

## By-Law #303-04

### BEING A BY-LAW OF THE TOWN OF COALHURST, IN THE PROVINCE OF ALBERTA, TO REGULATE UNSIGHTLY PREMISES;

**WHEREAS** the Municipal Government Act, R.S.A. 2000, Chapter M-26, states that the purposes of a municipality are

- a. to provide go
- b. to provide services, facilities or other things, that, in the opinion of council, are necessary or desirable for all or a part of the municipality,
- c. to develop and maintain safe and viable communities

**AND WHEREAS** the Municipal Government Act, R.S.A. 2000, Chapter M-26 provides the authority for Town council to pass bylaws for municipal purposes respecting:

- the safety, health and welfare of people and the protection of people and property, and
- nuisances, including unsightly property;

**AND WHEREAS** unsightly premises are a detriment to surrounding properties and the immediate neighbourhood generally, and may be dangerous to public safety;

**AND WHEREAS** Council deems it advisable to pass a By-Law to regulate unsightly premises;

**AND WHEREAS** the purpose of this By-Law is to prevent the existence and proliferation of unsightly premises and to provide a mechanism for the remediation of a property, which has become unsightly and/or dangerous.

**NOW, THEREFORE**, the Council of the Town of Coalhurst enacts as follows:

1. This By-Law shall be cited as the "Unsightly Premises By-Law".
2. **DEFINITIONS:** the following definitions will apply for the purposes of this by-law:
  - (a) "*animal material*" means any animal excrement and includes all material accumulated on premises from pets, veterinary clinics or veterinary hospitals;
  - (b) "*ashes*" means the powdery residue left after the combustion of any substances and includes any partially burnt wood, charcoal or coal;
  - (c) "*building material*" means all construction and demolition material accumulated on premises while constructing, altering, repairing or demolishing any structure and includes, but is not limited to, earth, vegetation or rock displaced during such construction, alteration or repair;
  - (d) "*Chief Administrative Officer*" herein after known as the CAO means the person who is appointed by By-Law to this position for the Town of Coalhurst
  - (e) "*Clean Up Order*" herein after known as the Order means an order issued under this By-Law by an Enforcement Officer with respect to an unsightly premises within the Town;
  - (f) "*Council*" means the Council of the Town of Coalhurst;
  - (g) "*detrimental to the surrounding area*" includes causing the decline of the market value of property in the surrounding area;

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- (h) *"Enforcement Officer"* means the Town of Coalhurst Development Officer or a By-Law Enforcement Officer of the Town;
- (i) *"garbage"* means material composed of organic matter which is or may become decomposed, including the by-products from the preparation, consumption or storage of food;
- (j) *"owner"* means:
  - (1) in respect of unpatented land, the Crown,
  - (2) in respect of other land, the person who is registered under the *Land Titles Act* as the owner of the fee simple estate in the land, and
  - (3) in respect of any property other than land, the person in lawful possession of it;
- (k) *"occupant"* means any person other than the owner who has a legal or equitable interest in land or other property, including but not restricted to a lessee, occupant or agent of the owner;
- (l) *"Peace Officer"* means a member of the Royal Canadian Mounted Police, a municipal Police Officer, Police Constable, Bailiff, Constable, By-Law Enforcement Officer or other person employed for the prevention of disorder and maintenance of the public peace.
- (m) *"premises"* means any land, building or property, whether real or personal, within the municipal boundaries of the Town;
- (n) *"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;
- (o) *"Town"* means the municipal corporation of the Town of Coalhurst or the area contained within the Town boundaries as the context requires;
- (p) *"unsightly condition"*:
  - (1) in respect of a structure, includes a structure whose exterior shows signs of significant physical deterioration, and
  - (2) in respect of land, includes land that shows signs of a serious disregard for general maintenance or upkeep.
- (q) *"unsightly premises"* means any property or part of it which is characterized by visual evidence of a lack of general maintenance and upkeep by the excessive accumulation on the premises of:
  - (1) any rubbish, refuse, garbage, papers, packages, containers, bottles, cans, manure, human excrement or sewage or the whole or a part of an animal carcass, dirt, soil, gravel, rocks, sod, petroleum products, hazardous materials, disassembled equipment or machinery, broken household dishes and utensils, boxes, cartons, and discarded fabrics or household goods;
  - (2) the whole or part of any vehicle as defined under the Traffic Safety Act, R.S.A. 2000, T-6, as amended, as well as any tractor or implement of husbandry
    - (i) which has no current license plate attached to it and in respect of which, no registration certificate has been issued for the current year, or
    - (ii) which is inoperative by reason of disassembly, age or mechanical condition;
  - (3) equipment or machinery which has been rendered inoperative by reason of its disassembly, age or mechanical condition and includes any household appliances;

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- (4) animal material, yard material, ashes, building material and garbage as defined in this By-Law;
- (r) "*Unsightly Premises Appeal Board*" hereinafter referred to as the Appeal Board means the Appeal Board, appointed by Town Council, which is empowered to hear and determine appeals lodged against Clean Up Orders issued by an Enforcement Officer;
- (s) "*Violation Ticket*" means where a Peace Officer, or Enforcement Officer, other authorized official of the Town of Coalhurst believes that any person has committed a breach of any of the sections of this By-Law, they may cause a violation ticket to be served upon such person pursuant to Part 2 of the Provincial Offences Procedure Act, Alberta.
- (t) "*work forces*" means Town employees or contract workers engaged by the Town for the purpose of enforcing a Clean Up Order;
- (u) "*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 PROVISIONS**

- a. No owner or occupant of premises shall cause or maintain his premises as an unsightly premise as defined in this By-Law.
- b. In determining whether premises are unsightly premises, as defined in this By-Law, the Enforcement Officer will have regard to the use and location of the property.
- c. If the Enforcement Officer has reason to believe that any property is an unsightly premises he may exercise a right of access to the property in order to inspect the premises to determine whether the property contravenes the provisions of this By-Law provided, however, that in this section "property" does not include a building used as a dwelling.

4. **CLEAN UP ORDER**

- a. If, in the opinion of the Enforcement Officer,
  - a structure, excavation or hole is dangerous to public safety, or
  - the condition of the property is unsightly,the Enforcement Officer may, by written Order require the owner of the:
  - i. Structure to:
    - Eliminate the danger to the public safety in the manner specified, or
    - Remove or demolish the structure and level the site.
  - ii. Land that contains the excavation or hole to:
    - Eliminate the danger to the public safety in the manner specified, or
    - Fill in the excavation or hole and level the site.
  - iii. Property that is in an unsightly condition to:
    - Improve the appearance of the property in the manner specified, or
    - If the property is a structure, remove or demolish the structure and level the site.
- b. The Order may require the person to whom it is addressed to comply with the Order within the time set in the Order
  - i. The time set in the order will not be less than seven (7) days and not more than thirty (30) days from the date of the making of the Order.

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- ii. The Enforcement Officer may extend the time for doing anything that is required to be done, in writing, if circumstances warrant an extension.
    - c. The Order will
      - i. Describe the premises by
        - Name, if any, and
        - The municipal address, and
        - The legal description.
      - ii. State that the condition of the premises contravenes the provisions of this By-Law.
      - iii. Give reasonable particulars to the extent of the clean up, removal, cleaning or other actions required.
      - iv. State the time within which the clean up, removal, cleaning or other actions are to be done.
      - v. State that if the required actions are not done within the time specified, the Town may carry out the actions required 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 will be charged against the premises concerned as taxes due and owing in respect of that property, and recovered as such.
      - vi. State that an appeal can be made to the Appeal Board, if a written appeal is filed with the Town's CAO within fourteen (14) days of the date of service of the Order.
    - d. A copy of the Order will be served on the owner and/or occupant of the premises as defined in this By-Law.
    - e. An Order given by the Enforcement Officer pursuant to any of the provisions in the By-Law shall be deemed to have been duly given and served on the person to whom it is addressed on:
      - i. The notice being personally delivered to the person to whom it is addressed; or
      - ii. Leaving it with a person apparently over the age of sixteen (16) years at the place of abode of the person to whom the notice is addressed; or
      - iii. Sending it by registered mail to the last known postal address of the person to whom the notice is addressed, or as shown in the assessment roll, as the case may be; or
      - iv. Posting the notice in a conspicuous place on the land referred to in the notice or on any buildings or erections thereon when the Enforcement Officer has reason to believe either
        - that the person to whom the notice is addressed is evading service thereof, or
        - for any reason it is improbable that the notice will be received by the person to whom it is addressed within three days of the date of the notice if it is delivered in any of the ways mentioned in this section.
5. **EMERGENCY**
- a. Despite Section 4, and in accordance with Section 551 of the Municipal Government Act, in an emergency the Enforcement Officer may appeal directly to Town Council for permission to take whatever actions or measures they deem necessary to eliminate the emergency.
  - b. This section applies whether or not the emergency involves a contravention of this By-Law.

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### 6. **REMEDY**

- a. The person to whom an Order is directed shall comply with the directions of the Order as set out in the Order or, if appealed, the requirements or directions set out in any decision of the Appeal Board.
- b. If a person to whom an Order is directed, under this By-Law, fails to carry out the Order within the time stated in the Order:
  - i. In the case of an Order that is not appealed, or
  - ii. Within the time limited by the Board in the case of an Order that is appealed, the Enforcement Officer may exercise a right of access to the unsightly premises and may, with whatever forces as necessary, enter the premises against which the Order has been issued and carry out the Order.
- c. Where the Enforcement Officer carries out an Order:
  - i. The Town or persons appointed by it may remove fencing or other obstructions in carrying out the Order and shall replace or repair any fencing or other obstructions removed or damaged in the course of carrying out the Order.
  - ii. The work forces shall deposit any material removed from an unsightly premises at a location designated by the Enforcement Officer.
  - iii. Where the Enforcement Officer is of the opinion that the material has no value he may direct that the material be disposed of at a location specified by the Enforcement Officer.

### 7. **COSTS**

- a. The expenses, incurred by the Town in carrying out an Order under this By-Law, constitute a debt owing to the Town from the person to whom the Order is directed.
- b. Within thirty (30) days of ascertaining the amount of expenses incurred by the Town in carrying out the Order, the CAO will send a demand for payment of these expenses to the person to whom the Order was directed.
- c. Where the Town carries out an Order under this section and the person to whom the Order is directed fails, within thirty (30) days after a demand for payment, to pay expenses incurred by the Town, the CAO will transmit to the Tax Clerk, of the Town, a statement setting out the:
  - i. amount of the expenses,
  - ii. name of the assessed owner of the land to which the Order relates, and
  - iii. location of the land to which the Order relates.
- d. On receipt of the statement the Tax Clerk shall place the amount of the expenses incurred in carrying out the Order on the tax roll as an additional tax against the land concerned and that amount
  - i. forms a lien on the land in favour of the Town, and
  - ii. shall, for all purposes, be deemed to be taxes imposed and assessed on the land and delinquent under the Municipal Government Act, R.S.A. 2000, Chapter M-26 from the date the expenses were incurred, and that Act applies to the enforcement, collection and recovery of the amount.

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### 8. **APPEAL BOARD**

- a. Council hereby authorizes and establishes the Unightly Premises Appeal Board to hear appeals arising from Orders issued pursuant to this By-Law.
  - i. The Town Council shall appoint three persons by resolution, on a case-by-case basis, to sit as members of the Appeal Board.
  - ii. The Appeal Board will operate as a Committee of Council and is subject to Part 5 of the Municipal Government Act and applicable sections of the Town of Coalhurst Procedure By-Law.
  - iii. The make up of the Appeal Board may be elected officials and/or appointed members of the public at large and is solely the decision of Town Council.
  - iv. The members of the Appeal Board shall select one of themselves as chairman.
  - v. Each member of the Appeal Board shall have one vote.
  - vi. Two members of the Appeal Board shall constitute a quorum.
  - vii. A decision of the majority of members at the appeal hearing shall be deemed to be the decision of the whole Appeal Board.
  - viii. Each member of the Appeal Board shall be entitled to such remuneration as may be fixed from time-to-time by Town Council.
- b. The Town Council may, by resolution, appoint a recording secretary, who may be an employee of the municipality and who shall attend all meetings of the Appeal Board, but shall not vote on any matter before the Appeal Board.
  - i. The recording secretary shall keep the following records:
    - The written appeal;
    - The minutes of the hearing;
    - All notices of hearing and of the persons to whom they were sent;
    - All written representations;
    - Notes as to each representation;
    - The names and addresses of those making representations at the hearing;
    - The decision of the Appeal Board;
    - The reasons for the decision of the Appeal Board;
    - The vote of the members of the Appeal Board on the decision;
    - Notices of the decision and of persons to whom they were sent;
    - Such other matters as the Appeal Board may direct.

### 9. **APPEAL**

- a. Where a Order is issued such Order may be appealed to the Appeal Board.
  - i. Appellants must submit notice of their appeal, in writing, to the CAO within fourteen (14) days of the date of the service of the Order.
  - ii. Each Notice of Appeal shall:
    - State with reasonable exactness the grounds of appeal;
    - State the name, address and interest of the appellant in the property;
    - Be dated, and signed by the appellant or on his behalf by his agent and, if signed by an agent, shall state the name and address of the agent; and
    - Be accompanied by a non-refundable fee of \$100.

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- b. The CAO shall, upon receipt of the Notice of Appeal, set a date for the hearing of the appeal, which shall be held within thirty (30) days of the receipt of the Notice of Appeal.
- c. Once the appeal is filed with the CAO, the Order is stayed, pending a final decision on the merits of the appeal, by the Appeal Board.
- d. The Appeal Board may:
  - i. Confirm, vary, or revoke the Order or may substitute its decision in place of the Order.
  - ii. Extend the time within which anything required to be done by the Order is to be performed.
  - iii. Direct anything to be done that an Enforcement Officer can direct to be done either in addition or in substitution for the direction in the Order.
- e. The Appeal Board will consider each appeal having regard to the circumstances and merits of the case and the applicable provisions of this By-Law.
- f. When hearing an appeal, the Board:
  - i. is not bound by the technical rules of evidence; and
  - ii. will afford to every person concerned the opportunity to be heard, to submit evidence and to hear the evidence of others.
- g. A decision of the Appeal Board may be appealed to the Court of Queen's Bench.
  - i. Such appeal must be filed within fifteen (15) days of the service of the decision.
  - ii. A copy of an appeal to the Court of Queen's Bench must be provided to the CAO immediately upon filing with the Court.
  - ii. If an appeal is not filed with the Court of Queen's bench within the seven (7) day appeal period, the Town will direct the Enforcement Officer to carry out the actions required as provided in this By-Law.

## 10. OFFENCE

- a. Where a Peace Officer believes that any person has committed a breach of any of the Sections of this By-Law, they may cause a violation ticket to be served upon such person pursuant to Part 2 of the Provincial Offences Procedure Act, Alberta.
- b. A person who contravenes any of the provisions of this By-Law is guilty of an offence and is subject to a fine of:
  - i. For the first offence, Five Hundred (\$500.00) Dollars and in default of payment to a term of imprisonment of not more than six (6) months, or both.
  - ii. For a second offence within one year of the first offence, One Thousand (\$1,000.00) Dollars and in default of payment to a term of imprisonment of not more than six (6) months, or both.
  - iii. For a third offence within eighteen months of the second offence, One Thousand Five Hundred (\$1,500.00) Dollars and in default of payment to a term of imprisonment of not more than six (6) months, or both.
  - iv. For a fourth or subsequent offence, within twenty-four months of the third or subsequent offence Two Thousand Five Hundred (\$2,500.00) Dollars, and in default of payment to a term of imprisonment of not more than six (6) months, or both.

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11. **INTENTION OF COUNCIL**

- a. It is the intention of the Town Council that each separate provision of this by-law shall be deemed independent of all other provisions herein and it is further the intention of the Town Council that if any provision of this by-law is declared invalid, all other provisions there of shall remain valid and enforceable
- b. Any reference to the masculine (he), shall also refer to the feminine (she).
- c. This By-Law rescinds By-Law #246-97 and those sections of By-Law #284-02 and By-Law #287-02 regarding By-Law #246-97, and amendments.
- d. This By-Law comes into force and effect upon the date of the passing of the third and final reading.

READ A FIRST TIME THIS 20<sup>th</sup> DAY OF JULY, A.D. 2004

READ A SECOND TIME THIS 20<sup>th</sup> DAY OF JULY, A.D. 2004

READ A THIRD TIME AND FINALLY PASSED THIS 20<sup>th</sup> DAY OF JULY, A.D. 2004

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MAYOR

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ADMINISTRATOR