

**THE TOWN OF NIVERVILLE
BY-LAW NUMBER 778-17**

A BY-LAW OF THE TOWN OF NIVERVILLE TO ALLOW ENFORCEMENT OF TOWN BY-LAWS, INCLUDING PARKING BY-LAWS, UNDER THE MUNICIPAL BY-LAW ENFORCEMENT ACT

WHEREAS *The Municipal By-law Enforcement Act* has been enacted by the Manitoba Legislature;

AND WHEREAS *The Municipal By-law Enforcement Act* empowers the Town to enforce its by-laws, including parking by-laws in accordance with the Act;

AND WHEREAS *The Municipal By-law Enforcement Act* further provides for a number of other matters that must be dealt with in a by-law;

NOW, THEREFORE, THE TOWN OF NIVERVILLE, in Council assembled, enacts as follows:

PART 1

INTRODUCTORY PROVISIONS

Short title

- 1** This By-law may be cited as *The Municipal By-law Enforcement Act* Enabling By-law.

Definitions and interpretation

- 2** Unless otherwise expressly provided in this by-law, or unless the context otherwise requires, words and expressions in this By-law have the same meaning as the same words and expressions in the Act. The following definitions apply in this By-law:
- a)** “**Act**” means *The Municipal By-law Enforcement Act*, C.C.S.M., c. M245 and the Regulations passed thereunder;
 - b)** “**Adjudication**” means the hearing and determination of an Appellant’s 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)** “**Appellant**” means a Final Notice Recipient, Penalty Notice Recipient or Termination Notice Recipient who disagrees with a Screening Officer’s decision to either confirm or reduce the Administrative Penalty set out in a Penalty Notice he or she received to end a Compliance Agreement to which he or she is a party;
 - f)** “**Application Fee**” means the maximum fee the Town can charge pursuant to the Act for an Adjudication, as set out in the Town’s Fees and Penalties Schedule;
 - g)** “**By-law Enforcement Officer**” means any person appointed or designated to enforce the Town’s by-laws pursuant to *The Municipal Act*, C.C.S.M., c. M225 and includes, without limitation, the Chief Administrative Officer, the Town’s Operations Manager and other designated officers;
 - h)** “**Chief Administrative Officer**” means the Town’s Chief Administrative Officer of the Town;
 - i)** “**Town**” means the Town of Niverville;
 - j)** “**Compliance Agreement**” means an agreement entered into pursuant to Part 5 of this By-law;

- k) **“Council”** means the Town’s council;
- l) **“Designated By-law Contravention”** means the by-law contraventions set by Part 2 of this By-law appearing in Schedule “A” of this By-law;
- m) **“Designated Employee”** means the Chief Administrative Officer and, where the Chief Administrative Officer has delegated a function, duty or authority under this By-law, means the employees or agents of the Town acting pursuant to that delegation;
- n) **“Early Payment Discount”** means the reduced financial penalty attributed to the Designated By-Law Contravention as set by Part 2 of this By-law appearing in Schedule “A” of this By-law;
- o) **“Final Notice”** means the notice issued pursuant to Article 8 of this By-law;
- p) **“Final Notice Recipient”** means the person to whom is delivered, or to whom is deemed to have been delivered, a Final Notice under this By-law;
- q) **“Penalty Notice”** means the notice issued by a By-law Enforcement Officer pursuant to Part 3 of this By-law;
- r) **“Penalty Notice Recipient”** means the person who is delivered, or who is deemed to have been delivered, a Penalty Notice under this By-law;
- s) **“Screening Officer”** means an individual appointed under Part 4 of this By-law;
- t) **“Termination Notice”** mean a notice issued pursuant to Article 15(2) of this By-law termination of Compliance Agreement;
- u) **“Termination Notice Recipient”** means a Final Notice Recipient or Penalty Notice Recipient receiving a Termination Notice;
- v) **“Vehicle Owner”** means the owner of the vehicle in question as indicated in the records of the Registrar of Motor Vehicles appointed under *The Drivers and Vehicles Act*, C.C.S.M., c. D104.

PART 2

BY-LAW CONTRAVENTIONS AND PENALTIES

Designated By-law Contraventions

- 3 The by-law contraventions described in Schedule “A” to this By-law are hereby set as Designated By-law Contraventions to be dealt with by penalty notice in accordance with the Act. The By-Laws in Schedule “A” can be amended from time to time by Resolution of Council.

Administrative Penalties Set

- 4 The Administrative Penalties described in Schedule “A” to this By-law for each Designated By-law Contravention to which it relates are hereby set.

Early Payment Discount

- 5(1) The Early Payment Discounts described in Schedule “A” for each Designated By-law Contravention to which it relates are hereby set.
- 5(2) The Early Payment Discount may be paid in full satisfaction of the Administrative Penalty set out in a Penalty Notice if payment is made to the Town within 14 days of service of the Penalty Notice.

PART 3

PENALTY NOTICES

Issuing Penalty Notices

- 6(1)** By-law Enforcement Officers may enforce this By-law by issuing Penalty Notices. A By-law Enforcement Officer may issue a Penalty Notice to a person against whom a Designated By-law Contravention is alleged when he or she believes a Designated By-law Contravention has occurred.
- 6(2)** A Penalty Notice may be in any form provided it complies with the requirements of the Act.
- 6(3)** A Penalty Notice shall be delivered in the manner and within the time required by the Act.
- 6(4)** For the purposes of this By-law, a Penalty Notice is deemed to be delivered as set out in the Act.

Responding to Penalty Notice

- 7(1)** A Penalty Notice Recipient may:
- (a) within fourteen (14) days after delivery or deemed delivery of the Penalty Notice, pay the Early Payment Discount associated with the Administrative Penalty set out in the Penalty Notice, if any; or
 - (b) within thirty (30) days after delivery or deemed delivery of the Penalty Notice, either:
 - i. pay the Administrative Penalty set out in the Penalty Notice; or
 - ii. request a review of the Penalty Notice by a Screening Officer in accordance with Part 4 of this By-law.

Issuing Final Notice

- 8(1)** If a Penalty Notice Recipient does not exercise any options under Article 7(1) within thirty (30) days, the Town shall deliver the Penalty Notice Recipient a Final Notice setting out the Administrative Penalty owing, the deadline for paying the Administrative Penalty and the manner in which the Administrative Penalty may be paid.
- 8(2)** A Final Notice shall be delivered in the manner and within the time required by the Act.
- 8(3)** For the purposes of this By-law, a Final Notice is deemed to be delivered at the time set out in the Act.

Responding to Final Notice

- 9(1)** A Final Notice Recipient may, within thirty (30) days after delivery or deemed delivery of the Final Notice, either:
- (a) pay the Administrative Penalty set out in the Final Notice; or
 - (b) request a review of the Penalty Notice resulting in the Final Notice by a Screening Officer in accordance with Part 4 of this By-law.
- 9(2)** If a Final Notice Recipient does not exercise his or her right under Article 9(1) within thirty (30) days, the Administrative Penalty set out in the Final Notice is immediately due and payable to the Town.

PART 4

SCREENING OFFICERS

Appointment of Screening Officers

10(1) The Chief Administrative Officer may appoint one or more Screening Officers for a duration he or she believes is necessary to meet the Town's administrative needs relating to this By-law.

Screening Officer Authority

11(1) A Screening Officer shall, upon request from a Penalty Notice Recipient or Final Notice Recipient, review the circumstances resulting in the Penalty Notice under review.

11(2) A Screening Officer shall, upon completing the review conducted pursuant to Article 11(1) of this By-law, take any one or more of the following actions:

- (a) confirm the Administrative Penalty set out in the Penalty Notice;
- (b) reduce the amount of the Administrative Penalty set out in the Penalty Notice under review to an amount he or she deems appropriate, if his or her review indicates that:
 - i. there would have been no Designated By-law Contravention if a permit, license, ticket or other document had been properly displayed on or within the vehicle, and the Vehicle Owner can show that, although the permit, license, ticket or other document was not properly displayed, it had been issued and was valid and applicable to the vehicle at the time of the contravention;
 - ii. the Designated By-law Contravention was a result of a minor medical emergency;
 - iii. the Penalty Notice Recipient was undergoing a personal tragedy which played a role in the Designated By-law Contravention and a reduction of the Administrative Penalty is in the public interest; or
 - iv. the Designated By-law Contravention was a result of mechanical problems that reasonably contributed to the Penalty Notice Recipient committing the Designated By-law Contravention, despite the fact that he or she exercised due diligence in attempting to comply with this By-law;
- (c) extend the time the Penalty Notice Recipient or Final Notice Recipient has for payment of the confirmed or reduced Administrative Penalty, to a time he or she believes is appropriate in the circumstances;
- (d) cancel the Penalty Notice, if his or her review indicates that:
 - i. the Designated By-law Contravention did not occur as alleged in the Penalty Notice under review; or
 - ii. the Penalty Notice under review does not comply with or was not delivered in accordance with the Act;
- (e) enter into a Compliance Agreement with the Penalty Notice Recipient or the Final Notice Recipient which contain terms and conditions the Screening Officer deems appropriate, if his or her review indicates that doing so is appropriate given the direction in Part 5 of this By-law; and
- (f) monitor and terminate Compliance Agreements, in accordance with Part 5 of

this By-law.

Screening Officer Written Reasons

- 12** Where a Screening Officer exercises his or her authority pursuant to Article 11(a), (b) or (c), of this By-law, he or she must:
- (a) provide the Penalty Notice Recipient or Final Notice Recipient initiating the review with written reasons for his or her decision;
 - (b) inform the Penalty Notice Recipient or Final Notice Recipient initiating the review that he or she must either:
 - i. pay the Town the amount that the Screening Officer directed be paid within seven days of receiving, or being deemed to have received, the written reasons, or such longer period that the Screening Officer may have directed; or
 - ii. request an Adjudicator to review the Screening Officer's decision in accordance with Part 6 of this By-law.

PART 5

COMPLIANCE AGREEMENTS

Where Compliance Agreements are Authorized

- 13** When considering any matter referred to him or her, a Screening Officer may enter into a Compliance Agreement with a Penalty Notice Recipient or Final Notice Recipient willing to do so if:
- (a) the Screening Officer has received comments about the proposed Compliance Agreement from a Designated Employee or By-law Enforcement Officer having knowledge of the Designated By-law Contravention set out in the Penalty Notice under review; and
 - (b) the Screening Officer believes it is appropriate to give the Penalty Notice Recipient or Final Notice Recipient an opportunity to abide by the terms of this By-law without having to pay the Administrative Penalty set out in the Penalty Notice under review.

Form of Compliance Agreement

- 14(1)** A Compliance Agreement must be in the form required by the Act and must contain the following terms:
- (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 reviewed the Penalty Notice;
 - (e) the purpose of a Compliance Agreement is to give the Penalty Notice 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;
 - (f) the terms and conditions the Screening Officer and Penalty Notice Recipient or Final Notice Recipient agreed to, as well as the date or dates the agreed upon terms and conditions must be met or satisfied by;
 - (g) the Penalty Notice Recipient's or Final Notice Recipient's agreement to cooperate with a By-law Enforcement Officer for the purpose of inspecting progress in relation to the timeline contemplated in the Compliance Agreement, including by:
 - i. providing the By-law Enforcement Officer with all information and

documents the By-law Enforcement Officer requires to inspect progress in relation to the timeline contemplated in the Compliance Agreement; and

- ii. allowing a By-law Enforcement Officer reasonable access to the Penalty Notice Recipient's or Final Notice Recipient's property or chattels, for the purpose of inspecting progress in relation to the timeline contemplated in the Compliance Agreement; and

- (h) the consequences of complying or failing to comply with the Compliance Agreement and the consequences of failing to comply with the Compliance Agreement.

14(2) A Compliance Agreement may not be for a term longer than sixty (60) days.

Operation and Termination of Compliance Agreements

15(1) Penalty Notice Recipients and Final Notice Recipients who enter into Compliance Agreements are not required to pay the Administrative Penalty set out in the Penalty Notice under review if said recipient complies with the Compliance Agreement resulting from the review of said Penalty Notice.

15(2) If the Screening Officer believes that a Penalty Notice Recipient or Final Notice Recipient that is party to a Compliance Agreement has failed to comply with its terms, the Screening Officer may terminate the Compliance Agreement and give the Penalty Notice Recipient or Final Notice Recipient a written Termination Notice indicating why the Compliance Agreement has been terminated.

15(3) For the purposes of this By-law, a Termination Notice is deemed to be delivered as set out in the Act.

Options after Compliance Agreement Terminated

16(1) A Termination Notice Recipient must, within fourteen (14) days after receiving or being deemed to have received the Termination Notice, either:

- (a) pay the Administrative Penalty set out in the Penalty Notice that resulted in the Compliance Agreement that was terminated; or
- (b) request that the Screening Officer submit for Adjudication the issue of whether the Penalty Notice Recipient or Final Notice Recipient complied with the terms of the Compliance Agreement.

16(2) If the Penalty Notice Recipient or Final Notice Recipient does not request Adjudication pursuant to Article 16(1)(b) of this By-law within fourteen (14) days after receiving the Termination Notice, the Administrative Penalty set out in the Penalty Notice resulting in the Compliance Agreement is immediately due and payable to the Town.

PART 6

ADJUDICATION

Adjudication Scheme Established

17(1) An Adjudication scheme allowing an Appellant to challenge a Screening Officer's decision to confirm or reduce the Administrative Penalty set out in a Penalty Notice the recipient received or the issuance of a Termination Notice is established by Part 6 of this By-law.

Requesting Adjudication

18(1) An Appellant may, where applicable:

- (a) request a review of a Screening Officer's decision to confirm or reduce the Administrative Penalty set out in the Penalty Notice; or
- (b) request a determination of a dispute as to whether the terms of a Compliance Agreement were complied with,

in accordance with Part 6 of this By-law.

- 18(2)** Requests pursuant to Article 18(1) must be made in writing and submitted to the Chief Administrative Officer, or his/her respective delegates, along with payment of the Application Fee, no later than seven (7) days after receiving the Screening Officer's written reasons for decision confirming or reducing the Administrative Penalty set out in the Penalty Notice subject to review or the Termination Notice that is the subject of the request.
- 18(3)** A request for adjudication under section 16 is not complete, and shall not be processed, until an adjudication fee has been paid to the Town. The adjudication fee is established as the maximum amount permitted by clause 3(3)(e) of the Act.

Scheduling Adjudications

- 19(1)** Within seven (7) days of receiving a request complying with Article 18 of this By-law, a Designated Employee shall schedule an Adjudication and provide the Appellant with a written notice containing the date, time and location of the scheduled Adjudication.
- 19(2)** If the Appellant is unable to attend the Adjudication scheduled pursuant to Article 19(1), the appellant may, subject to Article 19(3), make a written request for an adjournment, which must:
- (a) be submitted to the mailing or electronic address designated by the Town at least three (3) weekdays that are not statutory holidays in advance of the scheduled Adjudication; and
 - (b) include either:
 - i. at least three (3) weekdays that are not statutory holidays on which the Appellant will be available in the morning or afternoon to attend a rescheduled Adjudication within three months of the originally scheduled Adjudication date; or
 - ii. the Appellant's mailing address, telephone number, or e-mail address, that will allow a Designated Employee to contact the Appellant to discuss rescheduling the Adjudication.
- 19(3)** An Adjudication pertaining to a specific matter may not be rescheduled more than once.
- 19(4)** A \$ 25.00 fee is imposed for a request for a rescheduled adjudication unless the request is received by the Town within 7 days of the notice being given to the person.
- 19(5)** When the Town receives a request for an adjournment of an Adjudication that complies with this By-law, a Designated Employee shall, where possible, reschedule the Adjudication to a date provided by the Appellant under Article 19(2)(b)(i); or if the Appellant has provided contact information under clause 19(2)(b)(ii), to a date arranged with the Appellant.
- 19(6)** A request for a rescheduled adjudication must be received by the Town and the fee imposed in 19(4) paid at least 48 hours in advance of the scheduled adjudication. If they are not received prior to this time, the adjudication must proceed as originally scheduled.
- 19(5)** If a Designated Employee cannot, despite reasonable efforts, reschedule the Adjudication to a date designated by or agreeable to the Appellant requesting the adjournment, the Designated Employee may reschedule the Adjudication on any date that he or she believes is appropriate.
- 19(6)** A Designated Employee must give the Appellant requesting an adjournment notice of the date, time and place of a rescheduled Adjudication within seven (7) days of rescheduling the Adjudication.

Adjudications

- 20(1)** Adjudications shall be held and determined pursuant to the rules and procedures set out in the Act.
- 20(2)** Adjudicators have the powers and authority attributed to them under the Act.

Adjudication Decisions

- 21(1)** An Adjudicator's decision pertaining to a matter referred to him or her shall be disseminated in the manner required by the Act.

Payment of Adjudication Fees and Costs

- 22(1)** The Chief Administrative Officer or designate is hereby authorized to:
- (a) refund the Adjudication Fee to an Appellant, if ordered to do so by an Adjudicator; and
 - (b) pay invoices respecting fees and costs related to an Adjudication for which the Town is responsible under the Act.

Discontinuance of Penalty Notice

- 22(2)** At any time after a Penalty Notice has been issued, including at or before the Screening Officer or Adjudication stages, a Designated Employee may cancel the Penalty Notice on account of the Penalty Notice not being properly completed.

PART 7**GENERAL****Powers of Designated Employee**

- 23** The designated employee is empowered to administer and enforce this By-law and to take any actions reasonably required to do so. Without limiting the general nature of this authority, the designated employee is specifically authorized to:
- (a) Approve the form or forms of documents required by the Act or this By-law, including penalty notices and final notices;
 - (b) Establish administrative procedures for:
 - i) Accepting payments of administrative penalties;
 - ii) Accommodating requests for review by screening officers;
 - iii) Accommodating requests for review by adjudicators;
 - iv) Accommodating requests for rescheduling of adjudications;
 - (c) Take actions to collect administrative penalties owed to the Town.

Provision of Notices and Other Documents

- 24(1)** Where a notice or other document referred to in the By-law is required to be given to a person (other than to Town), unless this By-law provides otherwise, the notice or other document may be given:
- (a) By delivering it personally to the person;
 - (b) By mailing a copy by regular mail or delivering a copy
 - i) If the notice or document related to penalty notice for a contravention involving a vehicle, to the address of the vehicle owner indicated in the records of the Registrar of Motor Vehicles;

- ii) To the last known address of the person named in the penalty notice, which may be an address indicated in the records of the Registrar of Motor Vehicles; or
- (c) 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 or 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
- (d) If the person has used e-mail or another method of electronic communication in communication with the Town, by sending it to the e-mail address or other electronic address provided by or shown in the communication from the person.

24(2) A notice or other document that is:

- (a) Delivered personally is deemed to have been given on the day it was delivered;
- (b) Mailed under subsection (1) or mailed to the Town under this By-law is deemed to have been given to the person or received by the Town seven days after the day it was mailed;
- (c) Sent electronically under clause 24(1)(d) or sent electronically to the Town under this By-law is deemed to have been given two days after the day it was sent.

PART 8

AMENDMENT TO OTHER MUNICIPAL BY-LAWS

25(1) The enforcement and administrative penalty provisions in all other Town By-Laws are hereby superseded to the extent necessary to give effect to the provisions of this By-Law.

PART 9

TRANSITIONAL

26(1) This By-law shall come into force and effect on September 20th, 2017.

26(2) Prosecutions of Designated By-Law Contraventions that are outstanding when this By-law comes into effect shall continue under the previously applicable procedures, including *The Summary Convictions Act*.

**Done and passed by the Council of the Town of Niverville in regular session
assembled this 19th day of September, 2017 A.D.**

The Town of Niverville

**Per: _____
Mayor**

**Per: _____
Town Manager**

Read a first time this 20th day of June, 2017 A.D.

Read a second time this 19th day of September, 2017 A.D.

Read a third time this 19th day of September, 2017 A.D.

Certified a true and correct
copy of By-law No.778-17
of the Town of Niverville
given 3rd reading on September 19, 2017.

G. Jim Buys
Town Manager

SCHEDULE "A"
Designated By-law Contraventions

By-Law #	Name	By-Law #	Name
656-07	Parking	507-96	Junk, Weeds, Nuisance and Stagnant Water
650-07	Fire Prevention	685-10	Nuisances / Obstructions to O&M of Municipal Roads, Drains and Public Places
628-05	Lot Grading	775-17	Waste & Recycling Collection

The Administrative Penalty applicable to each of the respective Designated By-law Contraventions is the amount of the penalty designated for that Designated By-law Contravention by the Town's Fees and Penalties Schedule, as amended by Council from time to time.

The Early Payment Discount applicable to each of the respective Designated By-law Contraventions is the amount of the Reduced Penalty for Early Payment of Traffic Infraction designated for that Designated By-law Contravention by the Town's Fees and Penalties Schedule, as amended by Council from time to time.