

## BY-LAW #542

BEING A BY-LAW OF THE VILLAGE OF FERINTOSH IN THE PROVINCE OF ALBERTA TO REGULATE UNTIDY AND UNSIGHTLY PROPERTY AND FOR THE PREVENTION AND COMPELLING OF NUISANCES GENERALLY.

### WHEREAS

under Section 7 of the Municipal Government Act, RSA 1994, Chapter M-26.1, and amendments thereto, a council may pass by-laws for municipal purposes respecting nuisances, including unsightly property;

**NOW THEREFORE** the Council of the Village of Ferintosh, duly assembled enacts as follows:

1. This By-Law shall be cited as the “Nuisance By-Law”.
2. In this By-Law, the following definitions shall apply:
  - a) “Animal Material” means any animal excrement and includes all material accumulated on premises from pet pens, yards, kennels.
  - b) “Boulevard” means that portion of a street which lies between the roadway and the property line of the land abutting the said street.
  - c) “By-Law Enforcement Officer” means a person authorized by Council to carry out the provisions of this By-Law, or the Municipal Administrator of the Village of Ferintosh, or a member of the Royal Canadian Mounted Police.
  - d) “Clean-Up Order” means an order issued under this By-Law by an Enforcement Officer with respect to an unsightly property within the Village.
  - e) “Council” means the Council of the Village of Ferintosh.
  - f) “Litter” means:
    - 1) any solid or liquid material or combination of solid and liquid material or products, including but not limited to:
      - any rubbish, refuse, garbage, papers, packages, containers, bottles, cans, manure, human excrement or sewage or the whole or 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.
      - the whole or part of any motor vehicle as defined under the Highway Traffic Act, R.S.A. 1980, c.H-7 as amended as well as any tractor or implement of husbandry
        - (a) which has no current licence plate attached to it and in respect of which, no negotiation certificate has been issued for the current year, or
        - (b) which is inoperative by reason of disassembly, age or mechanical condition;

g) “Municipal Administrator” means a person appointed as such under the Municipal Government Act by the Village of Ferintosh.

h) “Nuisance” means any act or deed, or omission or thing, which is or could reasonably be expected to be annoying or troublesome, or destructive, or harmful, or inconvenient, or injurious to another person and/or his property, or anything troublesome or bothersome to other people for which complaints are received by the Village of Ferintosh Municipal Office or by the Royal Canadian Mounted Police, whether or not such act or deed or omission or thing constitutes nuisance at common law.

i) “Occupant” means any person occupying or having control over the condition of any property and the activities conducted on any property, be such person the owner, lessee, tenant or agent of the owner or whether such person resides thereon or conducts a business thereon.

j) “Owner” means a person having title to or legal possession of any property or who possesses property under a purchase agreement.

k) “Pest” means any animal, bird, reptile or insect which causes or could reasonably be expected to cause annoyance or damage or injury to any person, or animal or plant.

l) “Premises” means any land, building or property, whether real or personal, within the municipal boundaries of the Village of Ferintosh.

m) “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.

n) “Rubbish” means and includes any paper product or fabric, or wood, or plastic, or glass, or metal and/or any matter or substances of any kind which has been discarded, or abandoned, or in any way disposed of.

o) “Untidy or Unsightly Premises” means any property or part of it on which there is litter or rubbish which causes the property or any part of it to look untidy or unsightly.

p) “Violation Ticket” means an offense ticket as defined in the Provincial Offenses Procedure Act (S.A. 1988, c.P-21.5) as amended.

q) “Weeds” means any plants designated as restricted, noxious or nuisance weeds in accordance to the Weed Control Act, being a Statute of Alberta.

### 3. Regulations

a) Every owner, lessee, tenant or agent of the owner of any real property within the Village of Ferintosh, or if such property is unoccupied, the owner thereof shall:

i) No person being the owner, agent of the owner, lessee or occupant of land or premises, shall permit that land or premises to be or remain untidy or unsightly.

ii) No person being the owner, lessee, tenant or agent of the owner of any land or premises within the Village of Ferintosh shall permit any building structures or erection of any kind whatsoever, or any excavation, depression, drain or ditch, watercourse, pond, surface water or other matter or thing to remain a nuisance and/or dangerous to the public safety or health.

iii) Every person who is an owner, lessee, tenant or agent of the owner of the land or premises shall cut the grass on property they own or occupy and cut the grass on any boulevard which abuts, flanks or adjoins such property and this shall include lanes or alleys at the rear or side of such property to prevent it from growing to a height of more than six inches. Grass clippings shall be disposed of in accordance with By-Law No. 371. (Garbage Collection & Disposal By-Law).

iv) Every person who is an owner, lessee, tenant or agent of the owner of land or premises shall eradicate dandelions and noxious weeds and plants from the property they own or occupy and from the boulevard which abuts, flanks or adjoins such property and this shall include lanes or alleys at the rear or side of such property.

vi) No person who is owner, lessee, tenant, or agent of the owner of land or premises shall permit the accumulation of dirt, stones, old implements, automobiles and parts of automobiles, scrap iron, lumber, building materials or any other rubbish so as to cause any untidy or unsightly condition or hazard or nuisance within or on such property.

vii) No person who is the owner, lessee, tenant or agent of the owner of the land or premises shall permit the proliferation of any insect or other pest that is likely to spread disease, be destructive or dangerous or otherwise become a nuisance.

viii) Every person who is the owner, lessee, tenant, or agent of the owner of land on premises shall remove from such property any dead grass or brush or other rubbish which may be untidy or unsightly or that may harbor pests.

ix) Every person who is the owner, lessee, tenant or agent of the owner of land or premises when requested to do so by unwritten notice from the Village shall take such measures as the Village deems necessary for the prevention or abatement of a nuisance or for the remedying of any untidy or unsightly condition on any premises within the time period set out in the notice.

#### 4. Control of Litter

a) No person shall place, deposit, throw or cause to be placed, deposited or thrown any litter upon the street, land, sidewalks, parking lots, park, playground or other public place or water course or on property not his/her own, except in a receptacle provided for such purposes.

b) All private or general contractors shall during the construction, renovation or demolition of a building keep the land in a reasonable condition so as not to constitute a nuisance and shall secure all manner of debris so as to prevent it from blowing onto any other private or public property.

c) A person who has placed, deposited or thrown or caused to be placed, deposited or thrown any litter upon any street, lane, sidewalk, parking place, park, playground or other public place or water course or on any property not his own shall forthwith remove it.

d) If any person fails to remove any litter or any materials or objects referred to in this section or any other obstruction deposited by him/her off from the streets, lanes, alleys and byways, property not his own or public places of the Village, the By-Law Enforcement Officer shall cause such removal to be done at the expense of such person and the expense of so doing shall be recoverable from such person in any court of competent jurisdiction.

#### 5. Dust In The Air

a) No person shall cause or permit any opaque or dense dust to be emitted to the atmosphere from any operations on the premises of such person.

#### 6. Salvage Yards Fenced

a) All outdoor salvage yards, auto wreckers or other businesses which by their nature appear to be untidy or unsightly, shall be obscured from view by approved screening from surrounding property.

#### 7. Piling, Storing Material or Equipment on Village Property

a) No person shall place, pile or store any material or equipment on Village owned property without first obtaining approval for such purposes from the Village.

b) Any person placing or causing to be placed any litter, rubbish, material or equipment on any Village property without first obtaining approval shall remove or cause the removal thereof within twenty-four (24) hours.

#### 8. Control of Trees and Shrubs

a) Every person who is an owner, lessee, tenant or agent of the owner shall ensure that branches, roots, stems or trunks of trees or shrubs, whether on private property or otherwise shall not in any way interfere with or endanger the lines, poles, conduits, pipes, sewers or other works of a utility serving or owned by the Village of Ferintosh; Council or the By-Law

Enforcement Officer may direct the owner, agent, lessee or occupier of the property on which such trees or shrubs stands to remove or prune the tree or shrub or to take other steps as Council or the By-Law Enforcement Officer may deem necessary to alleviate the interference with or danger to such works.

b) Trees whose branches overhang a public sidewalk, road, lane or alley shall be pruned up from the bottom to a height of nine (9) feet so as to allow unobstructed flow of traffic. Cuttings from trees and shrubs shall be disposed of in accordance with By-Law No. 371. (Garbage Collection and Disposal).

#### 9. Authority to Enter and Enforcement

a) The By-Law Enforcement Officer is hereby authorized to enter lands within the Village of Ferintosh for the inspection of conditions that may constitute a nuisance and/or is dangerous to public safety or health or otherwise contravenes or fails to comply with the provisions of this By-Law.

b) The By-Law Enforcement Officer may declare that any property or premises within the Village is in contravention of this By-Law.

c) The By-Law Enforcement Officer may direct the owner, agent of the owner, lessee or occupier of any property to take such measures for the prevention or abatement of a nuisance or for the remedying of any untidy or unsightly condition on any premises or to ensure that the provisions of this By-Law are complied with, and may:

i) Issue a written Clean Up Notice, as prescribed in Schedule "A" of this By-Law, to the owner and/or occupier of the land or premises personally or by registered mail to the owner, agent, lessee or occupier of the land or premises in question advising them of the condition and directing that the condition be rectified within fourteen (14) days.

ii) Upon non-compliance to a Clean Up Notice referred to in Section 9,1), issue an offense ticket in accordance with Section 10.b).

d) Should any property owner, agent, lessee or occupier fail, neglect or refuse to remedy the conditions as directed in the said Notice, the Village of Ferintosh may cause the work to be performed as deemed necessary to remedy the condition and charge the costs of such work to the owner, agent, lessee or occupier, and in default of payment,

i) Recover the cost as a debt due to the Village, or

ii) Charge the cost against the land concerned as taxes due and owing in respect of that land and recover the cost as such.

e) Any person who enters property to remedy a condition as directed by the Council or the By-Law Enforcement Officer shall be deemed to have the authorization of Council and shall not incur any liability therefore.

## 10. Penalties

- a) Any person who breaches a provision of this By-Law shall be guilty of an offence and shall be liable upon summary conviction to a fine of not less than \$200.00 and not more than \$500.00.
- b) Notwithstanding the foregoing, a person charged with an offence under this By-Law may make a voluntary payment at the Village Office at any time up to fourteen (14) days after the date of the Violation Ticket is issued and in such case, prosecution for the offence will not proceed.
- c) The voluntary payment shall be as follows:
  - i) For a first offence in a calendar year, \$50.00
  - ii) For a second offence in a calendar year, \$100.00
  - iii) For a third and subsequent offence in a calendar year \$150.00
- d) If an alleged offender does not voluntarily pay the penalty amount as set out in Subsection 10.c) then such person may, by summons, be required to appear in court and shall be liable on summary conviction to pay a fine, pursuant to Subsection 10.a) plus court costs.

## 11. Appeal Provisions

- a) A person who receives a written Clean Up Order under this By-Law may request Council to review the Clean Up Order by delivering a written request to the Municipal Administrator within fourteen (14) days of the date the Clean Up Order was sent
- b) After reviewing the Clean Up Order, Council may confirm, vary, substitute or cancel the order
- c) Appeal of Council's decision may be made by a person affected by the decision of Council to the Court of Queen's Bench within thirty (30) days of the date the decision is sent to the person if:
  - i) the procedure required to be followed by this By-Law is not followed, or
  - ii) the decision is patently unreasonable
- d) The application for the appeal to the Court of Queen's Bench must state the reason for the appeal.
- e) The Court of Queen's Bench may
  - i) confirm the decision of Council
  - ii) declare the decision invalid and send the matter back to Council with direction.

12. Severability

a) Should any section or part of this By-Law be found to have been improperly enacted or untra vires, for any reason, then such section or part shall be regarded as being severable from the By-Law and the By-Law remaining after such severance shall be effective and enforceable as is the section found to be improperly enacted has not been enacted as part of this By-Law.

13. Duty to Enforce

a) The Village of Ferintosh is not required to enforce this By-Law. In determining whether to enforce this By-Law, the Village may take into account any practical concerns including available budget and personnel resources.

14. This By-Law rescinds By-Law No. 455.

15. This By-Law shall come into force and effect on the final date of passing thereof.

READ a First time this 15<sup>th</sup> day of June 2004.

READ a Second time this 15<sup>th</sup> day of June 2004.

READ a Third time and finally passed the 15<sup>th</sup> day of June 2004.

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Mayor

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Municipal Administrator