



The Municipal Corporation of the Town of Fort Erie

By-law No. 111-2019

Being a By-law to Establish a System for Administrative Penalties

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 By-law No. 84-2014 as amended, was passed on June 16, 2014 by the Council of the Town of Fort Erie for the Administrative Penalties System for Parking Offences within the Town: and,

Whereas the Council of the Corporation of the Town of Fort Erie 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 Municipal Council of The Corporation of the Town of Fort Erie enacts as follows:

1. **That** the Administrative Penalty System attached to and forming part of this by-law as Schedule "A", is authorized and approved.

- 2. That** the Clerk of the Town is authorized to effect any minor modifications, corrections, or omissions, solely of an administrative, numerical, grammatical, semantical or descriptive nature to this by-law or its schedules after the passage of this by-law.

Read a first, second and third time and finally passed this 15th day of July, 2019.

Mayor

Clerk

I, Carol Schofield, the Clerk, of The Corporation of the Town of Fort Erie hereby certifies the foregoing to be a true copy of By-law No. 111-2019 of the said Town. Given under my hand and the seal of the said Corporation, this day of , 20 .

Schedule “A”

1.0 SHORT TITLE

The Short Title of this by-law is the “Administrative Penalty By-law.”

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 Appendix “2” of this by-law.
- 2.3 “**Administrative Penalty**” means a monetary penalty as set out in the established Schedules attached to this by-law and approved by Council for a contravention of a Designated By-law.
- 2.4 “**Council**” means the Municipal Council of the Corporation of the Town of Fort Erie.
- 2.5 “**Designated By-law**” means a by-law, or provision of a by-law which is a designated by-law, and is listed in Appendix “1” attached to this By-law.
- 2.6 “**Director**” means the Director of Community and Development Services from time to time or the holder of the officer exercising the functions presently performed by the said Director and includes his or her designate.
- 2.7 “**Fee – Appeal Hearing - No Show**” 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 hearing before a Hearing Officer and listed in Appendix “2 “.
- 2.8 “**Fee – Late- Payment**” 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 Appendix “2 “.
- 2.9 “**Fee – NSF**” means an Administrative Fee from time to time established by Council in respect for demand for payment received by the Town from a Person for payment of any Administrative Penalty or Administrative Fee, which has insufficient funds available in the account of which the instrument was drawn and listed in the Fees and Charges By-Law No. 40-09, as amended, from time to time.

- 2.10 “Fee - Screening No-Show”** 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 Appendix“2”.
- 2.11 “Hearing Officer”** means the Hearing Officer appointed by Council from time to time.
- 2.12 “Officer”** means each of the following:
- i. the Director
 - ii. a Municipal Law Enforcement Officer appointed by or under the authority of a Town by-law to enforce a Designated By-law; and
 - iii. a police officer employed by the Royal Canadian Mounted Police (RCMP), Ontario Provincial Police (OPP) or Niagara Regional Police Service (NRPS);
 - iv. a Fire Prevention Officer appointed by or under the authority of a Town by-law to enforce a Designated By-law and
 - v. a licensed agent of the Fort Erie SPCA appointed by or under the authority of a Town by-law to enforce a Designated By-law.
- 2.13 “Penalty Notice”** means a notice given to a Person pursuant to section 4.0 of this by-law.
- 2.14 “Penalty Notice Date”** means the date specified on the Penalty Notice, pursuant to section 4.3 (c) of this by-law.
- 2.15 “Penalty Notice Number”** means the number specified on the Penalty Notice pursuant to section 4.3 (d) of this by-law.
- 2.16 “Person”** includes an individual, partnership, association, firm or corporation.
- 2.17 “Request for Screening Form”** means the form that must be filed by a Person under Section 5.4 (a) and (b).
- 2.18 “Request for a Hearing Form”** means the form that must be filled out by a Person under Section 6.5 (a) and (b).
- 2.19 “Screening Decision”** means a decision made by a Screening Officer pursuant to Section 5.0.
- 2.20 “Screening Officer”** means a person who performs the functions of a Screening Officer in accordance with section 5.0 of this By-law.

2.21 “Town” means The Corporation of the Town of Fort Erie.

3.0 DESIGNATED BY-LAWS

3.1 The Town by-laws that are listed in Appendix “1”, to this By-law are Designated By-laws and are designated to be under an administrative penalty system pursuant to section 434.1 and section 434.2 of the *Municipal Act*, 2001 as amended.

3.2 Appendix “2” of this By-law provides Administrative Fees imposed for the purposes of this By-law.

3.3 All set fines provided for in the Designated By-laws shall be administrative penalties under this by-law upon passage of this by-law.

4.0 PENALTY NOTICE

4.1 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.

4.1.1 The Director may, before 5:00 pm of the tenth (10th) day after the Penalty Notice Date, cancel the Administrative Penalty.

4.2 The Penalty Notice shall be given to the Person as soon as is reasonably practicable and shall include the following information:

- a) Municipal Address
- b) Name of Person
- c) the Penalty Notice Date;
- d) Penalty Notice Number;
- e) particulars of the contravention;
- f) the amount of the Administrative Penalty;
- g) such information as the Director 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
- h) 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.
- i) signature of the Officer.

5.0 REVIEW BY SCREENING OFFICER

- 5.1** A Person who is given a Penalty Notice may 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 5:00 p.m. on the fifteenth (15th) 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 5:00 p.m. on the Thirtieth (30th) 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 rights to request a review or to request an extension of time to request a review are exercised by giving to the Town written notice of the request to review by:
- a) submitting a Request for Screening Form available at the Town'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 Subsection 5.3;
 - 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, or
- ii. have the review undertaken by a Screening Officer in writing in respect of the particulars provided by the Person pursuant to this Subsection 5.5.

5.6 Where the Person elects to meet with a Screening Officer pursuant to Subsection 5.5 (e) i, the Person shall be given notice of the date, time and place of the review by facsimile, in-person, 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 pursuant to Subsection 5.5 (e) i, 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 Town a Fee – Screening No-Show as set out in Appendix “2”.

5.8 Subject to Subsection 5.3, 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.

5.8.1 For the purposes of Section 5.0 the Screening Officer may:

- (i) 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, or
- (ii) 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.

5.10 A Screening Officer has no 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.

6.0 APPEAL TO HEARING OFFICER

6.1 A Person may appeal to a Hearing Officer against the Screening Decision.

6.2 The right to appeal is limited to a Person who has been given a Screening Decision pursuant to Subsection 5.9.

6.3 A Person's right to appeal expires if it has not been exercised in the manner prescribed in Subsection 6.5 before 5:00 p.m. on the fifteenth (15th) day after the Screening Decision Date.

6.4 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 6.5 before 5:00 p.m. on the thirtieth (30th) 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.

6.5 A Person's rights to request an appeal of a Screening Officer's decision or to request an extension of time to make a Request for Review by Hearing Officer are exercised by giving to the Town written notice by:

- a) submitting a Request for Review Hearing Form available at the Town'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 Review Hearing Form and scheduling the time and place for the review.

6.6 The Request for Review Hearing Form shall include the following Information:

- a) the Penalty Notice Number;
- b) the Person's mailing address and, if applicable, facsimile transmission number and 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.

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

6.8 A request for review or a request for an extension of time to request a review shall only be scheduled by the Town if the Person has submitted the request within the time limits set out in Subsections 6.3 and 6.4.

6.9 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 Town the Fee – Hearing No-Show in accordance with Appendix 2.

6.10 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.

6.11 Subject to Subsections 6.4 and 6.5 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(b) 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 and not subject to any further review including review by any Court.

6.15 A Hearing Officer has no jurisdiction to consider questions relating to the validity of a statute, regulation or by-law or the constitutional applicability of operability of any statute, regulation or by-law.

7.0 SERVICE OF DOCUMENTS OR NOTICE

7.1 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) immediately when a copy is 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 provided by the person to the Town are deemed to include those provided by the Person pursuant to Subsections 5.5(b) and 6.6(b).

7.3 Any notice or document respecting this By-law to be given to the Town shall be in writing, shall be given in any of the following ways, and is effective:

- a) on the fifth (5th) day after a copy is sent by registered mail or by regular letter mail to "Administrative Penalties,
- b) Att: Director, Planning and Development Services, Town of Fort Erie, 1 Municipal Centre Drive, Fort Erie, Ontario, L2A 2S6";
- c) upon conclusion of the transmission of a copy by facsimile transmission to (905) 871-4022; or
- d) upon the sending a Request for Screening by e-mail transmission to: <https://www.forterie.ca/resource/eservices.xsp>

8.0 FINANCIAL ADMINISTRATION

8.1 No Officer who gives a Penalty Notice may accept payment of the Administrative Penalty respecting the Penalty Notice.

8.2 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.

- (a) In accordance with the *Municipal Act, 2001*, as amended or replaced where an Administrative Penalty which remains unpaid 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.

- 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 Town 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 Town a Fee – Late Payment in accordance with Appendix “2”.
- 8.5 Where a Person provides a payment to the Town 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 Town a Fee – NSF in accordance with Appendix “2”.

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 Town for conducting screening reviews and hearings under this By-law.

10.0 GENERAL PROVISIONS

- 10.1 The Director 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 Director deems necessary, without amendment to this By-law.
- 10.2 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, without amendment to this By-law.
- 10.3 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 Town owed by the Person.
 - (a) In accordance with the *Municipal Act, 2001, as amended or replaced* an Administrative Penalty, which remains unpaid 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.

10.4 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 Town a Late Payment Fee, in addition to the Administrative Penalty and any applicable Administrative Fee(s) in accordance with Appendix "2".

10.5 Where a Person makes payments to the Town 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 Town the NSF Fee in accordance with Appendix "2".

10.6 Where an Administrative Penalty is cancelled by a Screening Officer or Hearing Officer, any Administrative Fee(s) are also cancelled.

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

10.8 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.

11.0 COMPLAINTS AND COMMENTS

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

12.0 ENFORCEMENT

12.1 An administrative penalty shall be enforced by an officer as defined in this by-law.

12.2 every person who contravenes any part of this by-law is guilty of an offence and upon conviction is liable to the penalties prescribed under the *Provincial Offences Act R.S.O 1990,c.P.33*, as amended

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.

APPENDIX"1"**TOWN OF FORT ERIE ADMINISTRATIVE PENALTY OFFENCES BY-LAW
NO. XX-2019****DESIGNATED BY-LAWS**

Designated By-law	By-law Number
Lot Maintenance	92-2019
Waterworks	66-2016
Fences	71-2016
Snow and Ice Removal	17-2009
Noise and Nuisance	30-2009
Swimming Pool	149-2008
Property Standards	186-2008
Sewage and Drainage	66-2006
Motorized Snow Vehicles	24-2006
Parks and Beaches	119-2003
Open Air Burning	167-2003
Licensing (except Schedule 13)	217-05

APPENDIX “2”

**TOWN OF FORT ERIE ADMINISTRATIVE PENALTY SYSTEM BY-LAW NO. XX-2019
ADMINISTRATIVE FEES**

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