

The Corporation of the City of Port Colborne

By-law No. 6902/50/21

Being a By-law to Establish a System for Administrative Penalties for Non- Parking Offences within the City of Port Colborne

Whereas sections 8, 9 and 11 of the *Municipal Act, 2001, S.O. 2001, c. 25, as amended* (the "Municipal Act") authorizes the City of Port Colborne to pass by-laws necessary and desirable for municipal purposes; and

Whereas section 434.1(1) of the Municipal Act provides that a municipality may 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 passed under this Act; and

Whereas section 434.1(2) of the Municipal Act provides that the purpose of a system of administrative penalties established under this section shall be to assist the municipality in promoting compliance with its by-laws; and

Whereas Section 15.4.1 of the *Building Code Act, 1992* as amended, authorizes a municipality to pass a by-law that may require a person to pay an administrative penalty if the municipality is satisfied that the person has failed to comply with a by-law of the municipality passed under the Building Code Act, 1992, as amended, or an order of an officer authorized under 15.2(2) or 15.3, 2017, c.34, Sched. 2, s.10 of the Building Code Act, 1992, as amended; and

Whereas the City of Port Colborne considers it desirable to enforce and seek compliance with designated by-laws or portions thereof through an administrative monetary penalty system;

Now therefore the Municipal Council of The Corporation of the City of Port Colborne enacts as follows:

**1.0 Short Title and Scope**

- 1.1 The Short Title of this by-law is the "Administrative (Non-Parking) Penalty By-Law."
- 1.2 This By-law applies to all Designated By-laws.
- 1.3 The *Provincial Offences Act, R.S.O. 1990, c. P.33*, as amended continues to apply to Designated By-laws.
- 1.4 In carrying out their duties under this By-law, Screening Officers and Hearing Officers do not have jurisdiction to consider any question relating to the validity of a statute, regulation or by-law, including but not limited to constitutional questions.

**2.0 Definitions**

- 2.1 The following terms are defined for the purposes of this by-law:
- 2.2 "**Administrative Fee**" means any fee specified in this by-law listed in Schedule "A" of this by-law;
- 2.3 "**Administrative Penalty**" means a monetary penalty as set out in the Schedules "B" to "L" to this by-law and approved by Council for a contravention of a Designated By-law;

- 2.4 **“By-law”** means this by-law and any Schedule attached hereto as they may from time to time be amended;
- 2.5 **“City”** means The Corporation of the City of Port Colborne;
- 2.6 **“Clerk”** means the municipal Clerk of the City;
- 2.7 **“Council”** means the elected Council of the City;
- 2.8 **“Designated By-law”** means a by-law, or provision of a by-law that is designated under this or any other by-law, as a by-law or provision of a by-law to which this By-law applies and is listed in Schedule “B” to “L” attached to this By-law;
- 2.9 **“Director”** means the Director of Community Safety and Enforcement or his or her designate;
- 2.10 **“Hearing Officer”** means the Hearing Officer appointed by Council from time to time pursuant to the Screening and Hearing Officer By-law and as may be amended or replaced;
- 2.11 **“Officer”** means each of:
- i. the Director;
  - ii. a Municipal Law Enforcement Officer appointed by or under the authority of a City by-law to enforce a Designated By-law;
  - iii. a police officer;
  - iv. a Fire Prevention Officer appointed by or under the authority of a City by-law to enforce a Designated By-law; and
  - v. a licensed agent of the Niagara SPCA appointed by or under the authority of a City by-law to enforce a Designated By-law.
- 2.12 **“Penalty Notice”** means a notice given to a Person pursuant this by-law;
- 2.13 **“Penalty Notice Date”** means the date specified on the Penalty Notice;
- 2.14 **“Penalty Notice Number”** means the number specified on the Penalty Notice;
- 2.15 **“Person”** includes an individual partnership, association, firm or corporation.
- 2.16 **“Request for Screening Form”** means the request form that must be filed by a Person under this By-law to request a screening;
- 2.17 **“Request for a Hearing Form”** means the request form that must be filled out by a Person under this By-law to request a hearing;
- 2.18 **“Screening Decision”** means a decision made by a Screening Officer;
- 2.19 **“Screening Officer”** means a person who performs the functions of a Screening Officer in accordance with this By-law;

3.0 **Designated By-laws**

- 3.1 City by-laws, or portions thereof, that are listed in schedule “B” to “L” of

this By-law shall be and are hereby designated as Designated By-laws.

3.2 The provisions of the By-law may apply to any contravention of a Designated By-law as set out in the attached Schedules.

**4.0 Penalty Notice**

4.1 Every Person who contravenes a provision of a Designated By-law shall be liable, upon the issuance of a Penalty Notice, to pay to the City an Administrative Penalty in the amount specified in Schedule "B" to "L" of this By-law.

4.2 An Officer who has reason to believe that a Person has contravened any provision of a Designated By-law may issue a Penalty Notice to the Person.

4.3 The Director may, before 4:00 pm of the tenth (10<sup>th</sup>) day after a Penalty Notice Date, cancel an Administrative Penalty.

4.4 A Penalty Notice shall include the following information:

- a) the date of the contravention;
- b) the date of the issuance of the Penalty Notice;
- c) the location of the contravention;
- d) name of Person to whom the notice is issued;
- e) Penalty Notice Number;
- f) particulars of the contravention;
- g) the amount of the Administrative Penalty;
- h) such information as the Director determines is appropriate respecting the process by which the Person may exercise the right to request a review of the Administrative Penalty;
- i) a statement advising that an Administrative Penalty will, unless cancelled or reduced pursuant to the review and appeal processes, constitute a debt of the Person to the City; and
- j) signature of the Officer.

**5.0 Review by Screening Officer**

5.1 A person who is given a Penalty Notice shall:

- a) pay the Administrative Penalty within 15 days; or
- b) request that the Administrative Penalty be reviewed by a Screening Officer.

5.2 A Person's right to request a review expires if it has not been exercised in the manner prescribed in Subsection 5.4 before 4:00 p.m. on the fifteenth (15<sup>th</sup>) day after the Penalty Notice Date.

5.3 A Person's right to request an extension of the time to request a review expires if it has not been exercised in the manner prescribed

in Subsection 5.4 before 4:00 p.m. on the Thirtieth (30<sup>th</sup>) day after the Penalty Notice Date at which time:

- a) the Person shall be deemed to have waived the right to request a review;
- b) the Administrative Penalty shall be deemed to be affirmed; and
- c) the Administrative Penalty shall not be subject to review, including review by any Court.

**5.4** A Person's right to request a review or to request an extension of time to request a review are exercised by giving to the City written notice of the request to review by:

- a) submitting a Request for Screening Form available at the City's web page as set out in the Penalty Notice, by mail, fax or email and scheduling the time and place for the review; or
- b) attending in person at the location listed on the Penalty Notice to complete a Request for Screening Form and scheduling the time and place for the review.

**5.5** The Request for a Screening Form shall include the following Information:

- a) the Penalty Notice Number;
- b) the Person's mailing address and, if applicable, facsimile transmission number and e-mail address;
- c) in the case of a request to extend the time to request a review, the reasons, if any, for having failed to exercise the right to request a review within the time limit prescribed in this By-law;
- d) particulars of all grounds upon which the request to review is based; and
- e) the Person's election to:
  - i. meet with a Screening Officer for the review in person or virtually, or
  - ii. have the review undertaken by a Screening Officer in writing in respect of the particulars provided by the Person.

**5.6** Where the Person elects to meet with a Screening Officer, the Person shall be given notice of the date, time, place and/or mode the review by facsimile, e-mail or mailing address as provided by the Person in the Request for Screening Form.

**5.7** Where the Person elects to meet with a Screening Officer and the Person fails to appear at the time and place scheduled for a review or fails to remain at such place until the Screening Officer has made a Decision respecting the Administrative Penalty:

- a) the Person shall be deemed to have abandoned the request for the review;
- b) the Administrative Penalty shall be deemed to be affirmed;
- c) the Administrative Penalty shall not be subject to review, including review by any Court; and

- d) the Person shall pay to the City a Fee – Screening No-Show.

**5.8** Subject to Subsection 5.3 and 5.7, the Screening Officer may:

- a) deny an extension of time for a review in which case the Administrative Penalty is deemed to be affirmed; or
- b) grant an extension of time for a review.
  - i. For the purposes of Section 5.8 b), the Screening Officer may only extend the time to request a review of an Administrative Penalty where the Person demonstrates, on a balance of probabilities, the existence of extenuating circumstances that warrant the extension of time.
- c) cancel, reduce or extend the time for payment of the Administrative Penalty and any Administrative Fees respecting that Administrative Penalty, where the Screening Officer is satisfied that doing so would maintain the general intent and purpose of the Designated By-law and that:
  - i. there is reason to doubt that the Person contravened the Designated By-law;
  - ii. the Person took all reasonable steps to prevent the contravention; or
  - iii. that the cancellation, reduction or extension of the time for payment is necessary to relieve undue financial hardship.

**5.9** After a Review is complete, the Screening Officer shall serve the Person with a Screening Decision.

**6.0 Appeal to Hearing Officer**

**6.1** A Person who has received a decision from a Screening Officer may appeal to a Hearing Officer against the Screening Decision.

**6.2** A Person's right to appeal expires if it has not been exercised in the manner prescribed in Subsection 6.4 before 4:00 p.m. on the fifteenth (15<sup>th</sup>) day after the Screening Decision Date.

**6.3** A Person's right to request an extension of the time to appeal expires if it has not been exercised in the manner prescribed in Subsection 6.4 before 4:00 p.m. on the thirtieth (30<sup>th</sup>) day after the Screening Decision Date at which time:

- a) the Person shall be deemed to have waived the right to appeal;
- b) the Screening Decision and the Administrative Penalty as it may have been affected by the Screening Decision shall be deemed to be affirmed; and
- c) the Screening Decision and the Administrative Penalty as it may have been affected by the Screening Decision shall be deemed to be final and not subject to any further review, including review by any Court.

**6.4** A Person's right to request an Appeal of a Screening Officer's decision or to request an extension of time to Appeal to a Hearing Officer are exercised by giving to the City written notice by:

- a) submitting a Request for Hearing Form available at the City's web page as set out in the Penalty Notice by mail, fax or email and scheduling the time and place for the review; or
- b) attending in person at the location listed on the Penalty Notice to complete a Request for Hearing Form and scheduling the time and place for the review.

**6.5** The Request for Hearing Form shall include the following Information:

- a) the Penalty Notice Number;
- b) the Person's mailing address, fax or email address;
- c) in the case of a request to extend the time to appeal, the reasons, if any, for having failed to exercise the right to appeal within the time limit prescribed by Subsection 6.4;
- d) particulars of all grounds upon which the Appeal is made; and
- e) a copy of the Person's completed Request for Screening Form and the Screening Decision of the Screening Officer.

**6.6** The Person shall be given no fewer than seven (7) days' notice of the date, time and place of the hearing of the appeal.

**6.7** A request for Hearing or a request for an extension of time appeal shall only be scheduled by the City if the Person has submitted the request within the time limits set out in Subsections 6.4 and 6.5.

**6.8** Where the Person fails to appear at the time and place scheduled for a hearing of the Appeal:

- a) the person shall be deemed to have abandoned the Appeal;
- b) the Screening Decision and the Administrative Penalty as it may have been affected by the Screening Decision shall be deemed to be affirmed;
- c) the Screening Decision and the Administrative Penalty as it may have been affected by the Screening Decision shall be deemed to be final and are not subject to any further review or appeal, including review or appeal by any Court; and
- d) the Person shall pay to the City the Fee – Hearing No-Show.

**6.9** A Hearing Officer shall not make any decision respecting an Appeal unless the Hearing Officer has given each of the Person, the Director, and the Officer who gave the Penalty Notice an opportunity to be heard at the time and place scheduled for the hearing of the Appeal.

**6.10** A Hearing Officer may amend a simple error or omission on the Penalty Notice provided the amendment is minor in nature and the appellant is given an opportunity to be heard on the request to amend.

**6.11** Subject to Subsections 6.3 and 6.8 the Hearing Officer may:

- a) deny an extension of time for a Hearing in which case the Administrative Penalty including any Administrative Fees are deemed to be affirmed;
- b) grant an extension of time for a Hearing;

- i. for the purposes of Subsection 6.11(a) the Hearing Officer may only extend the time to request a Hearing of an Administrative Penalty where the Person demonstrates, on a balance of probabilities, the existence of extenuating circumstances that warrant the extension of time.
  - c) affirm, cancel, or vary the Screening Officer's Decision and extend the time for payment of the Administrative Penalty, including any Administrative Fee, on the following grounds:
    - i. where the Person establishes on a balance of probabilities, that he or she did not contravene the Designated By-law as described in the Penalty Notice; or
    - ii. where the Person establishes on a balance of probabilities, that the reduction or extension of time for payment of the Administrative Penalty including any Administrative Fee, is necessary to relieve any undue hardship.
- 6.12** All hearings conducted by the Hearing Officer shall be in accordance with the *Statutory Powers and Procedures Act*, R.S.O. 1990, c. S.22, as amended.
- 6.13** After a hearing is complete, the Hearing Officer shall immediately serve the Person with a Hearing Decision.
- 6.14** The decision of a Hearing Officer is final.

## **7.0 Service of Documents or Notice**

- 7.1** Service of any document or notice, including a Penalty Notice, under this By-law may be given in any of the following ways, and is effective:
- a) when a copy is immediately served on the Person to whom it is addressed;
  - b) on the fifth (5th) day after a copy is sent by registered mail or by regular letter mail to the Person's last known address;
  - c) upon the conclusion of the transmission of a copy by facsimile transmission to the Person's last known facsimile transmission number; or
  - d) upon the sending of the notice or document or a copy thereof by e-mail transmission to the Person's last known e-mail address.
- 7.2** For the purpose of Subsection 7.1(b), (c) and (d), a Person's last known address, last known facsimile transmission number and last known e-mail address are deemed to include those provided by the Person pursuant to Subsections 5.5(b) and 6.5(b).
- 7.3** Any notice or document respecting this By-law to be given to the City shall be in writing, shall be given in any of the following ways, and is effective:
- a) When a copy is delivered to the City Clerk at the City's municipal offices at 66 Charlotte Street during normal business hours;
  - b) on the fifth (5th) day after a copy is sent by registered mail or by regular letter mail to "Parking Administrative Penalties Att:

Clerk City of Port Colborne, 66 Charlotte Street, Port Colborne, ON L3K 3B3”;

- c) upon conclusion of the transmission of a copy by facsimile transmission to (905) 835-2939; or
- d) upon the sending a Request for Screening by e-mail transmission to: [ampsappeals@portcolborne.ca](mailto:ampsappeals@portcolborne.ca)

#### **8.0 Financial Administration**

- 8.1 No Officer may accept payment of the Administrative Penalty.
- 8.2 An Administrative Penalty constitutes a debt to the City of each Person to whom or to which the Penalty Notice was given.
- 8.3 Where a Person has paid an Administrative Penalty or an Administrative Fee that is then cancelled or reduced pursuant to this By-law, the City shall refund the amount cancelled or reduced.
- 8.4 Where an Administrative Penalty or any Administrative Fee respecting that Administrative Penalty are not paid within fifteen (15) days after the date that they become due and payable, a Person to whom the Penalty Notice was given shall pay to the City a Fee – Late Payment.
- 8.5 Where a Person provides a payment to the City for payment of any Administrative Penalty or Administrative Fee, which has insufficient funds available in the account on which the instrument was drawn, shall pay to the City a Fee – NSF.

#### **9.0 Administration**

- 9.1 The Director shall administer this By-law and establish any practices, policies and procedures necessary to implement this By-law and may amend such practices, policies and procedures from time to time as the Director deems necessary.
- 9.2 The Director 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 Director deems necessary.
- 9.3 The Director may designate areas within the City for conducting screening reviews and hearings under this By-law.

#### **10.0 General Provisions**

- 10.1 If an Administrative Penalty is paid, then a person is deemed to have waived their right to a review or appeal, and the matter is not subject to any further review or appeal including review or appeal by a Court.
- 10.2 Where an Administrative Penalty is cancelled by a Screening Officer or Hearing Officer, any Administrative Fee(s) are also cancelled.
- 10.3 A Person claiming financial hardship under this By-law shall provide documented proof of the financial hardship to the Director, the Screening Officer or the Hearing Officer, as applicable.
- 10.4 Any schedule attached to this By-law forms part of this By-law.



**11.0 Complaints and Comments**

**11.1** Complaints and comments respecting the administration of the City's system of Administrative Penalties may be given to the Director. The Director can consider each such complaint or comment in relation to the Director's consideration of opportunities for improvements to the City's system of Administrative Penalties.


**12.0 Validity**

**12.1** If a court or tribunal of competent jurisdiction declares any provision or part of a provision of this By-law to be illegal or unenforceable, then that particular provision or provisions or part of the provision shall be severed and the remainder of this By-law shall continue to remain in full force and shall be valid and enforceable to the fullest extent permitted by law.

**13.0 Effective Date**

**13.1** That this by-law shall come into force and take effect on the day that it is passed by Council.

Enacted and passed this 14th day of June, 2021.



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William C. Steele, Mayor



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Amber LaPointe, City Clerk

**SCHEDULE "A"**

**CITY OF PORT COLBORNE ADMINISTRATIVE PENALTY  
(NON-PARKING) BY-LAW NO. 6902/50/21 ADMINISTRATIVE FEES**

The table below lists the Administrative Fees as defined in Section 1.2 of this By-law

<b>Administrative Fee Description</b>	<b>Fee Amount</b>
Late Payment Fee	\$25.00
NSF Fee	\$30.00
Screening Non-Appearance Fee	\$100.00
Hearing Non-Appearance Fee	\$250.00
<b>NOTE:</b> Fees listed in Schedules to this By-law will be subject to Harmonized Sales Tax (H.S.T) where applicable.	