

CORPORATION OF THE TOWNSHIP OF ESQUIMALT

BYLAW NO. 2971

A Bylaw for the Regulation of the Use of the
Corporation of the Township of Esquimalt's Drainage System

WHEREAS, Council may, by bylaw, pursuant to section 8(3) of the *Community Charter* S.B.C. 2003 c. 26, regulate, prohibit and impose requirements in relation to municipal services, in relation to the protection and enhancement of the well-being of its community in relation to nuisances, disturbances and other objectionable situations, and in relation to the protection of the natural environment;

AND WHEREAS, pursuant to section 9 of the *Community Charter*, the Province of British Columbia (the "**Province**") has concurrent jurisdiction with municipalities in connection with protection of the natural environment, a council may not adopt a bylaw relating to the protection of the natural environment unless one of the conditions in section 9(3) has been met;

AND WHEREAS, the Province has enacted B.C. Reg. 144/2204 entitled "Spheres of Concurrent Jurisdiction – Environment and Wildlife Regulation" which provides in section 2(1)(a) that, for the purposes of section 9 of the *Community Charter*, 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, the Council of the Corporation of the Township of Esquimalt (the "**Township**"), in open meeting assembled, enacts as follows:

1.0 CITATION

This Bylaw may be cited for all purposes as the "**Watercourse and Drainage Regulation Bylaw, 2019, No. 2971**" (the "**Bylaw**").

2.0 DEFINITIONS

"**Air**" means the atmosphere but, except in a Sewer or a Storm Water Management Facility or as the context may otherwise require, does not include the atmosphere inside a constructed enclosure that is not open to the weather.

"**Air Contaminant**" means any Substance or odour whether gaseous, liquid, solid or a combination, that is emitted into the Air and that:

- (a) injures or is capable of injuring the health or safety of a person;
- (b) injures or is capable of injuring property or any life form;
- (c) interferes or is capable of interfering with visibility;
- (d) interferes or is capable of interfering with the normal conduct of business;
- (e) causes or is capable of causing material physical discomfort to a person; or

(f) damages or is capable of damaging the environment.

"Biomedical Waste" means biomedical waste as defined in the *Hazardous Waste Regulation*, as amended or replaced from time to time.

"Colour" means the true colour unit of Water from which turbidity has been removed, as determined by the appropriate procedure in Standard Methods.

"Contaminant" means any Substance, whether dissolved or suspected, or any waste water quality parameter that, when present above a certain concentration in Waste Water:

- (a) injures or is capable of injuring the health or safety of a person;
- (b) injures or is capable of injuring property or any life form;
- (c) interferes with or is capable of interfering with the proper operation of a Sewer or Storm Water Management Facility;
- (d) causes or is capable of causing material physical discomfort to a person; or
- (e) damages or is capable of damaging the environment.

"Composite Sample" means a sample which is composed of equivalent portions of a specified number of Grab Samples collected manually or automatically at the same sampling point, at specified times or flow intervals during a specified sampling period.

"Condensed Water" means Water which is produced through the process of condensation and includes condensate drainage from refrigeration equipment, air conditioning equipment and steam heating systems.

"Director" means the person duly appointed by Council as the Director of Engineering and Public Works, or any person acting under his or her authority.

"Discharge" means to directly or indirectly introduce into the Municipal Drainage System a Substance by any means.

"Domestic Waste" means Waste, Sanitary Waste and the water-carried wastes from drinking, culinary uses, washing, bathing, laundering or food processing which is introduced on a Residential Property.

"Enactment" means any applicable act, regulation, bylaw, order, or authorization, by a federal, provincial, regional, municipal government or their authorized representatives.

"Environmental Laws" means all applicable federal, provincial and municipal laws, statutes, ordinances, bylaws, codes, regulations, and all policies, guidelines, standards, protocols, orders, directives and decisions rendered or promulgated by any ministry, department or judicial, administrative or regulatory agency or body whatsoever relating to fisheries, public health and safety, occupational health and safety, the protection or preservation of the environment or the manufacture, operation, processing, distribution, use, treatment, storage, disposal, release, transport, handling or remediation of

Contaminants, including without limiting the generality of the foregoing, the *Environmental Management Act*, S.B.C. 2003 c. 53, as amended or replaced from time to time.

"Grab Sample" means a sample of Water or Storm Water collected at a particular time and place.

"Hazardous Waste" means "hazardous waste" as defined in the *Environmental Management Act* of British Columbia, as amended or replaced from time to time.

"Hazardous Waste Regulation" means the *Hazardous Waste Regulation* enacted pursuant to the *Environmental Management Act*, as amended or replaced from time to time.

"Municipal Drainage System" means all pipes, conduits, drains, equipment, works, facilities and all necessary appurtenances that are owned and operated by the Township and installed for the purpose of collecting, pumping, conveying, treating or disposing of Storm Water and Uncontaminated Water, and any Watercourses into which Storm Water and contaminated Water flows.

"Natural Watercourse" means a Watercourse or section of a Watercourse which has not been physically altered from its natural state other than cleaning, clearing or the removal of vegetation.

"Non-Domestic Waste" means all Waste except Domestic Waste, Trucked Liquid Waste, Sanitary Waste, Storm Water, and Uncontaminated Water.

"Nuclear Substance" means nuclear substance as defined in the *Nuclear Safety and Control Act* of Canada and Regulations under that Act, as amended or replaced from time to time.

"Oil and Grease" means an organic Substance or Substances recoverable by procedures set out in Standard Methods or procedures authorized by the Director and includes, but is not limited to, hydrocarbons, esters, fats, oils, waxes, and high-molecular weight carboxylic acids.

"Oil and Grease Interceptor" means an in-ground structure designed specifically to trap oil, grease and silt contained in Storm Water flows.

"PCB" means any monochlorinated, dichlorinated, or polychlorinated biphenyl or any mixture that contains one or more of these.

"Pesticides" means pesticides regulated under the *Pesticide Control Act* of British Columbia, as amended or replaced from time to time.

"pH" means the expression of the acidity or basicity of a solution as defined and determined by the appropriate procedure described in Standard Methods.

"Polluting Substance" means any Substance, whether liquid or solid, that damages or is capable of damaging the environment and includes any Substance that does not conform to one or more of the British Columbia Water Quality Guidelines for the Protection of Aquatic Life and the Canadian Council of Ministers of the Environment – Canadian Water

Quality Guidelines for the Protection of Aquatic Life, as amended or replaced from time to time.

"Pollution" means the presence in the environment of Substances or Contaminants that substantially alter or impair the health of the environment.

"Pool" means any Water receptacle designed for decorative purposes or used for swimming or as a bath or hot tub designed to accommodate more than one bather at a time.

"Premises" means any land or building or both or any part thereof.

"Prohibited Waste" means prohibited waste as defined in Schedule "A" to this Bylaw.

"Qualified Environmental Professional" means an applied scientist or technologist in good standing in British Columbia with an appropriate professional organization acting under that association's code of ethics and subject to disciplinary action by that association.

"Regional District" means the Capital Regional District.

"Residential Property" means a property which is used primarily for the purpose of residence by persons on a permanent, temporary or seasonal basis.

"Release" means spill, Discharge, leak, pump, pour, emit, empty, inject, leach, dispose, dump, deposit, spray, abandon, seep, place or any other similar action.

"Sanitary Waste" means Waste that contains human feces, urine, blood or body fluids originating from sanitary conveniences or other sources.

"Sanitary Sewer" means all pipes, conduits, drains and other equipment and facilities that are part of the Township's sanitary sewer system.

"Sewer" means all pipes, conduits, drains, and other equipment and facilities, owned or otherwise under the control or jurisdiction of the Regional District, the Township or one or more municipalities, for collecting, pumping, and transporting Waste Water and includes all such pipes, conduits, drains, and other equipment and facilities which connect with those of the Regional District, the Township or one or more municipalities.

"Sharps" means hypodermic needles, hypodermic syringes, blades, broken glass, and any devices, instruments or other objects which have acute rigid corners, edges or protuberances.

"Standard Methods" means the latest edition of "Standard Methods for the Examination of Water and Waste Water" jointly prepared and published by the American Public Health Association, American Water Works Association and the Water Environment Federation.

"Storm Drain" means a pipe, conduit, drain or other equipment or facilities intended or necessary to convey Storm Water from a Premises.

"Storm Sewer" means a pipe, conduit, drain or other equipment or facilities for the collection and transmission of Storm Water or Uncontaminated Water.

"Storm Water" means Water resulting from natural precipitation from the atmosphere, ground Water and street cleaning.

"Storm Water Management Facility" means an impoundment and appurtenant structures, connections and controls for containment, detention or retention of Storm Water and its delayed release at a controlled rate to a receiving Storm Sewer or Watercourse.

"Substance" includes any solid, liquid or gas.

"Trucked Liquid Waste" means any Waste that is collected and transported from the site where the Waste originated by means other than discharge to a Sewer including, but not limited to, holding tank waste, septic tank waste, chemical toilet contents, catch basin waste, Oil and Grease from interceptors or traps and other sludges of organic or inorganic origin.

"Uncontaminated Water" means any Water excluding Storm Water but including cooling Water, Condensed Water and Water from municipal Waterworks or a private Water supply to which no Contaminant has been added as a consequence of its use, or to modify its use by any person.

"Waste" means any Substance whether gaseous, liquid or solid, that is or is intended to be discharged or discarded, directly or indirectly, to a Sewer, Storm Sewer or Storm Water Management Facility.

"Waste Water" means the composite of Water and Water-carried Wastes from residential, commercial, industrial or institutional Premises or any other source.

"Waste Water Quality Parameter" means any parameter used to describe the quality of Waste Water.

"Water" includes surface water, ground water and ice.

"Watercourse" means a river, stream, creek, waterway, lagoon, lake, spring, swamp, marsh or other natural body of fresh Water or a canal, ditch, reservoir or other man-made surface feature in which Water flows constantly, intermittently or at any time.

"Waterworks" means any works owned or otherwise under the control or jurisdiction of the Regional District or one or more of its members that collects, treats, transports or stores drinking Water.

3.0 OBSTRUCTING WATERCOURSES

- 3.1 No person shall foul, obstruct or impede the flow of any Watercourse, Waterworks or Sewer, whether or not it is located on private property.

4.0 APPROVAL FOR WORK IN MUNICIPAL DRAINAGE SYSTEM

- 4.1 No person may:

- (a) connect to, disconnect from, alter, repair, remove, fill in, reconstruct, divert or carry out any other works within the Municipal Drainage System; or
 - (b) enclose or open any Watercourse in a drain or culvert,
- unless authorized in accordance with this section of the Bylaw.

4.2 A person who wishes to do work referred to in section 4.1 must:

- (a) apply to the Director for a drainage works permit on such form as the Director may prescribe from time to time;
- (b) submit drawings, plans and specifications with respect to drainage within the Premises, any proposed Storm Water Management Facilities and the Storm Drain service connection and other works necessary to connect the Premises to the Municipal Drainage System or enclose the Watercourse;
- (c) submit a written report, certified by a professional engineer, that evaluates the potential impacts of the proposed work on the quality of Storm Water and the Municipal Drainage System or Watercourse, including changes in Water flow patterns, hydraulic changes and the potential for flooding; and
- (d) pay all inspection and other applicable fees and charges as set out in the Subdivision and Development Control Bylaw, 1997, No. 2175, as may be amended or replaced from time to time.

4.3 The Director may waive the written report requirements under section 4.2(c) or (d) either in whole or in part if, in the opinion of the Director, the proposed works are of such a minor nature that they are unlikely to have any appreciable impact on the Municipal Drainage System or a Watercourse.

4.4 The Director may issue a drainage works permit upon being satisfied that the proposed work:

- (a) will not impair the quality of Storm Water; and
- (b) will not alter Storm Water flow patterns or flow rates in a manner that is likely to create or increase the risk of a nuisance, disturbance or other objectionable situation, including the accumulation of Water on the subject Premises or on any other Premises, increase the risk of flooding or environmental damage, or interfere with the proper functioning of the Municipal Drainage System or a Watercourse.

5.0 DISCHARGES TO STORM SEWERS AND WATERCOURSES

5.1 No person shall Discharge or allow, permit or cause to be Discharged into a Storm Sewer or Watercourse any Domestic Waste, Trucked Liquid Waste, Prohibited Waste, or Polluting Substance, other than as authorized by all applicable Environmental Laws.

5.2 No owner of a Premises shall Discharge or allow, permit, or cause to be Discharged into a Storm Sewer or Water course from their premises, any Domestic Waste, Trucked Liquid

Waste, Prohibited Waste, or Polluting Substance, other than as authorized by all applicable environmental laws.

5.3 Notwithstanding the prohibition contained in sections 5.1 and 5.2, a person may Discharge into a Storm Sewer or Watercourse Water resulting from domestic activities customarily incidental to a residential use of land including:

- (a) Water resulting from natural precipitation, and drainage of such Water;
- (b) Water resulting from garden and lawn maintenance, non-commercial car washing, building washing and driveway washing; and
- (c) Uncontaminated Water.

5.4 Notwithstanding the prohibition contained in sections 5.1 and 5.2, a person may Discharge into a Storm Sewer or Watercourse Water resulting from the following non-domestic activities:

- (a) street, hydrant and Water main flushing; and
- (b) firefighting activities.

6.0 POLLUTER PAYS FOR CLEANUP

6.1 Where an owner or occupier of a Premises Discharges, Releases or permits the Discharge or Release of any Domestic Waste, Trucked Liquid Waste, Prohibited Waste or Polluting Substance in contravention of this Bylaw, the person shall, in accordance with all environmental laws, immediately:

- (a) contain the Substance;
- (b) clean up any residue of the Substance;
- (c) clean up any area impacted by the Release or Discharge, including, without limitation, any portion of the Storm Sewer, the Sanitary Sewer, and any Watercourse and ditch, all to the satisfaction of the Director and to standards set out in any applicable Environmental Laws; and
- (d) provide the Director with a certificate from a Qualified Environmental Professional certifying that sections 6.1(a) through (c) have been complied with, and that there is no risk of further contamination of adjoining properties or the Municipal Drainage System.

6.2 If the Director determines that an owner or occupier has failed to comply with section 6.1, the Township may, by written notice, require the person to comply with section 6.1 (a "**Remediation Order**").

6.3 Each Remediation Order shall contain:

- (a) the name of the person to which it is directed, and the municipal address of the Premises to which it applies;

- (b) the particulars of how section 6.1 of this Bylaw has been contravened;
 - (c) a reasonable time within which section 6.1 is to be complied with;
 - (d) a statement that in the event the person does not comply with section 6.1 within the time given, the matter may proceed to Council for an order to comply; and
 - (e) a statement that, in the event that section 6.1 has not been not complied with within the time given in the Council order, the Township, by its employees, contractors and agents, may proceed to carry out such compliance, and that the costs of such will be charged to the Premises, and if not paid by December 31st of that year, will be added to the property taxes as taxes in arrears.
- 6.4 A person may only clean any portion of the Storm Sewer and Sanitary Sewer under a Remediation Order or otherwise if:
- (a) the person has received the advanced permission of the Director; and
 - (b) the person has engaged a Qualified Environmental Professional to perform the clean up, who has been approved in advance by the Director.
- 6.5 If a person fails to comply with a Remediation Order, Council may order that the person comply within a time specified in the order.
- 6.6 Prior to Council making an order, the person shall be given an opportunity to be heard by Council in respect of the matter contained in the Remediation Order.

7.0 EMERGENCY REMEDIATION

- 7.1 Notwithstanding sections 6.2 to 6.6, when the Director determines that an owner or an occupier (the "**Responsible Person**") has Discharged, Released or permitted the Discharge or Release of Domestic Waste, Trucked Liquid Waste, Prohibited Waste or a Polluting Substance in contravention of this Bylaw, and in the Director's opinion the Substance must be immediately contained to prevent, avoid, or mitigate against the Substance causing a significant and imminent threat or risk to the environment, Council may order that the Township, by its employees, contractors and agents:
- (a) contain the Substance;
 - (b) clean up any residue of the Substance; and
 - (c) clean up any area impacted by the Release, including without limitation, any portion of the Storm Sewer, the Sanitary Sewer, and any Watercourse and ditch, all to the satisfaction of the Director and to standards set out in any applicable Environmental Laws,
- all at the expense of the Responsible Person.
- 7.2 The Township may recover any amount expended acting pursuant to section 7.1 from the Responsible Person after serving the Responsible Person with a notice detailing the work performed and the amount owing (an "**Emergency Remediation Invoice**").

- 7.3 A person who has been served with an Emergency Remediation Invoice may apply to Council for a reconsideration of the requirement to pay contained in the Emergency Remediation Invoice by giving notice in writing to the Director within seven days of service of the Emergency Remediation Invoice. Upon reconsideration, Council must either confirm, amend or revoke the Emergency Remediation Invoice.
- 7.4 Any notice required to be served pursuant to this Bylaw shall be served by either:
- (a) personal service; or
 - (b) registered mail to the most recent address of the person to whom it is addressed, as shown on the Township's property tax records.

8.0 STORM WATER MANAGEMENT FACILITY

- 8.1 The owner of any lands within the Township shall keep any Storm Water Management located on the lands in good operating condition and shall service and repair the facility at least once per year. At the request of the Director, the owner of the lands shall provide satisfactory proof of service by a qualified contractor.

9.0 OIL AND GREASE INTERCEPTOR

- 9.1 The owner of any Premises containing any Oil and Grease Interceptor shall keep such Oil and Grease Interceptor in good operating condition and shall maintain and repair the device at least once per year from the date of completion of the interceptor.
- 9.2 At the request of the Director, the owner of the lands shall provide satisfactory proof of maintenance service by a qualified contractor.

10.0 INSPECTION

- 10.1 The Director or a Bylaw Enforcement Officer may enter at all reasonable times on any property that is subject to this Bylaw to ascertain whether the regulations of this Bylaw are being observed or the requirements of this Bylaw are being met.

11.0 OFFENCES AND PENALTIES

- 11.1 A person who contravenes this Bylaw commits an offence and is liable upon conviction to a fine of not more than \$10,000.
- 11.2 Each day that a violation occurs or continues shall constitute a separate offence.
- 11.3 This Bylaw may be enforced pursuant to the Bylaw Notice Enforcement Bylaw, 2014, No. 2839 and the Ticket Information Utilization Bylaw, 2005, No. 2619, as amended from time to time.

12.0 GENERAL

- 12.1 No person shall hinder or prevent the Director or a Bylaw Enforcement Officer from entering any Premises or from carrying out his or her duties with respect to the administration of this Bylaw.

12.2 Nothing in this Bylaw shall be interpreted as relieving a person discharging Waste from complying with Federal, Provincial and local government enactments governing the Discharge of Storm Water into Storm Sewers and Watercourses, and in the event of a conflict between the provisions of this Bylaw and a Federal or Provincial enactment the provisions of the Federal or Provincial enactment shall prevail.

12.3 In this Bylaw, words importing the male gender include the female gender and either includes the neuter and vice versa, and words importing the singular number include the plural number and vice versa.

12.4 The schedules attached to this Bylaw shall be deemed to be an integral part of this Bylaw.

12.5 If any provision of this Bylaw is found to be invalid by a court of competent jurisdiction it may be severed from the Bylaw.

13.0 REPEAL

13.1 The Watercourse and Drainage Regulation Bylaw, 1998, No. 2332 is hereby repealed.

READ a first time by the Municipal Council on the day of , 2019.

READ a second time by the Municipal Council on the day of , 2019.

READ a third time by the Municipal Council on the day of , 2019.

ADOPTED by the Municipal Council on the day of , 2019.

BARBARA DESJARDINS
MAYOR

RACHEL DUMAS
CORPORATE OFFICER

SCHEDULE "A"
PROHIBITED WASTE

Prohibited Waste means:

- 1. Hazardous Waste**
- 2. Biomedical Waste**
- 3. Air Contaminant Waste**

Any Waste which, by itself or in combination with another Substance, is capable of creating, causing or introducing an Air Contaminant, causing air pollution outside any Storm Sewer or Storm Water Management Facility or is capable of creating, causing or introducing an Air Contaminant within any Storm Sewer or Storm Water Management Facility which would prevent safe entry by authorized personnel.

- 4. Flammable or Explosive Waste**

Any Waste, which by itself or in combination with another Substance, is capable of causing or contributing to an explosion or supporting combustion in any Storm Sewer, Watercourse or Storm Water Management Facility including, but not limited to gasoline, naphtha, propane, diesel, fuel oil, kerosene or alcohol.

- 5. Obstructive Waste**

Any Waste which by itself or in combination with another Substance is capable of obstructing the flow of, or interfering with, the operation, performance or flow of any Storm Sewer, Watercourse or Storm Water Management Facility including, but not limited to earth, sand, sweepings, gardening or agricultural waste, ash, chemicals, paint, metal, glass, Sharps, rags, cloth, tar, asphalt, cement-based products, plastic, wood, waste portions of animals, fish or fowl, and solidified fat.

- 6. Corrosive Waste**

Any Waste with corrosive properties which, by itself, or in combination with any other Substance, may cause damage to any Storm Sewer or Storm Water Management Facility or which may prevent safe entry by authorized personnel.

- 7. High Temperature Waste**

- (1) any Waste which, by itself or in combination with another Substance, will create heat in amounts which will interfere with the operation and maintenance of a Storm Sewer or Storm Water Management Facility;
- (2) any Waste which will raise the temperature of Waste discharged by a Storm Sewer, Watercourse or Storm Water Management Facility by 2 degrees Celsius or more; or
- (3) any Waste with a temperature of 40 degrees Celsius or more at the point of discharge.

8. PCBs, Pesticides

Any Waste containing PCBs or Pesticides.

9. Pool Water

Any water from a Pool containing residual chlorine or chloramine.

10. Nuclear Substance

11. pH Waste

Any Waste which, prior to the point of discharge into a Storm Sewer or Watercourse, has a pH lower than 6.0 or higher than 9.0 as determined by either a Grab Sample or Composite Sample.

12. Dyes and Colouring Material

Dyes or Colouring materials which produce in a Grab Sample or Composite Sample a Colour value greater than or equal to 50 true Colour units, or that causes discolouration of water to such an extent that the Colour cannot be determined by the visual comparison method as set out in Standard Methods except where the dye is used by a municipality or regional district as a tracer.

13. Miscellaneous Wastes

Any Waste which by itself or in combination with another Substance:

- (1) constitutes or may constitute a health or safety hazard to any person; or
- (2) causes Pollution in any Storm Sewer, Watercourse or Storm Water Management Facility.

14. Disinfectant Process Water

Any water from a Waterworks containing residual chlorine or chloramine remaining from the disinfection of the Waterworks or any part of the Waterworks but does not include water containing chlorine or chloramine ordinarily added to a supply of potable water by a municipality, the Regional District, the Greater Victoria Water District or an Improvement District.

15. Fill

Soil, sand, clay, gravel, rock or other material of which land is composed.