

Cracking Down: Mastering Municipal Enforcement

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A trending topic amongst most Manitoba municipalities: Enforcement. Whether it is for an unsightly property, a violation of a Zoning By-law, operation of off-road vehicles (on public or private property) or a contravention of burning/fire by-law – each municipality has the same concern – we want to enforce, where do we start?



Prior to commencing enforcement, a municipality needs to create their jurisdiction. Section 232 of *The Municipal Act, C.C.S.M. c. M225* (“*The Municipal Act*”) sets out the municipal purposes in which a council may pass by-laws.

For the enforcement context: consider the municipality having a toolbox. Each by-law is a tool needed to “fill” the toolbox. In simple terms, certain by-laws create the offences (for example: Unsightly By-Law) and then other by-laws assist by providing the authority to carry out the enforcement.

What enforcement by-laws should be considered? Generally, there are four enforcement by-laws that should be carefully considered by each Council:

- General Enforcement By-Law (s. 232 of *The Municipal Act*);
- Municipal By-Law Enforcement Act (MBEA) By-Law (*The Municipal By-Law Enforcement Act, C.C.S.M. c. M245*);
- Provincial Offences Act (POA) By-Law (*The Provincial Offences Act, C.C.S.M. c. P160*); and
- Derelict (and Vacant) Building By-Law (s. 247.1 of *The Municipal Act*).

General Enforcement By-Law

A General Enforcement By-Law provides a municipality with the means to provide a fair process to the property owner/ratepayer that is believed to be in violation of a municipal by-law (including inspections, notices and orders) and remedying contraventions of by-laws. The authority for a municipality to enforce its by-laws is provided at section 232(1)(o) of *The Municipal Act*, with options of: (i) creating offences; (ii) providing fines and penalties (subject to regulations); (iii) providing whether a fine or penalty may be collected in any manner in which a tax is collected; (iv) seizing, removing, impounding, confiscating and selling; (v) charging and collecting costs; (vi) imposing a sentence of imprisonment.

The intent of a General Enforcement By-law is to provide a municipality the ability to enforce their by-laws pursuant to *The Municipal Act* and *The Planning Act*, C.C.S.M. c. P80 (or any other Acts they are permitted to enforce). Enforcement would include commencing the procedural process of inspection of a property, and if deemed appropriate by the municipal designated officer, a formal notice of contravention followed by an order to remedy. While some ratepayers will comply with the notice of contravention and order to remedy, the question that arises is: what do we do if the ratepayer is not willing to rectify the problem? What steps do we, as the municipality, need to take to remedy the contravention?

The General Enforcement By-law provides the authority for to the municipality to undertake the remedy of the contravention itself. For example, in the case of an unsightly property, the ability to enter the property and “clean-up” the unsightly property. If properly drafted, the General Enforcement By-law places all costs of enforcement (including legal fees) onto the ratepayer who is violating the municipal by-laws and in the event the ratepayer does not cover the costs invoiced, the General Enforcement By-law would permit the municipality to collect the costs of enforcement in the same manner as a tax.

The technicalities to the enforcement process include, amongst many other issues, the precise drafting of the infractions in the notice of contravention and order to remedy, in certain circumstances obtaining a warrant to enter the land (from Provincial Court), appealing the decision to Council, preparing for the designated officers for the “day of enforcement” (example: tow trucks, bins, officers, etc.) as well as what to do with items once removed, seized, etc.

Municipal By-Law Enforcement Act (MBEA) By-Law

A MBEA By-Law provides municipalities with the ability to process and resolve parking violations and other contraventions of their by-laws with an administrative penalty scheme. Simply put it is a “fine and ticketing” by-law which requires the municipality to select, at the time of passing the MBEA By-Law, which municipal by-laws will be enforced by the administrative penalty scheme. Equally, substantial municipal administrative involvement is required, as the MBEA process is administered “in house” by the respective municipality with appeal mechanisms to a Screening Officer and possibly, and an adjudicator.

Provincial Offences Act (POA) By-Law

The POA By-Law is another “tool” which governs how offences under certain municipal by-laws are to be prosecuted. Simply put, it is also a “fine and ticketing” which requires the municipality to select, at the time of passing the POA By-Law, which municipal by-laws will be enforced by the POA scheme; however, it does not apply to (a) offences related to parking, standing, or stopping of vehicles under the municipal by-laws; or (b) contraventions of municipal by-laws designated under clause 3(2)(a) of the MBEA Act. If fines are not paid, the process for the POA By-Law is before the provincial court. Of significant mention, is that 45%

of the preset fine are deemed court costs thereby leaving a municipality with 55% of the present fine to recover.

For some municipalities, depending on the matters they need/want to enforce, may decide between either the MBEA By-Law or the POA By-Law.

Derelict (and Vacant) Building By-Law (s. 247.1 of the Municipal Act)

Section 247.1 of the Municipal Act provides specific direction to municipalities as to how derelict and vacant buildings and properties are to be treated. A very detailed Derelict (and Vacant) Building By-Law must be drafted to establish the process for issuing preliminary derelict building orders, second notices and derelict building certificates in response of derelict properties.

The Derelict (and Vacant) Building By-Law will further allow a municipality to apply to the district registrar for title to the derelict property to be issued in the name of the municipality if the ratepayer is not willing to comply with the bylaw and the municipality has correctly followed the required procedures under *The Municipal Act*. It important to know there are strict timelines that a municipality must follow in submitting the application for title to the district registrar to avoid having to restart the enforcement process.

The above-mentioned by-laws are some of the “tools” available for enforcement. It is highly recommended that each municipality or planning district engage legal counsel to determine their specific needs surrounding enforcement (what forms of enforcement do they wanted to accomplish? Ex: fines and ticketing? Or clean-up of an unsightly property? All of the above?). Municipal legal counsel can guide, recommend and assist with the preparation of the by-laws and execution of enforcement.

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