

**THE RURAL MUNICIPALITY OF FRANKLIN**

**By-Law No. 12-11**

**Being a by-law of the Rural Municipality of Franklin  
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 Rural Municipality of Franklin 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 Rural Municipality of Franklin 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 Franklin.
- (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 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 member of Council or the Foreman 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.

### 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 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"

9. By-Law No. 12-09 is hereby repealed.

DONE AND PASSED by the Rural Municipality of Franklin this 12<sup>th</sup> day of July 2011.

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Greg Janzen, Reeve

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Tracey French, Chief Administrative Officer

Given First Reading this 14<sup>th</sup> day of June, 2011.

Given Second Reading this 14<sup>th</sup> day of June, 2011.

Given Third Reading this 12<sup>th</sup> day of July, 2011.