

The Corporation of the Town of Tecumseh

By-Law Number 2024-048

Being a by-law to establish a comprehensive system of administrative monetary penalties in the Town of Tecumseh

Whereas Sections 8, 9, and 11 of the *Municipal Act*, 2001, S.O. 2001, c.25, as amended (the “Municipal Act”), authorizes The Corporation of the Town of Tecumseh to pass by-laws necessary or desirable for municipal purposes;

And Whereas Sections 23.2, 23.3, and 23.5 of the Municipal Act authorizes a municipality to delegate its administrative and hearing powers;

And Whereas Section 102.1 of the Municipal Act provides that a municipality may require a person to pay an administrative penalty if the municipality is satisfied the person has failed to comply with any by-laws respect the parking, standing, or stopping of vehicles;

And Whereas the Province adopted the “Administrative Penalties” regulation O. Reg 333/07 pursuant to the Municipal Act;

And Whereas Section 151(1)(g) of the Municipal Act authorizes the municipality to 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 any part of a system of licences established by the municipality;

And Whereas Section 15.4.1 of the *Building Code Act*, 1992, S.O., c.23 as amended, (the “**Building Code Act**”) authorizes the 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, as amended or an order of an officer authorized under Section 15.2(2) or 15.3, 2017 c.34 Sced.2.s.10 of the Building Code Act, as amended;

And Whereas Section 434.1 of the Municipal Act provides that a municipality may require a person to pay an administrative penalty if the municipality is satisfied that the person has failed to comply with any by-law of the municipality passed under the Municipal Act;

And Whereas Section 391 of the Municipal Act authorizes a municipality to pass by-laws imposing fees or charges on any class of persons for services or activities provided or done by or on behalf of it;

And Whereas Section 434.2 of the Municipal Act provides that an administrative penalty imposed by a municipality on a person constitutes a debt of the person to the municipality;

And Whereas the Council of the Town of Tecumseh considers it desirable to have an administrative penalties system and to enforce and seek compliance with the designated by-laws, or portions of those by-laws, through the administrative penalties system.

Now Therefore the Council of The Corporation of The Town of Tecumseh enacts as follows:

1. Short Title

- 1.1 This by-law may be referred to as the “Administrative Penalty By-Law” or the “Administrative Monetary Penalty System (AMPS) By-Law”.

2. Definitions

- 2.1 In this By-law:

- a) **“Administrative Fee”** means any fee specified in this By-law and/or set out in the Town’s Administrative Fees and Charges By-law.
- b) **“Administrative Penalty”** means an administrative penalty established by this By-law or set out in the Town’s Administrative Fees and Charges By-law for a contravention of a Designated By-Law.
- c) **“AMPS”** means a system of administrative monetary penalties.
- d) **“Council”** means the Council of the Town of Tecumseh.
- e) **“Day”** means any calendar day.
- f) **“Designated By-law”** means a by-law, or part or provision of a by-law, that is designated for the purposes of this By-law and is listed in the attached Schedules of this By-Law.
- g) **“Director”** means the person from time to time occupying the office of the Director Legislative Services & Clerk of the Corporation of the Town of Tecumseh, or such successor office as the case may be, and includes any individual who has been authorized to temporarily act during that person’s absence or a vacancy in the office.
- h) **“Administrative Fees and Charges By-law”** means the Town’s by-law to prescribe administrative fees and charges, as amended or replaced from time to time.
- i) **“Hearing Non-Appearance Fee”** means an Administrative Fee in respect of a Person’s failure to appear at a time and place scheduled for a Review by Hearing Officer and listed in the Town’s Administrative Fees and Charges By-Law.

- j) **“Hearing Decision”** means a notice containing a decision of a Hearing Officer.
- k) **“Hearing Officer”** means a person who performs the functions of a Hearing Officer in accordance with Section 7 of this By-law, and pursuant to the Screening and Hearing Officer By-law.
- l) **“Holiday”** means a Saturday, Sunday, and any statutory holiday in the Province of Ontario or any Day the offices for the Town are officially closed for business.
- m) **“Late Payment Fee”** means an Administrative Fee in respect of a Person’s failure to pay an Administrative Penalty within the time prescribed by this By-law and listed in the Town’s Administrative Fees and Charges By-Law.
- n) **“Ministry”** means the Ontario Ministry of Transportation and any successor ministry of the Province of Ontario.
- o) **“Mitigating or Extenuating Circumstances”** means situations that do not provide an excuse or justify the infraction, but which in fairness and mercy may be considered as reducing the degree of responsibility.
- p) **“MTO Fee”** means an Administrative Fee for any search of the records of, or any inquiry to, the Ontario Ministry of Transportation, or related authority, and listed in the Town’s Administrative Fees and Charges By-Law.
- q) **“NSF Fee”** means an Administrative Fee in respect of payment by negotiable instrument received by the Town from a Person for payment of any Administrative Penalty or Administrative Fee, for which there are insufficient funds available in the account on which the instrument was drawn and listed in the Town’s Administrative Fees and Charges By-Law.
- r) **“Officer”** means any individual appointed by a Town by-law, or pursuant to delegated authority to appoint under a Town by-law, to enforce a Town by-law, or a police officer employed by the Ontario Provincial Police or any other police service having jurisdiction in the Town.
- s) **“Owner”** has the same meaning as set out in the Regulation.
- t) **“Penalty Notice”** means a notice given to a Person pursuant to Section 4 or Section 5 of this By-law.
- u) **“Penalty Notice Date”** means the date of the contravention specified on the Penalty Notice, in accordance with Section 4.3 or Section 5.2 of this By-Law.

- v) **“Penalty Notice Number”** means the reference number specified on the Penalty Notice that is unique to that Penalty Notice, in accordance with Section 4.3 or Section 5.2 of this By-law.
- w) **“Person”** includes an individual or business name, sole proprietorship, corporation, partnership, or limited partnership, or an authorized representative thereof. For the purposes of a violation of Section 4 of this By-law, the Person shall be an individual or a business name, sole proprietorship, corporation, partnership, limited partnership, or an authorized representative thereof whose name appears on a vehicle permit as provided by the Ministry. If the vehicle permit consists of a vehicle portion and a licence plate portion, and different Persons are named on each portion, the Person whose name appears on the licence plate portion, as provided by the Ministry.
- x) **“Regulation”** means Ontario Regulation 333/07, as amended, made pursuant to the Municipal Act.
- y) **“Request for Review by Hearing Officer”** means the request which may be made pursuant to Section 7 of this By-Law for the review of a Screening Decision.
- z) **“Request for Review by Screening Officer”** means the request which may be made pursuant to Section 6 of this By-Law for the review of a Penalty Notice.
- aa) **“Review by Hearing Officer”** means the review of a Screening Decision pursuant to the Regulation and as set out in Section 7 of this By-Law, and “Hearing” shall have a corresponding meaning.
- bb) **“Review by Screening Officer”** means a review of an Administrative Penalty pursuant to the Regulation and as set out in Section 6 of this By-Law, and **“Screening Review”** shall have a corresponding meaning.
- cc) **“Screening and Hearing Officer By-law”** means a by-law enacted by the Town for the purpose of providing for the appointment of a Screening Officer and Hearing Officer.
- dd) **“Screening Decision”** means a notice which contains the decision of a Screening Officer, delivered in accordance with Section 6.11 of this By-Law.
- ee) **“Screening Non-Appearence Fee”** means an Administrative Fee in respect of a Person’s failure to appear at the time and place scheduled for review before a Screening Officer and listed in the Town’s Administrative Fees and Charges By-Law.

- ff) **“Screening Officer”** means a person who performs the functions of a Screening Officer in accordance with Section 6 of this By-law, and pursuant to the Screening and Hearing Officer By-law; and
- gg) **“Town”** means The Corporation of the Town of Tecumseh.

3. Application

- 3.1 The Town by-laws, or portions of Town by-laws, listed in the attached Schedules of this By-law (as amended from time to time) shall be the Designated By-laws for the purposes of this By-Law, Sections 102.1, 151, and 434.1 of the Municipal Act and Section 3(1)(b) of the Regulation.
- 3.2 The attached Schedules of this By-law, as amended, also sets out the Administrative Penalty and includes short form wording to be used on Penalty Notices for the contraventions of the Designated By-laws.
- 3.3 The Town's Administrative Fees and Charges By-law, as amended from time to time, shall set out the applicable Administrative Fees imposed in relation to this By-law and contraventions of the Designated By-laws.
- 3.4 The *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended, (the **“Provincial Offences Act”**) will continue to apply to contraventions of a Designated By-law, except that no person that is required to pay an Administrative Penalty under this By-law in respect of a contravention of a Designated By-law shall be charged with an offence in respect of the same contravention under the Provincial Offences Act.

4. Penalty Notice

- 4.1 Every Person who contravenes a provision of a Designated By-law shall, upon issuance of a Penalty Notice, be liable to pay the Town an Administrative Penalty in the amount specified in attached Schedules to this By-law.
- 4.2 An Officer has the discretion to apply an escalated penalty as prescribed in Schedules if the same violation is repeated by the same person. If the violation is related to a property, the Officer must ensure the property ownership has not changed before applying the escalated penalty. Escalating penalties for the same violation apply to a property in perpetuity as long as the owner of the property has not changed.
- 4.3 An Officer who has reason to believe that a Person has contravened any Designated By-law may issue a Penalty Notice as soon as reasonably practicable.
- 4.4 A Penalty Notice shall include the following information, as applicable:
 - a) The Penalty Notice Date.

- b) A Penalty Notice Number.
- c) The date on which the Administrative Penalty is due and payable; being fifteen (15) days from service of the Penalty Notice.
- d) The identification number and signature of the Officer.
- e) The contravention wording as listed in the attached Schedules, or other particulars reasonably sufficient to indicate the contravention.
- f) The amount of the Administrative Penalty.
- g) Such additional information as the Director determines is appropriate, respecting the process by which a Person may exercise the right to request a Screening Review of the Administrative Penalty.
- h) A statement advising that an unpaid Administrative Penalty, including any applicable Administrative Fee(s), will constitute a debt of the Person to the Town unless cancelled pursuant to a Screening Review or Hearing process.
- i) At the discretion of the Officer, fines may be doubled for any and all subsequent repeat offences.

4.5 In addition to the service methods provided herein, an Officer may serve the Penalty Notice on a Person:

- a) by affixing it to the vehicle in a conspicuous place at the time of a parking or traffic-related contravention; or
- b) by delivering it personally to the Person, or, when relating to a parking or traffic-related contravention, the Person having care and control of the vehicle at the time of the contravention, within seven (7) days of the contravention; or
- c) for all other contraventions, as set out in Section 9 hereof within thirty (30) days of the contravention.

4.6 No Officer may accept payment of a Penalty Notice, Administrative Penalty or Administrative Fee.

4.7 A Person who is served with a Penalty Notice and who does not pay the amount of the Administrative Notice on or before the due date set out on the Penalty Notice, shall also pay any applicable Administrative Fee(s).

5. Voluntary Payment of Penalty Notice

5.1 Where a Penalty Notice has been paid, the Penalty Notice shall not be subject to any further review.

- 5.2 A Penalty Notice shall be deemed to have been paid when the amount and all applicable fees prescribed in the Administrative Fees and Charges By-law have been paid.

6. Review by Screening Officer

- 6.1 A Person who is served with a Penalty Notice may request the Administrative Penalty be reviewed by a Screening Officer and shall do so on or before the due date set out on the Penalty Notice, and in accordance with the process set out herein.
- 6.2 If a Person has not requested a Screening Review on or before the due date set out on the Penalty Notice, the Person may request the Director extend the time to request a Screening Review to a date that is no later than thirty (30) days after the due date set out on the Penalty Notice, in accordance with the process set out herein.
- 6.3 A Person's right to request an extension of time for a Screening Review expires on the due date set out in the Penalty Notice, if it has not been exercised, at which time:
- a) the Person shall be deemed to have waived the right to request a Screening Review or request an extension of time for a request for a Screening Review.
 - b) the Penalty Notice shall be deemed to be affirmed by the Person on the sixteenth (16th) day following the due date set out on the Penalty Notice; and
 - c) the Administrative Penalty shall not be subject to any further review, including a review by any Court.
- 6.4 A Person's Request for Review by Screening Officer or a request for an extension of time to request a Screening Review are exercised by:
- a) a submission in writing in the prescribed form and in accordance with the directions on said prescribed form; or
 - b) attending in person at the location listed on the Penalty Notice to make a Request for Review by Screening Officer or a request for an extension of time to request a Screening Reviewing the prescribed form and in accordance with the directions on said prescribed form; or
 - c) calling the telephone number listed on the Penalty Notice to make a Request for Review by Screening Officer or a request for an extension of time to request a Screening Review and providing the requested or prescribed information.

- 6.5 A Request for Review by Screening Officer or a request for an extension of time to request a Screening Review shall include the Penalty Notice Number and the Person's contact information.
- 6.6 A Screening Review shall only be scheduled, and/or an extension of time to request a Screening Review shall only be granted, by the Director if the Person makes the request within the time limits as prescribed in this By-law.
- 6.7 Upon a request for an extension of time to request a Screening Review, the Screening Officer may only extend the time to request a Screening Review where the Person demonstrates, on a balance of probabilities, the existence of Mitigating or Extenuating Circumstances that warrant the extension of time.
- 6.8 Where an extension of time to request a Screening Review is not granted by the Screening Officer, the Penalty Notice, and any applicable Administrative Fee(s) are deemed to be affirmed by the Person.
- 6.9 On a Screening Review of a Penalty Notice, the Director will direct the Screening Review proceed by way of written screening unless, in the Director's sole discretion, a virtual, in-person or telephone appointment is required in which case the Director shall determine the form and manner of the Screening Review.
- 6.10 Where a Person fails to attend at the time and place scheduled for a Screening Review of a Penalty Notice or fails to provide requested documentation in accordance with a request by a Screening Officer:
- a) the Person shall be deemed to have abandoned the request for a Screening Review of the Penalty Notice.
 - b) the Administrative Penalty as set out in the Penalty Notice shall be deemed to be affirmed by the Person on the sixteenth (16th) day following the due date set out on the Penalty Notice.
 - c) the Penalty Notice shall not be subject to any further review, including a review by a Hearing Officer or by any Court; and
 - d) the Person shall pay to the Town a Screening Non-Appearance Fee, MTO Fee, if applicable, and any other applicable Administrative Fee(s).
- 6.11 On review of a Penalty Notice, the Screening Officer may decide to:
- a) affirm the Administrative Penalty (if the person has not established on a balance of probabilities that Designated Bylaw(s) was not contravened as described in the Penalty Notice); or

- b) Cancel, reduce, or extend the time for payment of the Penalty Notice, including any Administrative Fee(s), on the following grounds if established by the Person on the balance of probabilities:
 - (i) the Person did not contravene the Designated By-law(s) as described in the Penalty Notice.
 - (ii) the existence of Mitigating or Extenuating Circumstances; or
 - (iii) the cancellation, reduction, or extension of time for payment of the Penalty Notice, including any Administrative Fee(s), is necessary to relieve any financial hardship.

6.12 After a Review by a Screening Officer, the Screening Officer shall deliver the Screening Decision to the Person, in accordance with this By-law.

6.13 A Screening Officer has no authority 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.

7. Review by Hearing Officer

7.1 A Person may make a Request for Review by Hearing Officer within thirty (30) days of issuance of a Screening Decision ("**Screening Decision Date**").

7.2 If a Person has not requested a Review by Hearing Officer within thirty (30) days of issuance of a Screening Decision the Person may request that the Director extend the time to request a Review by Hearing Officer to a date that is no later than forty-five (45) days after the Screening Decision Date. A Person's right to a Request for Review by Hearing Officer ultimately expires if it has not been exercised on or before the date that is no later than thirty (30) days or forty-five (45) days (as the case may be) after the Screening Decision Date, at which time:

- a) the Person shall be deemed to have waived the right to Request a Review by Hearing Officer.
- b) the Screening Decision and the Penalty Notice and any Administrative Fee(s), if applicable, as modified in the Screening Decision, shall be deemed to be affirmed by the Person; and
- c) the Screening Decision and the Penalty Notice shall not be subject to any further review, including review by any Court.

7.3 A Person's Request for Review by a Hearing Officer or request for an extension of time to request a Review by Hearing Officer is exercised by:

- a) by a submission in writing, in the prescribed form and in accordance with the directions on the prescribed form; or
 - b) attending in person at the location listed on the Screening Decision to make a Request for Review by Hearing Officer or a request for an extension of time to request a Hearing in the prescribed form and in accordance with the directions on the prescribed form; or
 - c) calling the telephone number listed on the Screening Decision to make a Request for Review by Hearing Officer or a request for an extension of time to request a Hearing and providing the requested or prescribed information.
- 7.4 For the purposes of this By-law, the Director may only extend the time to request a review of a Screening Decision by a Hearing Officer where the Person demonstrates, on a balance of probabilities, the existence of Extenuating Circumstances that prevented the Person from exercising the right to request a review in the timeframe set out in this By-law.
- 7.5 Where an extension of time is not granted by the Hearing Officer, the Screening Decision, which includes the Administrative Penalty and any applicable Administrative Fee(s), is deemed to be affirmed by the Person and shall not be subject to any further review, including review by any Court.
- 7.6 A Request for Review by Hearing Officer shall only be scheduled by the Director if the Person makes the request within the time limits prescribed in this By-law.
- 7.7 Unless otherwise requested and permitted by the Hearing Officer the only attendees permitted at a Hearing Review in addition to the Hearing Officer are an Officer, the Town solicitor, the Person, or any delegates thereof.
- 7.8 Where a Person fails to appear at the time and place scheduled for a Hearing:
- a) the Person shall be deemed to have abandoned the Hearing for review of a Screening Decision.
 - b) the Screening Decision and the Penalty Notice and any applicable Administrative Fee(s) shall be deemed to be affirmed by the Person.
 - c) the Screening Decision and the Penalty Notice and any applicable Administrative Fee(s) shall not be subject to any further review, including a review by any Court; and
 - d) the Person shall pay to the Town a Hearing Non-Appearance Fee, Late Payment Fee, MTO Fee, if applicable, and any other applicable Administrative Fee(s).

7.9 On review of a Screening Decision, the Hearing Officer may:

- a) confirm the Screening Decision; or
- b) cancel, reduce, or extend the time for payment of the Administrative Penalty, including any Administrative Fee(s), on the following grounds:
 - (i) where the Person establishes on the balance of probabilities that the Person did not contravene the Designated By-law(s) as described in the Penalty Notice.
 - (ii) the existence of Mitigating or Extenuating Circumstances; or
 - (iii) where the Person establishes on the balance of probabilities that the cancellation, reduction, or extension of time for payment of the Administrative Penalty, including any Administrative Fee(s), is necessary to relieve any financial hardship.

7.10 A Hearing Officer shall not make any decision respecting a review of a Screening Decision unless the Hearing Officer has given the Person and a representative of the Town an opportunity to be heard at the time and place scheduled for the Review by Hearing Officer.

7.11 All Hearings by a Hearing Officer shall be conducted in accordance with the *Statutory Powers and Procedures Act*, R.S.O. 1990, c. S.22, as amended.

7.12 A Hearing Officer has no authority 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.

7.13 After a Hearing is complete, the Hearing Officer shall deliver a Hearing Decision to the Person, in accordance with Section 9 of this By-law.

7.14 The decision of the Hearing Officer is final.

8. Prohibited Communication and Undue Influence

8.1 No individual shall attempt, directly or indirectly, to communicate with or influence a Screening Officer or a Hearing Officer respecting the determination of an issue in a proceeding that is or will be pending before the Screening Officer or Hearing Officer, except the Person who is entitled to be heard in the proceeding or the Person's lawyer or licensed representative and only by the Person or the Person's lawyer or licensed representative during the hearing of the proceeding in which the issue arises.

- 8.2 Nothing prevents a Screening Officer or Hearing Officer from seeking or receiving legal advice from a third-party lawyer not employed by the Town.

9. Service of Documents

- 9.1 The service of any document, notice or decision, including a Penalty Notice, pursuant to this By-law, when served in any of the following ways, is deemed effective:
- a) immediately, when a copy is personally delivered to the Person to whom it is addressed; or
 - b) on the seventh (7th) day following the date a copy is delivered by registered mail or by regular mail to the Person's last known address; or
 - c) immediately upon sending a copy by electronic mail (i.e., email) to the Person's last known electronic mail address.
- 9.2 For the purposes of administration of this By-law or any Designated By-law, a Person's last known address, facsimile number, and electronic mail address includes an address, facsimile number and electronic mail address provided by the Person to the Town as may be required by a form, practices, or policy under this By-law.

10. Administration

- 10.1 The Director, or any individual designated in writing by the Director for this purpose, shall administer this By-law and shall establish any additional practices and procedures necessary to implement this By-law and may amend such practices and procedures from time to time as the Director deems necessary, without amendment to this By-law provided that such practices and procedures are not in conflict or inconsistent with this By-law.
- 10.2 The Director, or any individual designated in writing by the Director for this purpose, shall prescribe to 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, provided that the contents of such forms and notices are not in conflict, or inconsistent with this By-law.
- 10.3 An Administrative Penalty, including any Administrative Fee(s), that are affirmed 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.
- 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).

- 10.5 Where an Administrative Penalty, and any applicable Administrative Fee(s) or Late Payment Fee(s), are not paid within thirty (30) Days after becoming due and payable, the Town may notify the Ministry of the default and the Ministry shall not validate the permit of the Person named in the notice of default nor issue a new permit to the Person until the Administrative Penalty and any applicable Administrative Fee(s) and Late Payment Fee(s) are paid to the Town.
- 10.6 Where the Town notifies the Ministry of a default under this By-law, the Person shall pay any applicable administrative fee(s) imposed by the Ministry.
- 10.7 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 is drawn, the Person shall pay to the Town the NSF Fee set out in the Town's Administrative Fees and Charges By-law, as amended.
- 10.8 Where an Administrative Penalty is cancelled by a Screening Officer or Hearing Officer, any Administrative Fee(s) are also cancelled.
- 10.9 Any time limit that would otherwise expire on a Holiday is extended to the next day that is not a Holiday.
- 10.10 A Person claiming financial hardship under this By-law shall, if requested, provide satisfactory documented proof of the financial hardship to the Screening Officer or the Hearing Officer, as applicable.

11. Severability

Should any provision, or any part of a provision, of this By-law be declared as invalid, or to be of no force and effect, by a court of competent jurisdiction, it is the intent of the Council that such a provision, or any part of a provision, shall be severed from this By-law, and every other provision of this By-law shall be applied and enforced in accordance with its terms to the extent possible according to law.

12. Interpretation

- 12.1 Any schedule attached to this By-law forms part of this By-law.
- 12.2 If there is a conflict between the provisions of this By-law and any other by-law of the Town, the provisions of this By-law shall apply.
- 12.3 The provisions of Part VI of the *Legislation Act*, 2006, S.O. 2006, c.21, Sched. F shall apply to this By-law.

13. Enactment

This By-law shall come into force and effect upon the final passage thereof.

Read a first, second, third time and finally passed this 25th day of June, 2024.

Gary McNamara, Mayor

Robert Auger, Clerk