

BY-LAW NUMBER 86-23

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THE CORPORATION OF THE COUNTY OF BRANT

To Establish and Operate a System To Use Camera Based Traffic Enforcement, and an Administrative Penalties System for Violations of the Highway Traffic Act (Automated Speed Enforcement)

WHEREAS section 128 of the Highway Traffic Act R.S.O. 1990, c.6 (Highway Traffic Act) provides for the regulation of the rate of speed by and provides for penalties for contraventions of section 128 of the Highway Traffic Act;

AND WHEREAS subsection 128(2) of the Highway Traffic Act permits the council of a municipality to prescribe a rate of speed different from those prescribed by subsection 128(1) of the Highway Traffic Act;

AND WHEREAS subsection 205.1 of the Highway Traffic Act provides that an automated speed enforcement system may be used in accordance with Part XIV.1 of, and the regulations made under, the Highway Traffic Act;

AND WHEREAS Ontario Regulation 398/19 (Automated Speed Enforcement) regulates the operation of automated speed enforcement systems by municipalities;

AND WHEREAS subsection 21.1 of the Highway Traffic Act provides that an administrative penalty may be imposed in order to promote compliance with this Act and its regulations;

AND WHEREAS Ontario Regulation 355/22 (Administrative Penalties For Contraventions Detected Using Camera Systems) regulates the enforcement of contraventions of subsection 128(1) of the Highway Traffic Act, and the use of municipal Administrative Penalty Systems authorized by subsection 21.1 of the Highway Traffic Act;

AND WHEREAS the Council of the Corporation of the County of Brant has established by by-law an administrative penalty system for the violation of by-laws constituted under the Municipal Act, 2001, S.O. 2001, c. 25;

AND WHEREAS Ontario Regulation 333/07, as amended, outlines the requirements to operate an Administrative Penalties System if the municipality is satisfied that a person has failed to comply with a by-law of the municipality passed under the Municipal Act;

AND WHEREAS the administration of the administrative penalty system for contraventions of the Highway Traffic Act relies on Regulation made under the Municipal Act governing the use of administrative penalty system authorized under the Municipal Act;

AND WHEREAS section 391 of the Municipal Act, 2001, S.O. 2001, c. 25 ("Municipal Act") provides that a municipality may impose fees or charges on persons for services or activities provided or done by or on behalf of it;

AND WHEREAS subsection 434.2(1) of the Municipal Act provides than an administrative penalty imposed by a municipality on a person constitutes a debt of the person to the municipality;

AND WHEREAS the Statutory Powers and Procedure Act, R.S.O. 1990, c. S.22, as amended, applies to all hearings held under this By-law;

AND WHEREAS the Council of the Corporation of the County of Brant is desirous of establishing an automated speed enforcement program authorized by subsection 205.1 of the Highway Traffic Act and an administrative penalty regime authorized by subsection 21.1 of the Highway Traffic Act;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE COUNTY OF BRANT HEREBY ENACTS as follows:

1. DEFINITIONS

In this By-law,

“Administrative Penalty” means an administrative penalty established by this by-law in accordance with subsection 21.1, subsection 128(1), and Ontario Regulation 355/22 of the Highway Traffic Act, R.S.O. 1990;

“Appear” means to attend in-person or participate remotely by telephone, or by videoconference at the time, place, telephone number or videoconference link scheduled for review or by email for a review by a Screening Officer. The format will be determined by the Director, and “Appearing” has a similar meaning;

“Business Day” means a day from Monday to Friday, other than a holiday as defined in section 87 of the *Legislation Act, 2006*, S.O. 2006, c. 21, Schedule F, as amended from time to time;

“Contravention” means a violation of subsection 128(1) of the Highway Traffic Act as determined by an automated speed enforcement system authorized under section 205 of the Highway Traffic Act;

“Council” means the Council for The Corporation of the County of Brant;

“County” means The Corporation of the County of Brant;

“Designated By-law” means each by-law that is designated by the County as a by-law to which this By-law applies as outlined in Section 1.1;

“Director” means the Director of Regulatory and Enforcement Services, or designate;

“Hearing Officer” means a Hearing Officer appointed pursuant to the by-law to establish the positions of Screening Officer and Hearing Officer, as amended, or successor by-laws, in accordance with Ontario Regulation 355/22.

“Notice of Penalty and Due Date” means a letter sent by the County to the Person to whom the Penalty Order was issued that includes the Penalty Order number, the amount of the outstanding Administrative Penalty, any administrative fees and the due date for payment;

“Notice of Final Due Date” means a letter sent by the County to the Person to whom the Penalty Order was issued that sets out the final date for payment of an Administrative Penalty and any administrative fees prior to these costs being referred and subject to further measures;

“Officer” means any person employed by the Corporation of the County of Brant, and designated as a provincial offences officer by the Minister of Transportation under subsection 1 (3) of the *Provincial Offences Act* for the purposes of imposing an administrative penalty in accordance with subsection 21.1(2) of the Highway Traffic Act and subsection 4.2 of Ontario Regulation 355/22;

“Ontario Regulation 355/22” means Ontario Regulation 355/22 (Administrative Penalties For Contraventions Detected Using Camera Systems) filed under the Highway Traffic Act, serving as the Regulatory basis for the use of Administrative Penalties for contraventions detected using camera systems. The County shall rely on the prescribed elements of this Regulation including the fees available to be assessed during the course of the review of an Administrative Penalty issued to a Person.

“Penalty Order” means a Notice of Penalty issued in relation to an Administrative Penalty, and pursuant to Section 2 of this By-law in accordance with Ontario Regulation 355/22;

“Person” means the holder of the permit for the motor vehicle, or, if the motor vehicle permit consists of a vehicle portion and plate portion and different persons are named on each portion, the person whose name appears on the plate portion of a vehicle that has been deemed by an Officer to have contravened subsection 128(1) of the Highway Traffic Act, in accordance with Ontario Regulation 355/22;

“**Screening Decision**” means a decision or disposition made by a Screening Officer;

“**Screening Officer**” means a Screening Officer appointed pursuant to the by-law to establish the positions of Screening Officer and Hearing Officer, as amended, or successor by-laws, in accordance with Ontario Regulation 355/22.

1.1 APPLICATION OF THIS BY-LAW

- (1) This By-law serves as the County’s process to issue Penalty Orders associated with Administrative Penalties for the contravention of subsection 128(1) of the Highway Traffic Act in accordance with Part XIV.1 of the Highway Traffic Act.
- (2) In accordance with subsection 6(1)1 of Ontario Regulation 355/22, the Penalty Order amount shall be determined in accordance with the following formula:

$$A \times B$$

in which:

“A” is the number of kilometres per hour by which the person driving the motor vehicle exceeds the speed limit set out in subsection 128 (1) of the Act, and

“B” is the penalty rate set out in Column 2 of Table 1 that is opposite the value of “A” described in Column 1 of Table 1, as outlined in Table 1 of subsection 6 of Ontario Regulation 355/22 as it appeared on the date of the contravention.

- (3) In accordance with subsection 6(2) of Ontario Regulation 355/22, if the amount of the Penalty Order referenced in subsection 1.1.(2) of this By-law is \$1000 or less, the County will collect the amount set out in Column 2 of Table 2 that is opposite the amount of the Penalty Order outlined in Column 1 of Table 2, This amount is to be remitted to the victims’ justice fund account managed by the Ministry of the Attorney-General in accordance with section 19 of Ontario Regulation 355/22. If the amount referenced in subsection 1.1.(2) of this By-law is greater than \$1000, the County will collect 25% of the amount to be remitted to the victims’ justice fund account managed by the Ministry of the Attorney-General in accordance with section 19 of Ontario Regulation 355/22.
- (4) The County will further collect the amount identified in subsection 6(1)5 of Ontario Regulation 355/22 as it appeared on the date of the contravention to reflect the costs incurred by the County to access the name and most recent address of the Person who is subject to the Penalty Order.
- (5) If a person is required by the County to pay an administrative penalty under Section 2 of this By-law in respect of a contravention, the person shall not be charged with an offence in respect of the same contravention.

2. PENALTY ORDER AND ADMINISTRATIVE PENALTY

- (1) An Officer who finds that a Person has contravened any provision of this By-law may issue a Penalty Order to that Person.
- (2) A Penalty Order cannot be issued 23 days after the day on which the contravention occurred.
- (3) Each Person who contravenes any provision of this By-law shall, when issued a Penalty Order in accordance with subsection 2(1) of this By-law, be liable to pay to the County an Administrative Penalty in the amount specified in this By-law, or as set out in the County’s Fees and Charges By-law.
- (4) The Penalty Order shall include the following information:
 - (a) A unique file number.
 - (b) The provision contravened.

- (c) The date and location of the contravention.
- (d) An identification of the motor vehicle that is involved in the contravention.
- (e) The amount of the administrative penalty determined under section 6.
- (f) A statement that the owner of the motor vehicle must, no later than 30 days after the day the order is served on them, pay the administrative penalty unless they commence an appeal in accordance with this Regulation.
- (g) A statement that the owner of the motor vehicle may, no later than 30 days after the day the order is served on them, commence an appeal in accordance with this Regulation.
- (h) Information regarding the appeal process including the manner in which to commence an appeal.

3. PAYMENT OF AN ADMINISTRATIVE PENALTY

- (1) No Officer may accept payment of an Administrative Penalty.
- (2) A Person who has been issued a Penalty Order shall:
 - (a) pay the Administrative Penalty within 30 days after the date the Penalty Order is deemed to be served; or
 - (b) request that the Administrative Penalty be reviewed by a Screening Officer in accordance with Section 5 of this By-law.
- (3) Payment of an Administrative Penalty or an administrative fee can be made through a County approved payment system. Partial payments or payment plans will not be accepted.
- (4) Payment of an Administrative Penalty must be received by the due date and will not be credited until received by the County.
- (5) Where a person has paid an Administrative Penalty or an administrative fee, but has appealed the Penalty Order to a Screening or Hearing Officer, and the Penalty Order is cancelled or reduced by a Screening Officer or Hearing Officer, the County shall refund the amount cancelled or reduced.
- (6) Once an Administrative Penalty has been paid, it shall not be subject to a review by a Screening Officer or a Hearing Officer or to any further review.

4. NON-PAYMENT OF AN ADMINISTRATIVE PENALTY

- (1) Where a Penalty Order is served and the Administrative Penalty is not paid within 30 days of the date the Penalty Order is deemed to be served:
 - (a) the Administrative Penalty shall be deemed to be affirmed;
 - (b) a Notice of Penalty and Due Date shall be sent to the Person to whom the Penalty Order was issued.
- (2) Where an Administrative Penalty and any applicable administrative fees are not paid within 30 days after the Notice of Penalty and Due Date is issued, a Notice of Final Due Date will be mailed to the Person to whom the Penalty Order was issued.

5. REVIEW OF AN ADMINISTRATIVE PENALTY BY SCREENING OFFICER

- (1) A Person who is served with a Penalty Order may request a review of the Administrative Penalty by a Screening Officer within 30 days after the date on which the service of the Penalty Order is deemed to be served.

- (2) If the Person does not request either a review of the Administrative Penalty by a Screening Officer within 30 days after the date on which the service of the Penalty Order is deemed to be served or an extension of time to request a review by a Screening Officer within 45 days after the date the Penalty Order is deemed to be served the Administrative Penalty shall be deemed to be affirmed.
- (3) The Person requesting a review of the Administrative Penalty shall be notified:
 - (a) that their request for a review has been received;
 - (b) of the date and time of the review; and
 - (c) of the way in which the review will be conducted according to subsection 5(4) of this By-law.
- (4) Upon receipt of the request for review, the Screening Officer shall determine the format to be used for the review, including but not limited to in-person, over the telephone, by email, or remotely by videoconference.
- (5) Written submissions to a Screening Officer relating to a scheduled screening review shall be submitted to the Screening Officer by 12:00 noon, one business day prior to the review.
- (6) No witnesses shall be called in the review of the Administrative Penalty by a Screening Officer.
- (7) A Screening Officer may consider the following information, in the conduct of an appeal:
 - (1) Photographs or images taken by the camera system or enforcement system, as applicable.
 - (2) Statements, including certified statements, made by the authorized person who imposed the penalty order.
 - (3) Documents, including certified documents, setting out the name and address of the person who is subject to the order, a description of the permit and the number plate of the motor vehicle.
 - (4) Statements by the appellant made either in writing or in the manner in which the appeal is conducted.
 - (5) Statements by or on behalf of the municipality in which the contravention that is the subject of the penalty order occurred, made either in writing or in the manner in which the appeal is conducted.
 - (6) Any other information, materials or submissions that the screening officer or hearing officer considers to be credible or trustworthy in the circumstances.
- (8) The Screening Officer does not have 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.

6. EXTENSION OF TIME TO REQUEST REVIEW

- (1) A Person may request that the Screening Officer extend the time to request a review of the Administrative Penalty within 45 days after the date the Penalty Order is deemed to be served, failing which, the Administrative Penalty shall be deemed to be affirmed.
- (2) The Screening Officer may:
 - (a) request such information from a Person as the Screening Officer considers relevant to a request to extend the time to request a review of the Administrative Penalty; and

- (b) extend the time to request a review of the Administrative Penalty when the Person requesting the extension demonstrates extenuating circumstances for failing to take action that warrants the extension of time.
- (3) Where an extension of time to request a review is not granted by the Screening Officer, the Administrative Penalty is deemed to be affirmed.
- (4) A request for an extension of time to review an Administrative Penalty shall include the Penalty Order number and the Person's contact information.
- (5) The Screening Officer will consider the request for extension before reviewing the Administrative Penalty.

7. SCREENING DECISION

- (1) On a review of the Administrative Penalty, the Screening Officer may affirm the Administrative Penalty, or may cancel, reduce or extend the time for payment of the Administrative Penalty, including any additional administrative fees, on the following grounds:
 - (a) where the Person establishes, on a balance of probabilities that the Person did not commit the act as described in the Penalty Order; or
 - (b) the cancellation, reduction or extension of the time for payment of the Administrative Penalty, including any administrative fees, is necessary to reduce financial hardship.
- (2) The Screening Officer shall issue a decision to the Person orally at the time of the review or thereafter by telephone, mail, or email using the contact information provided by the Person. If applicable, the decision shall include the amount of the Administrative Penalty, any administrative fees to be paid and the final due date for payment.

8. FAIL TO REQUEST REVIEW OR EXTENSION OF TIME TO REQUEST A REVIEW

- (1) Where a Person fails to request a review in accordance with subsection 5(1) of this By-law or an extension of time in accordance with subsection 6(1) of this By-law, the Person shall be deemed to have waived the right to a screening and hearing and the Administrative Penalty shall not be subject to review.

9. FAIL TO APPEAR FOR SCREENING REVIEW

- (1) Where the Person fails to Appear at a review of an Administrative Penalty by the Screening Officer:
 - (a) the Person shall be deemed to have abandoned the review;
 - (b) the Administrative Penalty and any administrative fees shall be deemed to be affirmed;
 - (c) the Administrative Penalty and any administrative fees shall not be subject to review; and
 - (d) the Person shall pay an additional fee, which is established and outlined in subsection 14(1)3 of Ontario Regulation 355/22 as it appeared on the date of the contravention, but which does not increase the amount referenced in subsection 1.1(3) of this By-law.

10. REVIEW OF SCREENING DECISION BY HEARING OFFICER

- (1) A Person who has received a Screening Decision may request a review of the Screening Decision by a Hearing Officer within 30 days after the date the Screening Decision is deemed to be served.

- (2) Where no request by mail or email for a review of the Screening Decision by a Hearing Officer is received within 30 days after the date the Screening Decision is deemed to be served, the Administrative Penalty shall be deemed to be affirmed.
- (3) The person requesting a review of the Screening Decision shall be notified:
 - (a) that their request for a review has been received;
 - (b) of the date and time of the review; and
 - (c) of the way in which the review will be conducted according to subsection 10(4) of this By-law.
- (4) Upon receipt of a request for review of the Screening Decision, the Director, shall determine the format to be used for the review, including but not limited to in-person, over the telephone, or remotely by videoconference.
- (5) A Person may request a postponement of a scheduled review upon application to the Director, who may approve the request based on extenuating circumstances. At their discretion, the Hearing Officer may reschedule the review.
- (6) The Hearing Officer may request such information from a Person as the Hearing Officer considers relevant to the request to review the Screening Decision.
- (7) Written submissions to a Hearing Officer related to a scheduled review of a Screening Decision and requests to participate in the review concerned shall be submitted to the Hearing Officer by 12:00 noon, one business day prior to the review.
- (8) 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 County an opportunity to be heard.
- (9) A Hearing Officer may consider the following information, in the conduct of an appeal:
 - (a) Photographs or images taken by the camera system or enforcement system, as applicable.
 - (b) Statements, including certified statements, made by the authorized person who imposed the penalty order.
 - (c) Documents, including certified documents, setting out the name and address of the person who is subject to the order, a description of the permit and the number plate of the motor vehicle.
 - (d) Statements by the appellant made either in writing or in the manner in which the appeal is conducted.
 - (e) Statements by or on behalf of the County made either in writing or in the manner in which the appeal is conducted.
 - (f) Any other information, materials or submissions that the screening officer or hearing officer considers to be credible or trustworthy in the circumstances.
- (10) No witnesses shall be called in an appeal of the review of the Screening Decision.
- (11) The Hearing Officer does not have 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.
- (12) The Hearing Officer may amend the Penalty Order as may be necessary if it appears that it fails to state or states defectively anything that is requisite to the violation. In considering whether or not an amendment should be made, the Hearing Officer shall consider whether the Person has been misled or prejudiced by the error or omission and

whether the proposed amendment can be made without injustice being done.

(13) The decision of the Hearing Officer is final.

11. EXTENSION OF TIME TO REQUEST REVIEW

(1) A Person may request that the Hearing Officer extend the time to request a review of the Screening Decision. The request must be received within 45 days after the date the Screening Decision is deemed to be served, failing which, the Screening Decision shall be deemed to be affirmed.

(2) The Hearing Officer may:

- (a) request such information from a Person as the Hearing Officer considers relevant to a request to extend the time to request a review of the Screening Decision; and
- (b) 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.

(3) Where an extension of time to request a review is not granted by the Hearing Officer, the Screening Decision shall be deemed to be affirmed.

(4) A request for an extension of time to review by the Hearing Officer shall include the Penalty Order number, the Person's contact information and the reason the Person requires an extension of time to request a review of the Screening Decision.

(5) The Hearing Officer will consider the request for extension before reviewing the decision of the Screening Officer.

12. DECISION OF THE HEARING OFFICER

(1) On a review of the Screening Decision, the Hearing Officer may affirm the Screening Decision, or may cancel, reduce or extend the time for payment of the Administrative Penalty, including any administrative fees, on the following grounds:

- (a) where the Person establishes, on a balance of probabilities that the Person did not commit the act as described in the Penalty Order; or
- (b) the cancellation, reduction or extension of the time for payment of the Administrative Penalty, including any administrative fees, is necessary to reduce financial hardship.

(2) The Hearing Officer's decision shall be issued to the person orally at the time of the review or thereafter by telephone, mail, or email using the contact information provided by the Person.

(3) The decision of the Hearing Officer is final.

13. FAIL TO REQUEST REVIEW OR EXTENSION OF TIME TO REQUEST A REVIEW

(1) 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, the Administrative Penalty and any administrative fees shall be deemed to be affirmed; and
- (c) the Screening Decision, the Administrative Penalty and any administrative fees shall not be subject to any further review.

14. FAIL TO APPEAR FOR REVIEW OF SCREENING DECISION

- (1) Where a Person fails to Appear for a review of a Screening Decision by the Hearing Officer:
 - (a) the Person shall be deemed to have abandoned the hearing;
 - (b) the Screening Decision, Administrative Penalty and any administration fees shall be deemed to be affirmed;
 - (c) the Screening Decision, Administrative Penalty any administration fees shall not be the subject of any further review; and
 - (d) the Person shall pay an additional fee, which is established and outlined in subsection 14(1)3 of Ontario Regulation 355/22 as it appeared on the date of the contravention, but which does not increase the amount referenced in subsection 1.1(3) of this By-law.
- (2) Should a person fail to Appear at the review by the Hearing Officer, the Person shall be sent a notice setting out the Administrative Penalty, any administrative fees to be paid and the final due date for payment.

15. EXTENSION OF TIME TO PAY

- (1) A Person who receives a Penalty Order and is Appearing before the Screening Officer or Hearing Officer may request an extension of time to pay the Administrative Penalty.
- (2) The Screening Officer or Hearing Officer may extend the time for payment of an Administrative Penalty taking into consideration such factors as:
 - (a) the amount of the Administrative Penalty and any administrative fees; and
 - (b) whether the Person is employed, a student, retired or other circumstances that would render the payment an undue financial hardship; as outlined in section 16 of this By-law.
- (3) The extension of time should not exceed 60 days from the date of the Screening or Hearing Officer's review, as the case may be.
- (4) If a Person is granted an extension of time to pay, the Screening or Hearing Officer shall record the extension so that the County's records can be updated accordingly.

16. UNDUE FINANCIAL HARDSHIP

- (1) The Screening Officer or Hearing Officer may excuse a Person from paying all or part of the Administrative Penalty, including any administrative fees, if requiring the Person to do so would cause undue financial hardship.
- (2) Any Person claiming undue financial hardship must provide documented proof substantiating financial hardship, for example: Old Age Security, Canada Pension, Guaranteed Income Supplement, Disability Pension, student loans, Ontario Works, etc. All information and documentation shall be treated in a confidential manner.

17. JURISDICTION OF SCREENING AND HEARING OFFICER

- (1) The Screening Officer or Hearing Officer has no 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.

18. SERVICE OF PENALTY ORDERS

- (1) A Penalty Order shall be served on the Person who is subject to the Penalty Order by sending the Penalty Order by mail or by courier to the most recent address that appears on the Ministry's records in respect of the holder of the plate portion of the permit for the

motor vehicle involved in the Contravention, in accordance with subsection 9.1 of Ontario Regulation 355/22.

19. ADMINISTRATION

- (1) The Director or designate 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 Director deems necessary, without amendment to this By-law.
- (2) The Director or designate shall prescribe all forms and notices, including the Penalty Order, 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.
- (3) An Administrative Penalty that is deemed to be affirmed is due and payable and constitutes a debt to the County.
- (4) The County may recover the amount of unpaid Administrative Penalties, including administration fees as outlined in Ontario Regulation 355/22 and unpaid Administrative Penalties or costs, by action, or by referring the Administrative Penalty to the Ministry of the Attorney-General's Default Fine Control Centre, which will subject the Person to restrictions of their vehicle registration.
- (5) If an extension of time to request a review of the Screening Decision is granted by the Hearing Officer, the collection process available to the County in relation to the Administrative Penalty shall be suspended until the extension of time has expired.
- (6) Where an Administrative Penalty is cancelled by a Screening Officer or Hearing Officer, any administrative fees are also cancelled.

20. REFERENCES

- (1) References in this By-law to any legislation or by-law means as may be amended or replaced from time to time and include any regulations thereunder.

21. SEVERABILITY

- (1) In the event any provisions of this By-law are deemed invalid or void, in whole or in part, by any court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

READ a first and second time, this 25th day of July, 2023.

READ a third time and finally passed in Council, this this 25th day of July, 2023.

THE CORPORATION OF THE COUNTY OF BRANT



David Bailey, Mayor



Alysha Dyjach, Clerk