

# MUNICIPALITY OF THE DISTRICT OF ARGYLE

## BY-LAW #41

### THE MAINTENANCE AND IMPROVEMENT OF PRIVATE ROADS

#### 1. SHORT TITLE

This By-Law may be cited as the “The Maintenance and Improvement of Private Roads By-Law.

#### 2. INTERPRETATION

In this By-Law,

- (a) “Act” means the Municipal Government Act, R.S.N.S, Chapter 18 of the Acts of 1998;
- (b) “Association” means a body corporate incorporated and in good standing under the Societies Act, which represents the owners within a Charge Area and to which all owners in a Charge Area are entitled to be a voting member of;
- (c) “Charge” means a charge imposed pursuant to Section 81 of the Municipal Government Act in an amount to be determined pursuant to this Bylaw and payable in respect of the road maintenance and/or improvement;
- (d) “Charge Area” means an area to which a Charge is imposed and as more fully described in a petition for road maintenance and/or improvement submitted pursuant to this Bylaw;
- (e) “Dwelling” means a residential unit as identified by the Property Valuation Services Corporation filed roll;
- (f) “Fiscal Year” means the period from April 1st to March 31st;
- (g) “Improvement” means the work undertaken on a road to increase or improve upon the existing condition or level of service of a road;
- (h) “Maintenance” means the work required to maintain a road’s existing condition or level of service;
- (i) “Municipality” means the Municipality of the District of Argyle;
- (j) “Owner” means:
  - i. an owner, part owner, joint owner, tenant in common or joint tenant of any interest in the whole or any part or parcel of land or a building in a Charge Area and having the right to use the road;
  - ii. in the case of the absence or incapacity of a person or persons having ownership of any interest in the parcel of land or building, a trustee, an executor, a guardian, an agent, a mortgagee in possession or a person having the care or control of land or building in a Charge Area and having the right to use the road; or
  - iii. in the absence of proof to the contrary, the person assessed for the taxes on the parcel of land or building in a Charge Area and having the right to use the road;
- (k) “Parent Parcel” means the parcel which keeps the primary Assessment Account Number A Bylaw Respecting
- (l) “Petition” means a written request to the Municipality to levy a charge for the maintenance and improvement of private roads submitted by the duly elected executive officers of an Association;

- (m) “Road” means any private street, private roadway, private highway or private traveled way, or portion thereof, situated in the Municipality;
- (n) “Seasonal Dwelling” means a residential unit as identified by the Property Valuation Services Corporation filed roll; and occupied as a secondary residence, not used or intended to be used for year-round occupancy, and not occupied for greater than six months per calendar year;
- (o) “Special Resolution” means a resolution passed by not less than three fourths of such members entitled to vote as are present in person or by proxy, where proxies are allowed, at a general meeting of which notice specifying the intention to propose the resolution as a special resolution has been duly given.

### **3. CHARGE IMPOSED**

3.1 The Municipality may levy a charge for maintenance and improvement of a road upon the owners of property within a Charge Area in an amount necessary to provide for such maintenance and improvement where the duly elected executive officers of an Association petition the Municipality for a purpose provided for under Section 81 of the Municipal Government Act; and

3.1.1. the petition referred to in clause 3.1 is accompanied by:

- i. an estimated yearly maintenance and improvement budget for that year which was passed by a Special Resolution at a duly called meeting of the Association;
- ii. a copy of the Special Resolution approved by the Association requesting the Municipality to collect a Charge for the maintenance and/or improvement of roads;
- iii. proof of the Associations good standing with the Registry of Joint Stocks;
- iv. a copy of the Associations Memorandum of Understanding and Bylaws which clearly states that the object or purpose of the Association is to carry out maintenance and/or improvements to the road(s);
- v. a Plan clearly showing the Charge Area, the lots affected and the road(s) in the Charge Area; and
- vi. any additional information as deemed necessary by the Municipality;

3.1.2 The Association has entered into an Agreement with the Municipality which:

- i. requires that the Association shall be responsible for performing, or contracting, the work associated with the improvement or maintenance of the road(s) in a Charge Area;
- ii. indemnifies and saves harmless the Municipality from any and all liability or responsibility with respect to the work associated with the improvement or maintenance of the road(s) in a Charge Area;
- iii. identifies the basis of the Charge and the Charge Area ; and
- iv. contains any other clauses as deemed necessary by the Municipality.

3.2. The petition referred to in clause 3.1 shall be in a form as prescribed by the Municipality and shall be submitted no later than the 31st day of January prior to the fiscal year in which the charges are to begin.

3.3. The Agreement referred to in clause 3.1 shall be in a form agreed to by the Association and the Municipality, signed by the Association's signing officers. Any amendments to the Agreement proposed by the Association shall be in consultation with the Municipality and submitted for approval by the Municipality no later than the January 31st.

#### **4. CHARGE IMPOSED**

4.1 A Charge levied pursuant to Section 3, shall be determined in accordance with the provisions of this Bylaw and may be calculated based on:

- 4.1.1. the assessment of each lot, being a rate of an amount per \$100.00 of assessed value of the property within the Charge Area;
- 4.1.2. a Charge per property within the Charge Area;
- 4.1.3. a Charge per Dwelling unit within the Charge Area; or

4.2. Where the method of charge is based on either a charge per property or a charge per dwelling unit, up to three billable Charge amounts are permitted for each Charge Area. The individual Charge amount shall only be based on:

- 4.2.1. lot frontage;
- 4.2.2. lot area;
- 4.2.3. location on the road;
- 4.2.4. type of occupancy (i.e. Dwelling or Seasonal Dwelling); or
- 4.2.5. use of the property (i.e. developed lots or undeveloped lots).

The Association must clearly identify the chosen method of calculating the billable charges and must clearly identify the properties subject to each of the billable charge amounts.

4.3. For all methods of charge, each property shall only be assigned one charge amount which may be reviewed annually.

4.4. Any changes to the method of calculating a charge within a Charge Area must be approved by Special Resolution at a duly called meeting of the Association and shall require amendments to the Agreement between the Municipality and the Association. Any change request must be submitted for approval by the Municipality no later than the January 31st for the following fiscal year.

#### **4.5. Dispute of Measurement**

In the event of a dispute between a property owner and the Municipality as to any measurements or area of a property, the owner shall retain, at his or her sole expense, a Licensed Nova Scotia Land Surveyor, who shall certify to the measurements or area of the property and submit the same to the Municipality.

## **5. ADMINISTRATION CHARGE**

5.1. The total amount of the Charge levied by the Municipality shall not exceed the estimated annual cost of the road(s) maintenance and improvements and an administration charge of five percent (5%).

## **6. EXEMPTIONS FROM CHARGE**

6.1. Notwithstanding the provisions of this Bylaw, the Municipality may, upon request, exempt from a charge any property within a Charge Area where the property owner does not use the road upon which the Charge is being levied and the property abuts and has access to a private or public road not located within the Charge Area.

6.2. The Municipality may revoke the exemption for any property within a Charge Area where there is evidence that the property owner is using the road(s) within the Charge Area. The Municipality will inform the Association of any exemptions granted or revoked.

6.3. All Municipal, Provincial and Federal properties are exempt from such charges.

## **7. ANNUAL MAINTENANCE CHARGE**

7.1. Where the Municipality has accepted the petition and signed an Agreement for roads maintenance and improvement, the Association shall submit on an annual basis a budget for the estimated road maintenance and improvement cost for the Fiscal Year. This Budget shall be approved by a majority vote as per the Association's Bylaws at a duly called meeting of the Association. The Budget, a copy of the minutes of the duly called meeting and proof of good standing with the Registry of Joint Stocks shall be received by the Municipality no later than January 31st of each calendar year.

## **8. LIEN**

8.1. A Charge imposed pursuant to this Bylaw constitutes a lien upon the property with respect to which the Charge has been made and the Charge may be calculated in the same manner as taxes and shall be made payable in the same manner as taxes.

8.2. The lien provided for in this Bylaw shall become effective, on the date which the CAO and/or Deputy CAO of the Municipality and the Association's signing officers sign the Agreement. The Agreement shall identify the area(s) subject to an annual Charge for road maintenance and improvement as provided for in this Bylaw and shall remain effective from year to year until terminated pursuant to this Bylaw.

8.3. The lien provided for in this Bylaw shall remain in effect until the Charge plus interest has been paid in full.

8.4. Where a property subject to a lien is subdivided, the amount of lien plus interest shall stay with the parent parcel;

## **9. NOTICE OF CHARGE**

9.1. Upon signing the Agreement pursuant to clause 8.2, the Municipality shall notify the owner(s) of each property within the Charge Area of the charge payable by the owner(s) and the basis for

the Charge.

9.2. The notice needs only to be sent to each owner upon signing the Agreement and not annually.

## **10. PAYMENT OF CHARGES**



10.1. A Charge payable pursuant to this Bylaw for road maintenance and improvements shall be due at the same time that taxes and rates are due in each year.

## **11. TERMINATION OF CHARGES**

11.1. The Charge imposed pursuant to this Bylaw may be terminated at any time by the Association by filing with the Municipality a signed copy of a Special Resolution passed at a duly called meeting requesting the Municipality to terminate the Charge; or

11.2. The Charge imposed pursuant to this Bylaw may be terminated at any time by the Municipality, at its own discretion, if there has been non-compliance by the Association with the provisions of this By-law or the Agreement;

11.3. In either case, once all monies payable pursuant to this Charge have been collected, the Agreement shall thenceforth have no further force or effect within the Charge Area.

Chief Administrative Officer's Annotation for Official By-Law Book	
Date of First Reading	November 9, 2021
Date of Advertisement of Notice of Intent to Consider	November 17, 2021
Date of Second Reading	December 2, 2021
Date of Advertisement of Passage of By-Law	December 8, 2021
Date of Mailing to Minister a Certified Copy of By-Law	December 10, 2021
Effective Date of By-Law	December 16, 2021
I certify that this Maintenance and Improvement of Private Roads By-Law #41 was adopted by Council and published as indicated above.	
 _____ Warden	<u>December 16, 2021</u> Date
 _____ Chief Administrative Officer	<u>December 16, 2021</u> Date