

SCHEDULE B

BY-LAW NUMBER 2024-002

OF THE

CORPORATION OF THE CITY OF KITCHENER

(Being a by-law with respect to the appointment of screening and hearing officers)

WHEREAS Section 102.1(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended ("*Municipal Act, 2001*") provides that a municipality may require a person to pay an administrative penalty if the municipality is satisfied that the person failed to comply with any by-laws respecting the parking, standing or stopping of vehicles;

AND WHEREAS the Province has adopted O. Reg. 333/07, pursuant to the *Municipal Act, 2001*, which applies to administrative penalties in respect of the parking, standing or stopping of vehicles;

AND WHEREAS in accordance with the *Municipal Act, 2001*, the City has passed a Parking Administrative Penalty By-law and an Administrative Penalty By-law for Non-Parking By-laws;

AND WHEREAS in accordance with the aforesaid by-law and the Regulation, a person who receives a Penalty Notice shall have the right to request a screening review of the administrative penalty by a Screening Officers appointed by the City;

AND WHEREAS in accordance with the aforesaid by-law and the Regulation, a person who receives a Screening Decision shall have the right to request a review of the decision by a Hearing Officer appointed by the City;

AND WHEREAS the City considers it desirable and necessary to establish the positions of Screening Officer and Hearing Officer, which are required for the operation of the Parking Administrative Penalty By-law and the Administrative Penalty By-law for Non-Parking By-laws;

NOW THEREFORE The Corporation of the City of Kitchener enacts as follows:

Title

1. This By-law shall be known and cited as the "Screening and Hearing Officer By-law".

Definitions

2. For the purposes of this by-law:

Administrative Penalty – means an administrative penalty imposed for a contravention of a Designated By-law, as set out in the Parking Administrative Penalty By-law or the Administrative Penalty By-law for Non-Parking By-laws;

Administrative Penalty By-law for Non-Parking By-laws – means By-law No. 2024-001 of the City, as amended from time to time, or any successor thereof;

City – means The Corporation of the City of Kitchener;

City Solicitor – means the City Solicitor, or anyone designated by the City Solicitor to perform his or her duties pursuant to this By-law;

Council – means the elected Council of the City;

Designated By-law – means any provision of a City by-law to which the Parking Administrative Penalty By-law or the Administrative Penalty By-law for Non-Parking By-laws applies, as designated therein;

General Manager, Community Services Department/Deputy CAO – means the General Manager, Community Services Department/Deputy CAO of the City, or anyone designated by the General Manager, Community Services Department/Deputy CAO to perform his or her duties pursuant to this By-law;

Hearing Officer – means any person appointed from time to time pursuant to this By-law, to perform the functions of a hearing officer in accordance with this By-law, the Parking Administrative Penalty By-law or the Administrative Penalty By-law for Non-Parking By-laws;

Joint Panel – means a panel comprised of representatives of the City of Kitchener and the City of Waterloo, as set out in the Policy for Appointment of Screening and Hearing Officers;

Parent – means a person who has demonstrated a settled intention to treat a child as a member of her or his family whether or not that person is the natural parent of the child;

Parking Administrative Penalty By-law – means By-law No. 2019-039 of the City, as amended from time to time, or any successor thereof;

Person – includes an individual or a corporation;

Policy for Appointment of Screening and Hearing Officers – means a policy for the appointment of screening and hearing officers as approved by Council, and amended from time to time, or any successor thereof;

Power of Decision – means a power or right, conferred by or under this By-law, the Parking Administrative Penalty By-law or the Administrative Penalty By-law for Non-Parking By-laws to make a decision deciding or prescribing the legal rights, powers, privileges, immunities, duties or liabilities of any person:

- a) In the case of a Screening Officer, in respect of a request to review an Administrative Penalty; and
- b) In the case of a Hearing Officer, in respect of a review of a Screening Decision

Regulation – means O. Reg. 333/07, made under the *Municipal Act, 2001*, as amended from time to time, or any successor thereof;

Relative – includes any of the following persons:

- a) spouse, common-law partner, or any person with whom the person is living as a spouse outside of marriage;
- b) Parent or legal guardian;
- c) child, including a step child and grandchild;
- d) siblings and children of siblings;
- e) aunt, uncle, niece and nephew;
- f) in-laws, including mother, father, sister, brother, daughter and son; or
- g) any person who lives with the person on a permanent basis

Screening Decision – means a notice which contains the decision of a Screening Officer, as set out in the Parking Administrative Penalty By-law or the Administrative Penalty By-law for Non-Parking By-laws;

Screening Officer – means any person appointed from time to time pursuant to this By-law, to perform the functions of a screening officer in accordance with this By-law, the Parking Administrative Penalty By-law or the Administrative Penalty By-law for Non-Parking By-laws; and

Spouse – means a person to whom the person is married or with whom the person is living in a conjugal relationship outside marriage

Screening Officer

- 3. The position of Screening Officer is established for the purpose of exercising the Power of Decision in the screening review of an Administrative Penalty, as set out in the Parking Administrative Penalty By-law or the Administrative Penalty By-law for Non-Parking By-laws .
- 4. The Screening Officer shall have all the powers of a screening officer as set out in the Parking Administrative Penalty By-law, the Regulation and the Administrative Penalty By-law for Non-Parking By-laws.
- 5. Screening Officer(s) shall be appointed by the General Manager, Community Services Department/Deputy CAO, in consultation with the City Solicitor, in accordance with the City's Policy for Appointment of Screening and Hearing Officers.

Hearing Officer

- 6. The position of Hearing Officer is established for the purpose of exercising the Power of Decision in a review of a Screening Decision, as set out in the Parking Administrative Penalty By-law or the Administrative Penalty By-law for Non-Parking By-laws.
- 7. The Hearing officer shall have all the powers of a hearing officer as set out in the Parking Administrative Penalty By-law and the Regulation.

8. Hearing Officer(s) shall be appointed by Council on the recommendation of the Joint Panel, in accordance with the City's Policy for Appointment of Screening and Hearing Officers. The recommendation shall give preference to an eligible candidate:
 - 1) with good knowledge of, and experience in, administrative law; and
 - 2) of good character
9. Hearing Officers shall be appointed for the term of Council, and thereafter until the Hearing Officer is reappointed or a successor is appointed pursuant to this By-law or is no longer required by the City.
10. Notwithstanding Section 9 of this By-law, Council may revoke the appointment of a Hearing Officer at any time, on the recommendation of the Joint Panel, if the Hearing Officer:
 - 1) is found to have contravened any applicable City policy relating to the administration of the Administrative Penalty system;
 - 2) is found to have contravened any other requirement of the appointment; or
 - 3) at any time during the appointment becomes ineligible for appointment
11. A Hearing Officer shall be remunerated at a rate as established by Council from time to time.
12. A Hearing Officer is deemed not to be an employee of the City, but a person who holds an administrative position in accordance with Section 258 of the *Municipal Act, 2001*.

Eligibility

13. The following persons are not eligible for appointment as a Screening Officer or a Hearing Officer:
 - 1) A member of Council;
 - 2) A Relative of a member of Council;
 - 3) In the case of a Hearing Officer, an employee of the City;
 - 4) A person indebted to the City, other than:
 - a) In respect of current property taxes; or
 - b) Pursuant to an agreement with the City, where the person is in compliance with the terms thereof

General

14. A Screening Officer or a Hearing Officer shall have no authority to further delegate his/her powers or duties.

- 15. 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.
- 16. For the purposes of subsection 23.2(4) of the *Municipal Act, 2001*, Council has determined that the powers delegated to the Screening Officer and the Hearing Officer are minor in nature.

Severability

- 17. 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, be severed from this by-law 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.

Repeal

- 18. By-law 2019-040 is hereby repealed.
- 19. This by-law shall come into effect on the date of passing.

PASSED at the Council Chambers in the City of Kitchener this _____ day of December , A.D. 2023.

Mayor

Clerk