

THE CORPORATION OF THE CITY OF ENDERBY

BYLAW NO. 1640

A BYLAW TO PROTECT STORMWATER AND REGULATE DRAINAGE

WHEREAS the City of Enderby has established drainage works for the collecting, impounding, conveying, and discharging of surface and other waters;

AND WHEREAS under section 69 of the *Community Charter*, Council may, by bylaw, regulate the design and installation of drainage works, including those provided by persons other than the municipality, and require property owners to connect their buildings and structures to the works, as well as impose requirements on persons undertaking the construction of works to maintain the proper flow of water in a stream, ditch, drain, or sewer in the municipality or to reclaim or protect part of the land mass of the municipality from erosion by any cause;

AND WHEREAS under section 64 of the *Community Charter*, Council may regulate, prohibit, and impose requirements in relation to the protection and enhancement of the well-being of its community with respect to nuisances, disturbances, and other objectionable situations;

AND WHEREAS under section 8(3)(j) of the *Community Charter* and section 2(1)(a) of the *Spheres of Concurrent Jurisdiction – Environment and Wildlife Regulation*, a municipality may regulate, prohibit, and impose requirements in relation to polluting or obstructing, or impeding the flow of, a stream, creek, waterway, watercourse, waterworks, ditch, drain or sewer, whether or not it is located on private property;

NOW THEREFORE Council of the City of Enderby, in open meeting assembled, hereby ENACTS AS FOLLOWS:

Citation

1. This bylaw may be cited as the “City of Enderby Stormwater Protection and Drainage Regulation Bylaw No. 1640, 2017”.

Definitions

2. For the purposes of this bylaw:
 - a. “City” means the City of Enderby.
 - b. “contaminant” means any substance other than uncontaminated water that injures, or is capable of injuring, the health or safety of a person, property, or life form, or capable of damaging the environment, or is capable of interfering with the operation of the drainage system.
 - c. “Director” means the Director of Public Works and Engineering or designate for the City of Enderby, as appointed by the Chief Administrative Officer.
 - d. “drainage element” means any part of the drainage system.

- e. “drainage service” means the collection service for stormwater and other permitted discharges provided by the City of Enderby that makes use of, relies upon, or is affected by the drainage system.
- f. “drainage system” means the system and network of watercourses, mains, pipes, culverts, drains or sewers, drainage works, pump stations, flood boxes, dike gates or valves, catch basins, leads, curbs, and gutters, located in the City, whether on private or public property, by which stormwater and other permitted discharges are conveyed to a receiving environment, other watercourse, detention area, or other terminal area or deposit point.
- g. “nutrient-laden water” means water which contains fertilizers or other substances which accelerate plant or weed growth.
- h. “owner” has the same meaning as in the *Assessment Act*.
- i. “person” has the same meaning as in the *Interpretation Act* which, for certainty, includes “owner” as defined in this bylaw.
- j. “prohibited material” means any sediment, earth, construction or excavation wastes, cement, concrete, pesticides, fertilizers, nutrient-laden water, sewage, soaps, paints, chemicals, chlorinated water, waste oil or any material or substance which is a “hazardous product”, “contaminant”, “toxic substance”, “deleterious substance”, “special waste”, “dangerous good” or “reportable substance” that is identified, described in, or defined by any applicable statute, regulation or law, including other bylaws of the City, or that may constitute a hazard to the health of humans or animals, or that may be detrimental to the environment, or that may inhibit a drainage system or any part thereof.
- k. “stormwater” means water resulting from natural precipitation from the atmosphere and which is intended to be transported by a drainage system.
- l. “watercourse” means and includes a natural or constructed stream, canal, ditch, reservoir, retention pond, ditch, channel, swale, or other surface feature designed to convey or hold stormwater or other drainage, whether it contains such water continuously or intermittently, and whether it is located on private or public property within the City.

Scope and Purpose

- 3. This bylaw applies to all land within the City of Enderby.
- 4. The scope of this bylaw is limited to stormwater collection and the drainage system.
- 5. This bylaw exempts a drainage element that is not connected to or does not appreciably affect the drainage system, such as a swale or minor ditch situate upon a single property that only conveys a small amount of localized drainage or a personal stormwater detention or rainwater harvesting device such as a rain barrel or cistern.
- 6. This bylaw excludes groundwater from its scope.

7. This bylaw is intended for the sole use and benefit of the City in the fulfillment of its municipal purposes and services, and does not confer any powers, rights, or remedies upon an owner of private property otherwise available in law.
8. The purpose of this bylaw does not provide for:
 - a) the protection of any person from economic loss, property damage, or personal injury; or
 - b) the assumption by the City of any responsibility for ensuring or enforcing compliance with this bylaw; or
 - c) a warranty to any person that compliance with this bylaw will prevent flooding, pollution, or other nuisance to any person or property.

General

9. The Director is responsible for administering and enforcing this bylaw.
10. The Director shall be admitted access to an owner's property during reasonable hours in order to inspect, photograph, or test any portion of the drainage system, or to determine compliance with this bylaw. The Director shall be admitted access to the owner's property at any time during an emergency or imminent emergency in order to assess, restore, or order the repair of a damaged or altered portion of the drainage system, or to determine compliance with this bylaw.
11. An owner shall ensure that the terms and conditions of this bylaw, under which connection to the drainage system is provided, are not breached. The owner shall be liable for any breach.
12. The City may limit, interrupt, terminate, or refuse drainage service, or limit when a person may make use of the drainage service, in circumstances where the discharge may interfere with works being undertaken on the drainage system by the City, or when there is an emergency, or when the public interest may so require.
13. Drainage service is provided on the condition that a person makes no claim against the City, its Council, officers, agents and employees acting within the scope of their employment. It is further a condition that a person shall make no claim for any indirect, incidental or consequential damage and indemnifies and saves harmless the City in respect of all claims arising from the provision of the drainage service.
14. Nothing in this bylaw shall be interpreted as limiting or circumscribing the municipal protections provided by section 744 [*Immunity in relation to certain nuisance actions*] of the *Local Government Act*.
15. Nothing in this bylaw shall be interpreted as relieving a person from complying with Federal, Provincial and local government enactments and, in the event of a conflict between the provisions of this bylaw and a Federal or Provincial enactment, the more stringent shall apply except that, in the event of an incompatibility such that the provisions of one cannot be met without contravening the other, the provisions of the Federal or Provincial enactment shall prevail to the extent of the incompatibility.

Permits and Connections

16. Every owner shall apply for and obtain a permit from the Director prior to commencement of construction for any of the following activities:
 - a) constructing in or over a watercourse;
 - b) installing a culvert on a ditch or watercourse;
 - c) enclosing or filling a ditch or watercourse;
 - d) constructing within seven (7) metres of the toe of a dike;
 - e) constructing within six (6) metres of a top of bank adjacent to a ditch or watercourse;
 - f) altering or obstructing a watercourse;
 - g) constructing an agricultural irrigation system.
17. An owner must make application to the City for a permit to connect or otherwise discharge to the public drainage system. The application must include a plan of the proposed work prepared by a qualified professional, a report by a qualified professional evaluating the potential impacts of the proposed works on the quality of stormwater and the functionality of the drainage system, as well as any mitigation measures that the applicant will take to minimize adverse effects on the drainage system while the work is carried out.
18. The requirement for a permit does not apply to connections made prior to the effective date of this bylaw, except that the Director may require the owner to prepare a report by a qualified professional if the Director has a reasonable concern or there is a real or proposed change in the quantity, quality, or rate of discharge. In the event that an existing connection changes in size, location, or other appreciable fashion after the effective date of this bylaw, the permit requirement shall apply.
19. It is the owner's responsibility to ensure that elevations are met in order to connect a private property to part of a drainage system. The City is not obligated to meet the elevation of, or connect to, any private drainage system installed prior to the installation of the service connection. The owner is responsible for all costs associated with connecting to the drainage system.
20. The Director may waive the permit requirement if, in the opinion of the Director, the proposed works are of a minor nature unlikely to have an appreciable impact upon the drainage system or if the requirements and intent of this bylaw are, in the opinion of the Director, suitably addressed through a Building Permit or other development application or approval process.
21. The Director may attach terms and conditions to the issuance of a permit as are necessary to ensure that construction is carried out or a connection is made to the City's satisfaction and appropriate approvals have been obtained, as well as validating flow assumptions and verifying maintenance requirements.

22. A permit under this bylaw, including a permit waived by the Director, in no way relieves an owner from responsibility for adhering to all applicable bylaws, statutes, and regulations.
23. The lack or waiving of a permit for a drainage system or any part thereof, including any part of a drainage system constructed or functional prior to the effective date of this bylaw, shall not absolve an owner from a regulation, prohibition, or requirement made under this bylaw.

Discharge

24. No person shall cause or permit any contaminant or prohibited material to be discharged, dumped, deposited, spilled or washed, directly or indirectly, into the drainage system.
25. No owner shall connect, or allow to remain connected, a sanitary sewer to any part of the drainage system.
26. No person shall wash or permit the washing of concrete material from any driveway, sidewalk, patio, other impervious surface, or residue from concrete trucks or mixing devices, into the drainage system.
27. An owner must maintain and ensure the ongoing functionality of any stormwater interceptor or other stormwater quality control device on their property unless it is owned and maintained by the City, and must keep records related to the maintenance of the interceptor or other device for at least three (3) years, which must be provided to the Director upon demand.
28. An owner must maintain and ensure the ongoing functionality of any stormwater flow control device or system on their property unless it is owned and maintained by the City, and must keep records related to its maintenance for at least three (3) years, which must be provided to the Director upon demand.
29. An owner must maintain and keep clear any catch basin on their property that connects with the drainage system, unless it is owned and maintained by the City.
30. Subject to the other provisions of this bylaw, a person may discharge into the drainage system:
 - a) stormwater and run-off from melt and subsurface water;
 - b) wastewater customarily incidental to a residential use of land, including water resulting from natural precipitation and the drainage of such water, tending lawns and gardens, non-commercial car washing, and driveway washing, as well as other forms of uncontaminated water; and
 - c) wastewater customarily incidental to street cleaning, building washing, hydrant and water main flushing, dechlorinated swimming pool water, and firefighting activities.

31. Codes of practice may be implemented by the Director to authorize discharge to the drainage system for activities other than those allowed above, for which conditions may vary by particular business, class of business, or type of use. A condition of the approval and the ongoing authorization of any code of practice is that the management practices and facilities, if any, must be maintained with records kept by the owner as proof of service. If a code of practice establishes a requirement in relation to a specific discharge which differs from a provision of this bylaw, the code of practice shall prevail to the extent of the conflict. At the Director's discretion, a code of practice may not be required where adequate stormwater control or treatment devices are installed and maintained by a business in accordance with this bylaw or there is no appreciable impact to drainage quality, quantity, or ate.

Culverts

32. An owner must keep in good repair any culvert which is part of the drainage system that is located on private property or on public property for the benefit of the owner, such as a driveway crossing.
33. The Director may order the maintenance, repair, replacement, or right-sizing, at the owner's expense, of any culvert which is part of the drainage system that is located on private property or on public property for the benefit of the owner, such as a driveway crossing.
34. The City shall not be responsible to repair or restore any owner improvements constructed on top of or adjacent to a culvert which is part of the drainage system that is located on private property or on public property for the benefit of the owner.

Watercourses

35. Subject to the provisions of this bylaw and Federal and Provincial enactments, all watercourses on private property shall be maintained by every owner to allow and maintain the flow of water in the established direction unless varied by permit.
36. No person shall foul, obstruct, alter, or impede the flow, directly or indirectly, of a watercourse, regardless of whether it is situate on public or private property, unless that person has first obtained a permit to do so from the Director.
37. No person shall construct, install, improve, alter, extend, repair, renew, maintain, remove any bridge, culvert or culvert headwall, enclose a ditch, construct an access, or perform any other works in or over a watercourse or other component of the drainage system, whether or not it is located on private property, unless that person has first obtained a permit to do so from the Director, except that this requirement may be deferred during an emergency in order to repair or restore a drainage element to its previous functional state or otherwise maintain a drainage element, provided a reasonable effort is made to notify the City during the emergency or as soon as possible thereafter.
38. An owner may allow the City to maintain a watercourse, subject to any consideration, terms, and conditions to which the parties agree, in which case, the owner shall provide suitable access for labour and equipment to each watercourse maintained by the City under agreement. The owner must indemnify and save the City harmless from any liability associated with such maintenance.

39. The City may, at its discretion, undertake maintenance of a watercourse for the benefit of an owner or group of owners in the absence of an explicit agreement. The City shall in no way warranty or assume liability for such maintenance, and such maintenance shall not relieve the owner or owners of their responsibility to maintain the watercourse notwithstanding a discretionary undertaking by the City.

Erosion and Sediment Control

40. A person must not discharge water at such a rate, quantity, or quality, nor obstruct or alter a drainage system or any part thereof, such that it causes or is likely to cause erosion of the land mass of the municipality.
41. The Director may require an erosion and sediment control plan for any development where the site is:
- a) within 30 metres of a watercourse; or
 - b) contains slopes greater than 15 percent; or
 - c) has a history of erosion or soil and slope instability.

Remedies

42. Should prohibited material enter the drainage system, the owner or contractor performing the work must immediately notify the appropriate Federal and Provincial agencies as well as the City and, under the direction of those entities, the owner or contractor must take immediate steps to capture, contain and remove such prohibited material, as well as remedial action with respect to any qualitatively or functionally diminished drainage system or part thereof, or receiving environment.
43. If any owner, person or contractor is carrying on any construction work, or any other activity, in contravention of this bylaw, or which in the opinion of the Director is causing, or is likely to result in a discharge of prohibited material into the drainage system or cause erosion, harm, or nuisance, then the Director may order the immediate suspension of all or any portion of such construction work or other activity by posting a notice (Cease and Desist Order) to that effect at the place where the construction work, or other activity, is occurring. The Director may further direct that steps be taken by the owner or contractor to prevent further erosion, fouling, or discharge of prohibited material into the drainage system.
44. Failure to obtain a permit under this bylaw from the Director may result in the Director ordering the immediate suspension of all or any portion of such construction work or other activity by posting a notice (Cease and Desist Order) to that effect at the place where the construction work, or other activity, is ongoing. Where the construction work or other activity has been completed without a permit under this bylaw from the Director, the City may remove or rectify the construction, activity or discharge at the owner's expense, which may include requiring the owner to expose or uncover any works for the purpose of inspection or evaluation.

45. If, in the opinion of the Director, immediate steps should be taken to prevent the escape of prohibited material from part of a drainage system on private property, or to stop an escape which is ongoing, and/or if the Director is not satisfied that the owner or contractor has taken the appropriate steps to mitigate the release of prohibited material, then the City may enter onto the property to take steps necessary in the circumstances.
46. The Director may order an owner to construct, maintain, or restore any part of a drainage system on private property that is causing or is likely to cause erosion of the land mass of the municipality.
47. Should an owner fail to maintain the drainage system or any part thereof that is located on private property, or alters a watercourse without permit, the Director may order the owner to remedy the matter and, should the owner fail to do so, the City may enter private property in order to undertake a remedy at the owner's expense.
48. The cost of any work done by the City will be assessed to the owner. If the costs remain unpaid as of December 31 of the same year, the amount shall be deemed to be taxes in arrears and may be collected in accordance with Part 7, Division 14 of the *Community Charter*.
49. The City is in no way liable for works, including remedial activities, which it undertakes pursuant to this bylaw on private property due to the absence, failure, or refusal of an owner, or in an emergency, provided it takes such actions in good faith.
50. The City is in no way liable for failing to undertake works, including remedial activities, which it undertakes pursuant to this bylaw on private property due to the absence, failure, or refusal of an owner, or in an emergency.

Penalty

51. Every person who violates any provision of this bylaw, or fails to comply with the terms and conditions of a permit, or an order issued under this bylaw, commits an offence punishable upon summary conviction and will be liable to a fine of up to and including the maximum penalty provided by the *Offence Act* and, where the offence is continuing, each day that offence is continued will constitute a separate offence.
52. Every person who violates any provision of this bylaw, or fails to comply with the terms and conditions of a permit, or an order issued under this bylaw, may be issued a ticket under the City of Enderby Municipal Ticketing Information System Bylaw No. 1518, 2013 and/or the City of Enderby Bylaw Notice Enforcement Bylaw No. 1581, 2015, as amended from time to time.

Severability

53. If any section or lesser portion of this bylaw is held invalid by a court of competent jurisdiction, it will be severed and the validity of the remaining provisions of this bylaw will not be affected.

Effective Date

54. This Bylaw shall come into force and effect as of the date of adoption.

READ a FIRST time this 5th day of September, 2017.

READ a SECOND time this 5th day of September, 2017.

READ a THIRD time this 5th day of September, 2017.

ADOPTED this 18th day of September, 2017.

Mayor

Chief Administrative Officer