

A BY-LAW TO PROVIDE FOR AN ADMINISTRATIVE PENALTY SCHEME FOR GENERAL BY-LAW ENFORCEMENT

WHEREAS section 3(1) of the Municipal By-law Enforcement Act (“Act”) provides that a municipality may require that administrative penalties be paid in respect of the contravention of its by-laws;

AND WHEREAS Council for the R.M. of Manitoba (“Municipality”) deems it advisable in the public interest to provide for an administrative penalty scheme as an additional means of encouraging compliance with its by-laws;

NOW THEREFORE Council of the R.M. of Manitoba enacts as follows:

PURPOSE AND INTERPRETATION

1. The purpose of this by-law is to establish an administrative penalty scheme for the enforcement of certain by-law contraventions and an adjudication scheme to review screening officer decisions.
2. *The following definitions apply to this by-law: (add if necessary)*
3. This by-law contains the following Schedules:

Schedule A: By-law contraventions that may be dealt with by a penalty notice under the Act.

Schedule B: Form of penalty notice.

Schedule C: Form of final notice.

Schedule D: Screening officer remuneration and expenses.

Schedule E: By-law contraventions that may be dealt with by a compliance agreement.

BY-LAW CONTRAVENTIONS AND PENALTIES

4. The by-law contraventions described in Schedule A are hereby designated as by-law contraventions that may be dealt with by a penalty notice.
5. The administrative penalties (including discounted amounts) described in Schedule A for each contravention are hereby set.
6. The discounted amount as shown in Schedule A for the by-law contravention to which it relates may be paid as an administrative penalty if:
 - a. payment is made within 14 days after delivery of the penalty notice, and
 - b. no request is made for review by a screening officer.
7. A penalty notice shall be in the form of Schedule B.
8. The period within which a person must pay the administrative penalty or request a review by a screening officer is hereby set at 30 days after delivery of the penalty notice.

9. If, at the end of the period for responding to a penalty notice under section 8 of this by-law, a person to whom a penalty notice was delivered has not responded, the Municipality must deliver a final notice to the person in the form of Schedule C. A person to whom a final notice is delivered must, within 30 days after delivery, pay the administrative penalty or request a review by a screening officer.
10. The Municipality must deliver penalty notices and final notices in the manner provided for in sections 9 and 22 of the Act and section 3 of the Municipal By-law Enforcement Regulation, and the date of delivery shall be determined in accordance with those sections. The giving of other notices or documents by the Municipality, a screening officer or an adjudicator is governed by sections 34 to 36 of this by-law. Periods within which affected persons must make payments or request a review or adjudication are determined under section 36 of this by-law.

SCREENING OFFICER

11. Council shall by resolution appoint one or more screening officers.
12. A member of council or of a council committee is not eligible to be appointed as a screening officer.
13. A screening officer who is not an employee of the Municipality must be paid remuneration and expenses as set out in Schedule D.

REVIEW BY SCREENING OFFICER

14. A request for review by a screening officer must be made in the manner set out in the penalty notice. When in writing the request must include a telephone number and/or email address, with an indication of the preferred means of communication with the screening officer to make arrangements for the review.
15. In the case of contraventions described in Schedule E, a request for review may include an indication that the person is prepared to enter into a compliance agreement.
16. Within 14 days after receiving the request, the screening officer must attempt to contact a person who has requested a review to arrange a mutually convenient date, time and means of reviewing the request. The means of the review may be written submission, on the telephone or in person, at the option of the person who has made the request.
17. If
 - a. the screening officer is unable to contact a person who has requested a review, or
 - b. the person without reasonable cause does not agree to a date and time or means of review,the screening officer must set a date and time for the review in person or by telephone. If the person fails to participate or appear the screening officer must review the penalty notice based on the information provided by the person in the request.

18. If having agreed to a date and time or means of review the person fails to participate in it, the screening officer must review the penalty notice based on the information provided by the person in the request.
19. On a review of a penalty notice, the screening officer may:
 - a. confirm the administrative penalty;
 - b. reduce the amount of the administrative penalty if satisfied that exceptional circumstances exist;
 - c. in the case of a contravention described in Schedule E, enter into a compliance agreement with the person on behalf of the Municipality; or
 - d. cancel the penalty notice if, in the screening officer's opinion,
 - i. the contravention did not occur as alleged, or
 - ii. the penalty notice does not comply with section 6(2) of the Act.
20. The screening officer must make a decision within 14 days after the review. After making the decision, the screening officer must give the affected person notice of the decision.
21. If the screening officer confirms or reduces the amount of the administrative penalty, the amount is due and payable within 14 days after receipt (or deemed receipt under section 35 of this by-law) of the decision of the screening officer, unless the person requests adjudication under section 27 of this by-law.

COMPLIANCE AGREEMENT

22. The by-law contraventions described in Schedule E are hereby designated as by-law contraventions that may be dealt with by a compliance agreement.
23. A compliance agreement must
 - a. describe the action to be taken to bring the person into compliance with the by-law,
 - b. state a date no later than 60 days after the date of the agreement by which the action must be completed, and
 - c. provide for inspection for the purpose of determining compliance with the agreement.
24. If the screening officer believes that a person who has entered into a compliance agreement has failed to comply with its terms, the screening officer may end the compliance agreement and give the person notice of that fact by regular mail. The notice is deemed to be received within seven days after the day it was mailed.
25. When a screening officer ends a compliance agreement, the person who entered into it may, within 14 days after receiving the notice under section 24 of this by-law
 - a. pay the administrative penalty set out in the penalty notice; or

- b. request that the screening officer submit for adjudication the issue of whether the person complied with the terms of the agreement.

ADJUDICATION SCHEME

26. An adjudication scheme described in sections 14 to 21 of the Act is hereby established to allow a person to whom a penalty notice has been issued to:
- a. request a review of a screening officer's decision to confirm or reduce the administrative penalty set out in the penalty notice;
 - b. request a determination of a dispute as whether the terms of a compliance agreement were complied with.
27. Within 14 days after receipt (or deemed receipt under section 35 of this by-law) of the screening officer's decision, the person may request a review of the screening officer's decision by an adjudicator by notice in writing to the screening officer mailed or delivered to the municipal office accompanied by a \$25 adjudication fee.
28. Upon receipt of a request for adjudication and the payment of the adjudication fee, the screening officer must submit the request to the chief adjudicator appointed under the Act.
29. The selected adjudicator must attempt to contact a person who has requested a review to arrange a mutually convenient date, time and means of reviewing the request. The person may be heard
- a. by telephone or in writing, including by fax or e-mail; or
 - b. through the use of a video or audio link or other available electronic means.
30. If
- a. the adjudicator is unable to contact a person who has requested a review,
 - b. the person without reasonable cause does not agree to a date and time or means of hearing, or
 - c. the person fails to appear or otherwise participate in the hearing,
- the adjudicator must order that the amount of the administrative penalty set by the screening officer or in the case of the ending of a compliance agreement, the administrative penalty set out in the penalty notice, is immediately due and payable to the Municipality.
31. In addition to the powers of the adjudicator in making a decision set out in section 19(2) of the Act, the adjudicator may reduce the amount of the administrative penalty if satisfied that exceptional circumstances exist, in which case the reduced penalty is immediately due and payable to the Municipality.

CHIEF ADMINISTRATIVE OFFICER'S AUTHORITY

32. The Chief Administrative Officer is authorized to do the following:
- a. pay invoices
 - i. of the screening officer for remuneration and expenses under Schedule D;
 - ii. for the costs and administration of the adjudication scheme under section 21(1) of the Act;
 - iii. for the remuneration and expenses of adjudicators;
 - b. refund an adjudication fee ordered to be refunded by an adjudicator.
 - c. issue a certificate in respect of an unpaid penalty under section 23(1) of the Act and file the certificate in the Court of Queen's Bench.

DISCLOSURE OF INFORMATION

33. Upon receipt of an adjudicator's decision, the Chief Administrative Officer must make the decision available to the public.

NOTICES AND TIME PERIODS

34. Where a notice or other document (other than a penalty or final notice) referred to in this by-law is required to be given to a person (other than to the Municipality), the notice or other document may be given
- a. by delivering it personally to the person;
 - b. by mailing a copy by regular mail or delivering a copy to the last known address of the person named in the penalty notice; or
 - c. if the person is a corporation,
 - i. by mailing a copy by regular mail to the corporation's registered office;
 - ii. by mailing a copy by regular mail or delivering a copy to an officer or director of the corporation;
 - iii. by delivering it personally to someone who appears to be in charge at a place where the corporation carries on business; or
 - d. if the person has used e-mail in communication, by sending it to the e-mail address provided by or shown in the communication from the person.
35. A notice or other document given under section 34 that is
- a. delivered personally is deemed to have been given or delivered on the day it was delivered;

- b. mailed is deemed to have been given or delivered to the person seven days after the day it was mailed;
 - c. sent by email is deemed to have been given or delivered two days after the day it was sent.
36. In determining the time within which a person must make a payment or request review or adjudication,
- a. the time does not include the first day of the period;
 - b. a period that would otherwise expire on a holiday is extended to include the next day that is not a holiday;
 - c. a period that would otherwise expire on a day when the municipal office is not open is extended to include the next day the municipal office is open.

AMENDMENTS TO OTHER MUNICIPAL BY-LAWS

This Part makes necessary amendments if required to the enforcement provisions of by-laws that contain designated violations and to the municipality's enforcement by-law (if there is one.)

TRANSITIONAL

37. This by-law shall come into force on _____.
38. Prosecutions of designated by-law contraventions that were started before this by-law comes into force shall continue under the procedures of the former by-laws and the Summary Convictions Act.

DONE AND PASSED by Council of the R.M. of Manitoba, in open meeting, duly assembled, this ___ day of _____ 201__.