

**VILLAGE OF LINDEN
BYLAW NO. 2011-05
NUISANCE AND UNSIGHTLY PREMISES BYLAW
BEING A VILLAGE OF LINDEN BYLAW TO REGULATE AND ABATE
UNSIGHTLY PREMISES AND OTHER NUISANCES WITHIN THE VILLAGE
OF LINDEN**

WHEREAS: The provisions of Section 7 of the *Municipal Government Act*, RSA 2000, Chapter M-26 permits the Council to pass Bylaws respecting nuisances, including unsightly property; the safety, health and welfare of people; and the protection of people and property;

AND WHEREAS: Council deems it necessary to provide an efficient and effective means of regulating and encouraging the abatement of unsightly premises and other nuisances contained exclusively within the VILLAGE OF LINDEN;

AND WHEREAS: Council deems it necessary to repeal and replace the existing Nuisance Bylaw No. 01-07 and any amendments thereto ;

NOW, THEREFORE, THE MUNICIPAL COUNCIL OF THE VILLAGE OF LINDEN, IN THE PROVINCE OF ALBERTA, DULY ASSEMBLED, ENACTS AS FOLLOWS:

1. TITLE

This Bylaw may be cited as the "Nuisance and Unsightly Premises Bylaw".

2. DEFINITIONS

2.1 In this Bylaw, unless the context otherwise requires:

2.1.1 "**Animal Material**" means any animal excrement and includes all material accumulated on a premise from pet pens or pet yards, veterinary clinics, animal hospitals, or kennels;

2.1.2 "**Building material**" means material or debris which may result from the construction, renovation or demolition of any building or other structure and includes, but is not limited to, wood, gypsum board, roofing material, vinyl siding, metal, packaging material, containers of building material, gravel, concrete, asphalt, and any earth, rocks or vegetation displaced during such construction, renovation or demolition of any building or other structure;

2.1.3 "**Chief Administrative Officer (CAO)**" means that person appointed to the position and title by the Municipal Council of VILLAGE OF LINDEN and includes any person appointed by the CAO to act as his/her appointee;

2.1.4 "**Control**" in reference to weeds means:

- a) Cut, mow or carry out measures designed to inhibit propagation of the weed, or
- b) Destroy the weed if so requested by an Enforcement Officer or Weed Inspector employed/authorized/contracted by the VILLAGE OF LINDEN, or
- c) Carry out other measures as prescribed by an Enforcement Officer or Weed Inspector employed/authorized/contracted by the VILLAGE OF LINDEN;

2.1.5 "**Council**" means the Council of the VILLAGE OF LINDEN.

2.1.6 "**Village** " means the Municipal Corporation of VILLAGE OF LINDEN, or the area of land within the corporate boundaries thereof, as the context so requires;

2.1.7 **“Court”** means the Provincial Court of Alberta;

2.1.8 **“Enforcement Officer”** means a Community Peace Officer, Bylaw Enforcement Officer, RCMP Officer or Designated Officer/ inspector employed/authorized/contracted by the Village with respect to the enforcement of Bylaws of the VILLAGE OF LINDEN;

2.1.9 **“Garbage”** means any household or commercial rubbish including, but not limited to, boxes, cartons, bottles, cans, containers, packaging, wrapping material, waste paper, cardboard, food, and discarded clothing, fabric or other household items;

2.1.10 **“Graffiti”** means words, figures/symbols, letters or drawings scribbled, scratched, painted or sprayed upon any surface without the consent of the owner of the building or premises on which such graffiti is placed;

2.1.11 **“Highway”** as defined in the *Traffic Safety Act*;

2.1.12 **“Including”** when introducing a list of items, does not limit the meaning of the words to those items or to items of a similar kind;

2.1.13 **“Notice”** means a notice issued to an Owner of a Premises pursuant to this Bylaw to remedy a condition that is not in compliance with any provision of this Bylaw;

2.1.14 **“Owner”** means: a) a person who is registered under the *Land Titles Act* as the owner of a parcel of land;

or

b) a person who is recorded as the owner of a property on the tax assessment roll of VILLAGE OF LINDEN; or

c) a person who has purchased or otherwise acquired a parcel of land, whether he has purchased or otherwise acquired the land directly from the owner or from another purchaser, and has not yet become the registered owner thereof; or

d) a person holding himself out as the person having the powers and authority of ownership of a property or premises or who for the time being exercises the powers and authority of ownership; or

e) a person in possession or control of a property or premises under construction; or

f) a person who is the occupant of a property or premises pursuant to a written or verbal rental or lease agreement, license or permit and/or being in care/control;

2.1.15 **“Person”** means an individual or any business entity including a firm, partnership, association, corporation, company or society;

2.1.16 **“Premise(s)”** means any land situated in whole or in part within the Village including the external surfaces of all buildings and land immediately adjacent to any building or buildings and includes any land or buildings owned or leased by the Village ;

2.1.17 **“Provincial Offences Procedure Act (POPA)”** means the *Provincial Offences Procedure Act*, R.S.A. 2000, Chapter P-34, and the regulations thereof, as amended or replaced from time to time;

2.1.18 **“Residential building”** means a structure used as a residence containing one or more dwelling units, including a house, multi-family dwelling, apartment building, hospital, lodging house, hotel, motel, mobile home, tent, trailer, motor home, camper or recreational vehicle of any type;

2.1.19 **“Residential development”** means any land that is the site of one or more residential buildings;

2.1.20 “**Unsightly Premises**” means any property or part of it that exhibits visual evidence of a lack of general maintenance, clean-up and upkeep, including the excessive accumulation on the premises of:

- a) garbage, animal or human excrement, sewage, the whole or a part of an animal carcass, dirt, soil, gravel, rocks, petroleum products, hazardous materials, disassembled equipment or machinery, broken household chattels or goods;
- b) the whole or any part of any vehicle or vehicles which are not registered with the Motor Vehicle Registry for the current year or are inoperative by reason of disrepair, removed parts or missing equipment, or any vehicles which are otherwise not in a roadworthy condition;
- c) equipment, household appliances, power tools or machinery which has been rendered inoperative by reason of disassembly, age or mechanical condition;
- d) animal material, building material, garbage and yard material as defined in this Bylaw, or
- e) any other form of scrap, litter, trash, junk or waste of any kind;

2.1.21 “**Vehicle**” has the same meaning as defined in the *Traffic Safety Act*, and includes any motorized vehicle that is unable to be moved under its own power;

2.1.22 “**Weeds**” noxious weeds as defined by the *Weed Control Act*; and designated in accordance with the Weed Control Regulations.

2.1.23 “**Yard material**” means waste material of an organic nature formed as a result of gardening, horticultural pursuits, or agricultural activities and includes grass, tree and hedge cuttings, waste sod and decomposing plants, leaves and weeds.

3. GENERAL PROHIBITION

3.1 No owner or owners of a premise shall cause, allow or permit the premises to become or to continue to be an Unsightly Premises as defined in this Bylaw.

3.2 The questions of whether or not a particular premises exhibits “visual evidence of a lack of general maintenance, clean-up and upkeep”, or whether there is an “excessive accumulation” of the materials listed in Section 2.1.20 of this Bylaw, are questions of fact to be determined by a Court hearing a prosecution pursuant to the provisions of this Bylaw.

3.3 When making the determination during a trial as to whether a person is guilty of an offence under Section 3.1 of this Bylaw, the Court’s considerations shall include any admissible evidence as to:

- a) The general condition and state of tidiness of the neighboring or surrounding premises; and
- b) The location and permitted use of the premises and whether or not the premises is located within a Residential Development; and
- c) The period of time the premises has been in the state complained of; and
- d) Whether or not the premises is undergoing construction or renovation, and the period of time that such activity has been ongoing; and
- e) Any other circumstances or facts relating to the premises that the Court deems are relevant to the said determination.

3.4 Every owner or occupier of a premise shall ensure that graffiti placed on the premises is removed, painted over, or otherwise permanently blocked from public view within 14 days of the owner becoming aware or notified of the presence of said graffiti.

4. WEEDS, GRASS, TREES, PESTS AND SMOKE

4.1 Every occupant or owner of any property or premises within the Village

shall:

- a) Eradicate or control all weeds on the premises, and on any boulevard which abuts or adjoins the premises, including up to the center of lanes or alleys at the rear or side of the premises;
- b) Prune or remove any and all trees located on the premises that, due to a deterioration of condition or for any other reason, interfere with any public utility or public works, and are a public safety hazard;
- c) Remove or prune any shrub located on the premises which is, or could be, a nuisance to any person using any publicly owned or maintained sidewalk or street;
- d) Prevent unnecessary stagnant water from remaining on the premises so as to avoid it becoming a potential breeding place for mosquitoes or other pests;
- e) Cut or mow the grass on any boulevard or street, situated on Village owned land adjoining, or abutting or adjacent to the premises owned or occupied by him, to prevent such grass from growing to such a height as to be unsightly, having regard to the height of the grass on adjacent or surrounding premises;
- f) Remove from such property any dead grass or brush or rubbish which is clearly untidy or unsightly, or which may harbor vermin or pests therein;
- g) Cut or mow the grass on such property before said grass reaches such a height as to be unsightly, having regard to the height of the grass on adjacent or surrounding property.

4.2 No occupant or owner of any property or premises, whether presently occupied or not, shall:

- a) Allow weeds to grow and propagate uncontrolled or excessively on the premises;
- b) Suffer or permit trees, or other vegetation growing on the property to interfere or endanger the lines, poles, conduits, pipes, sewers or other works of the Village ;
- c) Allow any infectious blight or disease of the trees or other vegetation located on the property to go uncontrolled or unchecked;
- d) Allow, permit or cause any opaque or dense smoke or dust to be emitted to the atmosphere from the premises.

5. CONSTRUCTION SITES

5.1 An owner of a property or premises under construction shall ensure that building materials and waste materials on the premises are removed or contained and secured in such a manner that prevents such material from being blown off or scattered from the property.

5.2 An owner of a property or premises under construction shall ensure that waste building material on the premises is removed or secured within a reasonable time by means of appropriate containers.

6. EXEMPTIONS & EXCEPTIONS

6.1 The provisions of this Bylaw shall not be interpreted to prevent bona fide and permitted commercial, industrial, agricultural, construction, demolition, renovation, landscaping, clean-up, storage or other related activities from being carried out on, or in relation to a premises.

6.2 The owner of a premises that carries on or permits the carrying on of any activities referred to in Section 6.1 of this Bylaw shall ensure that all reasonable steps are taken to minimize the duration and visual impact of any resulting untidiness or unsightliness of the premises.

6.3 Whether or not an owner has taken "all reasonable steps" to minimize the duration and visual impact of any resulting untidiness or unsightliness of a premises, as referred to in Section 6.2 of this Bylaw, is a question of fact to be determined by the Court hearing a prosecution pursuant to the provisions of this Bylaw.

7. BYLAW COMPLIANCE NOTICES

7.1 Where an owner or occupant of a premise is found by an Enforcement Officer to be in non-compliance with any provision of this Bylaw, the owner or occupant of the premises may be issued a Notice containing the following provisions:

a) The address and/or legal description of the property where remedial action is required; b) The condition or conditions that are not in compliance with this Bylaw; c) The remedial action that is required to bring the property into compliance; d) The deadline for completion of the remedial action required. The deadline for completion of the remedial action must not be less than 7 days after the date of service of the Notice and must not be greater than 30 days after the date of service of the Notice.

7.2 An application for an extension of the deadline for the completion of the remedial action required and provided for in a Notice may be applied for in writing to the Enforcement Officer not later than 7 days after the service of the Notice. The application must include the reasons why the deadline extension is required, and the anticipated date for completion of the required remedial action. Any such deadline extension applied for may be allowed or refused at the sole discretion of the Enforcement Officer, and the extension shall not exceed 120 days after the deadline provided in the Notice (giving consideration to environmental factors).

7.3 Any Notice issued pursuant to Section 7.1 of this Bylaw will be deemed to have been sufficiently served upon the owner or occupant of the premises when the Notice is:

a) Served personally upon the owner or occupant, or served upon any person who is or appears to be 18 years of age or older who resides in the subject premises;
b) Served personally upon the property manager or person apparently in charge of the premises, if the premises is not occupied or managed by the owner;
c) Posted at a conspicuous location(s) near the main entry to the premises; or
d) Mailed by regular mail to the owner of the premises using the address provided by the owner and/or on record with the VILLAGE OF LINDEN as the mailing address for the owner of the premises.

7.3.1 In the event of a mailed notice (as outlined in section 7.3) it shall be deemed sufficiently served seven (7) days from date of mailing.

7.4 The owner or occupant of a premise who has been served with a Notice issued pursuant to this Section shall fully comply with the Notice within the time allowed for compliance.

8. ENFORCEMENT

8.1 Where an Enforcement Officer has reasonable grounds to believe that a person has contravened any provision of this Bylaw, the Enforcement Officer may commence proceedings against such person by:

a) Issuing the person a Violation Ticket pursuant to the provisions of Part 2 of the *Provincial Offences Procedure Act*; or
b) Swearing out an Information and Complaint against the person.

8.2 Where an Enforcement Officer issues a person a Violation Ticket in accordance with section 8.1(a) of this Bylaw, the Officer may either:

a) Allow the person to pay the specified penalty as provided for in sections 10.1 and 10.2 of this Bylaw by indicating such specified penalty on the Violation Ticket; or
b) Require a Court appearance of the person where the Enforcement Officer reasonably believes that such appearance is in the public interest, pursuant to

the provisions of Part 2 of the *Provincial Offences Procedure Act*.

8.3 Notwithstanding any other provision of this Bylaw, an Enforcement Officer, upon receiving and reviewing a nuisance or unsightly premises complaint, shall assess the condition of the premises that is the subject of the complaint. The investigating Officer shall then recommend or take whatever actions are considered appropriate to address the complaint, in all of the circumstances.

8.4 No provision of this Bylaw nor any action taken pursuant to any provision of this Bylaw shall restrict, limit, prevent or preclude the Village from pursuing any other remedy in relation to a premises or nuisance as provided by the *Municipal Government Act*, or any other law of the Province of Alberta.

9. GENERAL PENALTY PROVISION

9.1 Any person that violates any provision of this Bylaw is guilty of an offence and is liable upon conviction to a maximum fine of TEN THOUSAND DOLLARS (\$10,000.00) or in default of payment of the fine to imprisonment for a period not exceeding one (1) year, or to both fine and imprisonment in such amounts.

10. MINIMUM AND SPECIFIED PENALTIES

10.1 See "Schedule A" for minimum and specified penalty (except 4.1, 4.2)

10.2 See "Schedule A" for minimum specified penalty for violation of 4.1 or 4.2.

10.3 See "Schedule A" for all violations of this Bylaw beyond those specified.

11. GENERAL

11.1 Provisions of this bylaw will be applied exclusively to properties contained within the boundaries of VILLAGE OF LINDEN .

11.2 It is the intention of the Council of VILLAGE OF LINDEN that each provision of this Bylaw should be considered as being separate and severable from all other provisions. Should any section or provision of this Bylaw be found to have been improperly enacted, then such section or provision shall be regarded as being severable from the rest of this Bylaw and that the Bylaw remaining after such severance shall remain effective and enforceable.

11.3 It is the intention of the Council of VILLAGE OF LINDEN that all offences created pursuant to this Bylaw be construed and considered as being Strict Liability Offences.

11.4 Whenever the singular and masculine gender is used in this Bylaw, the same shall include the plural, feminine and neutral gender whenever the context so requires.

11.5 This Bylaw shall come into force and effect upon it receiving third reading by Council, and Bylaw # B1349 of VILLAGE OF LINDEN is hereby repealed upon this bylaw coming into effect.




12. READINGS:

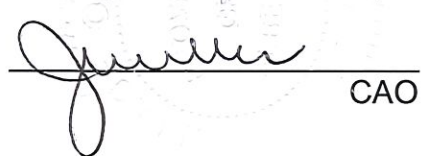
READ A FIRST TIME THIS 18TH DAY OF JULY, 2011.

READ A SECOND TIME THIS 18TH DAY OF JULY, 2011.

READ A THIRD TIME THIS 18TH DAY OF JULY, 2011.



Mayor



CAO

(Faint circular seal of the City of Berkeley is visible in the background behind the signatures.)

Appendix A of Bylaw #2011-05

10.1 The minimum and specified penalty for a violation of any provision of this Bylaw (excepting Sections 4.1, 4.2) is a fine in the amount of:

First Offence @250.00 Second Offence \$500.00 Third Offence \$1000.00

10.2 The Minimum and specified penalty for a violation of Sections 4.1 and 4.2 of this Bylaw is a fine in the amount of:

First Offence \$150.00 Second Offence \$250.00 Third Offence \$500.00

10.3 Notwithstanding any other provision of this Section, if a person violates the same provision of this Bylaw FOUR times (or more) within a one-year period, the minimum and specified penalty allowable for each subsequent offence shall be a fine in the amount of **ONE THOUSAND DOLLARS (\$1000.00)**.

