

VILLAGE OF BLACKS HARBOUR

BY-LAW NO. 10-109

A BY-LAW TO ADOPT A CODE RESPECTING STANDARDS FOR MAINTENANCE AND OCCUPANCY OF RESIDENTIAL BUILDINGS AND PREMISES BLACKS HARBOUR

Pursuant to the authority granted by Section 94(1) of the Municipalities Act, be it enacted by the Village Council of Blacks Harbour as follows.

TITLE

1 This By-law may be cited as the Residential Properties Standards By-law.

INTERPRETATION

2(1) In this by-law

"**building inspector**" means the officer appointed by the Village Council who shall exercise and perform such duties as are provided for in this By-Law and the Code.

"**Code**" means the *Residential Properties Maintenance and Occupancy Code* approved by the Lieutenant Governor in Council pursuant to Section 93 of the *Municipalities Act*.

"**village**" means Blacks Harbour.

2(2) Words and phrases used in this by-law have the same meaning as in the Code.

SCOPE

3 The purpose of this by-law is

- (a) to establish standards to govern the condition, occupancy and maintenance of residential properties, and
- (b) to provide safeguards for the safety, health and welfare of occupants and users of residential properties by requiring owners thereof to repair and maintain such property in accordance with established standards.

ADOPTION OF CODE

The *Residential Properties Maintenance and Occupancy Code* approved by Order in Council 84-346 and found in Regulation No. 84-86 pursuant to Section 93 of the *Municipalities Act*, as amended from time to time, is adopted by reference and is hereinafter referred to as the Code.

DUTIES OF THE OWNER AND ENFORCEMENT

- 5(1)** The owner of residential property shall repair and maintain such property in accordance with the standards set out in the Code.
- 5(2)** Where the owner of residential property fails to repair or maintain such property in accordance with the requirements of subsection (1), the building inspector may notify the owner or occupier of the residential property and the notice shall
- (a) be in writing,
 - (b) be signed by the building inspector,
 - (c) state that the condition complained of in subsection (2) exists,
 - (d) state what must be done to correct the condition,
 - (e) state the date before which the condition must be corrected, and
 - (f) be served either by personal delivery on the person to be notified or by posting in a conspicuous place on the premises, building or structure.
- 6(1)** Proof of the giving of notice in either manner provided for in subsection 5(2) may be by a certificate or an affidavit purporting to be signed by the building inspector, naming the person to whom notice was given and specifying the time, place and manner in which notice was given.
- 6(2)** A document purporting to be a certificate or affidavit under subsection (1) shall be
- (a) admissible in evidence without proof of signature, and
 - (b) conclusive proof that the person named in the certificate or affidavit received notice of the matters referred to in the certificate or affidavit.
- 6(3)** In any prosecution for a violation of this by-law 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.

- 6(4) A notice given under section 5(2) and purporting to be signed by the building inspector 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) on the hearing of information for a violation of this by-law, proof in the absence of evidence to the contrary that the person named in the notice is the owner or occupier of the residential property in respect of which the notice was given.
- 7(1) A person who fails to comply with the terms of a notice under subsection 5(2) 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.
- 7(2) A violation as provided for in subsection (1) is a continuing offence and a separate information may be laid for each day such offence continues and the penalty provided for in subsection (1) shall be imposed for each conviction resulting from the laying of each information.
- 7(3) The conviction of a person under this section does not operate as a bar to further prosecution for the continued neglect or failure of that person to comply with the provisions of this by-law.
- 8 If a notice has been given under subsection 5(2) and the owner or occupier does not comply with the notice within the time allowed, the Village may, rather than commencing proceedings in respect of the violation, cause the premises of that owner or occupier to be repaired and maintained 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 Village.
- 9(1) Where the cost of carrying out work becomes a debt due to the Village under section 8, the building inspector, Village Treasurer or Village Clerk 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.
- 9(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 Village against the person named in the certificate for a debt of the amount specified in the certificate.
- 9(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.

10(1) The cost of carrying out work under section 8 and all reasonable costs and charges attendant upon the filing, entering and recording of a certificate under section 9 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 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) of the *Municipalities Act*.

10(2) The lien in subsection (1)

(a) attaches when the work under section 8 is begun 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 whosoever hands the real property comes.

10(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.

DUTIES OF THE BUILDING INSPECTOR

11 The building inspector shall

(a) administer this by-law,

(b) exercise such powers and perform such duties as are provided for the enforcement of this by-law, and

(c) recommend to Council, if, in his or her opinion, it would not be economical to repair a residential property, or fence forming part of such property, that action be taken to require demolition or removal of such residential property or fence.

VOLUNTARY PENALTY

12(1) The building inspector or the Village Clerk may, either before or after the institution of proceedings against a person for any violation of this by-law or order of the building inspector, accept from the person alleged to have been guilty of such violation, the

payment of a sum equal to the minimum penalty prescribed for such violation for a first offence and a person so accepting payment under this section shall forthwith forward to the Village Treasurer the amount so received and shall give a receipt to the said person for such sum.

12(2) A payment made under subsection (1) shall constitute a full satisfaction, release and discharge of all penalties and imprisonment incurred by such person for such violation.

FIRST READING: **In its Entirety, *February 17, 2010***

SECOND READING: **By Title, *March 17, 2010***

THIRD READING: **By Title and Enacted, *June 16, 2010***

IN WITNESS WHEREOF Blacks Harbour has caused its corporate seal to be hereunto affixed to this by-law the 16th day of June 2010.

TM James
Mayor

Heather Chase
Municipal Clerk