

The Municipal By-Law Enforcement Act

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March 20, 2019



The Provincial Offences Act

- *The Summary Convictions Act* governed how provincial offences and municipal by-laws were prosecuted and enforced in Manitoba since 1985.
- In 2011, the Department of Justice led a working group consisting of various stakeholders to explore issues related to by-law enforcement identified by Municipalities.
- In February 2013, the Department of Justice announced that *The Summary Convictions Act* was being completely over-hauled to modernize and address the Act's limitations and challenges.
- Consultations and discussions continued with the working group.
- In December 2013 *The Provincial Offences Act* and *Municipal By-Law Enforcement Act* were passed. *The Provincial Offences Act* came into force on November 20, 2017.

The Municipal By-Law Enforcement Act

- Came into force on August 8, 2016 (except s. 4(2) - February 6, 2017)
- Gives municipalities the ability to process and resolve parking and contraventions of their by-laws without involving the court
- At time of proclamation, Winnipeg was the only municipality to implement the MBEA

Procedure

MBEA

- Municipality creates by-law allowing for enforcement under MBEA

MBEA By-Law

By-Law must:

- Designate by-law contraventions to be dealt with penalty notices
- Set administrative penalty for each contravention
- Set period which a person may pay penalty or request review
- Provide for appointment of 1+ screening officers and specifies their duties and powers
- Set period which a person must deal with screening officers decision
- Establish adjudication scheme

MBEA By-Law

By-Law may:

- Provide for an early payment discount
- If screening officer's powers include reduction of penalties, set out grounds on which it may be done
- Specify process and procedure screening officer's may enter into a compliance agreement
- Set out additional grounds for screening officers and adjudicators to cancel a penalty notice
- Establish a fee to file a request for adjudication
- Anything else authorized by the regulations

Procedure

MBEA

- Municipality creates by-law allowing for enforcement under MBEA

POA

- Municipality creates by-law allowing for enforcement under POA

POA By-Law

By-Law must:

- Designate all offences and include their preset fines (no parking)
- Designate enforcement officers

Procedure

MBEA

- Municipality creates by-law allowing for enforcement under MBEA
- Penalty notice created by municipality
- Contravention of by-law
- Designated by-law enforcement officer issues penalty notice
- Person must respond to penalty notice

POA

- Municipality creates by-law allowing for enforcement under POA
- Province issues Provincial Offence Tickets
- Contravention of by-law
- Designated by-law enforcement officer issues ticket
- Person must respond to ticket

Procedure

MBEA

- Person attends location for screening officer review

Screening Officers (MBEA)

- Appointed by the municipality
- Location to be determined by municipality
- Available during times set by municipality
- Powers of screening officer
 - Confirm the administrative penalty
 - Reduce amount of administrative penalty *
 - Enter into a compliance agreement on behalf of municipality *
 - Cancel the penalty notice

Procedure

MBEA

- Person attends location for screening officer review

POA

- Person attends provincial court location

Justices of the Peace (POA)

Staff Justices of the Peace

- Appointed by the Province
- Located in court locations
- Monday-Friday 8:30-4:30
- Powers
 - May set dispute hearings
 - May facilitate person's appearance before a JJP

Judicial Justices of the Peace

- Appointed by the Province
- Located in court locations
- Monday-Friday 8:30-4:30
- Powers
 - Can confirm fine amount
 - Can reduce fine amount
 - Can reprimand the person
 - Can allow time to pay

Procedure

MBEA

- Person attends location for screening officer review
- After review, the screening officer must make a decision
- After decision made, person must pay administrative penalty or request adjudication
- Adjudication (if requested)

POA

- Person attends provincial court location
- A Judicial Justice of the Peace makes a decision
- A JJP's decision is final (barring appeal)

Adjudication (MBEA)

- If a person requests adjudication the municipality must facilitate
- Municipality may choose when/where/how often
- An adjudicator must be selected from a roster of adjudicators
- Adjudicator may allow parties to be heard in person, by telephone, etc.
- Outcomes of adjudication
 - Order administrative penalty on penalty notice is due
 - Order that a reduced administrative penalty is due
 - Cancel the penalty notice
- The adjudicator's decision must be made in to writing and provided to the person and municipality
- The adjudicator's decision is final (barring judicial review)

Adjudicators

- Adjudicators are appointed by the Deputy Attorney General
- Adjudicators must:
 - Have the qualifications prescribed by regulation
 - Not be an employee or elected official of a municipality
 - Take an oath of office in form prescribed by regulations
- May not hear matter if he/she could reasonably be seen to have a conflict of interest
- The decision is to be made available to the public
- There are currently 3 adjudicators available for adjudications

Procedure

MBEA

- Person attends location for screening officer review
- After review, the screening officer must make a decision
 - Person must pay administrative penalty
 - Request Adjudication
- Adjudication (if requested)

POA

- Person attends provincial court location
- A Judicial Justice of the Peace makes a decision
- A JJP's decision is final (barring appeal)
- Hearing (if requested)

Dispute Hearing (POA)

- If a person wishes to set a dispute hearing, the court must set hearing
- The court will set date, time and location of hearing
- Municipality responsible for prosecuting attorney
- Proceedings presided over by a Justice
- Outcomes of hearing
 - Convict the defendant
 - Impose fine indicated on the ticket
 - Impose a lesser fine than indicated on the ticket
 - Reprimand the person
 - Allow time to pay
 - Dismiss the charge
- A Justice's decision is final (barring appeal)

Procedure

MBEA

- Collection of administrative penalty
 - Municipality responsible for collection
 - Use of final notice
 - Filing certificate with Court of Queen's Bench

POA

- Collection of fine
 - Municipality responsible for collection
 - Use of default conviction
 - Filing certificate with Court of Queen's Bench

Administrative Penalty vs. Fine

Administrative Penalty

- Must be equal to or less than \$1,000

Upon Collection

- 100% of the administrative penalty collected goes to the municipality

Fine

- Must be equal to or less than \$5,000

Upon Collection

- Total costs retrieved subject to court costs and surcharges
- The municipality will receive the base fine

Have you implemented the MBEA?

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Questions? Comments?