

# Town of Winnipeg Beach

## BY-LAW 7/2018

### OBJECTIVES

The objectives of this By-law are

- to implement *The Municipal By-law Enforcement Act*, which allows for locally-based enforcement of parking tickets and other by-law contravention disputes through the use of administrative penalties, screening officers and adjudicators.
- to establish an administrative penalties system for the enforcement of certain by-law contraventions.
- to establish an adjudication process to resolve matters relating to administrative penalties.

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The Council of the Town of Winnipeg Beach enacts as follows:

#### 1. BY-LAW TITLE

This By-law shall be known as the Administrative Penalties By-law.

#### 2. DEFINITIONS

“The Act” means the Municipal By-law Enforcement Act.

“Adjudicator” means the individuals appointed by the Deputy Attorney General to review the information contained on the penalty notice and hear from the recipient.

“Administrative penalties” means the administrative penalties which may be required to be paid for the contravention of designated by-laws.

“By-Law Enforcement Officer” means a person appointed or designated under *The Municipal Act* to enforce the by-laws of the Town of Winnipeg Beach.

“Town” means the Town of Winnipeg Beach.

“Compliance Agreement” means any compliance agreement authorized under this By-law to give a person who has contravened a designated by-law an opportunity to bring themselves into compliance with the by-law.

“Council” means the Council of the Town of Winnipeg Beach.

“Designated Officer” means the Chief Administrative Officer, By-law Enforcement Officer, or any person appointed by the Chief Administrative Officer to enforce the by-laws of the Town of Winnipeg Beach.

“Designated By-law Contravention” means a contravention of a By-law designated under the Administrative Penalties By-law.

“Director” means the department head responsible for the enforcement of by-laws within the Town of Winnipeg Beach.

“Penalty Notice” means a penalty notice issued under The Municipal By-law Enforcement Act to a contravention of a designated By-law.

“Recipient” means a person or corporation that receives the penalty notice.

“Screening Officer” means a person appointed to hear a recipient’s submission regarding the penalty notice.

### **3. ESTABLISHING AN ADMINISTRATIVE PENALTY SYSTEM**

#### **3.1 AUTHORITY TO IMPOSE ADMINISTRATIVE PENALTIES**

This by-law is to establish an administrative penalty system for the enforcement of certain by-law contraventions and an adjudication process to resolve matters relating to administrative penalties.

The by-law contraventions described in Schedule “A” are hereby designated as by-law contraventions that may be dealt with by a penalty notice. The administrative penalties described in Schedule “A” for each contravention are hereby set.

#### **3.2.1 PENALTY NOTICE**

By-law enforcement action shall commence with the completion of a penalty notice by a By-law Enforcement Officer.

The penalty notice informs the recipient of:

- 3.2.1.1** the alleged by-law contravention that is being made;
- 3.2.1.2** the penalty for the contravention; and
- 3.2.1.3** how to pay the penalty or dispute the allegation

**3.2.2** A penalty notice may not be issued if more than a period of one year has elapsed after the alleged designated by-law contravention.

**3.2.3** A penalty notice may be in any form permitted by *The Act* and approved by the Chief Administrative Officer. The CAO is authorized to approve more than one form of a penalty notice.

**3.2.4** A notice or other document that is

- 3.2.4.1** delivered personally is deemed to have been given on the day it is delivered.
- 3.2.4.2** delivered by mail is deemed to have been given to the recipient or received by the Town seven days after the day it was mailed.
- 3.2.4.3** sent electronically is deemed to have been given to the recipient or received by the Town two days after the day it was sent.

### **3.3 DELIVERY OF PENALTY NOTICES**

- 3.3.1** The penalty notice may be delivered by personal delivery, by mail, or in the case of a parking violation, by leaving the penalty notice on a vehicle.
  - 3.3.1.1** If the penalty notice is left on a vehicle, it is deemed to have been delivered on the day it is left.
  - 3.3.1.2** If the penalty notice is mailed, it is deemed to have been delivered seven days after it was mailed.
- 3.3.2** The Town may obtain the name and address of the registered owner of a vehicle from the Registrar of Motor Vehicles.

### **3.4 RESPONDING TO A PENALTY NOTICE**

- 3.4.1** A recipient who receives a penalty notice has 30 days from when the penalty notice is deemed to be received in which to take action.
- 3.4.2** Within the 30 days the recipient may either pay the amount of the penalty indicated on the penalty notice or request a review by a screening officer.
- 3.4.3** An early payment discount is applied if the administrative penalty is paid on or before 14 days after the Penalty Notice.
- 3.4.4** If the recipient does not respond to the penalty notice within the 30 days the Town will send a final notice to the recipient.
- 3.4.5** A final notice will provide the recipient with an additional 30 days to pay the administrative penalty or request a review by a screening officer.
- 3.4.6** If no request for review has been received within the 30 days provided in the final notice, the administrative penalty becomes Immediately due and payable and the Town may take additional steps to collect the outstanding amount as provided for in *The Act*.
- 3.4.7** Within 30 days of receiving a request for a review the screening officer must inform the recipient of the decision in writing:
  - 3.4.7.1** if the penalty notice is to be cancelled, or
  - 3.4.7.2** if the penalty is to be reduced, or
  - 3.4.7.3** if the penalty is being confirmed.

### **3.5 THE SCREENING OFFICER**

- 3.5.1** The Chief Administrative Officer may appoint screening officers as required to meet the administrative needs of this By-law.
- 3.5.2** The Chief Administrative Officer is hereby appointed as a screening officer should circumstances require he/she to act as a screening officer in the absence of an appointed screening officer.
- 3.5.3** The screening officer is to hear the recipient's submission regarding the penalty notice.
- 3.5.4** The screening officer has the authority to
  - 3.5.4.1** confirm the administrative penalty; or
  - 3.5.4.2** reduce the administrative penalty by up to 50%, or
  - 3.5.4.3** cancel the administrative penalty notice; or
  - 3.5.4.4** enter into a compliance agreement with the recipient.

- 3.5.5** When conducting a review of a penalty notice, a screening officer must consider the full amount of the administrative penalty for the contravention and not the discounted amount, whether or not the recipient appears within the discount period of the penalty notice being issued.
- 3.5.6** Where a screening officer makes a decision to uphold the full amount of the administrative penalty or reduce the amount of the administrative penalty, he or she must give a copy of the written reasons for the decision to the recipient who requested the review.
- 3.5.7** A screening officer may cancel the penalty notice if, in the opinion of the screening officer:
- (i) the contravention did not occur as alleged;
  - (ii) the content penalty notice does not comply with The Act.
  - (iii) a ground for cancellation authorized under this by-law exists.
- 3.5.8** Unless the screening officer has decided to cancel the penalty notice, the written reasons given by the screening officer must be accompanied by a notice to the recipient that they must, within 14 days after it is deemed the recipient has received the written notice:
- 3.5.7.1** pay the administrative penalty, or
  - 3.5.7.2** pay the reduced administrative penalty
- 3.5.9** Unless a recipient requests an adjudication or enters into a compliance agreement the amount of the administrative penalty as decided by the screening officer is due and payable to the Town of Winnipeg Beach 14 days after the written reasons have been deemed to be received by the recipient to whom the penalty notice was issued.

### **3.6 COMPLIANCE AGREEMENTS**

- 3.6.1** A screening officer and a recipient who has been issued a penalty notice may enter into a compliance agreement in order to give the recipient an opportunity to bring themselves into compliance with the by-law without having to pay the administrative penalty set out in the penalty notice.
- 3.6.2** All by-laws can be subject to compliance agreements except parking contraventions.
- 3.6.3** The recipient who agrees to enter into a compliance agreement with a screening officer is deemed to have admitted responsibility for the contravention alleged in the penalty notice.
- 3.6.4** A screening officer is not authorized to enter into a compliance agreement unless they have received comments about the proposed compliance agreement from the By-law Enforcement Officer that issued the penalty notice.
- 3.6.5** A compliance agreement must be in writing and the screening officer must give a copy to the recipient who has entered into it.
- 3.6.6** A recipient who has entered into a compliance agreement is not required to pay the administrative penalty set out in the penalty notice if the recipient complies with the terms of the agreement.
- 3.6.7** If the screening officer believes that a recipient 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 recipient notice in writing by regular mail.

- 3.6.8** When a screening officer ends a compliance agreement, the recipient who entered into it may, within 14 days after receiving notice, deemed to be received, that the agreement has ended
- 3.6.8.1** pay the administrative penalty set out in the penalty notice; or
  - 3.6.8.2** request that the screening officer submit for adjudication the issue of whether the recipient complied with the terms of the agreement.
- 3.6.9** If the recipient does not request adjudication within 14 days after receiving the notice, deemed to be received, the administrative penalty set out in the penalty notice is immediately due and payable to the Town.
- 3.6.10** The recipient who wishes to have an adjudicator make a determination of a dispute as to whether the terms of a compliance agreement were complied with must request the adjudication within 14 days of receiving of notice, deemed to be received, of the screening officer's decision to end the compliance agreement.

### **3.7 ADJUDICATION PROCESS ESTABLISHED**

- 3.7.1** An adjudication process as described in *The Act* is hereby established to allow a recipient to whom a penalty notice has been issued to
- 3.7.1.1** request a review of a screening officer's decision to confirm or reduce the administrative penalty set out in the penalty notice; or
  - 3.7.1.2** request a determination of a dispute as to whether the terms of a compliance agreement were complied with.
- 3.7.2** The recipient shall pay an adjudication fee, in the maximum permissible amount as set out in *The Act* payable to the Town. A request for adjudication is not complete and shall not be processed until an adjudication fee is paid.
- 3.7.3** When the place, date and time for an adjudication has been determined, a designated officer must give notice of the date, time and place to the recipient requesting the adjudication.
- 3.7.4** Depending on the circumstances, the recipient may be allowed to participate in the adjudication in person or a form of video link.
- 3.7.5** The recipient may be self-represented, represented by a lawyer or a non-lawyer agent.

### **3.8 ADJUDICATORS**

- 3.8.1** Adjudicators are appointed by the Deputy Attorney General in accordance with *The Act* and the Municipal By-law Enforcement Regulation.
- 3.8.2** The adjudicator has no jurisdiction to deal with challenges to the by-law or claims of infringement of rights under the *Charter of Rights and Freedoms*.
- 3.8.3** At the adjudication hearing, the adjudicator will review the information contained on the penalty notice and hear from the recipient.
- 3.8.4** The adjudicator may review any documents submitted and hear from any witnesses that the adjudicator believes to be relevant to a proper determination of the dispute.
- 3.8.5** If the recipient does not attend the adjudication, the adjudicator must order that the administrative penalty is immediately due and payable to the Town by the recipient.

- 3.8.6 The adjudicator is not bound by the normal rules of evidence.
- 3.8.7 After reviewing the relevant information, the adjudicator must either order
  - 3.8.7.1 the administrative penalty to be immediately due and payable,
  - 3.8.7.2 a reduced administrative penalty be immediately due and payable, or
  - 3.8.7.3 cancel the penalty notice if the adjudicator believes that the contravention did not occur or the required information is missing from the notice.
- 3.8.8 If the adjudication concerned a compliance agreement, the adjudicator must determine whether or not the recipient fulfilled the terms of the compliance agreement.
- 3.8.9 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.
- 3.8.10 If the recipient is successful, the Town shall reimburse the applicable fee paid by the recipient that requested adjudication.
- 3.8.11 The adjudicator's decision shall be in writing. A copy is to be provided to the recipient, to the Town and must be available to the public.

### **3.9 APPEALS AND JUDICIAL REVIEW**

- 3.9.1 The decision of the adjudicator is final. *The Act* does not allow for appeals.
- 3.9.2 If the recipient or the Town are of the opinion that the adjudicator exceeded his or her authority, or made an error of law, the recipient or Town may seek judicial review in the Manitoba Court of Queen's Bench.
- 3.9.3 An application for judicial review must be made within 30 days of the adjudication decision.

### **4. COLLECTIONS**

- 4.1 The Town shall collect an administrative penalty that has become due and payable, which occurs in the following circumstances:
  - 4.1.1 the recipient did not pay the administrative penalty within the 30 day period of time as set out in this By-law and 30 days have passed since a final notice of the administrative penalty was delivered personally or by regular mail;
  - 4.1.2 the screening officer confirmed the administrative penalty and the recipient did not seek adjudication;
  - 4.1.3 the adjudicator ordered that the full or reduced administrative penalty is immediately due and payable to the Town.
- 4.2 The Town may prepare a certificate showing the name of the recipient and the amount of the administrative penalty.
- 4.3 The certificate may be filed in the Court of Queen's Bench and subsequently enforced as a judgement of that court.
- 4.4 The judgement may be secured as a lien on personal property owned by the recipient by filing a financial statement in The Personal Property Registry and paying the required fee as determined by the *Personal Property Registry Fees Regulation*.
- 4.5 The Town may not obtain a certificate if the amount became due and payable more

than 6 years prior.

## **5. OWNERSHIP OF RECORDS**

- 5.1** Any records produced in accordance with the implementation and administration of the by-law adjudication system are records of the Town, including but not limited to:
- 5.1.1** copies of issued penalty notices
  - 5.1.2** records of issued penalty notices
  - 5.1.3** records of paid administrative penalties
  - 5.1.4** copies of adjudicator decisions
  - 5.1.5** copies of documents relating to the collection of any unpaid penalty
- 5.2** The Town is responsible for preserving these records in accordance with existing obligations imposed by provincial legislation.
- 5.3** 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 capability of the Town and the volume of decisions.

## **6. CHIEF ADMINISTRATIVE OFFICER DELEGATED AUTHORITY**

- 6.1** Unless otherwise set out in this By-law, the Chief Administrative Officer is delegated the authority to make regulations, implement policies, initiate works, establish fees and charges, rules or practice and procedures that he/she considers necessary to carry out the purpose and responsibilities of this By-law.
- 6.2** The Chief Administrative Officer shall not knowingly cause or allow any practice, activity, decision or organizational circumstance that is unlawful, unsafe, imprudent, or in violation of commonly accepted professional ethics and practices.

## **7. REPORTING TO COUNCIL**

- 7.1** The Chief Administrative Officer shall provide an annual statistical report on administrative penalties within the Town of Winnipeg Beach.
- 7.2** The Chief Administrative Officer shall establish reporting methods and procedures for advising and informing Council on the administrative penalties within the Town of Winnipeg Beach.

## **8. CONTRAVENTIONS AND PENALTIES**

- 8.1** A recipient who contravenes the provisions of Town of Winnipeg Beach designated enforcement by-laws is guilty of an offence.
- 8.2** Administrative Penalties and discounted amounts for contravention of the provisions of designated enforcement by-laws shall be as set out in Schedule "A" to this By-law.
- 8.3** The administrative penalties for each contravention may be as set out for a designated enforcement by-law as first, second and third offences which increase incrementally to a maximum as set out in section 9.1.
- 8.4** The Town of Winnipeg Beach reserves the right to collect fees, charges and costs associated with enforcement of its By-laws, over and above any penalty levied.

**9. MAXIMUM PENALTY**

- 9.1** The maximum administrative penalty that may be imposed for a designated enforcement by-law is the amount as set out in the Municipal By-law Enforcement Regulation.

**10. ADJUDICATION COSTS**

Upon the Town being invoiced for the costs of administering the adjudication process the invoice shall be paid within 30 days.

**11. FEES, CHARGES AND COSTS**

- 11.1** Fees and charges, and costs associated with the enforcement of this By-law, shall be set out in the Town of Winnipeg Beach Fees and Charges By-law as amended from time to time.
- 11.2** A recipient who contravenes this By-law is liable for any fees, charges or costs associated with or resulting from enforcing this By-law, in addition to any administrative penalty.
- 11.3** Any costs associated with or resulting from enforcing this By-law are in addition to any administrative penalty, and are an amount owing to the Town of Winnipeg Beach and may be collected in any manner as provided for in *The Municipal Act* and *The Municipal By-Law Enforcement Act* and its Regulations.

**12. BY-LAW REVIEW**

This By-law shall be reviewed no less than every five years from the date it is passed.

**13. AMENDMENTS TO OTHER TOWN BY-LAWS**

- 13.1** This By-law shall be considered to make the necessary amendments required to comply with the provisions in the Act, to the enforcement provisions of any Town of Winnipeg Beach By-laws that contain designated contraventions, violations or offences, as set out in Schedule "A" of this By-law.
- 13.2** Prosecutions of any enforcement 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*.

**14. SEVERABILITY**

The invalidity of any provisions of this By-law with an Act or Regulation in force in the Province of Manitoba or a decision of Court, shall not affect the validity or enforceability of any other provisions of this By-law, which shall remain in full force and effect.

**15. SUNSET**

This By-law shall continue in force and effect until repealed.

**16. EFFECTIVE DATE**

The effective date of this By-law shall be the day after it is passed.



## 17. AUTHORITY

*The Municipal By-law Enforcement Act provides as follows:*

### **By-law must be passed**

3(2) A Town may only require administrative penalties to be paid if it first passes a by-law that does the following:

- (a) designates the by-law contraventions that may be dealt with by a penalty notice;
- (b) sets the amount of the administrative penalty for each contravention, which must not exceed the amount prescribed by regulation;
- (c) sets the period within which a person may pay the administrative penalty or request a review by a screening officer, subject to subsection 10(2);
- (d) provides for the appointment of one or more screening officers and specifies their powers and duties, which may include
  - (i) the power to reduce the amount of an administrative penalty set out in a penalty notice, and
  - (ii) the power to enter into a compliance agreement, on behalf of the Town, with a person to whom a penalty notice has been issued;
- (e) sets the period within which a person must deal with a screening officer's decision under subsection 11(2);
- (f) establishes an adjudication scheme described in section 14 to resolve matters relating to administrative penalties and compliance agreements.

### **Additional by-law powers**

3(3) A Town that passes a by-law under subsection (2) may also, by by-law,

- (a) provide for an early payment discount of administrative penalties;
- (b) if the powers of a screening officer specified under clause (2)(d) include the power to reduce the amount of an administrative penalty, set out the grounds on which that may be done;
- (c) if the powers of a screening officer specified under clause (2)(d) include the power to enter into compliance agreements on behalf of the Town,
  - (i) specify the by-law contraventions in relation to which a screening officer may enter into a compliance agreement,
  - (ii) set the terms that may be included in a compliance agreement to encourage compliance with the by-law,
  - (iii) set the maximum duration of a compliance agreement, and
  - (iv) extend the time for requesting an adjudication about a compliance agreement under subsection 13(1);
- (d) set out any additional grounds on which a screening officer or adjudicator is authorized to cancel a penalty notice under subclause 11(1)(d)(iii) or 19(2)(c)(iii);
- (e) establish a fee payable to file a request for adjudication, which must not exceed \$25;
- (f) do any other thing authorized by the regulations.

## 18. REPEAL

18.1 By-Law 8-2017 is hereby repealed

Read a first time this 28<sup>th</sup> day of March, 2108 (Res # 66/2018)

Read a second this 25<sup>th</sup> day of April, 2108 (Res # 96/2018)

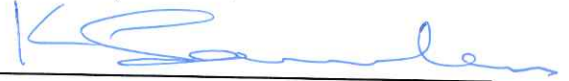
Read a third this 25<sup>th</sup> day of April, 2108 (Res # 97/2018)

DONE AND PASSED by the Council of the Town of Winnipeg Beach, assembled at Town of Winnipeg Beach, Manitoba, this 25<sup>th</sup> day of April, 2018.



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TONY PIMENTEL, MAYOR



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KERRY LAWLESS, CHIEF ADMINISTRATIVE OFFICER

**ADMINISTRATIVE PENALTIES BY-LAW NO. 7-2018**  
**SCHEDULE "A"**

The following are the by-law contraventions which may be dealt with by a penalty notice under *The Municipal By-law Enforcement Act*:

Administrative Penalties are as provided in the applicable by-laws.

- All contraventions under the Town of Winnipeg Beach Traffic By-law.
- All contraventions under the Lot Grade By-Law, a By-Law to regulate the grading of property and to establish lot grade elevations.
- All contraventions under the False Alarm By-Law.
- All contraventions under the smoking By-Law, a By-Law to regulate smoking within the Town of Winnipeg Beach.
- All contraventions under the Nuisance Noise By-Law.
- All contraventions under the Sidewalk Patio By-Law, a By-Law regulating the use of the Town of Winnipeg Beach sidewalks for sidewalk patios.
- All contraventions under the Business License By-Law.
- All contraventions under the Animal Control By-Law, a By-Law to regulate and control animals within the Limits of the Town of Winnipeg Beach.
- All contraventions under the Sanitation and Solid Waste By-Law, a by-law regulating sanitation and solid waste in the Town of Winnipeg Beach.
- All contraventions under the Water Meter By-Law, a by-law regulating water meters associated with the Town of Winnipeg Beach public water system.
- All contraventions under the Town of Winnipeg Beach Zoning By-Law
- All contraventions under the Town of Winnipeg Beach Fire Prevention and Emergency Services By-Law.

**ADMINISTRATIVE PENALTIES BY-LAW NO. 7-2018  
SCHEDULE "B" – Penalty Notice**

TOWN OF WINNIPEG BEACH  
PENALTY NOTICE  
No: \_\_\_\_\_

An offence has been committed contrary to By-Law \_\_\_\_\_ of the Town of Winnipeg Beach.

Time and Date:
Location:
Roll# (if Applicable)
Name:
Mailing Address:
Vehicle Make and License if Applicable:

Offense Description:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Penalty amount \$ \_\_\_\_\_

All penalties paid within 14 days of the date of issues are automatically reduced by 50%.

Issued at the Town of Winnipeg Beach in the Province of Manitoba this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Authorized Person Signature

Payment Options	
Cheque or money order payable to: Town of Winnipeg Beach Box 160 Winnipeg Beach, MB ROC 3G0	Or pay by cheque, cash or debit card at Winnipeg Beach Administration Office 29 Robinson Ave Winnipeg Beach, MB

A person must pay, or request in writing a review by a screening officer, within 30 days of date on Penalty Notice. The signed written request must be received by the Administration Office at 29 Robinson Avenue on or before the 30<sup>th</sup> day after the date issued and must include the Penalty Notice No., contact information (i.e.: Name, address, phone number) and reason for why penalty should be reviewed.

**Note: The Town of Winnipeg Beach may secure unpaid administrative penalties as a lien on personal property owned by the recipient by filing a certificate in the Court of Queen’s Bench.**