

**R.M. of ELLICE - ARCHIE
BY-LAW #15-2019
LIVESTOCK AT LARGE BY-LAW**

BEING a by-law to regulate the running at large of livestock in the Rural Municipality of Ellice – Archie and providing for the impounding and sale of impounded animals.

PART I: AUTHORITY

WHEREAS subsection 232(1) of *The Municipal Act* S.M. 1996 provides, in relevant part, as follows:

Spheres of jurisdiction

232(1) A council may pass by-laws for municipal purposes respecting the following matters:

- (a) the safety, health, protection and well-being of people and the safety and protection of property;
- ...
- (k) wild and domestic animals and activities in relation to them, including by-laws differentiating on the basis of sex, breed, size or weight;
- ...
- (o) the enforcement of by-laws.

AND WHEREAS subsection 232(2) of *The Municipal Act* S.M. 1996 provides, in relevant part, as follows:

Exercising By-Law making powers

232(2) without limiting the generality of subsection (1), a council may in a by-law passed under this Division

- (a) regulate or prohibit;
- ...
- (f) except where a right of appeal is already provided in this or any other Act, provide for an appeal and the body that is to decide the appeal, and related matters;

AND WHEREAS subsection 236(1) of *The Municipal Act* S.M. 1996 provides, in relevant part, as follows:

Content of by-laws under clause 232(1)(o)

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 contravention 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 offense that is in addition to a fine or imprisonment, so long as the penalty relates to a fee, rate, toll, charge, or cost that is associated with the conduct that gives rise to the offense, or related 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, other things related to a contravention,
 - (v) charging and collecting costs incurred in respect of acting under subclause (iv),

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- (vi) imposing a sentence of imprisonment for not more than six months for the commission of offenses or nonpayment of fines.

AND WHEREAS subsections 5(1), (2) and (3) of *The Animal Liability Act*, S.M. 1998 c.8 provide, in relevant part, as follows:

Animals not to run at large

5(1) Except when permitted by a municipal by-law passed in accordance with *The Municipal Act* or a by-law of a local government district passed in accordance with *The Local Government District Act*, no owner or person in charge of an animal shall allow it to run at large.

By-Law does not limit owner's liability

5(2) An owner's liability under section 2 is not limited or otherwise affected by a by-law referred to in subsection (1).

Municipality or LGD not liable by reason only of making By-Law

5(3) A municipality or local government district that makes a by-law referred to in subsection (1) is not liable, by reason only of having made the by-law, for damages for any harm that an animal causes to a person or property while running at large in the manner permitted under the by-law.

THEREFORE BE IT RESOLVED that the council of the Rural Municipality of Ellice – Archie, in open meeting assembled enacts as follows:

PART II: DEFINITIONS & INTERPRETATION

Definitions

In this by-law, unless the context otherwise requires,

- (a) **"Animal"** – shall mean any creature that is not human
- (b) **"Animal control officer"** – means the person appointed by Council to enforce the provisions of this By-Law, and includes any person acting as an assistant to, or under the direction of, the animal control officer authorized by the Council.
- (c) **"Appraiser"** – shall mean a person appointed and authorized from time to time by the Rural Municipality of Ellice – Archie to access claims made under the provisions of this by-law.
- (d) **"Council"** – means the council of the Rural Municipality of Ellice – Archie
- (e) **"Councillor"** – means a councillor of the Rural Municipality of Ellice – Archie
- (f) **"Day"** – unless otherwise qualified in this by-law shall consist of a period of twenty-four hours.
- (g) **"Enclosure"** – means any fenced or closed space which confines the movement of any animal within a specific land area, and includes pasture land and land under cultivation whether owned or rented by the owner is defined in subparagraph (h) hereunder and "enclosed" and "enclosing" shall have corresponding meaning.
- (h) **"Livestock"** – means
- (a) animals kept for the purpose of:
 - (i) production of meat,
 - (ii) production of other products from the animals, or
 - (iii) herding, protection of livestock or draft work, and breeding stock of such animals.

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(b) animals kept for the purpose of improving or preserving any species or kind of animal that may be kept for a purpose set out in subclause (a)(i), (ii) or (iii) of this definition; and

(c) any other animal determined by the animal control officer to be livestock for the purposes of this By-Law;

Whether or not intended for profit and including, without limitation:

(d) dairy and beef cattle, goats, sheep, bisons and horses;

(e) swine (including wild boar);

(f) all cervids on game production farms;

(g) all of the family Camilidae (including Llamas and Alpacas);

(h) all domestic poultry (including chickens, turkeys, ducks and geese);

(i) specialty fowl (including, guinea fowls); and

(j) any other animals that are of a species or kind prescribed as livestock in the regulations pursuant to *The Animal Liability Act*.

- (i) **“Municipality”** – means the Rural Municipality of Ellice – Archie.
- (j) **“Owner”** – means the owner of any animal which is subject to the provisions of this by-law and includes any person or persons acting for or on behalf of such owner, or having temporary charge or control of such animal for the owner.
- (k) **“Owner or Occupant of Land”** – shall include the owner of land, or a lessee, or any person or persons having temporary possession or use of land for the purpose of enclosing animals thereon which said animals are owned by him or some other person; and owner or occupant shall also mean when the circumstances require for the purpose of making any claim for damages pursuant to this by-law, the owner, lessee and person or persons having temporary passion or use of land upon which damage has been done by any animal which is prohibited from running at large or trespassing under the provisions of this by-law.
- (l) **“Pound”** – means any enclosure, premises or place, whether within or outside the Municipality, designated by Council for the impoundment and care of any animal for the purpose of enforcing any provision of this By-Law.
- (m) **“Poundkeeper”** – means the person appointed by Council, whether on a temporary or permanent basis, for the purpose of enforcing the provisions of this by-law and shall include any person who is employed by the poundkeeper to assist him in containing and confining any animal impounded pursuant to the provisions of this by-law, or to assist him in exercising the right of disposal and sale of any impounded animal as authorized by this by-law.
- (n) **“Run at large” or “Running at large”** – means not being under control of the owner or owners or occupant by confinement within an enclosure, except when an animal is being driven from one enclosure to another under the direct and continuous charge of a herder.

Interpretation

In all parts of this By-Law, any word importing the male gender shall include the female gender and vice versa, and any wording importing the singular shall include the plural, and vice versa, as applicable and unless the context requires a different interpretation.

PART III: ESTABLISHMENT OF POUND AND APPOINTMENT OF ANIMAL CONTROL OFFICER AND POUNDKEEPER

Establishment of Pound

- 3.1 Council may establish and maintain a pound for the impoundment and care of livestock apprehended pursuant to the enforcement of any provision of this By-Law, or the

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Council may enter into an agreement with any person (including with any other municipality, city, town, or organization) to establish and maintain a pound on their behalf. The costs associated with the pound operated by or for the Municipality shall be paid out of the general funds of the Municipality.

Appointment of Animal Control Officer

3.2 Council may appoint one or more persons as animal control officer to carry out the enforcement of this By-Law. The animal control officer so appointed may be appointed on a temporary or permanent basis, and shall be paid out of the general funds of the Municipality.

Appointment of Poundkeeper

3.3 Council may appoint one or more persons as poundkeeper to carry out the duties of the poundkeeper set out in this By-Law. The poundkeeper so appointed may be appointed on a temporary or permanent basis, and shall be paid out of the general funds of the Municipality.

Common Animal Control Officer and Poundkeeper

3.4 At the discretion of Council, the animal control officer may also serve as poundkeeper, and vice versa.

PART IV: DUTIES OF ANIMAL CONTROL OFFICER AND POUNDKEEPER

Duties of the Animal Control Officer

4.1 It shall be the duties of the animal control officer:

- (a) to apprehend and confine at the pound, any animal running at large within the Municipality contrary to the provisions of this By-Law.
- (b) to make reasonable attempt to notify the owner of every animal impounded if the identity of the owner is known, by direct contact with the owner or by leaving a notice at the last known address of the owner which shall state the place and time that the animal was apprehended, the place and time when the animal can be redeemed from the pound, the impoundment fee, any daily pound fees, licence fees and other costs of fines to be charged to the owner, the method of payment required, and the date and location after which the animal will be sold if not redeemed.
- (c) Where the identity of the owner of the animal is not known, the animal control officer shall post in the general office of the Municipality, a notice describing the animal including sex, color, any brand or mark of identification, the date of apprehension and the date after which the animal will be sold, destroyed or otherwise disposed of.
- (d) When livestock is impounded, the animal control officer shall publish a notice of the impoundment in a newspaper that is generally distributed within the Municipality as well as post a notice at the office of the Municipality. This notice shall describe the livestock so impounded, including any identifying tags, marks or brands, the day of impoundment, along with the location within the Municipality where the livestock were found running at large.
- (e) to enforce the provisions of this By-Law.

Duties of Poundkeeper

4.2 It shall be the duties of the poundkeeper:

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- (a) to provide sufficient food and clean water, adequate shelter and a safe and sanitary environment for every animal impounded.
- (b) to establish and maintain the pound in a manner in keeping with *The Animal Care Act* (Manitoba), and without limiting the generality of the foregoing, to discharge the duties of an owner as set out in subsection 2(1) of *The Animal Care Act* (Manitoba) while an animal is in the custody of the poundkeeper.
- (c) To keep a record of every animal impounded, which record shall include the following minimum information:
 - (i) a description in reasonable detail of the animal (including, the approximate weight, height and color of the animal, as well as the sex and breed of the animal and any identifying marks, brands or tags);
 - (ii) the day and hour of its impoundment;
 - (iii) the day and hour of its redemption, sale, disposition or destruction, together with the details of redemption, sale, disposition or destruction;
 - (iv) the name and address of the owner (being the person to whom the animal was sold or released); and
 - (v) the amount and particulars of all fees, fines and other charges invoiced to, and received from or on behalf of, the owner and the name and address of the payor (if different from the owner).
- (d) To pay the following:
 - (i) The cost of distraining the animals and mileage for transport to the pound as referred to in section VI hereof.
 - (ii) All fees and expenses of the appraisers as referred to in section VI hereof.
 - (iii) The poundkeeper shall not be required to pay such fees and expenses noted in (i) and (ii) until such time as the owner of the impounded livestock has obtained the release of the said animal or until after the sale of the animal as the case may be.
- (e) To collect all fees charged by the pound, and to remit all monies received by the pound to the CAO of the Municipality, together with such reports and statements as the said CAO may prescribe from time to time, except where the Municipality has entered into a contract with a private party for the operation of the pound, in which case the poundkeeper shall observe all terms and conditions of the contract with the Municipality for the operation of the pound, including, without limitation, the provisions concerning the charging and collection of fees, the remittance of amounts due to the Municipality, and the submission of all reports and statements required to be submitted to the Municipality under the said contract.
- (f) If no person claims the livestock within fifteen days of the date of the notices of impoundment, or if the owner has not paid the costs and fines referred to in section VI, the poundkeeper may deliver the livestock to be sold at public auction

PART V: RESPONSIBILITY OF OWNER

- 5.1 The keeping of livestock shall only be permitted in those areas of the Municipality which are zoned agricultural unless otherwise permitted by the Municipality's zoning by-law in effect from time to time.

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- 5.2 An owner shall not permit his livestock to run at large within the Municipality. When livestock is found running at large, its owner shall be deemed to have refused or failed to comply with this By-Law.

PART VI: IMPOUNDMENT FEES

- 6.1 The poundkeeper shall be entitled to the following fees:
- (a) For costs incurred through the delivery of livestock to the pound by the animal control officer, or owner or occupant of land as referred to in subsection 7.2.
 - (b) For supplying good and sufficient feed and water and properly sheltering and caring for animals impounded, including milking of cows regularly twice daily:
 - **First day / per animal** **\$200.00**
 - **Each day thereafter Initial Fee & \$2.00 feed & water / per animal** **\$25.00**
 - (c) For any damage caused by such animal while in the pound save and except from any damage resulting from the carelessness or negligence of the poundkeeper.
 - (d) For any necessary expense and disbursement made in connection with the care, keeping and sale of said livestock in addition to the cost of feeding and watering of said animal.
- 6.2 Each appraiser shall be entitled to a fee of \$50.00 per each appraisal plus the current mileage rate as per policy, both ways for necessary travel in order to make such appraisal.
- 6.3 The owner of the livestock shall not be entitled to the return of the livestock until the actual costs incurred by the Municipality in apprehending and impounding the livestock, together with the costs of caring for the livestock and any fines imposed pursuant to this By-Law, have been paid in full.
- 6.4 If no person claims the livestock within fifteen days of the date of the notices of impoundment, or if the owner has not paid the costs and fines outlined in subsection 6.1 the poundkeeper shall deliver the livestock to be sold at public auction, without further notice to the owner.
- 6.5 Whereas any animal is sold by reason of not being claimed and released, the proceeds after deducting all costs and expenses as aforesaid shall be paid by the poundkeeper to the CAO of Municipality. The poundkeeper must provide to the CAO a statement showing the amount received for such animal, the amount and detail of expenses, the damages, fees to the pound, fees for expenses of the appraisers and all other amounts paid by the said poundkeeper.
- 6.6 If after all other fees and expenses are reimbursed, the proceeds from the sale of the animal is sufficient to pay any damages sustained by the owner or occupant of the land where the said animal was running at large, the poundkeeper shall pay such damages as assessed by the appraisers hereunder or as agreed between the said person and the owner of said animal.
- 6.7 In the event, however that the proceeds of the sale be insufficient to pay damages sustained by the owner or occupant of the land where the said animal was running at large, the poundkeeper shall not pay to the owner of land or distrainer such damage but the owner of land or distrainer shall be entitled to take any action at law for such damage sustained by the animal at large against the owner of the animal thereof as he deems suitable.

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- 6.8 If the proceeds of the sale be insufficient to pay all expenses and fees payable to the poundkeeper together with all expenses paid by the poundkeeper personally, but not including damages referred to in subsection 6.6 hereof, any balance of such expense shall be paid to the poundkeeper by the Municipality.
- 6.9 If the proceeds of the sale be insufficient to pay all expenses incurred during the apprehension of the animals at large, the balance shall be recovered as a debt due to the Municipality by the owner of such animal. In such case, the Municipality would produce a statement of expenses incurred and any proceeds received from the sale of the animal and the balance owing to the owner of the animal.
- 6.10 The CAO of the Municipality shall hold the balance of any proceeds of sale as noted in subsection 6.4 hereof in the trust for at least one year. If the owner of the said animal does not claim the balance during the one-year term, the same shall be placed into the general account of the Municipality.

PART VII: GENERAL PROVISIONS

- 7.1 Council, or the animal control officer on the authority of Council, may establish from time to time a temporary or permanent premise for the confinement of livestock apprehended pursuant to the provisions of this By-Law. This may include the premises where the apprehension took place, and the owner of such premises or any other such person as may be authorized by Council, shall provide care for the impounded animals at a rate of remuneration to be fixed from time to time by the Council. The CAO of the Municipality may authorize the establishment of a temporary pound, which temporary pound shall be ratified at the next regularly scheduled Council meeting.

Apprehension by Owner or Occupant of Land

- 7.2 The owner or occupant of any land in the Municipality, or by his servant or agent, may detain any animal found running at large upon any highway or trespassing or committing damage upon any land within the Municipality, provided that he shall immediately thereafter inform the animal control officer, poundkeeper or the CAO of the Municipality of the apprehension and confinement. When such distress is made the distrainer shall convey such animal to the nearest pound within the Municipality within twenty-four hours after such distraint, except in the case where the twenty-four-hour period expires on a Sunday or statutory holiday, at which time the period shall be extended by twenty-four hours.
- 7.3 Such distrainer shall be entitled to the following:
- (e) reasonable costs for conveying animal to pound, reasonableness to be determined by appraisers; must produce receipts.
 - (f) damage.
 - (g) reasonable sum for feeding or looking after such animals from the time of distress until the time of delivery to the poundkeeper.
- 7.4 The distrainer shall give the poundkeeper at the time of impounding a written statement setting out his expense of delivering such animals, the amount of damage and his or her expense, if any, incurred in looking after such animals until their delivery to the poundkeeper; must produce receipts where applicable.
- 7.5 In the event the distrainer and the owner of the animal distrained can not agree, within a period of twenty-four hours from the time the said animals are impounded, upon the amount due under the sub-section 7.4 hereof, the same shall be determined by two appraisers appointed under and by virtue of this By-Law for this purpose. In the event the two appraisers can not agree the mean between their respective valuations shall be taken.

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Interference with Enforcement


- 7.6 Its shall be an offence under this By-Law for a person to interfere or obstruct any attempt by the animal control officer, poundkeeper or the Council from carrying out its duties and obligations hereunder. Without limiting the generality of the foregoing, no person shall interfere or obstruct or attempt to interfere or obstruct an animal control officer, the poundkeeper, a police officer or any other person authorized to apprehend and impound an animal running at large, who is attempting to apprehend or impound, or who has apprehended and impounded, any animal in accordance with the provisions of this By-Law.
- 7.7 Any person who interferes with or obstructs the duties of an animal control officer, a poundkeeper, or any other person authorized to enforce any provisions of this By-Law, or who unlawfully enters any pound or unlawfully removes any animal impounded, is guilty of an offense and is liable:
- (a) to a fine of not less than \$500.00 and not more than \$1,000.00, plus all applicable costs and penalties.
- 7.8 Where the interference of enforcement or obstruction of the duties of an animal control officer, a poundkeeper, or any other person authorized to enforce any provisions of this By-Law, continues for more than one day, the person is guilty of a separate offense for each day that the interference of enforcement or obstruction of the duties continues.

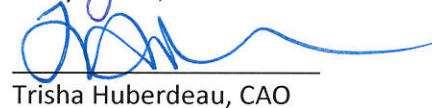
Liability

- 7.9 No liability shall attach to the animal control officer, the poundkeeper, the Council and/or the Municipality in carrying out their respective duties under this By-Law. Without limiting the generality of the foregoing, no liability shall attach to the animal control officer, the poundkeeper, the Council and/or the Municipality for any animal sold or otherwise disposed of pursuant to the provisions of this By-Law or killed or injured during the course of its apprehension or impoundment.

By-Law #1362 is hereby repealed.

DONE AND PASSED as a by-law of The Rural Municipality of Ellice - Archie at McAuley in the Province of Manitoba this 13th day of December, 2019.


Barry Lowes, Reeve


Trisha Huberdeau, CAO

Read a first time this 15th day of November, 2019.
Read a second time this 13th day of December, 2019.
Read a third time this 13th day of December, 2019.