

THE RURAL MUNICIPALITY OF PINEY

BY-LAW NO. 95/2013

BEING A BY-LAW OF THE RURAL MUNICIPALITY OF PINEY TO GOVERN CERTAIN ASPECTS OF DRAINS AND DRAINAGE ON PUBLIC 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 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 Rural Municipality of Piney 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 public property within the municipality;

NOW THEREFORE the Council of the Rural Municipality of Piney enacts as follows:

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 Rural Municipality of Piney.
- (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, R.S.M. 1987, cW70 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 Municipal 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 may, at the expense of the Person in default, 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 Municipal Act.

(c) 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. Only the Municipality 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 or order given to him by the CAO, Public Works Supervisor 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 charge referred to in this by-law in the same manner as a tax may be collected or enforced under the Municipal Act.

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. Approach Policy

The Municipality shall follow the guidelines as outlined in the policy attached hereto as 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"

DONE AND PASSED by the Rural Municipality of Piney this 29th day of October, 2013 A.D.

Duane Boutang, Reeve

Martin Van Osch, Chief Administrative Officer

Given First Reading this 24th day of September, 2013 A.D.
Given Second Reading this 29th day of October, 2013 A.D.
Given Third Reading this 29th day of October, 2013 A.D.