THE CORPORATION OF THE TOWN OF LINCOLN

BY-LAW NO. 2024~~43~~-XX~~25~~

BEING A BY-LAW TO ESTABLISH AN ADMINISTRATIVE MONETARY PENALTY SYSTEM FOR NON-PARKING RELATED OFFENCES WITHIN THE TOWN OF LINCOLN AND TO REPEAL BY-LAW NO. 2023-25

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

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,

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,

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,

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,

AND WHEREAS the Council of the Corporation of the Town of Lincoln 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 COUNCIL OF THE CORPORATION OF THE TOWN OF LINCOLN ENACTS AS FOLLOWS:

1. **Definitions in this By-law**

1.1. “Administrative Fee” shall mean any fee specified in this by-law or reference to fees in a designated by-law listed in Schedule “B” of this by-law.

1.2. “Administrative Penalty” shall mean a penalty established and approved by Council for a contravention of a Designated By-law.

1.3. “AMPS” shall mean Administrative Monetary Penalty System.

1.4. “Council” shall mean the Council of the Corporation of the Town of Lincoln.

1.5. “Day” shall mean any calendar day.

1.6. “Director” means the Director of Planning and Development or his or her designate.

1.7. “Designated By-law” shall mean a by-law, or a part or provision of a by-law, that is designated under this or any other by-law, and is listed in the attached Schedule “A”, to which this AMPS by-law applies.

1.8. “Electronic Mail” shall refer to email, and the two terms shall be used interchangeably.

1.9. “Electronic Hearing” means a hearing held by a form of electronic technology, allowing person/s/ to hear and see one another, and includes hearings conducted by video conference.

1.10. “Electronic Recording” means a record created, generated, sent, communicated, received or stored by electronic means.

1.11. “Hearing Decision” shall mean written notice of decision made by a Hearing Officer.

1.12. “Hearing Officer” shall mean a person who performs the duties of Hearing Officer as set out in section 5 of this by-law, and pursuant the Town’s Screening and Hearing Officer By-law.

1.13. “Holiday” shall mean a Saturday, Sunday, any statutory holiday in the Province of Ontario or any Day the Municipal Office of the Town of Lincoln is officially closed to the public.

1.14. “Late Payment Fee” means any Administrative Fee that is past the prescribed times as listed in Schedule “B” of this by-law.

1.15. “NSF Fee” shall mean an added fee as stated in Schedule “B” of this By-law for payment received for an Administrative Penalty for which there are insufficient funds available in the account.

1.16. “Non-Appearance Fee” shall mean a fee stated in Schedule “B” of this by-law in respect to a person’s failure to appear at a scheduled Hearing or Screening Review.

1.17. “Officer” means a Municipal Law Enforcement Officer or other person appointed under the authority of a Town By-law to enforce a designated By-law, a police officer employed by the Royal Canadian Mounted Police (RCMP), Ontario Provincial Police (OPP) or Niagara Regional Police

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Service (NRPS), an officer appointed under the Ontario Society for the Prevention of Cruelty to Animals (OSPCA).

1.18. "Penalty Notice" shall mean a notice given to a Person pursuant to section 3 of this AMPS by-law.

1.19. "Penalty Notice Date" shall mean the date the contravention specified on the Penalty Notice, in accordance with section 3 of this by-law.

1.20. "Penalty Notice Number" shall mean a reference number that is specified on the Penalty Notice that is unique to that Penalty Notice only.

1.21. "Person" includes an individual or business name, sole proprietorship, corporation, partnership, or limited partnership, or an authorized representative thereof.

1.22. "Request for Review by a Hearing Officer" shall mean the request that may be made in accordance with section 5 of this by-law for review of a Screening Decision.

1.23. "Review by Hearing Officer" or "Hearing Review" shall mean the process set out in section 5 of this by-law.

1.24. "Review by Screening Officer" or "Screening Review" shall mean the process set out in section 4 of this by-law.

1.25. "Screening Decision" shall mean written notice of decision made by a Screening Officer.

1.26. "Screening Officer" shall mean a person who performs the functions of a of Screening Officer in accordance with section 4 of this By-law and pursuant to the Township's Screening and Hearing Officer By-law.

1.27. "Town" shall mean The Corporation of the Town of Lincoln.

2. Application of this By-Law

2.1. The Town's by-laws, or portions of by-laws, listed in the attached Schedule "A" of this By-law shall be Designated By-laws for the purposes of sections 102.1 and 151 of the Municipal Act and paragraph 3(1)(b) of the Regulation.

2.2. Schedule "B" of this By-law shall set out Administrative Fees imposed for the purposes of this By-law.

3. Penalty Notice

3.1. Every Person in contravention of a Designated By-law shall upon issuance of a Penalty Notice be liable to pay the Town an Administrative Penalty, for each day or part of a day on which the contravention continues.

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3.2. 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.

3.3. An Officer who finds or has reasonable cause to believe that a Person has contravened any provision of this By-law, including any Schedules, may issue a penalty notice to the Person.

3.4 A Penalty Notice may include the following information:

(a) Municipal Address;

(b) Penalty Notice Date;

(c) Penalty Notice Number;

(d) name of the Person;

(e) details of the Designated By-law infraction including short form wording or other particulars reasonably sufficient to indicate the contravention;

(f) the date on which the Administrative Penalty is due and payable;

(g) Officer name, Officer ID number, and signature of Officer;

(h) process for a person to exercise their right to a Screening Review;

(i) the amount of the Administrative Penalty;

(j) statement that an unpaid Administrative Penalty including any applicable fee will constitute a debt of that Person to the Town of Lincoln, unless cancelled pursuant to the Screening or Hearing process.

3.5~~4~~. No Officer may accept payment of an Administrative Penalty or Administrative Fee.

3.6~~5~~. A Person who is served with a Penalty Notice and who does not pay the amount of the Administrative Penalty on or before the date on which the Penalty Notice is due and payable, shall also pay the Town any applicable Administrative Fee(s).

4. Review by Screening Officer

4.1. A Person who is served with a Penalty Notice may request that the Administrative Penalty be reviewed by a Screening Officer and shall do so on or before the date on which the Administrative Penalty is due and payable, and in accordance with the process set out in Section 4.3.

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4.2. If a Person has not requested a Screening Review on or before the date on which the Administrative Penalty is due and payable, the Person may request that the Screening Officer extend the time to request a Screening Review to a date that is no later than fifteen (15) days after the Penalty Notice Date, in accordance with the process set out in Section 4.3.

4.3. A Person's right to request an extension of time for a Screening Review expires if it has not been exercised on or before fifteen (15) days after the Penalty Notice Date, 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 Screening Review; and,

b) the Administrative Penalty shall be deemed to be confirmed on the sixteenth (16th) day following the Penalty Notice Date; and,

c) the Administrative Penalty shall not be subject to any further review, including a review by any Court.

4.4. A Person's Request for Review by Screening Officer or request for an extension of time to request a Screening Review are exercised by:

(a) a submission of 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 method (in person, written submission or virtual) or request for an extension of time to request a Screening Review;

4.5. A Request for Review by Screening Officer of an Administrative Penalty 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.

4.6. A Request for Review by Screening Officer or a request for an extension of time to request a Screening Review shall only be scheduled if the Person makes the request on or before the dates established by Sections 4.2 or 4.3 of this By-law.

4.7. On 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 extenuating circumstances that warrant the extension of time.

4.8. Where an extension of time to request a Screening Review is not granted by the Screening Officer, the Administrative Penalty and any applicable Administrative Fee(s) are deemed to be confirmed.

4.9. Where a Person fails to attend/participate at the time and place scheduled for a Screening Review of an Administrative Penalty:

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(a) the Person shall be deemed to have abandoned the request for a Screening Review of the Administrative Penalty;

(b) the Administrative Penalty as set out in the Penalty Notice shall be deemed to be confirmed on the sixteenth (16th) day following the Penalty Notice Date;

(c) the Administrative Penalty shall not be subject to any further review, including a review by any Court; and

(d) the Person shall pay to the Town a Screening Non-appearance Fee and any other applicable Administrative Fee(s).

4.10. On a review of an Administrative Penalty, the Screening Officer may:

(a) affirm the Administrative Penalty; or

(b) cancel or reduce the Administrative Penalty 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 they did not contravene the Designated By-law(s) as described in the Penalty Notice; or

(ii) where the Person establishes on a 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 undue hardship.

4.11. On a Screening Review of an Administrative Penalty, before making a decision, a Screening Officer shall provide the Person opportunity to provide information for consideration, in-person, electronic screening, telephone communication, or written submission.

4.12. After a Review by Screening Officer, the Screening Officer shall deliver a Screening Decision to the Person, in accordance with Section 6 of this By-law.

4.13. 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.

5. Review by Hearing Officer

5.1. A Person may Request a Review by Hearing Officer during the Screening Review.

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5.2. A person may request a review of a Screening Decision by a Hearing officer and shall do so within 15 days after the screening decision has been delivered to the person.

5.3. If a person has not requested a review within the time limit set out, a person may request that a Hearing Officer extend the time to request a review within 30 days of the Screening Decision being delivered to the person. A Person's right to Request for Review by Hearing Officer expires if it has not been exercised within 30 days after the Screening Decision has been delivered, at which time:

(a) the Person shall be deemed to have waived the right to Request for Review by Hearing Officer;

(b) the Screening Decision and the Administrative Penalty and any Administrative Fee(s), if applicable, as modified in the Screening Decision, shall be deemed to be affirmed; and

(c) the Screening Decision and Administrative Penalty shall not be subject to any further review, including a review by any Court.

5.4 A Person's Request for Review by Hearing Officer is exercised by:

(a) a submission in writing a Request for Review by Hearing Officer to the Town or request for an extension of time to request a Hearing; or

(b) attending in person at the location listed on the Screening Decision to make Request for Review by Hearing Officer or request an extension of time to request a Hearing.

5.5. A Request for Review by Hearing Officer shall only be scheduled if the Person makes the request within the time limits set out in sections 5.2 or 5.3 of this By-law.

5.6. 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 Administrative Penalty and any Administrative Fee(s) shall be deemed to be affirmed;

(c) the Screening Decision and the Administrative Penalty and any Administrative Fee(s) shall not be subject to any further review, including a review by any Court; and;

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(d) the Person shall pay to the Town a Hearing Non-appearance Fee, Late Payment Fee and any other applicable Administrative Fee(s).

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

(a) confirm the Screening Decision; or

(b) cancel or reduce the Administrative Penalty 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 a balance of probabilities that they did not contravene the Designated By-law(s) as described in the Penalty Notice; or

(ii) where the Person establishes on a 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 undue hardship.

5.8. 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 Hearing.

5.9. In accordance with any agreement in place in respect to the Hearing Officer, such Hearings will take place via Electronic Hearing (virtual), telephone conference.

5.10. 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.

5.11. 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.

5.12. After a Hearing is complete, the Hearing Officer shall deliver to the Person a Hearing Decision, in accordance with Section 6 of this By-law.

5.13. The decision of a Hearing Officer is final.

6. Service of Documents

6.1. 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

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effective:

(a) immediately, when a copy is personally delivered to the Person to whom it is addressed;

(b) on the fifth (5th) Day following the date a copy is sent by registered mail or by regular mail to the Person's last known address;

(c) immediately upon the conclusion of a copy by facsimile transmission to the Person's last known facsimile transmission number; or

(d) immediately upon sending a copy by electronic mail to the Person's last known electronic mail address.

6.2. For the purposes of subsections 6.1 (b), (c) and (d) of this 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, practice or policy under this By-law.

7. Administration

7.1. 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 Clerk deems necessary, without amendment to this By-law.

7.2. 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 Clerk deems necessary, without amendment to this By-law.

7.3. 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) Pursuant to Section 434.2(2) of the Municipal Act, where an administrative penalty is imposed under the Municipal Act remain unpaid after the day that it becomes due and payable, as specified in the Penalty Notice, the administrative penalty shall be added to the tax roll for any property in the local municipality for which all of the owners are responsible for paying the administrative penalty, and collected it in the same manner as municipal taxes.

7.4. 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

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applicable Administrative Fee(s).

7.5. 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 Township the NSF Fee set out Schedule "B" of this By-law.

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

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

7.8. A Person claiming financial hardship under this By-law shall provide documented proof of the financial hardship to the Clerk, the Screening Officer or the Hearing Officer, as applicable.

7.9. Any schedule attached to this By-law forms part of this By-law.

8. Severability

8.1. Should any provision, or any part of a provision, of this By-law be declared invalid, or to be of no force and effect, by a court of competent jurisdiction, it is the intent of Council that such a provision, or part of a provision, shall be severed from this Bylaw, 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.

9. Short Title

9.1. This By-law may be referred to as the AMPS By-law for Non-Parking Offences.

10. Effective Date

10.1 That this By-law shall come into force and take effect on the date of its final passing.

PASSED AND ENACTED on the ~~8~~th day of ~~May 2023~~.

MAYOR: SANDRA EASTON

CLERK: JULIE KIRKELOS

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SCHEDULE “A”

Administrative Monetary Penalty By-law for Non-Parking Offences

DESIGNATED BY-LAWS

Designated By-law	By-law Number
Use of Municipal Parks	2022-44
Clean Yards	2018-92
Open Air Fire	2017-110
Noise Control	2019-44
Public Nuisance	2021-30
Sale and use of Fireworks	2007-77
Public Property Sign	2002-24
Property Standards	2016-27
Site Alteration and Removal of Trees	2024-XX

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SCHEDULE “B”

Administrative Monetary Penalty System By-law

Administrative Fees

The table below lists the Administrative Fees as defined in Section 1.0 of this By-law

Administrative Fee Description	**Fee Amount**
Late Payment Fee	$22.00
NSF Fee	$27.00
Screening Non-Appearance Fee	$54.00
Hearing Non-Appearance Fee	$108.00
NOTE: Fees listed in Schedule “B” to this By-law will be subject to Harmonized Sales Tax (H.S.T) where applicable.	

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