



BIRCH HILLS COUNTY

BIRCH HILLS COUNTY BY-LAW 2012-01 UNSIGHTLY PROPERTY

BY LAW # 2012-01

BIRCH HILLS COUNTY UNSIGHTLY PROPERTY BY-LAW

A By-law of Birch Hills County to provide for the abatement and control of Unsightly Property within Birch Hills County.

Section 7 of the *Municipal Government Act*, 2000, Chapter M-26, and amendments thereto, provides that council may pass bylaws pertaining to unsightly property.

SECTION 1 - SHORT TITLE AND PURPOSE

1.01 This bylaw may be cited as the Unsightly Property Bylaw. The purpose of this bylaw is to provide for the abatement of unsightly conditions that affect the safety, health and welfare of persons and affect the amenity of a neighbourhood.

SECTION 2 - DEFINITIONS

2.01 In this Bylaw:

- a. **“Adjacent”** means land that is contiguous to the land that is the subject of a complaint and includes land or a portion of land that would be contiguous if not for a public road, railway, river or stream.
- b. **“Chief Administrative Officer”** means the individual appointed to that position by Council.
- c. **“County”** means Birch Hills County duly established pursuant to the laws of Alberta.
- d. **“Investigator”** means a Community Peace Officer employed by Birch Hills County.
- e. **“Occupant”** means the person in possession of premises.
- f. **“Owner”** means the registered owner on title at the Land Titles Office.
- g. **“Person”** means an individual or any business entity including a firm, partnership, association, corporation, company, or society.
- h. **“Premises”** means and includes land, buildings, excavations, stockpiles, structures and appurtenances thereto.
- i. **“Secretary”** means the Secretary of the Unsightly Property Abatement Committee.
- j. **“Unsightly Property Abatement Committee”** means the Committee, which shall consist of a quorum of the individuals appointed by Council as members of the Subdivision and Development Appeal Board.
- k. **“Unsightly Property” or “Unsightly Condition”** means and includes any use of, or activity upon any premises which is offensive to any person acting reasonably, or has or may be expected to be detrimental to the surrounding area or other premises in the neighbourhood or is dangerous or an imminent danger to public health or safety, or materially depreciates the value of other land or improvements on adjacent land, and without limiting the generality of the foregoing, may include the following:
 - i) the failure to cut or control grass and vegetation on the premises;

- ii) permitting a building or structure to deteriorate, become damaged or exist in a ruinous or dilapidated state:
- iii) the growth of trees or shrubs in such a manner that they interfere with or endanger visibility to street signage or sidewalk or roadway clearance:
- iv) failure to remove dead or hazardous trees or vegetation which is dangerous to the public safety or affecting public lands;
- v) the generation of excessive dust, smoke, steam or other noxious emissions and permitting such dust, smoke, steam or noxious emission to escape from the premises:
- vi) the storage or accumulation of dilapidated vehicles or the storage of vehicles on premises for which no development permit issued for that use;
- vii) the storage, stockpile or accumulation of rubbish, garbage or other article or material including, but not restricted to, discarded or dilapidated furniture or household appliances, scrap metals, scrap lumber, tires, motor vehicle parts and other like objects;
- viii) accumulated rubbish, garbage or other article or material and discarded or dilapidated furniture or household appliance, scrap metals, scrap lumber, tires, motor vehicle parts and other like objects in a wrecked, discarded, or abandoned condition upon any premises;
- ix) allowing a hole, excavation or accumulation of material that may be dangerous to public safety or health, to exist on premises;
- x) allowing conditions that result in an infestation of rodents, vermin or insects on the premises;
- xi) the posting or exhibiting of any poster, sign, billboard, placard, writing, drawing or painting, or any signs or messages or pictures upon the premises, where the same is in a dilapidated and unsightly condition.

SECTION 3 UNSIGHTLY PROPERTY ABATEMENT

3.01 Premises, or activities upon premises, shall not be permitted to be or become an unsightly premises or an unsightly condition.

3.02 An Unsightly Property shall be evaluated relative to adjacent lands and land uses or to other lands and land uses in the neighbourhood.

SECTION 4 - COMPLAINT PROCESS

4.01 Unsightly property complaints shall be referred to Council or staff in written format.

4.02 If the investigator is of the opinion that a complaint is valid, and that the premises complained about is an unsightly property or in an unsightly condition, the investigator shall require the unsightly property or unsightly condition be remedied by serving a notice as set out in Schedule "A" to this bylaw. The notice may include but is not restricted to providing the following directions to the owner or occupant of the property:

- a) cease the activity which causes the unsightly condition;
- b) change the way in which such person is carrying out any activity;
- c) direct any person to take any action or measure necessary to compel the elimination or abatement of the unsightly condition, including:
 - (i) the removal of any thing or matter from the property, which constitutes the unsightly condition;
 - (ii) the construction, installation or repair of a berm, screen or enclosure;
 - (iii) and enter into an agreement in a form to the satisfaction of the Director of Public Works for the abatement of the unsightly condition.
- d) specify the time within which such person must comply with the directions contained in the notice;
- e) offer the owner or occupant of the property an opportunity to enter into any other voluntary agreement with the County to keep the premises clean, tidy and free of unsightly conditions; and
- f) specify the time limits within which the actions must be completed.

4.03 If the unsightly condition is not remedied, as required by the notice issued by the investigator, the matter shall be referred to the Unsightly Property Abatement Committee.

4.04 An Unsightly Property Abatement owner or occupier of property to whom a notice is served may appeal a notice to the Committee by way of a written request to the Committee, received by the Secretary of the Committee not more than Fourteen (14) Days from the date the notice was served and by paying the fee prescribed in Schedule "B".

4.05 A notice issued under the provisions of Section 4.02 shall be deemed to be an Order issued under Section 545 of the *Municipal Government Act*, RSA 2000, c. M-26.

- 4.06 If the investigator determines a complaint to not be valid, the complainant shall be notified in writing of this finding. The complainant may appeal this finding, by way of written request to the Secretary of the Unsightly Property Abatement Committee not more than Ten (10) Days from the date the investigator's report is mailed to the complainant and by paying a fee prescribed in Schedule "B".
- 4.07 If a complaint is brought to the Unsightly Property Abatement Committee under Section 4.03, 4.04, or 4.06 the Secretary shall:
- a) set a time and place to hear the complaint.
 - b) notify the complainant, the owner, and occupier of the property in question, and the owner of land that is adjacent to the land that is subject of the complaint, or a person acting on behalf of that person and the investigator of the said time and place that the committee will consider the complaint, and that those notified may appear before the Committee to give information regarding the complaint, including the results of the investigation.
- 4.08 The Committee hearing a complaint brought to it under Section 4.03, 4.04, or 4.06 is not required to hear from any persons other than the persons notified pursuant to 4.07 b).
- 4.09 If, upon hearing the information provided, the Committee determines that a property is an unsightly property or that an unsightly condition exists on the subject property, the Committee shall issue an order in writing requiring the owner, or occupant, or both of the subject property to remedy, in such manner as the Committee may direct, any unsightly condition.
- 4.10 Any order made by the Committee under this part shall require the owner or occupant or both, to remedy the unsightly condition within a period of 30 days, or such other time period that the Committee determines, from the date on which the order made by the Committee is provided to the person.
- 4.11 The County may cause such work to be done as directed or ordered by the Committee to abate an unsightly condition for which an order has been issued under Section 4.09 but not complied within the time period specified by the Committee.
- 4.12 In addition to the penalty prescribed by Section 7.01 and 8.01, any **owner** who fails, neglects or refuses to remedy the unsightly condition required by an order issued under Section 4.09, may be assessed the cost of the work undertaken pursuant to Section 4.11 and in default of payment, the County may:
- a) recover the cost of work as a debt due to the municipality, or
 - b) charge the cost against the subject property concerned as taxes due and owing in respect of that land and recover provided for in Section 553 of the MGA.

- 4.13 Any notice or order required by this bylaw shall be deemed to have been duly given and served on the person to whom it is addressed:
- a) by the notice or order being personally delivered to the person to whom it is addressed; or
 - b) by leaving it with a person apparently over the age of 16 years at the residence of the person to whom the notice or order is addressed; or
 - c) by sending it by registered mail in a prepaid cover addressed to the last known postal address of the person to whom the notice or order is addressed, or as shown in the assessment roll for the land which is the subject of the notice or Order, as the case may be; or
 - d) by posting the notice in a conspicuous place on the land referred to in the notice or order or on building or erection thereon when the peace officer or designated officer of the municipality has reason to believe:
 - (i) that the person to whom the notice or order is addressed is evading service thereof; or
 - (ii) for any reason it is improbable that the notice or order will be received by the person to whom it is addressed within ten clear days of the date of the notice if it is delivered in any of the other ways mentioned in this section.

SECTION 5 - AUTHORITY TO ENTER PREMISES

- 5.01 A Community Peace Officer of the municipality may, as per Section 542(1) of the *Municipal Government Act*, after giving reasonable notice to the Owner or Occupant,
- a) enter such land or structure (other than a residence) at any reasonable time, and carry out the inspection, enforcement or action authorized or required by this bylaw,
 - b) request 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.
- 5.02 The Community Peace Officer must display or produce, on request, identification showing that the person is authorized to make the entry.
- 5.03 In an emergency or in extraordinary circumstances, the Community Peace Officer need not give reasonable notice to enter at a reasonable hour and may do the things in Section 5.01 (a) and (c) without the consent of the owner or occupant.

SECTION 6 - OFFENCE, PROCEDURE AND PROSECUTION

- 6.01 Breach of this bylaw or an order issued under Section 4.09 is an offence.
- 6.02 The conviction of a person under the provisions of this bylaw does not operate as a bar to further prosecution for the continued neglect or failure on the part of the person to comply with the provisions of this bylaw, or conditions, orders, or permits, issued in accordance with this bylaw.
- 6.03 A certificate purporting to be signed by the Chief Administrative Officer stipulating any particular relative to his power under this bylaw shall be admitted in evidence as prima facie proof of the facts stated in the certificate, without proof of the signature or authority of the person signing the certificate.

SECTION 7 - PENALTIES

- 7.01 A person convicted of an offence under this bylaw is liable to a fine of not less than One Hundred Dollars (\$100.00) and not more than Ten Thousand Dollars (\$10,000.00) or to imprisonment of not more than 12 months, or to both fine and imprisonment.

SECTION 8 - SPECIFIED PENALTY

- 8.01 Notwithstanding Section 7.01, a person who has been served a Birch Hills County Bylaw Tag or violation ticket as prescribed under the *Provincial Offences Procedures Act* is liable to a specified penalty of Two Hundred Dollars (\$200.00).
- 8.02 If a person, charged with an offence under this bylaw has been convicted twice within a two year period, the specified penalty on the second offence shall be double the basic specified penalty amount provided for in Section 8.01.
- 8.03 If a Person, charged with an offence under this bylaw, has been convicted three times of that same offence within a two year period, the specified penalty on the third offence shall be quadruple the specified penalty amount provided for in Section 8.01.

SECTION 9 – SEVERABILITY

- 9.01 Each provision of this Bylaw is independent of all other provisions. If any such provision is declared invalid by a Court of competent jurisdiction, all other provisions of this Bylaw will remain valid and enforceable.

SECTION 10 – DELEGATION

- 10.01 The duty to decide appeals from Orders issued under Section 545 of the *Municipal Government Act*, including notices issued pursuant to Section 4.02 of this Bylaw, is delegated to the Unsightly Property Abatement Committee.

SECTION 11 - EFFECTIVE DATE

11.01. This Bylaw shall come into effect at such time as it has received third (3rd) reading and has been signed in accordance with the *Municipal Government Act*.

Bylaw 2012-01, passed by Council _____, 2012 Bylaw No. 2012-01 Unsightly Property Bylaw

Bylaw No. 2012-01
Unsightly Property Bylaw
SCHEDULE "A"
BIRCH HILLS COUNTY
UNSIGHTLY PROPERTY ABATEMENT NOTICE

Dated:

To:

And to:

With respect to those premises located at:

Pursuant to the Unsightly Property Bylaw of Birch Hills County, the *Municipal Government Act* and the *Provincial Offences Procedure Act*, the above referenced persons as owner, agent, lessee or occupier of land or premises within Birch Hills County shall remedy the following condition(s) on the above-said land or premises on or before _____.

In the event the above conditions are not remedied within the deadline set out above, the County may thereafter immediately cause to be done any work necessary to remedy the condition, and the cost will be charged to you and other fines and penalties may result as permitted by the Unsightly Property Bylaw.

If you feel yourself aggrieved by this Notice, you may appeal the notice by delivering an appeal in person or sending an appeal by mail to the Reeve of Birch Hills County at P.O. Box 157, Wanham, AB T0H 3P0, within ten (10) days of the date of service of this Notice on you.

Thank you for your cooperation.

Reeve Birch Hills County

Bylaw No. 2012-01
Unsightly Property Bylaw
SCHEDULE "B"
FEE SCHEDULE

No fee shall be payable by Birch Hills County.

Any appeal made pursuant to Section 404 or 405 shall be accompanied by a fee of \$225.00, which shall be refunded if the appeal is successful.

READ A FIRST TIME THIS 28th DAY OF FEBRUARY 2012

COUNTY REEVE

C.A.O

READ A SECOND TIME THIS _____ DAY OF _____

COUNTY REEVE

C.A.O

READ A THIRD AND FINAL TIME AND FINALLY PASSED THIS _____ DAY
OF _____

COUNTY REEVE

C.A.O