



Town of Whitby

By-law # XXXX-24

Administrative Penalty By-law

A By-law to establish a system for Administrative Penalties in the Town of Whitby

Whereas Whereas Section 102.1 of the Municipal Act, 2001, S.O. 2001, c.25, as amended, (the "Municipal Act") and Ontario Regulation 333/07 (the "Regulation") authorize the Corporation of the Town of Whitby (the "Town") to require a Person to pay an Administrative Penalty for a contravention of any by-law respecting the parking, standing or stopping of vehicles;

And Whereas Section 434.1 of the Municipal Act authorizes the Town to require a Person, subject to such conditions as the municipality considers appropriate, to pay an Administrative Penalty if the municipality is satisfied that the Person has failed to comply with a by-law of the municipality;

And Whereas paragraph 151(1)(g) of the Municipal Act authorizes the Town to require a Person, subject to such conditions as the municipality considers appropriate, to pay an Administrative Penalty if the municipality is satisfied that the Person has failed to comply with any part of a system of licences established by the municipality;

And Whereas Sections 23.2, 23.3 and 23.5 of the Municipal Act authorize the Town to delegate its administrative and hearing powers;

And Whereas Section 391 of the Municipal Act authorizes the Town to pass by-laws imposing fees or charges for services or activities provided or done by or on behalf of it;

And Whereas the Council for the Town considers it desirable and necessary to provide for a system of Administrative Penalties and Administrative Fees for the designated Town by-laws.

Now therefore, the Council of The Corporation of the Town of Whitby hereby enacts as follows:

1. Definitions

- 1.1. In this By-law:
- 1.2. "Adjudication Fee" means the amount that the recipient is liable to pay as specified under Section 5.1 o) of this By-law and listed in Schedule "A";
- 1.3. "Administrative Fee" means any fee specified in this By-law, as amended;
- 1.4. "Administrative Penalty" means a monetary penalty set out in this By-law for a contravention of a Designated By-law;
- 1.5. "Commissioner" means the Commissioner of Legal and Enforcement Services/ Town Solicitor or their designate

- 1.6. “Court” means any court of law of the Province of Ontario, including but not limited to the Ontario Court of Justice, the Ontario Superior Court of Justice, and the Ontario Court of Appeal;
- 1.7. “Designated By-law” means a by-law with respect to parking, standing or stopping of vehicles that is designated by the Town as a by-law to which this By-law applies and, if only a part of a by-law is designated, includes only the designated part of the by-law;
- 1.8. “Fee – Hearing No-Show” means an Administrative Fee listed in Schedule “A” in respect of a Person’s failure to appear at the time and place scheduled for a hearing before a Hearing Officer;
- 1.9. “Fee – MTO Plate Denial” means an Administrative Fee listed in Schedule “A”, as represented by the Ontario Ministry of Transportation, for notifying the Registrar of Motor Vehicles for the purpose of denying renewal of a vehicle permit;
- 1.10. “Fee – MTO Search” means an Administrative Fee listed in Schedule “A” for searching the records of the Ontario Ministry of Transportation;
- 1.11. “Fee – Screening No-Show” means an Administrative Fee listed in Schedule “A” in respect of a Person’s failure to appear at the time and place scheduled for a review by a Screening Officer;
- 1.12. “Hearing Officer” means a Person who performs the duties of a Hearing Officer in accordance with Section 5 of this By-law, and is designated by the Commissioner of Legal and Enforcement Services;
- 1.13. “Ministry” means the Ontario Ministry of Transportation;
- 1.14. “Officer” means a Municipal Law Enforcement Officer appointed enforce the provisions of the Designated By-law;
- 1.15. “Penalty Notice” means a ticket issued pursuant to Section 3 of this By-law;
- 1.16. “Penalty Notice Number” means the number specified on the Penalty Notice that is unique to that Penalty Notice;
- 1.17. “Person” includes an individual or business name, sole proprietorship, corporation, partnership, or limited partnership, or an authorized representative thereof, to whom the context can apply according to law;
- 1.18. “Screening Officer” means a person who performs the functions of a Screening Officer in accordance with Section 4 and is designated by the Commissioner of Legal and Enforcement Services;

1.19. “Set Penalty Amount” means the amount that the recipient is liable to pay in respect of a contravention of the related by-law as identified in Schedule “X” of the Town’s Traffic By-law XXX-2024;

1.20. “Town” means The Corporation of the Town of Whitby.

2. Application

This By-law applies only to those contraventions included within Schedule “A”, attached hereto and forming part of this By-law.

3. Penalty Notice

3.1. Any person who contravenes a provision of a Designated By-law, or in the case of a violation of a provision of the Traffic By-Law XXX-2024, each registered owner of the vehicle, when given a Penalty Notice in accordance with this By-law, shall be liable to pay the amount specified by the Designated By-law.

3.2. Where the offence is continuous, each day the offence continues shall constitute a new and separate offence.

3.3. An Officer who has reason to believe that a person has contravened any provision of this By-law may issue a Penalty Notice.

3.4. The Penalty Notice shall be given to the person as soon as is reasonably practicable and shall include the following information:

- a) the date of the Penalty Notice;
- b) the Penalty Notice Number;
- c) particulars of the contravention;
- d) the amount of the Administrative Penalty;
- e) the identification number and signature of the issuing Officer;
- f) information respecting the process by which the person may exercise their right to request a review of the Administrative Penalty; and
- g) a statement advising that an Administrative Penalty will, unless cancelled pursuant to the review and appeal processes, constitute a debt of the Person to the Town.

3.5. As established in Section 27.5 of the Town’s Traffic By-law XXX-2024, the amount due for a Penalty Notice is:

- a) the Tier One (1) Payment set out in Schedule “X” of the Town’s Traffic By-law XXX-2024 for the related contravention for an initial offence;
- b) the Tier Two (2) Payment set out in Schedule “X” of the Town’s Traffic By-law XXX-2024 for the related offence for the repetition of the same offence within 90 days of receiving a Tier One (1) Offence.
- c) the Tier Three (3) Payment set out in “X” of the Town’s Traffic By-law XXX-2024 for the related offence for the repetition of the same offence within 90 days of receiving a Tier One (2) Offence.

the Tier Three (3) Payment set out in “X” of the Town’s Traffic By-law XXX-2024 for the related offence for the continuance the same offence until more than 90 calendar days have passed without the same infraction being committed.

4. Review by Screening Officer

4.1. The following applies to the review of an Administrative Penalty by a Screening Officer:

- a) A person who is served with a Penalty Notice may request that the Administrative Penalty be reviewed by a Screening Officer. A person must exercise this right before 4:30 pm on the fifteenth (15th) calendar day after the Penalty Notice was delivered.
- b) If a person has not requested a Screening Review on or before the date as set out in Section 4.1 a) above, the person may request that the Screening Officer extend the time to request a review within thirty (30) days after the person is served with the Penalty Notice. If no such request is made, the Administrative Penalty shall be deemed final.
- c) Every Person who requests a review by a Screening Officer shall receive a screening decision, served on the person in accordance with Section 6.
- d) A person’s right to request a review with a Screening Officer, or to request an extension of time to request a review, are exercised by giving to the Town notice on the prescribed form that includes:
 - I. the Penalty Notice Number;
 - II. the person’s mailing address and, if applicable, telephone number;
 - III. the person’s email address
 - IV. in the case of a request to extend time to request a review, the reasons, if any, for having failed to

exercise the right to request a review within fifteen (15) days from the date the Penalty Notice was received;

V. and the reasons for which the review has been requested.

- e) On a review of the Administrative Penalty, the Screening Officer may in the Screening Decision:
 - i. Affirm the Administrative Penalty;
 - ii. Cancel the Administrative Penalty;
 - iii. Reduce the Tier 2 or Tier 3 Administrative Penalty to the Tier One (1) Payment; or
 - iv. In the case of a Tier One (1) Penalty reduce the Administrative Penalty; or
 - v. Extend the time for payment, including any Late Payment Administrative Fees.
- h) A Screening Officer shall cancel or reduce payment of an Administrative Penalty, or extend the time for payment of an Administrative Penalty in a Screening Decision under the following circumstances:
 - i. a material error on the Penalty Notice has been made, which in the opinion of the Screening Officer, can only be remedied by cancellation; or
 - ii. the cancellation or reduction of an Administrative Penalty, or extended time for payment of an Administrative Penalty, including any Late Payment Administrative Fees, is necessary to reduce undue hardship.
- i) Where a person does not make a payment by the due date as determined by the Screening Officer in a Screening Decision, the Administrative Penalty will return (if reduced) to the applicable Tiered Penalty Amount plus any applicable Administrative Fee(s).
- j) A person who has been served with a Screening Decision pursuant to this By-law may appeal the Screening Decision to a Hearing Officer and shall do so within fifteen (15) calendar days after the Screening Decision was issued.

- k) A Screening Officer has no authority to consider questions relating to the validity of a statute, regulation or by-law or the constitutional applicability or operability of any statute, regulation or by-law.

5. Appeal to Hearings Officer

5.1. The following applies to the review of a Screening Decision by a Hearing Officer:

- a) A person may request a review by a Hearing Officer on or before 4:30 pm on the fifteenth (15th) calendar day after the Screening Decision was delivered..
- b) If a person has not requested a Screening Review on or before the date as set out in Section 5.1(a) above, the person may request that the Hearing Officer extend the time to request a review within thirty (30) days after the person is served with the Penalty Notice. If no such request is made, the Administrative Penalty shall be deemed final.
- c) A person's right to appeal the Screening Decision to a Hearing Officer, or request an extension of time to appeal, are exercised by giving to the Town notice on the prescribed form that includes:
 - I. the Penalty Notice Number;
 - II. the person's mailing address and, if applicable, telephone number;
 - III. the person's email address
 - IV. in the case of a request to extend time to appeal, the reasons, if any, for having failed to exercise the right to appeal within fifteen (15) days from the date the Screening Decision was issued; and
 - V. the reasons for which the appeal has been requested.
- d) Request to appeal or to request an extension of time to appeal is provided by completing the Hearing Officer Appeal Form in accordance with Section 6 of this By-law.
- e) The person shall be given no fewer than seven (7) calendar days notice as provided by Section 6 of the date, time, and place of the in person hearing of the appeal by the Hearing Officer.
- f) In the event that the person is unable to attend at the date, time and place as set out in the written notice, the person may submit a

request to the Town to reschedule the hearing no later than three (3) calendar days' prior to the scheduled hearing. The request to reschedule must indicate the reason for the request. The hearing will be rescheduled within forty-five (45) days of the originally scheduled hearing.

- g) The person will be permitted to reschedule an in -person hearing pursuant to Section 5.1(f) of this by-law one time.
- h) If the person fails to appear at the time and place scheduled for the in -person hearing of the appeal:
 - I. the person shall be deemed to have abandoned the appeal;
 - II. the Screening Decision and the Administrative Penalty as it may have been affected by the Screening Decision shall be deemed to be final and shall not be subject to any further review, including review by any Court; and
 - III. the person shall pay to the Town a Fee – Hearing No-Show.
- i) The Hearing Officer shall not make a determination with respect to a review of the Screening Decision where a person appears unless he or she has given the Person an opportunity to be heard.
- j) On an appeal of the Screening Decision, the Hearing Officer may:
 - I. Affirm the Administrative Penalty;
 - II. Cancel the Administrative Penalty;
 - III. Reduce the Tier 2 or Tier 3 Administrative Penalty to the Tier One (1) Payment; or
 - IV. Extend the time for payment, including any Late Payment Administrative Fees.
- k) Every person who requests a review by the Hearing Officer shall receive a Hearing Decision, served in accordance with Section 6 of this By-law.
- l) The decision of a Hearing Officer is final and not subject to review, including review by any Court.

- m) All hearings by a Hearing Officer shall be conducted in accordance with the Statutory Powers and Procedures Act, R.S.O. 1990, c. S.22, as amended.
- n) A Hearing Officer has no authority to consider questions relating to the validity of a statute, regulation or by-law or the constitutional applicability or operability of any statute, regulation or by-law.
- o) Every Person who receives an upheld decision in a review by the Hearing Officer in relation to a Penalty Notice issued through the Administrative Monetary Penalty System established by this By-law shall be responsible for an additional fee of \$25 for the purpose of the Town recovering administrative costs associated to the Hearing Officer Review.

6. Short Title

- 6.1. The service on a person of any document, notice, or decision, including but not limited to a Penalty Notice pursuant to this By-law, is deemed to have been served on the earliest of any of the following dates:
- a) when a copy is placed or affixed in a conspicuous place, on a person's vehicle;
 - b) when a copy is served on the person to whom it is addressed, by delivering it personally to the person;
 - c) when a copy is delivered by regular mail, on the fifth (5th) day after mailing to the person to whom it is addressed; or
 - d) immediately upon sending the notice or document, a copy by electronic mail (email) to the person's last known e-mail address.
- 6.2. Any notice or document to be given to the Town in respect of this By-law shall be on the prescribed form.

7. Administration

- 7.1. The Commissioner shall administer this By-law and establish any additional practices, policies, and procedures necessary to implement this By-law and may amend such practices, policies, and procedures from time to time, as the Commissioner deems necessary, without amendment to this By-law.
- 7.2. The Commissioner shall prescribe all forms and notices, including the Penalty Notice, necessary to implement this By-law and may amend such

forms and notices from time to time, as the Commissioner deems necessary, without amendment to this By-law.

- 7.3. The positions of Screening Officer and Hearing Officer are established through delegated authority and shall be appointed by the Commissioner.
- 7.4. Officers shall not accept payment of an Administrative Penalty respecting a Penalty Notice.
- 7.5. Where an Administrative Penalty and any applicable Administrative Fee(s) are not paid by the date on which they are due and payable, the Town:
 - i. may notify the Ministry of the default after thirty (30) days, at which time the Ministry shall not validate the permit of the person named in the notice of default nor issue a new permit to the person until the Administrative Penalty and any applicable Administrative Fee(s) are paid to the Town; or
 - ii. shall deem the outstanding amount to be unpaid taxes and shall be added to the tax roll and collected in the same manner as municipal taxes.
- 7.6. Where the Town notifies the Ministry of a default under this By-law, the person shall pay any applicable administration fee(s) imposed by the Ministry.
- 7.7. Where an Administrative Penalty or any Administrative Fees are not paid within thirty (30) days after the date they become due and payable, each person to whom the Penalty Notice was issued shall pay to the Town a Fee – MTO Plate Denial.
- 7.8. Where an Administrative Penalty is cancelled, any Administrative Fee(s) are also cancelled.
- 7.9. Once a Penalty Notice has been paid there is no further option for dispute.

8. Severability

- 8.1. Where a court of competent jurisdiction declares any section of this By-law to be invalid, or to be not in force, or without effect, it is the intention of Council in enacting this By-law that the remainder of this By-Law shall continue in force and be applied and enforced in accordance with its terms to the fullest extent possible according to law.

9. Interpretation

- 9.1. Where words and phrases used in this By-law are defined in the Highway Traffic Act, but not defined in this By-law, the definitions in the Highway Traffic Act shall apply to such words and phrases.

10. Short Title

- 10.1 This by-law may be cited as the “Administrative Penalty By-law”.

11. Effective Date

- 11.1 This by-law shall come into force and effect on May 1, 2024, at 12:00am.

By-law read and passed this *Select date day of Insert Month, Year.*

Elizabeth Roy, Mayor

Christopher Harris, Town Clerk