

Corporation of the Town of Newmarket

By-law 2023-09

A By-law to monitor, regulate, and enforce motor vehicle speeding via automated enforcement within identified school and community safety zones throughout the Town of Newmarket.

Whereas Section 11 of the Municipal Act, 2001, 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 391 of the Municipal Act authorizes the Town to impose fees or charges for services or activities provided or done by or on behalf of the Town;

And whereas Section 128 of the Highway Traffic Act R.S.O. 1998, c.6 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;

And whereas Section 128 of the Highway Traffic Act R.S.O. 1998, c.6 as amended, authorizes the council of a municipality to pass a by-law designating a portion of a highway under its jurisdiction that adjoins the entrance to or exit from a school and that is within 150 metres along the highway in either direction beyond the limits of the land used for the purposes of the school and for motor vehicles driven, on days on which school is regularly held, on the portion of a highway so designated, prescribe a rate of speed that is lower than the rate of speed for that portion of highway, and prescribe the time or times at which the speed limit is effective;

And whereas Section 214 of the Highway Traffic Act R.S.O. 1998, c.6 as amended, establishes that the council of a municipality may by by-law designate a part of a highway under its jurisdiction as a community safety zone if, in the council's opinion, public safety is of special concern on that part of the highway;

And whereas Ontario Regulation 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 enforcement systems;

Therefore be it enacted by the Council of the Corporation of the Town of Newmarket as follows:

1. Title

This By-law may be known and cited for all purposes as the "Automated Enforcement By-law 2023-09".

2. Definitions

In this By-law:

“Administrative Penalty” means a monetary penalty set out in this By-law for a contravention pursuant to the Automated Enforcement Program;

“Automated Enforcement Officer” means a provincial offences officer, as designated by the Ministry of the Attorney General, and duly employed by the Corporation for the Town of Newmarket to monitor and enforce the automated enforcement program under Administrative Penalties;

“Automated Speed Enforcement Program” means an automated system that uses a camera and a speed measurement device to enforce speed limits in school zones and community safety zones;

“Court” means any court of law of the Province of Ontario, including but not limited to the Ontario Court of Justice, the Ontario Superior Court of Justice, and the Ontario Court of Appeal;

“Community Safety Zone” means a designated section of roadway, recognized under provincial legislation and marked with community safety zone signs allowing the doubling of fines associated with traffic violations including speeding and, through the applicable sections of Bill 65, Safer School Zones Act, 2017;

“Contravention” means the failure to comply with a provision of this By-law;

“Director” means the Director of Legislative Services or their designate.

“Fee – No Show” means the fee listed in Schedule A of this By-law in respect of a Person’s failure to appear at the time and place scheduled for a **Screening** or **Hearing Review**;

“Fee – MTO Search” means the fee listed in Schedule A of this By-law for searching the records of the Ontario Ministry of Transportation;

“Fee – Plate Denial” means the fee listed in Schedule A of this By-law, as represented by the Ontario Ministry of Transportation and/or Ministry of Attorney General, for notifying the Registrar of Motor Vehicles for the purpose of denying renewal of a vehicle permit;

“Hearing Officer” means a Person who performs the duties of a Hearing Officer in accordance with Section 9 of this By-law, and pursuant to the Town’s Automated Enforcement Program: Screening and Hearing Officer Policy;

“Highway Traffic Act” or **“HTA”** or **“the Act”** means the Ontario Highway Traffic Act, R.S.O. 1990, c. H.8, as amended.

“Ministry of Transportation” or **“MTO”** means the provincial ministry of the Government of Ontario that is responsible for transport infrastructure and related law in Ontario.

“Penalty Order” means a ticket issued pursuant to Section 5 of this By-law;

“Penalty Order Number” means the number specified on the top right corner of the Penalty Order that is unique to that Penalty Order;

“Person” includes an individual or business name, sole proprietorship, corporation, partnership, or limited partnership, or an authorized representative thereof, to whom the context can apply according to law;

“Screening or Hearing Decision” means a notice that contains the decision made by a Screening or Hearing Officer and delivered in accordance with Section 10 of this By-law;

“Screening Officer” means a Person who performs the functions of a Screening Officer in accordance with Section 8 of this By-law, and pursuant to the Town’s Automated Enforcement Program policies and procedures;

“Set Amount” means the amount that the recipient is liable to pay in respect of a contravention pursuant to this By-law, but does not include any additional costs or fees identified therein;

“Total Amount Owing” means the total amount that the recipient is liable to pay in respect of a contravention and includes all costs and fees identified on the Administrative Penalty;

“Town” means The Corporation of the Town of Newmarket;

“Traffic By-law” means the Town of Newmarket Traffic By-law 2011-24, as amended;

“Victims Justice Fund Account” or “VJF” means a fee collected under Ontario's Victims' Bill of Rights to help support victims of criminal offences and is required to be collected on behalf of the province.

3. Application

- (1) This By-law applies only to those contraventions included in Ontario Regulation 355/22, as made under the Highway Traffic Act, to impose Administrative Penalties for contraventions detected using camera systems.
- (2) This By-law applies only to those contraventions included in Ontario Regulation 355/22, as made under the Highway Traffic Act, to impose Administrative Penalties for contraventions detected using camera systems.
- (3) This By-law applies to the Town’s Traffic By-law 2011-24, as amended, for the purpose of imposing Administrative Penalties for contraventions detected using automated camera systems in areas defined as Community Safety Zones.

4. Administrative Penalties

- (1) The Administrative Penalty amount is calculated using the formulas and amounts prescribed in Schedule A, as attached and forming part of this By-law, and may be dealt with by Penalty Order as an Administrative Penalty within the Automated Enforcement Program.

5. Penalty Order

- (1) If a Penalty Order is imposed in respect of a motor vehicle involved in a contravention of a provision of this By-law, the Penalty Order shall

be imposed on the owner of the motor vehicle whether or not the owner was the driver of the vehicle.

- (2) The Penalty Order shall be given to the Person as soon as is reasonably practicable and shall include the following information:
 - (a) a unique file number;
 - (b) the provision contravened;
 - (c) the date and location of the Contravention;
 - (d) a copy of a photograph or image of the motor vehicle that is involved in the Contravention;
 - (e) the amount of the Administrative Penalty, as outlined in Schedule "A" of this By-law;
 - (f) a statement that the owner of the motor vehicle must, no later than 30 days after the day the Penalty Order is served on them, pay the Administrative Penalty unless they commence an appeal in accordance with this By-law; and
 - (g) information regarding the appeal process, including the manner in which to commence an appeal.
- (3) An Automated Enforcement Officer shall include statements that are certified to be true in respect of the contravention or the service of the Penalty Order.
- (4) An Automated Enforcement Officer is solely empowered and authorized to issue a Penalty Order under this By-law.

6. Payment, Collection, and Time Limitations on Administrative Penalties

- (1) The amount of the Administrative Penalty is set out in "Schedule A", attached hereto and forming part of this By-law, and includes all other fees applicable to a Penalty Order imposed in accordance with this By-law and the Highway Traffic Act.
- (2) An Automated Enforcement Officer shall only issue a Penalty Order on or before the 23rd day after the day on which the contravention occurred.
- (3) The Town will collect payment of Administrative Penalty fees for Contravention's subject to Penalty Order's.
- (4) The Person who is subject to a Penalty Order shall pay the Administrative Penalty within 30 days after the date on which service of the order is deemed to have been affected, unless an appeal has been commenced.
- (5) If an appeal of a Penalty Order does not result in the Penalty Order being cancelled or set aside, the Person who is subject to the order shall pay the administrative penalty within 30 days following:
 - (a) the date of the decision by the Screening Officer, if no request for a review of the decision was made; or
 - (b) the date of the decision by the Hearing Officer, if a request for review was made.
- (6) If a Screening Officer or Hearing Officer, as the case may be, considers it fair and appropriate in the circumstances, the Person may be approved a plan of periodic payments that extends beyond the (30) day deadline.

- (7) For further clarity, a plan of periodic payments may be approved after the 30-day period has expired.
- (8) No fee shall be charged to:
 - (a) commence an appeal for a Penalty Order;
 - (b) extend the period of time in which to commence an appeal; or
 - (c) approve a plan of periodic payments.

7. Victims Justice Fund Account

- (1) When an Administrative Penalty is paid, the Town shall arrange for the amount determined under Schedule "A" of this By-law, or varied in accordance with Section 9 of this By-law, to be credited to the Victims' Justice Fund account.
- (2) The Town shall arrange for the amount identified in Section 7(1) above to be credited to the Victims' Justice Fund account before retaining any portion of the payment.

8. Review by Screening Officer

The following applies to the review of an **Administrative Penalty** by a **Screening Officer**:

- (1) A Person who is served with a Penalty Order may request that the Administrative Penalty be reviewed by a Screening Officer and shall do so within 30 days after the date on which service of the Penalty Order is deemed to have been affected under this By-law.
- (2) A Person who is subject to a Penalty Order may commence the first stage of an appeal by requesting, in the manner set out in the Penalty Order, a review of the Penalty Order by a Screening Officer.
- (3) The Screening Officer may confirm, vary, or cancel the Penalty Order and shall do so as soon as practical after the review is complete.
- (4) The Screening Officer shall send a copy of the decision to the appellant by regular mail, courier, or electronic means as soon as practical after the decision is made.
- (5) If a Screening Officer considers it fair and appropriate in the circumstances, they may extend the 30-day period to commence an appeal and the extension may be made even after the 30-day period has expired.

9. Review by Hearing Officer

The following applies to the review of a Screening Decision by a Hearing Officer:

- (1) A Person may request a review by a Hearing Officer within 30 days after the date of the decision of the Screening Officer.
- (2) If a Person has not requested a Hearing Review within 30 days after the date of the decision of the Screening Officer, Screening Decision shall be deemed final unless the Screening Decision was issued that the Hearing Officer extend the time to appeal.

- (3) If a Hearing Officer considers it fair and appropriate in the circumstances, the Hearing Officer may extend the 30-day period mentioned in (1) to request a review and the extension may be made even after the 30-day period has expired.
- (4) A Person's right to appeal the Screening Decision to a Hearing Officer, or request an extension of time to appeal, are exercised by giving to the Town written notice of the request to appeal that includes:
 - (a) the **Penalty Order Number**;
 - (b) the **Person's** mailing address and, if applicable, telephone number;
 - (c) in the case of a request to extend time to appeal, the reasons, if any, for having failed to exercise the right to appeal within thirty (30) days from the date the **Screening Decision** was issued; and,
 - (d) the reasons for which the appeal has been requested.
- (5) Written notice of the request to appeal or to request an extension of time to appeal is provided by completing the Hearing Officer Appeal Form and delivering it to the Town in accordance with Section 9 of this By-law.
- (6) The Person shall be given no fewer than seven (7) calendar days' notice, as provided by Section 9 of this By-law, of the date, time, and place of the hearing of the appeal by the Hearing Officer.
- (7) 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 and shall not be subject to any further review, including review by any Court; and
 - (c) if the appellant failed to attend the hearing the amount of the Administrative Penalty shall be increased to include the "Fee – No Show", as outlined in Schedule 'A' of this By-law.
- (8) The Hearing Officer shall not make a determination with respect to a review of the Screening Decision where a Person appears, unless he or she has given the Person an opportunity to be heard.
- (9) On an appeal of the Screening Decision, the Hearing Officer may:
 - (a) affirm or deny the request to extend the time to appeal;
 - (b) affirm the Administrative Penalty;
 - (c) cancel (set aside) the Administrative Penalty; or
 - (d) vary the Administrative Penalty pursuant to this By-law.
- (10) Every Person who requests a review by the Hearing Officer shall receive a Hearing Decision, served in accordance with this By-law.
- (11) The decision of a Hearing Officer is final and not subject to review, including review by any Court.
- (12) All hearings by a Hearing Officer shall be conducted in accordance with the Statutory Powers and Procedures Act, R.S.O. 1990, c. S.22, as amended.

- (13) A Hearing Officer has no authority 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.

10. Decision to Vary by Screening or Hearing Officer

If a **Screening or Hearing Officer**, as the case may be, decides to vary the amount of an **Administrative Penalty** determined under Schedule 'A', they shall vary the amount in accordance with the following rules:

- (1) If the total amount of an Administrative Penalty is decreased, the amount to be credited to the Victims' Justice Fund account is the amount mentioned in Schedule A that has been reduced proportionally to the decrease in the total Administrative Penalty amount.
- (2) For greater certainty, if the total amount of an Administrative Penalty is decreased to zero, the amount mentioned in paragraph 6 of Schedule 'A' (1) is zero.
- (3) If the appellant failed to attend any stage of an appeal, the amount of the Administrative Penalty shall be increased by \$60.
- (4) For greater certainty, an increase made under Section 10(3) above does not affect the amount mentioned in **paragraph 6** of Schedule 'A' of this By-law.
- (5) The amount of the Administrative Penalty shall not be increased other than in accordance with this By-law.
- (6) If, before a final decision is made in respect of an appeal, a Screening Officer or Hearing Officer, as the case may be, becomes aware that, contrary to subsection 21.1 (4) of the Highway Traffic Act, the person who is subject to the Penalty Order is charged with an offence under the HTA in respect of the same contravention, the Screening Officer or Hearing Officer shall set aside the Penalty Order.

11. Service of Documents

- (1) A Penalty Order may be served by sending the Penalty Order by regular mail or by courier to the most recent address that appears on the Ministry of Transportation's records in respect of the holder of the plate portion of the permit for the motor vehicle involved in the Contravention.
- (2) Service of a Penalty Order mailed or couriered in accordance with this By-law is deemed to be effected on the seventh (7th) day following the day on which it was mailed or couriered.
- (3) Any notice or document to be given to the Town in respect of this By-law shall be in writing and delivered in any of the following manners:
 - (a) Delivering a copy to the Town during its regular business hours to "Automated (Speed) Enforcement Program, Legislative Services Department – Town of Newmarket, 395 Mulock Dr, Newmarket, ON, L3Y 4Y9"; or
 - (b) Electronically mailing (e-mail) the Town at ase@newmarket.ca.

12. Administration and Enforcement

- (1) The Director 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 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) The positions of Screening Officer and Hearing Officer are established through delegated authority and shall be appointed by the Director.
- (4) Traffic Enforcement Officers shall not accept payment of an Administrative Penalty respecting a Penalty Order.
- (5) Where an Administrative Penalty and any applicable Administrative Fee(s) are not paid by the date on which they are due and payable, the Town may notify the Ontario Ministry of Transportation (the "Ministry") of the default after thirty (30) days, at which time the Ministry shall not validate the permit of the **Person** named in the notice of default nor issue a new permit to the **Person** until the **Administrative Penalty** and any applicable **Administrative Fee(s)** are paid to the **Town**.
- (6) Where the Town notifies the Ministry of a default under this By-law, the Person shall pay any applicable fee(s) imposed by the Ministry.
- (7) Where an Administrative Penalty is cancelled, any Administrative Fee(s) are also cancelled.
- (8) Once a Penalty Notice has been paid or forwarded to MTO, there is no further option for dispute.

13. Severability

- (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.

14. Interpretation

- (1) The provisions in Part VI of the Legislation Act, 2006, S.O. 2006, c.21, Schedule F, shall apply to this By-law.
- (2) Where words and phrases used in this By-law are defined in the Highway Traffic Act, but not defined in this By-law, the definitions in the Highway Traffic Act shall apply to such words and phrases.

15. Short Title

- (1) This By-law may be referred to as the "AE By-law".

16. Effective Date

- (1) This By-law shall come into force and effect on the 15th day of January 2020

Enacted this 13th day of February, 2023.

Mayor John Taylor, Mayor

Lisa Lyons, Town Clerk

Schedule “A”

Automated Enforcement By-law 2023-XX, as amended

A Schedule to adopt fines and fees consistent with provincial legislation for the Town’s automated enforcement program under administrative penalties.

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 *Highway Traffic 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 *Highway Traffic 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;

(2) \$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; and

(3) The amount determined under Section 2 below, as applicable, to be credited to the victims’ justice fund account in accordance with Section 19 of Ontario Regulation 355/22 under the *Highway Traffic Act*.

2. For a contravention of subsection 128 (1) of the *Highway Traffic Act*, the amount mentioned in 1(3) above is calculated as follows:

(1) if the amount determined under Section 1(1) above is \$1000 or less, the amount set out in Column 2 of Table 2 that is opposite the amount determined under Section 1(1) described in Column 1 of Table 2; or

(2) if the amount determined under Section 1(1) above is greater than \$1000, the amount that is 25 per cent of that amount.

3. Table 3 lists the additional fees defined in Section 2 of this By-law.

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 Section (1)1 of this Schedule	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
13.	Over \$1000	25% of contravention amount

TABLE 3

Item	Column 1 Fee Description	Column 2 Fee Amount (\$)
1.	Fee – No Show (Screening or Hearing)	\$60
2.	Fee – MTO Search	\$8.25