

THE CORPORATION OF THE TOWNSHIP OF ESSA

BY-LAW 2024 – 18

A By-law to establish and implement an Administrative Penalty System (APS) for Contraventions Detected Using Automated Speed Enforcement (ASE) Cameras, within the Township of Essa.

WHEREAS Section 11 of the *Municipal Act*, R.S.O. 2001, c.25, authorizes municipalities to enact by-laws respecting matters within the sphere of jurisdiction of highways, including traffic on highways, in conjunction with the *Highway Traffic Act*; and

WHEREAS Section 128 of the *Highway Traffic Act* (“HTA”), R.S.O. 1990, c.H.8 as amended, establishes that the council of a municipality may, for motor vehicles driven on a highway or portion of a highway under its jurisdiction, by by-law prescribe a rate of speed that is not greater than 100 kilometres per hour and may prescribe different rates of speed for different times of day;

WHEREAS O. Reg. 355/22 under the *Highway Traffic Act*, R.S.O. 1990, c.H.8, as amended, authorizes the use of Administrative Penalties for vehicle-based contraventions captured by Automated Speed Enforcement Systems; and

WHEREAS Section 21.1 of the HTA and O. Reg. 355/22, authorize the municipalities to establish an administrative penalty system to promote compliance with the HTA and its Regulations, and impose an administrative penalty within a prescribed time period on a prescribed class of persons that have contravened or failed to comply with prescribed provisions of the HTA and its Regulations; and

WHEREAS the purpose of the Administrative Penalty System as established by this municipality is to assist with promoting compliance of its Speed Limit, Community Safety Zone and School Zone By-laws; and

WHEREAS sections 23.2, 23.3 and 23.5 of the *Municipal Act* authorizes municipalities to delegate its administrative and hearing powers; and

WHEREAS the Council of the Corporation of the Township of Essa considers it desirable to provide for a system of administrative penalties and administrative fees for the designated Sections of the HTA, or portions of the designated HTA Sections set out herein;

NOW THEREFORE Council of The Corporation of the Township of Essa hereby enacts as follows:

1.0 TITLE

- 1.1 This By-law shall be known and cited as the "Administrative Penalty By-law for Contraventions Detected Using Camera Systems".

2.0 DEFINITIONS

2.1 Where words and phrases used in this By-law are not defined herein but are defined in the *Highway Traffic Act*, R.S.O. 1990, c. H. 8, as amended from time to time or any successor thereof (the HTA), the definitions in the HTA shall apply.

2.2 In this By-law:

Administrative Fee – means any fee specified in this By-law or set out in Ontario Regulation 355/22 made under the *Highway Traffic Act*;

Administrative Penalty - means any monetary penalty as set out and calculated in accordance with Section 6 of O. Reg 355/22 made under the *Highway Traffic Act*;

A.P.S. – means Administrative Penalty System;

Designated Section - means a section or portions of sections of the HTA to which this APS By-law applies, as designated under this By-law;

Director – means the person performing the function or the functions of the municipality's Manager of Legislative Services and/or their designate;

Hearing Decision - means a notice which contains the decision of a Hearing Officer, as set out in Section 6.10 of this By-law;

Hearing Officer - means a person who is appointed by Council to perform the duties of the Hearing Officer as set out in section 6 of this By-law, and meeting the requirements that a Hearing Officer cannot be a member of Council or an employee of the municipality. The Hearing Officer shall have knowledge of and experience in administrative law; such as a lawyer, retired lawyer, paralegal, retired paralegal, retired police officer, retired municipal clerk or retired municipal deputy clerk;

Holiday - means a Saturday, Sunday and any statutory holiday in the province of Ontario, or any day on which the offices of the Township of Essa are officially closed for business;

Officer (Provincial Offences Officer) - means a person employed by the Township of Essa and designated as a Provincial Offences Officer by the Minister of Transportation in accordance with s. 4 of O. Reg 355/22, that being a person authorized to administer and enforce s. 128 of the *Highway Traffic Act* in relation to speeding infractions caught by an automated speed enforcement camera system.

Owner - means the person whose name appears on the permit for the vehicle as provided by the Ontario Ministry of Transportation, and if the vehicle permit consists of a vehicle portion and a plate portion and

different persons are named on each portion, the person whose names appears on the plate portion;

Penalty Order - means an order made under Subsection 21.1(2) of the HTA;

Penalty Order Date - means the date of the contravention specified on the Penalty Order;

Penalty Order Number - means the reference number specified on the Penalty Order that is unique to that Penalty Order;

Person - includes an individual, a corporation, partnership, sole proprietorship, or an authorized representative thereof.

Regulation - means O. Reg. 355/22, made under the *HTA*, as amended from time to time, or any successor thereof;

Request for Review by Hearing Officer - means the request which may be made in accordance with section 6 of this By-law for the review of a Screening Decision;

Request for Review by Screening Officer - means the request made in accordance with section 5 of this By-law for the review of a Penalty Order;

Review by Hearing Officer and Hearing - means the process set out in section 6 of this By-law;

Review by Screening Officer and Screening Review - means the process set out in section 5 of this By-law;

Screening Decision - means a notice which contains the decision of a Screening Officer, delivered in accordance with Section 5.7 of this By-law;

Screening Officer - means a person employed by the Township of Essa and appointed by Council pursuant to this By-law, who performs the duties of Screening Officer as set out in section 5 of this By-law and meeting the requirements that a Screening Officer cannot be a Member of Council;

Township - means The Corporation of the Township of Essa.

3.0 APPLICATION OF THIS BY-LAW

3.1 In accordance with the *Highway Traffic Act* ("HTA"), or portions of the HTA, the following sections shall be designated sections for the purposes of Section 21.1(2) of the HTA:

a) Subsection 128(1);

3.2 Schedule "A" of this By-law sets out Administrative Penalty Amounts for contraventions of the designated sections or portions of the designated sections of the HTA, as in accordance with section 6 of O. Regulation 355/22. Where a discrepancy in the Administrative Penalty Amount occurs, the penalties outlined in section 6 of O. Regulation 355/22 shall prevail.

4.0 PENALTY ORDER

4.1 An Officer who has reason to believe that a person has contravened a designated section or portions of designated sections may issue a Penalty Order in accordance with this By-law set out in one or more of the following parts of the HTA:

a) Part XIV.1 "Automated Speed Enforcement".

4.2 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 of O. Regulation 355/22.

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 O. Regulation 355/22.

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 O. Regulation 355/22.

h) Information regarding the appeal process including the manner in which to commence an appeal.

- i) A copy of a photograph or image of the motor vehicle involved in the contravention may be included in the penalty order.
- j) The penalty order will include statements by the authorized person that are certified to be true in respect of the contravention or in respect of the service of the penalty order.
- k) The penalty order shall be in the form specified by the municipality that employs the authorized person.

5.0 REVIEW BY SCREENING OFFICER

- 5.1 A person who is served a Penalty Order may, within 30 calendar days after the Effective Date of Service, may request that the Administrative Penalty be reviewed by a Screening Officer.
- 5.2 A request for a review, or for an extension of time to request a review, shall be in the form and manner as determined by the Director from time to time, and shall include the Penalty Order Number and the person's contact information. Where a request is made by a person who is not the Owner, the person shall submit with the request an authorized agent/representative form, in the form as determined by the Director from time to time. Incomplete forms or forms not submitted in the form and manner as determined by the Director may not be accepted or processed, at the discretion of the Director.
- 5.3 The Screening Officer may only extend the time to request a review of the Administrative Penalty when the person requesting the extension demonstrates, on a balance of probabilities, extenuating circumstances that warrant the extension of time. The Screening Officer will consider the request for extension before reviewing the Administrative Penalty.
- 5.4 Where an extension of time to request a review is not granted by the Screening Officer, the Administrative Penalty and any applicable Administrative Fees shall be deemed to be affirmed and shall not be subject to review.
- 5.5 Where neither a review nor an extension of time for review are requested in accordance with this By-law, or where the person fails to request a review within any extended period of time granted by the Screening Officer:
 - a) The person shall be deemed to have waived the right to a screening and a hearing;
 - b) The Administrative Penalty, and any applicable Administrative Fees, shall be deemed to be affirmed; and
 - c) The Administrative Penalty, and any applicable Administrative Fees, shall not be subject to review.

- 5.6 Upon review of an Administrative Penalty, the Screening Officer may affirm the Administrative Penalty including any applicable Administrative Fees, or the Screening Officer may cancel or reduce the Administrative Penalty or extend the time for payment of the Administrative Penalty, including any applicable Administrative Fees, on the following grounds:
- a) Where the Screening Officer is satisfied, on a balance of probabilities, that a contravention of section 128 of the *Highway Traffic Act*, was not proven as set out in the Penalty Order; or
 - b) Where the Screening Officer is satisfied, on a balance of probabilities, that the cancellation, reduction or extension of the time for payment of the Administrative Penalty, including any applicable Administrative Fees, is necessary to reduce any undue hardship.
- 5.7 Every person who has been granted a review by the Screening Officer shall be sent a copy of the Screening Decision as soon as is practical after the decision has been made, in accordance with Section 7.3 of this By-law.

6.0 REVIEW BY HEARING OFFICER

- 6.1 Any person to whom a Screening Decision is issued may request a review of the Screening Decision by a Hearing Officer within 30 calendar days after the date on which the Screening Decision was issued.
- 6.2 A request for a review by the Hearing Officer, or for an extension of time to request a review before the Hearing Officer, shall be in the form and manner as determined by the Director from time to time, and shall include the Penalty Order Number and the person's contact information. Where a request is made by a person who is not the Owner, the person shall submit with the request an authorized agent/representative form, in the form as determined by the Director from time to time. Incomplete forms or forms not submitted in accordance with the form and manner as determined by the Director may not be accepted or processed, at the discretion of the Director.
- 6.3 The Hearing Officer may only extend the time to request a review of the Screening Decision where the person requesting the extension demonstrates, on a balance of probabilities, extenuating circumstances that warrant the extension of time. The Hearing Officer will consider the request for extension before reviewing the Screening Decision.
- 6.4 Where an extension of time for a hearing review is not granted by the Hearing Officer, the Screening Decision shall be deemed to be affirmed, and shall not be subject to review.
- 6.5 Where neither a hearing review nor an extension of time for a hearing review are requested in accordance with this By-law, or where the person fails to request a hearing review within any extended period of time granted by the Hearing Officer:

- a) The person shall be deemed to have waived the right to a hearing review;
 - b) The Screening Decision shall be deemed to be affirmed; and
 - c) The Screening Decision shall not be subject to review.
- 6.6 Upon review of the Screening Decision, the Hearing Officer may affirm the Screening Decision, or the Hearing Officer may cancel, reduce or extend the time for payment of the Administrative Penalty, including any applicable Administrative Fees, on the following grounds:
- a) Where the Hearing Officer is satisfied, on a balance of probabilities, that a contravention of section 128 of the *Highway Traffic Act* was not proven as set out in the Penalty Order; or
 - b) Where the Hearing Officer is satisfied, on a balance of probabilities, that the cancellation, reduction or extension of the time for payment of the Administrative Penalty, including any Administrative Fees, is necessary to reduce any undue hardship.
- 6.7 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 Township an opportunity to be heard.
- 6.8 In making a determination, the Hearing Officer may consider and rely on documentation as outlined in s.13(3) of O. Regulation 355/22. Those items being photographs or images taken by the camera system; certified statements of the Officer that imposed the penalty order; certified documents setting out the name/address of the person who is subject to the penalty order; a description of the permit and the number plate of the motor vehicle; statements made by the appellant (either in writing or in the manner in which the appeal is conducted); statements by or on behalf of the municipality in which the contravention that is the subject of the penalty order occurred, made in the manner in which the appeal is conducted; any other information, materials or submissions that the Hearing Officer considers to be credible or trustworthy in the circumstances.
- 6.9 The person requesting the hearing shall be served with a copy of the Hearing Decision as soon as practicable after the review is complete.
- 6.10 The decision of a Hearing Officer is final.
- 6.11 Where notice has been given in accordance with this By-law, and the person fails to appear at the time and place scheduled for a review by the Hearing Officer:
- a) The person shall be deemed to have abandoned the hearing; and

- b) The Screening Decision shall be deemed to be affirmed.

7.0 SERVICE OF DOCUMENTS

- 7.1 Service of a Penalty Order in any of the following ways is deemed effective by:
 - a) A penalty order may be served on the person who is subject to the order by sending the order by mail to the most recent address that appears on the Ministry of Transportation records in respect of the holder of the plate portion of the permit for the motor vehicle involved in the contravention.
 - b) If the authorized person who imposed the penalty order believes that the person who is subject to the order resides outside Ontario or, in the case of a corporation has its principal place of business outside Ontario, the penalty order may be served on the person by sending the order by mail or by courier to the address outside Ontario at which the authorized person believes the person resides or has its principal place of business.
 - c) The address mentioned in subsection (b) may be determined from a document obtained from the government of any province or territory of Canada or from the government of a state of the United States of America, or from a person or entity authorized by any such government to keep records of vehicle permits, number plates or other evidence of vehicle ownership in that jurisdiction.
 - d) Service of a penalty order mailed or couriered in accordance with this section is deemed to be served on the seventh (7th) day following the day on which it was mailed or couriered.
- 7.2 For purposes of this By-law, the last known address of the Owner shall be the address as set out on the vehicle ownership or, where an updated address has been provided in writing by the Owner to the Enforcement Services offices of the Township at the time of service, such updated address.
- 7.3 Any Penalty Order or document sent in writing to the Owner by regular mail, as set out in this By-law, is deemed to have been served on the seventh calendar day after the date of mailing.
- 7.4 Service of any document or notice (other than a Penalty Order) on an authorized representative of the Owner shall be deemed service on the Owner.

8.0 ADMINISTRATION

- 8.1 The Director shall administer this By-law.
- 8.2 The Director may:

- a) Designate the location within the Township of Essa for conducting reviews and hearings under this By-law, as well as setting the time(s) for such reviews and hearings;
 - b) Prescribe all forms, notices, including the Penalty Order, guidelines, processes, policies and procedures, necessary to implement the By-law and the administrative penalty system, and to amend such forms, notices, guidelines, procedures and processes from time to time as the Director deems necessary; and
- 8.3 Any Administrative Fee(s) prescribed within Schedule "A" of this By-law shall be added to, and deemed to be, part of the Administrative Penalty amount unless otherwise rescinded by the Hearing Officer.
- i. In accordance with s. 14 of O. Regulation 355/22, if the appellant fails to attend any stage of an appeal, the amount of the penalty shall be increased by \$60.00.

9.0 GENERAL PROVISIONS

- 9.1 A Penalty Order that is paid prior to a screening review shall be deemed as final and will not be subject to screening, unless there is an error on the face of the Penalty Order as determined by the Director may cancel the Penalty Order and direct a refund of all amounts paid.
- 9.2 Unless otherwise stated in this By-law, an Administrative Penalty is due and payable within 30 calendar days following the Effective Date of Service.
- 9.3 Where an Administrative Penalty, including any Administrative Fees, is affirmed or reduced by a Screening Officer or a Hearing Officer, the Administrative Penalty and any Administrative Fees shall be due and payable on the date specified in the Screening Decision or Hearing Decision, as the case may be.
- 9.4 Where an Administrative Penalty, including any Administrative Fees, is not paid within 30 calendar days after it has become due and payable, the Township may notify the Ministry of Transportation of the default. Plate denial is at the discretion of the Ministry of Transportation. If the Ministry of Transportation does deny a plate renewal, they would be responsible to charge and collect the associated fee.
- 9.5 All amounts due and payable to the Township pursuant to this By-law constitute a debt to the Township.
- 9.6 Where a person makes a request for an extension of time for payment, and the request is granted, the date on which the Administrative Penalty is due and payable shall be the date established in accordance with the extension of time, and:

- a) the Penalty Order will not be subject to the Late Payment Fee, until the time for payment has expired, and then in accordance with the provisions herein; and
 - b) the enforcement mechanisms available to the Township shall be suspended until the extension of time has expired, and then shall apply in accordance with the provisions herein.
- 9.7 Where a person has paid an Administrative Penalty or an Administrative Fee that is cancelled or reduced by a Screening Officer or Hearing Officer, the Township shall refund the amount cancelled or reduced.
- 9.8 No Officer may accept payment in respect of an Administrative Penalty or Administrative Fee.
- 9.9 Payments of an Administrative Penalty or Administrative Fee must be received by the date on which they are due and payable, or any extended due date in accordance with this By-law and will not be credited until received by the Township.
- 9.10 Any time limit that would otherwise expire on a Holiday is extended to the next day that is not a Holiday.
- 9.11 An authorized representative is permitted to appear on behalf of a person at a Screening Review or a Hearing Review or to communicate with the Township of Essa on behalf of a person where a written Authorization to Act as an Agent form has been provided.
- 9.12 Any person claiming financial hardship under this By-law shall provide documented proof of the financial hardship to the Screening Officer or Hearing Officer, as applicable.
- 9.13 All Administrative Penalties associated with automated speed enforcement are administered and calculated in accordance with O. Reg 355/22 made under the *Highway Traffic Act*.

10.0 SEVERABILITY

- 10.1 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 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.

11.0 OFFENCES

11.1 Any person who:

- a) Makes a false, misleading or fraudulent statement in relation to a Penalty Order, or on any form submitted to the Township in relation to a Penalty Order; or
- b) Obstructs an Officer exercising any authority under this By-law;

is guilty of an offence and, upon conviction, is subject to a penalty in accordance with s.128(1) of the *Highway Traffic Act section 128(1)*, *O. Reg 355/22 and 398/19*.


11.2 No person shall attempt, directly or indirectly, to communicate with a Screening Officer or Hearing Officer for the purpose of influencing or interfering, financially, politically or otherwise with the Screening Officer or Hearing Officer respecting a Penalty Order and/or respecting a Power of Decision in a proceeding that is or will be pending before a Screening Officer or Hearing Officer:

12.0 EFFECTIVE DATE

12.1 This By-law shall come into force and effect upon the date it is finally passed.

12.2 That By-law 2023-38 be and is hereby superseded.

READ A FIRST TIME AND TAKEN AS READ A SECOND AND THIRD TIME
AND FINALLY PASSED on this the 20th day of March, 2024.



Sandie Macdonald, Mayor



Lisa Lehr, Manager of Legislative Services

SCHEDULE "A" TO BY-LAW 2023-38

Administrative Penalty Amounts for Automated Speed Enforcement

Excerpts from O. Reg. 355/22

6. (1) The amount of the administrative penalty shall be the sum of the following amounts:

1. In respect of a contravention of subsection 128 (1) of the Act, the amount 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.

5. \$8.25, to reflect costs incurred by the authorized person to access the name and most recent address of the person who is subject to the penalty order.
 6. The amount determined under subsections (2) to (4) as applicable, to be credited to the victims' justice fund account in accordance with O. Reg 355/22 section 19.
- (2) For a contravention of subsection 128 (1) of the Act, the amount mentioned in paragraph 6 of subsection (1) is,
- (a) if the amount determined under paragraph 1 of subsection (1) is \$1000 or less, the amount set out in Column 2 of Table 2 that is opposite the amount determined under paragraph 1 of subsection (1) described in Column 1 of Table 2; or
 - (b) if the amount determined under paragraph 1 of subsection (1) is greater than \$1000, the amount that is 25 per cent of that amount.

TABLE 1

Item	Column 1 Kilometres per hour over the maximum speed limit	Column 2 Penalty rate in community safety zone or school zone
1.	1 to 19 kilometres per hour over the maximum speed limit	\$5.00 per kilometre
2.	20 to 29 kilometres per hour over the maximum speed limit	\$7.50 per kilometre
3.	30 to 49 kilometres per hour over the maximum speed limit	\$12.00 per kilometre
4.	50 kilometres per hour or more over the maximum speed limit	\$19.50 per kilometre

TABLE 2

Item	Column 1 Amount determined under paragraph 1 of subsection (1) of this section	Column 2 Amount mentioned in paragraph 6 of subsection (1) of this section
1.	\$0 - \$50	\$10
2.	\$51 - \$75	\$15
3.	\$76 - \$100	\$20
4.	\$101 - \$150	\$25
5.	\$151 - \$200	\$35
6.	\$201 - \$250	\$50
7.	\$251 - \$300	\$60
8.	\$301 - \$350	\$75
9.	\$351 - \$400	\$85
10.	\$401 - \$450	\$95
11.	\$451 - \$500	\$110
12.	\$501 - \$1000	\$125

Decision

14(3) If the appellant failed to attend any stage of an appeal, in accordance with subsection 12(2), the amount of the penalty shall be increase by \$60.