

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.

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]

[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:

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.

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 with 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.