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Under section 191 of the *Local Governance Act*, the Lieutenant-Governor in Council makes the following Regulation:

Citation

1 This Regulation may be cited as the *Dangerous or Unsightly Premises and Property Regulation – Local Governance Act*.

Definitions

2 The following definitions apply in this Regulation.

“Act” means the *Local Governance Act. (Loi)*

“dwelling” means a building, any part of which is used or intended to be used for human habitation. (*habitation*)

“dwelling unit” means one or more rooms located within a dwelling used or intended to be used for human habitation. (*logement*)

“inspector” means an inspector appointed under section 12. (*inspecteur*)

“land registration office” means a registry office established under the *Registry Act* or a land titles office established under the *Land Titles Act. (bureau d’enregistrement des biens-fonds)*

“premises” means lands within 150 m on either side of the right-of-way of a highway. (*lieux*)

Offences and penalties relating to dangerous or unsightly premises

3(1) Except as provided for under this Regulation, no person shall permit premises owned or occupied by him or her to be unsightly by permitting to remain on any part of the premises

(a) any ashes, junk, rubbish or refuse,

(b) an accumulation of wood shavings, paper, sawdust or other residue of production, construction or demolition,

(c) a derelict vehicle, equipment or machinery or the body or any part of a vehicle, equipment or machinery, or

(d) a dilapidated building.

3(2) No person shall permit a building or other structure owned or occupied by the person to become a hazard to the safety of the public by reason of being vacant or unoccupied.

3(3) No person shall permit a building or other structure owned or occupied by the person to become a hazard to the safety of the public by reason of dilapidation or unsoundness of structural strength.

3(4) A person who violates or fails to comply with subsection (2) or (3) commits an offence that is, subject to subsection (5) and section 16, punishable under Part 2 of the *Provincial Offences Procedure Act* as a category F offence.

3(5) Despite subsection 56(6) of the *Provincial Offences Procedure Act*, if a person who is leasing a dwelling or dwelling unit to another person commits an offence under subsection (4) in relation to the dwelling or dwelling unit, the minimum fine that may be imposed by a judge under that Act in respect of the offence shall be \$1,000.

Notice

4(1) If a condition referred to in subsection 3(1), (2) or (3) exists, an inspector may notify

(a) the owner or occupier of the premises, building or other structure,

(b) the person managing or receiving the rent for the premises, building or other structure, whether on the person's own account or as agent or trustee of any other person, or

(c) the person who would receive the rent if the premises, building or other structure were let.

4(2) A notice under subsection (1) shall

(a) be in writing,

(b) be signed by the inspector,

(c) state which condition mentioned in subsection 3(1), (2) or (3) exists,

(d) state what must be done to correct the condition, and

(e) state the date before which the condition must be corrected.

4(3) A notice referred to in subsection (1) may be given in the following ways:

(a) if the person to be notified is an individual,

(i) by personal delivery to the individual,

(ii) by registered mail to the individual's latest known address, or

(iii) by posting the notice in a conspicuous place on the premises, building or other structure, and

(b) if the person to be notified is a corporation,

(i) by personal delivery to an officer, director or agent of the corporation or to a manager or person who appears to be in control of any office or other place of business in the Province where the corporation carries on business,

(ii) by registered mail to the corporation's registered office, or

(iii) by posting the notice in a conspicuous place on the premises, building or other structure.

4(4) A notice that is posted in a conspicuous place under subparagraph (3)(a)(iii) or (b)(iii) shall be deemed to have been given to an individual or corporation on the day it was posted.

4(5) A notice given to a person referred to in paragraph (1)(b) or (c) shall be deemed to have been given to the owner of the premises, building or other structure.

Evidence

5(1) Proof of giving a notice in a manner provided for in subsection 4(3) may be made by a certificate or an affidavit purporting to be signed by the inspector referred to in subsection 4(1) naming the person named in the notice and specifying the time, place and manner in which notice was given.

5(2) A document purporting to be a certificate under subsection (1) shall be

(a) admissible in evidence without proof of signature, and

(b) conclusive proof that the person named in the certificate received notice of the matters referred to in the certificate.

5(3) In a prosecution for a violation of a provision of this Regulation in which proof of the giving of the notice is made in accordance with subsection (1), the onus is on the accused to prove that the accused is not the person named in the certificate or affidavit.

5(4) A notice given under section 4 and purporting to be signed by an inspector shall be

(a) received in evidence by any court in the Province without proof of signature,

- (b) proof, in the absence of evidence to the contrary, of the facts stated in the notice, and
- (c) in a prosecution for a violation of an offence under this Regulation, proof, in the absence of evidence to the contrary, that the person named in the notice is the owner or occupier of the premises, building or other structure in respect of which the notice was given.

Offence and penalty for failure to comply with a notice

6(1) A person who fails to comply with the terms of a notice given under section 4 commits an offence that is, subject to subsection (2) and section 16, punishable under Part 2 of the *Provincial Offences Procedure Act* as a category F offence.

6(2) Despite subsection 56(6) of the *Provincial Offences Procedure Act*, if a person who is leasing a dwelling or dwelling unit to another person commits an offence under subsection (1) in relation to a notice given under section 4 with respect to the dwelling or dwelling unit, the minimum fine that may be imposed by a judge under that Act in respect of the offence is \$1,000.

6(3) The conviction of a person under this section does not operate as a bar to further prosecution for the continued neglect or failure on the person's part to comply with the provisions of this Regulation.

Power to clean, repair or demolish

7(1) If an owner or occupier does not comply with a notice given under section 4 within the time set out in the notice, the Minister may, rather than commencing proceedings in respect of the violation or in addition to doing so,

- (a) cause the premises of that owner or occupier to be cleaned up or repaired if the notice arises out of a condition contrary to subsection 3(1),

(b) cause the building or other structure of that owner or occupier to be repaired or demolished if the notice arises out of a condition contrary to subsection 3(2), or

(c) cause the building or other structure of that owner or occupier to be demolished if the notice arises out of a condition contrary to subsection 3(3).

7(2) The costs of carrying out any work set out in subsection (1), including any associated charge or fee, is chargeable to the owner or occupier and becomes a debt due to the Crown in right of the Province.

7(3) For the purpose of subsection (1), the Minister or a person acting on behalf of the Minister may, at all reasonable times, enter the premises, building or other structure in order to clean up or repair the premises or repair or demolish the building or other structure, as the case may be.

7(4) Before or after attempting to gain access to any place under this section, the Minister or a person may apply for an entry warrant in accordance with the *Entry Warrants Act*.

7(5) For the purposes of this section, the Minister or other person shall not enter a private dwelling unless the Minister or other person

(a) is entering with the consent of a person who appears to be an adult and an occupier of the dwelling, or

(b) has obtained an entry warrant under the *Entry Warrants Act*.

7(6) The Minister or a person acting on behalf of the Minister is not liable to compensate an owner or occupier or any other person by reason of anything done by or on behalf of the Minister or other person in the reasonable exercise of his or her powers under this section.

Offences and penalties for obstruction

8(1) No person shall refuse entry to or obstruct or interfere with the Minister or other person referred to in subsection 7(3) who under the authority of that subsection is entering or attempting to enter premises or a building or other structure.

8(2) A person who violates or fails to comply with subsection (1) commits an offence that is, subject to subsection (3) and section 16, punishable under Part 2 of the *Provincial Offences Procedure Act* as a category E offence.

8(3) Despite subsection 56(6) of the *Provincial Offences Procedure Act*, if a person who is leasing a dwelling or dwelling unit to another person commits an offence under subsection (2) in relation to the dwelling or dwelling unit, the minimum fine that may be imposed by a judge under that Act in respect of the offence is \$1,000.

Report required before demolition

9 The Minister shall not proceed to act under paragraph 7(1)(c) unless the Minister has a report from an architect, an engineer, a building inspector or the fire marshal that the building or structure is dilapidated or structurally unsound and that report is proof in the absence of evidence to the contrary that the building or structure is dilapidated or structurally unsound.

Recovery of Minister's costs – filing of certificate

10(1) If the cost of carrying out work or the cost of taking measures becomes a debt due to the Crown in right of the Province under subsection 7(2), the Minister 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.

10(2) A certificate issued under subsection (1) may be filed in The Court of Queen's Bench of New Brunswick and the filed certificate shall be entered and recorded in the Court and may then be enforced as a judgment obtained in the Court by the Minister against the person named in the certificate for a debt in the amount specified in the certificate.

10(3) All reasonable costs and charges associated with filing, entering and recording a certificate under subsection (2) may be recovered as if the amount had been included in the certificate.

Lien

11(1) Despite subsection 72(2) of the *Workers' Compensation Act*, the cost of carrying out work under subsection 7(1) and all reasonable costs and charges associated with filing, entering and recording a certificate under section 10 shall, until they are paid, form a lien on 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 to a special lien under subsection 117(9) or 164(11) of the Act.

11(2) The lien under subsection (1)

(a) attaches when the work under subsection 7(1) begins and does not require registering or filing any document or giving notice to any person to create or preserve it, and

(b) is not defeated by a change in the ownership of the real property.

11(3) A mortgagee, judgment creditor or other person having a claim, privilege, lien or other encumbrance on or against the real property to which a lien under subsection (1) is attached

(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 that are contained in the person's security.

Appointment of inspectors

12 The Minister may appoint the following persons to be inspectors for the purpose of ensuring compliance with this Regulation:

- (a) a person who is an employee of a regional service commission established under the *Regional Service Delivery Act*; and
- (b) any other person the Minister considers appropriate.

Inspections

13(1) After giving reasonable notice to the owner or occupier of the land, building or other structure to be entered to carry out an inspection, an inspector, for the purpose of enforcing this Regulation, may

- (a) enter the land, building or other structure, other than a private dwelling, and carry out the inspection,
- (b) request that anything be produced to assist in the inspection,
- (c) make copies or take extracts of anything related to the inspection, and
- (d) remove anything produced as a result of a request under paragraph (b) or discovered during the inspection for the purpose of making copies or taking extracts.

13(2) An inspector who removes a document or other thing from a place under subsection (1) shall first provide a receipt for it to the owner or occupier of the land, building or other structure and, subject to subsection (4), shall promptly return the document or other thing to the land, building or other structure after making copies or taking extracts, as the case may be.

13(3) An inspector may detain for the purposes of evidence any document or other thing that the inspector discovers while acting under this section and believes, on reasonable and probable grounds, may afford evidence of a violation of or a failure to comply with a provision of this Regulation.

13(4) Copies of or extracts from documents or things removed from land, a building or other structure under this Regulation and certified by the person making the copies or taking the extracts as being true copies of or extracts from the originals are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or from which they are extracts.

13(5) An inspector shall display or produce on request identification showing that he or she is authorized to make the entry.

13(6) When entering any dwelling, dwelling unit, land, building or other structure under this section, an inspector may be accompanied by a person to assist the inspector.

13(7) In an emergency, or in extraordinary circumstances, an inspector is not required to enter the land, building or other structure at a reasonable hour or give reasonable notice under this section and may do the things referred to in paragraph (1)(a), (c) or (d) without the consent of the owner or occupier.

Prohibitions and offences relating to inspections

14(1) No person shall knowingly make a false or misleading statement, either orally or in writing, to an inspector while the inspector is carrying out an inspection or attempting to carry out an inspection under this Regulation.

14(2) No person shall obstruct or interfere with an inspector who is carrying out or attempting to carry out an inspection under this Regulation, or withhold, destroy, conceal, alter or refuse to produce any information or thing reasonably required by the inspector for the purposes of the inspection.

14(3) A refusal of consent to enter a dwelling or dwelling unit is not and shall not be considered to be interfering with or obstructing within the meaning of subsection (2), except if an entry warrant has been obtained.

14(4) A person who violates or fails to comply with subsection (1) commits an offence that is, subject to subsection (6), punishable under Part 2 of the *Provincial Offences Procedure Act* as a category E offence.

14(5) A person who violates or fails to comply with subsection (2) commits an offence that is, subject to subsections (6) and section 16, punishable under Part 2 of the *Provincial Offences Procedure Act* as a category E offence.

14(6) Despite subsection 56(6) of the *Provincial Offences Procedure Act*, if a person commits an offence under subsection (1) or (2) in relation to a dwelling or dwelling unit, the minimum fine that may be imposed by a judge under that Act in respect of the offence is \$1,000.

Assisting inspectors

15(1) The owner or person in charge of an area, place or premises, and every person present there, shall give an inspector all reasonable assistance to enable the inspector to carry out his or her duties under this Regulation and shall give the inspector the information that he or she reasonably requests.

15(2) A person who violates or fails to comply with subsection (1) commits an offence punishable under Part 2 of the *Provincial Offences Procedure Act* as a category C offence.

Continuing offences

16(1) If an offence under subsection 3(2) or (3) or subsection 6(1) continues for more than one day,

(a) if the offence was committed in relation to a dwelling or dwelling unit by a person who is leasing the dwelling or dwelling unit to another person,

(i) the minimum fine that may be imposed is the sum of

(A) \$1,000, and

(B) the minimum fine set by the *Provincial Offences Procedure Act* for a category F offence multiplied by the number of days during which the offence continues after the first day, and

(ii) the maximum fine that may be imposed is the maximum fine set by the *Provincial Offences Procedure Act* for a category F offence multiplied by the number of days during which the offence continues, and

(b) in any other case,

(i) the minimum fine that may be imposed is the minimum fine set by the *Provincial Offences Procedure Act* for a category F offence multiplied by the number of days during which the offence continues, and

(ii) the maximum fine that may be imposed is the maximum fine set by the *Provincial Offences Procedure Act* for a category F offence multiplied by the number of days during which the offence continues.

16(2) If an offence under subsection 8(2) or 14(2) continues for more than one day,

(a) if the offence was committed by a person in relation to a dwelling or dwelling unit the person is leasing to another person,

(i) the minimum fine that may be imposed is the sum of

(A) \$1,000, and

(B) the minimum fine set by the *Provincial Offences Procedure Act* for a category E offence multiplied by the number of days during which the offence continues after the first day, and

(ii) the maximum fine that may be imposed is the maximum fine set by the *Provincial Offences Procedure Act* for a category E offence multiplied by the number of days during which the offence continues, and

(b) in any other case,

(i) the minimum fine that may be imposed is the minimum fine set by the *Provincial Offences Procedure Act* for a category E offence multiplied by the number of days during which the offence continues, and

(ii) the maximum fine that may be imposed is the maximum fine set by the *Provincial Offences Procedure Act* for a category E offence multiplied by the number of days during which the offence continues.

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