

THE CORPORATION OF THE TOWNSHIP OF NIPISSING

BY-LAW NUMBER 2023-08

**BEING A BY-LAW TO ADOPT A POLICY RESPECTING THE
MANAGEMENT OF NUISANCE BEAVERS AND BEAVER DAMS
IN THE TOWNSHIP OF NIPISSING**

WHEREAS pursuant to Section 10 of the Municipal Act, S.O. 2001, c. 25, as amended, the “Municipal Act” authorizes a Municipality to enact by-laws for drainage and flood control in the interest of the protection of persons and property, and the health, safety and well-being of persons;

AND WHEREAS Section 8 of the Fish and Wildlife Conservation Act, 1997, S.O. 1997, c. 41, as amended, authorizes a municipality to damage or destroy a beaver dam to protect municipal property;

AND WHEREAS Part XIV, Sections 425 to 447.9 of the Municipal Act, as amended, gives authority to a municipality to enforce its by-laws including the issuance and enforcement of orders, rights of entry, rights of remedial action and the right to recover its costs;

AND WHEREAS the Council of The Corporation of the Township of Nipissing believes it to be in the public interest to regulate and control flooding that may be caused by Beaver Dams in order to protect public infrastructure and the health and safety of the public;

AND WHEREAS beaver dams constructed on private property and the damage they may cause due to flooding, breaches and related hazards are the responsibility of the private property owner;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF NIPISSING ENACTS AS FOLLOWS:

1.0 Definitions

In this By-law:

- 1.1 “**Beaver**” means a large semiaquatic broad-tailed rodent that is native to North America. It is noted for its habit of gnawing through tree trunks to fell the trees in order to feed on the bark and build dams;
- 1.2 “**Beaver Dam**” means a structure constructed by a Beaver to create a pond to protect against predators and to store food during winter;
- 1.3 “**By-Law**” means Corporation of the Township of Nipissing By-Law 2023-08, short title: “Management of Beavers and Beaver Dams By-law”;
- 1.4 “**By-Law Enforcement Officer**” means a person who is appointed by Council as a Municipal Law Enforcement Officer to enforce by-laws enacted and passed by Council;
- 1.5 “**Council**” means the Council of The Corporation of the Township of Nipissing;
- 1.6 “**Owner**” means the registered Owner of the land and also includes the Owner of the animal and also includes a trustee acting on behalf of the registered Owner, the estate of a registered Owner and a Person with a leasehold interest in the land;

1.7 “**Person**” means any human being, association, firm, partnership, incorporated company, corporation, agent or trustee, and the heirs, executors or other legal representatives of a Person to whom the context can apply, according to law;

1.8 “**Operations Superintendent**” means a person or designate, who is employed by the Municipality and is responsible for overseeing the maintenance of municipal roads and infrastructure;

1.9 “**Municipality**” means the Corporation of the Township of Nipissing;

2.0 **General Prohibitions – Flood Risks**

2.1 No Person or Owner shall permit a Beaver Dam or other obstruction on their property that may create a flood risk or threaten health and safety of the general public or which may cause damage to municipal property.

3.0 **Administration**

3.1 For the purposes of this By-law, a flood risk is created where a Beaver Dam or other obstruction allows water to collect in a manner that might reasonably be expected to cause flooding or other damage to highways, culverts, bridges, drainage works or other municipal property, if the water collected were to rise or to escape.

3.2 If damage to municipal property is likely to occur or has already occurred, the Operations Superintendent may issue an order to have the Beaver Dam removed and shall forward copies of the same addressed to each Owner of the property so identified by the municipal tax rolls upon which the Beaver Dam is located, and to any occupier of the property to whom the Operations Superintendent considers the order should also be issued. The order may also be posted up in a conspicuous place on the property. Where damage to municipal property has already occurred, the order may also require the repair of that damage at the cost to the Owner(s).

3.3 If an inspection of a property reveals that the prohibition set out in section 2.1 of this By-law has been or will be breached due to the presence of a Beaver Dam on the property and the Operations Superintendent is of the reasonable opinion that the presence of the Beaver Dam creates a risk to public health and safety that must be remedied immediately, the Municipality may enter on the property with such employees, agents or contractors and equipment and take all reasonable measures necessary to correct the situation creating the risk to public health and safety. Under such circumstances, notice shall be given to the Owner or occupant of the property as soon as practicable.

3.4 If it appears to the Operations Superintendent that damage to municipal property is presently occurring or, on reasonable grounds, that protection of municipal property requires immediate action, the order may require immediate compliance on the date of issuance of the order.

3.5 If an inspection of a property reveals that the property does not conform to the standards prescribed in section 2.1 of this By-law and the circumstances in section 3.4 are not present, the Operations Superintendent may issue a written order to the Owner or occupant of the property or both, setting out that the Persons to whom an order has been issued are jointly and severally liable for all of the costs to the municipality of locating and removing the Beaver Dam in compliance with all the applicable legislation, and for the costs associated with any other remedial work to rectify damage caused to municipal property, as described in the order.

3.6 Any order issued by the Municipality in accordance with this By-law shall be served personally or by registered mail sent to the last known address of the

Person to whom the order is to be given, in which event the service shall be deemed to have been made on the seventh day after mailing.

- 3.7 Every owner shall comply with an Order issued under the authority of this bylaw. If the Owner of a property to whom an order has been given in accordance with this By-law does not comply with the order within the time prescribed in the order, the Municipality may, in addition to all other remedies, cause the property to be brought into a condition that conforms to this By-law at the Owner's expense and, for this purpose, the Municipality's employees or agents may enter onto the property at any reasonable time without further notice to the Owner or occupant in order to do such work and remedy any contravention of this By-law.
- 3.8 The Municipality may collect any costs incurred by it to remedy any non-compliance with section 3 of this By-law by adding the costs to the tax roll of the property on which the work was performed in accordance with this By-law.
- 3.9 Despite any actions taken in respect to this By-law, the Municipality shall not be liable to compensate the Owner, occupant 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 By-law.

4.0 **Entry and Inspection**

- 4.1 The Operations Superintendent or By-law Enforcement Officer or their designate may at any time, enter onto a property to determine whether this By-law is being complied with. The use of a drone may be used for inspection of a property. Notice shall be given to the Owner or occupant of the property as soon as practicable.
- 4.2 Every Person shall permit a Operations Superintendent or By-law Enforcement Officer or their designate to inspect any land for the purposes of determining compliance with this By-law.

5.0 **Obstruction**

- 5.1 No Person shall hinder or obstruct, or attempt to hinder or obstruct, any Operations Superintendent or By-law Enforcement Officer or their designate from exercising a power or performing a duty under this By-law.

6.0 **Offences and Penalties**

- 6.1 Any person who contravenes of any provision of this By-law is guilty of an offence and upon conviction, is liable to a fine as provided for by the Provincial Offences Act, R.S.O. 1990, c. P. 33, as amended.
- 6.2 Any person who fails to comply with an order or any part thereof issued pursuant to this By-law is guilty of an offence.
- 6.3 Upon conviction, an individual found guilty of an offence is liable to a fine not to exceed the maximum provided under the Provincial Offences Act, exclusive of costs, and every such fine shall be recoverable under the Provincial Offences Act.

7.0 Severability

- 7.1 If any provision or part of a provision of this By-law is declared by any court or tribunal of competent jurisdiction to be illegal or inoperative, in whole or in part, or inoperative in particular circumstances, the balance of the By-law, or its application in other circumstances, shall not be affected and shall continue to be in full force and effect.
- 7.2 If a provision of this By-law conflicts with an Act or regulation or another by-law, the provision that is the most restrictive shall prevail.
- 7.3 If a court of competent jurisdiction should declare any section or part of a section of this By-law to be invalid, such section or part of a section shall not be construed as having persuaded or influenced Council to pass the remainder of the By-law and it is hereby declared that the remainder of the By-law shall be valid and shall remain in force.

8.0 Schedules

- 8.1 Schedules “A” and “B” as attached form part of this By-law.

9.0 Short Title

- 9.1 This By-law shall be known as the “Management of Beavers and Beaver Dams By-law”.

10.0 Municipality Not Liable

- 10.1 The Municipality assumes no liability for property damage or personal injury resulting from remedial action or remedial work.

11.0 Passage

- 11.1 This By-law shall come into force and effect on the day it is passed by Council.

Read a first, second and third time and passed this 17th day of January, 2023.

Tom Piper
Mayor

Kris Croskery-Hodgins
Municipal Administrator

SCHEDULE “A” TO BY-LAW 2023-08

Policy and Procedure for the Management of Beavers and Beaver Dams

The Council of the Corporation of the Township of Nipissing deems it expedient to adopt a policy and procedure to deal with potential flood threats caused by beaver dams. These structures, with associated head ponds, often do adversely impact public roads, and the health and safety of the general public.

Where dams occur on municipal property, the municipality has clear authority to remove or alter the dams to ensure the negative impacts of flooding on a public road(s) is minimized or controlled.

Where dams occur on private lands, the Municipality will encourage landowners to manage these nuisance animals and structures in an effort to help protect public assets from the negative impacts of flooding, which may occur when dams are suddenly breached as well as oversee any potential damage caused and ensure health and safety of the general public.

The Municipality will require corrective action as necessary to prevent damage to public infrastructure, in accordance with this By-law.

Situations and Circumstances

- 1.1 On performing road patrols or in receiving comments or complaints from the public, the Operations Superintendent or designate, may become aware of beaver activities that represent potential problems for municipal property or infrastructure. In such instance, the Operations Superintendent or designate will make an assessment as to whether municipal property is or soon will be damaged as a result of beaver activities and identify the safest and most effective method to address problems associated with these activities and the health and safety associated for the general public.
- 1.2 If the beaver dam or blockage is located on municipal property, the Operations Superintendent or designate will remove the dam or blockage if risks to public safety or property damage so warrant and may contact a licensed trapper to trap or dispatch the beaver(s). The trapper shall be licensed by the Ministry of Natural Resources and Forestry (MNR) and comply with all applicable legislation when setting and retrieving traps.
- 1.3 If the beaver dam is located on private property, the landowner will be asked, in writing by the Operations Superintendent or designate, to have the dam removed or altered in such a manner as to prevent flooding damage to municipal property. Alternatively, the landowner's permission will be obtained in writing, using the form attached as Schedule “B” to this by-law, for municipal staff to enter onto the property to remove or alter the dam. In obtaining consent for municipal involvement, the owner will be asked to acknowledge and agree, in writing, that the Municipality will not be held responsible for damages that may occur when altering or removing a dam by municipal or contracted resources and/or trapper being assigned to commence trapping on said private lands.
- 1.4 If the landowner refuses access to the property or to population control of the beaver, the landowner will be sent a registered letter from the Operations Superintendent or designate informing them that they could be held liable for any damages caused to municipal property or harm caused to the public as a result of the beaver dam being suddenly breached or washed out.

Emergency Situations

- 2.1 There may be emergency situations which arise where water levels and the volume of retained water created by a beaver dam(s) represents an imminent flood threat to a public asset (road, bridge, culvert, etc.), which in turn could impact public safety. In such instances, the Operations Superintendent or designate, shall assess the threat, determine the risk of damage to the public asset and take action to alter or remove the dam to lower the threat of flooding to an acceptable level.
- 2.2 Authority to take such emergency action is referenced in the Fish and Wildlife Conservation Act, 1997 as follows:

Beaver dams - Section 8(3) states: A person shall not damage or destroy a beaver dam unless the person holds a license to trap furbearing mammals.

Protection of property - Section 8(4) states: Subsection (3) (shown above) does not apply to a person, or agent of a person, who damages or destroys a beaver dam to protect the person's property.
- 2.3 In accordance with 2.2 above, under an emergency situation, as determined by the Operations Superintendent or designate, municipal staff or an appointed contractor/agent may enter onto private property to alter or remove a beaver dam with the objective of "protecting property"; e.g. a public road.

Risk Assessment Procedure

- 3.1 A risk assessment will be conducted by the Operations Superintendent or designate to determine if an emergency response is required.
- 3.2 Where, as a result of excessive water associated with a beaver dam(s), water is being held against a road to the extent that the road is deemed to be unsafe for public travel and/or it is apparent that road failure is possible then emergency actions will be initiated including entry to private land to remedy the problem.
- 3.3 Where there is a sufficient head of water being held behind a beaver dam that if released quickly would overwhelm the road and related drainage system, thereby representing a serious threat to infrastructure and/or public safety, then emergency actions will be initiated including entry onto private lands to remedy the problem.
- 3.4 In either of the above situations (3.2 and 3.3), the threat of damage may be heightened if weather conditions, and predictions call for greater rain or run-off that would increase water volumes and increase washout possibilities.

SCHEDULE "B" TO BY-LAW 2023-08

Property Access Form

[Date]:

I, owner of the property located within the Township of Nipissing at Lot __, Conc. __,
Civic Address _____,
Plan _____, Part _____,
Roll Number 4971 – 000 – 00 _____ - 0000

Select an option below;

Option A:

Give the Township of Nipissing municipal staff, agent and/or licensed trapper permission to access the above-mentioned property to deal with the nuisance beaver and/or beaver dams.

Option B:

Refuse to give the Township of Nipissing municipal staff, agent and/or licensed trapper permission to access the above-mentioned property to deal with the nuisance beaver and/or beaver dams.

NOTE:

- (1) Failure to provide a response to the Municipality within 7 business days of receipt of this Form by Registered Mail will be considered a refusal of access and shall be recorded as such. (Option 'B')
- (2) In obtaining consent (Option 'A'), the Municipality will not be held responsible for any damages that may occur as a result of altering or removing a beaver dam on the above-mentioned property.
- (3) Refusal of access will result in legal action(s) and you will be held liable for any damages caused to municipal property or harm caused to the public as a result of the beaver dam being breached or washed out.
- (4) The Municipality may collect any costs incurred by adding locating, removal and trapping costs, to the tax roll of the property on which the work will be performed in accordance with this By-law.

Name of Land Owner (Print)

Signature of Land Owner

Mailing Address of Land Owner:

Name of Witness (Print)

Signature of Witness

SCHEDULE "C" TO BY-LAW 2023-08

Set Fines

The Management of Nuisance Beavers and Beaver Dams

Part I Provincial Offences Act

ITEM	COLUMN 1 Short Form Wording	COLUMN 2 Provision creating or defining offence	COLUMN 3 Set Fine
1	Permit a Beaver Dam or other obstruction on property	s. 2.1	\$500.00
2	Fails to comply with an order	s. 3.7	\$500.00
3	Hinders or obstructs any Operations Superintendent or By-law Enforcement Officer or their designate.	s. 5.1	\$500.00

NOTE: The penalty provision for the offences indicated above is Section 6.0 of By-Law 2023-08 and section 61 of the Provincial Offences Act, R.S.O. 1990, c. P. 33.