



REPORT

COUNCIL MEETING

MEETING DATE: FEBRUARY 22, 2021

FROM: Municipal Enforcement Services Department

DATE: February 9, 2021

SUBJECT: **Global Administrative Penalties for Non Parking and Order System**

LOCATION:

WARD: Town wide

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RECOMMENDATION:

1. That the report from the Municipal Enforcement Services Department, dated February 9, 2021, titled "*Global Administrative Penalties for Non Parking and Order System*", be received for information; and,
2. That By-law 2021-038, a by-law to establish a comprehensive system of administrative penalties for non-parking violations, a comprehensive system of orders and to amend By-laws 2002-034, 2003-021, 2005-062, 2006-071, 2007-135, 2008-098, 2009-025, 2009-072, 2011-045, 2013-013, 2015-075, 2016-083, 2017-008, 2017-038, 2018-006, 2018-045, 2018-153 and 2019-060, attached as Appendix A to the report from the Municipal Enforcement Services Department dated February 9, 2021 be passed; and,
3. That By-law 2021-039, a by-law to amend Parking Administrative Penalties By-law 2015-071, as amended, attached as Appendix D to the report from the Municipal Enforcement Services Department dated February, 9, 2021 be passed; and,
4. That the updated Regulatory Services Policy [MS-REG-001], attached as Appendix B to the report from the Municipal Enforcement Services Department dated February, 9, 2021 be approved; and,
5. That the Administrative Penalties Procedure [MS-REG-001-003] attached as Appendix C to the report from the Municipal Enforcement Services Department dated February, 9, 2021 be received.

KEY FACTS:

The following are key points for consideration with respect to this report:

- The Municipal Act, 2001 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 a by-law of the municipality.
- On September 23, 2019, Council approved escalating penalties and fees for use under the Lot Maintenance By-law. These were put in place to address repeat violations.
- By-law 2021-038 proposes a consolidated process for administrative penalty systems (APS) for orders and for the service of same.
- Centralizing the APS, orders and service processes under one by-law provides consistency and ease of administration.
- The addition of APS to the Noise By-law and the Fence By-law under this by-law will streamline enforcement.
- Escalating APS and order fees are another tool officers can use to encourage compliance with by-laws.
- An update to the screening and hearing process for both parking and non parking APS violations has been updated to allow for remote hearings as found in proposed By-law 2021-038 as well as By-Law 2021-039, a by-law to amend the Parking APS By-law (as attached as Appendix D).

BACKGROUND:

APS streamlines the processing of by-law infractions while maintaining an individual's right to request a review of the penalty. Currently, there are several by-laws ("regulatory by-laws") that provide for penalties to be issued under the APS. The response to by-law contraventions results in the issuance of orders and/or penalties which are of a static value.

On September 23, 2019, Council approved the system of escalating penalties and order fees which was to address specific issues surrounding repeated violations under the Lot Maintenance By-law.

The introduction of a by-law to establish a comprehensive system of administrative penalties for non-parking offences, and a comprehensive system of orders provides a uniform approach to the use of escalating penalties and order fees. This approach was discussed during the Council meeting on September 23, 2019. The approval and implementation of By-law 2021-038 will allow for the deployment of the progressive enforcement strategy using escalating penalties and order fees. Under this by-law, the progressive enforcement strategy will be applied in the enforcement of all regulatory by-laws that include APS as a means of enforcement.

COMMENT/OPTIONS:

Escalating APS penalties and fees

Progressive enforcement is based on seeking ongoing compliance by employing reasonably escalating tools of enforcement over time – this includes the issuance of penalties and fees by way of APS. The Municipal Act, 2001 provides that penalties created by the town cannot be punitive, which limits the overall value of any one penalty to \$500. It should also be noted that, as a final step in progressive enforcement, staff can take a violator to court by issuing a summons under the Provincial Offences Act. This process takes significantly longer than the issuance of APS and order fees, but can result in more significant fines – specifically if a pattern of non-compliance, in the face of progressive enforcement, can be shown.

By-law 2021-038 amends the regulatory by-laws to provide for the escalation of APS with the progression of increased penalties or order fees to be applied for contraventions of the same provision of a regulatory by-law within a 24 month period. If the contravention relates to a property, the owner of the property must not change in order to allow for the APS penalty to be escalated. The penalties and fees escalate as follows, as approved by Council in 2019:

APS		ORDERS	
First Violation	\$300	First Order	\$0
Second Violation	\$400	Second Order	\$100
Third Violation	\$500	Third Order	\$250
Subsequent Violation	\$500	Fourth Order	\$500
-	-	Subsequent Orders	\$500

The above chart provides examples of how progressive enforcement can work. Not all cases will result in a fee and/or penalty. Officers will continue to use judgement and follow progressive enforcement guidelines when dealing with individual investigations.

APS By-laws and Penalty process

There are 16 regulatory by-laws currently administered under APS. Each contains the administrative penalties and order process. They are:

- Site Alteration By-law 2003-021
- Site Plan Control By-law 2005-062
- Pool Enclosure By-law 2006-071
- Temporary Road Closure By-law 2007-135
- Licensing By-law 2015-075
- Transportation Network Companies By-law 2016-083
- Lot Maintenance By-law 2017-008
- Private Tree By-law 2017-038

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- Municipal Tree By-law 2009-025
- Municipal Right-of-Way By-law 2009-072
- Tow Truck By-law 2019-060
- Animal Control By-law 2018-006
- Short-Term Accommodation Licensing By-law 2018-045
- Sign By-law 2018-153

Rather than each by-law containing the same administrative penalties process, it is recommended that Council pass By-law 2021-038, attached as Appendix A, which consolidates the process into one stand-alone by-law. By-law 2021-038 contains amendments to each of the above-noted by-laws to defer to it for the APS process. If By-law 2021-038 is approved, officers will have the option to deploy the town's progressive enforcement strategy by using either escalating APS and/or order fees, where applicable, for contravention of each of the above-noted by-laws.

The following by-laws do not currently provide for APS and have been included in By-law 2021-038:

- Noise By-law 2018
- Fence By-law 2002-034
- Parks By-law 2013-013
- Litter By-law 2011-045

With the approval of By-law 2021-038, officers will be able to use APS to enforce the Noise By-law and the Fence By-law which will allow them the ability to deploy the progressive enforcement strategy more effectively.

Order Process

Like the APS for penalty notice issuance and penalties, each regulatory by-law contains provisions for the issuance of orders to persons who are contravening the by-law. By-law 2021-038 consolidates this process and amends each of the above-noted by-laws to defer to it with respect to the issuance of orders. Similarly, By-law 2020-125 contains provisions for the service of penalty notices and orders, rather than requirements for service appearing in each regulatory by-law.

Parks By-law 2013-013, which does not currently provide for order issuance, will see this process added under By-law 2021-038. With the approval of By-law 2021-038, officers will be able to use the order process as a tool to provide documented information to the resident such as nature of violation, ways to remedy and timelines under which to comply. The ability to issue orders under this By-law will assist with enforcement of such violations as parks encroachments and municipal tree removals.

Future by-laws will defer to By-law 2021-038 for processes respecting APS, the issuance of orders and the service of same.

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Remote Screening and Hearing options

Prior to the COVID Emergency announced in March 2020, the process for a ticket recipient to dispute their ticket through screening or hearing was undertaken in person. The constraints for in-person service imposed over the past year as required under Provincial orders that prevented access to Town Hall, required physical distancing and efforts to limit social interaction, revealed the limitations in accommodating the dispute process for both Parking and Non parking APS penalties. Proposed By-law 2021-038 provides the opportunity to update the administrative process relating to non by-law screenings and hearings to allow for the opportunity for the ticket holder looking to engage in the dispute process to be offered the opportunity to have their ticket reviewed remotely by email, phone or a video conference. The implementation of remote hearings will align with other committee proceedings held within the town such as the Committee of Adjustment and Heritage Committee meetings.

Parking APS By-law

To ensure the language used for all APS remains consistent, staff reviewed the Parking APS By-Law. This resulted in amending By-Law 2021-039, as found in Appendix D updates By-law 2015-071 relating to the administrative functions of APS. Most notably, the amendment to the Parking APS By-law updates the screening and hearing process to permit remote proceedings. The addition of remote proceedings for parking violations will allow for a safe and efficient way for the screening and hearing proceedings to be heard.

Updated Policy and Procedure

The Administrative Penalty Procedure has been updated to be consistent with the provisions of By-law 2021-038. The up-dated procedure was presented to the Procedural Committee on January 13, 2021 for approval and is attached as Appendix C to this report for Council's information. The updates to this procedure allow for remote screenings and hearings for parking APS penalties.

The Regulatory Services Policy, attached as Appendix B for Council approval, updates the term "Administrative Monetary Penalty System" to align with the Parking APS By-Law 2015-071 and proposed By-law 2021-038, which refers to the system of issuing penalties as the "Administrative Penalty System"

Conclusion

Consolidation of the processes for non-parking APS and orders will improve customer service by ensuring consistency with respect to process and mitigate the risk of unintended differences between various processes. Further, a consolidated by-law is legislatively more efficient since amendments need only be made to one by-law rather than to each by-law.

CONSIDERATIONS:**(A) PUBLIC**

The administrative penalty system of enforcement allows for the processing of by-law penalties outside of the courts, thereby providing the Town and the public with a timely, local dispute resolution system.

The process of escalating fines and order fees will ensure that property owners and persons that continue to contravene the by-laws will be reminded of their egregious behaviour through the escalating fine amounts and order fees.

(B) FINANCIAL

Requests for screening and hearing reviews under new APS provisions in the Noise By-law and Fence By-law should be able to be accommodated with existing legal resources and reduces the requirement for provincial court resources.

Revenue may increase if the necessity exists for escalating penalties and/or order fees are required to be issued.

(C) IMPACT ON OTHER DEPARTMENTS & USERS

Multiple departments including Municipal Enforcement and Legal have been involved in the review process.

(D) CORPORATE AND/OR DEPARTMENT STRATEGIC GOALS

This report addresses the corporate strategic goal to:

- continuously improve our programs and services
- provide outstanding service to our residents and businesses
- be accountable in everything we do
- be honest in everything we do

(E) COMMUNITY SUSTAINABILITY

Ensuring that that staff have progressive enforcement options to promote compliance with town by-laws will improve neighborhood cohesion and protect the character and stability of neighborhoods. The social, economic and cultural pillars of sustainability are addressed.

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APPENDICES:

Appendix A – By-law 2021-038, a by-law to establish a comprehensive system of administrative monetary penalties for non-parking violations, a comprehensive system of orders and to amend By-laws 2002-034, 2003-021, 2005,062, 2006-071, 2007-135, 2008-098, 2009-025, 2009-072, 2011-045, 2013-013, 2015-075, 2016-083, 2017-008, 2017-038, 2018-006, 2018-045, 2018-153 and 2019-060.

Appendix B – Regulatory Services Policy [MS-REG-001]

Appendix C – Administrative Penalties Procedure [MS-REG-001-003]

Appendix D- By-Law 2021-029, a by-law to amend Parking Administrative Penalties By-law 2015-071

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