

**THE CORPORATION OF THE CITY OF WELLAND**

**BY-LAW NUMBER 2019 - 134**

**A BY-LAW TO ESTABLISH AN ADMINISTRATIVE PENALTY SYSTEM FOR NON-PARKING RELATED OFFENCES**

WHEREAS sections 8, 9, 10 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 section 434.1 (1) of the 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 City of Welland considers it desirable to have one administrative penalty system for all non-parking related offences;

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**

1.0 This By-law may be referred to as the “Administrative Penalty By-law for Non-parking Related Offences”.

**PART II – DEFINITIONS**

2.0 For the purposes of this By-law:

“Administrative Fee” means any fee specified in this by-law and listed in Schedule “B”;

“Administrative Penalty” means a monetary penalty set out in Schedule “C” attached to this by-law and approved by Council for a contravention of a Designated By-law;

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

“Council” means the elected Council of the City;

“Designated By-law” means 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 by-law applies;

“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 Hearings Officer and listed in Schedule “B”;

“Hearings 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 decisions of a Hearings 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 “B”;

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

“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 Schedule “B”;

“Officer” means each of:

- (a) A Municipal By-law Enforcement Officer, Building Inspector, Property Standards Officer, Fire Prevention 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;
- (c) Any employee or agent of the Welland and District SPCA appointed by or under the authority of a City By-law to enforce a Designated By-law;

“Penalty Notice” means a notice given to a Person pursuant section 4.0 of this by-law;

“Penalty Notice Date” means the date of the contravention specified on the Penalty Notice pursuant to section 4.2 (a);

“Penalty Notice Number” means the number specified on the Penalty Notice pursuant to section 4.2 (b);

“Person” includes an individual, corporation, partnership or limited partnership;

“Request for Review by Hearings Officer” means the form attached to the Notice of Decision which may be filed by a Person under section 6.2 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 “B” of this by-law; and

“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**

- 3.0 City by-laws or portions of City by-laws, that are listed in Schedule “A” to this by-law shall be Designated By-laws and are hereby designated to be under an administrative penalty system pursuant to section 434.1 and section 434.2 of the Municipal Act, 2001 as amended.
- 3.1 Schedule “B” of this By-law provides Administrative Fees imposed for the purposes of this By-law.
- 3.2 Schedule “C” of this By-law sets out Administrative Penalties for the Designated By-laws.

### **PART IV – PENALTY NOTICE**

- 4.0 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.
- 4.1 An Officer who has reason to believe that a Person has contravened a provision of a Designated By-law may issue a Penalty Notice as soon as reasonably practicable.

4.2 A Penalty Notice shall include the following information:

- (a) the Penalty Notice Date;
- (b) the Penalty Notice Number;
- (c) the Municipal Address;
- (d) the name of the Person;
- (e) the details of the Designated By-law infraction including short form wording or other particulars reasonably sufficient to indicate the contravention;
- (f) the amount of the Administrative Penalty;
- (g) the date on which the Administrative Penalty is due and payable;
- (h) 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
- (i) 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.

4.3 A Person who is served 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 to the City any applicable Administrative Fee(s).

#### **PART V – REVIEW BY SCREENING OFFICER**

5.0 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 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.

5.1 If a Person has not requested a review within the time limit set out in Section 5.0, 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 16<sup>th</sup> day after the Penalty Notice Date; and
- (c) the Administrative Penalty shall not be subject to any further review, including a review by any Court.

5.2 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 e-mail 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.

5.3 A review or request for 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 5.0 and 5.1.

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

- (a) the Person shall be deemed to have abandoned the request for review of the Administrative Penalty;
- (b) the Administrative Penalty as set out in the Penalty Notice shall be deemed to be affirmed on the 16<sup>th</sup> 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.

5.5 For the purposes of section 5.1, 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.

5.6 Where an extension of time is not granted by the Screening Officer the Administrative Penalty is deemed to be affirmed.

- 5.7 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.
- 5.8 After a review has been held, the Screening Officer shall serve the Screening Decision on the Person.

**PART VI – REVIEW BY HEARINGS OFFICER**

- 6.0 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.
- 6.1 If a Person has not requested a review within the time limit set out in section 6.0, 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 not 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.
- 6.2 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.
- 6.3 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 6.0 and 6.1.
- 6.4 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 to be final and are not subject to any 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.
- 6.5 For the purposes of section 6.1, 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.
- 6.6 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.
- 6.7 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.
- 6.8 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 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.
- 6.9 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.
  - 6.10 After a hearing is complete, the Hearings Officer shall serve the Person with a Hearing Decision.
  - 6.11 Any decision by a Hearings Officer is final.
  - 6.12 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 DOCUMENTS**

- 7.0 Service of any document or notice, including a Penalty Notice, respecting the By-law may be given in writing 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 5<sup>th</sup> day after a copy is sent by registered mail or by regular mail to the Person's last known address;
  - (c) 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.
- 7.1 For the purposes of subsections 7.0 (b) and (c), a Person's last known address and e-mail address may include an address 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**

- 8.0 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 Manager deems necessary.
- 8.1 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 Manager deems necessary.
- 8.2 The Manager, or his or her delegate may designate areas within the City for conducting screening reviews and hearings under this By-law.

**PART IX – GENERAL PROVISIONS**

- 9.0 The Manager may appoint as Screening Officers such individuals and on such terms as the Manager considers appropriate.
- 9.1 It is Council's opinion that the delegations in this By-law to the Manager, to Hearings Officers and 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.
- 9.2 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.
- 9.3 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.
- 9.4 Where an Administrative Penalty is not paid within 30 days after it becomes due and payable, the City shall add the outstanding amount to the tax roll and collected in the same manner as municipal taxes.
- 9.5 Where a Person provides a payment to the City for 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.
- 9.6 Where an Administrative Penalty is cancelled by a Screening Officer or a Hearings Officer, any Administrative Fee is also cancelled.

- 9.7 Any time limit that would otherwise expire on a Holiday is extended to the next day that is not a Holiday.
- 9.8 No Officer may accept payment in respect of an Administrative Penalty.
- 9.9 Any Schedule attached to this By-law forms part of this By-law.

**PART X – VALIDITY**

- 10.0 This By-law shall come into force on January 1, 2020.
- 10.1 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 **19<sup>TH</sup>** DAY OF **NOVEMBER, 2019.**

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Mayor

\_\_\_\_\_  
City Clerk

By-law Amendments:

By-law 2020-121: October 20, 2020

**SCHEDULE "A"**

**THE CORPORATION OF THE CITY OF WELLAND**

**ADMINISTRATIVE PENALTY BY-LAW 2019-134**

**DESIGNATED BY-LAWS**

<b>DESIGNATED BY-LAW</b>	<b>BY-LAW NUMBER</b>
Clean Yards By-law	2019-135
Property Standards By-law	2009-108, as amended
Noise Control By-law	2015-23, as amended

**SCHEDULE "B"**

**THE CORPORATION OF THE CITY OF WELLAND**

**BY-LAW 2019-134**

**ADMINISTRATIVE FEES**

<b>ITEM</b>	<b>FEE</b>
Hearing Non-appearance Fee	\$250.00
Late Payment Fee	\$20.00
NSF Fee	\$30.00
Screening Non-appearance Fee	\$100.00



**SCHEDULE "C"**

**THE CORPORATION OF THE CITY OF WELLAND**

**BY-LAW 2019-134**

**SET FINE SCHEDULES**

<b>SET FINE SCHEDULE</b>	<b>PAGE NO.:</b>
Clean Yards By-law 2019-135	10 - 11
Property Standards By-law 2009-108	12
Noise By-law 2015-23	13

**SCHEDULE "C"**

**THE CORPORATION OF THE CITY OF WELLAND**

**BY-LAW 2019-134**

**SET FINE SCHEDULES**

**TO CLEAN YARDS BY-LAW 2019-135, BEING A BY-LAW  
TO PROVIDE REGULATIONS FOR MAINTAINING LAND IN A  
CLEAN AND CLEAR CONDITION WITHIN THE CITY OF  
WELLAND**

<b>ITEM</b>	<b>COLUMN 1 Short Form Wording</b>	<b>COLUMN 2 Provision Creating or Defining Offence</b>	<b>COLUMN 3 First Penalty</b>	<b>COLUMN 4 Set Fine Second or Subsequent Penalty</b>
1.	Fail to keep property in a clean and clear condition	Sec. 3.1	\$400.00	\$800.00
2.	Fail to keep property free from refuse or refuse material	Sec. 3.1	\$400.00	\$800.00
3.	Throw refuse or refuse material on private property without written authority	Sec. 3.2	\$400.00	\$800.00
4.	Place refuse or refuse material on private property without written authority	Sec. 3.2	\$400.00	\$800.00
5.	Deposit refuse or refuse material on private property by any means without written authority	Sec. 3.2	\$400.00	\$800.00
6.	Throw refuse or refuse material on public property without written authority	Sec. 3.3	\$400.00	\$800.00
7.	Place refuse or refuse material on public property without written authority	Sec. 3.3	\$400.00	\$800.00
8.	Deposit refuse or refuse material on public property by any means without written authority	Sec. 3.3	\$400.00	\$800.00
9.	Owner permit refuse or refuse material to remain on a property	Sec. 3.4	\$400.00	\$800.00
10.	Fail to dispose of refuse at an approved site	Sec. 3.5	\$400.00	\$800.00
11.	Permit yard to remain in an unsafe condition	Sec. 3.6 (a)	\$400.00	\$800.00
12.	Permit an excavation to remain in an unsafe condition	Sec. 3.6 (b)	\$400.00	\$800.00
13.	Permit an opening in a yard to remain in an unsafe condition	Sec. 3.6 (b)	\$400.00	\$800.00
14.	Permit a septic tank to remain in an unsafe condition	Sec. 3.6 (c)	\$400.00	\$800.00
15.	Permit a cistern to remain in an unsafe condition	Sec. 3.6 (c)	\$400.00	\$800.00
16.	Permit a well to remain in an unsafe condition	Sec. 3.6 (c)	\$400.00	\$800.00

17.	Fail to remove weeds more than six inches in height	Sec. 3.7	\$400.00	\$800.00
18.	Fail to keep property free from Injurious insects, termites, rodents, vermin or other pests	Sec. 3.7 (a)	\$400.00	\$800.00
19.	Fail to keep property free from Refrigerators, freezers, appliances, and other containers that could trap a child	Sec. 3.7 (b)	\$400.00	\$800.00
20.	Fail to keep property free from syringes, needles and other sharps	Sec. 3.7 (c)	\$400.00	\$800.00
21.	Fail to remove grass more than six inches in height	Sec. 3.8	\$400.00	\$800.00
22.	Fail to trim weeds more than six inches in height	Sec. 3.8	\$400.00	\$800.00
23.	Fail to trim grass more than six inches in height	Sec. 3.8	\$400.00	\$800.00
24.	Fail to remove a bird feeder	Sec. 3.9	\$400.00	\$800.00
25.	Fail to maintain the ground underneath a bird feeder	Sec. 3.10	\$400.00	\$800.00
26.	Throw any type of food, in a yard for the purposes of feeding any birds.	Sec. 3.11	\$400.00	\$800.00
27.	Place any type of food, in a yard for the purposes of feeding any birds.	Sec. 3.11	\$400.00	\$800.00
28.	Permit any type of food, in a yard for the purposes of feeding any birds.	Sec. 3.11	\$400.00	\$800.00
29.	Fail to keep refuse or refuse material in containers.	Sec. 3.13 (a)	\$400.00	\$800.00
30.	Permit refuse or refuse material to accumulate longer than 7 days	Sec. 3.13 (b)	\$400.00	\$800.00
31.	Fail to keep property free of standing water	Sec. 3.14	\$400.00	\$800.00
32.	Fail to maintain swimming pool/ hot tub/ wading pool/ pond	Sec. 3.15	\$400.00	\$800.00
33.	Obstruct private drain/ swale/ watercourse	Sec. 3.16	\$400.00	\$800.00
34.	Cause/ Permit the obstruction of private drain/ swale/ watercourse	Sec. 3.16	\$400.00	\$800.00
35.	Fail to maintain container/ object free of standing water	Sec. 3.17	\$400.00	\$800.00
36.	Fail to comply with an order	Sec. 4.3	\$400.00	\$800.00
37.	Obstruction	Sec. 5.9	\$400.00	\$800.00
38.	Fail to produce any documents or things required by a By-law Officer	Sec. 5.10	\$400.00	\$800.00
39.	Furnish false information to a By-law Officer	Sec. 5.11	\$400.00	\$800.00

**SCHEDULE "C"**

**THE CORPORATION OF THE CITY OF WELLAND**

**ADMINISTRATIVE PENALTY BY-LAW 2019-134**

**SET FINE SCHEDULES**

**TO PROPERTY STANDARDS BY-LAW 2009-108, AS AMENDED  
BEING A BY-LAW PRESCRIBING STANDARDS FOR THE  
MAINTENANCE AND OCCUPANCY OF PROPERTY**

<b>ITEM</b>	<b>COLUMN 1 Short Form Wording</b>	<b>COLUMN 2 Provision Creating or Defining Offence</b>	<b>COLUMN 3 First Penalty</b>	<b>COLUMN 4 Set Fine Second Penalty or Subsequent Penalty</b>
1.	Fail to comply with an Order, direction or other requirement	Sec. 16.1 (a)	\$400.00	\$800.00
2.	Obstruction	Sec. 14.6	\$400.00	\$800.00
3.	Fail to produce any documents or things required by an Officer	Sec. 14.9	\$400.00	\$800.00
4.	Furnish false information to an Officer	Sec. 14.10	\$400.00	\$800.00

**SCHEDULE "C"**

**THE CORPORATION OF THE CITY OF WELLAND**

**ADMINISTRATIVE PENALTY BY-LAW 2019-134**

**SET FINE SCHEDULE (APS)**

**BY-LAW 2015-23, AS AMENDED BEING A BY-LAW TO  
REGULATE AND CONTROL NOISE IN THE CITY OF WELLAND**

1	Make noise or noises likely to disturb inhabitants of the City	Section 2	\$300.00
2	Cause noise or noises likely to disturb inhabitants of the City	Section 2	\$300.00
3	Permit noise or noises likely to disturb inhabitants of the City	Section 2	\$300.00