

**BY-LAW NO. 7198**

**BEING A BY-LAW of The City of Brandon to provide for enforcement and compliance with City by-laws, and to be known as the “Compliance By-law”.**

**WHEREAS The Provincial Offences Act, S.M. 2013 c.P160 establishes clear and effective processes for prosecuting offences under municipal by-laws;**

**AND WHEREAS The Municipal By-law Enforcement Act establishes an administrative penalty scheme for enforcing municipal by-laws;**

**AND WHEREAS it is deemed expedient and in the public interest to establish a process in accordance with The Provincial Offences Act and The Municipal By-law Enforcement Act to ensure enforcement of and compliance with City by-laws;**

**NOW THEREFORE, the Council of The City of Brandon in regular session assembled enacts as follows:**

**PART I: DEFINITIONS**

**1. DEFINITIONS**

(a) Unless otherwise expressly provided 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 Legislative Standards By-law.

(b) In this by-law:

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

“ADJUDICATOR” means a person appointed under Section 5 of The Municipal By-law Enforcement Act.

“AUTHORITY HAVING JURISDICTION” means The City of Brandon and its designated agents, including but not limited to the Building Safety Manager and, for Orders under the Manitoba Fire Code, The Fires Prevention Act (Manitoba), or the Fire Prevention By-law, the Fire Chief, or their respective designates.

“COMMITTEE” means the By-law Compliance Standards Committee as appointed by City Council.

“DESIGNATED EMPLOYEE” means that City employee appointed by the City Manager and delegated responsibility for ensuring the provisions of this By-law are followed.

“FEE SCHEDULE” means the fees set out in the current Annual Schedule of Fees By-law as may be amended from time to time.

“INFORMATION OFFENCE NOTICE” means the compliance ticket issued by an Officer for a violation under Part 2 of The Provincial Offences Act.”

“ORDER TO REMEDY” means an Order issued for non-compliance with provisions of the Fire Prevention By-law, the Building By-law, the Building Safety and Property Standards By-law, the Vacant and Derelict Building By-law, or any other City by-law.

“PENALTY NOTICE” means the compliance ticket issued by an Officer for a violation under the Act.”

“SCREENING OFFICER” means that individual appointed herein and responsible for hearing appeals to penalty notices.

**PART II: VIOLATION NOTICES**

2. Any person who contravenes, or does not comply, or improperly complies, or only partly complies with any provision of a by-law of the municipality commits an offence and is subject to penalty. Such penalty shall follow the process of an Order to Remedy, a Penalty Notice, or an Offence under the Provincial Offences Act.

**DIVISION I: ORDER TO REMEDY**

3. The Authority having Jurisdiction may elect to issue an Order to Remedy for violations involving multiple areas of concerns, and particularly for life safety or health related concerns.
4. Any person receiving an Order to Remedy may appeal same to the By-law Compliance Standards Committee in accordance with PART IV herein.
5. Failure to comply with an Order to Remedy within the established timeline is deemed an offence as set out in Division II of Schedule "B" and is subject to preset fines set out in Division II of "Schedule C", as well as related Court Costs and Surcharges.

**DIVISION II: PENALTY NOTICE**

6. Without restricting the generality of the foregoing, Schedule "A" and Division I of Schedule "B" contain a listing of offences which qualify as By-law Compliance violations and are subject to a Penalty Notice.
7. For the purposes of this Division, violations that fall into the "Other" category as listed on Schedule "A" include those offences as set out in Division I of Schedule "B".
8. Any person who commits an offence under Section 2 is guilty of a summary offence and liable to a preset fine as set out in Division I of Schedule "C".
9. The following procedure shall apply for offences set out in Schedule "A" and Division I of Schedule "B":
  - (a) An Officer may issue to any person committing an offence under Section 2, a Penalty Notice of by-law violation levying the applicable preset-fine as set out in Division I of Schedule "C".
  - (b) A Penalty Notice must contain the information required by section 6 of the Act.
  - (c) A Penalty Notice may be in any form permitted by the Act and approved by the Designated Employee. The Designated Employee is authorized to approve more than one form of a Penalty Notice.
  - (d) A Penalty Notice may not be issued if more than the period of time set out in section 8 of the Act has elapsed after the designated by-law contravention for which it is issued is alleged to have occurred.
  - (e) A Penalty Notice must be delivered as permitted by section 9 of the Act or by regulations made pursuant to that Act.
  - (f) The person to whom a Penalty Notice is delivered may, within 30 days after the date of service of the Penalty Notice, either
    - (1) Pay the administrative penalty; or
    - (2) Request a review by a Screening Officer.
  - (g) The discounted amount as shown on the Penalty Notice for the contravention to which it relates may be paid as an administrative penalty if payment is made within 15 days of service of the penalty notice as provided for in clause 3(3)(a) of the Act.
  - (h) The Designated Employee must ensure that a final notice as required by section 22 of the Act is delivered to a person who fails to respond to a penalty notice in compliance with section 9.
10. An Officer may issue a By-law Violation Notice outlining the compliance requirements or a warning ticket on the Penalty Notice for which no prosecution will be carried out and no fine shall be levied, if the person has not recently been charged with an offence for the same by-law violation.

**DIVISION III: PROVINCIAL OFFENCE VIOLATIONS**

11. Without restricting the generality of Section 2, Division II of Schedule "B" contains a listing of offences which are deemed to be life safety or health related concerns and are established as Provincial Offence violations.

12. For the purposes of this Division, violations that fall into the “Other” category as listed on Schedule “A” include those offences as set out in Division II of Schedule “B”.
13. Any person who commits an offence as set out in Division II or Schedule “B” is guilty of a summary offence and liable to a fine as set out in Division II of Schedule “C”.
14. The following procedure shall apply for offences set out in Division II of Schedule “B”:
  - (a) An Officer may issue to any person committing an offence under Section 2, an Information Offence Notice of by-law violation levying the applicable preset-fine as set out in Division II of Schedule “C”, plus the required court costs of 45% of the preset fine amount and a justice services surcharge fee of \$50.
  - (b) If payment of the fine, together with the required court costs and justice services surcharge fee, is made as provided in this section, the person shall not be liable for prosecution for that offence.
  - (c) The person to whom an Information Offence Notice has been issued may appeal the offence charge in accordance with section 36.

### PART III: APPEAL PROCESSES

#### DIVISION I: APPEALS TO SCREENING OFFICER

15. The City Manager may appoint Screening Officers as required to meet the administrative needs of this by-law.
16. A Screening Officer may take one of the following actions with respect to a penalty notice:
  - (a) Uphold the full amount of the administrative penalty;
  - (b) If authorized under section 17, reduce the amount of the administrative penalty to as little as \$1.00, or issue a warning without imposing any penalty;
  - (c) If deemed appropriate, enter into a compliance agreement with the person in accordance with provisions set out in the Act; or
  - (d) Cancel the penalty notice where:
    - (1) The contravention did not occur as alleged;
    - (2) The penalty notice does not comply with subsection 6(2) of the Act;
    - (3) The contravention was necessary in order to address immediate health and safety concerns.
17. The Screening Officer may reduce the amount of the administrative penalty where the circumstances surrounding the contravention are such that a reduction of the amount of the administrative penalty would be in the public interest.
18. 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 person appears within 15 days of the penalty notice being issued.
19. Where a Screening Officer makes a decision to uphold the full amount of the administrative penalty or reduce the amount of the administrative penalty, a written copy of the reasons for the decision must be given to the person who requested the review, in accordance with section 35 or 36.
20. Unless the Screening Officer has decided to cancel the penalty notice, the written reasons given by a Screening Officer must be accompanied by a notice to the person that they must, within 7 days after the person has received or is deemed to have received the written reasons, either:
  - (a) Pay the administrative penalty, or pay the reduced amount if the Screening Officer has reduced it; or
  - (b) Request an Adjudicator, in accordance with the provisions set out herein, to review the Screening Officer’s decision.
21. The Screening Officer has the authority to grant, for good and sufficient reason and with written agreement, additional time for the person to pay the administrative penalty.

22. An adjudication scheme as described in sections 14 to 20 of the Act is hereby established to allow a person to whom a penalty notice has been issued to:
- (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.
23. A fee as set out in the Fee Schedule is imposed for a request for an adjudication.
24. When the place, date and time for an adjudication has been determined, a Designated Employee must give notice of the date, time and place to the person requesting the adjudication.
25. If the person is unable to attend the scheduled adjudication, he or she may request that it be rescheduled. Such a request must be submitted in writing or through electronic means to the mailing or electronic address provided by the City, a minimum of 48 hours in advance, and must include either:
- (a) At least 3 dates on weekdays on which the person will be available either in the morning or the afternoon to attend a rescheduled adjudication; or
  - (b) Contact information, such as a mailing address, telephone number, or email address, that will allow a Designated Employee to arrange with the person a date for a rescheduled adjudication.
- If the request for reschedule was not received a minimum of 48 hours in advance, the adjudication must proceed as originally scheduled.
26. A person may only request that an adjudication be rescheduled one time for the same penalty notice.
27. When a request for a rescheduled adjudication has been received by the City, the Designated Employee must reschedule the adjudication
- (a) To a date provided by the person under clause 25.(a); or
  - (b) If the person has provided contact information under clause 25.(b) herein, to a date arranged with the person after the Designated Employee has contacted the person.
- If a Designated Employee has made unsuccessful but reasonable efforts to contact the person at the contact information provided under clause 25.(b), the Designated Employee may reschedule the adjudication on any suitable date.
28. A Designated Employee must give notice of the date, time and place of a rescheduled adjudication to the person requesting the rescheduled adjudication.
29. Adjudications must be held in accordance with, and the Adjudicator must follow, the rules set out in sections 16 to 20 of the Act.
30. An Adjudicator has the powers granted in sections 19, 20, 21, and 25 of the Act.
31. If the Adjudicator upholds the full amount of the administrative penalty or reduces the amount of the penalty, the amount of the administrative penalty, as determined by the Adjudicator, is immediately due and payable
32. 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 MBE Act or this by-law, including penalty notices and final notices;

- (b) Establish administrative procedures for:
    - (1) Accepting payments of administrative penalties;
    - (2) Accommodating requests for review by Screening Officers;
    - (3) Accommodating requests for review by Adjudicators;
    - (4) Accommodating requests for rescheduling of adjudication;
  - (c) Take actions to collect administrative penalties owed to the City.
33. Where a notice or other document referred to in this by-law is required to be given to a person (other than the City), 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
    - (1) If the notice or document relates 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;
    - (2) 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:
    - (1) By mailing a copy by regular mail to the corporation's registered office;
    - (2) By mailing a copy by regular mail or delivering a copy to an officer or director of the corporation;
    - (3) 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 email or another method of electronic communication to communicate with the City, by sending it to the email address or other electronic address provided by or shown in the communication from the person.
34. 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 section 34 or mailed to the City under this by-law is deemed to have been given to the person or received by the City 7 days after the day it was mailed.
  - (c) Sent electronically under subsection 34.d. or sent electronically to the City under this by-law is deemed to have been given 2 days after it was sent.

#### **DIVISION II: APPEALS TO PROVINCIAL COURT**

35. Any person who chooses to challenge the issuance of an Information Offence Notice may plead not guilty to the Designated Employee within 60 days of issuance of the Information Offence Notice.
36. The Designated Employee, upon receipt of the plea of not guilty, will arrange for a court date to be established for the individual to present their case.
37. The person receiving the Information Offence Notice will attend at court on the specified date and the decision of the Judicial Justice of the Peace is binding on the parties.

#### **PART IV: BY-LAW COMPLIANCE STANDARDS COMMITTEE**

38. The By-law Compliance Standards Committee is hereby established and is the appeal body for all Orders issued by the Authority having Jurisdiction.
39. The Committee is comprised of three Councillors, and 2 additional Councillors who act as alternate members for the purpose of hearing any appeal, when necessary, in the absence of any member. Two members shall constitute a quorum of the Committee.

40. The membership, including the alternate members, shall be appointed by resolution of Council for a term of one year, expiring December 31 each year, with members being eligible for reappointment upon the expiration of their term of office.
- (a) Council shall appoint a Chair and Acting Chair at the time of making its appointments. In the event neither the Chair nor Acting Chair are in attendance at a hearing the membership in attendance shall appoint an Acting Chair for the purpose of that hearing.
41. The City Clerk, upon receipt of an appeal or notice of objection against any order or notice issued pursuant to the provisions of any by-law, shall set a time and place for a hearing by the Committee. In no case shall a hearing be held later than 15 days following the filing of the appeal or notice of objection.
- (a) The City Clerk shall cause not less than 3 days' notice of the hearing to be served, by certified mail, registered mail, or personal service sworn to by affidavit, on the appellant at the address as shown on the City's latest assessment roll, and such notice shall inform the appellant that they or their agent, may appear at the hearing and make such representation as so desired and that, in the event they do not appear at the said hearing, a decision may be made by the Committee in their absence.
42. On the day and at the time set out in the notice of the City Clerk, the Committee shall conduct the hearing and receive representations from the appellant and the inspector, or any person appearing on their behalf.
- (a) The hearing may be adjourned from time to time and may be resumed at such time and place as the Committee may decide.
- (b) In the event there is no quorum present to conduct a set hearing, the City Clerk shall adjourn the hearing until the first available date, as established by the City Clerk, when a quorum will be available. Notice of the continued hearing date must be given in accordance with subsection 42.(a) however the requirement for 3 days' notice may be waived if such time is not available, providing notice is by personal service sworn to by affidavit.
43. Where the Committee is of the opinion that the owner of a dwelling or other building is unable to pay the cost of making it conform to the standards, the Committee may make a recommendation to the Council that the City advance money to the extent necessary to pay the cost subject to the conditions set forth in Section 180 of The Municipal Act (Manitoba).
44. Upon hearing an appeal, the Committee may:
- (a) Rescind or suspend the order given by the Authority having Jurisdiction;
- (b) Extend the time within which compliance with the order shall be made;
- (c) Make such other order as in the circumstances of each case it deems just;
- and the decision or order of the Committee, upon being communicated to the appellant, stands in place of the order against which appeal is made.
45. Any failure to comply with a decision or order of the Committee is an offence and is subject to the penalty provisions and such further action as set out in this by-law.
46. The City Clerk, as soon as practicable following the adjournment of the hearing, shall provide written notice to the appellant and the Authority having Jurisdiction as to the decision or order of the Committee, and shall advise the appellant of the right to appeal such decision or order pursuant to Section 48 herein.
47. Any person affected by a decision or order of the Committee on an appeal made to it, may appeal from the decision or order to a judge of the Court of Queen's Bench.
48. Summary Conviction
- (a) Any person who contravenes, neglects, omits or fails to obey or observe any provision of this By-law is guilty of an offence and is liable on summary conviction to a fine not exceeding \$1,000 and costs on conviction or to imprisonment for a term not exceeding 90 days or to both such a fine and imprisonment.
- (b) Where the contravention, refusal, neglect, omission or failure continues for more than 1 day, the person is guilty of a separate offence for each day that it continues.

49. By-law No. 6664 and amending By-laws No. 6726, 6774, and 6802 are hereby repealed and the provisions set out in the Legislative Standards By-law with respect to rules of repeal apply.
50. This by-law shall come into full force and take effect upon the passage thereof.

DONE AND PASSED by the Council of the City of Brandon duly assembled this 20<sup>th</sup> day of November A.D. 2017.

\_\_\_\_\_  
"R. Chrest"

MAYOR

\_\_\_\_\_  
"H. Ewasiuk"

CITY CLERK

Read a first time this 6<sup>th</sup> day of November A.D. 2017.

Read a second time this 20<sup>th</sup> day of November A.D. 2017.

Read a third time this 20<sup>th</sup> day of November A.D. 2017.

I, Heather Coreen Ewasiuk, Clerk of the City of Brandon, DO HEREBY CERTIFY the above by-law to be a true and correct copy of By-law No. 7198.

*Original Signed By*

H. Ewasiuk

H. Ewasiuk, City Clerk

**SCHEDULE "A"**  
**to Compliance By-law No. 7198**

<b>TICKET CODE</b>	<b>COMPLIANCE VIOLATION</b>	<b>BY-LAW REFERENCE</b>
50	Littering	Solid Waste Collection and Disposal
51	Untarped Loads	Solid Waste Collection and Disposal
52	Trucks off Truck Routes	Traffic
53	Derelict Vehicles	Nuisance
54	Snow Dumping onto Street	Traffic
55	Failure to Clear Snow from Sidewalk	Traffic
56	Sight Line Obstructions	Traffic
57	Extension Cords Across Sidewalk	Traffic
58	Skateboards, Roller Blades, Non-motorized Scooter or Bicycle where Prohibited	Traffic Nuisance
59	Smoking in a Public Place	Smoking in a Public Place
60A	Excessive Noise – 1 <sup>st</sup> offence	Nuisance
60B	Excessive Noise – 2 <sup>nd</sup> offence	Nuisance
61	Urinating in Public Place	Nuisance
62	Drunk/Disorderly in Public Place	Nuisance
63A	Unauthorized Posting of Signs: Private	Traffic / Zoning
63B	Unauthorized Posting of Signs: Commercial	Traffic / Zoning
64	Leaving an Animal in a Vehicle when Unsafe	Animal Control
65	Not Providing Sufficient Food/Water to Animal	Animal Control
66	Dog Barking	Animal Control
67	Dog/Cat Running at Large/Off-Leash	Animal Control
68	Dog Bites/Dog Threatening to Attack	Animal Control
69	Permit Dog on Any Schoolground/Playground	Animal Control
70	Failure to Pick up Dog/Cat Excrement	Animal Control
71	Accumulation of Dog/Cat Excrement on Private Property	Animal Control
72	Dog/Cat Without a License	Animal Control
73	Failure to Obtain Business License	Business Licensing
94	Unsightly Premises	Nuisance
	Other: (specify)	

**SCHEDULE "B"**  
**to Compliance By-law No. 7198**

**Division I: Compliance Violations that fall into the "Other" category:**

<b>TICKET CODE</b>	<b>COMPLIANCE VIOLATION</b>	<b>BY-LAW REFERENCE</b>
74	Handbill Delivery	
75	Residential Tipping Fee	Solid Waste Collection and Disposal
76	House Numbering	
77	Shrubs and Trees on Sidewalk	Traffic
78	False Alarm – 3 <sup>rd</sup> offence in 12 months	Fire Prevention
79	False Alarm – 4 <sup>th</sup> offence in 12 months	Fire Prevention
95	Use of engine retarder brakes within City limits	Traffic
96	Driving a vehicle on, across, or along a boulevard, sidewalk or curb	Traffic
97	Failure to obtain permit for locating sanitation collection bin on City property	Solid Waste
98	Failure to cover adult magazines	Adult Magazine
99	Contravention of other specified by-law provisions	

**Division II: Provincial Offence Violations that fall into the "Other" category:**

80	Failure to comply with an Order to Remedy	Vacant and Derelict Building Fire Prevention Building Safety and Property Standards
81	Failure to comply with Policy established under the Fire Prevention By-law	Fire Prevention
93	Contravention which may be considered as a life or fire safety hazard	Fire Prevention

**SCHEDULE "C"**  
to Compliance By-law No. 7198

**Division I: Penalty Notice fine amounts**

TICKET CODE	COMPLIANCE VIOLATION	OPTION A	OPTION B
		Within 15 days	Over 15 days
50	Littering	50.00	100.00
51	Untarped Loads	50.00	100.00
52	Trucks off Truck Routes	100.00	200.00
53	Derelict Vehicles	50.00	100.00
54	Snow Dumping onto Street	50.00	100.00
55	Failure to Clear Snow from Sidewalk	50.00	100.00
56	Sight Line Obstructions	25.00	50.00
57	Extension Cords Across Sidewalk	25.00	50.00
58	Skateboards, Roller Blades, Non-motorized Scooter or Bicycle where Prohibited	25.00	50.00
59	Smoking in Public Place	50.00	100.00
60A	Excessive Noise – 1 <sup>st</sup> offence	50.00	100.00
60B	Excessive Noise – 2 <sup>nd</sup> offence	100.00	200.00
61	Urinating in Public Place	50.00	100.00
62	Drunk/Disorderly in Public Place	100.00	200.00
63A	Unauthorized Posting of Signs: Private	25.00	50.00
63B	Unauthorized Posting of Signs: Commercial	100.00	200.00
64	Leaving an Animal in a Vehicle when Unsafe	100.00	200.00
65	Not Providing Sufficient Food/Water to Animal	100.00	200.00
66	Dog Barking	100.00	200.00
67	Dog/Cat Running at Large/Off-Leash	100.00	200.00
68	Dog Bites/Dog Threatening to Attack	100.00	200.00
69	Permit Dog on Any Schoolground/Playground	25.00	50.00
70	Failure to Pick up Dog/Cat Excrement	100.00	200.00
71	Accumulation of Dog/Cat Excrement on Private Property	100.00	200.00
72	Dog/Cat Without a License	50.00	100.00
73	Failure to Obtain Business License	100.00	200.00
74	Handbill Delivery	25.00	50.00
75	Residential Tipping Fees	25.00	50.00
76	House Numbering	25.00	50.00
77	Shrubs & Trees on Sidewalk	25.00	50.00
78	False Alarm – 3 <sup>rd</sup> offence in 12 months	100.00	200.00
79	False Alarm – 4 <sup>th</sup> offence in 12 months	150.00	300.00
94	Unightly premises	100.00	200.00
95	Use of engine retarder brakes within City limits	100.00	200.00
96	Driving a vehicle on, across, or along a boulevard, sidewalk or curb	100.00	200.00
97	Failure to obtain permit for locating sanitation collection bin on City property	100.00	200.00
98	Failure to cover adult magazines	100.00	200.00
99	Contraventions of other specified by-law provisions	100.00	200.00

**Division II: Provincial Offence violations preset fines:**

80	Failure to comply with an Order to Remedy	200.00	400.00
81	Failure to comply with Policy established under the Fire Prevention By-law	200.00	400.00
93	Contravention which may be considered as a life or fire safety hazard	200.00	400.00

Every offence processed through the Provincial Offences Act is subject to additional costs as follows:

Court Costs: 45% of the preset fine amount

Justice Services Surcharge: \$50.00

These fees are due and payable together with the preset fine amount and upon collection will be remitted by the City to the Province as set out in The Provincial Offences Act.