



By-law 63-2013 of The Corporation of the City of Oshawa

Being a by-law to establish a consistent process for non-parking administrative penalties.

Now therefore the Council of The Corporation of the City of Oshawa enacts as follows:

Interpretation

1. In this By-law:

- 1.1. "Administrative Penalty" means an administrative penalty established by a Designated By-law;
- 1.2. "By-law" means this by-law and any schedule to this by-law as they may from time to time be amended;
- 1.3. "City" means The Corporation of the City of Oshawa;
- 1.4. "Council" means the City's Council;
- 1.5. "Designated By-law" means each by-law that is designated by the City as a by-law to which this By-law applies;
- 1.6. "Director" means the person from time to time performing the functions of the City's Director, Municipal Law Enforcement and Licensing Services;
- 1.7. "Fee – Appeal 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 hearing before a Hearings Officer;
- 1.8. "Fee – Late Payment" 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 pay an Administrative Penalty by the date on which it is due and payable;
- 1.9. "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;
- 1.10. "General Fees and Charges By-law" means the City's By-law 13-2003 as from time to time amended;
- 1.11. "Hearings Officer" means each hearings officer from time to time appointed pursuant to the City's Hearings Officer By-law 26-2008 as from time to time amended;
- 1.12. "Manager" means the person from time to time performing the functions of the City's Manager, Municipal Law Enforcement Services;
- 1.13. "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, by the Ontario Provincial Police or by the Royal Canadian Mounted Police.
- 1.14. "Penalty Notice" means a notice given pursuant to sections 3 and 5;

- 1.15. "Penalty Notice Date" means the date specified on the Penalty Notice pursuant to subsection 5.1;
- 1.16. "Penalty Notice Number" means the number specified on the Penalty Notice pursuant to subsection 5.2;
- 1.17. "Person" includes an individual, partnership, association, firm or corporation;
- 1.18. "Screening Decision" means a decision made by a Screening Officer pursuant to subsection 7.6;
- 1.19. "Screening Decision Date" means the date on which a Screening Decision is made pursuant to subsection 7.6;
- 1.20. "Screening Officer" means each person from time to time performing the functions of a Screening Officer pursuant to this By-law; and
- 1.21. "Service Oshawa" means the Customer Service Division of the City's City Clerk Services and includes each person from time to time employed therein.

Penalty Notice

2. Each Person who contravenes a provision of a Designated By-law shall, when given a Penalty Notice in accordance with section 3, 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 continues.
3. An Officer who has reason to believe that a Person has contravened any provision of a Designated By-law may give to the Person a Penalty Notice.
4. The Director may, before 4:30 pm of the tenth (10th) day after the Penalty Notice Date, cancel the Administrative Penalty
5. The Penalty Notice shall be given to the Person as soon as is reasonably practicable and shall include the following information:
 - 5.1. the date of the Penalty Notice;
 - 5.2. a reference number that is unique to that Penalty Notice;
 - 5.3. particulars of the contravention;
 - 5.4. the amount of the Administrative Penalty;
 - 5.5. 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
 - 5.6. 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.
6. A Person who is given a Penalty Notice may request that the Administrative Penalty be reviewed by a Screening Officer pursuant to section 7.

Review by Screening Officer

7. The following applies to reviews of an Administrative Penalty by a Screening Officer:
 - 7.1. A Person's right to request a review expires if it has not been exercised in the manner prescribed in subsection 7.3 before 4:30 p.m. on the twenty-first (21st) day after the Penalty Notice Date.
 - 7.2. 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 7.3 before 4:30 p.m. on the forty-second (42nd) 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.
- 7.3. 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 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 subsection 7.1;
 - (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 7.3(d).
- 7.4. Where the Person elects to meet with a Screening Officer pursuant to clause 7.3(e)(i), the Person shall be given notice of the date, time and place of the review.
- 7.5. Where the Person elects to meet with a Screening Officer pursuant to clause 7.3(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 the subject of the Person's request for the review,
- (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 a Fee - Screening No-Show.
- 7.6. Subject to subsections 7.2 and 7.5, the Screening Officer may
- (a) extend the time to request a review; and may
 - (b) 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 that
 - (iii) the cancellation, reduction or extension of the time for payment is necessary to relieve undue financial hardship.
- 7.7. The Screening Decision shall be given to the Person.
- 7.8. The Person may appeal to a Hearings Officer against the Screening Decision pursuant to section 8.

Appeal to Hearings Officer

8. The following applies to appeals to a Hearings Officer against Screening Decisions:

- 8.1. The right to appeal is limited to the following:
- (a) a Person who has been given a Screening Decision pursuant to subsection 7.7; and
 - (b) the Director.
- 8.2. A Person's right to appeal expires if it has not been exercised in the manner prescribed in subsection 8.4 before 4:30 p.m. on the twenty-first (21st) day after the Screening Decision Date.
- 8.3. 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 8.4 before 4:30 p.m. on the forty-second (42nd) 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.
- 8.4. 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 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 subsection 8.2; and
 - (d) particulars of all grounds upon which the appeal is made.
- 8.5. The Person shall be given no fewer than seven (7) days' notice of the date, time and place of the hearing of the appeal.
- 8.6. 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 a Fee - Appeal No-Show.
- 8.7. 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.
- 8.8. Subject to subsections 8.3, 8.6 and 8.7, 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.
- 8.9. The decision of a Hearings Officer is final and not subject to review including review by any Court.

Notice

9. Subject to section 11, any notice or document respecting this By-law may be given in writing in any of the following ways and is effective:
 - 9.1. when a copy is placed on or affixed in any manner to a Person's vehicle;
 - 9.2. when a copy is delivered to the Person to whom it is addressed;
 - 9.3. on the third (3rd) day after a copy is sent by registered mail or by regular lettermail to the Person's last known address;
 - 9.4. upon the conclusion of the transmission of a copy by facsimile transmission to the Person's last known facsimile transmission number; or
 - 9.5. 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.
10. For the purpose of section 9, 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 7.3(b) and 8.4(b).
11. 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:
 - 11.1. when a copy is delivered to Service Oshawa during its regular business hours at its reception area in the City's Civic Administration Complex, 1st Floor, West Wing, 50 Centre Street South, Oshawa;
 - 11.2. on the third (3rd) day after a copy is sent by registered mail or by regular lettermail to "Administrative Penalties, City of Oshawa, 50 Centre Street South, Oshawa, Ontario, L1H 3Z7";
 - 11.3. upon the conclusion of the transmission of a copy by facsimile transmission to (905) 436 5689; or
 - 11.4. upon the sending of the notice or document or a copy thereof by e-mail transmission to "AMPappeals@oshawa.ca".

Financial Administration

12. No Officer who gives a Penalty Notice may accept payment of the Administrative Penalty respecting that Penalty Notice.
13. 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.
14. 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.
15. 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 a Fee - Late Payment.

Complaints and Comments

16. 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.

General

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

18. Nothing in this By-law limits the City's right to enforce a Designated By-law by all legal means.
19. It is Council's opinion that the delegations in this By-law to the Director, the City 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.
20. The short title of this By-law is the "Administrative Penalty Process By-law".

Consequential Amendments

21. Carbon Monoxide Alarm By-law 72-2012 is amended as follows:

- 21.1. By deleting the text of each of its subsections 2.6 and 2.10 and by substituting in each, "Deleted by By-law 63-2013";
- 21.2. By deleting its subsections 4.1 to 4.10, inclusive, and by substituting the following subsections:
 - 4.1 Administrative Penalty Process By-law 63-2013 applies to each administrative penalty issued pursuant to this By-law.
 - 4.2 Each person who contravenes any provision of this By-law shall, upon issuance of a penalty notice in accordance with Administrative Penalty Process By-law 63-2013, be liable to pay to the City an administrative penalty in the amount of \$250 for each day on which the contravention occurs or continues.
- 21.3. By deleting the text of the heading of its section 5 and by substituting "Deleted by By-law 63-2013"; and by
- 21.4. Deleting its subsections 5.1 to 5.7, inclusive.

22. City Trees By-law 78-2008 is amended as follows:

- 22.1. By deleting the text of its paragraph 6.1(f) and by substituting "Deleted by By-law 63-2013";
- 22.2. By deleting its subsections 11.1 to 11.11, inclusive, and by substituting the following subsections:
 - 11.1 Administrative Penalty Process By-law 63-2013 applies to each administrative penalty issued pursuant to this By-law.
 - 11.2 Each person who contravenes any provision of this By-law shall, upon issuance of a penalty notice in accordance with Administrative Penalty Process By-law 63-2013, be liable to pay to the City an administrative penalty in the amount of \$250 for each day on which the contravention occurs or continues.

23. Section 16.1 of Licensing By-law 120-2005, as amended, is further amended by deleting its paragraphs (a) to (k), inclusive, and by substituting the following paragraphs:

- (a) Administrative Penalty Process By-law 63-2013 applies to each administrative penalty issued pursuant to this By-law.
- (b) Each person who contravenes any provision of this By-law, including any provision of its Schedules, shall, upon issuance of a penalty notice in accordance with Administrative Penalty Process By-law 63-2013, be liable to pay to the City an administrative penalty in the amount of \$250 for each day on which the contravention occurs or continues.

24. No Smoking By-law 92-2010 is amended by deleting its subsection 5.1 and by substituting the following subsections

- 5.1 Administrative Penalty Process By-law 63-2013 applies to each administrative penalty issued pursuant to this By-law.

- 5.2 Each person who contravenes any provision of this By-law shall, upon issuance of a penalty notice in accordance with Administrative Penalty Process By-law 63-2013, be liable to pay to the City an administrative penalty in the amount of \$125 for each day on which the contravention occurs or continues.

25. Nuisance By-law 65-2009, is amended as follows:

- 25.1. By deleting the text of its paragraph 2.1(i) and by substituting “Deleted by By-law 63-2013”;
- 25.2. By deleting its subsections 5.1 to 5.11, inclusive, and by substituting the following subsections:
- 5.1 Administrative Penalty Process By-law 63-2013 applies to each administrative penalty issued pursuant to this By-law.
- 5.2 Each person who contravenes any provision of this By-law shall, upon issuance of a penalty notice in accordance with Administrative Penalty Process By-law 63-2013, be liable to pay to the City an administrative penalty in the amount of \$250 for each day on which the contravention occurs or continues.
- 25.3. By deleting the text of the heading of its section 6, by deleting its subsections 6.1 to 6.7, inclusive, and by substituting “Deleted by By-law 63-2013”.

26. Responsible Pet Owners By-law 14-2010, as amended, is further amended as follows:

- 26.1. By deleting the text of its subsection 1.25 and by substituting “Deleted by By-law 63-2013”;
- 26.2. By deleting in its section 32 the phrase, “pursuant to section 29”, and by substituting “pursuant to section 30”;
- 26.3. By deleting its sections 33 and 34 and by substituting the following sections:
33. Administrative Penalty Process By-law 63-2013 applies to each administrative penalty issued pursuant to this By-law.
34. Each person who contravenes any provision of this By-law shall, upon issuance of a penalty notice in accordance with Administrative Penalty Process By-law 63-2013, be liable to pay to the City an administrative penalty in the amount of \$125 for each day on which the contravention occurs or continues.
- 26.4. By deleting its sections 35 to 43, inclusive, and by substituting “Sections 35 to 43, inclusive, deleted by By-law 63-2013”; and by
- 26.5. By deleting in its subsection 44.1 the phrase, “, the Licence Revocation Notice or the Penalty Notice”, and by substituting “or the Licence Revocation Notice”.

27. Snow and Ice Removal By-law 92-2009, as amended, is further amended as follows:

- 27.1. By deleting the text of its paragraph 2.1(j) and by substituting “Deleted by By-law 63-2013”;
- 27.2. By deleting its subsections 8.1 to 8.11, inclusive, and by substituting the following subsections:
- 8.1 Administrative Penalty Process By-law 63-2013 applies to each Administrative Penalty issued pursuant to this By-law.
- 8.2 Each Person who contravenes any provision of this By-law shall, upon issuance of a penalty notice in accordance with Administrative Penalty Process By-law 63-2013, be liable to pay to the City an administrative penalty in the amount of \$125 for each day on which the contravention occurs or continues.
- 27.3. By deleting the text of the heading of its section 9 and by substituting “Deleted by By-law 63-2013”; and by
- 27.4. Deleting its subsections 9.1 to 9.7, inclusive.

28. Waste Collection By-law 113-2008 is amended as follows:

28.1. By deleting the text of its paragraph 2.1(r) and by substituting “Deleted by By-law 63-2013”;

28.2. By deleting its subsections 13.10 to 13.21, inclusive, and by substituting the following subsections:

13.1 Administrative Penalty Process By-law 63-2013 applies to each administrative penalty issued pursuant to this By-law.

13.2 Each person who contravenes any provision of this By-law shall, upon issuance of a penalty notice in accordance with Administrative Penalty Process By-law 63-2013, be liable to pay to the City an administrative penalty in the amount of \$250 for each day on which the contravention occurs or continues.

By-law passed this tenth day of June, 2013.

Mayor

Acting City Clerk