

**THE MUNICIPAL CORPORATION OF THE TOWNSHIP OF McMURRICH/MONTEITH**

**BY-LAW # - 2019**

Being a By-law to adopt a policy respecting the management of nuisance beavers and beaver dams.

**WHEREAS** section 11 of the *Municipal Act*, 2001, S.O. 2001, c. 25, as amended, authorizes a municipality to pass by-laws to manage drainage and flood control within the municipality;

**AND WHEREAS** section 8 of the *Fish and Wildlife Conservation Act*, 1997, S.O. 1997, c. 41, as amended, authorizes a municipality to damage or destroy a beaver dam to protect municipal property;

**AND WHEREAS** the Council of The Municipal Corporation of the Township of McMurrich/Monteith believes it to be in the public interest to regulate and control flooding that may be caused by beaver dams in order to protect public infrastructure and the health and safety of the public;

**AND WHEREAS** sections 425, 435-446 of the *Municipal Act*, 2001, S.O. 2001, c. 25, as amended, authorizes municipalities to issue and enforce orders and to enter onto private property for the purpose of determining compliance with its By-laws and to undertake corrective work where non-compliance is not addressed by the person ordered to do the work;

**NOW THEREFORE**, the Council of the Municipal Corporation of the Township of McMurrich/Monteith enacts as follows:

**Section 1: Managing Flood Risks**

**1.1** No owner or occupant of a property in the Township of McMurrich/Monteith shall permit a beaver dam or other obstruction on the property that may create a flood risk.

**1.2** For the purposes of this By-law, a flood risk is created where a beaver dam or other obstruction allows water to collect in a manner that might reasonably be expected to cause flooding or other damage to a highway, culverts, bridges, drainage works or other municipal property, if the water collected were to escape.

**Section 2: Administration and Enforcement**

**2.1** The provisions of this By-law shall be administered by the Roads Supervisor (RS) or his/her designate and enforced by the By-Law Enforcement Officer (BEO).

**2.2** The RS or designate or BEO, and any employee or agent authorized by the RS or designate or BEO, shall have the authority to enter onto private property without a warrant at any reasonable time for the purpose of inspecting the property to determine compliance with this By-law or to confirm whether any order issued under this By-law has been complied with.

**2.3** The RS or designate, and any employee or agent authorized by the RS or designate or BEO, shall have the authority to enter onto private property without a warrant at any reasonable time for the purpose of performing all work necessary to comply with an order pursuant to section 2.7 of this By-law.

**2.4** The power of entry set out in sections 2.2 and 2.3, shall be exercised in accordance with the following:

**2.4.1** Proper identification shall be produced for inspection, if requested;

**2.4.2** The person exercising the power of inspection may be accompanied by a person under his/her discretion.

**2.4.3** Notice of the proposed entry shall be provided to the occupier of the land prior to entry, unless the delay necessary to give notice might result in immediate danger to the health and safety of any person; and

**2.4.4** No entry shall be made of a place actually being used as a dwelling.

**2.5** Where notice of a proposed exercise of a power of entry is given, the notice must:

**2.5.1** Be given to the occupier of the land in respect of which the power of entry will be exercised;

**2.5.2** The notice must be given with reasonable time before power of entry is exercised; and

**2.5.3** The notice must be given by personal service or regular mail or by posting the notice on the land in a conspicuous place.

**2.6** If an inspection of a property reveals that the property does not conform to the standards prescribed in section 1.1 of this By-law and the RS or designate or BEO is of the reasonable opinion that the non-compliance creates a risk to public health and safety that must be remedied immediately, the Township shall enter on the property with such employees, agents or contractors and equipment and take all reasonable measures necessary to correct the situation creating the risk to public health and safety. Under such circumstances, notice shall be given to the owner or occupant of the property as soon as practicable.

**2.7** If an inspection of a property reveals that the property does not conform to the standards prescribed in section 1.1 of this By-law and the circumstances in section 2.6 are not present, the BEO may issue a written order to the owner or occupant of the property or both, setting out:

**2.7.1** The name of the person to whom the order is issued, the address and location of the contravention;

**2.7.2** Sufficient particulars of the contravention to adequately identify the contravention and the location on the property of the contravention;

**2.7.3** An order to cease the contravention and a date by which the contravention must cease;

**2.7.4** An order to remedy the contravention, indicating the particulars of what must be remedied;

**2.7.5** The date by which the contravention must be remedied; and

**2.7.6** A statement that if the contravention is not remedied within the time period stipulated in the order, the Township may carry out the necessary work at the owner's expense.

**2.8** Any order given by the BEO in accordance with this By-law shall be served personally or by registered mail sent to the last known address of the person to whom the order is to be given, in which event the service shall be deemed to have been made on the fifth day after mailing.

**2.9** If the owner of a property to whom an order has been given in accordance with this By-law does not comply with the order within the time prescribed, the Township may, in addition to all other remedies, cause the property to be brought into a condition that conforms to this By-law at the owner's expense and, for this purpose, the Township's employees or agents may enter onto the property at any reasonable time without further notice to the owner or occupant in order to do such work and remedy any contravention of this By-law.

**2.10** The Township may collect any costs incurred by it to remedy any non-compliance with section 1.1 of this By-law by adding the costs, plus a 10% administration fee, to the tax roll of the property on which the work was performed in accordance with this By-law.

**2.11** Despite any actions taken in respect to this By-law, the Township shall not be liable to compensate the owner, occupant or any other person by reason of anything done by or on behalf of the Township in the reasonable exercise of its powers under this By-law.

### **Section 3: Offences and Penalties**

**3.1** Any person in contravention of any provision of this By-law is guilty of an offence.

**3.2** Any person who fails to comply with an order or any part thereof issued pursuant to this By-law is guilty of an offence.

**3.3** Any person who hinders or obstructs or attempts to hinder or obstruct an employee or agent of the Township in the exercise of his/her duties or powers under this By-law is guilty of an offence.

**3.4** Any officer, employee or agent of a corporation that knowingly concurs in the commission of an offence under this By-law is guilty of an offence.

**3.5** Upon conviction, an individual found guilty of an offence is liable to a fine not to exceed the maximum provided under the Provincial Offences Act, exclusive of costs, and every such fine shall be recoverable under the Provincial Offences Act.

### **Section 4: Miscellaneous**

**4.1** In the event any provision, or part thereof, of this By-law is found, by a court of competent jurisdiction, to be *ultra vires*, such provision, or part thereof, shall be deemed to be severed and the remaining portion of such provision and all other provisions of this By-law shall remain in full force and effect.

**4.2** Council hereby adopts the "Policy and Procedure for the Management of Beaver Dams" attached to this By-law as Schedule "A".

**4.3** This By-law may be cited as the "Management of Beaver Dams" By-law.

**4.5** This By-law shall come into force and effect on the day it is passed.

Read in its entirety, approved, signed and the seal of the Corporation affixed thereto and finally passed in open Council this     day of

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Reeve

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Clerk/Treasurer

## Schedule "A" to By-law # - 2019

### Policy and Procedure for the Management of Beaver Dams

#### MANAGEMENT OF BEAVER AND BEAVER DAMS

The Council of the Municipal Corporation of the Township of McMurrich/Monteith deems it expedient to adopt a policy and procedure to deal with potential flood threats caused by beaver dams. These structures, with associated head ponds, often do not adversely impact public roads, but occasionally they do.

Where dams occur on township property, the municipality has clear authority to remove or alter the dams to ensure the negative impacts of flooding on a public road(s) is minimized or controlled.

Where dams occur on private lands, the Township will encourage landowners to manage these animals and structures in an effort to help protect public assets from the negative impacts of flooding, which may occur when dams are suddenly breached.

The Township will require corrective action as necessary to prevent damage to public infrastructure, in accordance with the By-law.

#### POLICIES AND PROCEDURES

##### 1. Routine Situations/Circumstances

**1.1** On performing routine road patrols or in receiving comments or complaints from the travelling public or property, the Roads Supervisor (RS) or designate or By-law Enforcement Officer (BEO), may become aware of beaver activities that represent potential problems for municipal property or infrastructure. In such instance the RS or designate or BEO will make an assessment as to whether municipal property is or soon will be damaged as a result of beaver activities and identify the safest and most effective method to address problems associated with these activities.

**1.2** If the beaver dam or blockage is located on municipal property, the RS or designate will remove the dam or blockage if risks to public safety or property damage so warrant and may contact a licensed trapper to trap or dispatch the beaver(s). (The trapper shall be licensed by the Ministry of Natural resources and Forestry (MNRF) and comply with all applicable legislation when setting and retrieving traps).

**1.3** If the beaver dam is located on private property, the landowner will be asked, in writing by the RS or designate or BEO, to have the dam removed or altered in such a manner as to prevent flooding damage to adjacent municipal property. Alternatively, the landowner's permission will be obtained in writing, using the form attached as Schedule "B" to this by-law, for Township staff to enter onto the property to remove or alter the dam. In obtaining consent for the Township involvement the owner will be asked to acknowledge and agree, in writing, that the Township will not be held responsible for damages that may occur when altering or removing a dam by township or contracted resources and/or trapper being assigned to commence trapping on said private lands.

**1.4** If the landowner refuses access to the property or to a population control of the beaver, the landowner will be sent a registered letter from the RS or designate or BEO informing them that they could be held liable for any damages caused to municipal property or harm caused to the public as a result of the beaver dam being suddenly breached or washed out.

## **2. Emergency Situations**

**2.1** There may be emergency situations which arise where water levels and the volume of retained water created by a beaver dam(s) represent an imminent flood threat to a public asset (road, bridge, culvert, etc.), which in turn could impact public safety. In such instances, the RS or designate or BEO, shall assess the threat, determine the risk of damage to the public asset and take actions to alter or remove the dam to lower the threat of flooding to an acceptable level.

**2.2** Authority to take such emergency action is referenced in the *Fish and Wildlife Conservation Act, 1997* as follows:

*Beaver dams; Section 8(3) states: A person shall not damage or destroy a beaver dam unless the person holds a licence to trap furbearing mammals.*

*Protection of property; Section 8(4) states: Subsection (3) (shown above) does not apply to a person or agent of a person, who damages or destroys a beaver dam to protect the person's property.*

**2.3** Section 9 of the *Municipal Act, 2001* states "A municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act.

**2.4** With these authorizations, under an emergency situation, as determined by the RS or designate or BEO, Township staff or an appointed contractor/agent may enter onto private property to alter or remove a beaver dam with the objective of "protecting property"; e.g. a public road.

## **3. Risk Assessment Procedure**

**3.1** A risk assessment will be conducted by the RS or designate to determine if an emergency response is required.

**3.2** Where, as a result of excessive water associated with a beaver dam(s), water is being held against a road to the extent that the road is deemed to be unsafe for public travel and/or it is apparent that road failure is possible then emergency actions will be initiated including entry to private land to remedy the problem.

**3.3** Where there is a sufficient head of water being held behind a beaver dam that if released quickly would overwhelm the road and related drainage system, thereby representing a serious threat to infrastructure and/or public safety, then emergency actions will be initiated including entry onto private lands to remedy the problem.

**3.4** In either of the above situations, the threat of damage may be heightened if weather conditions and predictions call for greater rain or run-off that would increase water volumes and increase washout possibilities.

**Schedule "B" to By-law # - 2019  
PROPERTY ACCESS FORM**

Date: \_\_\_\_\_

I, \_\_\_\_\_, owner of the property located at Lot \_\_\_\_\_, Concession \_\_\_\_\_, Plan \_\_\_\_\_, Part \_\_\_\_\_, Township of McMurrich/Monteith;

**Option 'A'**

Give the Township of McMurrich/Monteith Road Department and/or a licensed trapper permission to access the above-mentioned property to deal with the nuisance beaver and/or beaver dams.

**Option 'B'**

Refuse to give the Township of McMurrich/Monteith Road Department and/or a licensed trapper permission to access the above-mentioned property to deal with the nuisance beaver and/or beaver dams.

**NOTE:**

(1) Failure to provide a response to the Municipality within 30 days of receipt of this Form by Registered Mail will be considered a refusal of access and shall be recorded as such. (Option 'B')

(2) In obtaining consent (Option 'A'), the Municipality will not be held responsible for any damages that may occur as a result of altering or removing a beaver dam on the above-mentioned property.

(3) Refusal of access may result in legal action(s) and you may be held liable for any damages caused to municipal property or harm caused to the public as a result of the beaver dam being breached or washed out.

Signature of land owner: \_\_\_\_\_

Mailing address of owner: \_\_\_\_\_

Witness: \_\_\_\_\_