

**VILLAGE OF BENITO**  
**BY-LAW #01/13**

Being a By-Law of the Village of Benito to maintain property  
and regulate nuisance, derelict, abandoned and unsightly property.

**WHEREAS** the Manitoba Municipal Act C.C.S.M. c.M225 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;
  - (c.1) Subject to Section 233.1, the condition and maintenance of vacant dwelling and non-residential buildings;
  - (o) the enforcement of by-laws.
- 232(2) Without limiting the generality of Subsection (1), a council may in by-law passed under this Division
- (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;
- 233 A By-law under Clause 232(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 topsoil; and
  - (d) activities or things that in the opinion of the council are or could become a nuisance, which may include noise, weeds, odors, unsightly property, fumes and vibrations.
- 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 procedure, 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, 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, vehicles, or other things related to a contravention,
    - (v) charging and collecting costs incurred in respect of acting under Sub Clause (iv),

- (vi) imposing a sentence of imprisonment for not more than six months for the commission of offences or nonpayment of fines.

242(1) If a designated officer finds that a person is contravening a By-Law 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

**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 Village of Benito.

**NOW THEREFORE** the Council of the Village of Benito, in Council assembled, enacts 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 Village of Benito:

**1. Definitions**

- (a) "Accessory Building" means a detached building which is greater than ten (10) square metres in area and is secondary to the principal building that is located on the same site;
- (b) "Building" means any structure used or occupied or intended for supporting or sheltering any use or occupancy, and includes an addition built to an existing structure and, where applicable, the land adjoining a structure;
- (c) "Town" means the municipal corporation of the Village of Benito;
- (d) "Council" means the municipal Council of the Village of Benito;
- (e) "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;
- (f) "Development Permit" means a document issued by the Swan Valley Planning District, authorizing a development pursuant to the Village of Benito Zoning Bylaw, and includes plans and conditions of approval;
- (g) "Driveway" means that portion of a residential property used for the parking of vehicles and for access to an enclosed garage structure or permanently covered car port;
- (h) "Dwelling Unit" means a room or series of rooms that are used as a residence by one or more persons. A dwelling unit typically contains cooking, eating, living, sleeping and sanitary facilities and is accessed by a separate locked entrance or serviced by one or more separate utility connections or accounts or both;
- (i) "Excavation" means the space created by the removal of soil, rock or fill for the purposes of construction. It may also be performed by natural occurrences such as sink holes or holes dug by animals;
- (j) "Existing Development" means development that is not governed, covered or approved by existing permits and agreements, including but not limited to development permits and agreements, and subdivision servicing agreements;
- (k) "Fence" means a vertical barrier which is used to prevent or restrict passage; to provide visual screening, sound attenuation, protection from dust or other elements, or to mark a boundary;
- (l) "Good Repair" means maintain the condition of an object or structure such that it does not become untidy, unsightly or dangerous and such that the object or structure can continue to be used in the means that it was originally intended;
- (m) "Graffiti" means a form of unwanted vandalism that includes any drawing, inscription, writing or other mark that disfigures or defaces any premises, structure or other property;
- (n) "Occupant" means any person who resides leases or carries on any kind of business in a residential or non-residential premises with or without a license of occupation granted by the owner of said premises;
- (o) "Owner" means a person or persons listed on a title of a parcel of land at the Land titles office or in the case of a vehicle, the person registered as the vehicle owner with the driver and motor vehicle registry;

- (p) "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;
- (q) "Refuse" means any discarded or abandoned organic or inorganic material and without restricting the generality of the foregoing, includes garbage, ashes and all forms of grass, tree and hedge cuttings and clippings, broken household dishes and utensils, empty or partly empty tins, boxes, cartons, bottles and containers, discarded paper and fabric and other materials, trees, shrubs, stumps, fences, scrap lumber, scrap metal, crates, oil drums, and similar unwieldy materials, discarded furniture and fixtures, including but not limited to tables, mattresses, water heating tanks, stoves, furnaces, gates and other discarded fixtures;
- (r) "Structure" means any building retaining wall, scaffolding, garbage container, trailer, mobile home, shed or portable shack including canvas or tarp covered portable shed;
- (s) "Unightly" means a condition that is caused due to the over accumulation of any type of materials in any yard such that the yard becomes visually unattractive and negatively affects the value of other properties in a neighborhood;
- (t) "Utility trailer" means a vehicle so designed that it may be attached to or drawn by a motor vehicle and intended to transport property, goods, etc.;
- (u) "Derelict vehicle" means an automobile, tractor, truck, boat, trailer, ATV, snowmobile or other vehicle that has no valid license plates attached to it, or is in a rusted, wrecked, partly wrecked, dismantled, partly dismantled, inoperative or abandoned condition;
- (v) "Vehicle, Recreational" means a vehicle or trailer that is designed, constructed and equipped, either temporarily or permanently, as an accommodation for travel, vacation or recreational use and includes a travel trailer, motorized homes, slide-in campers, chassis-mounted campers, boats, all-terrain vehicles, snowmobiles and tent trailers, whether licensed or unlicensed;
- (w) "Yard" means an open space on Land which is unoccupied and unobstructed by the principal building.

## 2. Application

- 2.1 This by-law applies to all property and to all owners and occupants of property within the Municipality;

## 3. Property Maintenance

- 3.1 No Person, owner or occupant of a premises within the Village of Benito shall permit the land or premises to be or remain in an untidy or unsightly condition, which means that the premises shows signs of a serious disregard for general maintenance and upkeep, whether or not it is a detriment to the surrounding area, which includes but is not limited to the following:
  - a. any loose litter, feces, garbage or refuse, whether located in a storage area collection area or elsewhere on the land;
  - b. damaged, dismantled or derelict vehicles, motor vehicles, or machinery whether insured or registered or not;
  - c. smelly or messy compost heaps;
  - d. unkept grass or weeds (as defined in the Noxious Weeds Act) which in the opinion of the designated officer is unsightly;
  - e. any tree, shrub, other type of vegetation or any structure;
    - that interferes or could interfere with any public work or utility;
    - that obstructs any sidewalk adjacent to the Land;

- that impairs the visibility required for safe traffic flow at any intersection adjacent to the land; or
  - that becomes a nuisance by encroaching on a neighbouring premises.
- f. any accessible excavation, ditch, drain or standing water that could pose a danger to the public;
- 3.2 All residential premises shall be protected by suitable ground cover which prevents erosion of the soil.
- 3.3 The provisions of the section shall not be interpreted to prevent bona fide and lawfully permitted commercial, industrial, agricultural, construction, demolition, renovation, landscaping, clean-up, storage or other related lawful activities from being carried out on, in or in relation to a premises.
- 3.4 The owner or occupant of a premises upon which activities contemplated in the preceding section are being carried on, shall ensure that all reasonable and practicable steps are taken to minimize the duration and visual impact of any resulting untidy or unsightly condition of the premises.

Outside Storage - Residential

- 3.5 All residential yards are prohibited from being in an untidy and unsightly condition such that:
- a. The storage of any vehicles is done in such a way as to cause unsightly clutter and therefore adversely affects the visual well being of a neighborhood.
  - b. The storage of any items in a yard is done in such a way as to cause unsightly clutter and therefore adversely affects the visual well being of a neighborhood.
- 3.6 All residential driveways are to be kept free of construction vehicles and equipment.

Outside Storage - Non Residential

- 3.7 Any vehicle, mechanical equipment or object on non-residential land, which is in a wrecked or dismantled condition shall be removed from the land, unless the storage area is defined and enclosed with an approved fence and visually screened, to the satisfaction of the designated officer.

Drainage

- 3.8 Eavestroughs, sump pump discharges and downspouts, if provided along any building, shall prevent the discharge of water onto external stairs, landings and walkways and shall direct water away from the building.
- 3.9 Rain water downspouts, sump pump discharges or flow of water from a hose or eaves troughs, shall not discharge onto any adjacent premises or roadway.

Exterior Maintenance of Buildings and Fences

- 3.10 All residential and commercial buildings shall have affixed to the street side of the building, the civic address number assigned to that property.
- 3.11 Any structure shall be kept in good repair and shall be free from health and fire hazards.
- 3.12 In the event that an owner or occupant neglects to repair or maintain a damaged or deteriorating fence the village may require the owner of the subject property to repair, rehabilitate or replace their portion of the fence through the enforcement of this By-Law.

- 3.13 The maintenance and/or replacement of any fence shall be the sole responsibility of the property owner.

Unoccupied Buildings

- 3.14 If a building normally intended for human habitation is unoccupied, then any and all door openings, window openings or any other openings in the building should be securely closed, or may be covered with a solid piece of wood, but only if the wood is:
- (a) Installed from the exterior and fitted within the frame of the opening in a watertight manner;
  - (b) of a thickness sufficient to prevent unauthorized entry into the building; and
  - (c) secured in a manner sufficient to prevent unauthorized entry into the building.

**4. Recreational Vehicles, Utility Trailers, and Off-Highway Vehicles**

- 4.1 Recreational Vehicles including attachments (e.g. hitches, bike carriers, etc.) that are parked on a front driveway shall not extend onto the sidewalk, curb or roadway.
- 4.2 No person shall park a recreational vehicle so as to obstruct access to or exit from a roadway, from any driveway or adjacent roadway.
- 4.3 A recreational vehicle parked on a roadway shall not be occupied.
- 4.4 No person shall park a vehicle, recreational vehicle or any vehicle with any type of trailers attached thereto upon any roadway in a residential development if the overall length of the vehicle, recreational vehicle or the vehicle with trailer exceeds nine (9) meters.
- 4.5 Section 4.4 shall not apply so as to prohibit such vehicle being parked on a roadway for the purpose of cleaning, unloading or loading goods to or from premises abutting such roadway provided this is completed within twenty four (24) hours.

**5. Complaint**

- 5.1 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.

**6. Inspections**

- 6.1 Upon receipt of a complaint, as aforesaid, the designated officer shall inspect all property alleged to be in violation of the 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.

**7. Warnings & Orders**

- 7.1 If the 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 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 6(1) 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 effected within the specified time, the Village 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;
- (iv) be substantially in the form attached as Schedule "B";

**8. Appeals**

- 8.1 Any interested person may appeal an order made by the designated officer by filing with the Chief Administrative Officer of the Village at any time before the time for compliance with such order an objection substantially in the form attached at Schedule "B".
- 8.2 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 the same by holding a hearing. Council may hear the appeal as a committee of the whole or by subcommittee specially 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 10 below no later than 5 days prior to the appeal hearing.
- 8.3 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.

**9. Service of Notices or Orders**


- 9.1 Any order issued by the designated officer under Subsection 6.1 and a notice of hearing issued under section 8.2 hereof this By-Law shall be served by personal service or by registered mail upon:
  - (a) the owner;
  - (b) the occupant, if any; and
  - (c) in respect to any order alleging violation of unsafe structures, the mortgagee, if any;of the property affected by order.
- 9.2 Service made personally shall be deemed to have been made on the date of such service and service made by registered mail shall be deemed to have been made three (3) days after posting. In the case of service upon an occupant, 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 Village. 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.

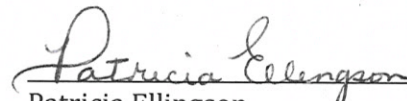
**10. Enforcement**

- 10.1 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.
- 10.2 Any person who contravenes or disobeys, or refuses or neglects to obey or comply with an order made under this By-Law is guilty of an offence and is liable, on summary conviction, to a fine not exceeding \$1000, or in the case of an individual, to imprisonment for a term not exceeding six months, or to both such a fine and such an imprisonment.
- 10.3 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.

11. That By-law No. 01/01 be hereby repealed.

**DONE AND PASSED** in Council assembled at the Village of Benito in the Province of Manitoba this 26<sup>th</sup> day of February, A.D. 2013.

  
Marion Meadows  
Mayor

  
Patricia Ellingson  
Chief Administrative Officer

Given 1<sup>st</sup> reading this 29<sup>th</sup> day of January, A.D, 2013.

Given 2<sup>nd</sup> reading this 29<sup>th</sup> day of January, A.D 2013.

Given 3<sup>rd</sup> reading this 26<sup>th</sup> day of February, A.D. 2013.



# VILLAGE OF BENITO

## SCHEDULE "A"

### PROPERTY STANDARDS BY-LAW NO. 01/13

#### ORDER TO MAINTAIN

**TO:** \_\_\_\_\_, as registered owner

**AND TO:** \_\_\_\_\_ as interested person

**FROM:** **THE VILLAGE OF BENITO**

**PURSUANT** to The Village of Benito Property Standards By-Law No. 01/13, an Inspector for The Village of Benito has inspected the land, buildings and premises commonly known as:

\_\_\_\_\_, in The Village of Benito, in Manitoba,

said property being described as \_\_\_\_\_

the registered owner of the said property being \_\_\_\_\_

and as a result of this inspection, the Inspector is satisfied that the premises does not comply with the standards prescribed in the said by-law in that:

1. The above is a contravention of Section \_\_\_\_\_ & Section \_\_\_\_\_.

(applicable By-Law excerpts are attached).

**PURSUANT** to **Section 7** of the said by-law, The Village of Benito, herewith orders you to bring the property into conformity with the provisions of the said by-law and herewith orders you to bring the said property into conformity with the said By-law within **20 days** of service of this Order.

**PURSUANT** to **Section 8** of the said by-law, the owner(s) or a person authorized in writing by him/her to act on his/her behalf, may appeal this Order or any provisions hereof by filing with the Chief Administrative Officer of the municipality, a **NOTICE OF OBJECTION** (attached herewith) within **SEVEN (7) DAYS** following the service of this Order.

**SIGNED** at Village of Benito, this \_\_\_ day of \_\_\_\_\_.

# VILLAGE OF BENITO

## SCHEDULE "B"

### PROPERTY STANDARDS BY-LAW NO. 01/13

**IN THE MATTER** of the Property Standards By-Law No. 01/13 of The Village of Benito.

**NOTICE OF OBJECTION**

**TO:** Chief Administrative Officer  
Village of Benito  
Box 369  
Benito, MB ROL OCO

**PLEASE TAKE NOTICE** that the undersigned Appellant hereby appeals to the Council of The Village of Benito from the Order to:

\_\_\_\_\_

( Repair or Demolish; Vacate Dwelling; remove etc)

made by \_\_\_\_\_

Name and Title

on the \_\_\_\_ day of \_\_\_\_\_, A.D. \_\_\_\_ respecting the residential

premises or non-residential property known as

\_\_\_\_\_

Dated at Benito, Manitoba, this \_\_\_\_ day of \_\_\_\_\_, A.D. \_\_\_\_.

\_\_\_\_\_

Signature of Appellant