



Unightly Properties Bylaw

Bylaw 2019-12

- PURPOSE** A Bylaw of Birch Hills County, in the Province of Alberta for the purpose to regulate dangers and unsightly and untidy properties.
- WHEREAS** pursuant to the authority of the Municipal Government Act, RSA 2000, Chapter M-26, Council may pass bylaws regulating unsightly properties; and;
- WHEREAS** unsightly properties are a detriment to surrounding properties and the immediate neighborhood generally; and;
- WHEREAS** Council deems it advisable to pass a bylaw to regulate unsightly properties; and;
- WHEREAS** the purpose of this Bylaw is to prevent the existence and proliferation of unsightly properties and to provide a mechanism for the remediation of a property which has become an unsightly property;
- NOW THEREFORE** the Council of Birch Hills County, in the Province of Alberta, duly assembled hereby enacts as follows:

1) TITLE

That this Bylaw shall be known as the Birch Hills County "Unightly Properties Bylaw".

2) DEFINITIONS

That definitions, for the purpose of this Bylaw, unless the context otherwise requires, the term:

- a) **'Animal material'** means any animal excrement and may includes material accumulated on premises from pet pens, yards, stables, kennels or veterinary businesses.
- b) **'Ashes'** means the powdery residue left after the combustion of any substance including partially burnt substances accumulated on premises.
- c) **'Building material'** means all construction and demolition material accumulated on premises including materials hauled in or accumulated as a result of constructing, renovating, repairing or demolishing any structure and includes, but is not limited to, earth, vegetation or rock displaced during such activity.



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- d) **'Clean up order'** means an order issued under the Bylaw by an Enforcement Officer with respect to an unsightly property within the Hamlets of Birch Hills County.
- e) **'Council'** means the Council of Birch Hills County.
- f) **'County'** means the municipal corporation of the Birch Hills County.
- g) **'Enforcement Officer'** means any peace officer including a Bylaw Enforcement officer of Birch Hills County, or any other person appointed by Council to enforce the provisions of this by-law, and includes a member of the Royal Canadian Mounted Police.
- h) **'Equipment'** and/or **'machinery'** means units which have been rendered inoperative by reason of its disassembly, age or mechanical condition and includes any household appliances and vehicles.
- i) **'Fence'** means a permanent enclosing material, maximum six-foot height, of wood, steel or like materials designated to provide visual screening and not detract from surrounding neighborhood, as permitted by the County's Land Use Bylaw.
- j) **'Garbage'** means household waste including material containing organic matter which is or may become decomposed, and materials and by-products resulting from the preparation, consumption and storage of food.
- k) **'Garbage container'** means a container that garbage may be placed in and that is capable of being closed and secured in such a way as to prevent animals and birds from gaining access to the contents.
- l) **'MGA'** means the *Municipal Government Act*, R.S.A. 2000, c.M-26, as amended or repealed and replaced from time to time.
- m) **'Nuisance'** means an offensive, annoying, unpleasant or obnoxious thing, object or practice which causes an intrusion or disturbance of a visual or sensory nature affecting another person's quiet enjoyment of his or her property.
- n) **'Occupant'** means any person other than the registered owner who is in possession of the Property, including but not limited to, a lessee, licensee, tenant or agent of the owner.



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- o) 'Offence Notice'** means a ticket issued pursuant to Part 3 of the Provincial Offences Procedure Act, RSA 2000, c.P-34, as amended, repealed or amended from time to time, and regulations there under.
- p) 'Order'** means an Order as described in Section 545 or 546 of the Municipal Government Act, as applicable.
- q) 'Owner'** means:

 - i. a person who is registered under the Land Titles Act as the owner of the land;
 - ii. a person who is recorded as the owner of the property on the assessment roll of the County;
 - iii. a person holding himself out as the person having the powers and authority of ownership or who for the time being exercises the powers and authority of ownership;
 - iv. a person controlling the property under construction; or
 - v. a person who is the occupant of the property under a lease, license or permit.
- r) 'Property'** means any land, building or property within the municipal boundaries of the Hamlets of Birch Hills County.
- s) 'Reasonable State of Repair'** means the condition of being:

 - i) structurally sound; and
 - ii) free from damage, free from rot or other deterioration and safe for its intended use: and
 - iii) does not show signs of serious disregard for maintenance or upkeep.
- t) 'Right of access'** means the right of an Enforcement Officer to enter onto a property to inspect the property to determine whether to issue a Clean Up Order, or to allow work forces access to the property for the purposes of enforcing a Clean Up Order.
- u) 'Trash'** means materials of every description or abandoned, discarded or rejected goods not disposable in a garbage can or receptacle, included but not limited to trailers, sheds, shacks.



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- v) **'Violation ticket'** means a ticket issued pursuant to Part 2 of the Provincial Offenses Procedure Act, RSA 2000, c.P-34, as amended, repealed or amended from time to time, and regulations there under.
- w) **'Weeds'** means a plant that is not valued where it is growing and is usually of vigorous growth; especially one that tends to overgrow more desirable plants; or weeds as defined by the Weed Control Act.
- x) **'Work forces'** means County employees or contract workers engaged by the County for the purposes of enforcing a Clean Up Order.
- y) **'Yard material'** means organic matter formed as a result of gardening or horticultural pursuits and includes grass, tree and hedge cuttings and clippings.

3) GENERAL

- a) The provision of this Bylaw shall not be interpreted to prevent bona fide and permitted commercial, construction, demolition, renovation, landscaping, clean up, storage or other related activities from being carried out on, or in relation to a property.
- b) Regard shall be given to the use and location of the property (ie. residential, commercial, or located along major public roadway), as well as conditions of any public property which is adjacent to such property (for example slope of ditches, ditches filled with water or gravel), in determining what remedies should be taken and whether a property is an unsightly property.

4) RESPONSIBILITIES OF OWNER

- a) Property owners shall keep such property and any public property which abuts or flanks such property, in a presentable condition and shall:
 - i) remove garbage, yard material, animal material, building material and ashes as it accumulates;
 - ii) prune and remove trees or shrubs in deteriorating condition located on the premises;
 - iii) cut grass and control dandelions and other weeds;
 - iv) remove any vehicles, equipment, machinery, trash or parts thereof; and



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- v) not suffer or permit trees, or other vegetation growing on the property to interfere or endanger the lines, poles, conduits, pipes, sewers, public utility laneways or other works of the County.
- b) Owner of a property in the hamlets of Birch Hills County shall:
 - i) maintain all buildings, structures and improvements to their property so that:
 - the foundations;
 - exterior walls;
 - roof;
 - windows, including frames, shutters and awnings;
 - doors, including frames and awnings;
 - steps and sidewalks; and
 - fencesare kept in a Reasonable State of Repair.
 - ii) maintain all fixtures, improvements, renovations, or additions to any building, structure or improvement on their property, including but not limited to:
 - exterior stairs;
 - porches;
 - decks;
 - patios;
 - landings;
 - balconies; or
 - other similar structuresshall be maintained in a Reasonable State of Repair.

5) UNSIGHTLY PROPERTY

- a) **Unsightly and/or untidy property'** means any property, whether land, buildings, improvements to lands or buildings, personal property, or any other combination of the above , located on land within the Hamlets of Birch Hills County that, in the opinion of an Enforcement Officer is unsightly to such extent as to detrimentally affect the repose, amenities, use, value or enjoyment of the surrounding properties in reasonable proximity to the unsightly property, or is otherwise detrimental to the surrounding area or in an unsightly condition as defined by the Municipal Government Act.; including, but not limited to, the excessive accumulation on the property of:



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- i) any rubbish, refuse, garbage, papers, packages, containers, bottles, cans, human excrement or sewage, or the whole or part of an animal carcass, dirt, soil, sand, gravel, rocks, sod, petroleum products, hazardous materials, disassembled equipment or machinery, broken or discarded household goods;
 - ii) the whole or part of any motor vehicle as defined in the *Traffic Safety Act*, RSA 2000, as amended or repealed and replaced from time to time, as well as any tractor or implement of husbandry:
 - 1) that has no current license plate attached to it and in respect of which, no registration certificate has been issued for the current year; or
 - 2) that is inoperative by reason of disassembly, age or mechanical condition;
 - iii) equipment or machinery as defined in this Bylaw;
 - iv) animal material, yard material, ashes, building material, and garbage as defined in this Bylaw;
 - v) any building, erection or structure that is unsightly or has become ruinous or dilapidated;
 - vi) any structure, excavation or hole that is unsafe, unprotected or dangerous to public health or safety;
 - vii) any combination of materials that is deemed by an Enforcement Officer to be unsightly or offensive;
 - viii) in respect of land, includes land that shows signs of serious disregard for general maintenance or upkeep.
- b)** An Enforcement Officer may, for the purposes of ensuring that this Bylaw is complied with, enter in or upon the property in accordance with Section 542 of the *Municipal Government Act* to carry out an inspection, enforcement or other action required or authorized by this Bylaw.
- c)** In determining whether a property is an unsightly property, an Enforcement Officer shall use the following criteria:



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- i) a property or part of it is unsightly when it is characterized by visual evidence of a lack of general maintenance and upkeep by the excessive accumulation on the premises, or any other hazard or condition which poses a danger to public safety;
- ii) any garbage, trash, building material, ashes, manure, human excrement or sewage, animal material or the whole or a part of an animal carcass, dirt, soil, gravel, rocks, sod, petroleum products, hazardous materials, disassembled equipment or machinery;
- iii) uncontrolled grass and weeds on premises;
- iv) the whole or part of any motor vehicle or vehicles which has no current license plate attached to it and in respect of which, no registration certificate has been issued for the current year, and which is inoperative by reason of removed parts, or equipment
- v) the lack of repair or maintenance of buildings, structures or property including but not limited to:
 - 1) the significant deterioration of buildings, structures or improvements, or portions of buildings, structures or improvements;
 - 2) broken or missing windows, siding, shingles, shutters, eaves or other building material; or
 - 3) significant fading, chipping or peeling of painted areas of buildings, structures or improvements on property.

6) VIOLATIONS

- a) No owner or occupant of a premise shall cause, allow, permit or maintain his or her premises in an unsightly, untidy or nuisance condition as defined in this Bylaw.
- b) No owner or occupant shall cause, permit, or allow to exist, a structure, excavation or hole that in the opinion of an Enforcement Officer may be a danger to public safety or property.
- c) No owner or occupant shall cause, allow, or permit his or her property to become overgrown with dandelions or other weeds and vegetation.



- d) No owner shall cause, allow or permit trees or shrubs on his or her property to interfere in any way with adjacent property owned by another person or operated by a municipal or public utility.

7) ISSUING AN UNSIGHTLY PROPERTY ORDER

- a) If an Enforcement Officer determines that a nuisance exists, or that the inspected property has become unsightly or untidy, or that a danger to the public safety exists the Enforcement Officer may direct the owner or occupant of the property upon which a nuisance or unsightly or untidy condition exists as follows:

- i) issue a verbal or written warning to remedy the problem;
- ii) issue an Order under Section 545 or 546 of the *Municipal Government Act* to remedy the nuisance or unsightly condition;
- iii) issue an offence notice specifying a voluntary penalty to be paid;
- iv) issue a violation ticket specifying a voluntary penalty to be paid;
- v) any combination of the above.

- b) Each order shall:

- i) describe the property by:
 - 1) name, if any; and
 - 2) the municipal address and/or legal description;
- ii) state that the property contravenes the provisions of this Bylaw;
- iii) give reasonable particulars of the extent of the clean up, removal, clearing or other actions required to be made;
- iv) state the time that the clean-up, removal, clearing or other actions must be completed within from the order date. The timeline will vary due to how the order can be served and which provision of the *Municipal Government Act* is being enforced;
- v) state that if the required actions are not done within the time specified, the County may carry out the actions required pursuant to the *Municipal Government Act* and charge the cost thereof against the person to whom the Order is directed and if such person does not pay the costs, the costs shall be charged against the property concerned



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as taxes due and owing in respect of that property, and recovered as such;

- vi) state that a person receiving a written Order may request that Council review the Order;
 - vii) state that a request for Council to review the Order must be written including the reasons for requesting a review, dated, and signed by the appellant and delivered to the Birch Hills County Chief Administrative Officer within fourteen (14) days after the Order issued pursuant to Section 545 of the *Municipal Government Act* is received by the person, or seven (7) days after which the Order issued pursuant to Section 546 of the *Municipal Government Act* is received by the person.
- c)** An Enforcement Officer may utilize the Unsightly Property Order form attached as appendix A of this Bylaw or may substitute another form that meets the requirements of Section 7 b. of this Bylaw.
- d)** The Order shall be served upon the owner of the property and a copy may be served on any person shown by the records of the Land Titles Office or any person deemed to have an interest in the property, or responsible for the contravention.
- e)** An Order may be served:
- i) by being delivered personally to the person who is intended to be served;
 - ii) by being left with a person apparently over the age of eighteen (18) years at the dwelling place or place of business of the person who is intended to be served; or
 - iii) where a premises is not occupied, by being sent by registered mail to the last known address of the person who is intended to be served as shown on the assessment roll of the County and the Order shall be deemed to be served upon expiry of fifteen (15) days after the mailing of the Order.
- f)** If, in the opinion of the Enforcement Officer, service under Section 7.d. cannot reasonably be effected, the Enforcement Officer may post the Clean-Up Order or a copy of the Order in a conspicuous place on the land or property to which the Order relates, or on the private dwelling place of the person who is intended to be served and Such Order is deemed to be served upon the expiry of five (5) calendar days after such Clean-Up Order is posted.

- g) The Enforcement Officer may, at his discretion, extend the time for doing anything directed in the Order considering the circumstances involved.

8) APPEALING A CLEAN-UP ORDER

- a) An owner or Occupant who receives a written Order under this Bylaw may request a review of the Order by written notice to Council within fourteen (14) days of the day on which the Order is received. Upon reviewing the Order Council may confirm, vary, substitute or cancel the Order.
- b) Within thirty (30) days of receiving a request, Council will review the Order and may vary, revoke, or uphold the Order and the time stipulated by the Order to remedy the nuisance or unsightly condition.
- c) An Owner or Occupant or other person affected by the decision of Council under Section 7.b. may appeal to the Court of Queen's Bench, within the time period set out in the *Municipal Government Act*, Section 548.

9) EXPENSES INCURRED IN CARRYING OUT AN UNSIGHTLY PROPERTY ORDER

- a) The expenses incurred to process and execute an Order constitute a debt owed to the County from the person to whom the Order is directed.
- b) The Chief Administrative Officer shall send a demand for payment of these expenses by regular mail to the person to whom the Order was directed.
- c) If the person to whom the Order was directed fails to pay, the expenses incurred by the County will become an amount owing to the County and may be added to the tax roll pursuant to the *Municipal Government Act*.
- d) Any moneys collected from the disposition of materials, vehicles, buildings, erections or structures may be applied against the costs incurred by the County to execute the Order.
- e) The following rates shall apply:
 - i) if a third party was engaged in carrying out the Order under direction of an Enforcement Officer, the Owner shall be invoiced the actual expense;
 - ii) if the County's work forces were used in carrying out the Order under direction of an Enforcement Officer, the Owner shall be invoiced

based on rates specified for employees, equipment, and materials in the County's Fees Rates and Charges Bylaw in place at the time of clean-up.

10) MATERIALS COLLECTED IN CARRYING OUT AN UNSIGHTLY PROPERTY ORDER

- a)** Where the County carries out an Order, the workers shall deposit any materials, vehicles, buildings, erections or structures at a location as designated by an Enforcement Officer and said property shall be disposed of in a manner determined by an Enforcement Officer or Chief Administrative Officer.
- b)** Notwithstanding Section 10.a. where an Enforcement Officer is of the opinion the material removed under Section 9.a has no value, he may direct that the materials be disposed of at the time of cleanup.
- c)** When material removed from an unsightly premise is removed to a location specified by the Chief Administrative Officer, the Chief Administrative Officer may direct that the property be disposed of if the person to whom an Order has been issued does not remove the property within fourteen (14) days of being requested in writing to do so by the Chief Administrative Officer.
- d)** If the County sells all or part of a building, structure or improvement that has been removed under this Bylaw, the proceeds of the sale must be used to pay the expenses and costs of the removal and any excess proceeds must be paid to the Owner.

11) OFFENCES & PENALTIES

- a)** A person who contravenes Section 6.c., or 6.d. of this Bylaw is guilty of an offence and liable, upon summary conviction before a Provincial Court Judge to fines as listed in Appendix B - Schedule 1.1 of this Bylaw.
- b)** A person who contravenes Section 6.a. or 6.b. of this Bylaw is guilty of an offence and liable, upon summary conviction before a Provincial Court Judge to fines as listed in Appendix B - Schedule 1.2 of this Bylaw.
- c)** In addition to the fines stipulated in Sections 11.a. and 11.b. of this Bylaw, a Provincial Court Judge may make any other order deemed appropriate concerning a breach of this Bylaw.



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- d) Notwithstanding Sections 11.a. and 11.b. of this Bylaw, an Enforcement Officer may issue an offence notice to a person who the Enforcement officer has reasonable and probable grounds to believe has contravened any provision of this Bylaw:
 - i) specifying a voluntary payment as described in Appendix B - Schedule 1.3 of this Bylaw; and
 - ii) the person to whom the offence notice is issued may, in lieu of being prosecuted for the offence, may make voluntary payment of the penalty specified within the time period indicated on the offence notice.
- e) In those cases where a written warning has been issued and the violation on the written warning has not been corrected within the prescribed time, then an Enforcement Officer may issue an offence notice or violation ticket specifying that a voluntary payment be made as described in Schedule 1.3 of this Bylaw.
- f) Notwithstanding Section 11.d. of this Bylaw, an Enforcement Officer may immediately issue a violation ticket to any person who the Enforcement Officer has reasonable grounds to believe has contravened any provisions of this Bylaw, specifying that a voluntary payment be made as described in Schedule 1.3 of this Bylaw.
- g) The levying and payment of any fines shall not relieve a person from the necessity of remedying the situation that created the violation of any section of this Bylaw

12) ADDING AMOUNTS OWING TO A TAX ROLL

- a) Within thirty (30) days of ascertaining the amount of the expenses incurred by the County in carrying out the Order to the Owner or issued as a fine per Section 11, a demand for payment shall be sent of these expenses to the person to whom the Order was directed.
- b) Where the person to whom the Order is directed and a fine is issued per Section 11 fails, within thirty (30) days after a demand for payment, to pay the fines and expenses incurred by the County, the total outstanding amount shall be placed on the tax roll as an additional tax against the land concerned and that amount:
 - i) forms a lien on the land in favor of the County; and



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- ii) shall, for all purposes, be deemed to be taxes imposed and assessed on the land and delinquent under the Municipal Government Act from the date the expenses were incurred.

13) SEVERABILITY PROVISION

- a) Should any provision of this Bylaw be invalid, then such provision shall be severed and the remaining Bylaw shall be maintained.

14) REPEAL

- a) The Unsightly Property Bylaw 2012-01 is repealed.

15) ATTACHMENTS

- a) "Schedule A"- Clean-Up Order
- b) "Schedule B"- Specified Penalties for Non-Compliance with this Bylaw

READ a first time this 26th day of September, 2019.

READ a second time this 26th day of September, 2019.

READ a third and final time this 26th day of September, 2019.

SIGNED this 26th day of September, 2019.

Original to be signed by

Reeve
Gerald Manzulenko

Original to be signed by

Chief Administrative Officer
Hermann Minderlein



SCHEDULE A

UNIGHTLY PROPERTY ORDER

BIRCH HILLS COUNTY
BYLAW ENFORCEMENT SERVICES
TELEPHONE (780) 694-3793

DATE	TIME		
NAME			
ADDRESS	CITY	PROVINCE	POSTAL CODE
METHOD OF SERVICE	DELIVERED PERSONALLY	LEFT WITH A PERSON APPARENTLY OVER THE AGE OF 18	REGISTERED OR CERTIFIED MAIL

TAKE NOTICE THAT

Pursuant to the provisions of the **Unightly Property Bylaw**, and s. _____ of the **Municipal Government Act, as amended**.

The property located at: _____, in the Hamlet of _____, Alberta is in contravention of the following section(s) of the Unightly Property Bylaw.

You are hereby ordered to remedy the nuisance, unsightly or untidy condition of the above property within _____ days from this date and time by: _____

Enforcement Officer's Signature

<p>IMPORTANT</p> <p>1. If the required actions are not taken by the time specified, the County may carry out the work required and charge all costs thereof against the person to whom the Order is directed. If such person does not pay the costs, the costs may be charged against the property concerned as taxes due and owing in respect of that property, and recovered as such.</p> <p>2. Failure to comply with this Order is an offense punishable by a fine of up to \$2500, and may include additional orders a Provincial Court Judge deems appropriate.</p>
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A review of this Order may be made to the Council of Birch Hills County. Appellants must submit written notice of their appeal to: CAO, **Birch Hills County, Wanham, Alberta**, within _____ **days** of the date of the issuance of an Order. The request for review shall state with reasonable exactness the grounds of the appeal and be dated and signed by the appellant or on his behalf by his agent and, if signed by an agent, shall state the name, address and telephone number of the agent.



SCHEDULE B

SPECIFIED PENALTIES FOR NON-COMPLIANCE WITH THIS BYLAW

A person is guilty of an offence and liable for non-compliance with this Bylaw

	SCHEDULE 1.1	SCHEDULE 1.2	SCHEDULE 1.3
First Offence	\$ 300. Fine	\$1,000. Fine	\$ 75. Fine
Second Offence	\$ 600. Fine	\$1,500. Fine	\$ 150. Fine
Third and Subsequent Offences	\$1,000. Fine	\$2,500. Fine	\$ 300. Fine

Where a discrepancy occurs between Specified Penalties in this Bylaw and those established in the Fees, Rates and Charges Bylaw, the Fees, Rates and Charges Bylaw shall be deemed correct.