



**BEING A BY-LAW TO ESTABLISH AN ADMINISTRATIVE PENALTY SYSTEM FOR THE CORPORATION OF THE TOWN OF COBOURG**

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**WHEREAS** the *Municipal Act, 2001*, section 102.1 authorizes a municipality to require a person to pay an administrative penalty if the municipality is satisfied that the person has failed to comply with any by-laws respecting the parking, standing or stopping of vehicles.

**AND WHEREAS** the *Municipal Act, 2001*, section 434.1 authorizes a municipality to 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 Municipal Act, 2001.

**AND WHEREAS** the *Building Code Act, 1992*, section 15.4.1 authorizes a municipality to require a person to pay an administrative penalty if the municipality is satisfied that the person has failed to comply with the municipality’s property standards by-law or with a property standards order.

**AND WHEREAS** Council intends by this By-law to establish the system pursuant to which administrative penalty notices are given and may be reviewed and appealed.

**NOW THEREFORE, The Corporation of the Town of Cobourg by its Council enacts as follows:**

## SHORT TITLE

1. This By-Law may be referred to as the "AMP System By-law".

## INTERPRETATION

2. Unless otherwise stated:
  - a) a reference to any statute or regulation refers to a statute or regulation of Ontario
  - b) as it may be amended or replaced from time to time;
  - c) a reference to a by-law refers to a by-law of the Town as it may be amended or
  - d) replaced from time to time; and
  - e) a reference to a section, paragraph, clause, subclause or schedule is a reference
  - f) to this By-law's section, paragraph, clause, subclause or schedule.
3. The table of contents and headings in this By-law are for convenience only and do not form part of this By-law.
4. If any part of this By-law is determined to be invalid by a court of competent jurisdiction, the invalid part is severed and the remainder continues to be valid.
5. This By-law does not limit the Town's right to enforce a Designated By-law or a Property Standards Order by all legal means.
6. In this By-law:
  - a) **"Administrative Fee"** means an administrative fee respecting an Administrative Penalty established by the Fees By-law including:
    - i) Fee – Appeal No-Show
    - ii) Fee – Late Payment
    - iii) Fee – MTO Plate Denial
    - iv) Fee – MTO Plate Search; and
    - v) Fee – Screening No-Show.
  - b) **"Administrative Penalty"** means an administrative penalty established by a Designated By-law.

- c) **“By-law”** means this by-law and any schedule to this by-law as they may from time to time be amended.
- d) **“CAO”** means the Town’s Chief Administrative Officer.
- e) **“Council”** means the Town’s Council
- f) **“Designated By-law”** means each by-law that is designated by the Town or by a Municipality as a by-law to which this By-law applies.
- g) **“Director”** means the person from time to time performing the functions of the Town’s Director, Legislative Services.
- h) **“Fee – Appeal No-Show”** means an administrative fee from time to time established by the Fees By-law in respect of a Person’s failure to appear at the time and in the manner scheduled for a hearing before a Hearing Officer.
- i) **“Fee – Late Payment”** means an administrative fee from time to time established by the Fees By-law in respect of a Person’s failure to pay an Administrative Penalty by the date on which it is due and payable.
- j) **“Fee – MTO Plate Denial”** means an administrative fee from time to time established by the Fees By-law for notifying the Registrar of Motor Vehicles for the purposes of plate permit denial.
- k) **“Fee – MTO Plate Search”** means an administrative fee from time to time established by the Fees By-law for searching the records of the Ontario Ministry of Transportation.
- l) **“Fee – Screening No-Show”** means an administrative fee from time to time established by the Fees By-law in respect of a Person’s failure to appear at the time and in the manner scheduled for a review by a Screening Officer.
- m) **“Fees By-law”** means the Town’s User Fees By-law.
- n) **“Hearing Officer”** means each hearing officer from time to time appointed pursuant to the Town’s Hearing Officer By-law.
- o) **“Manager”** means the person from time to time performing the functions of the Town’s Manager, Municipal Law Enforcement and Licensing Services.

- p) **“Municipality”** means a municipality in Ontario other than the Town that is a party to an agreement with the Town respecting the Town’s administration of the municipality’s administrative penalty system.
- q) **“Officer” means:**
- i. the Director;
  - ii. the Manager;
  - iii. each person from time to time appointed as a municipal law enforcement officer to enforce a Town by-law or a by-law of a Municipality;
  - iv. each assistant to the Fire Marshal employed by the Town or by a Municipality; and
  - v. a police officer employed by Cobourg Police Service, the Ontario Provincial Police or the Royal Canadian Mounted Police.
- r) **“Parking Administrative Penalty”** means an Administrative Penalty established by a Designated By-law with respect to parking, standing or stopping of vehicles.
- s) **“Penalty Notice”** means a notice given pursuant to sections 8 and 10.
- t) **“Penalty Notice Date”** means the date specified on the Penalty Notice pursuant to paragraph 10.a).
- u) **“Penalty Notice Number”** means the number specified on the Penalty Notice pursuant to paragraph 10.b).
- v) **“Person”** includes an individual, partnership, association, firm or corporation and, where a Penalty Notice has been given to more than one Person, includes each such Person.
- w) **“Property Standards Order”** means an order made pursuant to subsection 15.2(2) of the Building Code Act, 1992 as deemed confirmed or as confirmed or modified by the Town’s Property Standards Committee, by a Municipality’s Property Standards Committee or by a judge of the Superior Court of Justice pursuant to section 15.3 of the Building Code Act, 1992
- x) **“Screening Decision”** means a decision made by a Screening Officer pursuant to paragraph 13.i)iv).

- y) **“Screening Decision Date”** means the date on which a Screening Decision is made pursuant to paragraph 13.i)iv).
- z) **“Screening Officer”** means each person from time to time performing the functions of a Screening Officer pursuant to this By-law.
- aa) **“Town”** means The Corporation of the Town of Cobourg or the geographic area of the Town of Cobourg as the context requires.
- bb) **“Town Clerk”** means the Town’s Clerk.

## **PENALTY NOTICE**

7. Each Person who contravenes a provision of a Designated By-law or a Property Standards Order is, when given a Penalty Notice in accordance with section 8, liable to pay to the Town an Administrative Penalty in the amount specified by the Designated By-law for each day or part of a day on which the contravention occurs or continues.
8. An Officer who has reason to believe that a Person has contravened any provision of a Designated By-law or a Property Standards Order may give to the Person a Penalty Notice.
9. The Director or Manager may, before 4:30 pm of the tenth (10th) day after the Penalty Notice Date, cancel the Penalty Notice if the Director or Manager determines that the Penalty Notice was issued in error.
10. The Penalty Notice must be given to the Person as soon as is reasonably practicable and must include the following information:
  - a) the date of the Penalty Notice;
  - b) a reference number that is unique to that Penalty Notice;
  - c) particulars of the contravention;
  - d) the amount of the Administrative Penalty
  - e) such information as the Director or Manager 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

- f) 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 Town.

11. A Person who is given a Penalty Notice respecting a Parking Administrative Penalty and who does not pay to the Town the amount of the Parking Administrative Penalty within fifteen (15) days of the Penalty Notice Date must pay to the Town a Fee – M.T.O. Plate Search.

12. A Person who is given a Penalty Notice may request that the Administrative Penalty be reviewed by a Screening Officer pursuant to section 13.

### **REVIEW BY SCREENING OFFICER**

13. The following applies to reviews of an Administrative Penalty by a Screening Officer:

- a) A Person's right to request a review expires if it has not been exercised in the manner prescribed in paragraph c) before 4:30 p.m. on the twenty-first (21st) day after the Penalty Notice Date.
- b) 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 paragraph c) before 4:30 p.m. on the forty-second (42nd) day after the Penalty Notice Date at which time:
  - i. the Person is deemed to have waived the right to request a review;
  - ii. the Administrative Penalty is deemed to be affirmed; and
  - iii. the Administrative Penalty and each Administrative Fee are not subject to review, including review by any Court.
- c) A Person's rights to request a review and to request an extension of time to request a review are exercised by giving to the Town written notice of the request to review that includes:
  - i. the Penalty Notice Number;
  - ii. the Person's mailing address, e-mail address and, if applicable, facsimile transmission number;
  - iii. 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 limited by paragraph a);

- iv. particulars of all grounds upon which the request to review is based; and
- v. the Person's election to:
  - 1) meet with a Screening Officer electronically for the review;
  - 2) meet with a Screening Officer in person for the review; or to
  - 3) have the review undertaken by a Screening Officer without meeting the Screening Officer.
- d) The Town Clerk may establish standards and procedures that, in the opinion of the Town Clerk, reasonably enables a Person and a Screening Officer to meet electronically for the purposes of this section 13.
- e) If the Penalty Notice has been given to more than one Person and any Person's election pursuant to clause c)v) is not the same as another Person's election, all such Persons will be deemed to have elected to meet with a Screening Officer in person for the review pursuant to subclause c)v)(2).
- f) The Person's right to a review is limited to the particulars provided pursuant to clause c)iv).
- g) Where the Person elects to meet electronically with a Screening Officer pursuant to subclause c)v)(1), the Person must be given notice of the date and time of the meeting for the review and particulars of the electronic means by which the person will meet electronically with the Screening Officer.
- h) Where the Person elects to meet in person with a Screening Officer pursuant to subclause c)v)(2), the Person must be given notice of the date, time and place of the meeting for the review.
- i) Where the Person elects to meet electronically with a Screening Officer pursuant to subclause c)v)(1) or in person with a Screening Officer pursuant to subclause c)v)(2), the Person must attend the meeting for the review pursuant to the notice and remain in or at the meeting until the Screening Officer has made a Screening Decision respecting the Administrative Penalty the subject of the Person's request for the review failing which:

- i. the Person is deemed to have abandoned the request for the review;
  - ii. the Administrative Penalty is deemed to be affirmed;
  - iii. the Person must pay to the Town a Fee - Screening No-Show; and
  - iv. the Administrative Penalty and each Administrative Fee are not subject to review, including review by any Court.
- j) Subject to paragraphs b) and i), the Screening Officer may:
- i. confirm the Administrative Penalty and any Administrative Fees;
  - ii. extend the time to request a review; and
  - iii. may cancel, reduce or extend the time for payment of the Administrative Penalty and any Administrative Fees where the Screening Officer is satisfied that doing so would maintain the general intent and purpose of the Designated By-law and that:
    - 1) there is reason to doubt that the person contravened the Designated Bylaw or the Property Standards Order;
    - 2) the Person took all reasonable steps to prevent the contravention; or that the cancellation, reduction or extension of the time for payment is necessary to relieve undue financial hardship.
- k) The Screening Decision must be given to the Person.
- l) The Person may appeal to a Hearing Officer against the Screening Decision pursuant to section 14.

## **APPEAL TO HEARING OFFICER**

14. The following applies to appeals to a Hearing Officer against Screening Decisions:

- a) The right to appeal is limited to the following:
- i. the Person who has been given a Screening Decision pursuant to paragraph 13k); and
  - ii. the Director or Manager.



- b) The Person's right to appeal expires if it has not been exercised in the manner prescribed in paragraph d) before 4:30 p.m. on the twenty first (21st) day after the Screening Decision Date.
- c) 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 paragraph d) before 4:30 p.m. on the forty-second (42nd) day after the Screening Decision Date at which time:
  - i. the Person is deemed to have waived the right to appeal;
  - ii. the Screening Decision and the Administrative Penalty as it may have been affected by the Screening Decision are deemed to be affirmed; and
  - iii. the Screening Decision and the Administrative Penalty as it may have been affected by the Screening Decision are not subject to review, including review by any Court.
- d) A right to appeal is exercised by giving to the Town written notice of the appeal that includes:
  - i. the Penalty Notice Number;
  - ii. the Person's mailing address, e-mail address and, if applicable, facsimile transmission number;
  - iii. 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 limited by paragraph b);
  - iv. particulars of all grounds directly related to the Screening Decision upon which the appeal is made; and
  - v. the Person's election for the appeal to be heard by the Hearing Officer
    - 1) electronically; or
    - 2) in person.
- e) The Person's right of appeal is limited to
  - i. grounds directly related to the Screening Decision; and to
  - ii. the particulars provided pursuant to clause d)iv).
- f) Where the Person elects to have the appeal heard by the Hearing Officer electronically pursuant to subclause d)v)(1), the Person must be given no fewer than seven (7) days' notice of the date and time of the electronic hearing of the appeal and particulars of the electronic means by which the person will attend the electronic hearing of the appeal.

- g) Where the Person elects to have the appeal heard by the Hearing Officer in person pursuant to subclause d)v)(2), the Person must be given no fewer than seven (7) days' notice of the date, time and place of the hearing of the appeal.
- h) The Person must attend the hearing of the appeal pursuant to the notice and remain in or at the hearing of the appeal failing which:
  - i. the Person is deemed to have abandoned the appeal;
  - ii. the Screening Decision and the Administrative Penalty as it may have been affected by the Screening Decision are deemed to be affirmed;
  - iii. the Screening Decision and the Administrative Penalty as it may have been affected by the Screening Decision are not subject to review, including review by any Court; and
  - iv. the Person must pay to the Town a Fee - Appeal No-Show.
- i) A Hearing Officer may not make any decision respecting an appeal unless the Hearing Officer has given each of the Person, a Manager 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.
- j) Subject to paragraphs c), h) and i) a Hearing Officer may:
  - i. extend the time to request an appeal; and may
  - ii. make any decision that the Screening Officer could have made pursuant to this By-law.
- k) The decision of a Hearing Officer is final and not subject to review including review by any Court.

## **METHODS OF GIVING NOTICE**

15. Subject to section 17, any notice or document respecting this By-law may be given to a Person in writing in any of the following ways and is effective:
- a) when a copy is placed on or affixed in any manner to a Person's vehicle;
  - b) when a copy is delivered to the Person to whom it is addressed;
  - c) on the third (3rd) day after a copy is sent by registered mail or by regular lettermail to the Person's last known address;
  - d) upon the conclusion of the transmission of a copy by facsimile transmission to the Person's last known facsimile transmission number; or

- e) 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.
16. For the purpose of section 15, 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 clauses 13.c)ii) and 14.d)ii).
17. Any notice or document respecting this By-law to be given to the Town must be in writing, must be given in any of the following ways and is effective:
- a) when a copy is delivered to the Office of the Town Clerk, Town of Cobourg, during regular business hours at Victoria Hall, 55 King Street, West, Cobourg, Ontario;
  - b) on the third (3rd) day after a copy is sent by registered mail or by regular lettermail to "Administrative Penalties, Town of Cobourg, during regular business hours at Victoria Hall, 55 King Street, West, Cobourg, Ontario K9A 2M2";
  - c) upon the conclusion of the transmission of a copy by facsimile transmission to (905) 372-7558; or
  - d) upon the sending of the notice or document or a copy thereof by e-mail transmission to "AMPS@cobourg.ca".

## **FINANCIAL ADMINISTRATION**

18. An Officer who gives a Penalty Notice must not accept payment of the Administrative Penalty respecting that Penalty Notice.
19. An Administrative Penalty that is affirmed or reduced or in respect of which the time for payment has been extended pursuant to this By-law is due and payable and constitutes a debt to the Town of each Person to whom or to which the Penalty Notice was given.
20. Where a Person has paid an Administrative Penalty or an Administrative Fee that is then cancelled or reduced pursuant to this By-law, the Town must refund the amount cancelled or reduced.
21. 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, each Person to whom the Penalty Notice was given must pay to the Town a Fee - Late Payment.
22. Where a Parking Administrative Penalty or any Administrative Fee respecting that Parking Administrative Penalty are not paid within thirty (30) days after the date that they become due and payable, each Person to

whom the Parking Administrative Penalty Notice was given must pay to the Town a Fee – MTO Plate Denial.

## **COMPLAINTS AND COMMENTS**

23. Complaints and comments respecting the administration of the Town's system of administrative penalties may be given to the Manager. The Town's Clerk/Director, Legislative Services, will consider each such complaint or comment in relation to the consideration of potential improvements to the Town's system of administrative penalties.

## **GENERAL**

24. The CAO may, in consultation with the Town Clerk, appoint as Screening Officers such individuals and on such terms as the CAO considers appropriate.

25. It is Council's opinion that the delegations in this By-law to the CAO, the Town Clerk, the Director, Manager, Hearing 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.

26. Not proceeding for damages or otherwise may be commenced against the Town, a member of Council or an officer, employee or agent of the Town or a person acting under the instructions of the officer, employee or agent for any act done in good faith in the performance or intended performance of a duty or authority under this By-law or for any alleged neglect or default in the performance in good faith of the duty or authority.

## **EFFECTIVE DATE**

27. This By-law is in effect on the day on which it is passed.

Read and passed in Open Council on this      day of October, 2022.

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MAYOR

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MUNICIPAL CLERK