

Municipal Nuisance Guide and Sample Bylaw

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Introduction

A “nuisance” is defined as an annoying action or anything disagreeable or inconvenient. What is considered to be a nuisance to one person may well be, in the opinion of another person, their right to do something or to permit something to be done on their property. In general terms, a nuisance refers to any interference with a person’s enjoyment of their property.

Often, a person who is adversely affected by the nuisance will turn to their municipality for assistance to remedy the situation. *The Municipalities Act* (Act) provides authority for municipalities to enact bylaws respecting nuisances, including property, activities or other things which may affect the amenity of the surrounding area.

The discretionary power provided to Saskatchewan municipalities is extensive and therefore requires council to carefully consider the actions and policies best suited for the community.

This document is intended as a guide for elected officials and administrators in their efforts to provide a nuisance abatement bylaw for their community. Municipalities are responsible for making local decisions, including compliance with any applicable statutes or regulations. The guide is not intended and should not be considered as a substitute for legislation. **Persons using this guide are encouraged to always refer to the actual wording in the Act or other relevant legislation.**

Bylaw Requirements

Why is a bylaw needed?

Section 8 of the Act empowers Saskatchewan municipalities to enact bylaws respecting “nuisances, including property, activities or things that affect the municipality” if council considers it expedient to do so. Unless council enacts a nuisance abatement bylaw (bylaw), the municipality is unable to take corrective action to remedy nuisances.

The bylaw targets two audiences – the person who is affected by a nuisance, and the person who creates a nuisance.

A Nuisance Abatement Bylaw sets out:

- What constitutes a nuisance.
- Enforcement.
- Consequences of non-compliance.

What constitutes a nuisance?

A nuisance may be subjective, therefore, the municipality must assess a nuisance complaint to determine if it is in contravention of the bylaw.

Municipalities also have the option to include nuisance activities occurring on property within the bylaw. Examples may include such things as mowing grass in the very early hours of the day, employing improper compost methods, or any other thing(s) a person might do that bothers their neighbour(s).

The bylaw imposes responsibility on owners to not allow for nuisances on their property. Specific offences may be established by statements requiring owners to ensure that certain things do not happen on their land, such as:

- allowing buildings to become dilapidated;
- allowing property to become unsightly or untidy;
- allowing excavations to exist; or
- allowing junked vehicles to be kept.

Council will determine which nuisances will be addressed in the bylaw. Council may also determine if they wish to include all or some nuisances in one bylaw and have other bylaws for other specific nuisances. For example, the municipality may prefer to have a separate bylaw for untidy and unsightly premises or for nuisance vehicles. The sample bylaw in Appendix A is prepared as a consolidation of property nuisances into a single bylaw.

To enforce a nuisance abatement bylaw, the municipality has the authority to:

- investigate alleged reports of a nuisance;
- issue an order to the owner or occupant to remedy the contravention and to prevent reoccurrences; or
- register an interest against the land.

The municipality may investigate nuisances on its own initiative or as the result of a complaint. A municipality may authorize a Designated Officer to enter private land or buildings for the purpose of carrying out an investigation. In some circumstances, the municipality may need to apply to a justice of the peace or a provincial court for a warrant to enter private land or buildings. The manner of the investigation, and the powers and responsibilities of the Designated Officer are prescribed in sections 362 and 363 of the Act. In most circumstances, however, it should be possible to investigate an allegation of nuisance without the need to enter private land or buildings.

Issuing remedial orders

The bylaw provides that the Designated Officer has authority to issue a remedial order (order) to a person where a bylaw contravention may have occurred. Municipalities are encouraged to develop a process to evaluate nuisance complaints to ensure procedural fairness has been carried out.

The sample bylaw specifies an order is to be served on the owner / occupant of the property in accordance with section 390 of the Act. An order must contain the information required by section 364 of the Act and may include additional forms for use by the Designated Officer.

Right to appeal

Owners or occupants have the right to appeal against an order issued by the municipality. The owner / occupant may believe the allegation of a nuisance is unfounded or that the remedial action ordered by the Designated Officer is excessive or unreasonable. The appeal process enables the owner / occupant an opportunity to formally discuss the matter. However, an appeal does not pause the order from being in effect.

Council has the option to appoint a local appeal board to hear an appeal, or where one has not been established, the appeal must be heard by council itself.

The local appeal board / council has the authority to:

- Uphold, amend, or overturn the order or decision; or
- Substitute its own order or decision for the order or decision being appealed.

Council members have a duty to follow principles of procedural fairness when making decisions and taking actions.

The owner / occupant has a further right to appeal the decision of the local appeal board / council to the Court of King's Bench on a question of law or jurisdiction. The appeal must be made to the court within 30 days after the decision has been made.

Interest registered against the land

The municipality may register an interest against the title to the land on the basis of an order that is issued by the Designated Officer. The interest registration is binding on the owner, and on any subsequent owner of the land. The municipality must withdraw the interest registration when:

- the remedial action specified within the order has been undertaken, or
- the municipality has recovered its costs in those situations where the municipality performed the remedial action.

Consequences of non-compliance

In many instances, the owner / occupant will comply with enforcement or pre-enforcement activities. Where there is non-compliance, the municipality has the authority to:

- Undertake the remedial activities at the expense of the owner / occupant of the property; or
- Establish fines for contraventions or repeated contraventions.

The order issued by the Designated Officer may contain a statement that the municipality may undertake the directed action if the person receiving the order does not remedy the contravention within the specified time. The municipality cannot undertake these remedial actions until either:

- the appeal period has elapsed; or
- if an appeal has been made, the appeal has been decided and the municipality's ability to take remedial action has been upheld.

If the municipality's costs are not paid by the person who contravened the bylaw, the sample bylaw provides that it may recover those costs either by civil suit or by adding the amount to the tax roll in accordance with sections 366, 368 and 369 of the Act.

Fines

Section 388 of the Act enables municipalities to establish fines for bylaw violations within the limits established in subsection 8(2) of the Act. In order to collect a fine, a summary of conviction must be obtained through the court. Non-payment of voluntary fines cannot be added to the taxes. As an alternative to court proceedings, the municipality has the option to implement a process to enable a person to voluntarily pay a specified sum to avoid prosecution for the offence.

Municipal Bylaw Courts

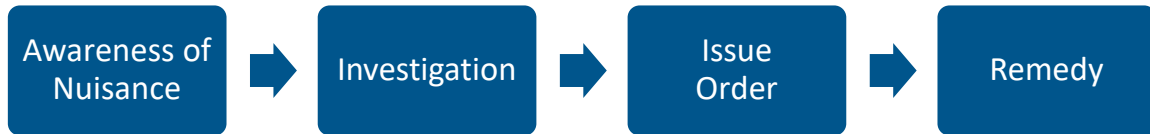
A municipal bylaw court is a provincial court that focuses on violations of municipal bylaws such as property standards, noise, animal control, and other community-level regulations. It provides a more accessible, community-focused way to resolve bylaw matters. There are three municipal bylaw court hubs located at Fort Qu'Appelle, Rosthern and Kindersley.

Bylaw courts are overseen by Justices of the Peace. They operate under the authority of the Provincial Court and follow established procedures to ensure fairness and transparency.

More information about municipal bylaw courts and the municipal bylaw administrative processes can be found on www.saskatchewan.ca or by contacting bylaws@gov.sk.ca.

Administrative Matters

The administrative process respecting the nuisance abatement bylaw is developed by council and administration in accordance with local expectations. The process can be summarized as:



To assist councils and staff in the development of an administrative process, this section will discuss the role of the Designated Officer, the role of council or local appeals board, and the procedural stages involved in the enforcement of the bylaw.

Appointment of a Designated Officer

The Designated Officer will become aware of a nuisance situation either by their own initiative or as the result of a report filed by a staff person, an elected official or a complaint from the public. The decision of the municipality to proceed with work ordered is decided upon by the inaction of the person to remedy the contravention.

Section 364 of the Act specifies that an order to remedy must be written by the Designated Officer. Where a bylaw enforcement officer has been appointed under the authority of section 373 of the Act, this can be one of their duties. In the absence of an appointment made by council, this responsibility and others associated with the Designated Officer are the responsibility of the administrator.

Process Prior to Writing Order to Remedy

Legislation does not prescribe the process taken by a municipality before the Designated Officer writes the order to remedy a nuisance. Council is encouraged to outline the steps leading to the issuance of an order by either a separate policy or within their bylaw.

An established process demonstrates procedural fairness and consistency. Defining the process as a policy simplifies modification if deemed necessary. In developing this policy, the council may want to consider:

- What or who will activate the process?
 - Will it be initiated by a complaint from the public, a report from other staff, or will the Designated Officer actively search for potential nuisances? Or will it be a combination of all methods?
- What degree of authority will be delegated to the Designated Officer?
 - Will the Designated Officer be required to consult with other authorized personnel before making their determination regarding the validity of an alleged nuisance?
 - Is additional consultation required dependent on the type of nuisance? For example, determining the validity of some nuisances may be straightforward, while others may be subjective in nature. Where remedial action warrants removal and/or destruction of buildings or vehicles, it may be desirable to consult with other authorized personnel.

- What activities are required as part of the process to investigate an allegation of a nuisance condition?

Appendix “A” contains a flowchart illustrating the process in which the designated officer is fully authorized to act.

Assessing the Nuisance/Investigation

Prior to taking any action regarding an alleged nuisance, the property should be inspected by the Designated Officer and any other person with whom they must consult according to the municipality’s administrative process. Inspections under the bylaw shall be carried out in accordance with section 362 of the Act.

Orders to Remedy the Contravention

The municipality’s administrative procedure will determine the steps taken prior to the Designated Officer issuing an order.

The remedial actions available to the municipality are limited to those set out in the order so they must be specific and measurable. The municipality should be prepared for the action it will take if an order to remedy is not complied with. For example, a nuisance fence situation may be remedied either by repairing the fence or by removing it. If the municipality is forced into acting and its preference is to remove the nuisance fence, the remedial action in the order should specify removal rather than repair.

When issuing an order, the municipality must also consider the deadline imposed for completion of the work to be done. The municipality is required to allow 15 days after the order for a person to appeal, so consideration should be given to the length of time it will take to hear an appeal and then the length of time to complete the remedial action required.

Keep accurate records (copies of complaints, correspondence, photos, etc.) throughout the process.

The order must contain a statement of the ability to appeal, inform the recipient by when an appeal must be filed, and to whom should he or she direct that appeal. A statement advising that where a person does not comply with the directions within the specified time, the municipality may take the action or measure at the expense of the person must also be included.

The order may contain a statement indicating the date, time and place that the appeal hearing will be heard. While not legislatively required, this may be a documented method of providing notification of hearing which provides the appellant an opportunity to plan for the hearing.

Serving an Order

Subsection 364(2) requires that the order be served on the person to whom the order is directed. Serving an order may be carried out via the following methods set out in section 390 of the Act:

- Personal service
- Registered mail to the last known address of the person

- A notice served by registered mail is deemed served on the 10th day following the date of mailing unless the recipient can establish non-receipt of the notice through no fault of their own.
- Posting a copy of the notice on the relevant land, building, structure or vehicle.

If a notice cannot be served using the methods above, it may be served by publishing it in two issues of a newspaper. The last publication must appear at least three business days before taking any action set out in the order.

The Appeal Hearing

The hearing must be conducted in the open and in a manner that is fair and objective. Procedural fairness should be evident to all parties concerned.

Although not required, the Designated Officer may choose to notify the appeal board / council that a remedial notice has been issued, and the date by which an appeal is to be filed. To ensure the process continues forward without unnecessary delays, the Designated Officer may also wish to pro-actively schedule the appeal hearing to be held shortly after the period during which an appeal may be filed. If no appeal is filed, or the situation is remedied prior to the deadline, the hearing may be canceled.

The appeal board / council may confirm, modify or repeal an order or substitute its own order. An order resulting from this appeal may be further appealed to the courts on a question of law or jurisdiction within 30 days after the date of the decision.

Remedial Action by the Municipality

A municipality may take whatever action is necessary to remedy a contravention **only if**:

- A written order has been given pursuant to section 364;
- The order contains the statement as required by clause 364(4)(d);
- The order has not been complied with within the required time; and
- The appeal period respecting the order has passed or if an appeal has been made and it allows the municipality to take action.

Consistent, fair administration of the bylaw requires the municipality to clearly define its administrative process. Whatever process is developed, the municipality may not proceed to complete the remedial action (with the exception of emergency situations) unless the appeal period has expired, or unless there has been a determination as the result of an appeal being filed.

Emergencies

Section 367 empowers the municipality to take reasonable emergency action in response to a situation which poses an imminent danger to public safety or serious harm to property which may or may not involve a bylaw contravention.

For the purposes of this guide, an emergency refers only to contraventions of the municipality's bylaw. If the Designated Officer is in doubt a situation constitutes an emergency under the provisions of their bylaw, the municipality may be at risk if acted upon and it did allow time for the occupant or owner to deal with the situation or appeal the order issued.

As time will be a factor in managing an emergency, it is very likely the administrative process may be different than the process to be followed with respect to other nuisance situations. This process will be contingent upon the amount of authority provided to the Designated Officer and the occupancy status of the property.

An **emergency** includes a situation in which there is imminent danger to public safety or of serious harm to property.

Examples of dangerous situations may include:

- The wall of the building is leaning outward and may fall on the sidewalk or street; or
- The tree has been severely damaged by age / wind / lightning and may fall on a building situated on an adjacent property.

Inspection (Emergencies)

The Act empowers the Designated Officer to take certain actions in an emergency which supersede the rights of a property owner / occupant. In the event of an emergency, the Designated Officer is not required to make reasonable efforts to notify the owner / occupant of the property, and has the ability to:

- Enter certain property at other than reasonable hours; and
- Carry out an inspection of the property and make copies of anything related to the inspection without the consent of the owner / occupant.

The power to enter property without consent of the owner / occupant does not extend to private dwellings. Entrance to a private dwelling requires either the consent of the owner / occupant, or a warrant issued either by a justice of the peace or the provincial court which authorizes the entry. The entry upon private property without the consent of the owner / occupant should occur only if the entry is absolutely required to assess the situation.

Situations which initially seemed to qualify as an emergency may appear significantly less threatening upon examination. Careful documentation of actions, and factors leading up to an action are critical.

Order to Take Emergency Action

In situations where the property is occupied, the municipality is encouraged to provide notice to the owner / occupant to undertake the work.

In cases where the “public” at risk is restricted to the owner / occupant of a property, the municipality is advised to assess the need to act and consult with their legal counsel.

- Are the proposed action(s) in the public interest, or are they unnecessarily intruding on the rights of an individual to use the in a lawful manner?
- Are there alternative options to deal with the situation?

A municipality may take whatever actions or measures necessary to eliminate an emergency.

An emergency order would set out for the remedial work to be undertaken within a short timeline to provide the owner / occupant an opportunity to do the work themselves. Where the owner / occupant refuses to comply with the order, the municipality will take steps to carry out the remedial measures.

Emergency Action Taken

An emergency order issued may be oral or written and may be issued to the person causing an emergency and/or to any other person. When an order is issued under section 367, a person is required to comply with its contents – provide labour, services, equipment, materials, etc. Third parties (a person who did not cause the emergency situation) who are ordered to act are entitled to reasonable remuneration. The municipality may recover expenses and costs from the person who caused the emergency. The municipality may be called upon to justify its decision to exercise authority in this area. Careful documentation is highly recommended.

The expenses and costs of emergency action taken or authorized by the municipality to remedy the nuisance may be recovered from the property owner.

The municipality may wish to enclose its invoice for the costs with the order to reinforce that it is seeking recovery of costs from the owner. If the municipality does not intend to use any other method to enforce recovery of the costs and will take no other action than adding the amount to taxes if the invoice is not paid within a specific period, state that intention within the notice.

Please contact
Advisory Services at
306-787-2680 or
advisoryservices@gov.sk.ca
for more information.

Appendix A – Sample Bylaw

This sample bylaw has been created for municipalities that operate under the Act only. The content must be modified and formatted to suit the needs of the municipality. Optional matters and instructional information indicated in blue font must be reviewed, amended and removed as necessary. It is strongly encouraged that municipalities seek their own legal advice when drafting any bylaw.

A BYLAW TO PROVIDE FOR THE ABATEMENT OF NUISANCES ON PROPERTY

FULL NAME OF MUNICIPALITY

Bylaw No. _____

The council for the [full name of Municipality] in the Province of Saskatchewan enacts as follows:

Short Title

1. This bylaw may be cited as the “Nuisance Abatement Bylaw”.

Purpose

2. The purpose of this bylaw is to provide for the abatement of nuisances, including property, activities, or things that adversely affect:
 - a. The safety, health or welfare of people in that neighbourhood;
 - b. People’s use and enjoyment of their property; or
 - c. The amenity of a neighbourhood.

Definitions

3. In this Bylaw:
 - a. “Designated officer” means an employee or agent of the [full name of Municipality] appointed by council to act as a municipal inspector for the purpose of this Bylaw;
 - b. “Building” means building within the meaning of *The Municipalities Act* (Act);
 - c. “Municipality” means the [full name of Municipality];
 - d. “Council” means the council of the [full name of Municipality];
 - e. “Junked vehicle” means any automobile, tractor, truck, trailer or other vehicle that
 - i. Either
 1. Has no valid license plates attached to it; or
 2. Is in a rusted, wrecked, partly wrecked, dismantled, partly dismantled, inoperative or abandoned condition; and
 - ii. Is located on private land, but that:
 1. Is not within a structure erected in accordance with any bylaw respecting the erection of buildings and structures in force within the municipality; and
 2. Does not form a part of a business enterprise lawfully being

operated on that land;

- f. “nuisance” means a condition of property, or thing, or an activity, that adversely affects or may adversely affect:
 - i. The safety, health or welfare of people in the neighbourhood;
 - ii. People’s use and enjoyment of their property; or
 - iii. The amenity of a neighbourhood and includes:
 - i. A building in a ruinous or dilapidated state of repair;
 - ii. An unoccupied building that is damaged and is an imminent danger to public safety;
 - iii. Land that is overgrown with grass and weeds;
 - iv. Untidy and unsightly property;
 - v. Junked vehicles; and
 - vi. Open excavations on property;
- g. “Occupant” means an occupant as defined in the Act;
- h. “Owner” means an owner as defined in the Act;
- i. “Property” means land or buildings or both;
- j. “Structure” means anything erected or constructed, the use of which requires temporary or permanent location on, or support of, the soil, or attached to something having permanent location on the ground or soil; but not including pavement, curbs, walks or open-air surfaced areas.
- k. “Untidy” means lands or building that are in a disorderly, slovenly, and littered condition and are not kept in generally good order.
- l. “Unsightly” means lands or buildings that are unpleasant to look at or are aesthetically objectionable.
- m.

Responsibility

- 4. Unless otherwise specified, the owner of a property, including land, buildings and structures, shall be responsible for carrying out the provisions of this Bylaw.

Nuisances Prohibited Generally

- 5. No person shall cause or permit a nuisance to occur on any property owned by that person.

Dilapidated Buildings

- 6. Notwithstanding the generality of section 5, no person shall cause or permit a building or structure to deteriorate into a ruinous or dilapidated state such as that the building or structure:
 - a. Is dangerous to the public health or safety;
 - b. Substantially depreciates the value of other land or improvements in the neighbourhood; or
 - c. Is substantially detrimental to the amenities of the neighbourhood.

Unoccupied Buildings

- 7. Notwithstanding the generality of section 5, no person shall cause or permit an unoccupied building to become to become damaged or to deteriorate into a state of disrepair such that the building is an imminent danger to public safety.

Overgrown Grass and Weeds

8. Notwithstanding the generality of section 5, no owner or occupant of land shall cause or permit the land to be overgrown with grass or weeds.
9. For the purposes of this section 8 of this bylaw, “overgrown” means in excess of 0.20 metres in height.
10. Section 8 of this bylaw shall not apply to any growth which forms part of a natural garden that has been deliberately planted to produce ground cover, including one or more species of wildflowers, shrubs, perennials, grasses or combination of them, whether native or non-native, consistent with a managed and natural landscape other than regularly mown grass.

Untidy and Unsightly Property

11. Notwithstanding the generality of section 5, no person shall cause or permit any land or buildings to become untidy and unsightly.

Junked Vehicles

12. Notwithstanding the generality of section 5, no person shall cause or permit any junked vehicle to be kept on any land owned by that person.

Open Excavations

13. Notwithstanding the generality of section 5, no person shall cause or permit any basement, excavation, drain, ditch, watercourse, pond, surface water, swimming pool or other structure which is dangerous to be the public safety or health.

Maintenance of Yards

14. Notwithstanding the generality of section 5, no person shall cause or permit on any property owned by that person:
 - a. An infestation of rodents, vermin or insects;
 - b. Any dead or hazardous trees; or
 - c. Any sharp or dangerous objects.

Outdoor Storage of Materials

15. Any building materials, lumber, scrap metal, boxes or similar items stored in a yard shall be neatly stacked in piles and elevated off the ground so as not to constitute a nuisance or harbourage for rodents, vermin and insects.
16. Materials referred to in section 15 shall be elevated at least 0.15 metres off the ground and shall be stacked at least 3.0 metres from the exterior walls of any building and at least 1.0 metre from the property line.

Refrigerators and Freezers

17. Any refrigerator or freezer left in a yard shall first have its hinges, lid, door or doors removed.

Fences

18. Fences shall be maintained in a safe and reasonable state of repair.

Enforcement of Bylaw

19. The administration and enforcement of this bylaw is hereby delegated to the Administrator of the municipality.
20. The Administrator of the municipality is hereby authorized to further delegate the administration and enforcement of this bylaw to _____.

Inspections

21. The inspections of property by the municipality to determine if this bylaw is being complied with is hereby authorized.
22. Inspections under this bylaw shall be carried out in accordance with section 362 of the Act.
23. No person shall obstruct a designated officer who is authorized to conduct an inspection under this section, or a person who is assisting a designated officer.

Order to Remedy Contraventions

24. If a designated officer finds that a person is contravening this bylaw, the designated officer may, by written order, require the owner or occupant of the property to which the contravention relates to remedy the contravention.
25. Orders given under this bylaw shall comply with section 364 of the Act.
26. Orders given under this bylaw shall be served in accordance with section 390 of the Act.

Registration of Notice of Order

27. If an order is issued pursuant to section 24, the municipality may, in accordance with section 364 of the Act, give notice of the existence of the order by registering an interest against the title to the land that is the subject of the order.

Appeal of Order to Remedy

28. A person may appeal an order made pursuant to section 24 in accordance with section 365 of the Act.

Municipality Remediating Contraventions

29. The municipality may, in accordance with section 366 of the Act, take whatever actions or measures are necessary to remedy a contravention of this bylaw.
30. In an emergency, the municipality may take whatever actions or measures are necessary to eliminate the emergency in accordance with the provisions of section 367 of the Act.

Recovery of Unpaid Expenses and Costs

31. Any unpaid expenses and costs incurred by the municipality in remediating a contravention of this bylaw may be recovered either:
 - a. By civil action for debt in court of competent jurisdiction in accordance with section 368 of the Act; or
 - b. By adding the amount to the taxes on the property on which the work is done in accordance with section 369 of the Act.

Offences and Penalties

32. No person shall:
 - a. Fail to comply with an order made pursuant to this bylaw;
 - b. Obstruct or interfere with any designated officer or any other person acting under the authority of this bylaw; or
 - c. Fail to comply with any other provision of this bylaw.
33. A designated officer who has reason to believe that a person has contravened any provision of this bylaw may serve on that person a Notice of Violation, which Notice of Violation shall indicate that the municipality will accept voluntary payment in the sum of (insert amount in words and figures) to be paid to the municipality within (insert amount of time provided to

the person) days.

34. Where the municipality receives voluntary payment of the amount prescribed under section 33 within the time specified, the person receiving the Notice of Violation shall not be liable to prosecution for the alleged contravention.
35. Payment of any Notice of Violation does not exempt the person from enforcement of an order pursuant to section 24 of this bylaw.
36. Every person who contravenes any provision of section 32 is guilty of an offence and liable on summary conviction:
 - a. In the case of an individual, to a fine of not more than \$10,000;
 - b. In the case of a corporation, to a fine of not more than \$25,000; and
 - c. In the case of a continuing offence, to a maximum daily fine of not more than \$2,500 per day.

Repeal of Former Bylaws

37. Bylaw No. _____ (Short Title of Bylaws); and all amendments thereto are hereby repealed.

Coming Into Force

38. This bylaw shall come into force on the day of its final passing.

{Seal}

(Mayor/Reeve Signature)

(Administrator Signature)

Read a third time and adopted

this ____ day of _____.

Appendix B – Bylaw Enforcement Contravention Process

