

MUNICIPALITY OF THE DISTRICT OF YARMOUTH

**PAYMENT IN LIEU OF PROSECUTION POLICY**  
**P-082-02**

Effective Date:  
May 22, 2002

1. This Policy is entitled "Payment in Lieu of Prosecution Policy".
2. In this Policy:
  - (1) "applicable offence" means an offence to which this Policy applies;
  - (2) "enforcement officer" means the Municipality of the District of Yarmouth's By-Law Enforcement Officer [and members of the Royal Canadian Mounted Police] except when another employee of the Municipality of the District of Yarmouth is identified as the enforcement officer in respect of this Policy in the applicable By-law; and
  - (3) "to lay a charge" means to issue a Summary Offence Ticket or to swear an information pursuant to the Summary Proceedings Act.
3. This Policy applies to those offences involving a breach of a By-Law which expressly authorizes a payment in lieu of prosecution to be made in accordance with this Policy.
4. The investigation of alleged violations of applicable offences is the responsibility of the enforcement officer.
5. When the enforcement officer, on reasonable grounds, believes that an applicable offence has been committed, the officer, in lieu of or in addition to providing a warning and in lieu of laying a charge, may issue a Notice of By-Law Violation, generally in the form of the draft Notice appended to this Policy.
6. The exercise of the enforcement officer's discretion pursuant to Section 5 shall conform with the following principles:
  - (1) The decision shall be made in a non-discriminatory, fair manner, affording to all persons the equal protection and benefit of the law, and to the extent reasonably possible, alleged violators shall be treated similarly in similar circumstances.
  - (2) Subject to any lawful resolution of Council of general application regarding enforcement practices, the decision shall not be influenced by members of Council or by political factors.

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- (3) The decision shall not be influenced by personal relationships involving the enforcement officer.
  - (4) The decision shall not be inconsistent with the principles of fundamental justice.
  - (5) The enforcement officer's knowledge of a history of prior violations by the alleged offender, including violations which were the subject of warnings or previous Notices of By-Law Violations, the seriousness or willfulness of the violation, and the consequences of the violation or of a continued or repeated violation are factors properly considered by the enforcement officer in making the decision.
7. When issuing a Notice of By-Law Violation, the enforcement officer shall fill in the blanks on the Notice to the best of the officer's ability.
  8. Upon issuance, or shortly thereafter, the enforcement officer shall attempt to deliver the Notice of By-Law Violation to the alleged offender, or post it upon any real or personal property involved in the violation, or shall otherwise attempt to bring it to the attention of the alleged offender.
  9. The alleged offender shall have 14 days from the date of the issuance of the Notice of By-Law Violation in which to pay the payment in lieu of prosecution authorized by By-Law and identified in the Notice.
  10. Payments in lieu of prosecution shall be made by mail to P. O. Box 152, Yarmouth, Nova Scotia, B5A 4B2; or in person at [the Tax Office at 403 Main St., Yarmouth, Nova Scotia].
  11. A receipt for such payments shall be provided by municipal staff to the payer, identifying the number on the Notice of Violation, and whether the payment has been made by cash, cheque or otherwise.
  12. Notwithstanding the issuance of a receipt, the payment shall not be deemed to have been received for purposes of section 13 until cheques have irrevocably cleared the banking system.
  13. Upon receipt of a timely payment in lieu of prosecution in respect of a violation for which a Notice of By-Law Violation has been issued, the alleged offender shall not be prosecuted by the Municipality of the District of Yarmouth for that violation and the payment shall operate as a Release by the Municipality of the

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District of Yarmouth of any charge that it might otherwise lay in respect of the violation.

14. In the event an alleged offender does not make timely payment in lieu of prosecution, the Municipality of the District of Yarmouth may lay a charge pursuant to the *Summary Proceedings Act*. The Municipality of the District of Yarmouth's Payment in Lieu of Prosecution Policy shall apply in respect of the laying of the charge, and its prosecution.
15. Subject only to section 13, non-compliance by the Municipality of the District of Yarmouth with this Policy shall not constitute of a defense to a charge for breach of a By-Law.

**Clerk's Annotation For Official Policy Book**

Date of Notice to Council members of Intent to Consider  
( 7 days minimum) May 8, 2002

Date of Passage of Current Policy: May 22, 2002

I certify that this Policy was adopted by Council as indicated above.

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Clerk

May 23, 2002  
Date

**Date last reviewed: March 1, 2004**

**Date of last amendment: May 22, 2002**