

# TOWN OF SAINT ANDREWS

## BYLAW 09-02

### RESPECTING DANGEROUS OR UNSIGHTLY PREMISES

WHEREAS Sections 190.001 to 190.07 of the Municipalities Act of New Brunswick provides as follows:

**190.001(1)** In sections 190.01 to 190.07

“dwelling” means a building any part of which is used or is intended to be used for the purposes of human habitation, whether or not the building is in such state of disrepair so as to be unfit for such purpose;

“dwelling unit” means one or more rooms located within a dwelling and used or intended to be used for human habitation by one or more persons.

**190.001(2)** In subsection 190.01(3) and sections 190.02, 190.021, 190.04, 190.041 and 190.05

“owner” includes the person for the time being managing or receiving the rent for premises or a building or structure, whether on the person’s own account or as agent or trustee of any other person, or who would receive the rent if the premises, building or structure were let.

**190.01(1)** No person shall permit premises owned or occupied by him or her to be unsightly by permitting to remain on any part of such premises

- (a) any ashes, junk, rubbish or refuse,
- (b) an accumulation of wood shavings, paper, sawdust or other residue of production or construction,
- (c) a derelict vehicle, equipment or machinery or the body or any part of a vehicle, equipment or machinery, or
- (d) a dilapidated building.

**190.01(2)** No person shall permit a building or structure owned or occupied by him or her to become a hazard to the safety of the public by reason of dilapidation or unsoundness of structural strength.

**190.01(2.1)** A person who violates or fails to comply with subsection (2) commits an offence that is, subject to subsections (2.2) and (2.3), punishable under Part II of the *Provincial Offences Procedure Act* as a category F offence.

**190.01(2.2)** Notwithstanding subsection 56(6) of the *Provincial Offences Procedure Act*, where a person who is leasing a dwelling or dwelling unit to another person commits an offence under subsection (2.1) in relation to the dwelling or dwelling unit, the minimum fine that may be imposed by a judge under that Act in respect of the offence shall be one thousand dollars.

**190.01(2.3)** Where an offence under subsection (2.1) continues for more than one day,

- (a) if the offence was committed in relation to a dwelling or dwelling unit by a person who is leasing the dwelling or dwelling unit to another person,

- (i) the minimum fine that may be imposed is the sum of
    - (A) one thousand dollars, and
    - (B) the minimum fine set by the *Provincial Offences Procedure Act* for a category F offence multiplied by the number of days during which the offence continues after the first day, and
  - (ii) the maximum fine that may be imposed is the maximum fine set by the *Provincial Offences Procedure Act* for a category F offence multiplied by the number of days during which the offence continues, and
- (b) in any other case,
- (i) the minimum fine that may be imposed is the minimum fine set by the *Provincial Offences Procedure Act* for a category F offence multiplied by the number of days during which the offence continues, and
  - (ii) the maximum fine that may be imposed is the maximum fine set by the *Provincial Offences Procedure Act* for a category F offence multiplied by the number of days during which the offence continues.

**190.01(3)** Where a condition mentioned in subsection (1) or (2) exists, an officer appointed by council may notify the owner or occupier of the premises, building or structure by notice in the form prescribed by regulation which shall:

- (a) be in writing,
  - (b) be signed by the officer,
  - (c) state that the condition referred to in subsection (1) or (2) exists,
  - (d) state what must be done to correct the condition,
  - (e) state the date before which the condition must be corrected, and
- (e.1) if an appeal may be brought under subsection 190.021(1), state the final date for giving notice of the appeal.
- (f) Repealed: 2006, c.4, s.7.

**190.011** A notice referred to in subsection 190.01(3) shall be given:

- (a) if the person to be notified is an individual, by personal delivery on the individual or by posting the notice in a conspicuous place on the premises, building or structure, or
- (b) if the person to be notified is a corporation, by personal delivery on an officer, director or agent of the corporation or on a manager or person who appears to be in control of any office or other place of business where the corporation carries on business in New Brunswick or by posting the notice in a conspicuous place on the premises, building or structure.

**190.02(1)** Proof of the giving of notice in either manner provided for in section 190.011 may be by a certificate or an affidavit purporting to be signed by the officer referred to in subsection 190.01(3), naming the person to whom notice was given and specifying the time, place and manner in which notice was given.

**190.02(2)** A document purporting to be a certificate under subsection (1) shall be:

- (a) admissible in evidence without proof of signature, and
- (b) conclusive proof that the person named in the certificate received notice of the matters referred to in the certificate.

**190.02(3)** In any prosecution for a violation of a by-law under section 190 where proof of the giving of notice is made as prescribed under subsection (1), the burden of proving that one is not the person named in the certificate or affidavit shall be upon the person charged.

**190.02(4)** A notice given under section 190.011 and purporting to be signed by an officer appointed by council shall be

- (a) received in evidence by any court in the Province without proof of the signature,
- (b) proof in the absence of evidence to the contrary of the facts stated in the notice, and
- (c) in a prosecution for a violation of a by-law under section 190, proof in the absence of evidence to the contrary that the person named in the notice is the owner or occupier of the premises, building or structure in respect of which the notice was given.

**190.021(1)** An owner or occupier of premises or a building or structure who has been given a notice under section 190.011, other than a notice prepared under subsection 190.041(2), and who is not satisfied with the terms or conditions set out in the notice may appeal to the appropriate committee of council by sending a notice of appeal by registered mail to the clerk of the municipality within fourteen days after having been given the notice.

**190.021(2)** A notice that is not appealed within the time referred to in subsection (1) shall be deemed to be confirmed.

**190.021(3)** On an appeal, the committee of council shall hold a hearing into the matter at which the owner or occupier bringing the appeal has a right to be heard and may be represented by counsel.

**190.021(4)** On an appeal, the committee of council may confirm, modify or rescind the notice or extend the time for complying with the notice.

**190.021(5)** The committee of council shall provide a copy of its decision to the owner or occupier of the premises, building or structure who brought the appeal within fourteen days after making its decision.

**190.021(6)** The owner or occupier provided with a copy of a decision under subsection (5) may appeal the decision to a judge of The Court of Queen's Bench of New Brunswick within fourteen days after the copy of the decision was provided to the owner or occupier on the grounds that:

- (a) the procedure required to be followed by this Act was not followed or
- (b) the decision is patently unreasonable.

**190.021(7)** On the appeal, the judge of The Court of Queen's Bench of New Brunswick may confirm, modify or rescind the whole or any part of the decision of the committee of council, and the decision of the judge under this subsection is not subject to appeal.

**190.021(8)** A notice that is deemed to be confirmed under subsection (2) or that is confirmed or modified by the committee of council under subsection (4) or a judge of The Court of Queen’s Bench of New Brunswick under subsection (7), as the case may be, shall be final and binding upon the owner or occupier who shall comply within the time and in the manner specified in the notice.

**190.021(9)** An appeal does not prevent a further notice from being given under section 190.011 or from being prepared and signed under subsection 190.041(2) in relation to a condition referred to in the notice that is the subject of the appeal if there has been a change in the condition.

**190.022(1)** In this section “land registration office” means the registry office for a county or the land titles office for a land registration district.

**190.022(2)** A notice given under section 190.011 may be registered in the appropriate land registration office and, upon such registration, any subsequent owner of the premises, building or structure in respect of which the notice was given shall be deemed, for the purposes of sections 190.04 and 190.041, to have been given the notice on the day on which the notice was given under section 190.011.

**190.022(3)** For the purposes of registering a notice under subsection (2), section 44 of the *Registry Act* and section 55 of the *Land Titles Act* do not apply.

**190.022(4)** Within thirty days after the terms of the notice have been complied with or a debt due to a municipality under subsection 190.04(1) or 190.041(5) or due to the Minister of Finance under subsection 190.061(3), as the case may be, is discharged, the municipality shall provide a certificate in the form prescribed by regulation to that effect to the person to whom the notice was given under section 190.011 or deemed to have been given under subsection (2), as the case may be, and the certificate shall operate as a discharge of the notice.

**190.022(5)** A person to whom a certificate is provided under subsection (4) may register the certificate in the appropriate land registration office, and, upon registration of the certificate, the appropriate registrar of the land registration office may cancel registration of the notice in respect of which the certificate was provided.

**190.03(1)** A person who fails to comply with the terms of a notice under subsection 190.01(3) commits an offence punishable under Part II of the *Provincial Offences Procedure Act* as a category E offence and notwithstanding the provisions of any Act to the contrary, no judge of the Provincial Court may suspend the imposition of any penalty under this section.

**190.03(1.1)** Notwithstanding subsection 56(6) of the *Provincial Offences Procedure Act*, where a person who is leasing a dwelling or dwelling unit to another person commits an offence under subsection (1) in relation to a notice given under section 190.011 with respect to the dwelling or dwelling unit, the minimum fine that may be imposed by a judge under that Act in respect of the offence shall be one thousand dollars.

**190.03(1.2)** Where an offence under subsection (1) continues for more than one day,

(a) if the offence was committed by a person in relation to notice given under section 190.011 with respect to a dwelling or dwelling unit the person is leasing to another person,

(i) the minimum fine that may be imposed is the sum of:

(A) one thousand dollars, and

(B) the minimum fine set by the *Provincial Offences Procedure Act* for a category F offence multiplied by the number of days during which the offence continues after the first day, and

(ii) the maximum fine that may be imposed is the maximum fine set by the *Provincial Offences Procedure Act* for a category F offence multiplied by the number of days during which the offence continues, and

(b) in any other case,

(i) the minimum fine that may be imposed is the minimum fine set by the *Provincial Offences Procedure Act* for a category F offence multiplied by the number of days during which the offence continues, and

(ii) the maximum fine that may be imposed is the maximum fine set by the *Provincial Offences Procedure Act* for a category F offence multiplied by the number of days during which the offence continues.

**190.03(2)** Repealed: 2006, c.4, s.11.

**190.03(3)** The conviction of a person under this section does not operate as a bar to further prosecution for the continued neglect or failure on his or her part to comply with the provisions of a by-law under section 190.

**190.04(1)** If a notice has been given under section 190.011, other than a notice prepared under subsection 190.041(2), and the owner or occupier does not comply with the notice, as deemed confirmed or as confirmed or modified by a committee of council or a judge under section 190.021, within the time set out in the notice, the municipality may, rather than commencing proceedings in respect of the violation or in addition to doing so,

(a) if the notice arises out of a condition existing contrary to subsection 190.01(1), cause the premises of that owner or occupier to be cleaned up or repaired, or

(b) if the notice arises out of a condition existing contrary to subsection 190.01(2), cause the building or structure of that owner or occupier to be demolished, and the cost of carrying out such work, including any related charge or fee, is chargeable to the owner or occupier and becomes a debt due to the municipality.

**190.04(2)** For the purpose of subsection (1), the officer who gave the notice in respect of the premises, building or structure and the employees of the municipality or other persons acting on behalf of the municipality may, at all reasonable times, enter upon the premises, building or structure in order to clean up or repair the premises or demolish the building or structure, as the case may be.

**190.04(3)** A municipality or a person acting on its behalf is not liable to compensate an owner or occupier or any other person by reason of anything done by or on behalf of the municipality in the reasonable exercise of its powers under this section.

**190.041(1)** In this section

“emergency” includes a situation in which there is imminent danger to public safety or of serious harm to premises or to a building or structure.

**190.041(2)** If upon inspection of a property under section 102.1, an officer referred to in that section is satisfied that there is nonconformity with a by-law under section 190 to such an extent as to pose an emergency, the officer may prepare and sign a notice referred to in subsection 190.01(3) requiring the owner or occupier of the premises, building or structure in respect of which the notice is prepared to immediately carry out work to terminate the danger.

**190.041(3)** After having prepared and signed a notice referred to in subsection (2), the officer may, either before or after the notice is given under section 190.011, take any measures necessary to terminate the danger giving rise to the emergency, and, for this purpose, the officer who prepared the notice and the employees of the municipality or other persons acting on behalf of the municipality may, at any time, enter upon the premises, building or structure in respect of which the notice was prepared.

**190.041(4)** A municipality or a person acting on its behalf is not liable to compensate an owner or occupier or any other person by reason of anything done by or on behalf of the municipality in the reasonable exercise of its powers under this section.

**190.041(5)** The cost of taking measures under subsection (3), including any related charge or fee, is chargeable to the owner or occupier and becomes a debt due to the municipality.

**190.041(6)** If the notice was not given before measures were taken to terminate the danger, the officer shall give a copy of the notice under section 190.011 as soon as possible after the measures have been taken, and the copy of the notice shall have attached to it a statement by the officer describing the measures taken by the municipality and providing details of the amount expended in taking such measures.

**190.041(7)** If the notice was given before the measures were taken, the officer shall give a copy of the statement mentioned in subsection (6) in the same manner as a notice is given under section 190.011 as soon as practicable after the measures have been taken.

**190.042(1)** No person shall refuse entry to or obstruct or interfere with an officer referred to in subsection 190.04(2) or 190.041(3) who under the authority of that subsection is entering or attempting to enter premises or a building or structure.

**190.042(2)** A person who violates or fails to comply with subsection (1) commits an offence that is, subject to subsections (3) and (4), punishable under Part II of the *Provincial Offences Procedure Act* as a category F offence.

**190.042(3)** Notwithstanding subsection 56(6) of the *Provincial Offences Procedure Act*, where a person who is leasing a dwelling or dwelling unit to another person commits an offence under subsection (2) in relation to the dwelling or dwelling unit, the minimum fine that may be imposed by a judge under that Act in respect of the offence shall be one thousand dollars.

**190.042(4)** Where an offence under subsection (2) continues for more than one day,

(a) if the offence was committed in relation to a dwelling or dwelling unit by a person who is leasing the dwelling or dwelling unit to another person,

(i) the minimum fine that may be imposed is the sum of:

(A) one thousand dollars, and

(B) the minimum fine set by the *Provincial Offences Procedure Act* for a category F offence multiplied by the number of days during which the offence continues after the first day, and

(ii) the maximum fine that may be imposed is the maximum fine set by the *Provincial Offences Procedure Act* for a category F offence multiplied by the number of days during which the offence continues, and

(b) in any other case:

(i) the minimum fine that may be imposed is the minimum fine set by the *Provincial Offences Procedure Act* for a category F offence multiplied by the number of days during which the offence continues, and

(ii) the maximum fine that may be imposed is the maximum fine set by the *Provincial Offences Procedure Act* for a category F offence multiplied by the number of days during which the offence continues.

**190.05(1)** Where the cost of carrying out work or the cost of taking measures becomes a debt due to a municipality under subsection 190.04(1) or 190.041(5), as the case may be, an officer of the municipality may issue a certificate stating the amount of the debt due and the name of the owner or occupier from whom the debt is due.

**190.05(2)** A certificate issued under subsection (1) may be filed in The Court of Queen's Bench of New Brunswick and a certificate so filed shall be entered and recorded in the Court and when so entered and recorded may be enforced as a judgment obtained in the Court by the municipality against the person named in the certificate for a debt of the amount specified in the certificate.

**190.05(3)** All reasonable costs and charges attendant upon the filing, entering and recording of a certificate under subsection (2) may be recovered as if the amount had been included in the certificate.

**190.06(1)** The cost of carrying out work under subsection 190.04(1) or of taking measures under subsection 190.041(3), as the case may be, and all reasonable costs and charges attendant upon the filing, entering and recording of a certificate under section 190.05 shall, notwithstanding subsection 72(2) of the *Workers' Compensation Act* and until paid, form a lien upon the real property in respect of which the work is carried out or the measures are taken in priority to every claim, privilege, lien or other encumbrance, whenever created, subject only to taxes levied under the *Real Property Tax Act* and a special lien under subsection 189(10).

**190.06(2)** The lien in subsection (1)

(a) attaches when the work under subsection 190.04(1) is begun or the measures under subsection 190.041(3) are begun, as the case may be, and does not require registration or filing of any document or the giving of notice to any person to create or preserve it, and

(b) follows the real property to which it attaches into whose hands the real property comes.

**190.06(3)** Any mortgagee, judgment creditor or other person having any claim, privilege, lien or other encumbrance upon or against the real property to which is attached a lien under subsection (1)

(a) may pay the amount of the lien,

(b) may add the amount to the person's mortgage, judgment or other security, and

(c) has the same rights and remedies for the amount as are contained in the person's security.

**190.061(1)** Where a debt due to a municipality under subsection 190.04(1) or 190.041(5) remains unpaid in whole or in part and the Minister of Finance is of the opinion that the municipality has made reasonable efforts to recover the unpaid amount, the Minister of Finance shall, if the municipality requests him or her to do so before December 31 in any year, pay to the municipality the following amounts at the same time as the first payment is made to the municipality under section 6 of the *Municipal Assistance Act* in the following year:

(a) the unpaid amount of the debt; and

(b) interest on the unpaid amount of the debt

(i) calculated at the same rate as is applied in determining the amount of a penalty under subsection 10(3) of the *Real Property Tax Act*, and

(ii) accruing from the day the municipality completes the work or measures in respect of which the debt arose to the day the municipality makes a request under this subsection for payment in respect of the debt.

**190.061(2)** A municipality shall make a request under subsection (1) by submitting to the Minister of Finance a statement of the expenditures of the municipality that gave rise to the debt.

**190.061(3)** Subject to subsection (4), where a debt due to a municipality under subsection 190.04(1) or 190.041(5) in relation to work carried out or measures taken with respect to premises or a building or structure remains unpaid, in whole or in part, by the person liable to pay the debt and the Minister of Finance has made a payment under subsection (1) in respect of the debt,

(a) any part of the debt that remains unpaid by the person liable to pay the debt becomes a debt due to the Minister of Finance, and

(b) the Minister of Finance shall collect the following amounts from the owner of the premises, building or structure in the same manner that taxes on real property are collected under the *Real Property Tax Act*:

(i) any part of the debt under subsection 190.04(1) or 190.041(5) that remains unpaid by the person liable to pay the debt; and

(ii) interest on the unpaid part of the debt

(A) calculated at the same rate as is applied in determining the amount of a penalty under subsection 10(3) of the *Real Property Tax Act*, and

(B) accruing from the day the municipality completes the work or measures in respect of which the debt arose to the

day the municipality makes a request under subsection (1) for payment in respect of the debt.

**190.061(4)** Subject to subsections (5) and (6), section 7, section 10, except subsection 10(2), and sections 11, 12, 13, 14, 14.1, 15, 16, 19, 20, 24 and 25 of the *Real Property Tax Act* apply with the necessary modifications for the purposes of subsection (3).

**190.061(5)** Where the amounts referred to in paragraph (3)(b) remain unpaid, those amounts and any penalty added to them under subsection (4) constitute a lien on the real property in respect of which the work was carried out or the measures were taken, and the lien ranks equally with a lien under subsection 11(1) of the *Real Property Tax Act*.

**190.061(6)** Where the real property is sold under any order of foreclosure, order for seizure and sale, execution or other legal process or a power of sale under a debenture or mortgage or under subsection 44(1) of the *Property Act*, the amount of a lien referred to in subsection (5) constitutes a charge on the proceeds that ranks equally with a charge under subsection 11(1) of the *Real Property Tax Act*.

**190.07** A municipality shall not proceed to act under paragraph 190.04(1)(b) unless it has a report from an architect, an engineer, a building inspector or the Fire Marshal that the building or structure is dilapidated or structurally unsound and such report is proof in the absence of evidence to the contrary that the building or structure is dilapidated or structurally unsound.

The Council of the Municipality of The Town of St. Andrews duly assembled hereby enacts as follows, under the authority of Section 190 of the Municipalities Act of New Brunswick:

1. Sections 190.001 to 190.07 inclusive of the Municipalities Act of New Brunswick applies to the entire area within the municipal limits of The Town of St. Andrews.
2. This By-law comes into force on the date of final passing thereof.
3. By-law No. 88-10, "a By-law Respecting Dangerous or Unsightly Premises" enacted on the 3<sup>rd</sup> day of October, 1988, is hereby repealed.

Read first time by title this August 4, 2009

Read second time by title this 8<sup>th</sup> day of September, 2009

Read third and final time in its entirety in Council this 8<sup>th</sup> day of September, 2009 and enacted this 8<sup>th</sup> day of September, 2009.

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Mayor

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Clerk