

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.

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.

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