

# THE CORPORATION OF THE MUNICIPALITY OF NEEBING

## BY-LAW NUMBER 2015-011

Being a by-law to require Property Owners to undertake Action to Prevent Damage to Municipal Infrastructure caused by Wildlife Activity

### Recitals

1. Over the past several years, the Corporation has had to expend funds to rectify damage caused to the municipal road infrastructure due to flooding caused by beaver activity on property adjacent to the municipal roads.
2. From time to time owners of private property on which wildlife such as beavers are undertaking activity that either has caused or is likely to cause damage to the municipal road infrastructure have refused, upon request, to either undertake the work necessary to remove the wildlife or to allow the Corporation to have access to the land to undertake the work.
3. Council considers it appropriate to protect taxpayer investment in the municipal road infrastructure in Neebing by requiring property owners to take affirmative action to remove wildlife that poses a significant risk.
4. The Fish and Wildlife Conservation Act provides authority for property owners of land upon which wildlife is causing damage to undertake remedial action. The Municipal Act, 2001 requires Ontario municipalities to maintain their municipal highways in a passable manner and, through provision of natural person powers, provides Ontario municipalities with the authority to protect their property from damage.

### **ACCORDINGLY, THE COUNCIL OF THE CORPORATION OF THE MUNICIPALITY OF NEEBING ENACTS AS FOLLOWS:**

1. Scope of By-law: This By-law applies to circumstances where activity by wildlife that is occurring on private property has either caused, or is threatening to cause, damage to property owned by The Corporation of the Municipality of Neebing (the "Corporation").
2. Requirement to Prevent Damage: The owners of property within the Municipality of Neebing are required to maintain their properties in a manner which will not cause damage to other property, including property owned by the Corporation.
3. Notice: The Corporation shall provide notice to all of the owners of property when circumstances have arisen where activity by wildlife on their property has either caused damage to the Corporation's property, or is likely to cause damage to the Corporation's property. Notice will initially be sent by regular mail to the address on file with the Municipality as each intended recipient's residential address.

4. Contents of Notice: Where damage has occurred, the notice sent in accordance with Section 3 of this By-law will advise the property owners of the cause of the damage that originated on their property, and suggested action required to prevent recurrence of the damage. Where there is a risk that damage will occur if a situation on his, her or their property is not rectified or remediated, the notice will advise the property owner(s) of the Corporation's concern that risk of damage exists, and provide some suggestions for action that needs to be taken to manage that risk. In either case, the notice will provide contact information for a municipal representative who can answer questions or concerns, and a deadline date by which time the activity needs to be undertaken, together with information on alternative actions a set out in Section 6.
  
5. Deemed Delivery: Unless the Corporation receives actual notice that the intended recipient of the notice did not receive it, the notice will be deemed to have been received by the persons to whom it was mailed on the fifth (5th) business day following the date that it was mailed.
  
6. Delivery Failure: In circumstances where the Corporation receives actual notice that the intended recipient of the notice did not receive it, the Corporation will cause the notice to be re-delivered in a method that is most likely to reach the intended recipients. Possible delivery methods include, but are not limited to:
  - a) Leaving the notice with an adult person at the residence shown as the recipient's residence on the Corporation's records;
  - b) Leaving the notice in a mailbox, dropped through a mail delivery slot, or in another similar place at the residence shown as the recipient's residence on the Corporation's records;
  - c) Using the method in either (a) or (b) for a residence at which the Corporation has learned from a reliable source that the recipient is residing at;
  - d) Having the notice personally delivered to the intended recipient at an address at which it is reasonable to assume that he or she will receive it (such as a place of business employing the intended recipient);
  - e) Using the method in (d), but leaving the notice, in a sealed envelope marked "personal and confidential", with an adult person at the address at which it is reasonable to assume that he or she will receive it; or
  - f) Engaging a business willing to personally serve the notice on the intended recipient and to provide an affidavit of service in that regard.

In each case where the document was personally handed to the intended recipient, it will be deemed to have been received at the time it was handed over. In each other case, it will be deemed to have been delivered on the business day next following the date of delivery.

7. Requirement to Act: A property owner receiving a notice sent in accordance with Section 3 of this By-law is required to take action to prevent recurrence

of damage or to manage the risk of future damage, in accordance with the notice. Failure to take action in this regard is an offence.

8. Activity: The recipients of the notice need not accept the suggestions provided in the notice in terms of activity to be undertaken. They may have further information and/or suggested activity that is, in all of the circumstances, equally adequate and/or more appropriate. Where the property owners undertake the activity as specified in the notice, within the stipulated time frame, they do not need to contact the Corporation to confirm that they will undertake that activity. If the property owners wish to undertake alternative action, they are required to contact the Corporation to obtain the Corporation's concurrence that the alternative action and/or alternative time frame will be acceptable. These requirements will be set out in the notice.
9. Order to Comply: Where the recipients of the notice do not comply with it, the Corporation shall issue an order to comply with the notice. The order shall be sent to the recipients of notice in the same manner as the notice had been successfully sent. Where the property in question contains a residence, a copy of the order to comply will also be delivered to the residence and left with an adult person in residence, or, if no one is home, in a mailbox or similar receptacle on site. The provisions of sections 5 and 6 apply to delivery of the order in the same manner as they applied to delivery of the notice.
10. Contents of Order: The order to comply will contain a copy of the notice that had been sent earlier, together with instruction that the notice must be complied with by a particular date. Contact information will again be provided for a municipal representative who can answer questions or concerns. The order will indicate that if it is not complied with within the time frame provided, the Corporation will enter onto the private property, undertake the action necessary to comply with the order, and invoice the property owners for all of the related costs, under the authority of Subsection 446(2) of the Municipal Act, 2001.
11. Requirement to Act: Subject to Section 10, a property owner receiving an Order to Comply sent in accordance with Section 7 of this By-law is required to undertake the action set out in the order. Failure to take action in this regard is an offence.
12. Appeal to Council: The recipient of the Order to Comply may appeal the requirements, or part of them, to the municipal Council for consideration. In order to effect an appeal, the property owner(s) must, within ten (10) days of his, her or their receipt of the Order to Comply, submit a written request to appeal to the Clerk of the Corporation, specifying the elements of the order that they disagree with. Provided a regular meeting of Council will occur within the ensuing ten (10) days, the Clerk will schedule a deputation to that meeting of the Council. If the next regular meeting of Council will not occur within the ensuing ten (10) days, a special meeting of the Council will be arranged for this purpose. The property owners shall attend the meeting (in

person or by authorized agent) to advise the Council as to their reasons for appealing. Failure to attend the meeting may result in refusal by the Council to entertain the appeal.

13. Decision of Council: The Council will consider the deputation and decide whether to confirm the order to comply as it was written, or to vary it in some manner in response to the appeal. The decision of Council will be provided in writing, containing reasons for the decision, as soon as practicable after the decision has been made.
14. Invoice: If the Corporation undertakes the work in accordance with Subsection 446(2) of the Municipal Act, 2001, it will compile the costs associated with the work and invoice the property owners for the costs. The property owners will have thirty (30) days in which to pay the invoice, after which time interest at the statutory rate of fifteen (15%) per cent will apply to the amount owing. The amount expended represents a debt owing to the Corporation which may be collected in any manner provided for at law.
15. Collection with Taxes: If the invoice remains unpaid after sixty (60) days, the Corporation may add the amount owing, together with accrued interest, to the tax roll for the property and collect them in the same manner as property taxes are collected, and at the same interest rate as is applied to unpaid property tax.
16. Effective Date: This By-law shall come into force and take effect on the date it is passed.

ENACTED AND PASSED IN COUNCIL THIS 18th day of March, 2015, as witnessed by the Corporate seal of the Corporation and the hands of its proper Officers duly authorized in that behalf.

THE CORPORATION OF THE  
MUNICIPALITY OF NEEBING

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Mayor

c/s

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Deputy Clerk

Read for a first, second and third time, and passed, this 18th day of March, 2015