



## RURAL MUNICIPALITY OF HANOVER

By-Law No. 2528-22

### ADMINISTRATIVE PENALTY BY-LAW

**A BY-LAW to allow enforcement of municipal by-laws, including Parking By-laws, under *The Municipal By-law Enforcement Act* and to be known as the "Administrative Penalty By-Law"**

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 the Act provides that municipal by-laws respecting parking may only be enforced by issuing penalty notices under that Act and may not be enforced by a proceeding under *The Summary Convictions Act*;

AND WHEREAS Council for the Rural Municipality of Hanover 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 Rural Municipality of Hanover ("RM") enacts as follows:

### PURPOSE AND INTERPRETATION

1. The purpose of this by-law is to establish an administrative penalty scheme for the enforcement of parking and other by-law contraventions and an adjudication scheme to review screening officer decisions.

2. 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: Forms of penalty notices for parking contraventions and other by-law contraventions.

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.

Schedule F: Adjudication request form

Schedule G: Province of Manitoba's "A Guide to The Municipal By-Law Enforcement Act"

Schedule H: Province of Manitoba's "Frequently Asked Questions"



### **BY-LAW CONTRAVENTIONS AND PENALTIES**

3. The by-law contraventions described in Schedule A are hereby designated as by-law contraventions that may be dealt with by a penalty notice.
4. The administrative penalties (including discounted amounts) described in Schedule A for each contravention are hereby set.
5. 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.
6. A penalty notice shall be in the form set out in Schedule B.
7. 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.
8. 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.
9. The RM 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 RM, 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**

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



### REVIEW BY SCREENING OFFICER

13. 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.
14. 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.
15. 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.
16. 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.
17. 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.
18. 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 RM; or
  - d. cancel the penalty notice if, in the screening officer's opinion,
    - i. the contravention did not occur as alleged,
    - ii. the penalty notice does not comply with section 6(2) of the Act, or



- iii. in the case of a parking contravention the vehicle owner can show
1. the vehicle was stolen or otherwise being used without the owner's permission at the time of the contravention,
  2. the contravention was the result of a medical emergency or was necessary in order to address immediate health or safety concerns, or
  3. both that the contravention was a result of a mechanical problem, and that the problem reasonably prevented the person in control of the vehicle at the time of the contravention from complying with the by-law despite exercising due diligence in attempting to comply.

19. The screening officer must make a decision in writing within 14 days after the review. After making the decision, the screening officer must give the affected person notice of the decision.
20. 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**

21. The by-law contraventions described in Schedule E are hereby designated as by-law contraventions that may be dealt with by a compliance agreement.
22. 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.
23. 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.



24. 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**

25. 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.
26. 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.
27. 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.
28. 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.
29. 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 RM.

30. In addition to the powers of the adjudicator in making a decision set out in section 19(2) of the Act, the adjudicator may cancel the penalty notice on the grounds set out in section 19d.iii of this bylaw and 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 RM.

#### **CHIEF ADMINISTRATIVE OFFICER'S AUTHORITY**

31. 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**

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

#### **NOTICES AND TIME PERIODS**

33. 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 RM), 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



- i. if the notice or document relates to a parking contravention, to the address of the vehicle owner indicated in the records of the Registrar of Motor Vehicles;
- ii. 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.

34. 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.

35. 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**

36. That Council, from time to time, by resolution, may amend Schedule "A" attached to this By-law.



**TRANSITIONAL**

37. This by-law shall come into force upon third reading of said by-law.
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 Hanover, in open meeting, duly assembled, this 25<sup>th</sup> day of May 2022.

A handwritten signature in blue ink, appearing to read "Stan Toews", written over a horizontal line.

Stan Toews - Reeve

A handwritten signature in blue ink, appearing to read "Luc Lahaie", written over a horizontal line.

Luc Lahaie - Chief Administrative Officer

Read a first time this 11th day of May, 2022  
Read a second time this 25th day of May, 2022  
Read a third time this 25th day of May, 2022





## SCHEDULE "A"

The contraventions that may be dealt with by a penalty notice under this by-law include:

**By-Law No.**    **Name of By-Law**

2395-22    Traffic By-Law (Parking, No Truck Routes,

Fire Prevention By-Law

Dog and Animal By-Law

Neighbourhood Liveability By-Law (Unightly Premises, Noxious Weeds, Noise,

Sump Pump



**SCHEDULE "B"**

**PENALTY NOTICE INFORMATION**

Penalty Notice Number: \_\_\_\_\_

Date of Issue: \_\_\_\_\_

Location: \_\_\_\_\_

Violation: \_\_\_\_\_

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**SCREENING OFFICER'S DECISION:**

*(Screening Officer to check one box)*

- The administrative penalty in the amount of \$ \_\_\_\_\_ is confirmed and is due \_\_\_\_\_.
- The administrative penalty is reduced to \$ \_\_\_\_\_ and is due \_\_\_\_\_.
- The penalty notice is cancelled.
- The penalty notice is stayed pending completion of the terms of a compliance agreement.

\_\_\_\_\_  
Screening Officer's Signature

**RIGHT TO ADJUDICATION**

You have a right to have this decision reviewed by an independent adjudicator. If you wish to request adjudication you must do so by completing a Request for Adjudication form and filing it in the Municipal Office at 28 Westland Drive, Mitchell, Manitoba by the date specified on the form. A fee of \$25.00 is required to file a Request for Adjudication. This fee will be refunded to you if the adjudicator determines you were successful on the adjudication.



**SCHEDULE "C"**

**FORM OF FINAL NOTICE**

\_\_\_\_\_  
[Date]

\_\_\_\_\_  
[To]

\_\_\_\_\_  
[Address]

\_\_\_\_\_  
[City]

\_\_\_\_\_  
[Province]

\_\_\_\_\_  
[Postal Code]

Re: **FINAL NOTICE**  
Violation of Rural Municipality of Hanover

By-law No. \_\_\_\_\_  
[name of by-law]

**CONTRAVENTION:** This Final Notice is issued to you that as a result of your failure to comply with the Penalty Notice issued to you for violation of the Rural Municipality of Hanover By-law No. \_\_\_\_\_,  
[insert a brief description of the violation and of the section(s) of the By-law violated].

As a result, you have until \_\_\_\_\_ ("Deadline")  
[month, day, year]

to EITHER:

1. Pay the penalty of \$ \_\_\_\_\_; OR
2. Request a review by a screening officer.

**PAYMENT:** Payment must be made by cash, debit or certified cheque.

**REQUEST FOR REVIEW:** A request for review by a screening officer must be made in writing to the Chief Administrative Officer either by Canada Post or email. If you request a review, the screening officer will review the circumstances that resulted in the Penalty Notice, as well as the information you and the by-law enforcement officer provide. After the review, the screening officer may confirm or reduce the penalty amount, cancel the Penalty Notice, or enter into a compliance agreement with you that will bring yourself into compliance with the By-law.

**FAILURE TO RESPOND:** If you have not paid the penalty or requested a review by the deadline, the penalty amount will be due and payable immediately. Failure to pay will result in the Municipality taking collection proceedings against you to collect the penalty amount.

By-law Enforcement Officer

\_\_\_\_\_



**SCHEDULE "D"**

**SCREENING OFFICER RENUMERATION AND EXPENSES**

**Screening Officer**

Hourly rate:	\$30.00
Transportation costs:	As per RM policy no. GA-005.
Expenses:	As per RM policy no. GA-005.



**SCHEDULE "E"**

**AGREEMENT RESPECTING ADMINISTRATIVE PENALTY  
(COMPLIANCE AGREEMENT)**

Date \_\_\_\_\_

On \_\_\_\_\_, penalty notice # \_\_\_\_\_  
*[insert date]* *[insert number]*  
was issued to \_\_\_\_\_ (the "recipient")  
*[insert name]*

in respect of a violation of \_\_\_\_\_  
*[insert by-law]*

The penalty notice required the recipient to pay \$ \_\_\_\_\_ (the "administrative penalty")  
*[insert penalty]*

The recipient requested a review of the penalty notice by a screening officer and the penalty notice was reviewed by a screening officer on \_\_\_\_\_ in the presence of the recipient.  
*[insert date]*

The By-law authorizes the use of a compliance agreement.

The purpose of a compliance agreement is to give the recipient an opportunity to come into compliance with the by-law without having to pay the administrative penalty as set out on the penalty notice.

The recipient has agreed to enter into a compliance agreement on the following terms:

1. For the purpose of becoming compliant with the by-law, the recipient will:

a. \_\_\_\_\_

[enter detailed description of the activities to be performed by the recipient, which may include applying for the necessary permits, undoing any activity that brought caused them to be non-compliant, etc.]

2. The recipient will cause all of the works referred to in paragraph 1 to be completed in accordance with the following timeline:

a. \_\_\_\_\_



[insert timeline for completion, in particular a final date by which compliance must be achieved]

3. The recipient will allow a R.M. of Hanover By-law Enforcement Officer reasonable access to the premises between the hours of 8:00 am – 4:00 pm, Monday to Friday, for the purpose of inspecting progress in relation to the timeline contemplated in paragraph 2 [alternatively, include specific times when inspections will occur].
4. The By-law Enforcement Officer shall prepare a report at the completion of the compliance period indicating whether the By-law Enforcement Officer is of the opinion that the anticipated state of compliance has been achieved. Upon completion of the timeline outlined above, the screening officer shall review the report, make a determination as to whether the recipient has complied with the terms of this agreement, and notify the recipient of that determination by regular letter mail to the following address: 28 Westland Drive, Mitchell, Manitoba, R5G 2N9.
5. If the notice prepared by the screening officer indicates that the recipient has not complied with the terms of this agreement, the notice must include that the recipient, within 14 days of receipt of the notice, must either:
  - a. pay the full administrative penalty as required by the penalty notice; or
  - b. request that the determination be reviewed by an adjudicator by completing and returning an Adjudication Request Form and paying the \$25.00 adjudication fee.
6. The recipient agrees that, pursuant to *The Municipal By-law Enforcement Act*, an adjudicator has the authority to determine whether the recipient has complied with the terms of the agreement but not to vary, delete, or otherwise modify the terms of this agreement.

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name: Screening Officer Name



**SCHEDULE "F"**

**ADJUDICATION REQUEST FORM**

**Date of Request** \_\_\_\_\_

**Applicant Information:**

**Last Name** \_\_\_\_\_ **First Name** \_\_\_\_\_

**Address** \_\_\_\_\_ **Postal Code** \_\_\_\_\_

**Daytime Phone:** \_\_\_\_\_ **Email** \_\_\_\_\_

<b>Penalty Notice No.</b>	<b>Date of Adjudication</b>	<b>Contravention</b>	<b>By-Law No.</b>

**INSTRUCTIONS**

1. Print clearly your name, contact information, date of request and adjudication information.
2. Complete all information fields for Adjudication Decision requested.
3. This form must be submitted in person at 28 Westland Drive, Mitchell, MB during regular business hours 8:00 a.m. to 4:00 a.m. Monday to Friday.
4. COST: Payment is required before your request will be processed. A fee for each adjudication decision requested is \$25.00.

*Your personal information is being collected under the authority of s.36 (1) (b) of the Freedom of Information and Protection of Privacy Act. This information will be used to administer your request and will not be used or disclosed for any other purposes, except as authorized by law. If you have any questions about the collection of this information, contact the Municipal FIPPA Coordinator at (204 - \_\_\_\_\_).*

**Applicant Signature** \_\_\_\_\_ **Application Date** \_\_\_\_\_

**A GUIDE TO**

***THE MUNICIPAL BY-LAW***

***ENFORCEMENT ACT***





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## Disclaimer

The purpose of this document is to assist municipalities in implementing *The Municipal By-law Enforcement Act*, which allows for locally-based enforcement of parking tickets and other by-law violation disputes through the use of administrative penalties and adjudicators.

This document includes an overview of the model, including background information, policies and processes that may be helpful for municipalities implementing the administrative by-law enforcement penalty scheme. These materials are guiding documents only and should be modified, as appropriate, to fit the requirements of each municipality and each by-law.

This document is not a legal document and should not be considered as a substitute for the governing legislation and regulations. Municipalities are encouraged to seek a legal opinion to ensure conformity with the legislation.

## Overview of New Administrative Penalty Scheme

In December 2013, the Province of Manitoba enacted legislation providing an alternative approach for processing and resolving minor by-law infractions; *The Municipal By-law Enforcement Act*. The goal of the new Act is to create a simple, fair, and cost-effective system for dealing with minor by-law infractions. To meet this goal, the Act creates a new administrative penalty scheme that:

- establishes a dedicated forum for resolving parking ticket and other by-law enforcement disputes;
- allows service by regular mail, in addition to personal service and by leaving the penalty notice on the vehicle; and
- promotes the timely resolution of by-law enforcement disputes.

Under the Act, municipalities may only resolve parking tickets by establishing an administrative system. Additionally, the system can be used to resolve other designated by-law infractions. The Provincial Court will no longer be a venue for resolving parking tickets or designated by-law infractions; ss. 3(2), 4(1), 4(2).

The Act, and the authority it provides to establish an administrative system, applies to municipalities, local government districts, and planning districts. However, for the purpose of this document, they will be referred to collectively as 'municipalities'.

Each municipality will need to establish an administrative system if it wishes to enforce parking by-laws. Municipalities may opt into the system to enforce other by-laws. Several municipalities may jointly administer the system by entering into an agreement and adopting the necessary by-laws; ss. 5(1), (2).

The two main features of the system are a simplified process for issuing penalty notices and a locally managed adjudication process to hear by-law enforcement disputes.

## Commencing the Process

Under the new model, formal by-law enforcement action begins with the completion of a penalty notice by a by-law enforcement officer. The penalty notice informs the recipient of; ss. 6(1) & 6(2):

1. the alleged by-law contravention that is being made;
2. the penalty for the contravention; and
3. how to pay the penalty or dispute the allegation.

## Delivering the Penalty Notice

The penalty notice may be delivered in several ways, including leaving it on the vehicle, mailing it to the registered owner of the vehicle, by personal delivery or by mail.

If the penalty notice is left on a vehicle, it is presumed to have been served on the day it is left. If mailed, the municipality may presume that it was received 7 days after it was mailed; ss. 6, 7, 9

The municipality may obtain the name and address of the registered owner of a vehicle from Manitoba Public Insurance Corporation. It is the responsibility of the municipality to make the arrangements with MPI for vehicle registration information; *The Drivers and Vehicles Act*, s. 135(1.1).

## Responding to the Penalty Notice

The person who receives the penalty notice (the “recipient”) has a fixed period of time in which to take action. The precise duration of this period must be set out in the municipality’s by-law, and must be at least 30 days from when the penalty notice was received or presumed received; s. 10(2).

Within that period, the recipient may either pay the amount of the penalty indicated on the penalty notice or dispute the penalty notice by having it reviewed by a screening officer. The municipality may, by by-law, provide an early payment discount if the administrative penalty is paid before the fixed period of time expires; ss. 3(3) (a), 10(1).

If the recipient does not respond to the penalty notice within the period set out in the by-law, the municipality must send a final notice to the recipient. The final notice must provide the recipient with an additional 30 days to pay the administrative penalty or have the penalty notice reviewed by a screening officer. After the 30 days, the administrative penalty becomes immediately due and payable and the municipality may take additional steps to collect the outstanding amount, as provided for in the Act; s.22.

## Role of the Screening Officer

The function of the screening officer is to listen to the recipient's submissions regarding the penalty notice. The screening officer then has the authority to confirm the administrative penalty or cancel the penalty notice if he or she believes the contravention did not occur or if the required information is missing from the notice. The municipality may, by by-law, also permit the screening officer to reduce the administrative penalty, cancel the penalty notice, or enter into a compliance agreement with the recipient; s. 11.

The screening officer must inform the recipient of the decision. The Act does not specify how this is to be done. It could be done orally, if that makes sense in the circumstances. For example, if the penalty notice is to be cancelled, telling the recipient that is probably sufficient. However, if the penalty is being confirmed and the recipient is still expressing dissatisfaction, providing a written notice of the decision, that includes the information required by s.11, would be required.

## Compliance Agreements

The municipality may by by-law allow the screening officer to enter into a compliance agreement with the recipient. A compliance agreement will include acknowledgement of the contravention of the by-law and will typically set out actions to be performed within a designated period of time, and waive the penalty at the conclusion of that period if the terms of the agreement are fulfilled.

The compliance agreement should include a mechanism for confirming that the terms of the agreement have been complied with. If the screening officer believes that the terms have not been complied with, he or she must notify the recipient of that fact by regular mail.

Within 14 days of receiving notice from the screening officer, or a longer period if provided in the by-law, the recipient may pay the administrative penalty or request that an adjudicator determine whether the recipient has complied with the terms of the compliance agreement. If the recipient does neither within that period of time, the administrative penalty is immediately due and payable by the recipient to the municipality; ss.12, 13.

## Referring a Dispute to Adjudication

If the screening officer confirms the administrative penalty or believes the recipient did not fulfil the terms of the compliance agreement, the recipient may pay the administrative penalty or request that the matter be referred to adjudication. The municipality may require the recipient to pay an adjudication fee, which may not exceed \$25; ss. 3(3)(e), 14.

The municipality will then schedule a day and time for the adjudication, notify the recipient of these details, and request the presence of an adjudicator. Once the adjudication has been scheduled, the recipient should receive notice of the adjudication.

Depending on the circumstances, the recipient may be allowed to participate in the adjudication in person, over the phone, by submitting written material, or by another form of video or audio link acceptable to the municipality. Additionally, the recipient may indicate an intention to be self-represented or be represented by a lawyer or non-lawyer agent; s.17.

### **Adjudication of the Dispute**

Adjudicators are appointed by the Deputy Attorney General in accordance with the applicable regulation and a list of eligible adjudicators will be made available for the province or for specific municipalities. An adjudicator may not be an employee or an elected official of a municipality and may not hear a matter if he or she is reasonably apprehended to have a bias or an interest in relation to the outcome of that matter. The adjudicator also has no jurisdiction to deal with challenges to the by-law or claims of infringements of rights under the *Charter of Rights and Freedoms*; ss. 15,16,25.

At the adjudication hearing, the adjudicator will review the information contained on the penalty notice and hear from the recipient. The adjudicator may also review any documents submitted and hear from any witnesses that the adjudicator believes to be relevant to a proper determination of the dispute. The adjudicator is not bound by the normal rules of evidence; s.18.

After reviewing the relevant information, the adjudicator must either order the administrative penalty to be immediately due and payable, reduce the administrative penalty if exceptional circumstances exist, or cancel the penalty notice if the adjudicator believes that the contravention did not occur or the required information is missing from the notice. The municipality may, by by-law, also permit the adjudicator to reduce the administrative penalty for additional reasons; s.19 (2).

If the adjudication concerned a compliance agreement, the adjudicator must determine whether or not the recipient fulfilled the terms of the compliance agreement. If the adjudicator is satisfied that the terms were complied with, he or she must order that the administrative penalty is not payable. If not, the adjudicator must order that the amount of the administrative penalty be immediately due and payable; s. 19(3).

If the municipality, by by-law, required the recipient to pay a fee when he or she requested adjudication, the fee must be reimbursed if the recipient is successful; s. 21(2)

If the recipient does not attend the adjudication, the adjudicator must order that the administrative penalty is immediately due and payable by the recipient to the municipality; s. 17(4).

The adjudicator's decision must be in writing, be provided to the recipient, and be available to the public; ss. 19(4), 19(5).

## Appeals and Judicial Review

The decision of the adjudicator is final and the Act does not allow for appeals. If the recipient or the municipality feel that the adjudicator exceeded his or her authority, or made an error of law, the recipient or municipality may seek judicial review in the Manitoba Court of Queen's Bench. An application for judicial review must be made within 30 days of the adjudication decision; s.20.

## Collections

A municipality may collect an administrative penalty that has become due and payable, which occurs in the following circumstances:

- the recipient did not pay the administrative penalty within the fixed period of time as determined in the applicable by-law and 30 days have passed since a final notice of the administrative penalty was delivered personally or by regular mail;
- the screening officer confirmed the administrative penalty and the recipient did not seek adjudication;
- the adjudicator ordered that the administrative penalty is immediately due and payable to the municipality.

The municipality may prepare a certificate showing the name of the recipient and the amount of the administrative penalty. The certificate may be filed in the Court of Queen's Bench and subsequently enforced as a judgement of that court; s. 23(1). The judgement may be secured as a lien on personal property owned by the recipient by filing a financing statement in The Personal Property Registry and paying the required fee as determined by the *Personal Property Registry Fees Regulation (79/2004)*; s.24.

The municipality may not obtain a certificate if the amount became due and payable more than 6 years prior; s. 23(2).

## Ownership of Records

Any records produced pursuant to the implementation and administration of the by-law adjudication system, including but not limited to:

- copies of issued penalty notices
- records of issued penalty notices
- records of paid administrative penalties
- copies of adjudicator decisions
- copies of documents relating to the collection of any unpaid penalty

are owned by the municipality, which is responsible for preserving these records in accordance with existing obligations imposed by provincial legislation.



Adjudicator decisions must be made available to the public. This may take the form of a central registry, online publication, or other means of public access, depending on the capacity of the municipality and the volume of decisions.

## Implementation of a By-law Enforcement and Adjudication System

Successful implementation of a by-law adjudication system requires some forethought and collaboration between various municipal departments. Individuals responsible for by-law enforcement, information technology and financial services in each municipality should be consulted. Neighbouring municipalities may also develop a system jointly.

When establishing a by-law adjudication system, here are some questions to consider:

### What by-law and specific provision?

- In addition to parking offences what by-laws and specific provisions does the municipality want to be dealt with by penalty notice?
  - The adjudication system is best suited to contraventions that can be confirmed easily. An adjudicator's authority is focused on whether the contravention occurred as alleged. A hearing before an adjudicator is less formal than a hearing before a Judge or Judicial Justice of the Peace.
- What penalties will apply for different categories of contraventions?
  - Will early-payment discounts apply?
  - Will an adjudication fee apply? The maximum adjudication fee is \$25.
  - The maximum penalty under the system is set by regulation.
- What information is to appear on the face of the penalty notice?
  - Beyond the basic information required by regulation, municipalities have considerable flexibility to customize the penalty notice face, allowing notices to be designed to suit local enforcement and information management practices, including using pre-printed or electronically generated penalty notices.
- What types of contraventions, if any, may be resolved through a compliance agreement?
  - The screening officer may only enter into a compliance agreements if the by-law so provides.
  - What conditions should the screening officer include?
  - Compliance agreements are best suited to situations of ongoing contravention, like minor zoning issues or general neighbourhood livability by-laws.
- What, if any, additional authority should be included in the municipal by-law to authorise the screening officer:
  - To reduce the amount of the administrative penalty?
  - To cancel the penalty notice?

## When?

- When will the period to pay or dispute the penalty notice end?
  - The Act dictates that the minimum period to pay is 30-days from when the penalty notice is received, but a particular by-law may provide additional time.

## Who?

- Who may issue a penalty notice?
  - A by-law enforcement officer is a person who has been designated by a municipality to enforce one or more by-laws in that municipality.
  - Where several municipalities intend to administer an adjudicative system jointly, it may be helpful to designate the same by-law enforcement officers in each participating municipality.
- Who may be a screening officer?
  - A screening officer is appointed by a municipality.
  - Where several municipalities intend to administer an adjudicative system jointly, it may be helpful to designate the same screening officers in each participating municipality.
  - A screening officer should have some familiarity with the by-laws to be enforced and be available to respond to penalty notice recipients in a timely fashion. This might include by-law or licensing clerks who are available during office hours, department heads, or other existing municipal staff. In larger municipalities it may be necessary to employ full-time screening officers.
- Who coordinates the adjudication?
  - An adjudicator is appointed by the Deputy Attorney General and the province is responsible for coordinating the adjudication.
  - The municipality is responsible for the cost of administering the adjudication, including remuneration of the adjudicator.

## Where?

- Where and when will a screening officer be available to hear disputes?
  - The screening officer's function is to hear the dispute and to listen to any submissions made by the recipient. It may be helpful to have a private or semi-private space available to the screening officer.
  - Additionally, the screening officer may be confronted by a recipient who does not understand the penalty notice or is frustrated with having received a penalty notice and screening officer safety should be considered.
  - Normal business hours may be sufficient or additional hours may be necessary.
- Where and when will an adjudicator be available to hear adjudications?
  - The municipality is responsible for the cost of an adjudication, including providing a venue and supplying the necessary technology.
  - The adjudicator may need to hear from multiple witnesses and consider other evidence.

- The Act allows adjudications to occur by telephone, written submission, or other means of video or audio electronic communication. This means that it may not be necessary for the adjudicator to be personally present in the municipality.

### How?

- How will the new system be explained to the public and internal staff?
  - It may be helpful to post Frequently Asked Questions (FAQs) about the adjudication system on the municipality's website. Example FAQs are attached as a schedule.
  - People appointed as by-law enforcement officers, screening officers, and other internal municipal staff who provide services directly to members of the public should understand how the different aspects of the adjudicative system work together.

## An implementation Checklist for Municipalities

### Initial Preparations

- Confirm that your municipality intends to enforce parking violations and, therefore, is required to establish an adjudication system.
- Review the regulations and identify any additional municipal by-law violations that your municipality would like to enforce using the adjudication system.
- Determine if the adjudication system will apply to more than one municipality. If so, determine how responsibilities and costs for the administration of the system will be shared, where the screening officers will be located, and where the adjudication hearings will be held.
- Prepare the necessary documents to recommend that your Municipal Council approve the implementation of a By-law Dispute Adjudication System.
- Negotiate an agreement between participating municipalities, and enact necessary by-laws and resolutions to enter into the agreement, as required.

### Implementation (Policies and Procedures)

- Prepare the by-law to implement the By-law Dispute Adjudication System and prepare amendments to the applicable by-laws to bring them within the scope of the By-law Dispute Adjudication System (refer to sample by-law language provided).
- Prepare Screening Officer Policy.
- Prepare a communications plan for the public, internal employees, and other stakeholders.

- Train enforcement officers, screening officers, and finance staff.
- Prepare implementation and operational budgets.
- Consult with Manitoba Justice, Courts Division regarding the process for scheduling adjudicators.
- Consult with Manitoba Public Insurance regarding the process for obtaining a vehicle owner's name and address.

### Implementation (Forms and Systems)

- Assess enforcement and collections capacity.
- Prepare penalty notice
- Prepare Screening Officer and Adjudication forms.

## By-laws and Penalty Notices

### Implementation By-law

Section 3 of the Act allows a municipality to use a penalty notice to impose administrative penalties for designated by-law contraventions.

In order to do so, the municipality must pass a by-law that implements a By-law Dispute Adjudication System; s. 3. This by-law must:

- designate the by-law contraventions that may be dealt with by a penalty notice;
- establish the administrative penalty for each contravention;
- set the period within which a recipient may pay the administrative penalty or request a review by a screening officer;
- provide for the appointment of one or more screening officers and specify their powers and duties;
- set the period within which a recipient must respond to a screening officer's decision; and
- establish an adjudicative scheme to resolve matters relating to administrative penalties and compliance agreements.

The municipality may also include the following in the implementation by-law:

- provide for an early payment discount of administrative penalties;
- the grounds on which the screening officer may reduce the amount of the administrative penalty;
- provide the screening officer the authority to enter into compliance agreements for specified by-law contraventions and any terms to be included in the compliance agreement;
- set out any additional grounds on which a screening officer or adjudicator is authorized to cancel a penalty notice;
- establish a fee payable to file a request for adjudication, which must not exceed \$25;

If two or more municipalities intend to jointly administer the by-law dispute adjudication system, each participating municipality must individually adopt the same implementation by-law, as outlined above.

### Penalty Notices

Municipalities undertaking a by-law dispute administrative system will need to ensure that the penalty notices include the information required by the Act. A penalty notice must contain the following information:

- name of the person required to pay the administrative penalty unless it is issued for a parking violation;
- the specific by-law contravention alleged to have occurred;
- sufficient information in support of the alleged contravention to enable the recipient to respond to the allegation;
- the amount of the administrative penalty;
- how to pay the administrative penalty or request that the penalty notice be reviewed by a screening officer, and the applicable time limit for doing so;

Although the Act requires that the above information be included on a penalty notice, municipalities may organize or supplement this information as they see fit. The penalty notice may also be electronically generated or hand written on a pre-printed form.

### Role of the Screening Officer

Municipalities may wish to develop and implement a screening officer policy in order to provide guidelines for screening officers during the penalty notice screening process.

The screening officer, after reviewing a penalty notice and hearing from the recipient, may:

- 1) cancel the notice, if
  - a) the contravention did not occur as alleged;
  - b) the penalty notice does not meet the requirements set out in the Act; or,
  - c) the grounds for cancellation authorized by the municipality are satisfied;
- 2) confirm the penalty notice and notify the recipient of the decision;
- 3) reduce the amount of the administrative penalty, if this is authorized in the by-law; or
- 4) enter into a compliance agreement with the person, if this is authorized in the by-law.

Screening officers provide a first opportunity to deal with penalty notices in an informal setting.

### Screening Officer Checklist

Screening officers are required to provide recipients with a fair opportunity to be heard. They may choose to take notes of their conversation with the recipient. The following are some guidelines for screening officers:

- 1) Identify yourself as a Screening Officer.
- 2) Clarify that your authority to make a determination is based upon authority granted by the municipality.
- 3) Listen carefully to the recipient's information and if you feel it is desirable record a summary of this information.
- 4) Make a decision to cancel or uphold the notice; explain this to the recipient.
- 5) Record your decision in the file.

### Adjudication Process

The municipality must establish a procedure by which a person may request adjudication. Upon confirmation that the recipient wishes to adjudicate the person designated by the municipality must contact Manitoba Justice, Courts Division to arrange for an adjudicator. Once a date and time is arranged the disputant must be advised.

Disputants have the right to be heard, and this right may be exercised in one of the following manners:

- in person, or by an agent;
- in writing; or
- by video conference, audio conference, telephone or other electronic means, if available and acceptable to the adjudicator.

The adjudicator's decision is made on a balance of probabilities, as in civil claim proceedings, and may be based on any evidence that the adjudicator considers relevant and credible.

The adjudicator may accept evidence in writing, orally (in person or by telephone) or other electronic means from the disputant, the enforcement officer or any other witness to the alleged by-law contravention.

The decision before the adjudicator is strictly whether a violation of a municipality's by-law occurred, or did not occur and the appropriate penalty. The process is not designed, nor intended, to deal with challenges to the fairness of the by-law, validity or other legal questions. Adjudicators do not have the authority to consider remedies under the *Charter of Rights and Freedoms*. Adjudicators may only confirm the penalty notice, impose a reduced penalty, or cancel it outright. In the case of a compliance agreement, the adjudicator may only determine whether or not the disputant has complied with the terms of the compliance agreement. In making this determination the adjudicator could consider such evidence as a report from the by-law enforcement officer and photographs.

The decision must be in writing and made available to the public.

The Act provides that the decision is final and binding and not subject to appeal. However, either party may seek judicial review of the decision if they believe that the adjudicator exceeded his or her authority or made an error of law. Judicial review must be sought within 30 days of the decision.

## **The Adjudicator**

Adjudicators are appointed by the Deputy Attorney General and must meet the prescribed qualification, not be an employee of, or hold an elected office in, a municipality, and take an oath of office. These criteria provide the basis for an objective adjudication system separate from the municipality.

One or more rosters of adjudicators must be established for the province generally, or for one or more municipalities.

Qualifications, responsibilities and requirements for rosters, remuneration and expenses are established by regulation.

## **Notice of Adjudication**

Once the municipality has confirmed that the recipient of a penalty notice wishes to proceed to adjudication, the municipality must schedule an adjudication hearing and ensure that all parties are notified. The proceedings are open to the public.

## Adjudicator's Decision

The adjudicator's decision must be in writing and made available to the public.

The decision should include:

- the name of the recipient;
- the facts relating to the penalty notice;
- a summary of the screening officer's decision;
- the issues raised by the parties;
- a summary of the evidence provided by each party in support of each issue;
- the adjudicator's assessment of each issue; and
- the adjudicator's final decision.

The decision may include more or less detail depending on the particular circumstances.

## Notice of Adjudication Outcome

The recipient must receive notice of the adjudication outcome that includes the adjudicator's decision and any necessary information for how and when payment of the administrative penalty must be made.

## Communications Plan

The purpose of a communications plan is to bring awareness to the newly formed Bylaw Dispute Administrative System to internal, municipal staff and to local residents. It may be helpful to prepare answers to frequently asked questions. Including a FAQ page on your website provides an opportunity to anticipate the key issues and guide residents through the process.



## SAMPLE BY-LAW AND FORMS

### Sample Implementation By-Law

#### A BY-LAW TO PROVIDE FOR AN ADMINISTRATIVE PENALTY SCHEME

WHEREAS section 3(1) of *The Municipal By-law Enforcement Act* (“Act”) provides that a municipality may require administrative penalties to 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 a means of encouraging compliance with its by-laws;

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

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 resolve matters relating to administrative penalties.
2. *The following definitions apply to this by-law: (add if necessary)*

#### BY-LAW CONTRAVENTIONS AND PENALTIES

3. The by-law contraventions described in Schedule A are hereby designated as by-law contraventions that may be dealt with by a penalty notice.
4. The administrative penalties described in Schedule A for each contravention are hereby set.
5. The period within which a person may pay the administrative penalty or request a review by a screening officer is hereby set at 30 days.

#### SCREENING OFFICERS

6. The persons listed in Schedule B are hereby appointed as screening officers.
7. Within 14 days of receiving a decision of the screening officer that confirms the administrative penalty, the person may request a review of the decision by an adjudicator by notice in writing to the Chief Administrative Officer mailed or delivered to the municipal office accompanied by a \$25 adjudication fee.

*The Municipal By-law Enforcement Act provides for optional provisions in the by-law that may include screening officers having the power to:*

- i. reduce the amount of an administrative penalty, and set out the grounds for reducing the penalty,*
- ii. enter into a compliance agreement with a person to whom a penalty notice has been issued, including identifying the contraventions that such an agreement may apply to, setting the terms that may be included in such an agreement and the maximum duration of the agreement and setting the time for a person to submit to adjudication the issue of whether the person complied with the agreement ,*

- iii. *establishing additional grounds upon which the screening officer is authorized to cancel a penalty notice, and*
- iv. *providing for an early payment discount of administrative penalties.*

*In addition, depending on the screening officer system to be established under this by-law, a municipality may consider adding provisions to deal with how a person makes a request for a review, how the screening officer administers the review, makes a decision and provides notice of the decision to the person.*

#### **ADJUDICATION SCHEME**

- 8. An adjudication scheme described in sections 14-21 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.

*The Municipal By-law Enforcement Act provides for optional provisions in the by-law that may include providing for establishing additional grounds upon which the adjudicator is authorized to cancel a penalty notice.*

*In addition, depending on the screening officer system to be established under this by-law, a municipality may consider adding provisions to deal with how notices for adjudication reviews are administered.*

#### **ADJUDICATION FEE AND COSTS**

- 9. Upon the adjudicator ordering the adjudication fee to be refunded, the Chief Administrative Officer is authorized to refund the adjudication fee to the person.
- 10. Upon the Municipality being invoiced under section 21 of the Act for the costs of administering the adjudication scheme, the Chief Administrative Officer is authorized to pay the invoice.

#### **PENALTY NOTICE**

- 11. A penalty notice shall be in the form of Schedule C.

**AMENDMENTS TO OTHER MUNICIPAL BY-LAWS**

*This Part makes necessary amendments to the enforcement provisions of parking by-laws, by-laws that contain designated violations and the enforcement by-law (if there is one.)*

**TRANSITIONAL**

- 12. *This by-law shall come into effect on \_\_\_\_\_ (Use only if a delayed start date is provided for.)*
- 13. Prosecutions of designated by-law contraventions that are outstanding when this by-law comes into effect 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 \_\_\_\_\_ 2015.

## Sample Screening Officer Decision

### PENALTY NOTICE INFORMATION

Penalty Notice Number:

Date of Issue:

Location:

Violation:

### SCREENING OFFICER'S DECISION:

- The administrative penalty in the amount of [insert amount] is confirmed and is due [insert last date of the response period].
- The administrative penalty is reduced to [insert amount] and is due [insert last date of the response period].
- The penalty notice is cancelled.
- The penalty notice is stayed pending completion of the terms of a compliance agreement.

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Screening Officer's Signature

### RIGHT TO ADJUDICATION

You have a right to have this decision reviewed by an independent adjudicator. If you wish to request adjudication you must do so by completing a Request for Adjudication form and filing it in the Municipal Office at [insert address] by the date specified on the form. A fee of \$25 is required to file a Request for Adjudication. This fee will be refunded to you if the adjudicator determines you were successful on the adjudication.

# Sample Compliance Agreement

## AGREEMENT RESPECTING ADMINISTRATIVE PENALTY

Date

On [insert date], penalty notice # [insert number] was issued to [insert name](the “recipient”) in respect of a violation of [insert by-law].

The penalty notice required the recipient to pay \$[insert administrative penalty], (the “administrative penalty”)

The recipient requested a review of the penalty notice by a screening officer and the penalty notice was reviewed by a screening officer on [insert date] in the presence of the recipient.

The By-law authorises the use of a compliance agreement.

The purpose of a compliance agreement is to give the recipient an opportunity to come into compliance with the by-law without having to pay the administrative penalty as set out on the penalty notice.

The recipient has agreed to enter into a compliance agreement on the following terms.

1. For the purpose of becoming compliant with the by-law, the recipient will:
  - a. [enter detailed description of the activities to be performed by the recipient, which may include applying for the necessary permits, undoing any activity that brought caused them to be non-compliant, etc.]
2. The recipient will cause all of the works referred to in paragraph 1 to be completed in accordance with the following timeline:
  - a. [insert timeline for completion, in particular a final date by which compliance must be achieved]
3. The recipient will allow a R.M. of Manitoba By-law Enforcement Officer reasonable access to the premises between the hours of 8:30am – 4:30 pm, Monday to Friday, for the purpose of inspecting progress in relation to the timeline contemplated in paragraph 2 [alternatively, include specific times when inspections will occur].
4. The By-law Enforcement Officer shall prepare a report at the completion of the compliance period indicating whether the By-law Enforcement Officer is of the opinion that the anticipated state of compliance has been achieved.

5. Upon completion of the timeline outlined above, the screening officer shall review the report, make a determination as to whether the recipient has complied with the terms of this agreement, and notify the recipient of that determination by regular letter mail to the following address [insert address].
6. If the notice prepared by the screening officer indicates that the recipient has not complied with the terms of this agreement, the notice must include that the recipient, within 14 days of receipt of the notice, must either:
  - a. pay the full administrative penalty as required by the penalty notice; or
  - b. request that the determination be reviewed by an adjudicator by completing and returning an Adjudication Request Form and paying the \$25 adjudication fee.
7. The recipient agrees that, pursuant to *The Municipal By-law Enforcement Act*, an adjudicator has the authority to determine whether the recipient has complied with the terms of the agreement but not to vary, delete, or otherwise modify the terms of this agreement.

[Recipient signature]

---

[Recipient Printed Name]

[Screening Officer signature]

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[Screening Officer Printed Name]

## Sample Adjudication Request Form

ENQUIRIES MAY BE DIRECTED TO THE R.M. OF MANITOBA ADMINISTRATIVE OFFICE, 321 Main Street, PO BOX 1630 R.M. OF MANITOBA, MB, R2K 9F8, BETWEEN 8:30AM AND 4:30 PM, MONDAY TO FRIDAY, (204) 435-6468, OR PARKING@RMOFMANITOBA.CA.

### ADJUDICATION REQUEST

If you wish to dispute the decision of the screening officer complete the following request form and return it by [insert date] to the address above.

**PLEASE PRINT**

NAME:

PENALTY NOTICE NO:

DATE OF ISSUE:

ADDRESS:

DAYTIME PHONE NUMBER:

EMAIL:

SIGNATURE

**NOTE:** A \$25 adjudication fee must be paid. This fee is refunded if the adjudicator determines you were successful on the adjudication.

## Sample Notice of Time and Place of Adjudication

Municipal Letterhead

### NOTICE OF ADJUDICATION

May 15, 2014

To: Ms. Jane Doe  
1231 Any Street  
R.M. of Manitoba, MB  
R3N 1Y6

Penalty Notice Number:

Date of Issue:

Location:

Section:

Violation:

Time of Issue:

Officer:

Fine Amount:

TAKE NOTICE OF THE FOLLOWING INFORMATION REGARDING YOUR ADJUDICATION:

TIME:

LOCATION:

This will confirm that you requested adjudication of the above referenced penalty notice. Your adjudication will take place at the date and time and location indicated above. You are required to attend at that time. If you do not attend, the adjudicator will order that the fine is immediately due and payable, by you, to the R.M. of Manitoba.

Yours truly,

R.M. of Manitoba By-Law Enforcement



## Sample Notice of Adjudication Decision

May 30, 2014

Ms. Jane Doe  
1231 Any Street  
R.M. of Manitoba, MB  
R3N 1Y6

Dear Ms. Doe:

**Re: PENALTY NOTICE # – Notice of Adjudication Decision**

The adjudicator has notified the R.M. of Manitoba that at the adjudication on May 23, 2014 the above noted penalty notice was upheld. A copy of the adjudicator's decision is enclosed along with this notice.

The administrative fine of \$\_\_\_\_\_ is now outstanding.

Payment of the fine can be made in person or by mail to:

Administration Office  
The R.M. of Manitoba  
321 Main Street, PO Box 1630  
R.M. of Manitoba, MB R2K 9F8

If you do not pay the amount of the fine as set out above, the R.M. of Manitoba may take any and all steps necessary to collect the amount of fine from you, as authorised by *The Municipal By-law Enforcement Act*.

Yours truly,

R.M. of Manitoba By-Law Enforcement

/encl.

## Sample Adjudication Decision

Adjudication Decision No:

### PENALTY NOTICE INFORMATION

Penalty Notice Number:

Date of Issue:

Location:

Section:

Violation:

Time of Issue:

Officer:

Fine Amount:

### ADJUDICATION DECISION:

Facts:

Summary of Screening Officer's Decision:

Issues:

Evidence Considered:

Decision:

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Adjudicator's Signature

## Sample FAQ for Municipal Websites

### How Bylaw Adjudication Works

*The Municipal By-law Enforcement Act* allows municipalities to enforce parking tickets and other by-law violations through the use of administrative penalties and non-judicial adjudicators instead of relying on limited Provincial Court resources.

The goal is to create a simple, fair, and cost-effective system to enforce by-laws while resolving disputes in a way that promotes understanding and compliance. The majority of the violations that will be enforced this way will relate to parking restrictions and community liveability by-laws.

A penalty notice is issued if a by-law enforcement officer believes that there has been a by-law violation. The notice will include the relevant information relating to the violation and the amount of the administrative penalty that is owed. You may dispute the violation by contacting the municipal offices.

A dispute is first reviewed by a screening officer who will review the information contained on the penalty notice and any additional information you may wish to provide. The screening officer will then determine if the penalty should be upheld, cancelled or in some cases varied.

If you disagree with the screening officer's decision, you can request adjudication by a provincially appointed adjudicator. The adjudicator will review the screening officer's decision and any additional information that the adjudicator considers relevant. The adjudicator's decision is final and not subject to any appeal.

### How to Pay the Fine on the Penalty Notice

Payment of the fine indicated on the Penalty Notice can be made in person or by mail to:

Administration Office  
The R.M. of Manitoba  
321 Main Street, PO Box 1630  
R.M. of Manitoba, MB R2K 9F8

Do not send cash in the mail.

[Payment may also be made by credit card over the phone or online as a secured transaction, depending on the resources available to the particular municipality.]

Take note of any early payment discounts that are set out on the penalty notice.

## How to Dispute a Penalty Notice

You have until the date noted on the penalty notice to pay the administrative penalty or dispute the penalty notice. If you do not pay the penalty or dispute the notice before that date, you will receive a Final Notice. The Final Notice will give you 30 additional days to pay the penalty or dispute the penalty notice. If you do neither within that period, you will no longer be able to dispute the penalty notice.

You may dispute a penalty notice by appearing at the address set out below on weekdays between 8:30 and 4:30 and requesting to speak to a screening officer.

Administration Office  
The R.M. of Manitoba  
321 Main Street, PO Box 1630  
R.M. of Manitoba, MB R2K 9F8

The screening officer will review the penalty notice and may:

- cancel the penalty notice;
- in some circumstances, enter into a compliance agreement with your consent to resolve the violation;
- in some circumstances reduce the administrative penalty if the circumstances warrant; or
- uphold the penalty notice.

The specific options available to the screening officer are determined by the particular by-law. A copy of each by-law is available online at [rmofmanitoba.ca/by-laws](http://rmofmanitoba.ca/by-laws).

If you are not satisfied with the decision of the screening officer you may request a hearing before an adjudicator.

## How to Request an Adjudication Hearing

You may request an adjudication hearing by completing and returning an Adjudication Request Form to the municipal offices within the time period set out on the form. Shortly after you submit the form, you will be contacted to schedule the adjudication hearing. The address, email or phone number set out on the form will be used to contact you.

You are required to pay a \$25 adjudication fee when requesting an adjudication hearing. This amount will be refunded to you if you are successful.

The adjudicator is appointed by the province and must be independent and objective. The adjudicator may not be an employee or officer of any municipality and may not hear a dispute if there is an apprehension of bias towards you.

You may appear at the adjudication hearing in person, or you may be represented by an agent or a lawyer. You may also participate in the adjudication hearing through prepared written submissions or by telephone or other telecommunications device. Be sure to clearly indicate how you wish to participate when scheduling the hearing.

At the adjudication hearing, the adjudicator will review the screening officer's decision and the relevant evidence before deciding whether or not the contravention occurred. If the adjudicator believes that the violation occurred, the administrative penalty must be paid in full. If not, the penalty notice is cancelled, the \$25 adjudication fee is refunded, and no penalties are payable. The adjudicator may also reduce the administrative penalty if exceptional circumstances exist.

### **What is a Compliance Agreement**

A compliance agreement is an agreement that you may voluntarily enter into in certain situations. By entering into the agreement you recognize that a by-law violation has occurred and agree to resolve the violation by bringing the situation back into compliance with the by-law.

Compliance agreements are best suited to ongoing violations, like minor zoning issues or general neighbourhood livability by-laws, where you are willing to correct the situation but need some time to do so. The compliance agreement will include a time period for resolving the situation and identify what needs to occur before the situation is resolved.

The screening officer will review a report from the by-law officer concerning whether the agreement has been complied with. The screening officer will cancel the penalty notice if the terms of the compliance agreement are fulfilled. If the screening officer believes that you have not complied with the terms of the agreement, the penalty must be paid within 14 days of when you received notice of the screening officer's decision.

You may dispute the screening officer's decision by requesting an adjudication hearing. [See [How to Request an Adjudication Hearing](#)]

### **What Happens if the Administrative Penalty is Not Paid**

An administrative penalty may become payable in one of the following scenarios:

- you do not respond to a penalty notice within 30 days of receiving a Final Notice;
- the screening officer confirms that the by-law violation occurred and you do not request an adjudication hearing within the time set out;
- the screening officer determines that you did not comply with the terms of a compliance agreement and you do not request an adjudication hearing within 14 days; or
- the adjudicator confirms that the by-law violation occurred.

In any of these scenarios, the administrative penalty is owing and must be paid by you to the Municipality. The Municipality is entitled to take enforcement action to recover any unpaid amounts. Examples of enforcement action include registering a lien against your vehicle in the Personal Property Registry, even if the by-law offence did not involve the use of your vehicle and filing a judgment against your land in the provincial Land Titles office.

## The Municipal By-law Enforcement Act (MBEA)

### Frequently Asked Questions

#### GENERAL

**Q:** *The Municipal By-law Enforcement Act (MBEA) came into force on August 8, 2016. How can the new legislation be utilized to enforce municipal by-laws?*

**A:** The MBEA gives municipalities the ability to enforce parking and other by-laws through an administrative penalty scheme that is simple and cost-effective. An administrative penalty scheme enacted under the MBEA allows municipal by-law contraventions to be resolved outside the courts. Two key elements of the MBEA scheme are:

- a simplified process for issuing penalty notices; and
- a two-tiered, locally managed adjudication process to hear disputes.

**Q:** *Are municipalities required to enforce **all** municipal by-laws under the MBEA administrative system?*

**A:** Municipalities must enforce their parking by-laws under the MBEA scheme effective February 2017. Other municipal by-laws may be enforced under the MBEA scheme, but municipalities are not required to use the MBEA scheme to enforce any by-laws other than parking.

The MBEA scheme is best suited to enforce by-law contraventions that are over and done once they occur. For example, a contravention of a noise by-law is not an ongoing violation and can be effectively dealt with by issuing a penalty notice.

The maximum penalty a municipality can set for a by-law contravention under the MBEA scheme is \$1000.

**Q:** *Can a by-law be enforced under both the MBEA and *The Municipal Act*?*

**A:** Yes, the same section of a municipal by-law can be enforced under both the MBEA and *The Municipal Act*. Once a section of a by-law is designated under the MBEA by-law, it removes a municipality's ability to enforce that violation by prosecution of an offence under *The Summary Convictions Act*. However, a municipality could still choose to enforce that violation under *The Municipal Act* if it chose to do so, such as by using the self-help procedure set out in s. 242. A municipality may choose which enforcement tool to use in each situation.

**Q: Will by-law enforcement officers be permitted to issue penalty notices under the MBEA for contraventions of by-laws enacted under *The Highway Traffic Act* (HTA)?**

**A:** Only peace officers have authority to stop moving vehicles for HTA offenses like speeding or failing to comply with weight restrictions.

Your municipality may have by-laws under HTA authority with contraventions that could be effectively dealt with by having a by-law enforcement officer issue a penalty notice. However, municipalities are advised to consult with their municipal lawyer about which contraventions are appropriate to enforce under the MBEA scheme.

**Q: Can the MBEA scheme be used to enforce by-laws enacted under *The Planning Act*?**

**A:** Yes, zoning and other by-laws enacted under *The Planning Act* may be enforced under the MBEA scheme if they contain contraventions that can be dealt with by issuing a penalty notice. If your municipality is a member of a planning district, you will want to coordinate enforcement of zoning and building by-laws under the MBEA scheme with the district.

**Q: Can an unpaid penalty be added to the property taxes of the person who received the penalty notice?**

**A:** No. There is no authority under the MBEA scheme to add unpaid penalties to property taxes.

## **IMPLEMENTATION**

**Q: How can our municipality implement an administrative penalty scheme under the MBEA?**

**A:** Municipalities must pass an implementation by-law under the authority of s. 3(2) of the MBEA. The implementation by-law will:

- designate by-law contraventions that will be dealt with by a penalty notice issued under the MBEA scheme;
- establish one or more screening officer positions and the powers of the screening officers;
- set the amount of the penalty for each contravention and the time frame to request a review by a screening officer; and
- establish the adjudication process.



The AMM is working to develop template by-laws which will soon be made available on AMM's website at: [www.amm.mb.ca](http://www.amm.mb.ca).

The City of Winnipeg's Municipal By-law Enforcement Act Enabling By-law 59/2016 is also available on the City of Winnipeg's website at: <http://www.winnipeg.ca/interhom/>

## **SCREENING OFFICERS**

**Q: What is the process for a person to dispute a penalty notice?**

**A:** A person who has received a penalty notice from a by-law enforcement officer may pay the set fine or dispute it in front of a screening officer. Screening officers are the first tier of the adjudication process under the MBEA. Screening officers "hear" a person dispute a penalty notice and render a decision to uphold the penalty, reduce the penalty if permitted under the by-law, or cancel it. Screening officers may also enter into compliance agreements in order to remedy the matter at issue.

**Q: Can a CAO be appointed as a screening officer?**

**A:** It would be very challenging for a CAO to also perform the role of screening officer.

The screening officer could be someone who is already an employee of the municipality, or someone in the community chosen for the position, like a former municipal official or retired RCMP officer. It is important for screening officers to be accessible to anyone who wishes to dispute their penalty notice, and the municipal office is a familiar location that is accessible during regular business hours.

The person who issued the penalty notice cannot also hear the matter as screening officer.

**Q: What authority do screening officers have?**

**A:** Screening officers have authority to cancel the penalty notice if they determine the contravention did not occur or if the penalty notice contains incorrect or insufficient information.

The municipality's implementation by-law may give additional authority to screening officers to cancel penalty notices. For example, the implementation by-law could give a screening officer authority to cancel a parking violation if the person disputing it can show they received the penalty notice while dealing with a medical emergency.

In addition to the authority to cancel a penalty notice, the municipality's implementation by-law may give screening officers the power to reduce the amount of a penalty, and the power to enter into a compliance agreement on behalf of the municipality with the person disputing the penalty notice.

**Q: What are compliance agreements?**

**A:** A compliance agreement is made between the municipality and the person who received the penalty notice. The person agrees in writing to take action to fix the contravention within a set period of time. In return, the penalty for the contravention is waived if the person fixes the contravention as agreed.

For example, a person agrees to enter into a compliance agreement to remove a derelict vehicle from their property within six weeks, and complies. Because the person fixed the contravention within the time limits set out in the agreement, the original penalty is waived.

## **ADJUDICATORS**

**Q: Can a person dispute the decisions of screening officers?**

**A:** Yes. If a person is not satisfied with the decision of a screening officer, the person may request a review of the screening officer's decision by an adjudicator.

Adjudicators are the second tier of the adjudication process. An adjudicator will hold a hearing on the matter and decide whether to uphold, reduce or cancel the penalty.

Adjudicators also have authority to hear disputes regarding compliance agreements.

Adjudicators are appointed by the Province. Municipalities will contact the chief adjudicator to arrange for an adjudication sitting.

**Q: What does adjudication cost?**

**A:** The adjudication fee set out in the municipality's implementation by-law may not exceed \$25 and is paid to the municipality by the person requesting adjudication. If the adjudicator determines that the person was successful at the adjudication review, the adjudicator will order the municipality to refund the adjudication fee to the person.

Adjudicators will charge the municipality \$200 per half-day sitting and \$400 per full-day sitting, so municipalities will want to schedule adjudication sittings accordingly. Each municipality must also pay an administration fee of \$10 per adjudication review as set out in the Municipal By-law Enforcement Regulation 116/2016.

**Q: Where and how will adjudication reviews be conducted?**

**A:** Adjudications will not always be held in the municipality. While some adjudication sittings may be in person, the legislation provides great flexibility for adjudicators to hear reviews in other ways.

Under the MBEA scheme, adjudicators can review screening officer decisions by telephone or in writing, including by fax or e-mail; or through the use of a video or audio link or other electronic means. Once an adjudication sitting is scheduled, the municipality must advise the persons to be heard of the date and time of their adjudication review and confirm the method of communication to be used.

Adjudicator decisions are final and may not be appealed.

**Q: Can municipalities work together to enforce by-laws under the MBEA?**

**A:** Municipalities can coordinate with their planning districts and may want to consider collaborating with neighbouring municipalities to enforce by-laws under the MBEA scheme. For example, partnering municipalities might decide to share screening officers and adjudication sittings to reduce costs.

Date: September 16, 2016