City Of Kingston
Ontario
By-Law Number 2020-69

A By-Law to Establish a Process for Administrative Penalties

Passed: April 7, 2020

As Amended By By-Law Number:

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By-law 2020-69

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Passed: April 7, 2020

Whereas section 434.1(1) of the Municipal Act, 2001, S.O. 2001, c. 25 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 that Act; and

Whereas Council deems it necessary and expedient to establish a process for imposing, adjudicating and collecting administrative penalties in relation to contraventions of designated by-laws passed under the Act in conjunction with other municipal, Provincial and Federal enforcement mechanisms created in response to the COVID-19 pandemic emergency;

Therefore be it resolved that By-Law Number 2020-69, being “A By-Law to Establish a Process for Administrative Penalties” is hereby enacted as follows:

1. Definitions

1.1. For the purposes of this By-Law:

“Act” means the Municipal Act, 2001

“Administrative Penalty” means an Administrative Monetary Penalty established by 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 Kingston;

“Council” means the City’s Council;

“Declaration of Municipal Emergency” means a declaration of the Head of Council made pursuant to section 4(1) of the EMCPA;

“Designated By-law” means each by-law that is designated by Council as a by-law to which this By-Law applies as set out in Schedule A to this By-law or as referenced in any Order of the Head of Council issued pursuant to a Declaration of Municipal Emergency;
“Director” means (i) the Director, Building and Enforcement Services, or (ii) in his or her absence, the duly appointed designate, or (iii) in the event of organizational changes or otherwise, the director of the appropriately titled department assigned duties under this bylaw or designate;

“EMCPA” means the Emergency Management and Civil Protection Act, R.S.O. 1990, c. E 9, as amended from time to time;

“Fee – Appeal No-Show” means an administrative fee from time to time established by the Fees and Charges By-law in respect of a Person’s failure to appear at the time and place scheduled for a hearing before a Hearings Officer;

“Fee – Late Payment” means an administrative fee from time to time established by the Fees and Charges By-law in respect of a Person’s failure to pay an Administrative Penalty by the date on which it is due and payable;

“Fee – Screening No-Show” means an administrative fee from time to time established by the General Fees and Charges By-law in respect of a Person’s failure to appear at the time and place scheduled for a review by a Screening Officer;

“Fees and Charges By-law” means City of Kingston By-Law Number 2005-10, “A By-Law to Establish Fees and Charges to be Collected by The Corporation of the City of Kingston”, as amended from time to time;

“Head of Council” means the Mayor of the City of Kingston;

“Hearings Officer” means any person designated from time to time to perform the functions of a Hearings Officer pursuant to this By-Law;

“Manager” means the person from time to time performing the functions of the City’s Manager, Licensing and Enforcement;

“Municipality” means the geographic area under the jurisdiction of the City;

“Officer” means each of (a) the Director; (b) the Manager; (c) a Municipal Law Enforcement Officer appointed by or under the authority of a City by-law to enforce a Designated By-law; and (d) a police officer employed by a municipal police force;

“Penalty Notice” means a notice given pursuant to sections 2.2 and 2.4;

“Penalty Notice Date” means the date specified on the Penalty Notice pursuant to section 2.4;

“Penalty Notice Number” means the number specified on the Penalty Notice pursuant to section 2.4;

“Person” includes an individual, partnership, association, firm or corporation;
“Screening Decision” means a decision made by a Screening Officer pursuant to section 3.7;

“Screening Decision Date” means the date on which a Screening Decision is made pursuant to section 3.7;

“Screening Officer” means any person designated from time to time to perform the functions of a Screening Officer pursuant to this By-law;

2. Penalty Notice

2.1. Subject to sections 2.3, 3 and 4, each Person who contravenes a provision of a Designated By-law shall, if given a Penalty Notice, be liable to pay to the City 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.

2.2. An Officer who has reasonable grounds to believe that a Person has contravened any provision of a Designated By-law may give to the Person a Penalty Notice.

2.3. The Director may, before 4:30 pm of the tenth (10th) day after the Penalty Notice Date, cancel the Administrative Penalty.

2.4. The Penalty Notice shall be given to the Person as soon as is reasonably practicable after the contravention has occurred and shall include the following information:

   a. the date the Penalty Notice is given;
   b. a reference number that is unique to that Penalty Notice;
   c. particulars of the contravention, including the date and location of the contravention, and the Person(s) to whom the Penalty Notice is being given;
   d. the monetary amount of the Administrative Penalty;
   e. the actions that must be taken by the person(s) named in the order to comply and any date by which compliance is required
   f. 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
   g. 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 City.
2.5. A Person who is given a Penalty Notice may request that the Administrative Penalty be reviewed by a Screening Officer pursuant to section 3.

3. **Review by Screening Officer**

3.1. Section 3 applies to reviews of an Administrative Penalty by a Screening Officer.

3.2. Subject to section 3.3, a Person’s right to request a review expires if it has not been exercised in the manner prescribed in section 3.4 before 4:30 p.m. on the fifteenth (15th) day after the date receipt of the Penalty Notice is deemed to have occurred pursuant to section 5.

3.3. 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 section 3.4 before 4:30 p.m on the fifteenth (15th) day after the date receipt of the Penalty Notice is deemed to have occurred pursuant to section 5, 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.

No extension granted under this section will extend beyond the forty-second (42nd) day after the date receipt of the Penalty Notice is deemed to have occurred pursuant to section 5.

3.4. 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 City written notice of the request to review that includes:

   a. the Penalty Notice Number;

   b. the Person’s mailing address and, if applicable, facsimile transmission number and/or 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 limited by section 3.2;

   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 to

      (ii) have the review undertaken by a Screening Officer in writing in respect of the particulars provided by the Person pursuant to paragraph 3.4(d).
3.5. Where the Person elects to meet with a Screening Officer pursuant to clause 3.4(e)(i), the Person shall be given notice of the date, time and place of the review.

3.6. Where the Person elects to meet with a Screening Officer pursuant to clause 3.4(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 Screening 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 City an additional Fee - Screening No-Show.

3.7. Subject to sections 3.3 and 3.6, the Screening Officer may

a. extend the time to request a review;

b. receive submissions from the officer who issued the Penalty Notice under review; and

c. 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; or that

   (ii) the person took all reasonable steps to prevent the contravention; or that

   (iii) the cancellation, reduction or extension of the time for payment is necessary to relieve undue financial hardship.

3.8. The Screening Decision shall be given to the Person in writing as soon as is reasonably practicable.

3.9. The Person may appeal to a Hearings Officer against the Screening Decision pursuant to section 4.
4. **Appeal to Hearings Officer**

4.1. Section 4 applies to appeals to a Hearings Officer against Screening Decisions:

4.2. The right to appeal is limited to the following:
   
   a. a Person who has been given a Screening Decision pursuant to section 3.8; and
   
   b. the Director.

4.3. A Person’s right to appeal expires if it has not been exercised in the manner prescribed in section 4.5 before 4:30 p.m. on the fifteenth (15th) day after the Screening Decision Date.

4.4. 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 section 4.5 before 4:30 p.m. on the fifteenth (15th) 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 not be subject to review, including review by any Court.

   No extension granted under this section will extend beyond the forty-second (42nd) day after the Screening date.

4.5. A right to appeal is exercised by giving to the City written notice of the appeal that includes:

   a. the Penalty Notice Number;
   
   b. the Person’s mailing address and, if applicable, facsimile transmission number and/or e-mail 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 limited by section 4.3; and
   
   d. particulars of all grounds upon which the appeal is made.

4.6. The Person shall be given no fewer than seven (7) days’ notice of the date, time and place of the hearing of the appeal.
4.7. 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 not be subject to review, including review by any Court; and

d. the Person shall pay to the City an additional Fee - Appeal No-Show.

4.8. Except in the case of a Person who is deemed to have abandoned their appeal, a Hearings Officer shall not make any decision respecting an appeal unless the Hearings 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.

4.9. Subject to sections 4.4, 4.7 and 4.8, a Hearings Officer may:

a. extend the time to request an appeal; and may

b. make any decision that the Screening Officer could have made pursuant to this By-law.

4.10. The decision of a Hearings Officer is final and not subject to review including review by any Court.

5. Notice

5.1. Subject to section 5.3, any notice or document respecting this By-law, including the Penalty Notice, may be given 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.
5.2. For the purpose of section 5.1, 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 paragraphs 3.4(b) and 4.5(b).

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

a. when a copy is delivered to the Clerk of the City of Kingston during regular business hours at its reception area, located on the first floor, City Hall, 216 Ontario Street, Kingston, Ontario;

b. on the third (3rd) day after a copy is sent by registered mail or by regular lettermail to “Administrative Penalties, City of Kingston, c/o City Clerk, City of Kingston, 216 Ontario Street, Kingston, Ontario, K7L 2Z3”;

c. upon the conclusion of the transmission of a copy by facsimile transmission to 613-546-5232; or

d. upon the sending of the notice or document or a copy thereof by e-mail transmission to “CityClerk@cityofkingston.ca”.

6. Financial Administration

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

6.2. 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 City of each Person to whom or to which the Penalty Notice was given.

6.3. Where a Person has paid an Administrative Penalty or an administrative fee that is then cancelled or reduced pursuant to this By-law, the City shall refund the amount cancelled or reduced.

6.4. Where an Administrative Penalty or any administrative fees 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 shall pay to the City an additional Fee - Late Payment.
7. Complaints and Comments

7.1. Complaints and comments respecting the administration of the City’s system of administrative penalties may be given to the Director. The Director shall consider each such complaint or comment in relation to the Director’s consideration of opportunities for improvements to the City’s system of administrative penalties.

8. General

8.1. The Director may appoint as Screening Officers and Hearings Officers such individuals and on such terms as the Director considers appropriate.

8.2. Nothing in this By-law limits the City’s right to enforce a Designated By-law by any other legal means or to use any other process of enforcement available under law.

8.3. The short title of this By-law is the “Administrative Penalty Process By-law”.

This By-Law was Given all Three Readings and Passed: April 7, 2020
Schedule A

Designated By-Laws

2. City of Kingston By-Law Number 2018-53, being “A By-Law to Regulate Nuisance Parties within the City of Kingston”

(By-Law Number 2020-114)