

THE CORPORATION OF THE CITY OF WELLAND

BY-LAW NUMBER 2014-64

A BY-LAW TO ESTABLISH AN ADMINISTRATIVE MONETARY PENALTIES SYSTEM RESPECTING THE STOPPING, STANDING OR PARKING OF VEHICLES IN THE CITY OF WELLAND (ADMINISTRATIVE PENALTY BY- LAW)

WHEREAS sections 8, 9 and 11 of the *Municipal Act, 2001*, S. O. 2001, c. 25, as amended (*"Municipal Act, 2001"*) authorize The Corporation of the City of Welland to pass by-laws necessary or desirable for municipal purposes;

AND WHEREAS subsection 102.1(1) of the *Municipal Act, 2001* provides that a municipality may require a person to pay an administrative penalty if the municipality is satisfied that the person failed to comply with any by-laws respecting the parking, standing or stopping of vehicles;

AND WHEREAS the Province adopted the "Administrative Penalties" regulation, O. Reg. 333/07 pursuant to the *Municipal Act, 2001* which applies to administrative penalties in respect of the parking, standing or stopping of vehicles;

AND WHEREAS section 391 of the *Municipal Act, 2001* authorizes a municipality to pass by-laws imposing fees or charges for costs payable by it for services or activities, and services or activities provided or done by or on behalf of the municipality;

AND WHEREAS The Corporation of the City of Welland has enacted by-laws regulating the parking, standing or stopping of vehicles, namely By-law No. 89-2000, as amended, being a By-law regulating traffic and parking, and By-law No. 11027, as amended, being a By-law regulating traffic and parking on the Welland Campus of the Niagara College of Applied Arts and Technology;

AND WHEREAS the City of Welland will designate portions of By-law No. 89-2000, as amended, By-law 11027, as amended, to be applicable to the administrative penalty system established through this By-law;

AND WHEREAS the City of Welland considers it desirable to have one administrative penalty system for all by-laws to which administrative penalties may apply and may designate other by-laws to be applicable to the administrative penalty system established through this By-law;

AND WHEREAS the City of Welland considers it desirable to enforce and seek compliance with the designated by-laws, or portions of those by-laws, through the administrative penalty system;

NOW THEREFORE the Council of the Corporation of the City of Welland enacts as follows:

PART I – SHORT TITLE

1. This By-law may be referred to as the "Administrative Penalty By-law".
2. For the purpose of this By-law:

"Administrative Fee" means any fee specified in this by-law and listed in Schedule "C";

"Administrative Penalty" means a monetary penalty as set out in Schedules "A" and "B" to this By-law for a contravention of a Designated By-law;

"By-law" means this by-law and any schedule to this by-law as they may be amended from time to time;

“**City**” means The Corporation of the City of Welland;

“**Council**” means the elected Council of the City;

“**Day**” means calendar day

“**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 Schedules “A” and “B” attached to this By-law;

“**Hearing Non-appearance Fee**” means an Administrative Fee from time to time established by Council in respect of a Person’s failure to appear at the time and place scheduled for a review before a Hearing Officer and listed in Schedule “C”.

“**Hearing Officer**” means a person from time to time appointed by Council pursuant to the Hearings Officer By-law;

“**Hearing Decision**” means a notice that contains the decision of a Hearing Officer;

“**Holiday**” means a Saturday, Sunday, any statutory holiday in the Province of Ontario or any day the offices for the City are officially closed for business;

“**Late Payment Fee**” means an Administrative Fee from time to time established by Council in respect of a Person’s failure to pay an Administrative Penalty within the time prescribed in this By-law and listed in Schedule “C”;

“**Manager**” means the person from time to time performing the function of the City’s Manager;

“**MTO Search Fee**” means an Administrative Fee from time to time established by Council in respect of searching the records of the Ontario Ministry of Transportation and listed in Schedule “C”;

“**NSF Fee**” means an Administrative Fee from time to time established by Council in respect of a demand for payment received by the City from a Person for payment of any Administrative Penalty or Administrative Fee, which has insufficient funds available in the account on which the instrument was drawn, and listed in the Rates and Fees by-law from time to time;

“**Officer**” means each of:

- a) a Municipal By-law Enforcement Officer or other person appointed by or under the authority of a City by-law to enforce a Designated By-law; and
- b) a police officer employed by Niagara Regional Police, the Ontario Provincial Police or the Royal Canadian Mounted Police.

“**Owner**” means the registered owner of a motor vehicle as provided by the Ministry of Transportation of Ontario (MTO);

“**Penalty Notice**” means a notice given to a Person pursuant to section 5 of this By-law;

“**Penalty Notice Date**” means the number specified on the Penalty Notice pursuant to subsection 7(b);

“**Penalty Notice Number**” means the number specified on the Penalty Notice pursuant to subsection 7(c);

“**Person**” includes a corporation, partnership or limited partnership;

“**Regulation**” means the Administrative Penalties, Ontario Regulation 333/07;

“**Request for Review by Hearings Officer**” means the form attached to the Notice of Decision which may be filed by a Person under subsection 19 of this By-law;

“**Screening Decision**” means a notice which contains the decision of a Screening Officer;

“**Screening Non-appearance Fee**” means an Administrative Fee from time to time established by Council in respect of a Person’s failure to appear at the time and place scheduled for a review by a Screening Officer and listed in Schedule “C”;

“**Screening Officer**” means a person from time to time performing the functions of a Screening Officer pursuant to this By-law.

PART III – DESIGNATED BY-LAWS

3. City By-laws, or portions of City By-laws, that are listed in Schedules “A”, “B” and “D” to this By-law shall be Designated By-laws and are hereby designated for the purpose of section

3(1)(b) of the Regulations. The provisions of this By-law shall apply to any contravention of a Designated By-law. Schedules "A", "B" and "D" shall set out the short form wording to be used for the contraventions of Designated By-laws and also set out the Administrative Penalties imposed for the contraventions. *(BY-LAW 2015-144)*

4. The *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended, does not apply to a contravention of a Designated By-law.

PART IV – PENALTY NOTICE

5. Every Person who contravenes a provision of a Designated By-law shall, when given a Penalty Notice, be liable to pay to the City an Administrative Penalty in the amount specified in Schedules "A", "B", "C" and "D". *(BY-LAW 2015-144)*

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

7. A Penalty Notice shall include the following information:

- (a) the vehicle licence plate number or vehicle identification number;
- (b) the Penalty Notice Date;
- (c) a number that is unique to the Penalty Notice;
- (d) the contravention wording listed in Schedules "A", "B", "C" and "D" describes particulars of the contravention; *(BY-LAW 2015-144)*
- (e) the amount of the Administrative Penalty;
- (f) such information as the Clerk determines is appropriate respecting the process by which the Person may exercise the Person's right to request a review of the Administrative Penalty; and
- (g) a statement advising that an Administrative Penalty, including any Administrative Fee, will, unless cancelled or reduced pursuant to a review, constitute a debt of the Person to the City

8. A Person who is served a Penalty Notice and who does not pay the amount of the Administrative Penalty within 15 days of the Penalty Notice Date may pay to the City an MTO Search Fee.

PART V – REVIEW BY SCREENING OFFICER

9. 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 within 15 days after the Penalty Notice Date. A Person may request that the review by a Screening Officer be held in person or in writing or remotely by zoom or other method as approved by the Screening Officer. *(BY-LAWS 2015-16, 2021-102)*

10. If a Person has not requested a review within the time limit set out in section 9, a Person may Request that the Screening Officer extend the time to request a review within 45 days after the penalty notice date. A Person's right to request an extension of time expires if it has not been exercised within 45 days 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 on the 16th day after the Penalty Notice Date; and
- (c) the Administrative Penalty shall not be subject to any further review, including review by Court.

11. A Person's right to request a review or to request an extension of time to request a review are exercised 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 in the Penalty Notice to complete a Request for Screening form and scheduling the time and place for review.

12. A review or request for an extension of time to request a review shall only be scheduled by the City if the Person has exercised his or her right to request a review or an extension of time to request a review within the time limits set out in sections 9 and 10.

13. Where a person fails to attend at the time and place scheduled for a review of the Administrative Penalty:

- (a) the Person shall be deemed to have abandoned the request for a review of the Administrative Penalty;
- (b) the Administrative Penalty as set out in the Penalty Notice shall be deemed to be affirmed on the 16th day after the Penalty Notice Date and is not subject to any further review, including by any Court; and
- (c) the Person shall pay to the City a Screening Non-appearance Fee.

14. (1) For the purposes of section 10, the Screening Officer may only extend the 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.

(2) Where and extension of time is not granted by the Screening Officer the Administrative Penalty is deemed to be affirmed.

15. On a review of the Administrative Penalty, the Screening Officer may affirm the Administrative Penalty, or the Screening Officer may cancel, vary, or extend the time for payment of the Administrative Penalty, including any Administrative Fee, on the following grounds:

- (a) 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
- (b) 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.

16. After a review has been held, the Screening Officer shall serve the Screening Decision on the Person.

PART VI – REVIEW BY HEARING OFFICER

17. A Person may request a review of a Screening Decision by a Hearings Officer and shall do so within 15 days after the Screening Decision has been delivered to the Person. A Person may request that such review be in person or remotely by zoom or other method as approved by the Hearing Officer. (*BY-LAW 2021-102, 2021-102*)

18. If a Person has not requested a review within the lime limit set out in section 17, a Person may request that the Hearings Officer extend the time to request a review within 30 days of the Screening Decision being delivered to the Person. A Person's right to request an extension of time expires if it has riot been exercised within 30 days after the Screening Decision has been delivered at which time:

- (a) the Person shall be deemed to have waived the right to request a hearing;
- (b) the Screening Decision and the Administrative Penalty, if applicable as modified in the Screening Decision, shall be deemed to be affirmed; and
- (c) the Screening Decision and the Administrative Penalty shall not be subject to any further review, including review by any Court.

19. A Person's right to request a review of a Screening Decision or to request an extension of time to request the review are exercised by attending in person or by representative at the place specified in the Request for Review by Hearings Officer form and filing a completed form.

20. A review or a request for an extension of time to request a review shall only be scheduled by the City if the Person has exercised his or her right to request a review or an extension of time to request a review within the time limits set out in sections 17 and 18.

21. Where a Person fails to attend at the time and place scheduled for a review by the Hearings Officer:

- (a) the Person shall be deemed to have abandoned the request for a review of the Screening Decision;
- (b) the Screening Decision and the Administrative Penalty, if applicable as modified in the Screening Decision, shall be deemed be final and are not subject to any to further review, including by any Court;
- (c) the Administrative Penalty, if applicable as modified in the Screening Decision, is deemed to be affirmed on the date the Screening Decision was served on the Person; and

(d) the Person shall pay to the City a Hearing Non-Appearance Fee.

22. (1) For the purposes of section 18, the Hearings Officer may only extend the time to request a review of a Screening Decision where the Person demonstrates, on a balance of probabilities, the existence of extenuating circumstances that warrant the extension of time.

(2) Where an extension of time is not granted by the Hearings Officer the Screening Decision and Administrative Penalty, if applicable as modified in the Screening Decision, are deemed to be affirmed.

23. A Hearings Officer shall not make any decision respecting a review of a Screening Decision unless the Hearings Officer has given the Person and the City an opportunity to be heard at the time and place scheduled for the hearing of the review.

24. On a review of a Screening Decision, the Hearings Officer may affirm the Screening Decision, or the Hearings Officer may cancel, vary or extend the time for payment of the Administrative Penalty, including any Administrative Fee, on the following grounds:

(a) where the Person establishes a balance of probabilities, that he or she did not contravene the Designated By-law as described in the Penalty Notice; or

(b) 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

25. All hearings conducted by the Hearings Officer shall be in accordance with the *Statutory Powers and Procedures Act*, R.S.O. 1990, c. S.22, as amended.

26. After a hearing is complete, the Hearings Officer shall serve the Person with a Hearing Decision.

27. Any decision by a Hearing Officer is final.

28. Neither a Screening Officer nor a Hearings Officer has jurisdiction 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.

PART VII – SERVICE OF DOCUMENT

29. (1) Service of any document or notice, including a Penalty Notice, respecting this By-law may be given in writing in any of the following ways and is effective:

- (a) affixing it to the vehicle in a conspicuous place at the time of the violation;
- (b) delivering it personally to the operator of the vehicle or the person in care and control of the vehicle at the time of the contravention;
- (c) when a copy is delivered to the Person to whom it is addressed;
- (d) on the fifth day after a copy is sent by registered mail or by regular letter mail to the Owner's last known address;
- (e) upon the conclusion of the transmission of a copy by facsimile transmission to the Person's last known facsimile transmission number; or
- (f) upon the sending a copy by e-mail transmission to the Person's last known email address.

(2) For the purposes of subsections 29(1)(b), (c) and (d), a Person's last known address, facsimile number and e-mail address may include an address, facsimile number and e-mail provided by the Person to the City as may be required by a form, practice or policy developed under this By-law.

PART VIII – ADMINISTRATION OF THE BY-LAW

30. The Manager, or his or her delegate shall administer the By-law and establish any practices, policies and procedures necessary to implement the By-law and may amend such practices, policies and procedures from time to time as the Director deems necessary.

31. The Manager or his or her delegate shall prescribe all forms and notices, including the Penalty Notice, necessary to implement the By-law and may amend such forms and notices from time to time as the Director deems necessary.

32. The Manager or his or her delegate may designate areas within the City for conducting screening reviews and hearings under this By-law.

32 (a) The Manager, or his or her delegate shall prescribe the procedures for all reviews or hearings whether in person, writing or remotely as set out in this by-law. (BY-LAW 2021-102)

PART IX – GENERAL PROVISIONS

33. The Manager may appoint as Screening Officers such individuals and on such terms as the City Manager considers appropriate.

34. It is Council's opinion that the delegations in this By-law to the Manager, to Hearings Officers and to Screening Officers are of a minor nature. In forming this opinion, Council has had regard to the number of people, the size of geographic area and the time period affected by the exercise of each delegated power.

35. An Administrative Penalty, including any Administrative Fees, that is affirmed or reduced or in respect of which the time for payment has been extended is due and payable and constitutes a debt to the City owed by the Person to whom the Penalty Notice was given.

36. Where an Administrative Penalty is not paid within 15 days after it becomes due and payable, the Person to whom the Penalty Notice was given shall pay to the City a Late Payment Fee.

37. Where an Administrative Penalty is not paid within 30 days after it becomes due and payable, the City shall notify the Registrar of Motor Vehicles of the default and the Registrar shall not validate the permit of a person named in the default notice nor issue a new permit to that person until the penalty is paid.

38. Where an Administrative Penalty or any administrative fees respecting that Administrative Penalty are not paid within 30 days after the date that they become due and payable, each Person to whom the Penalty Notice was given shall pay to the City a MTO Search Fee.

39. Where a person provides a demand for 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 NSF Fee.

40. Where an Administrative Penalty is cancelled by a Screening Officer or a Hearings Officer, any Administrative Fee is also cancelled.

41. Any time limit that would otherwise expire on a Holiday is extended to the next day that is not a Holiday.

42. No Officer may accept payment in respect of an Administrative Penalty.

43. Any schedule attached to this By-law forms part of this By-law.

PART X – VALIDITY

44. This By-law shall come into force on July 1, 2014.

45. If a court of competent jurisdiction declares any provision, or any part of a provision, of this By-law to be invalid, or to be of no force and effect, it is the intention of the Council in enacting this By-law, that each and every other provision of this By-law authorized by law, be applied and enforced in accordance with its terms to the extent possible according to law.

READ A FIRST, SECOND AND THIRD TIME AND PASSED BY COUNCIL THIS

27th DAY OF **May, 2014.**

"Barry Sharpe"

MAYOR

"Christine Raby"

CLERK