



**City of Kingston
Report to Council
Report Number 20-175**

To: Mayor and Members of Council
From: Paige Agnew, Commissioner, Community Services
Resource Staff: Kyle Compeau, Manager, Licensing & Enforcement
Date of Meeting: August 11, 2020
Subject: Use of Administrative Monetary Penalties (AMPs) for the Enforcement of the Nuisance Party and Noise By-Laws

Council Strategic Plan Alignment:

Theme: Policies & by-laws

Goal: See above

Executive Summary:

During the COVID-19 pandemic, nuisance behaviours, such as excessive noise, unsanctioned street parties and large gatherings, pose an additional risk to the community and put an additional strain on public resources, including first responders. City staff along with Kingston Police have had discussions on how to effectively respond to nuisance behaviours, such as excessive noise and unsanctioned street parties, during the current pandemic, while being mindful of the impacts on public resources, including law enforcement personnel and the court system.

In April 2020, Council passed By-Law Number 2020-068 “A By-Law for the Provision and Enforcement of Orders During a Declared Emergency” and By-Law Number 2020-069 “A By-Law to Establish a Process for Administrative Penalties”, as part of the larger scheme of provisions for maintaining public health and safety that have been created at all levels of government in response to the COVID-19 pandemic.

Staff are recommending that Council designate the Nuisance Party By-Law and the Noise By-Law as by-laws for which Administrative Monetary Penalties (AMPs) can be issued. While enforcement officers would still have discretion to commence proceedings under the *Provincial Offences Act* for a contravention of a City by-law, AMPs will give Kingston Police and City of

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Kingston By-Law Enforcement an additional tool to respond to these nuisance behaviours efficiently and effectively, and without involving the Provincial Offences Court system.

There are two positions required to help administer the AMP, a Screening Officer, which will be filled by existing City staff and a Hearing Officer, which adjudicates appeals of AMPs and is more appropriately filled by an external body. Because the Hearing Officer performs a quasi-judicial decision-making role, this position must be filled by an impartial, arms-length individual external to the City. Staff are recommending that such a position be staffed through posting an external, one-year contract to be fulfilled by a qualified person who would be paid at a pre-established rate on a per-hearing-date basis. The penalties collected by the City from AMPs will offset the cost of the Hearing Officer. If no appeals are filed, the Hearing Officer is not compensated. City staff have reviewed examples from several other municipalities that currently use AMPS for enforcement of various by-laws and the process established to administer those programs.

Through [Report Number 20-116](#), Council passed and endorsed the procedures which established the role and functions of a Screening Officer, Hearings Officer, and the appeal process.

Staff are seeking three readings of the by-laws appended to this report in order to have this program up and running for September, given that Kingston has moved into Phase 3 of the Provincial re-opening strategy.

Recommendation:

That Council approve the By-Law, being “A By-Law to Amend By-Law Number 2020-069, A By-Law to Establish a Process for Administrative Penalties,” to designate By-Law Number 2018-53 “A By-Law to Regulate Nuisance Parties within the City of Kingston” and By-Law Number 2004-52 “A By-Law to Regulate Noise” as by-laws for which Administrative Penalties can be issued, as per Exhibit C (Draft By-Law to amend By-Law Number 2018-53) to Report Number 20-175; and

That Council approve the By-Law, being “A By-Law to Amend By-Law Number 2004-52 “A By-Law to Regulate Noise,” to permit enforcement of the Noise By-Law through the use of Administrative Penalties, as per Exhibit A (Draft By-Law to amend By-Law Number 2004- 52, “A By-Law to Regulate Noise”) to Report Number 20-175; and

That Council approve the By-Law, being “A By-Law to Amend By-Law Number 2018-53 “A By-Law to Regulate Nuisance Parties within the City of Kingston,” to permit enforcement of the Nuisance Party By-Law through the use of Administrative Penalties, as per Exhibit B (Draft By-Law to amend By-Law Number 2018-53, “A By-Law to Regulate Nuisance Parties within the City of Kingston”) to Report Number 20-175; and

That Council approve the By-Law, being “A By-Law to Amend By-Law Number 2005-10 “A By-Law to Establish Fees and Charges to be Collected by the Corporation of the City of Kingston,” as amended, be further amended to include administrative fees associated

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with the AMP system, as per Exhibit D (Draft By-Law to Amend By-Law Number 2005-10, “A By-Law to Establish Fees and Charges to be Collected by the Corporation of the City of Kingston”) to Report Number 20-175; and

That the By-Laws attached as Exhibits A, B, C, D to Report Number 20-175 be given all three readings.

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Authorizing Signatures:

**Paige Agnew, Commissioner,
Community Services**

**Lanie Hurdle, Chief
Administrative Officer**

Consultation with the following Members of the Corporate Management Team:

Peter Huigenbos, Commissioner, Business, Environment & Projects	Not required
Brad Joyce, Commissioner, Corporate Services	
Jim Keech, President & CEO, Utilities Kingston	Not required
Desirée Kennedy, Chief Financial Officer & City Treasurer	
Sheila Kidd, Commissioner, Transportation & Public Works	Not required

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Options/Discussion:

In the spring of 2018, Council passed the Nuisance Party By-Law, giving Kingston Police and City of Kingston By-Law Enforcement an additional tool to address nuisance behaviours, such as unsanctioned street parties and excessive noise associated with large social gatherings. Such disruptive behaviour puts a significant strain on emergency services and creates dangerous situations when roads and traffic are blocked.

For the past two years, the Nuisance Party By-Law has been enforced primarily through the issuance of a Part I Summons. Individuals charged are required to appear before a Justice of the Peace in Kingston, regardless of where they live, and do not have the option to settle the charge by mail, online or by phone. Part of the objective of this approach is to ensure that people charged with by-law violation account for their actions in person as a means of deterring the person from continuing to engage in the behavior.

Historically, enforcement of City By-Laws has been through the Provincial Offences Court system. On March 16, 2020, this Court's operations were suspended, and are not expected to resume until mid-September at the earliest. As a result, there is currently a backlog of cases to process through the Court, and it is unknown how long the delay might be between a charge being laid and a court appearance being scheduled. The deterrent impact of any charge or fine is lessened the longer a person has to wait until a penalty is imposed.

Administrative penalties are authorized under section 434.1 of the *Municipal Act* as a civil (rather than quasi-criminal, like traditional fines) mechanism for enforcing compliance with regulatory requirements. They can be an effective, efficient and tangible way for responding to violations of the law. In practice, a monetary penalty is assessed and imposed in the form of a notice with a prescribed date and time for payment. The amount of an administrative penalty established may not be punitive in nature and must not exceed the amount reasonably required to promote compliance with a by-law of the municipality. While administrative penalties do not lead to convictions or pose a risk of imprisonment, administrative decisions may still be made (e.g. business license suspensions).

The Administrative Penalties Process By-Law previously approved by Council created a process to impose administrative penalties and set out a number of procedural, financial, staffing and other administrative processes, including the establishment of an administrative scheme to support the imposition of administrative monetary penalties under the Director, Building and Enforcement Services. It designated the Emergency Orders By-Law as a By-Law for which AMPs can be issued as a means to impose escalating sanctions, from administrative penalties to significant fines, to address immediate and specific local needs at the municipal level which was in harmony with the efforts of other upper level governments.

The Administrative Penalty Process By-Law also includes due process provisions including (i) notice requirements, (ii) review and confirmation or cancellation of penalties by a Screening Officer; and (iii) a right of appeal to an independent Hearings Officer. In order to fully implement the Administrative Penalty Process By-Law, staff must be assigned to carry out the functions of the Screening and Hearing Officers.

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Current Challenge

During a pandemic, unsanctioned street parties of the magnitude that Kingston has seen historically pose an additional and significant public health risk to party attendees, first responders, and the general public. There is an important public interest in enforcement of nuisance behaviours relating to these large gatherings.

However, the current pandemic has put a significant strain on public resources, some of which are heavily relied on to support traditional enforcement strategies, including police, by-law enforcement, first responders, and court administration.

With respect to court administration, there is currently no known date by which Kingston Provincial Offences Court will re-open, nor is it known in what capacity the court will begin to open. The court is currently managing a backlog of 600+ cases (cases that had scheduled appearances between March 16, 2020 and on-going), which will likely take priority over new matters. In other words, it may take several months before new matters are brought before the court, which can be less of a deterrent for nuisance behaviours. Historically the City's approach to the enforcement of the Nuisance Party Bylaw required a court appearance which has been effective because there was the relative immediacy of the public accountability. Charged individuals were being Summoned to appear in court approximately 1-2 months after the offence.

AMPs are an alternative to the traditional method of issuing *Provincial Offences Act* (POA) tickets. When a person receives a POA ticket, that person may request a trial and have the matter adjudicated by a Justice of the Peace in the Provincial Offences Court.

Staff are recommending the establishment of an AMP of \$500.00 for hosting or attending or continuing a Nuisance Party, or for failing to comply with an order issued under the Nuisance Party By-Law. The Ontario Court of Justice approved set fines of \$500.00 for POA tickets issued for hosting or attending or continuing a Nuisance Party, and for failing to comply with an order issued under the Nuisance Party By-Law. Unlike POA tickets, court costs and victim fine surcharges are not added to AMPs.

For violations of the Noise By-Law, including excessive noise generated by a device that amplifies sound, staff are recommending an AMP of \$200. The Ontario Court of Justice approved set fines of \$195.00 for POA tickets issued for causing or permitting noise through a device for the amplification of sound. Court costs and the victim fine surcharge, which are added to every POA ticket, bring the total payable to \$235.00.

Appeal of an AMP

When enforcement is carried out through an AMP, the person who is alleged to have contravened the by-law receives a penalty notice rather than a POA ticket or a summons to court. The recipient of the penalty notice may contest the penalty notice outside of the court process by appealing to a Screening Officer and, if not satisfied by the decision, the matter is referred to a Hearing Officer for a final decision. The decision of the Hearing Officer is final, meaning that there is no further level of appeal. Although AMPs are outside the court process,

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the *Statutory Powers Procedure Act* prescribes procedural protections for the defendant thereby ensuring the process is fair.

Review of Other Municipalities

Staff reviewed the enforcement approaches of other municipalities in Ontario in assessing the tool and drafting the framework recommended in this report.

A growing number of municipalities employ AMPs as an additional tool for by-law enforcement. For example, in Oshawa, the AMP system applies to by-law infractions related to: Business Licensing, Trees, Fences, Lot Maintenance, Smoking, Noise, Nuisance, Open Air Burning, Parking, Responsible Pet Ownership, Snow & Ice Removal, and Waste Collection, among others. Other municipalities that use this approach include Brampton, Burlington, Mississauga, Niagara, Oakville, Pelham, Port Colborne, St. Catharines, Thorold, Vaughan, Welland and Windsor. The use of AMPs also aligns with the province's expanding use of AMPs for provincial statutes, including the *Nutrient Management Act, 2002*, the *Ontario Water Resources Act*, the *Pesticides Act*, and the *Safe Drinking Water Act, 2002*.

Communications Strategy

A communications strategy will be developed to ensure a consistent message is delivered from all community partners. The City of Kingston communication channels will be used to inform residents across the City of this new enforcement tool. The communication channels may include, but are not limited to the City website, News Release, signage, social media and print.

Conclusion

During the COVID-19 pandemic, nuisance behaviours, such as unsanctioned street parties and large gatherings, pose an additional risk to the community and to first responders. City staff along with Kingston Police have had discussions on how to effectively respond to nuisance behaviours, such as unsanctioned street parties during the current pandemic, while being mindful of the impacts on public resources, including law enforcement personnel and the court system.

Staff are recommending that Council designate the Nuisance Party By-Law and the Noise By-Law as by-laws for which AMPs can be issued. While enforcement officers will still have discretion to issue a POA ticket or summons to court to a person in contravention of a City By-Law, AMPs will give Kingston Police and City of Kingston By-Law Enforcement an additional tool to respond to these nuisance behaviours efficiently and effectively. Staff will monitor data in terms of the number of AMPs issued and any appeals filed to assess the effectiveness of AMPs related to the enforcement of these two by-laws and if needed bring additional reports back to Council should the program needed to be adjusted.

Existing Policy/By-Law:

By-Law Number 2018-53 – A By-Law to Regulate Nuisance Parties within the City of Kingston
By-Law Number 2004-52 – “A By-Law to Regulate Noise”
By-Law Number 2005-10 – “A By-Law to Establish Fees And Charges To Be Collected By The Corporation Of The City Of Kingston”

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By-Law Number 2020-69 – “A By-Law to Establish A Process For Administrative Penalties”

Notice Provisions:

None

Accessibility Considerations:

None

Financial Considerations:

None

Contacts:

Kyle Compeau, Manager, Licensing & Enforcement 613-546-4291 extension 1343

Other City of Kingston Staff Consulted:

Sarah Gareau, Senior Legal Counsel and Municipal Prosecutor

Lana Foulds, Director, Financial Services

External Consultation:

Antje McNeely, Chief of Police, Kingston Police

Exhibits Attached:

- Exhibit A Draft By-Law to Amend By-Law Number 2004-52, “A By-Law To Regulate Noise”
- Exhibit B Draft By-Law to Amend By-Law Number By-Law Number 2018-53, “A By-Law To Regulate Nuisance Parties Within The City Of Kingston”
- Exhibit C Draft By-Law to Amend By-Law Number By-Law Number 2020-69, “A By-Law To Establish A Process For Administrative Penalties”
- Exhibit D Draft By-Law to Amend By-Law Number By-Law Number 2005-10, “A By-Law To Establish Fees And Charges To Be Collected By The Corporation Of The City Of Kingston”

By-Law Number 2020-XX

**A By-Law to Amend By-Law Number 2004-52, "A By-Law To Regulate
Noise"**

Passed: [Meeting date]

The Council of the Corporation of the City of Kingston hereby enacts as follows:

1. By-Law Number 2004-52 of the Corporation of the City of Kingston entitled "A By-law to Regulate Noise", as amended, is hereby further amended as follows:

1.1. The "Whereas" clauses are hereby amended by adding a second "Whereas" clause as follows:

Whereas section 434.1(1) of the Municipal Act, 2001, as amended from time to time, provides that a municipality may require a person, subject to such conditions as the municipality considers appropriate, to pay an administrative penalty if the municipality is satisfied that the person has failed to comply with a by-law of the municipality passed under this Act; and

1.2. Section 1 of By-Law 2004-52 is amended by inserting the following definition to section 1 Definitions, in alphabetical order:

"Administrative Penalty" means an administrative penalty administered pursuant to "By-law 2020-69 of the Corporation of the City of Kingston being "A By-Law to Establish a Process for Administrative Penalties";

"Penalty Notice" means a notice given pursuant to sections 2.2 and 2.4 of "By-law 2020-69 of the Corporation of the City of Kingston being "A By-Law to Establish a Process for Administrative Penalties";

1.3. Section 4 of By-Law 2004-52 is amended by adding the following subsections:

4.4 Where a Provincial Offences Officer has reasonable grounds to believe that an offence under this By-Law has been committed by a Person, the Provincial Offences Officer may require the name, address, and proof of identity of that Person.

4.5 Failure to provide proof of identification satisfactory to a Provincial Offences Officer when requested to do so pursuant to Section 4.4 of this By-Law shall constitute obstruction of an Officer under Section 4.3 of this By-Law.

1.4. Section 7 of By-Law 2004-52 is amended by adding the following subsection immediately before section 7.1:

7.1a Every Person who contravenes any provision of this By-law shall, upon issuance of a Penalty Notice in accordance with Administrative Penalty Process By-law 2020-69, be liable to pay to the City an Administrative Penalty in accordance with By-Law Number 2005-10, "A By-Law To Establish Fees And Charges To Be Collected By The Corporation Of The City Of Kingston".

- 1.5. Section 7.1 of By-Law 2004-52 is amended by adding the phrase, "Notwithstanding section 7.1a of this By-Law," so that section 7.1 now reads:

7.1 Notwithstanding section 7.1a of this By-Law, every person, other than a corporation, who contravenes any provision of this By-Law is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 for a first offence and \$25,000 for any subsequent offence, as provided for in subsection 429 (2) (c) of the Municipal Act, 2001, as amended from time to time.

- 1.6 Section 7.2 of By-Law 2018-53 is amended by adding the phrase, "Notwithstanding section 7.1a of this By-Law," so that section 7.2 now reads:

7.2 Notwithstanding section 7.1a of this By-Law, every corporation that contravenes any provision of this By-Law and every officer or director of a corporation who knowingly concurs in such contravention is guilty of an offence and on conviction is liable to a fine of not more than \$50,000 for a first offence and \$100,000 for any subsequent offence, as provided for in subsection 425(3) and 429(2)(a) of the Municipal Act, 2001, as amended from time to time.

- 1.7. Section 7 of By-Law 2004-52 is amended by adding the following subsections immediately after section 7.3:

7.4 If a Person is required to pay an Administrative Penalty under section 7.1a in respect of a contravention of this By-Law, the Person shall not be charged with an offence in respect of the same contravention.

7.5 In accordance with section 351 of the Municipal Act, 2001, as amended from time to time, the treasurer of the City may add unpaid fees, charges and/or fines issued under this By-Law to the tax roll and collect them in the same manner as property taxes.

2. This By-law shall come into force and take effect on the date of its passing.

Given three readings and passed: [Meeting date].

John Bolognone
City Clerk

Bryan Paterson
Mayor

By-Law Number 2020-XX**A By-Law to Amend By-Law Number 2018-53, "A By-Law To Regulate Nuisance Parties Within The City Of Kingston"****Passed: [Meeting date]**

The Council of the Corporation of the City of Kingston hereby enacts as follows:

1. By-Law Number 2018-53 of the Corporation of the City of Kingston entitled "A By-law to Regulate Nuisance Parties within the City of Kingston" is hereby amended as follows:

1.1. The "Whereas" clauses are hereby amended by inserting the following "Whereas" clause in between the sixth (6th) and seventh (7th) "Whereas" clauses:

Whereas section 434.1(1) of the Municipal Act, 2001 provides that a municipality may require a person, subject to such conditions as the municipality considers appropriate, to pay an administrative penalty if the municipality is satisfied that the person has failed to comply with a by-law of the municipality passed under this Act; and

1.2. Section 1 of By-Law 2018-53 is amended by inserting the following definition to section 1, in alphabetical order:

"Administrative Penalty" means an administrative penalty administered pursuant to "By-Law 2020-69 of the Corporation of the City of Kingston being "A By-Law to Establish a Process for Administrative Penalties";

"Penalty Notice" means a notice given pursuant to sections 2.2 and 2.4 of "By-law 2020-69 of the Corporation of the City of Kingston being "A By-Law to Establish a Process for Administrative Penalties";

1.3. Section 7 of By-Law 2018-53 is amended by adding the following subsection immediately before section 7.1:

7.1a Every Person who contravenes any provision of this By-Law shall, upon issuance of a Penalty Notice in accordance with Administrative Penalty Process By-Law 2020-69, be liable to pay to the City an Administrative Penalty in accordance with By-Law Number 2005-10, "A By-Law To Establish Fees And Charges To Be Collected By The Corporation Of The City Of Kingston".

1.4. Section 7.1 of By-Law 2018-53 is amended by adding the phrase, "Notwithstanding section 7.1a of this By-Law," so that section 7.1 now reads:

7.1 Notwithstanding section 7.1a of this By-Law, every Person, other than a corporation, who contravenes any provision of this By-Law is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 for a first offence and \$25,000 for any subsequent offence.

- 1.5. Section 7.2 of By-Law 2018-53 is amended by adding the phrase, "Notwithstanding section 7.1a of this By-Law," so that section 7.2 now reads:

7.2 Notwithstanding section 7.1a of this By-Law, every corporation that contravenes any provision of this By-Law and every officer or director of a corporation who knowingly concurs in such contravention is guilty of an offence and on conviction is liable to a fine of not more than \$50,000 for a first offence and \$100,000 for any subsequent offence.

- 1.6. Section 7 of By-Law 2018-53 is amended by adding the following subsections immediately after section 7.3:

7.4 If a Person is required to pay an Administrative Penalty under section 7.1a in respect of a contravention of this By-Law, the Person shall not be charged with an offence in respect of the same contravention.

7.5 In accordance with section 351 of the Municipal Act, 2001, the treasurer of the City may add unpaid fees, charges and/or fines issued under this By-Law to the tax roll and collect them in the same manner as property taxes.

2. This By-Law shall come into force and take effect on the date of its passing.

Given all Three Readings and Passed: [Meeting date]

John Bolognone
City Clerk

Bryan Paterson
Mayor

By-Law Number 2020-XX

**A By-Law to Amend By-Law Number 2020-69, “A By-Law To
Establish A Process For Administrative Penalties” (Designating By-
Laws)**

Passed: [Meeting date]

Whereas Council has authorized the expanded use of Administrative Penalties for the enforcement of the Nuisance Parties By-Law and the Noise By-Law; and

Whereas a formal designation from Council is required to Designate the Nuisance Parties By-Law and the Noise By-Law as By-Laws for which Administrative Penalties can be issued;

Therefore be it resolved that the Council of The Corporation of the City of Kingston hereby enacts as follows:

1. By-Law Number 2020-69 of the Corporation of the City of Kingston entitled “A By-law to Establish a Process for Administrative Penalties” is hereby amended as follows:
 - 1.1. Schedule A is appended to and forms part of By-Law 2020-69, and reads as follows:

Schedule A

Designated By-Laws

1. City of Kingston By-Law Number 2004-52, being “A By-Law to Regulate Noise”
 2. City of Kingston By-Law Number 2018-53, being “A By-Law to Regulate Nuisance Parties within the City of Kingston”
2. This By-law shall come into force and take effect on the date of its passing.

Given all Three Readings and Passed: **[Meeting date]**

John Bolognone
City Clerk

Bryan Paterson
Mayor

By-Law Number 2020-XX

A By-Law to Amend By-Law Number 2005-10, “A By-Law To Establish Fees And Charges To Be Collected By The Corporation Of The City Of Kingston

Passed: [Meeting date]

Whereas Council has authorized the expanded use of Administrative Penalties for the enforcement of the Nuisance Parties By-Law and the Noise By-Law; and

Whereas the Administrative Penalty Process By-Law provides for administrative fees to be added when an Administrative Penalty has not been paid by the due date, and when a person fails to attend a screening review or an appeal hearing scheduled under that by-law;

Therefore be it resolved that the Council of the Corporation of the City of Kingston hereby enacts as follows:

1. By-Law Number 2005-10 of the Corporation of the City of Kingston entitled “A By-law to Establish Fees And Charges To Be Collected By The Corporation Of The City Of Kingston” is hereby amended as follows:
 - 1.1. Add a new sub-heading “Administrative Monetary Penalties” under “Building & Licensing,” in Schedule A of By-Law 2005-10 as follows:

	Fees	Hst
Administrative Monetary Penalties		
Nuisance Party Offence (per contravention)	\$500.00	No
Noise By-Law Offence – Amplified Music	\$200.00	No
Noise By-Law Offence – Yelling, Screaming, Shouting, Hooting and Hollering	\$100.00	No

- 1.2. Add the following fees under the heading “Building & Licensing,” within the category of “Administrative Fees,” in Schedule A of By-Law 2005-10:

	Fees	Hst
Administrative Penalty Fee – Screening No-Show	\$50.00	No
Administrative Penalty Fee – Hearing Appeal No-Show	\$100.00	No

Administrative Penalty Fee – Delinquent Payment of Fine		\$25.00	No
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2. This By-law shall come into force and take effect on the date of its passing.

Given all Three Readings and Passed: [Meeting date]

John Bolognone
City Clerk

Bryan Paterson
Mayor