPALITY**

Project # _____

\$25.00 FILING FEE

Applicant Name: _____ Company Name (if applicable): _____

Mailing Address: _____

Postal Code: _____ Telephone No. (H) _____ (C) _____

Fax No: _____ E-Mail: _____

Fill out only what applies:

Who will be completing the work: Applicant Requesting RM to complete work

Proposed work is located on: Private property only Municipal Right of Way only
(refer to private works application)

Land Description: _____
i.e. NE 23-21-25W

Location of work proposed: _____
i.e. Road 109N, east of 149W in south ditch

Please provide details in description and/or sketch that apply:

- Full description of work/issue (Ditch work, Culvert install/repair, Pipe install, Road crossing etc.)
- Method of construction (Surface excavation, Trench, Road cut, Directional push etc.)
- Land and Road description
- Full details on facilities proposed (Type, location, depth, length, size, etc.)
- Measures taken for erosion control.
- Indicate direction of water flow.
- #acres of land proposed to be drained.

Description: _____ _____ _____ _____ _____ _____ _____ _____ _____

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Date work is planned for: _____

Estimated hours required to complete the project: _____

Name of individual/contractor completing the work: _____

A Survey & Aerial Photo must be attached to all ditch excavation work in the municipal right of way unless assistance is provided by the Rossburn Municipality.

Survey must include:

- 1) Existing & proposed ditch bottom profile
- 2) Culvert – location, elevation, type, size
- 3) Cross section (if requested by the municipality)
- 4) Drain outlets – location, elevation (Coordinates preferred)
- 5) North Arrow
- 6) Land Description

Signature of Applicant

Print Name

Date: _____

ROSSBURN MUNICIPALITY

Office:

Ph: 204-859-2779, Fax: 204-859-2595 Email: municipaloffice@rossburn.ca Website: rossburn.ca

THIS SECTION TO BE COMPLETED BY THE MUNICIPALITY

Received by: _____

Date Received: _____

Date Reviewed: _____

Application forwarded to Council/Committee

Approved: Date: _____

Municipal Comments/Details: The Municipality shall do its best to make decisions on applications in a timely manner subject to weather and work schedules. The Municipality will acquire the necessary drainage license from MB Water Stewardship that will be a condition of the approval and required prior to work proceeding.
