

**TOWN OF STONEWALL
BY-LAW NO. 15/05**

**Being a by-law to maintain property and to regulate
nuisances, abandoned and unsightly property**

Whereas The Municipal Act reads in parts as follows:

232(1) A Council may pass by-laws for municipal purposes respecting the following matters;

- (a) the safety, health, protection and well-being of people, and the safety and protection of property;....
- (c) subject to Section 233, activities or things in or on private property;....
- (o) the enforcement of by-laws

232(2) Without limiting the generality of subsection (1), a council may in a by-law passed under this Division

- (d) establish fees or other charges for services, activities or things provided or done by the municipality or for the use of property under the ownership, direction, management or control of the municipality

233 A by-law under clause 231(1)(c) (activities or things in or on private property) may contain provisions only in respect of

- (a) the requirement that land and improvements be kept and maintained in a safe and clean condition;....
- (d) activities or things that in the opinion of council are or could become a nuisance, which may include noise, weeds, odours, unsightly property, fumes and vibrations

236(1) Without limiting the generality of section 232(1)(o) (enforcement of by-laws), a by-law passed under that clause may include provisions

- (a) providing for procedures, including inspections, for determining whether by-laws are being complied with; and
- (b) remedying contraventions of by-laws, including
 - (i) creating offences,
 - (ii) subject to the regulations, providing for fines and penalties, including the imposition of a penalty for an offence that is in addition to a fee or imprisonment, so long as the penalty relates to a fee, rate, toll, charge, or cost that is associated with the conduct that gives rise to the offence, or related to enforcing the by-law,
 - (iii) providing that an amount owing under subclause (ii) may be collected in any manner in which a tax may be collected or enforced under this Act,
 - (iv) seizing, removing, impounding, confiscating and selling or otherwise disposing of plants, animals, vehicles, or other things related to a contravention,
 - (v) charging and collecting costs incurred in respect of acting under subclause (iv),
 - (vi) imposing a sentence of imprisonment for not more than six months for the commission of offences or non-payment of fines.

242(1) If a designated officer finds that a person is contravening a by-law or this or any other Act that the municipality is authorized to enforce, the designated officer may by written order require the person responsible for the contravention to remedy it if, in the opinion of the officer, the circumstances so require.

242(2) The order may

- (a) direct a person to stop doing something, or to change the way in which the person is doing it;
- (b) direct a person to take any action or measure necessary to remedy the contravention of the Act or by-law, including the removal or demolition of a structure that has been erected or placed in contravention of a by-law and, if necessary, to prevent a reoccurrence of the contravention;
- (c) state a time within which the person must comply with the directions; and
- (d) state that if the person does not comply with the directions within a specified time, the municipality will take the action or measure at the expense of the person.

243(1) If, in the opinion of a designated officer, a structure, excavation or hole is dangerous to public safety or property, or because of its unsightly condition, is detrimental to the surrounding area, the designated officer may by written order

- (a) in the case of a structure, require the owner
 - (i) to eliminate the danger to public safety in the manner specified, or
 - (ii) remove or demolish the structure and level the site;
- (b) in the case of land that contains the excavation or hole, require the owner
 - (i) to eliminate the danger to public safety in the manner specified, or
 - (ii) fill in the excavation or hole and level the site;
- (c) in the case of property that is in an unsightly condition, require the owner
 - (i) to improve the appearance of the property in the manner specified, or
 - (ii) if the property is a building or other structure, remove or demolish the structure and level the site.

243(2) The order may

- (a) state a time within which the person must comply with the order; and
- (b) state that if the person does not comply with the order within the specified time, the municipality will take the action or measure at the expense of the person.

244(1) A person who receives a written order under section 242 or 243 may request the council to review the order by written notice within 14 days after the date the order is received, or such longer period as a by-law specifies.

244(2) After reviewing the order, the council may confirm, vary, substitute or cancel the order.

245(1) A municipality may take whatever action or measures are necessary to remedy a contravention of a by-law or this or any other Act that the municipality is authorized to enforce or to prevent a re-occurrence of the contravention, if

- (a) the designated officer has given a written order under section 242;
- (b) the order contains a statement referred to in clause 242(2)(b);
- (c) the person to whom the order is directed has not complied with the order in the time specified in the order; and
- (d) the appeal period respecting the order has passed or, if an appeal has been made, the appeal has been decided, and it allows the municipality to take the action or measures.

245(2) If the order under section 242 directs that premises be put and maintained in a sanitary condition, the municipality may, under this section, close the premises and use reasonable force to remove the occupants.

245(3) The costs of an action or measure taken by a municipality under this section are an amount owing to the municipality by the person who contravened the Act or by-law.

246(1) A municipality may take whatever actions or measures it considers necessary to eliminate the danger to public safety caused by a structure, excavation or hole or to deal with the unsightly condition of property if

- (a) the municipality has given a written order under section 243;
- (b) the order contains a statement referred to in clause 243(2)(b);
- (c) the person to whom the order is directed has not complied with the order within the time specified in the order; and
- (d) the appeal period respecting the order has passed or, if an appeal has been made, the appeal has been decided and it allows the municipality to take the action or measures.

246(2) If a structure is being removed or demolished by a municipality under this section, the municipality may use reasonable force to remove occupants.

246(3) The costs of an action or measure taken by a municipality under this section are an amount owing to the municipality by the person who was required to do something by the order under section 243.

247(1) Despite sections 243, 245 and 246, in an emergency a municipality may take whatever actions or measures are necessary to eliminate the emergency.

247(2) This section applies whether or not the emergency involves a contravention of this or any other Act that the municipality is authorized or required to enforce, or a by-law.

247(3) A person who receives an oral or written order under this section requiring him or her to provide labour, services, equipment or materials must comply with the order.

247(4) A person who provides labour, services, equipment or materials under this section and who did not cause the emergency is entitled to reasonable remuneration from the municipality.

247(5) The costs or measures taken to eliminate an emergency, including the remuneration referred to in subsection (4), are an amount owing to the municipality by the person who caused the emergency and may be collected by the municipality in the same manner as a tax may be collected or enforced under this Act.

249(2) Where a contravention continues for more than one day, the person is guilty of a separate offence for each day it continues.

AND WHEREAS it is deemed expedient to pass a By-law for the purpose of maintaining property and regulating and abating nuisances and abandoned and unsightly property that are detrimental to the health, safety and comfort of the residents of the Town of Stonewall;

NOW THEREFORE the Council of the Town of Stonewall, in Council assembled, enact the following policies and procedures which shall govern the inspection, remedy, enforcement, action or measure respecting maintaining property and regulating and abating unsightly and/or unsafe property and/or structures or those which may cause a nuisance in the Town of Stonewall:

By-law Name

1. This By-law may be referred to as “The Unsafe/Unsightly Property By-law” of the Town of Stonewall.

Definitions

2. In this By-law:

“CAO” means the Chief Administrative Officer of the Town of Stonewall as appointed by Council.

“Council” means the Council of the Town of Stonewall.

“Designated Officer” means the person appointed by Council, from time to time, to enforce this By-law, or, in the absence of such an appointment, the Chief Administrative Officer.

“interested person” means the owner, occupier or mortgagee of property which is the subject of an Order under the authority of this By-law.

“mortgagee” in the case of any property means any person holding a registered real property mortgage against the property according to the records of the Land Titles Office for the area within which the property is situated.

“occupier” in the case of any property means any person in actual or constructive possession of the property pursuant to a lease, tenancy, license or right to occupy.

“owner” in the case of any property means the registered owner of the property according to the current assessment records of the Town of Stonewall.

“person” means an individual, firm, partnership or corporation and where the context requires shall include the plural as well as the singular.

“property” means any land as defined in The Municipal Assessment Act within the Town of Stonewall whether or not there is situated thereon a dwelling house or any other building.

“rubbish” means any garbage, trash, or junk including, but not limited to unwanted or discarded household items, waste from building construction, demolition, remodeling and repair; tree branches, grass and shrub clippings, leaves or other general yard and garden waste; motor vehicle parts or tires; newspapers, magazines, packing materials, waste paper or cardboard, lumber or wood, and any other unsightly, discarded or stored material which causes or is likely to cause a public hazard or nuisance, or is unacceptably offensive in light of community standards of cleanliness or generally accepted neighbourhood aesthetics.

“Town” means the Town of Stonewall

“unsafe structure” means any structure, whether a building, fence or shed, excavation or hole, which in the opinion of the Designated Officer is at risk of collapse or otherwise dangerous to public safety or property.

“unsightly property” means a property which in the opinion of the Designated Officer is detrimental to the surrounding area, including but not limited to the growth of grass to a length which is unsightly, the growth of weeds so that same become a nuisance to adjoining properties or the open and uncovered storage of items, goods or materials.

Application

3. This By-law applies to all property and to all occupiers and owners of property within the Town.

Standards

4. No occupier or owner of property shall permit on such property, and each occupier and owner of property shall keep property free and clear of:
 - (a) rubbish;
 - (b) unsafe structure(s);
 - (c) the keeping or storage of household items, including but not limited to, appliances, whether or not same are capable of operation, furniture, or furnaces or air conditioners;
 - (d) the keeping or storage of wood, tree branches, grass and shrub clippings, leaves or other yard and garden waste, lumber or other construction, demolition, remodeling or repair materials which in the opinion of the Designated Officer is unsightly;
 - (e) the growth of grass to a length which in the opinion of the Designated Officer is unsightly;
 - (f) the growth of weeds as defined in The Noxious Weeds Act so that the same become a nuisance to adjoining properties; or
 - (g) regular outdoor burning, the smoke of which causes a nuisance to adjoining properties.

Complaint

5. Any person may allege a contravention of this By-law by filing a complaint with the Designated Officer in such form and with such particulars as the Designated Officer may from time to time require.

Inspections

6. Upon receipt of an alleged contravention, as aforesaid, the Designated Officer shall inspect all property alleged to be in contravention of this By-law, in such manner as shall be reasonably necessary in order to determine whether or not there has been a contravention of this By-law.

Warnings and Orders

7. Where inspections reveal a contravention of any provision of this By-law, the Designated Officer:
 - (a) may in his or her discretion give written notice of the contravention to the occupier and/or owner of the property by regular mail or by personal delivery substantially in the form attached hereto as Schedule "A" to this By-law.
 - (b) if the contravention continues following the warning notice, if any, provided in subsection 7.(a) above, or if in his or her discretion no such warning notice is provided, the Designated Officer shall issue a written Order, in the manner specified in section 11, which shall:
 - (i) specify the action or measure necessary to remedy the contravention
 - (ii) specify the time within which compliance shall be required;
 - (iii) advised that should compliance not be effected within the specified time, the Town may undertake the remediation of the contravention at the expense of the owner of the property and that such expense may be collected in the same manner that a tax may be collected or enforced under The Municipal Act;
 - (iv) advise of the process of appeal;
 - (v) be substantially in the form attached hereto as Schedule "B" to this By-law;

Appeals

8. Any interested person may appeal an Order made by the Designated Officer by filing with the CAO at any time before the time for compliance with such Order an appeal in the form attached hereto as Schedule "C" to this By-law.
9. Upon the receipt of an appeal in the required form, the CAO shall cause a copy thereof to be forwarded to Council. The Council shall entertain such appeal within forty (40) days of the receipt of same by holding a hearing. A written notice of the hearing shall be issued by Council and shall be served upon the persons and in the manner specified in section 11 below no later than five (5) days prior to the hearing of the appeal.
10. The Council shall determine an appeal within 10 days of a hearing and shall serve a written notice of disposition forthwith upon determination, upon the interested persons. The Council may, by resolution:
 - (a) confirm the Order of the Designated Officer;
 - (b) vary the Order of the Designated Officer in any respect; or
 - (c) set aside the Order of the Designated Officer

Service of Orders and Notices

11. Any Order issued by the Designated Officer under subsection 7. (b) and a notice of an appeal hearing under section 9. hereof of this By-law shall be served by personal service or by registered mail upon:
 - (a) the owner
 - (b) the occupier, if any; and
 - (c) in respect to any Order alleging a contravention of subsection 4. (b) (unsafe structure), the mortgagee, if any;of the property affected by the Order.
12. Service made personally shall be deemed to have been made on the date of such service and service made by registered mail shall be deemed to have been made three (3) days after posting. In the case of service upon an occupier, the address for mailing shall be the address of the property. In the case of the owner, the address for mailing shall be as shown on the current assessment records of the Town. In the case of a mortgagee, the address for mail shall be as shown according to the records of the Land Titles Office for the area within which the property is situated.

Emergency Order

13. If in the opinion of the Designated Officer an emergency exists respecting the condition of a property an Order for the emergency condition shall be issued to the occupier and/or owner of the property and the Town shall require or take whatever actions or measures are necessary to eliminate the emergency condition of the property.
14. Any person who receives an Order for an emergency condition of a property requiring him or her to provide labour, services, equipment or other materials must comply with the Order.
15. A person who provides labour, services, equipment or materials in compliance with an Order for an emergency condition of a property and who did not cause or is not responsible for the emergency shall be entitled to reasonable remuneration from the Town.

16. The costs of actions or measures taken to eliminate an emergency, including the remuneration referred to in section 15. above, are an amount owing to the Town by the person who caused the emergency or is responsible for the emergency and may be collected by the Town in the same manner as a tax may be collected or enforced under The Municipal Act.

Enforcement

17. The costs of actions or measures taken by the Town to carry out the terms of an Order issued by the Designated Officer are an amount owing to the Town by the owner of the property. In addition to all other rights of collection which the Town may have at law, such amounts may be collected by the Town in the same manner as a tax may be collected or enforced under The Municipal Act.

18. The Town shall use such reasonable efforts and actions to prevent or minimize any damage to the property while undertaking, performing and completing the actions or measures to carry out the terms of an Order. The Town shall not be responsible or liable for any incidental damage to the property which may result from the undertaking, performance and completion of the actions or measures.

19. Any person who contravenes or disobeys, or refuses or neglects to obey or comply with any Order made under this By-law is guilty of an offence and is liable on summary conviction, to a fine not exceeding \$1,000.00, or in the case of an individual, to imprisonment for a term not exceeding six (6) months, or to both such a fine and such an imprisonment.

20. Where a corporation commits an offence under this By-law, each director or officer of the corporation who authorized, consented to, connived at or knowingly permitted or acquiesced in the doing of the act or omission that constitutes the offence or offences, is likewise guilty of the offence and is liable upon summary conviction, to the penalties for which provision is made in section 18. above.

21. Where the contravention, refusal, neglect, omission, or failure continues for more than one day, the person or corporation is guilty of a separate offence for each day it continues.

Enactment

22. This By-law shall come into force and effect on the _____ day of _____, _____.

Done and passed in Council duly assembled at Stonewall in the Province of Manitoba this ____ day of _____, _____.

TOWN OF STONEWALL

Mayor

CAO

Read a first time this _____ day of _____, 200__.

Read a second time this _____ day of _____, 200__.

Read a third time this _____ day of _____, 200__.

TOWN LOGO

**SCHEDULE "A"
TO By-law No. 15/05**

Date

FILE NO. _____

(Name)

(Civic and mailing address)

Dear Sir/Madam:

RE: Town of Stonewall Unsafe/Unsightly Property By-law No. 15/05

Acting upon a written complaint, the Designated Officer had cause to inspect your property at _____ in the Town of Stonewall.
civic and legal address

Upon inspection of the property, it is apparent that a contravention exists in accordance with the Town of Stonewall Unsafe/Unsightly Property By-law No. 15/05 due to the following described condition.

Description of condition causing contravention

Therefore, the Town directs that you rectify the condition by the following described actions / measures.

Description of actions / measures to rectify condition and contravention

The above described actions / measures to rectify the condition and contravention **must be undertaken and completed on/or before** _____.
(date)

In accordance with Section 239(1) of The Municipal Act, I will enter onto the subject property on _____(date) to conduct a second inspection. If there has been no compliance with this notice, an Order may be issued authorizing the Town to take actions or measures necessary to bring the subject property into compliance with By-law No. 15/05. The costs of such actions or measures are an amount owing to the Town by the owner of the property. In addition to all other rights of collection which the Town may have at law, such amounts may be collected by the Town in the same manner as a tax may be collected or enforced under The Municipal Act.

Your cooperation and compliance in this matter is appreciated.

If you have any questions, please contact the writer at _____.

Sincerely,
TOWN OF STONEWALL

Designated Officer

TOWN LOGO

SCHEDULE "B"
To By-law No. 15/05

Date

FILE No. _____

_____(name)
_____(civic and mailing address)

Dear _____:

RE: Unsafe/Unsightly Property at _____
(Civic and Legal Address)

<Further to my letter of _____(date),> this is to advise that an <a second> inspection of your property at _____ (Civic and Legal Address) conducted on _____ (Inspection Date) found that it is <continues to be> in violation of the Town of Stonewall Unsafe/Unsightly Property By-law No. 15/05.

Specifically, the property is in contravention because _____
(Description of condition / contravention) <which to date has not been removed>.

Under the authority of Section 242(1) of The Municipal Act, you are hereby ordered to undertake and complete the following described actions / measures to remedy the condition and contravention **on/or before** _____(Date).

Description of actions / measures to be undertaken and completed to remedy the condition / contravention

In the event you do not comply with this Order the Town of Stonewall shall undertake the actions and measures to remedy the condition and contravention.

Please note that section 17 of By-law No. 15/05 provides as follows.

The costs of actions or measures taken by the Town to carry out the terms of an Order issued by the Designated Officer are an amount owing to the Town by the owner of the property. In addition to all other rights of collection which the Town may have at law, such amounts may be collected by the Town in the same manner as a tax may be collected or enforced under The Municipal Act.

You may appeal this Order in writing by filing with the Chief Administrative Officer of the Town at any time **before** the time for compliance with this Order has elapsed (_____) (Date for compliance) an appeal substantially in the form attached hereto (Schedule "C" to By-law No. 15/05).

Please govern yourself accordingly.

Sincerely,
TOWN OF STONEWALL

Designated Officer

TOWN LOGO

SCHEDULE "C"
To By-law No. 15/05

Unsafe / Unsightly Property By-law No. 15/05

IN THE MATTER of the Unsafe / Unsightly Property By-law No. 15/05 of the Town of Stonewall.

NOTICE OF APPEAL

Date:

TO: The Town of Stonewall

PLEASE TAKE NOTICE that the undersigned Appellant, pursuant to section 8 of By-law No. 15/05, hereby appeals to the Council of the Town of Stonewall Order No. _____, dated _____, to _____
(nature of action / measures ordered)

respecting the property known as _____
(Civic and Legal Address)

Reasons for Appeal (please provide)

Dated at Stonewall, Manitoba this ____ day of _____, 20____.

Signature of Appellant

Name of Appellant **PRINT**

Telephone No. _____

Address

Fax No. _____

Email _____