

MUNICIPALITY OF KILLARNEY - TURTLE MOUNTAIN

BY-LAW NO. 4-2017

Being a By-law of the Municipality of Killarney – Turtle Mountain to Regulate and Control Mining and Transportation of Aggregate in the Municipality of Killarney – Turtle Mountain and to be Known as the “Aggregate Mining and Transportation By-law”

WHEREAS *The Municipal Act* provides as follows:

“232(1) A Council may pass by-laws for municipal purpose respecting the following matters:

- (a) the safety, health, protection and well-being of people, and the safety and protection of property;
- (b) people, activities and things in, on or near a public place or a place open to the public, including parks, municipal roads, recreation centres, restaurants, facilities, retail stores, malls and private clubs and facilitates that are exempt from municipal taxation;
- (c) subject to section 233, activities or things in or on private property;
- (d) municipal roads, including naming the roads, posting the names on public or private property, and numbering lots and buildings along the roads;
- (e) private works on, over, along or under municipal roads;
.....
- (m) local transportation systems;
- (n) businesses, business activities and persons engaged in business;
- (o) the enforcement of by-laws.

232(2) Without limiting the generality of subsection (1), a council may in a by-law passed under this Division

- (a) regulate or prohibit;
.....
- (e) subject to the regulations, provide for a system of licenses, permits or approvals, including any or all of the following:
 - (i) establishing fees, and terms for payment of fees, for inspections, licenses, permits and approvals, including fees related to recovering the cost of regulation;
 - (ii) establishing fees for licenses, permits and approvals that are higher for persons or businesses who do not reside or maintain place of business in the municipality;
 - (iii) prohibiting a development, activity, industry business or thing until a license, permit or approval is granted;
 - (iv) providing that terms and conditions may be imposed on any license, permit or approval, and providing for the nature of the terms and conditions and who may impose them;

- (v) providing for the duration of licenses, permits and approvals and their suspension or cancellation or any other remedy, including undertaking remedial action, and charging and collecting the costs of such action, for failure to pay a fee or to comply with a term or condition or with the by-law or for any other reason specified in the by-law, and
- (vi) providing for the posting of a bond or other security to ensure compliance with a terms or condition,

239(1) If this or any other Act or a by-law authorizes or requires anything to be inspected, remedied, enforced or done by a municipality, a designated officer of the municipality may, after giving reasonable notice to the owner or occupier of land or the building or other structure to be entered to carry out the inspection, remedy, enforcement or action,

- (a) enter the land or structure at any reasonable time, and carry out the inspection, enforcement or action authorized or required by the Act or by-law;
- (b) request that anything be produced to assist in the inspection, remedy enforcement or action; and
- (c) make copies of anything related to the inspection, remedy, enforcement or action.

293 A municipality must maintain

- (a) municipal roads within its boundaries; and
- (b) land within its boundaries that is shown on a plan of subdivision registered by an applicant at a land titles office under *The Planning Act* as dedicated for public use as a municipal road, upon compliance by the applicant with any condition that is related to the road and required for approval of the plan.

294 A municipality is required to construct or maintain municipal road only to a standard that is appropriate for the use to which the municipality expects the roads to be put.

AND WHEREAS the Lieutenant Governor in Council has made Regulation No. 48/97 under section 232(2)(e) of *The Municipal Act* for the purpose of regulating aggregate mining and transportation fees and agreements;

AND WHEREAS the municipality wishes to provide for the licensing of aggregate mining and transportation within the municipality and to set fees payable in connection with such licensing;

NOW THEREFORE the Council of the Municipality of Killarney - Turtle Mountain in Council duly assembled enacts as a by-law the following:

1.0 DEFINITIONS:

1.1 In this by-law;

“Aggregate” means a quarry mineral that is used solely for construction purposes or is used as a constituent of concrete, other than in the manufacture of cement, and includes sand, gravel and crushed stone or rock;

“Aggregate Mining and Transportation License” means a license issued under paragraph 4.0 of this by-law.

“Mine”, “Mining” or “Mined” means the removal of a substance to a place outside the boundaries of a parcel or tract of land from which such substance has been extracted by means of digging or excavation.

“Municipality” means the Municipality of Killarney - Turtle Mountain.

"Municipal Road" means a municipal road as defined in *The Municipal Act* and which is located in the Municipality of Killarney - Turtle Mountain.

"Person" means a natural person, a partnership, a firm, a business, an association, a credit union, a cooperative, corporation or municipality.

"Pit Location" means the parcel or tract of land from which aggregate is mined and includes a pit location specified in an Aggregate Mining and Transportation license.

"Transport", "Transporting" or "Transported" means the movement of a substance from one place to another place.

2.0 APPLICATION

2.1 Unless provided to the contrary herein, this by-law applies to every person mining or transporting aggregate within the municipality, and where the final use is outside the municipality.

2.2 Other than as provided in the immediately following paragraph, this by-law does not apply to the Crown, a Crown Agency or the municipality.

2.3 For the purpose of paragraph 5, excepting subparagraph 5.1(a), the Crown or a Crown Agency shall be deemed to be a person required to have an Aggregate Mining and Transportation License.

3.0 PROHIBITIONS:

3.1 No person shall mine aggregate unless such person has a valid and subsisting Aggregate Mining and Transportation License.

3.2 No person shall transport aggregate on a municipal road unless:

- (a) such aggregate was obtained from a person required to have an Aggregate Mining and Transportation License; or
- (b) such aggregate was obtained from an entity deemed to be a person required to have an Aggregate Mining and Transportation License under paragraph 2.3 hereof; or
- (c) in any case other than as described in (a) or (b), such person pays to the municipality within five (5) days of the transport of aggregate, the full amount of fees calculated in accordance with sub-paragraphs 5.1(b) and (c).

3.3 No owner shall allow, suffer or permit the mining or transportation of aggregate from any land of the owner unless such land is specified as a pit location in a valid and subsisting Aggregate Mining and Transportation License.

3.4 Where a person transports aggregate that was mined from a pit location specified in a valid and subsisting Aggregate Mining and Transportation License or from a pit location for which such License should have been obtained, such person shall within a reasonable time provide to the Licensee or to the person who should have obtained a license, the following information:

- a) his full name and mailing address; and
- b) the full name and address of his employer, if any; and
- c) the quantity of aggregate transported by him from the pit location in question; and
- d) the route over which such aggregate has been or will be transported; and
- e) and other information necessary to calculate fees due or the party from whom they are due in accordance with sub-paragraph 5.1 (b)

4.0 LICENSES:

4.1 Aggregate Mining and Transportation Licenses shall be in the form attached hereto as Schedule "A".

4.2 Aggregate Mining and Transportation Licenses shall be valid and subsisting for a period of one year, commencing January 1 and ending December 31, notwithstanding the time of issuance.

4.3 Every person requiring an Aggregate Mining and Transportation License shall make application for such license at the office or the municipality and shall pay to the municipality the fee for such license at the time of application.

4.4 The fee for an Aggregate of Mining and Transportation License shall be \$100.00.

4.5 The holder of an Aggregate Mining and Transportation License shall produce such license to a designated officer of the municipality forthwith upon demand.

5.0 ADDITIONAL FEES:

5.1 A person required to have an Aggregate Mining and Transportation License shall pay fees to the municipality as follows:

- (a) a fee based on the quantity of aggregate mined in the municipality by that person during the calendar year specified in Column A and which fee shall be the lesser of the amounts calculated in Column B or Column C as follows:

Column A Year	Column B Rate per cubic metre	Column C Rate per tonne
2010	\$0.089	\$0.050
2011	\$0.107	\$0.060
2012	\$0.249	\$0.140
2013 and following	\$0.267	\$0.150

and,

- (b) a fee for the maintenance, repair and restoration of any municipal road used to transport aggregate mined by that person which fee shall be calculated by the following formula:

$$A \times B$$

In this formula,

A is the number of kilometers of municipal road over which the aggregate is transported;

B is the lesser of

- a) The number of tonnes of aggregate transported, multiplied by the rate per tonner set out in Column 1 of the following table for the relevant time period; and
- b) The number of cubic metres of aggregate transported, multiplied by the rate per cubic metre set out in Column 2 for the relevant time period.

Time Period	Column 1 Rate per tonne	Column 2 Rate per cubic metre
January 2010 to end of February 2010	\$0.0146	\$0.0256
March 2010 to end of November 2010	\$0.0303	\$0.0530

December 2010 to end of February 2011	\$0.0151	\$0.0266
March 2011 to end of November 2011	\$0.0315	\$0.0551
December 2011 to end of February 2012	\$0.0157	\$0.0277
March 2012 to end of November 2012	\$0.0328	\$0.0573
December 2012 to the end of February 2013	\$0.0164	\$0.0288
After February 2013, during the months of March to November	\$0.0341	\$0.0596
After February 2013, during the month of December, January and February	\$0.0170	\$0.0299

5.2 Where a person is required to have an Aggregate Mining and Transportation License in any part of a calendar year, such person shall provide to the municipality on or before February 25th in the next ensuing year, a complete and accurate record in the form attached hereto as Schedule B.

5.3 Where a person is required to have an Aggregate Mining and Transportation License in any part of a calendar year, such person shall maintain and retain for at least six years, complete and maintain accurate records sufficient to permit the calculation of fees payable under this by-law which records, without restricting the generality of the foregoing, shall include, in respect to all aggregate obtained by any person from the person required to have such License, the following:

- a) the name and address of persons transporting aggregate; and
- b) the quality of aggregate transported by any person; and
- c) the dates upon which aggregate was transported by any person; and
- d) The delivery point of aggregate transported by any person.

5.4 Fees payable by a person required to have an Aggregate Mining and Transportation License in any part of a calendar year, shall be remitted in full to the municipality on, or before February 25th in the next ensuing year.

5.5 Fees payable under this paragraph are a civil debt due to the municipality and the municipality may effect recovery of such debt in any manner available to it at law.

6.0 AGREEMENT IN LIEU OF FEES:

6.1 In lieu of payment of the fees referred to in sub-paragraphs 5.1(b) and (c), or either of them, the municipality may enter into agreements with persons required by this by-law to have an Aggregate Mining and Transportation License.

6.2 Any agreement made under the authority of this paragraph shall be in conformity with Manitoba Regulation 48/97, as amended from time to time and is subject to the approval of the Council of the municipality.

7.0 ENFORCEMENT:

7.1 Any person who contravenes any provision of this by-laws is guilty of an offense and is liable to a fine of not less than \$100.00 or more than \$500.00 or to imprisonment for a term not exceeding three months, or both.

7.2 Where any person contravenes any provision of this by-law for more than one day, such person is guilty of a separate offense for each day it continues.

7.3 Upon reasonable notice, a person required to have an Aggregate Mining and Transportation License in any year shall permit a designated officer of the municipality to enter upon any premises where records required under this by-law are kept, to examine such records and to make copies thereof.

8.0 COMING INTO FORCE:

8.1 This by-law comes into force and effect on the 1st of September, 2017.

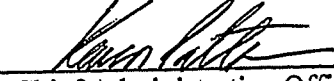
8.2 That By-Law No. 3 of 2008 enacted by the Municipality of Killarney - Turtle Mountain, February 27th, A.D. 2008, is hereby repealed.

DONE AND PASSED by Council of the Municipality of Killarney - Turtle Mountain duly assembled this 16th day of August, A.D., 2017.

Municipality of Killarney - Turtle
Mountain



Mayor



Chief Administrative Officer

Read a first time this 5th day of July, A.D., 2017.
Read a second time this 16th day of August, A.D., 2017.
Read a third time this 16th day of August, A.D., 2017.

SCHEDULE "A"

MUNICIPALITY OF KILLARNEY - TURTLE MOUNTAIN

AGGREGATE MINING AND/OR TRANSPORT APPLICATION AND LICENSE

To: Municipality of Killarney - Turtle Mountain
P.O. Box 10, Killarney, MB R0K 1G0

Name, Address, and Telephone Number

hereby make application for a license for the mining of aggregate at the following location:

EXISTING PIT _____

NEW DEVELOPMENT _____

LAND USE APPROVAL IN PLACE [] YES [] NO *

- Land use Approval must be in place before a license may be issued.

and for the transportation of that aggregate over the following highway(s) in the Municipality of Killarney – Turtle Mountain

I hereby agree to the following:

- a) to pay all fees and provide all records stipulated in the provisions of By-Law #4-2017 and amendments thereto, By January 1st of next year;
b) to provide the municipality through its officers, servants or agents, the right of entry to inspect and determine the weight and volumes of aggregate removed land within the Municipality and to provide proof of the Aggregate Mining License issued as a result of this Application and payment of the prescribed fee, upon request of any officer, servant or agent of the Municipality of Killarney - Turtle Mountain;
c) to forthwith surrender the license issued by the Municipality of Killarney -Turtle Mountain as a result of this Application and payment of the prescribed fee, upon the cancellation of it by the Municipality of Killarney - Turtle Mountain for non-compliance with By-Law #4-2017; and
d) My address to which all notices by the Municipality of Killarney -Turtle Mountain to me should be sent is:

Dated at the Municipality of Killarney - Turtle Mountain this ___ day of ___ 20__.

Signature of Applicant

License

This certifies that _____ is granted a license(s) as described above subject to terms and provisions of the Municipality's By-Laws.

License Fee: \$100.00 Received _____

Pit Location _____ ¼ Sec. _____ Twp. _____ Rge. _____

License Expiry Date: _____

Dated at the Municipality of Killarney - Turtle Mountain, in the Province of Manitoba this day of ___ 20__.

MUNICIPALITY OF KILLARNEY - TURTLE MOUNTIAN

P.O. Box 10

Killarney, MB R0K 1G0

SCHEDULE "B"

MUNICIPALITY OF KILLARNEY - TURTLE MOUNTAIN

AGGREGATE MINING AND/OR TRANSPORT APPLICATION AND LICENSE

**MUNICIPALITY OF KILLARNEY - TURTLE MOUNTAIN
AGGREGATE MINING AND TRANSPORT FEES
REMITTANCE YEAR _____**

COMPLETE ONE FORM FOR EACH ROUTE OF TRAVEL

LICENCE NO.			
PIT LOCATION	Sec.	Twp.	Range

COMPANY NAME:	
MAILING ADDRESS:	
TELEPHONE:	
CONTACT PERSON:	

Payment may be calculated using either Tonnes or cubic meters, it is not necessary to calculate both, **Aggregate taken from pits owned by the Crown or a Crown Agency are exempt from fees payable under Box A.**

BOX A – FEES FOR THE MINING OF AGGREGATE

NO. OF TONES OF AGGREGATE	RATE OF PAYMENT	\$ AMOUNT (BOX A)
Tonnes or		
Cubic metres		

BOX B – FEES FOR THE TRANSPORTATION OF AGGREGATE

PERIOD TRANSPORTED	AMOUNT TRANSPORTED	RATE OF PAYMENT	\$ AMOUNT (BOX B)
January & February	Tonnes Cubic Metres		
March to end of November	Tonnes Cubic Metres		
December	Tonnes Cubic Metres		
Total Sum of Amounts in Box B and Move to Box C			

BOX C – CALCULATION OF FEES FOR KILOMETRES TRAVELLED ON MUNICIPAL ROADS

\$ AMOUNT FROM BOX B	
MULTIPLIED BY NO. OF KILOMETERS TRAVELLED	X KMS
\$ AMOUNT (MOVE TO BOX D)	

BOX D – TOTAL PAYABLE TO MUNICIPALITY

\$ AMOUNT FROM BOX A	
\$ AMOUNT FROM BOX C:	
TOTAL PAYABLE :	

UPON COMPLETION, THIS FORM TOGETHER WITH PAYMENT IN THE AMOUNT FROM BOX E IS TO BE REMITTED TO THE MUNICIPALITY OF KILLARNEY - TURTLE MOUNTAIN, PO BOX 10, KILLARNEY MB R0K 1G0.

DATE RECEIVED _____