

MUNICIPALITY OF THE DISTRICT OF YARMOUTH

**Local Improvement By-Law
L-068-09**

Effective Date:
December 22,
2009.

- 1) This By-Law is enacted pursuant to Sections 81 and 179 of the Municipal Government Act, S.N.S. 1998, c. 18, and shall be known and may be cited as the *Local Improvement By-Law* of the Municipality of the District of Yarmouth.

Definitions

2) In this By-Law:

- (a) “**Adjacent Property**” means a parcel or lot of property, other than an *Exempt Property*, which has a common boundary with a *Street* in which a *Local Improvement* is or will be situated, provided that some portion of the *Local Improvement* is located immediately beside the parcel or lot of property.
- (b) “**CAO**” means the Chief Administrative Officer of the Municipality of the District of Yarmouth.
- (c) “**Charge**” means the recovery of costs through a uniform area rate equal to the relevant components of the area service rates.
- (d) “**Corner Property**” means an *Adjacent Property* situated at an intersection or junction of two or more *Streets*, such that the property has *frontage* on more than one *Street*, provided that each such *street* either
- I. has been improved and has been the subject of a municipal *local improvement charge* attaching to the property in question for the applicable type of *local improvement*, irrespective of whether the *charge* was levied under a previous by-law or pursuant to this By-Law, or
 - II. is unimproved but is potentially eligible for future *local improvement* under this By-Law in respect of the applicable type of *local improvement*.
- (e) “**Director of Public Works**” includes any person assigned or designated by the Director to carry out tasks or activities or exercise discretion which this By-Law assigns to the *Director of Public Works*, including the Property Information Manager.
- (f) “**Dwelling**” means a suite operated as a housekeeping unit, used or intended to be used as a domicile by one or more persons and usually containing cooking, eating, living, sleeping and sanitary facilities.
- (g) “**Effective Date**” means the date of issuance of Substantial Completion Certificate for the *local improvement*
- (h) “**Engineer**” means the appointed *engineer* of the Municipality or a consultant *engineer* engaged by the Municipality, or any other person engaged by the

MUNICIPALITY OF THE DISTRICT OF YARMOUTH

**Local Improvement By-Law
L-068-09**

Effective Date:
December 22,
2009

Municipality who, in the opinion of the Council, is competent to carry out the duties normally assigned to an *engineer*.

- (i) **“Exempt Property”** means property exempted by the *Municipal Government Act* from paying a *charge* levied under this By-Law.
- (j) **“Flat Rate”** is an amount in dollars representing the cost of providing services divided by the total number of *Adjacent Property* to determine the rate to be included in the Area Rate for services which rate may change from time to time to reflect increases in the cost of such annual services.
- (k) **“Frontage”** means the length of the common boundary, or common portion of boundary, between an *Adjacent Property* and the portion of a *Street* in which a *Local Improvement* is or will be situated, irrespective of whether the boundary is a front, rear or side boundary of the *Adjacent Property*, or along a side or end of a *Street*. In calculating *frontage* the following rules shall apply:
 - I. Where a *Local Improvement* does not extend the full length of the *Street*, *frontage* shall only be measured to a point perpendicular to the end-point of the *Local Improvement*, except that at a cul-de-sac, inside corner or similar circumstance, if a property is effectively fully-serviced by a *Local Improvement*, the *frontage* shall be measured along the entire such common boundary irrespective of perpendiculars;
 - II. For Corner Properties *frontage* shall be adjusted by reducing the actual measured *frontage* by 50% unless, Council specifies otherwise at the time of approving a Petition or that said lot has potential for subdivision under the Municipality of the District of Yarmouth’s Subdivision By-Law.
- (l) **“Local Improvement”** includes any of the following activities: laying out, opening, paving, constructing, repairing, improving, and maintaining *streets*, curbs, sidewalks, gutters, bridges, culverts, retaining walls and other improvements, but excludes maintenances of the paving and ancillary works.
- (m) **“Owner”** includes a part *owner*, joint *owner*, tenant in common or joint tenant of the whole or any part of any real property fronting on a *street*, and also includes any trustee, executor, guardian, agent or other person having the care or control of such real property in case of the absence or disability of the person having title thereto.
- (n) **“Permits”** means any *permit*
- (o) **“Sewer Service Area”** means those areas within Municipality of the District of Yarmouth serviced by a public sewer system.
- (p) **“Street”** means a Provincially or Municipally owned *street*, highway, road, lane,

MUNICIPALITY OF THE DISTRICT OF YARMOUTH

**Local Improvement By-Law
L-068-09**

Effective Date:
December 22,
2009

travelled way, bridge, or square and includes the portion of the *street* right-of-way which is not used for vehicular traffic but which is available for use for installation of services, or as a shoulder, ditch or buffer.

- (q) **“Total Cost”** means the *total cost* to the Municipality of undertaking the *Local Improvement* exclusive of any direct funding for the *Local Improvement* provided to the Municipality by or through the Province of Nova Scotia or the Government of Canada or any funding agencies or programs of those governments.

Council Approval of Local Improvement Project

- 3) Council may approve the expenditure of funds for a proposed *Local Improvement*, to be funded by *Charges* based on *Frontage* of Adjacent Properties, if it has received a petition in accordance with the petition process set out in this By-Law which Council is satisfied is valid and signifying Majority Approval. In spite of receiving such a petition, Council shall retain the discretionary right to decline to carry out such a *Local Improvement*. If at the time of approving a *Local Improvement* under this Section, Council determines that it is unfair and inappropriate to reduce the *Frontage* for a *corner property* pursuant to s. 2(k)(II), it may so direct and the *Charge* shall be computed accordingly, and the petition shall be deemed valid. Council may however direct that the affected property *owner* be contacted in the event that the change in the *frontage* calculation might affect the outcome of the petition process.

Petition Process

- 4) One or more *Owners* of Adjacent Properties who are proponents of the *Local Improvement* may initiate a petition process in compliance with this section, in order to request Council to carry out a *Local Improvement* funded by *frontage charges* in accordance with this By-Law:
- (a) Before circulating a petition, the form of the petition shall be developed with or approved by the *Director of Public Works* and shall include at the minimum:
- I. an accurate description of the nature of the proposed *Local Improvement* and its precise geographic location, identified on a plan or diagram showing the *Local Improvement* and identifying the Adjacent Properties and all pertinent information pertaining to the request;
 - II. a summary of the *Local Improvement* funding formula set out in this By-Law;
 - III. an estimate by the *Director of Public Works* as to the anticipated *Total cost* of the *Local Improvement*, the anticipated amount of the *Frontage Rate* and its annual payment, the proposed *Flat Rate* or proposed area rate, but the Municipality shall not be liable and *owners* of Adjacent Properties shall not be relieved of paying the true amount of the *Charge* in the event that any such estimates prove to be wrong;

MUNICIPALITY OF THE DISTRICT OF YARMOUTH

**Local Improvement By-Law
L-068-09**

Effective Date:
December 22,
2009

- IV. a petition signature sheet or sheets on which shall be listed beside each signature space the civic address, assessed *owner* and property identification number of each *Adjacent Property* according to the Municipality's records, and a column shall be included on the petition sheets for identification of *Frontage* for each such property. At the discretion of the *Director of Public Works*, the column for *Frontage* for each *Adjacent Property* may be completed in advance of circulating the petition, to include estimates by the *Director of Public Works* of the applicable entries for individual *Adjacent Properties*, but the Municipality shall not be liable and *owners* of *Adjacent Properties* shall not be relieved of paying the true amount of the *Charge* in the event that any such estimates prove to be wrong;
- V. In the petition sheets no more than one signature space shall be provided for each *Adjacent Property*;
- VI. A warning in a form satisfactory to the *Director of Public Works* that estimates may be inaccurate or subject to change.
- VII. Valid expiration date of petition.
- (b) The petition shall be circulated by the proponents to the *Owners* of as many *Adjacent Properties* as reasonably possible, but that in any event a copy of the Petition shall be mailed or delivered at their current address.
- (c) Where an *Adjacent Property* has more than one *Owner*, the signature of one *Owner* of an *Adjacent Property* shall be taken to signify the consent of other *owners* of the same property.
- (d) The *Director of Public Works* shall review the petition submitted by the proponent, and may carry out such verification or validation process as he or she deems fit before submitting the petition to Council with an opinion from staff as to whether the petition is valid and signifies Majority Approval for the proposed *Local Improvement*.

Majority Approval for Local Improvement

- 5) I. Where an individual or individuals, representing *ownership* of two-thirds (2/3) of the *frontage* on any one *street*, file a petition with the Municipal CAO requesting that the Municipality make an improvement to the said *street*, the Municipality may make such improvement by levying a *charge* upon all of the *owners* of *frontage* on the said *street*.
- II. Notwithstanding subsections (1), on an emergency basis for safety reasons, the Council may give approval to a project without approval from the *owners* of *frontage*.
- III. *Owners* of *frontage*, other than *corner property*, who do not have entrances on

MUNICIPALITY OF THE DISTRICT OF YARMOUTH

**Local Improvement By-Law
L-068-09**

Effective Date:
December 22,
2009

access roads to subdivisions or the *street* being considered will only be *charged* 50% of their *frontage* for that *street*.

- IV. Subdivision *streets* will only be paved if their access roads are paved as well.
- V. Notwithstanding subsection (1) above, only *streets* on which two thirds (2/3) of the total number of lots have *dwellings* constructed on them will be considered for *local improvements*.

Repeal of Approval for Local Improvement Due to Delay Before Construction

6) Where Council has approved or conditionally approved construction of a *Local Improvement* pursuant to section 3 of this By-Law, but construction of the *Local Improvement* has neither commenced nor been contracted for within 24 months of the approval by Council due to uncertainties over funding contributions or approvals from other levels of government, or for any other reason, an *Owner of Adjacent Property* may circulate a petition, in a form satisfactory to the *Director of Public Works*, to seek repeal of the Council approval for the *Local Improvement*. The process shall generally be similar to the petition process outlined above, with any necessary changes for context, and including up to date information in the petition document. In the event that such a process indicates that there is no longer Majority Approval for the *Local Improvement*, Council may reverse its decision approving the *Local Improvement*.

Charge and Lien

- 7) *Local Improvement* shall be funded by a *Charge*. Upon completion of construction of a *Local Improvement*, the CAO shall calculate the amount of the *Charge* which shall be applied to each *Adjacent Property* in respect of the *Local Improvement*. Its *total Cost* and the amount of the *Charge* applicable to each *Adjacent Property* shall become effective due and payable upon billing of such *charge*.
- 8) The *charge* shall be calculated according to the following formula, with the total *frontage* being based on both sides of the *street*:

Chg = *Charge*

TF = Total *Frontage* abutting subject *street*

PF = Portion of total *frontage* owned by particular individual

TC = Total cost of improvements

$$\text{Chg} = \frac{\text{PF}}{\text{TF}} \times \text{TC}$$

9) The *Charge* levied under this By-Law:

(a) Becomes effective when the *Engineer* files with the CAO a Certificate of Substantial Completion that the improvement has been completed; and

(b) Shall remain in effect until the *Charge* together with interest at the rate of 1.5%

MUNICIPALITY OF THE DISTRICT OF YARMOUTH

**Local Improvement By-Law
L-068-09**

Effective Date:
December 22,
2009

percent per month, or portion thereof, on the entire amount from time to time outstanding has been paid.

(c) Is a lien on the whole of the property which has a *frontage* on the improved *street* and the lien has the same effect as a lien for rates and taxes under the Municipal Government Act and

(d) Is collected at the option of Council and in the same manner and at the same time as are rates and taxes under the Municipal Government Act.

10) Notwithstanding the other provisions of this By-Law, in a case where a lot has two (2) or more *frontages*, the longest *frontage* will be assessed at its full length when its *Charge* is calculated and the other *frontage* or *frontages* will be assessed at 50% of their respective full lengths when their respective *frontages* become subject to the *Charge* calculation.

Payment of Charge over Time and Interest

11) At the option of the *Owner* of a property which is subject to a *Charge*, the *Charge* may be paid in up to ten (10) equal annual installments together with interest on the unpaid balance at 18% per annum compounded annually completed from the *effective date* of the *Charge*, subject to the provisions that:

(a) in the event of default of payment of any installment, the entire unpaid balance, including interest, becomes due and payable;

(b) in the event of default of payment of any installment, the interest on the amount of the default shall be computed at the same rate prescribed for the late payment of other real property taxes payable to the Municipality; and

(c) an *Owner* may pay off the *Charge* and extinguish the lien at any time by paying the entire unpaid balance, including any accumulated interest.

12) (1) If the *owner* defaults in any one annual installment the entire balance of the *Charge* then becomes due and owing.

(2) The installment option will not change the date upon which the entire sum becomes due for the purposes of calculating interest thereon pursuant to section (b).

MUNICIPALITY OF THE DISTRICT OF YARMOUTH

**Local Improvement By-Law
L-068-09**

Effective Date:
December 22,
2009

Clerk's Annotation For Official By-Law Book

Date of first reading: November 12 2009

Date of advertisement of Notice of Intent to Consider: November 24, 2009

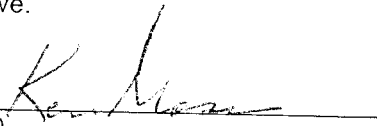
Date of second reading: December 9, 2008

Date of advertisement of Passage of By-Law: December 22, 2009

Date of mailing to Minister a certified copy of By-Law: December 23, 2009

I certify that this by-law was adopted by Council and published as indicated above.

CAO



December 23, 2009

Date

Date Last reviewed: December 9, 2009

Date of last amendment: December 9, 2009