



**THE MUNICIPAL CORPORATION OF THE TOWN OF FORT SMITH
BY-LAW 855**

A By-Law of the Municipal Corporation of the Town of Fort Smith in the Northwest Territories, to control and prevent the unsightly appearance of land and to minimize the effects of unsightly land on adjoining property;

PURSUANT TO Sections 173, 174, 176, 177, 182, 183 and 187 of the Cities, Towns and Villages Act, R.S.N.W.T., 1988, c. E-7; and the Summary Convictions Procedures Act, R.S.N.W.T., 1988, c. S-15;

WHEREAS unsightly land is a detriment to surrounding properties and the immediate neighbourhood generally;

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

AND WHEREAS the purpose of this By-Law is to prevent the existence and proliferation of unsightly land and to provide a mechanism for the remediation of property, which has become unsightly land;

NOW THEREFORE, THE COUNCIL OF THE TOWN OF FORT SMITH enacts as follows:

SHORT TITLE

1. This By-Law shall be cited as the “Unsightly Land By-Law”

DEFINITIONS

2. In this By-Law the term:

- a. “Animal Material” means any excrement and includes all material accumulated on property from pet pens, yard, stables, veterinary clinics or hospitals or kennels;
- b. “Ashes” means the powdery residue accumulated on property left after the combustion of any substance and includes any partially burnt wood, charcoal, coal or other material;
- c. “Building Material” means all construction and demolition material accumulated on property 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. “Council” means the Council of the Town of Fort Smith;
- e. “Director of Municipal Services” means the person appointed as the Director of Municipal Services for the Town of Fort Smith and includes any person designated by the S.A.O. to act on his behalf;
- f. “Enforcement Officer” means a By-Law Enforcement Officer appointed by Council and any person designated by the S.A.O. to act on his behalf;



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- g. “Order” means any Clean Up or other Order issued by the Enforcement Officer under the authority of this by-law;
- h. “Owner” means:
- i. a person who is registered under the Land Titles Act as the owners of the property;
 - ii. the person who is recorded as the owner of the property on the assessment roll of the Town;
 - 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.
- i. “Property” means any land, building or property, whether real or personal, within the municipal boundaries of the Town;
- j. “Right of Access” means the right of an Enforcement Officer to enter 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 purpose of enforcing a Clean Up Order;
- k. “S.A.O.” means the Senior Administrative Officer of the Town of Fort Smith appointed by Council;
- l. “Unsightly Land” means any property or part of it which is characterized by visual evidence of a lack of general maintenance and upkeep and/or by the accumulation on the property of:
- i. any rubbish, refuse, papers, packages, container, bottles, cans, manure, human excrement or sewage or the whole or a part of an animal carcass, dirt, soil, leaves, gravel, rocks, sod, petroleum products, hazardous materials, disassembled equipment or machinery, broken items, boxes, cartons, fabrics, household appliances and furniture;
 - ii. equipment, vehicles or machinery which has been rendered inoperative by reason of its disassembly, age or mechanical condition;
 - iii. construction and/or industrial vehicles, equipment or machinery in a residential setting;
 - iv. animal material, yard material, ashes, and building materials as defined in this by-law;
 - v. all forms of garbage, litter, refuse and waste as defined under By-Law No. 659, the Garbage By-Law as amended from time to time;
 - vi. in the case of external surfaces of buildings “unsightly” means unauthorized signs, posters, billboards, graffiti, obscene or offensive symbols, words, pictures or art; and may include but is not limited to dilapidated paint, siding, trim, roofing material, soffits, fascia material and eave troughs;
 - vii. grass in excess of 6 inches high.
- m. “Work forces” means town employees or contract workers engaged by the Town of Fort Smith for the purposes of enforcing a Clean Up Order;



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- n. “Yard material” means organic matter formed as a result of gardening or horticultural pursuits and includes grass, tree and hedge cuttings and clippings, plus excessive growth of grass, weeds, trees and hedges.

APPLICATION

3. No owner of a property shall allow his or her property to become unsightly land as defined in this By-Law.
4. In determining whether a property is unsightly land as defined in this By-Law an Enforcement Officer shall have regard to the use and location of the property and the provision of applicable Zoning By-Laws, other by-laws, any applicable statutes and regulations of Canada and the Northwest Territories.
5. If an Enforcement Officer has reason to believe that any property is unsightly land he may exercise a right of access to the property in order to inspect the property to determine whether the property contravenes the provisions of this By-Law.
6. If an Enforcement Officer considers any property to be unsightly land, the Enforcement Officer may issue an Order. Each order will:
 - a. describe the property by name, if any, and the municipal address or legal description or a plan showing the location of the property;
 - b. state that the property contravenes the provisions of this By-law;
 - c. give reasonable particulars of the extent of the clean-up, removal, clearing or other actions required to be made;
 - d. state the time within which the clean-up, removal, clearing or other action is to be completed, subject to Section 8;
 - e. 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 shall be charged against the property concerned as taxes due and owing in respect of that property, and recovered as such;
 - f. state that an appeal lies from the issuance of this Order to Council if an appeal is lodged in writing with the Senior Administrative Officer within fourteen (14) days of the date of issuance of the Order;
 - g. be served upon an owner of the property and may be served on any person shown by the records of the Land Titles Office to have an interest in the property;
 - h. be served in one of the following manners:
 - i. by being delivered personally to the person who is intended to be served; or
 - ii. by mailing the Order to the person to be served by double registered mail to the last known post office address of the person to be served, and service shall be deemed to be effected at the time the copy is delivered by an official of the Post Office to the person to be served; or
 - iii. where the property is not occupied, by mailing the notice by double registered mail to the mailing address noted on the Town’s tax roll for that property, and service shall be deemed to be effected at the time the copy is delivered by an official of the Post Office to be served; or
 - iv. as directed by the Court.
 1. If, in the opinion of the Enforcement Officer, service under (h)(ii) cannot reasonably be effected, the Enforcement Officer may post the Order or copy of the Order in a conspicuous place on the 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 three (3) days after such Order is posted.



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7. The Order may require the person to whom it is addressed, within a period of time which shall not be more than thirty (30) days from the date of the issuance of the Order, but not less than fourteen (14) days:
 - a. to remedy the condition of the property in a manner and to the extent directed in the Order;
 - b. to remove any material causing or contributing to the unsightliness of the property;
 - c. to place in waste receptacles any material causing or contributing to the unsightliness of the property; or
 - d. to do all or any of the matters specified in subsections 7(a) – 7(c).
8. The Enforcement Officer may extend the time for doing anything, which is required to be done by the terms of the Order.
9. Where an Order is issued pursuant to this By-Law, such Order may be appealed within fourteen (14) days to Council.
10. When an appeal is filed, the Order is stayed pending a decision of Council on the appeal.
 - a. A decision by Council shall be final and binding.
11. When Council is handling an appeal, Council may:
 - a. confirm, vary, or revoke the Order or may substitute its decision in place of the Order;
 - b. extend the time within which anything required to be done by the Order is to be performed;
 - c. direct anything to be done that an Enforcement Officer can direct to be done either in addition to or in substitution for the direction in the Order appealed.
12. Appellants must submit notice of their appeal in writing to the Senior Administrative Officer within fourteen (14) days of the date of the issuance of the Order. Each notice of appeal will:
 - a. state with reasonable exactness the grounds of appeal;
 - b. state the name, address, and interest of the appellant in the property;
 - c. 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.
13. The Senior Administrative Officer 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.
14. Council shall consider each appeal having regard to the circumstances and merits of the case and applicable provisions of this By-Law. When considering an appeal Council will:
 - a. not be bound by the technical rules of evidence,



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- b. afford to every person concerned the opportunity to be heard, to submit evidence and to hear the evidence of others.
15. The person to whom an Order is directed shall comply with the directions of the Order as set out in the Order of the Enforcement Officer or the requirements set out in any decision of Council.
16. If a person to whom an Order is directed under this By-law fails to carry out the Order within the time stated in such Order, in the case of an Order that is not appealed, or within the time limited by the Council in the case of an Order appealed an Enforcement Officer may exercise a right of access to the unsightly land and may, with whatever work forces as are necessary, enter the property against which the Order has been issued and carry out the Order. During the process of carrying out the intent of the order, the following may occur:
- a. The Town or persons appointed by it may remove any fencing or other obstructions in carrying out the Order and shall restore any fencing or other obstructions removed or damaged in the course of carrying out the Order, to a condition and state of repair equivalent to that which is directed;
 - b. The expense incurred by the Town in carrying out an Order constitutes a debt owing the Town from the person to whom the Order is directed;
 - c. Within thirty (30) days of ascertaining the amount of the expenses incurred by the Town in carrying out the Order, Town staff shall send a demand for payment of these expenses to the person to whom the Order was directed;
 - d. Where the Town carries out an Order and the person to whom the Order is directed fails, within thirty (30) days after a demand for payment, to pay the expenses incurred by the Town, staff shall place the amount of the expenses incurred in carrying out the Order on the tax roll as an additional tax against the property concerned and that amount will:
 - i. form a lien on the property in favour of the Town;
 - ii. shall for all purposes, be deemed to be taxes imposed and assessed on the property and delinquent under the Property Assessment and Taxation Act from the date the expenses were incurred and this Act shall apply to the enforcement, collection and recovery of the amount;
 - e. Where the Town carries out an Order, the work forces shall deposit any material removed from unsightly land at a location designated by its Director of Municipal Services;
 - f. Notwithstanding subsection 16(e), where an Enforcement Officer is of the opinion that the material removed under Section 16(e) has no value, he may direct that the material be disposed of;
 - g. When material removed from unsightly land under subsection 16(e) is removed to a location specified by the Director of Municipal Services, he may direct that the material be disposed of if the person to whom an Order has been issued does not remove the material within fourteen (14) days of being requested in writing to do so.



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- 17. Any person or corporation who violates any provision of this By-Law is guilty of an offence and is liable on Summary Conviction to:
 - a. a fine not exceeding two thousand dollars (\$2,000) for an individual or ten thousand dollars (\$10,000) for a corporation;
 - b. any other order that may be imposed by the Court as outlined in the Cities, Towns and Villages Act.
- 18. No person found guilty of an offense pursuant to this By-Law shall be liable to imprisonment.
- 19. A By-Law Officer may issue a Summary Offense Ticket in the form prescribed by the Summary Conviction Procedures Act and Regulations, to any person who violates any provision of this By-Law and such person may, in lieu of prosecution, pay the Town the volunteer penalty for the offense as listed in Schedule A, attached hereto and forming part of this By-Law, prior to the court date specified on the ticket.

EFFECT

- 20. This By-Law shall come into effect upon receiving Third Reading and otherwise meets the requirements of the Cities, Towns and Villages Act.

REPEAL

- 21. That Bylaw 684 is hereby repealed.

READ a First time this 24 day of May, A.D., 2011

READ a Second Time this 24 day of May A.D. 2011

READ a Third Time and Finally Passed this 23 day of June, A.D. 2011

Original signed by Mayor Janie Hobart

Original signed by Brenda Black

Mayor

Senior Administrative Officer

I hereby certify that this bylaw has been made in accordance with the requirements of the *Cities, Towns and Villages Act* and the bylaws of the Municipal Corporation of the Town of Fort Smith.

Original signed by Brenda Black

Senior Administrative Officer



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Town of Fort Smith

By-Law No. 855

Schedule ``A``

<u>Offence</u>	<u>Penalty</u>
Unsightly Land – 1 st Offence	\$400.00
Unsightly Land – 2 nd Offence	\$500.00
Unsightly Land – 3 rd Offence	\$600.00
Failure to Comply- 1 st Offence	\$600.00
Failure to Comply – 2 nd Offence	\$800.00
Failure to Comply – 3 rd Offence	\$1,000.00