

**THE CORPORATION OF THE
TOWNSHIP OF WAINFLEET**

BY-LAW NO. 027-2019

AS AMENDED BY BY-LAW NO. 079-2019 & BY-LAW 005-2020

Being a by-law to Establish an Administrative Monetary Penalty System
for Non-Parking Related Offences

WHEREAS section 434.1 (1) of the Municipal Act, 2001, S.O. 2001, c.25, as amended (Municipal Act, 2001) 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, 2001, provides that the purpose of a system of administrative penalties established by a municipality 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 section 434.2 (1) of the Municipal Act, 2001, provides that an administrative penalty imposed by a municipality on a person under section 434.1 constitutes a debt of the person to the municipality; and,

WHEREAS section 391 (1) of the Municipal Act, 2001, provides that without limiting sections, 9, 10 and 11, those sections authorize a Municipality to impose fees or charges on persons; and,

WHEREAS the Council of the Corporation of the Township of Wainfleet considers it desirable to enforce and seek compliance with the designated by-laws, or portions of those by-laws, through an administrative penalty system;

NOW THEREFORE the Council of the Corporation of the Township of Wainfleet enacts as follows

1. Definitions

- 1.1. In this by-law:
- 1.2. "Administrative Fee" shall mean any fee specified in this by-law or reference to fees in a designated by-law listed in Schedule "B" of this by-law.
- 1.3. "Administrative Penalty" shall mean a penalty established and approved by Council for a contravention of a Designated By-law.

- 1.4. "AMPS" shall mean Administrative Monetary Penalty System.
- 1.5. "Council" shall mean the Council of the Corporation of the Township of Wainfleet.
- 1.6. "Day" shall mean any calendar day.
- 1.7. "Designated By-law" shall mean a by-law, or a part or provision of a by-law, that is designated under this or any other by-law, and is listed in the attached Schedule "A", to which this AMPS by-law applies.
- 1.8. "Electronic Mail" shall refer to email, and the two terms shall be used interchangeably.
- 1.9. "Hearing Decision" shall mean written notice of decision made by a Hearing Officer.
- 1.10. "Hearing Officer" shall mean a person who performs the duties of Hearing Officer as set out in section 5 of this by-law, and pursuant the Township's Screening and Hearing Officer By-law.
- 1.11. "Holiday" shall mean a Saturday, Sunday, any statutory holiday in the Province of Ontario or any Day the Municipal Office of the Township of Wainfleet is officially closed to the public.
- 1.12. "Late Payment Fee" means any Administrative Fee that is past the prescribed times as listed in Schedule "B" of this by-law.
- 1.13. "NSF Fee" shall mean an added fee as stated in Schedule "B" of this By-law for payment received for an Administrative Penalty for which there are insufficient funds available in the account.
- 1.14. "Non-Appearance Fee" shall mean a fee stated in Schedule "B" of this by-law in respect to a person's failure to appear at a scheduled Hearing or Screening Review.
- 1.15. "Officer" shall mean:
 - i. a police officer employed by the Royal Canadian Mounted Police (RCMP), Ontario Provincial Police (OPP) or Niagara Regional Police Service (NRPS);
 - ii. a Provincial Offences Officer of the Township or other person appointed by or under the authority of a Township by-law to enforce Township by-laws including, but not limited to, an appointed By-law Enforcement Officer for the Township of Wainfleet or an employee of the Ontario Society for the Prevention of Cruelty of Animals (OSPCA).

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- 1.16. "Penalty Notice" shall mean a notice given to a Person pursuant to section 3 of this AMPS by-law.
- 1.17. "Penalty Notice Date" shall mean the date the contravention specified on the Penalty Notice, in accordance with section 3 of this by-law.
- 1.18. "Penalty Notice Number" shall mean a reference number that is specified on the Penalty Notice that is unique to that Penalty Notice only.
- 1.19. "Person" includes an individual or business name, sole proprietorship, corporation, partnership, or limited partnership, or an authorized representative thereof.
- 1.20. "Request for Review by a Hearing Officer" shall mean the request that may be made in accordance with section 5 of this by-law for review of a Screening Decision.
- 1.21. "Review by Hearing Officer" or "Hearing Review" shall mean the process set out in section 5 of this by-law.
- 1.22. "Review by Screening Officer" or "Screening Review" shall mean the process set out in section 4 of this by-law.
- 1.23. "Screening Decision" shall mean written notice of decision made by a Screening Officer.
- 1.24. "Screening Officer" shall mean a person who performs the functions of a of Screening Officer in accordance with section 4 of this By-law and pursuant to the Township's Screening and Hearing Officer By-law.
- 1.25. "Township" shall mean The Corporation of the Township of Wainfleet.

2. Application of this By-Law

- 2.0 The Township's by-laws, or portions of Township by-laws, listed in the attached Schedule "A" of this By-law shall be Designated By-laws for the purposes of sections 102.1 and 151 of the Municipal Act and paragraph 3(1)(b) of the Regulation.
- 2.1 Schedule "B" of this By-law shall set out Administrative Fees imposed for the purposes of this By-law.

3. Penalty Notice

- 3.0 Every Person in contravention of a Designated By-law shall upon issuance of a Penalty Notice be liable to pay the Township an Administrative Penalty.
- 3.1 An Officer who has reason to believe that a Person has contravened any Designated By-law may issue a Penalty Notice as soon as reasonably practicable.

3.2 A Penalty Notice may include the following information:

- (a) Municipal Address;
- (b) Penalty Notice Date;
- (c) Penalty Notice Number;
- (d) name of the Person;
- (e) details of the Designated By-law infraction including short form wording or other particulars reasonably sufficient to indicate the contravention;
- (f) the date on which the Administrative Penalty is due and payable;
- (g) Officer name, Officer ID number, and signature of Officer;
- (h) process for a person to exercise their right to a Screening Review
- (i) the amount of the Administrative Penalty
- (j) statement that an unpaid Administrative Penalty including any applicable fee will constitute a debt of that Person to the Township of Wainfleet, unless cancelled pursuant to the Screening or Hearing process

3.4 No Officer may accept payment of an Administrative Penalty or Administrative Fee.

3.5 A Person who is served with a Penalty Notice and who does not pay the amount of the Administrative Penalty on or before the date on which the Penalty Notice is due and payable, shall also pay the Township any applicable Administrative Fee(s).

4. **Review by Screening Officer**

4.0 A Person who is served with a Penalty Notice may request that the Administrative Penalty be reviewed by a Screening Officer and shall do so on or before the date on which the Administrative Penalty is due and payable, and in accordance with the process set out in Section 4.3.

4.1 If a Person has not requested a Screening Review on or before the date on which the Administrative Penalty is due and payable, the Person may request that the Screening Officer extend the time to request a Screening Review to a date that is no later than forty-five (45) days after the Penalty Notice Date, in accordance with the process set out in Section 4.3.

4.2 A Person's right to request an extension of time for a Screening Review expires if it has not been exercised on or before forty-five (45) days after the Penalty Notice Date, at which time:

- (a) the Person shall be deemed to have waived the right to request a Screening

Review or request an extension of time for a Screening Review; and,

- (b) the Administrative Penalty shall be deemed to be confirmed on the sixteenth (16th) day following the Penalty Notice Date; and,
 - (c) the Administrative Penalty shall not be subject to any further review, including a review by any Court.
- 4.3 A Person's Request for Review by Screening Officer or request for an extension of time to request a Screening Review are exercised by:
- (a) a submission in writing to the Screening Officer of a Request for Review by Screening Officer or request for an extension of time to request a Screening Review; or (b) calling the telephone number listed on the Penalty Notice to make a Request for Review by Screening Officer or to request an extension of time to request a Screening Review.
- 4.4 A Request for Review by Screening Officer of an Administrative Penalty or a request for an extension of time to request a Screening Review shall include the Penalty Notice Number and the Person's contact information.
- 4.5 A Request for Review by Screening Officer or a request for an extension of time to request a Screening Review shall only be scheduled if the Person makes the request on or before the dates established by Sections 4.0 or 4.1 of this By-law.
- 4.6 On a request for an extension of time to request a Screening Review, the Screening Officer may only extend the time to request a Screening Review where the Person demonstrates, on a balance of probabilities, the existence of extenuating circumstances that warrant the extension of time.
- 4.7 Where an extension of time to request a Screening Review is not granted by the Screening Officer, the Administrative Penalty and any applicable Administrative Fee(s) are deemed to be confirmed.
- 4.8 Where a Person fails to attend at the time and place scheduled for a Screening Review of an Administrative Penalty:
- (a) the Person shall be deemed to have abandoned the request for a Screening Review of the Administrative Penalty;
 - (b) the Administrative Penalty as set out in the Penalty Notice shall be deemed to be confirmed on the sixteenth (16th) day following the Penalty Notice Date;
 - (c) the Administrative Penalty shall not be subject to any further review, including a review by any Court; and
 - (c) the Person shall pay to the Township a Screening Non-appearance Fee and any other applicable Administrative Fee(s).

4.9 On a review of an Administrative Penalty, the Screening Officer may:

- (a) affirm the Administrative Penalty; or
- (b) cancel or reduce the Administrative Penalty or extend the time for payment of the Administrative Penalty, including any Administrative Fee(s), on the following grounds:
 - (i) where the Person establishes on the balance of probabilities that they did not contravene the Designated By-law(s) as described in the Penalty Notice; or
 - (ii) where the Person establishes on a balance of probabilities that the cancellation, reduction or extension of time for payment of the Administrative Penalty, including any Administrative Fee(s), is necessary to relieve any undue hardship.

4.10 On a Screening Review of an Administrative Penalty, before making a decision, a Screening Officer shall conduct an interview with the Person.

4.11 After a Review by Screening Officer, the Screening Officer shall deliver a Screening Decision to the Person, in accordance with Section 6 of this By-law.

4.12 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. **Review by Hearing Officer**

5.0 A Person may Request a Review by Hearing Officer during the Screening Review.

5.1 If a Person has not made a Request for Review by Hearing Officer at the time of the Screening Review, the Person may make a Request for Review by Hearing Officer before the due and payable date for the Administrative Penalty listed on the Screening Decision.

5.2 The Person's right to Request for Review by Hearing Officer expires if it has not been exercised on or before the due and payable date for the Administrative Penalty listed on the Screening Decision, at which time:

- (a) the Person shall be deemed to have waived the right to Request for Review by Hearing Officer;
- (b) the Screening Decision and the Administrative Penalty and any Administrative Fee(s), if applicable, as modified in the Screening Decision, shall be deemed to be confirmed; and
- (c) the Screening Decision and Administrative Penalty shall not be subject to any

further review, including a review by any Court.

5.3 A Person's Request for Review by Hearing Officer is exercised by:

- (a) a submission in writing to the Township for a Request for Review by Hearing Officer or request for an extension of time to request a Hearing; or
- (b) attending in person at the location listed on the Screening Decision to make Request for Review by Hearing Officer or request an extension of time to request a Hearing; or
- (c) calling the telephone number listed on the Screening Decision to make a Request for Review by Hearing Officer or request an extension of time to request a Hearing.

5.4 A Request for Review by Hearing Officer shall only be scheduled if the Person makes the request within the time limits set out in sections 5.0 or 5.1 of this By-law.

5.5 Where a Person fails to appear at the time and place scheduled for a Hearing:

- (a) the Person shall be deemed to have abandoned the Hearing for review of a Screening Decision;
- (b) the Screening Decision and the Administrative Penalty and any Administrative Fee(s) shall be deemed to be confirmed;
- (c) the Screening Decision and the Administrative Penalty and any Administrative Fee(s) shall not be subject to any further review, including a review by any Court; and
- (d) the Person shall pay to the Township a Hearing Non-appearance Fee, Late Payment Fee and any other applicable Administrative Fee(s).

5.6 On a review of a Screening Decision, the Hearing Officer may:

- (a) confirm the Screening Decision; or
- (b) cancel or reduce the Administrative Penalty or extend the time for payment of the Administrative Penalty, including any Administrative Fee(s), on the following grounds:
 - (i) where the Person establishes on a balance of probabilities that they did not contravene the Designated By-law(s) as described in the Penalty Notice; or
 - (ii) where the Person establishes on a balance of probabilities that the cancellation, reduction or extension of time for payment of the Administrative Penalty, including any Administrative Fee(s), is

necessary to relieve any undue hardship.

- 5.7 A Hearing Officer shall not make any decision respecting a review of a Screening Decision unless the Hearing Officer has given the Person and a representative of the Township an opportunity to be heard at the time and place scheduled for the Hearing.
- 5.8 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.
- 5.9 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.
- 5.10 After a Hearing is complete, the Hearing Officer shall deliver to the Person a Hearing Decision, in accordance with Section 6 of this By-law.
- 5.11 The decision of a Hearing Officer is final.

6. Service of Documents

- 6.0 The service of any document, notice or decision, including a Penalty Notice, pursuant to this By-law, when served in any of the following ways, is deemed effective:
- (a) immediately, when a copy is personally delivered to the Person to whom it is addressed;
 - (b) on the seventh (7th) Day following the date a copy is sent by registered mail or by regular mail to the Person's last known address;
 - (c) immediately upon the conclusion of a copy by facsimile transmission to the Person's last known facsimile transmission number; or
 - (d) immediately upon sending a copy by electronic mail to the Person's last known electronic mail address.
- 6.1 For the purposes of subsections 6.0 (b), (c) and (d) of this By-law, a Person's last known address, facsimile number, and electronic mail address includes an address, facsimile number and electronic mail address provided by the Person to the Township as may be required by a form, practice or policy under this By-law.

7. Administration

- 7.0 The Clerk 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 Clerk deems necessary, without amendment to this By-law.
- 7.1 The Clerk 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 Clerk deems necessary, without amendment to this By-law.

- 7.2 An Administrative Penalty, including any Administrative Fee(s), that is confirmed or reduced, or in respect of which the time for payment has been extended, remaining unpaid after the date when it is due and payable, constitutes a debt to the Township owed by the Person.
- a) Pursuant to Section 434.2(2) of the Municipal Act, where an administrative penalty is imposed under the Municipal Act remain unpaid after the day that it becomes due and payable, as specified in the Penalty Notice, the administrative penalty shall be added to the tax roll for any property in the local municipality for which all of the owners are responsible for paying the administrative penalty, and collected it in the same manner as municipal taxes.
- ~~(a) Pursuant to subsections 398 (1) and (2) of the Municipal Act, where an Administrative Penalty, including any Administrative Fees(s) remain unpaid after the final date on which it is payable as specified in the Penalty Notice, the Administrative Penalty, including any Administrative Fees(s) shall be deemed to be unpaid taxes and the outstanding amount shall be added to the tax roll and collected in the same manner as municipal taxes.~~
- 7.3 Where an Administrative Penalty is not paid by the date on which the Administrative Penalty is due and payable, the Person shall pay to the Township a Late Payment Fee, in addition to the Administrative Penalty and any applicable Administrative Fee(s).
- 7.4 Where a Person makes payments to the Township of any Administrative Penalty, Administrative Fee(s) or Late Payment Fee(s), by negotiable instrument, for which there are insufficient funds available in the account on which the instrument was drawn, the Person shall pay to the Township the NSF Fee set out Schedule "B" of this By-law.
- 7.5 Where an Administrative Penalty is cancelled by a Screening Officer or Hearing Officer, any Administrative Fee(s) are also cancelled.
- 7.6 Any time limit that would otherwise expire on a Holiday is extended to the next day that is not a Holiday.
- 7.7 A Person claiming financial hardship under this By-law shall provide documented proof of the financial hardship to the Clerk, the Screening Officer or the Hearing Officer, as applicable.
- 7.8 Any schedule attached to this By-law forms part of this By-law.
- 8. Severability**
- 8.0 Should any provision, or any part of a provision, of this By-law be declared invalid, or

to be of no force and effect, by a court of competent jurisdiction, it is the intent of Council that such a provision, or part of a provision, shall be severed from this Bylaw, and every other provision of this By-law shall be applied and enforced in accordance with its terms to the extent possible according to law.

9. Short Title

10.0 This By-law may be referred to as the AMPS By-law for Non-Parking Offences.

10. Effective Date

11.0 This By-law shall come into force and effect on the day of its passing.

BY-LAW READ A FIRST TIME THIS 9th DAY OF APRIL, 2019.

BY-LAW READ A SECOND TIME THIS 9th DAY OF APRIL, 2019.

BY-LAW READ A THIRD TIME AND FINALLY PASSED THIS 9th DAY OF APRIL, 2019.

K. Gibson

W. Kolasa, Clerk

SCHEDULE "A"

Administrative Monetary Penalty By-law for Non-Parking Offences

DESIGNATED BY-LAWS

Designated By-law	By-law Number
Animals at Large	008-2018
Building	027-2012
Clean Yards	073-2019
Discharge of Firearms	025-2013
Dog Control	014-2016
Entry onto Adjoining Lands	027-2011
Exotic Animal	011-2018
Fence	019-2005
Fireworks	021-2007
Fouling of Roads	584-78
Medical Marijuana Facilities	057-2017
Noise	042-2018
Open Air Burning	027-2009
Property Standards	059-2000
Public Nuisance	022-2009

SCHEDULE "B"

Administrative Monetary Penalty System By-law

Administrative Fees

The table below lists the Administrative Fees as defined in Section 1.0 of this By-law

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