

TOWN OF CARBERRY

BYLAW NO. 2/2020

BEING A BY-LAW of the Town of Carberry to provide for an Administrative Penalty Scheme for the enforcement of all Town of Carberry Bylaws;

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 Provincial Offences Act;

AND WHEREAS Council for the Town of Carberry 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 the Council of the Town of Carberry in regular session assembled ENACTS as follows:

1. PURPOSE

The Purpose of this by-law is to establish an Administrative Penalty scheme for the enforcement of by-law contraventions and an Adjudication scheme to review Screening Officer decisions.

This Bylaw shall be enforceable on all Town of Carberry Bylaws, and administrative penalties shall be outlined in each individual Bylaw.

2. INTERPRETATION

Unless otherwise expressly provided in this bylaw, or unless the context otherwise requires, words and expressions in this bylaw have the same meaning as the same words and expressions in the Act. The following definitions apply to this by-law;

- a) "**Act**" means The Municipal By-Law Enforcement Act;
- b) "**Adjudication**" means the hearing and determination of a request under Part 6 of this By-Law;
- c) "**Adjudicator**" means a person appointed pursuant to the Act who is eligible to preside over an Adjudication;
- d) "**Administrative Penalty**" means the financial penalty attributed to a designated by-law contravention as set out in Schedule "A";
- e) "**Compliance Agreement**" means an agreement entered into pursuant to Part 5 of this By-Law;
- f) "**Early Payment Discount**" means the reduced financial penalty attributed to the designated by-law contravention as set out in Schedule "A" of this By-Law;
- g) "**Final Notice**" means the notice issued pursuant to Part 3, Section 9 and set out Schedule "C" of this By-Law;
- h) "**Penalty Notice**" means the notice issued by a Designated Officer pursuant to Part 3, Section 7 and set out in Schedule "B" of this By-Law;

- i) **"Screening Officer"** means the person thereby appointed by Council as the Screening Officer.

(i) This By-Law contains the following Schedules:

Schedule A: Penalty Notice

Schedule B: Final Notice

Schedule C: Screening Officer Forms

- Request to meet with the Screening Officer
- Notice of meeting with the Screening Officer
- Screening Officer Decision

Schedule D: Compliance Agreement

3. BYLAW CONTRAVENTIONS AND PENALTIES

- a) All Town of Carberry Bylaws are hereby designated as By-Law Contraventions that may be dealt with by a Penalty Notice.
- b) The Administrative Penalties, including Early Payment Discounts are described in each individual Bylaw.
- c) The Early Payment Discount amount as shown in the by-law contravention it relates to 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 to review by a Screening Officer.

4. PENALTY NOTICES

- a) A Penalty Notice shall be in the form as set out in Schedule A.
- b) The period in 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.
- c) If, at the end of the period for responding to a Penalty Notice, 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 as set out in Schedule B. A person to whom a Final Notice is delivered must within 30 days after delivery, pay the Administrative Penalty.
- d) The municipality must deliver Penalty Notices and Final Notices in the manner provided for in Section 9 and 22 of the Act and the date of delivery shall be determined in accordance with those sections. The giving of other notices or documents by the municipality or a Screening Officer is governed by Part 9, Sections 35 to 37 of this By-Law.

5. SCREENING OFFICER

- a) Council will appoint the screening officers in addition to the Bylaw Enforcement Officer.
- b) A member of Council or of a Council Committee is not eligible to be appointed as a Screening Officer.
- c) A request for review by a Screening Officer as set out in Schedule C1 must be made in the manner as set out in the Penalty Notice.

- d) In the case of contraventions as set out in the Bylaw, a request for review by the Screening Officer may include an indication that the person is prepared to enter into a Compliance Agreement.
- e) Within fourteen (14) days after receiving the request, the Screening Officer must attempt to contact the applicant who has requested to review to arrange a mutually convenient date, time and means of reviewing the request. Once the date and time have been agreed upon, the Screening Officer will provide the applicant with a written, e-mail or phone confirmation of the meeting as set out in applicant with a written, e-mail or phone confirmation of the meeting as set out in Schedule C2. The means of the review may be accomplished in the following manner and at the option of the applicant:
 - i) Written submission
 - ii) On the telephone
 - iii) In person
- f) If;
 - i) The Screening Officer is unable to contact the applicant who has requested a review, or
 - ii) The applicant who has requested a review 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 applicant fails to participate or appear in the Screening Officer must review the Penalty Notice based on the information provided by the applicant in the request.
- g) If having agreed to date, time and means of review and the applicant fail to participate in the review, the Screening Officer must review the Penalty Notice based on the information provided by the applicant in the request.
- h) On review of a Penalty Notice, the Screening Officer may:
 - i) Confirm the Administrative Penalty;
 - ii) Reduce the amount of the Administrative Penalty if satisfied that exceptional circumstances exist;
 - iii) Extend the time the person has for payment of the confirmed or reduced Administrative Penalty to a time he or she believes is appropriate in the circumstances;
 - iv) In the case of a contravention as set out in the Bylaw, enter into a Compliance Agreement with the person which contains terms and conditions the Screening Officer deems appropriate; or
 - v) 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;
 - iii. The vehicle was stolen or otherwise being used without the owner's permission at the time of the contravention;

- iv. The contravention was the result of a medical emergency or was necessary in order to address immediate health or safety concerns or;
 - v. The contravention was a result of both 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.
- i) The Screening Officer must make a decision within fourteen (14) days after the review. After making the decision, the Screening Officer must provide the applicant with written notice of the decision as set out in Schedule C3.
 - j) If the Screening Officer confirms or reduces the amount of the Administrative Penalty, the amount is due and payable within fourteen (14) days after receipt of the decision of the Screening Officer, unless the person requests Adjudication under Part 6 of the By-Law.
 - k) The by-law contravention as set out in the bylaws are hereby designated as by-law contraventions that may be dealt with by a Compliance Agreement.

6. COMPLIANCE AGREEMENT

- a) A Compliance Agreement must include:
 - a. The date the designated by-law contravention took place;
 - b. The penalty notice number at issue;
 - c. The amount of the Administrative Penalty resulting from the Penalty Notice;
 - d. The date the Screening Officer reviewing the Penalty Notice;
 - e. A description of the action to be taken to bring the person into compliance with the by-law;
 - f. A date not later than sixty (60) days after the date of the agreement by which the action must be completed, and
 - g. A way to provide for inspection for the purpose of determining compliance with the agreement.
- b) 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 (7) days after the day it was mailed.
- c) When a Screening Officer ends a Compliance Agreement, the person who entered into it may, within fourteen (14) days after receiving the notice under Part 5 Section 23 of this By-Law;

- i) Pay the Administrative Penalty set out in the Penalty Notice; or
- ii) Request that the Screening Officer submit for Adjudication of the issue of whether the person complied with the terms of the agreement.

7. ADJUTICATION SCHEME

- a) An Adjudication scheme as set out in sections 14 to 21 of the Act is hereby established to allow a person to whom a Penalty Notice has been issued to;
- b) Request a review of a Screening Officer's decision to confirm or reduce the Administrative Penalty set out in the Penalty Notice;
- c) Request a determination of a dispute as to whether the terms of a Compliance Agreement were complied with.
- d) Within fourteen (14) days after receipt of the Screening Officer's decision, the person may request a review of the Screening Officer's decision by an Adjudicator. A form must be submitted to the Screening Officer by mail or delivered to the municipal office accompanied by a \$25.00 Adjudication fee.
- e) 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.
- f) The selected Adjudicator must attempt to contact the application who has requested a review to arrange a mutually convenient date, time and means of reviewing the request. Once the date and time have been agreed upon, the Adjudicator will provide the applicant with confirmation of the meeting. The means of the review may be accomplished in the following manner:
 - i) Written submission, including fax or e-mail;
 - ii) On the telephone, including the use of an audio link or other available electronic means
 - iii) In person, including the use of a video link or other available electronic means
- g) If;
 - i) The Adjudicator is unable to contact the applicant who has requested the review,
 - ii) The application without reasonable cause does not agree to a date and time or means of the hearing, or
 - iii) The applicant fails to appear or otherwise participate in the hearing,
The Adjudicator must order that the amount of the Administrative Penalty set by the Screening Officer or in the case of the ending of a Compliance Agreement, the Administrative Penalty set out in the Penalty Notice is immediately due and payable to the municipality.
- h) In addition to the powers of the Adjudicator in making a decision as set out in Section 19(2) of the Act, the Adjudicator may;

- i) Confirm the Administrative Penalty;
- ii) Reduce the amount of the Administrative Penalty;
- iii) Extend the time the person has for payment of the confirmed or reduced Administrative Penalty, to a time he or she believes is appropriate in the circumstances;
- iv) Cancel the Penalty Notice if, in the Adjudicator's opinion;
 - i. The contravention did not occur as alleged;
 - ii. The Penalty Notice does not comply with Section 6(2) of the Act;
 - iii. The vehicle was stolen or otherwise being used without the owner's permission at the time of the contravention;
 - iv. The contravention was the result of a medical emergency or was necessary in order to address immediate health or safety concerns;
- Or;
- v. The contravention was a result of both 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.
- i) Once the Adjudicator makes a decision, the Adjudicator must provide the applicant with a written notice of the decision.
- j) If the Adjudicator confirms or reduces the amount of the Administrative Penalty the amount is due and payable within fourteen (14) days after receipt of the decision of the Adjudicator.

8. AUTHORITY

- a) The Screening Officer is authorized to do the following:
 - b) Pay invoices;
 - i. For the costs and administration of the Adjudication scheme under Section 21(1) of the Act;
 - ii. For the remuneration and expenses of the Adjudicator;
- c) Refund an Adjudicator fee if ordered to do so by and Adjudicator
- d) 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.

9. DISCLOSURE OF INFORMATION

- a) Upon receipt of an Adjudicator's decision, the Screening Officer must make a decision available to the public.

10. NOTICES AND TIME PERIODS

- a) Where a notice or other document (other than a Penalty or Final Notice) referred to in By-Law is required to be given to a person (other than to the municipality), the notice or other document may be given in the following manner;

- b) By delivering it personally to the person;
- c) By mailing a copy by regular mail or delivering a copy
 - i. To the address of the vehicle owner indicated in the records of the Register of Motor Vehicles;
 - ii. To the last known address of the person named in the Penalty Notice; or
- d) 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 to 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
- e) 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.
- k) A notice or other document given under Section 35 that is;
 - i) Delivered personally is deemed to have been given or delivered on the day it was delivered;
 - ii) Mailed is deemed to have been given or delivered to the person seven (7) days after the day it was mailed;
 - iii) Sent by e-mail is deemed to have been given or delivered two (2) days after the day it was sent.
- l) In determining the time within a person must make a payment or request a review or an Adjudication;
 - i) The time does not include the first day of the period;
 - ii) A period that would otherwise expire on a holiday is extended to include the next day that is not a holiday;
 - iii) 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.

11. PREVIOUS BYLAW CONTRAVENTIONS

- a) 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 Provincial Offences Act.

This by-law shall come into force and effect on the day of passing thereof.

DONE AND PASSED as a bylaw of the Town of Carberry, in Council duly assembled at the Town of Carberry, in the Province of Manitoba, this **11th** day of **February, 2020.**

Town of Carberry

Mayor

(SEAL)

CAO

Read a first time this **6th** day of **February, 2020.**
Read a second time this **11th** day of **February, 2020.**
Read a third time this **11th** day of **February, 2020.**