

City of Burlington By-law 40-2016

A by-law to provide for a system of administrative penalties and administrative fees for parking infractions in the City of Burlington

Whereas section 102.1 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, and Ontario Regulation 333/07 authorize a municipality to require a person to pay an administrative penalty for a contravention of any by-law respecting the parking, standing or stopping of vehicles; and

Whereas the Corporation of the City of Burlington has enacted a by-law regulating the parking, standing or stopping of vehicles, namely Parking and Idling By-law 39-2016, being a by-law to regulate parking of vehicles pursuant to the *Municipal Act, 2001*, as amended and the *Fire Protection and Prevention Act, 1997*, S.O. 1997, c.4, as amended.

Now therefore the Council of the Corporation of the City of Burlington hereby enacts as follows:

PART 1
DEFINITIONS AND AMENDMENTS

1. DEFINITIONS

For the purposes of this By-law, the following definitions shall apply:

“Administrative Fee” means any fee established or approved by City Council in the Current Budget or previous budgets and listed in Schedule “1”;

“Administrative Penalty” means an administrative penalty established by a Designated 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 Burlington;

“Council” means the City of Burlington’s Council;

“Current Budget” means the annually approved Current Budget of the Corporation of the City of Burlington;

“Designated By-law” means a by-law with respect to the parking, standing or stopping of vehicles that is designated by the City to which this By-law applies and, if only a part of a by-law is designated, includes only the designated part of the by-law;

“Director” means the person from time to time performing the functions of the City’s Director of Transportation Services, or their designate;

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“Hearing Decision” means a decision made by a Hearing Officer;

“Hearing Officer” means each person appointed from time to time performing the functions of a Hearing Officer pursuant to this By-law, as amended, and By-law 41-2016, as amended;

“Officer” means any person authorized by the Corporation of the City of Burlington to enforce Parking By-laws and shall include Parking enforcement officers, provincial offences officers and Halton Regional Police Officers;

“Owner” means the registered owner of a motor vehicle as provided by the Ministry of Transportation of Ontario (MTO);

“Penalty Notice” means a notice given pursuant to Section 5;

“Penalty Notice Date” means the date specified on the Penalty Notice pursuant to Section 5.3(a);

“Penalty Notice Number” means the reference number specified on the Penalty Notice that is unique to that Penalty Notice pursuant to Section 5(b);

“Screening Decision” means a decision made by a Screening Officer;

“Screening Officer” means each person from time to time performing the functions of a Screening Officer pursuant to this By-law and appointed by By-law 41-2016, as amended.

2. INTERPRETATION

Where words and phrases used in this By-law are defined in the *Highway Traffic Act*, but not defined in this By-law, the definitions in the *Highway Traffic Act* shall apply to such words and phrases.

3. EXPRESSION OF TIME

In this By-law, any expression of time shall be calculated as standard time except in periods when daylight saving time is declared to be in effect, where upon time shall be calculated as daylight saving time.

4. APPLICATION, SCHEDULES AND SEVERABILITY

1. This by-law applies to designated by-laws, as amended.

2. Each person who contravenes any provision of a Designated By-law, and each Owner of that vehicle, when given a Penalty Notice, in accordance with the City’s Parking Administrative Monetary Penalties By-law, shall be liable to pay the City an Administrative Penalty in the amount specified by the Designated By-

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law, and any Administrative Fees related thereto in Schedule "1".

3. If a Court of competent jurisdiction declares any section or part of a section of this by-law invalid, it is the intention of the Council that the remainder of the By-law shall continue to be in force and effect.

PART 2
PENALTY NOTICE

5. PENALTY NOTICE

1. Every person who contravenes a provision of a Designated By-law shall, when given a Penalty Notice in accordance with section 8, be liable to pay to the City an Administrative Penalty in the amount specified by the Designated By-law and shall be liable to pay to the City Administrative Fees specified in Schedule "1."
2. 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.
3. The Penalty Notice issued to the person shall include the following information:
 - a) the date of the Penalty Notice;
 - b) the Penalty Notice Number;
 - c) particulars of the contravention;
 - d) the amount of the Administrative Penalty;
 - e) information respecting the process by which the person may pay the Administrative Penalty or request a review of the Administrative Penalty; and
 - f) a statement advising that an Administrative Penalty will constitute a debt of the person to the City.
4. Any person who is served a Penalty Notice and who does not pay to the City the amount of the Administrative Penalty within fifteen (15) days of the Penalty Notice Date shall pay to the City an Administrative Fee with regards to conducting an Ontario Ministry of Transportation search for vehicle ownership information.
5. Any person who is served a Penalty Notice may request that the Administrative Penalty be reviewed by a Screening Officer and shall do so within 15 days after the Penalty Notice Date.
6. A Penalty Notice that is paid prior to a Screening Meeting shall be deemed as final and will not be subject to a Screening Meeting, unless there is error on the face of the Penalty Notice as determined by the Director.

PART 3
REVIEW BY A SCREENING OFFICER

6. REVIEW BY SCREENING OFFICER

1. Any person may request that the Screening Officer extend the time to request a review within 45 days after the Penalty Notice Date, at which time the Administrative Penalty shall be deemed to be affirmed. The Screening Officer may extend the time to request a review of the Administrative Penalty when the person requesting the extension demonstrates extenuating circumstances that warrant the extension of time.
2. A request for a review or a request of an extension of time to review shall include the Penalty Notice Number and the person's contact information.
3. On a review of the Administrative Penalty, the Screening Officer may affirm the Administrative Penalty, or the Screening Officer may cancel, reduce or extend the time for payment of the Administrative Penalty, including any late payment Administrative Fees, on the following grounds:
 - a) where the person establishes, on a balance of probabilities that the motor vehicle was not parked, standing or stopped as described in the Penalty Notice; or
 - b) the cancellation, reduction or extension of the time for payment of the Administrative Penalty, including any late payment Administrative Fees, is necessary to reduce hardship.
4. Every person who requests a review by the Screening Officer shall receive a Screening Decision and may request a review of the Screening Decision by a Hearing Officer within 15 days after the Screening Decision was issued.

PART 4
APPEAL TO HEARING OFFICER

7. APPEAL TO HEARING OFFICER

1. Any person may request that the Hearing Officer extend the time to request a review within 45 days after the Screening Decision was issued, at which time the Screening Decision shall be deemed to be affirmed. The Hearing Officer may extend the time to request a review of the Screening Decision when the person requesting the extension demonstrates extenuating circumstances that warrant the extension of time.
2. A request for a review or a request for an extension of time to review by the Hearing Officer shall include the Penalty Notice Number and the person's contact information.
3. The person shall be given notice of the date, time and place of the review by the Hearing Officer.
4. On a review of the Screening Decision, the Hearing Officer may affirm the Screening Decision, or the Hearing Officer may cancel, reduce or extend the time for payment of the Administrative Penalty, including any late payment Administrative Fees, on the following grounds:
 - a) where the person establishes, on a balance of probabilities that the motor vehicle was not parked, standing or stopped as described in the Penalty Notice; or
 - b) the cancellation, reduction or extension of the time for payment of the Administrative Penalty, including any late payment Administrative Fees, is necessary to reduce hardship.
5. Where a person fails to request a review of the Screening Decision or extension of time before the Hearing Officer in accordance with this By-law:
 - a) the Person shall be deemed to have waived the right to a hearing;
 - b) the Screening Decision and the Administrative Penalty shall be deemed to be affirmed; and
 - c) the Screening Decision and the Administrative Penalty shall not be subject to review, including review by any Court.
6. Where the person fails to appear at the time and place scheduled for a review by the Hearing Officer:
 - a) the person shall be deemed to have abandoned the hearing;

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- b) the Screening Decision and the Administrative Penalty shall be deemed to be final;
 - c) the person shall pay to the City an Administrative Fee for failing to attend the scheduled hearing.
7. A Hearing Officer shall not make any decision respecting a review of the Screening Decision unless the Hearing Officer has given the person, and the City an opportunity to be heard.
 8. The decision of a Hearing Officer is final.
 9. Neither a Screening Officer nor a Hearing Officer has 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.

PART 5
SERVICE OF NOTICE OR DOCUMENT

8. SERVICE OF NOTICE OF DOCUMENTS

1. A Penalty Notice set out in this By-law served in any of the following ways is deemed effective by:
 - a) affixing it to the vehicle in a conspicuous place at the time of the contravention;
 - b) delivering it personally to the operator of the vehicle or the person having care and control of the vehicle at the time of the contravention; or
 - c) mailing it to the Owner as provided by the Ministry of Transportation (Ontario) as soon as reasonably practicable;
2. Where the contravention of a Designated By-law is alleged against the Owner, any notice or document may be given to the person identified as the Owner.
3. Any notice or document sent in writing to the Owner is deemed effective on the seventh (7th) calendar day after the date of mailing.

PART 6
FINANCIAL ADMINISTRATION

9. FINANCIAL ADMINISTRATION

1. No Officer may accept payment in respect of the Administrative Penalty.
2. An Administrative Penalty that is deemed to be affirmed is due and payable and constitutes a debt to the City.
3. Payments of an Administrative Penalty must be received by the due date and will not be credited until received by the City.
4. Where a person has paid an Administrative Penalty or an Administrative Fee that is cancelled or reduced by a Screening Officer or Hearing Officer, the City shall refund the amount cancelled or reduced.
5. Where an Administrative Penalty and any applicable Administrative Fees are not paid within 15 days after the date that it become due and payable, each person to whom the Penalty Notice was given shall pay to the City an Administrative Fee for late payment.
6. Where an Administrative Penalty and any applicable Administrative Fees are not paid within 15 days each person to whom the Penalty Notice was given shall pay to the City an Administrative Fee with regards to notifying the Registrar of motor Vehicles for the purpose of plate permit denials.

PART 7
GENERAL

10. GENERAL

The Director may:

1. designate areas within the City for conducting reviews and hearings under this By-law;
2. make forms, notices, applications, policies, guidelines and documents not otherwise prescribed by this By-law to satisfy the requirements of, or to provide other information required under, this By-law, the *Municipal Act, 2001* or the *Statutory Powers Procedure Act, R.S.O. 1990, c.S.22*; and
3. make regulations and impose conditions for the orderly operation of the administrative penalty system established by this By-law.

PART 8
APPLICATION AND ADMINISTRATION

11. SHORT TITLE

The short title of this by-law is the “Parking Administrative Monetary Penalties By-law.”

12. COMMENCEMENT

This by-law shall come into full force and take effect on September 1, 2016.

13. REPEAL OF BY-LAW

By-law 38-2014, as amended is repealed on the date this by-law takes effect.

Enacted and passed this 18th day of July, 2016

Mayor Rick Goldring _____

Acting City Clerk Danielle Pitoscia _____

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SCHEDULE "1"
List of administrative fees

ADMINISTRATIVE FEES		
	DESCRIPTION	FEE
1	Vehicle Ownership from Ministry of Transportation (MTO) or Canadian Police Information Centre (CPIC) Search Fee	\$16
2	Late Payment Administrative Penalty Fee	\$26
3	Vehicle Licence Filed with Ministry of Transportation (MTO) for Plate Denial Fee	\$26
4	Fail to Attend a Scheduled Hearing Meeting Fee	\$52
5	Tow Vehicle Fee	\$100