

**TOWN OF CARBERRY**

**BY-LAW NO. 5-2021**

Being a by-law to regulate the storage of vehicles.

**WHEREAS** The Municipal Act reads in part as follows:

- 232 (1) A council may pass by-laws for municipal purposes respecting the following matters;
- (c) subject to section 233, activities or things in or on private property;
  - (o) the enforcement of by-laws
- 233 A by-law under clause 231 (1)(c) (activities or thing in or on private property) may contain provisions only in respect of
- (b) the parking and storing of vehicles, including the number and type of vehicles that may be kept or stored and the manner of parking and storing;
- 236 (1) Without limiting the generality of clause 232(1)(o) (enforcement of by-laws), a by-law passed under that clause may include provisions
- (a) providing for procedures, including inspections, for determining whether by-laws are being complied with; and
  - (b) remedying contraventions of by-laws, including
    - (i) Creating offences,
    - (ii) Subject to the regulations, providing for fines and penalties, including the imposition of a penalty for an offence that is in addition to a fine or imprisonment, so long as the penalty relate to a fee, rate, toll, charge, or cost that is associated with the conduct that give rise to the offence, or relates to enforcing the by-law,
    - (iii) Providing that an amount owing under subclause (ii) may be collected in any manner in which a tax may be collected or enforced under this Act,
    - (iv) Seizing, removing, impounding, confiscating and selling or otherwise disposing of plants, animals, vehicles, or other things related to a contravention,
    - (v) Charging and collecting costs incurred in respect of acting under subclause (iv),
    - (vi) Imposing a sentence of imprisonment for not more than six months for the commission of offences or non-payment of fines.
- 242 (1) If a designated officer finds that a person is contravening a by-law or this or any other Act that the municipality is authorized to enforce, the designated officer may by written order require the person responsible for the contravention to remedy it if, in the opinion of the officer, the circumstances so require.
- 242 (2) The order may
- (a) direct a person to stop doing something, or to change the way in which the person is doing it;
  - (b) direct a person to take any action or measure necessary to remedy the contravention of the Act or by-law, including the removal or demolition of a structure that has been erected or placed in contravention of a by-law and, if necessary, to prevent a recurrence of the contravention;

- (c) state a time within which the person must comply with the directions; and
- (d) state that if the person does not comply with the direction within a specified time, the municipality will take the action or measure at the expense of the person.

243 (2) The order may

- (a) state a time within which the person must comply with the order; and
- (b) state that if the person does not comply with the order within the specified time, the municipality will take the action or measure at the expense of the person”.

**NOW THEREFORE** the Council of the Town of Carberry, in Council assembled, enacts as follows:

1. Definitions

- a) “**council**” means the council duly elected in the Municipality.
- b) “**designated officer**” means a building inspector or other official appointed by council, from time to time, to enforce this by-law, or, in the absence of such an appointment the Chief Administrative Officer.
- c) “**Municipality**” means the Town of Carberry.
- d) “**occupier**” in the case of any property means any person in actual or constructive possession of the property pursuant to a lease, tenancy license or other right to occupy.
- e) “**owner**” in the case of any property means the registered owner of the property according to the current assessment records of the Municipality.
- f) “**person**” means an individual, firm, partnership or corporation and where the context requires shall include the plural as well as the singular.
- g) “**property**” means any land as defined in *The Municipal Assessment Act* within the Municipality whether or not there is situated thereon a dwelling house or any other building.
- h) “**store**” means to keep or allow to be kept.
- i) “**vehicle**” shall have the meaning ascribed to that term in *The Highway Traffic Act* and amendments thereto and shall include an off-road vehicle and any parts of any vehicle exceeding 18” in length.

**Application**

- 2. This by-law applies to all property and to all owners and occupiers of property within the Municipality.

**Prohibitions**

- 3. Except as provided in Section 4 of this By-Law no owner or occupier of property shall store or keep on such property, vehicles capable of registration under the Highway Traffic Act or the Off-Road Vehicles Act, which are not registered under either of those statutes, unless the said property and/or structures are lawfully used and licensed as a commercial automobile dealership;

**Exceptions**

- 4. Notwithstanding section 3, a person may park or store a vehicle on private property provided that:

(a) The vehicle is wholly contained within a lawfully existing structure on the property.

(b) Two vehicles are allowed in the rear yard of a property provided that no part of any vehicle is visible from any public road.

### **Complaint**

5. Any person may allege a violation of this by-law by filing a written complaint with the designated officer in such form and with such particulars as the designated officer may from time to time require.

### **Inspections**

6. Upon receipt of a complaint, as aforesaid, the designated officer shall inspect all property alleged to be in violation of this by-law, in such manner as shall be reasonably necessary in order to determine whether or not there has been a violation of this by-law.
7. The designated officer may, on his own initiative, inspect any property in the Town of Carberry, in such manner as shall be reasonably necessary in order to determine whether or not there has been a violation of this by-law.

### **Warning and Orders**

8. Where inspections reveal a violation of any provision of this by-law, the designated officer:
- (a) may in his or her discretion give written notice of the contravention to the owner and occupier of the property by regular mail;
  - (b) if the contravention continues following the warning notice, if any, provided under subsection 8(a) above, or if in his or her discretion no such warning notice is provided, the designated officer shall issue a written order which shall:
    - (i) specify the time within which compliance shall be required;
    - (ii) advise that should compliance not be affected within the specified time, the Municipality may undertake the removal of the vehicles at the expense of the owner of the property, and that such expense may be collected in the same manner that a tax may be collected or enforced under The Municipal Act;
    - (iii) advise of the process of appeal;

### **Appeals**

9. Any owner or occupant may appeal an order made by the designated officer by filing with the Chief Administrative Officer of The Municipality at any time before the time for compliance with such order.
10. Upon receipt of an appeal in the required form, the Chief Administrative Officer of the Municipality shall cause a copy thereof to be forwarded to the council forthwith and the council shall entertain such appeal within forty days of receipt of same by holding a hearing. Council may hear the appeal as a committee of the whole or by subcommittee especially established for this purpose. A notice of hearing shall be issued by council and shall be served upon the persons and in the manner specified in section 12 below no later than 5 days prior to the appeal hearing.

11. The council shall determine an appeal within 5 days of a hearing and shall serve a notice of disposition forthwith upon determination, upon the interested persons. The council may:
  - (a) confirm the order of the designated officer;
  - (b) vary the order of the designated officer in any respect; or
  - (c) set aside the order of the designated officer.

#### **Service of Notices or Orders**

12. Any order issued by the designated officer under subsection 8(b) and a notice of hearing issued under section 10 hereof of this by-law shall be served by personal service or by registered mail upon:
  - (a) the owner;
  - (b) the occupier, if any; andof the property effected by order.
13. Service made personally shall be deemed to have been made on the date of such service and service made by registered mail shall be deemed to have been made 3 days after posting. In the case of service upon the occupier, the address for mailing shall be the address of the property. In the case of an owner, the address for mailing shall be as shown on the current assessment records of the Municipality. In the case of a mortgagee, the address for mailing shall be as shown according to the records of Land Titles Office for the area within which the property is situated.

#### **Removal of Vehicles**

14. In addition to the issue of an Offence Notice, any vehicle kept or stored in contravention of the By-law may be removed from the property, towed, impounded and stored by the Municipality.

#### **Destruction or Sale of Vehicle**

15. Any vehicle removed from property by the Municipality pursuant to this By-law may be destroyed or sold at any time thirty (30) days after the date of removal of the vehicle from the property. In the event that such vehicle is sold, the Municipality shall be entitled to recover from the sale price all fines, fees and charges permitted hereunder. In the event that the sale proceeds shall exceed the aggregate of all fine, fees and charges, any remainder shall be paid to the owner of the vehicle.

#### **Redemption of Vehicle**

16. A vehicle removed pursuant to the By-law may be released to the owner thereof, or to the owner, occupant or person in charge or control of the property from which the vehicle was removed, upon the payment in full of the Penalties and Charges prescribed in this by-law within thirty (30) days of the removal of the vehicle.

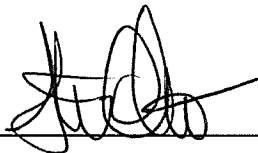
#### **Penalties and Charges**

17. In addition to any fines imposed pursuant to section 20 hereof, the Municipality shall impose the following penalties and charges in respect of each vehicle removed in accordance with this By-law.
  - (a) \$100.00 for the removal and towing of the vehicle; and
  - (b) \$20.00 per day for the impoundment and storage; and
  - (c) \$150.00 for the destruction and disposal of the vehicle.

**Enforcement**

- 19. The costs of actions or measures taken by the Municipality to carry out the terms of an order issued by the designated officer are an amount owing to the Municipality by the owner of the property. In addition to all other rights of collection which the Municipality may have at law, such amounts may be collected by the Municipality in the same manner as a tax may be collected or enforced under The Municipal Act.
- 20. Any Person who contravenes or disobeys, or refuses or neglects to obey or comply with any order made under this by-law is guilty of an offence and is liable, on summary conviction, to a fine not exceeding \$1000, or in the case of an individual, to imprisonment for a term not exceeding six months, or to both such a fine and such an imprisonment.
- 21. Where a corporation commits an offence under this by-law, each director or officer of the corporation who authorized, consented to, connived at or knowingly permitted or acquiesced in the doing of the act or omission that constitutes the offence or offences, is likewise guilty of the offence and is liable on summary conviction, to the penalties for which provision is made in section 13 above.
- 22. Where the contravention, refusal, neglect, omission, or failure continues for more than one day, the person or corporation is guilty of a separate offence for each day it continues.

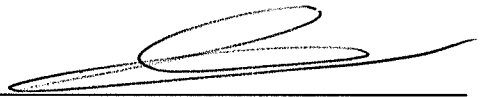
Done and passed in council assembled at Carberry in the Province of Manitoba this 9<sup>th</sup> day of March, 2021.



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Mayor

Seal



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CAO

Read a first time on the 9<sup>th</sup> day of February, 2021.

Read a second time on the 9<sup>th</sup> day of February, 2021.

Read a third and final time on the 9<sup>th</sup> day of March, 2021.