

BY - LAW NUMBER 112-2013

A BY-LAW TO AMEND BY-LAW 9023 BEING A BY-LAW TO  
REGULATE VEHICULAR PARKING WITHIN THE LIMITS  
OF THE CITY OF WINDSOR ON MUNICIPAL STREETS,  
MUNICIPAL PARKING LOTS AND PRIVATE PROPERTIES  
AND A BY-LAW TO ESTABLISH A SYSTEM FOR  
ADMINISTRATIVE PENALTIES AND FEES

Passed the 8<sup>th</sup> day of July, 2013.

**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 Council for The Corporation of the City of Windsor considers it desirable and necessary to further amend Parking By-law 9023, as amended to provide for a system of administrative penalties and administrative fees as an additional means of encouraging compliance with the Parking By-law 9023;

**NOW THEREFORE** the Council of The Corporation of the City of Windsor hereby enacts as follows:

**Interpretation**

1. That section 1 of By-law 9023 as amended be further amended by adding the following definitions in alphabetical sequence:

“Administrative Penalty” means an administrative penalty established by this By-law;

“City” means The Corporation of the City of Windsor;

“Fees and Charges By-law” means the City’s By-law 392-2002 as amended from time to time;

“Fee – Hearing No-Show” means an administrative fee from time to time established by the Fees and Charges By-law in respect of a Person’s failure to appear at the time and place scheduled for a hearing before a Hearing Officer;

“Fee – Late Payment” means an administrative fee from time to time established by the Fees and Charges By-law in respect of a Person’s failure to pay an Administrative Penalty by the date on which it is due and payable;

“Fee – MTO Plate Denial” means an administrative fee from time to time established by the Fees and Charges By-law for notifying the Registrar of Motor Vehicles for the purpose of plate permit denial;

“Fee – MTO Search” means an administrative fee from time to time established by the Fees and Charges By-law for searching the records of the Ontario Ministry of Transportation;

“Fee – Screening No-Show” means an administrative fee from time to time established by the Fees and Charges By-law in respect of a Person’s failure to appear at the time and place scheduled for a review by a Screening Officer;

“Hearing Officer” means hearing officer from time to time appointed pursuant to the City’s Screening and Hearing Officer By-law 80-2013 as amended from time to time;

“Hearing Officer Appeal Form” means the form to be completed and delivered to the City when requesting a review by a Hearing Officer, or requesting an extension of time to request a review by a Hearing Officer. The Hearing Officer Review Form is available on the City’s website [www.citywindsor.ca](http://www.citywindsor.ca) and at Administrative Penalties, Parking Enforcement Office, 1266 McDougall St., Windsor, Ontario N8X 3M7;

“Manager of Traffic Operations” means the person who holds the position of Manager of Traffic Operations for the City;

“Officer” includes members of Windsor Police Services, Provincial Offences Officers of the City of Windsor and any other person authorized by the City to enforce this By-law;

“Penalty Notice” means a notice given pursuant to sections 81 and 82;

“Penalty Notice Date” means the date specified on the Penalty Notice pursuant to section 82;

“Penalty Notice Number” means the number specified on the Penalty Notice pursuant to section 82;

“Person” includes an individual, partnership, association, firm or corporation;

“Screening Decision” means a decision made by a Screening Officer pursuant to section 85;

“Screening Decision Date” means the date on which a Screening Decision is made pursuant to section 85;

“Screening Officer” means a person from time to time performing the functions of a Screening Officer pursuant to the Screening Officer and Hearing Officer By-law 80-2013, as amended from time to time;

“Screening Officer Review Form” means the form to be completed and delivered to the City when requesting a review by a Screening Officer, or requesting an extension of time to request a review by a Screening Officer. The Screening Officer Review Form is available on the City’s website [www.citywindsor.ca](http://www.citywindsor.ca) and at Administrative Penalties, Parking Enforcement Office, 1266 McDougall St., Windsor, Ontario N8X 3M7.

2. That By-law 9023 as amended be further amended by adding Part VII thereto as follows:

## **Part VII**

### **Administrative Penalties and Fees**

#### **Designation of Administrative Penalties**

79. Sections 80 to 99, **Schedule “W”** and the parts of this By-law to which **Schedule “W”** relates, are designated as parts of this By-law to which the Parking Administrative Penalty System applies.

#### **Penalty Notice**

80. Each Person who contravenes any designated provision of this by-law pursuant to section 79 and each registered owner of that vehicle, when given a Penalty Notice in accordance with this by-law, shall be liable to pay to the City an Administrative Penalty in the amount set out in **Schedule “W”** Administrative Penalties, hereof for each day or part of a day on which the contravention continues, and any fees related thereto.

81. An Officer who has reason to believe that a Person has contravened any provision of this by-law except s. 21(12), may give to the Person a Penalty Notice.
82. The Penalty Notice shall be given to the Person as soon as is reasonably practicable and 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 exercise the Person's right to request a review of the Administrative Penalty; and
  - f) A statement advising that an Administrative Penalty will, unless cancelled or reduced pursuant to the review and appeal processes, constitute a debt of the Person to the City.
83. Any Person who is given 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 a Fee – MTO Search.
84. A Person who is given 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.

#### **Review by Screening Officer**

85. The Following applies to review of an Administrative Penalty by a Screening Officer:
- (1) Any Person may request that the Screening Officer extend the time to request a review within 30 days after the Penalty Notice Date, at which time the Administrative Penalty shall be deemed to be final.
  - (2) A Person's rights to request a review, or to request an extension of time to request a review are exercised by giving to the City written notice of the request to review that includes:
    - (a) the Penalty Notice Number;
    - (b) the Person's mailing address and, if applicable, facsimile transmission number;
    - (c) in the case of a request to extend the time to request a review, the reasons, if any, for having failed to exercise the right to request a review within the time limited by s.84;
    - (d) particulars of all grounds upon which the request to review is based; and
    - (e) the Person's election to
      - i) meet with the Screening Officer for the review; or
      - ii) have the review undertaken by a Screening Officer in writing in respect of the particulars provided by the Person pursuant to s.7(2)(d).
  - (3) Written notice of the request to review is to be given by completing the Screening Officer Review Form and delivering it to the City in accordance with s. 92 of this By-law.

- (4) Where the Person elects to meet with the Screening Officer in accordance with s. 85(2)(e)(i) the Person shall be given no fewer than seven (7) days' notice of the date, time and place of the hearing of the review by the Screening Officer.
- (5) Where the Person elects to meet with the Screening Officer in accordance with s. 85(2)(e)(i) and the Person fails to appear at the time and place scheduled for a review or fails to remain at such place until the Screening Officer has made a Screening Decision respecting the Administrative Penalty then:
  - (a) the Person shall be deemed to have abandoned the request for the review;
  - (b) the Administrative Penalty shall be deemed to be final;
  - (c) the Administrative Penalty shall not be subject to review, including review by any Court; and;
  - (d) the Person shall pay to the City a Fee – Screening No-Show.
- (6) On a review of the Administrative Penalty, the Screening Officer may affirm the Administrative Penalty, or the Screening Officer may cancel the Administrative Penalty, reduce the Administrative Penalty 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 of the Administrative Penalty, reduction of the Administrative Penalty or extension of the time for payment of the Administrative Penalty, including any late payment administrative fees, is necessary to reduce undue financial hardship.
- (7) Every Person who requests a review by the Screening Officer shall receive a Screening Decision.

86. A Person who has been given a Screening Decision pursuant to section 85 may appeal the Screening Decision to a Hearing Officer, and shall do so within 15 days after the Screening Decision was issued.

**Appeal to Hearing Officer**

87. The following applies to appeals to a Hearing Officer against the Screening Decision:
- (1) Any Person may request that the Hearing Officer extend the time to appeal within 30 days after the Screening Decision was issued, at which time the Screening Decision shall be deemed to be final.
  - (2) A Person's rights to appeal the Screening Decision to a Hearing Officer or to request an extension of time to appeal are exercised by giving to the City written notice of the request to review that includes:
    - (a) the Penalty Notice Number;
    - (b) the Person's mailing address and, if applicable, facsimile transmission number;
    - (c) in the case of a request to extend the time to appeal, the reasons, if any, for having failed to exercise the right to appeal within the time limited by s.86; and

- (d) particulars of all grounds upon which the appeal is made.
  - (3) Written notice of the request to appeal is given by completing the Hearing Officer Appeal Form and delivering it to the City in accordance with s. 92 of this By-law.
  - (4) The Person shall be given no fewer than seven (7) days' notice of the date, time and place of the hearing of the appeal by the Hearing Officer.
  - (5) If the Person fails to appear at the time and place scheduled for the hearing of the appeal :
    - (a) the Person shall be deemed to have abandoned the appeal;
    - (b) the Screening Decision and the Administrative Penalty as it may have been affected by the Screening Decision shall be deemed to be final;
    - (c) the Screening Decision and the Administrative Penalty as it may have been affected by the Screening Decision shall not be subject to review, including review by any Court; and
    - (d) the Person shall pay to the City a Fee – Hearing No-Show.
  - (6) A Hearing Officer shall not make any decision respecting an appeal unless the Hearing Officer has given each of the Person and the Officer who gave the Penalty Notice an opportunity to be heard at the time and place scheduled for the hearing of the appeal.
  - (7) On an appeal of the Screening Decision, the Hearing Officer may affirm the Screening Decision, or the Hearing Officer may cancel the Administrative Penalty, reduce the Administrative Penalty 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 of the Administrative Penalty, reduction of the Administrative Penalty or extension of the time for payment of the Administrative Penalty, including any late payment administrative fees, is necessary to reduce hardship.
  - (8) Every Person who requests a review by the Hearing Officer shall receive a Hearing Decision.
88. The decision of a Hearing Officer is final and not subject to review including review by any Court.
89. 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.

**Notice**

90. Subject to section 91, any notice or document respecting this By-law may be given in writing in any of the following ways and is effective:
- (1) when a copy is placed on or affixed in any manner to a Person's vehicle;
  - (2) when a copy is delivered to the Person to whom it is addressed;

- (3) on the third (3<sup>rd</sup>) day after a copy is sent by registered mail or by regular letter mail to the Person's last known address; or
  - (4) upon the conclusion of the transmission of a copy by facsimile transmission to the Person's last known facsimile transmission number.
91. For the purpose of section 90, a Person's last known address, last known facsimile transmission number and last known e-mail address are deemed to include those provided by the Person pursuant to sections 85(2) and 87(2).
92. Any notice or document respecting this By-law to be given to the City shall be in writing, shall be given in any of the following ways and is effective:
- (a) when a copy is personally delivered to the City during its regular business hours to "City of Windsor, Public Works, Parking Enforcement Office, 1266 McDougall St., Windsor, Ontario N8X 3M7";
  - (b) on the third (3<sup>rd</sup>) day after a copy is sent by registered mail or by regular letter mail to "City of Windsor, Public Works, Parking Enforcement Office, 1266 McDougall St., Windsor, Ontario N8X 3M7";
  - (c) upon the conclusion of the transmission of a copy by facsimile transmission to (519) 255-9467.

### **Financial Administration**

93. No Officer who gives a Penalty Notice may accept payment of the Administrative Penalty respecting that Penalty Notice.
94. An Administrative Penalty that is affirmed or reduced or in respect of which the time for payment has been extended pursuant to this By-law is due and payable and constitutes a debt to the City of each Person to whom or to which the Penalty Notice was given.
95. Payments of an Administrative Penalty must be received by the due date and will not be credited until received by the City.
96. Where a Person has paid an Administrative Penalty or an administrative fee that is then cancelled or reduced pursuant to this By-law, the City shall refund the amount cancelled or reduced.
97. Where an Administrative Penalty or any administrative fees respecting that Administrative Penalty are not paid within fifteen (15) days after the date that they become due and payable, each Person to whom the Penalty Notice was given shall pay to the City a Fee – Late Payment.
98. Where an Administrative Penalty or any administrative fees respecting that Administrative Penalty are not paid within thirty (30) days after the date that they become due and payable, each Person to whom the Penalty Notice was given shall pay to the City a Fee – MTO Plate Denial.

### **Complaints and Comments**

99. Complaints and comments respecting the administration of the City's system of parking administrative penalties may be given to the Manager of Traffic Operations. The Manager of Traffic Operations shall consider each such complaint or comment in relation to the Manager of Traffic Operations' consideration of opportunities for improvements to the City's system of parking administrative penalties.

## General

3. That By-law 9023 as amended be further amended by adding Schedule “A” attached hereto, as **Schedule “W”** to By-law 9023:
4. That By-law 9023 as amended be further amended by deleting sections 71, 73 and 74 and substituting the following therefore:
  - “71. (1) Each Person who contravenes s.5, 6 or s.21(12) of this by-law is guilty of an offence and upon conviction is liable to a penalty as provided in the *Provincial Offences Act*, R.S.O. 1990, c. P.33 as amended.
  71. (2) The owner of a vehicle that is parked, stopped or left standing in contravention of s.21(12), is guilty of an offence and upon conviction is liable to such fines as provided in the *Provincial Offences Act*, unless the owner proves to the satisfaction of the Court that at the time of the offence the motor vehicle was in the possession of another Person without the owner's consent, express or implied.
  73. The defendant may, within twenty days of the service of the parking infraction notice for a contravention of s.21(12), give notice of intention to appear in Court for the purpose of entering a plea and having a trial pursuant to the *Provincial Offences Act*.
  74. Failure by the defendant to pay the set fine payment or to give notice of intention to appear in Court for the purpose of entering a plea within twenty days of the service of the Parking Infraction Notice for a contravention of s.21(12) shall render the defendant liable to prosecution pursuant to the *Provincial Offences Act*.”
5. That By-law 9023 as amended, be further amended by deleting s. 68 and substituting the following therefore:
  - “68. (1) This by-law can be administered and enforced by members of Windsor Police Services, Provincial Offences Officers of the City of Windsor or any other person authorized by the City.
  68. (2) Members of Windsor Police Services, Provincial Offences Officers of the City of Windsor, or any other person authorized by the City, may, at any reasonable time, enter on land for the purpose of carrying out an inspection to determine compliance with this by-law.”
6. It is Council’s opinion that the delegations in this By-law to Hearing Officers and to Screening Officers are of a minor nature. In forming this opinion, Council has had regard to the number of people, the size of geographic area and the time period affected by the exercise of each delegated power.
7. This by-law shall come into force and take effect on September 1, 2013.

EDDIE FRANCIS, MAYOR

CLERK

First Reading - July 8, 2013  
Second Reading - July 8, 2013  
Third Reading - July 8, 2013