

THE CORPORATION OF THE MUNICIPALITY OF MAGNETAWAN

BY-LAW No. 2015-19

**BEING A BY-LAW TO ENTER INTO AGREEMENT FOR THE
JOINT ENFORCEMENT OF THE BUILDING CODE ACT, 1992
WITH THE TOWN OF KEARNEY**

WHEREAS Section 3 of the Building Code Act, 1992 as amended (the Act) authorizes Municipalities to enter into an Agreement to jointly enforce the Act;

AND WHEREAS the Municipality of Magnetawan and the Town of Kearney wish to utilize that authority to enter into an Agreement which is attached hereto as Appendix 'A';

NOW THEREFORE, THE COUNCIL OF THE CORPORATION OF THE MUNICIPALITY OF MAGNETAWAN ENACTS AS FOLLOWS:

1. The Mayor and Clerk are hereby authorized to execute the Joint Enforcement Agreement, attached hereto as Appendix 'A';
2. Appendix 'A', attached hereto and forming part of this By-law, shall be the Agreement;
3. All conditions of the Agreement will remain in effect until the Agreement is terminated, as outlined.

ADOPTED June 24, 2015

**THE CORPORATION OF THE
MUNICIPALITY OF MAGNETAWAN**



Sam Dunnett, Mayor



Roger Labelle, Clerk Administrator

Council MTG. of June 24/15
Agenda Item # 8.1.

Appendix 'A'

JOINT BUILDING CODE ACT, 1992 ENFORCEMENT AGREEMENT

Between

THE CORPORATION OF THE TOWN OF KEARNEY
(Kearney)

and

THE CORPORATION OF THE MUNICIPALITY OF MAGNETAWAN
(Magnetawan)

WHEREAS Section 3 of the Building Code Act, 1992 (the Act) authorizes municipalities to jointly provide for the enforcement of the Act;

AND WHEREAS Kearney and Magnetawan have agreed to jointly enforce the Act subject to the provisions of this Agreement and the Act;

AND WHEREAS the parties agree the Chief Building Official and any other Inspectors that may be engaged shall be employees of Kearney;

NOW THEREFORE both the Town of Kearney and the Municipality of Magnetawan agree as follows:

1. Term

This Agreement shall be for an indefinite term, subject to the termination provisions set out in Section 6.

2. Chief Building Official: Brian Horsman

The parties acknowledge that Kearney has appointed and employed Brian Horsman as its Chief Building Official (the CBO). Magnetawan shall, upon the approval and execution of this Agreement, appoint Brian Horsman as its Chief Building Official.

3. Cost Sharing

The Parties shall share, equally, all costs related to the employment of the Chief Building Official. Kearney shall be responsible for administering all employment related matters including but not limited to payment of wages and statutory deductions. In addition Kearney shall be responsible for paying for any educational or training programs. All of the foregoing shall be referenced as the "shared expenses".

4. Division of Time

The CBO's time and work efforts on behalf of each party shall be allocated as set out in Schedule A and subject to the provisions therein.

5. Support Services

Each party shall be responsible for providing for support services related to the enforcement of the Act within its jurisdiction. The cost of such support services shall not be a shared expense as contemplated in Section 3. Support services may include those services set out in Schedule B.

6. Termination of this Agreement

Either party may terminate this Agreement by delivering ninety (90) days written notice of the termination to the other party. Upon delivery of such notice, Kearney shall cause to be undertaken an accounting of all amounts

owing by Magnetawan under this Agreement which amount shall be due and payable as of the date of termination.

7. Potential Termination or Resignation of Brian Horsman

Should the Parties agree upon the termination of Brian Horsman as CBO or should Brian Horsman give notice of his resignation, the parties shall jointly select a replacement and amend this Agreement to substitute the name of the newly selected CBO in place of Brian Horsman.

8. Termination of Brian Horsman: No Mutual Intent

Where the parties do not agree upon the termination of Brian Horsman, the following provisions apply:

8.1 Whereupon Kearney wishes to terminate Mr. Horsman, it shall provide thirty (30) days written notice to Magnetawan and Magnetawan shall have the option of retaining Mr. Horsman as its CBO and terminating this Agreement. Magnetawan shall provide notice of its decision within twenty (20) days of receipt of the notice from Kearney. Should it decide to retain Mr. Horsman, this Agreement shall be terminated as of the tenth (10th) day following receipt of such notice whereupon all accounts under this Agreement shall be reconciled and Magnetawan shall pay any amounts owing to Kearney under this Agreement. If Magnetawan decides not to retain Mr. Horsman such decision shall be deemed to be a decision to consent to the termination and the provisions of Section 9 shall apply.

8.2 Where Magnetawan wishes to terminate Mr. Horsman it shall provide a notice of termination as set out in Section 6.

9. Termination: For Cause and Not For Cause

Further to Section 5 (and where applicable 8.2), where such termination is “not for cause” the parties agree that any termination/severance package for Brian Horsman shall be shared equally notwithstanding that Brian Horsman was an employee of the Town of Kearney for eleven (11) months prior to this Agreement. Where termination is “for cause” and is challenged/disputed by Brian Horsman, the parties agree to jointly defend any claim for “wrongful dismissal” and share equally in any judgment whether it imposes liability on the parties or whether the parties are entitled to costs as a result of any legal proceedings.

10. No Outside Work

The parties agree that the CBO shall not be permitted to undertake any building design works, consultation on code compliance or construction on behalf of any landowner or tenant of land within Kearney or Magnetawan, except where such owner or tenant is a member of the CBO’s immediate family. The CBO shall be advised in writing by both parties that violation of this provision shall be cause for dismissal without any further warning.

11. Access to Employment Related Records

Magnetawan is entitled to have access to any employment contract or related employment information which is maintained in the records held by Kearney. Where Magnetawan requires documentation contemplated herein it shall make its request in writing and Kearney shall provide such documents within a reasonable time. For the purposes of MFIPPA, Magnetawan shall be deemed to be the joint employer of the Chief Building Official.

12. Payment of Shared Expenses

Kearney shall invoice Magnetawan for the shared expenses on a quarterly basis and such amounts shall be due and payable within fifteen (15) days of the end of a quarter. Late payments shall be subject to interest at rate of 1.25% per month.

13. Judicial Proceedings

Each Municipality shall be responsible for the conduct and expense of any enforcement proceedings initiated by or against the Chief Building Official under the Act. The parties also agree that any claims, suits or actions initiated against the respective Municipality related to or arising from alleged negligence in the enforcement of the Act shall be the responsibility of the respective Municipality.

14. Insurance

The Municipalities agree to each maintain an insurance policy relating to and covering the related good faith performance or non-performance of services, within their territorial jurisdiction for the entire term of this Agreement. Proof of such an insurance policy must be to the other party upon demand.

15. Indemnification

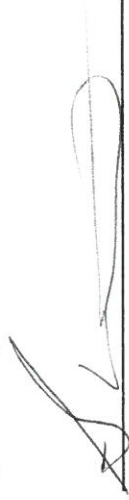
The Municipality agrees on behalf of itself, its successors and assigns, to indemnify and save harmless the partner Municipality, its servants and agents from and against any actions, causes of actions, damages, suits, claims and demands whatsoever which may arise, either directly or indirectly, out of the good faith performance or non-performance of the services provided herein and in connection with the carrying out of the provisions of the Agreement within each parties respective territorial jurisdiction.

16. Good Faith Resolution of Disputes

Any disputes arising from or related to the administration of this Agreement shall be resolved through good faith attempts. Each part shall direct two members of its Council along with the Clerk to meet and discuss the disputed issue and report back to their respective councils with a proposed resolution for approval and implementation. Where a resolution is not attained each party remaining may opt to enforce the provisions of this Agreement by court application.

This Agreement entered into this 24 day of June, 2015.

By the Corporation of the Municipality of Magnetawan



Mayor



Clerk

By the Corporation of the Town of Kearney

Mayor

Clerk

Schedule A

1. The Chief Building Official shall dedicate 50% of his working time to matters related to arising from the enforcement of the Act in each Municipality.
2. In furtherance of the equal sharing of time set out in Schedule A 1 and the general intent of this Agreement, the CBO shall maintain the following Schedule of Office Hours. Each Municipality may utilize the following notice as it deems appropriate.

Schedule of Office Hours for the Chief Building Official Brian Horsman

	Monday	Tuesday	Wednesday	Thursday	Friday	
AM	Municipality of Magnetawan		Shared in accordance with service demand	Town of Kearney		AM
PM						PM

It is advisable to set up an appointment prior to your arrival.

Magnetawan (705) 387-3947

Office Hours 8:30 a.m. – 4:30 p.m.

Kearney (705) 636-7752

Office Hours 8:30 a.m. – 4:30 p.m.

3. Notwithstanding the Schedule of Office Hours, the CBO is hereby given discretion to conduct work concerning enforcement matters for either Municipality at any time in order to effectively and efficiently deliver enforcement services. The CBO shall track all enforcement work by Municipality to ensure that the principle of the 50% sharing of costs and delivery of services is maintained over an annual basis. It is acknowledged by both municipalities that due to the nature of inspection work, the scheduling of judicial enforcement matters etc, there will be imbalances in the amount of time devoted to each Municipality by the CBO on a daily and/or weekly basis.

Schedule B

Support Services

1. Support services include:
 - 1.1 office space;
 - 1.2 use of a municipally owned motor vehicle or in the alternative payment of a per kilometre charge for the CBO's use of its private motor vehicle while undertaking enforcement activities;
 - 1.3 the provision of personnel for administrative assistance;
 - 1.4 computers/tablets, electronic recording devices, cameras, internet access, photocopying, facsimile services.