



The Corporation of the Town of Pelham

By-law No. 69-2023

Being a By-law to establish a system of administrative penalties for contraventions of designated By-laws respecting traffic and the parking, standing or stopping of vehicles and to repeal By-law No. 4353(2022).

WHEREAS section 8 of the *Municipal Act, 2001*, S.O. 2001, c. 25 ("*Municipal Act, 2001*" or "the statute") provides that the powers of a municipality under the statute or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the statute or any other Act;

AND WHEREAS section 11 of the *Municipal Act, 2001* provides that a lower-tier municipality has the authority to pass by-laws respecting parking and traffic on highways and parking on lands other than highways;

AND WHEREAS section 102.1 of the *Municipal Act, 2001* provides that a municipality may require a person to pay an administrative penalty if the municipality is satisfied that the person has failed to comply with any by-law respecting the parking, standing or stopping of vehicles;

AND WHEREAS Ontario Regulation 333/07 under the *Municipal Act, 2001* ("the Regulation") provides that a municipality shall not require a person to pay an administrative penalty under section 102.1 of the *Municipal Act, 2001* unless the municipality has met the requirements of the Regulation;

AND WHEREAS the Corporation of the Town of Pelham has established a system of administrative penalties in accordance with section 102.1 of the *Municipal Act, 2001* and the Regulation;

AND WHEREAS section 391 of the *Municipal Act, 2001* authorizes a municipality to impose fees and charges on persons for services or activities provided or done by or on behalf of the municipality;

AND WHEREAS the Council of the Corporation of the Town of Pelham deems it necessary and desirable to implement a system of administrative penalties to promote compliance with designated by-laws respecting traffic and the parking, standing and stopping of vehicles or portions of such designated by-laws;

NOW THEREFORE the Council of The Corporation of the Town of Pelham enacts as follows:

1. Purpose

- 1.1. The purpose of this By-law is to establish and implement a system of administrative penalties for contraventions of designated by-laws so as to promote compliance with by-laws of the Town of Pelham and to facilitate enforcement of by-law contraventions.

2. Definitions

- 2.1. In this By-law:

"Administrative Fee" means a Screening Review Non-Attendance Fee, a Hearing Non-Attendance Fee, a Late Payment Fee, a Non-Sufficient Funds Fee, a Ministry Records Search Fee and/or a Notification of Default Fee.

"Administrative Penalty" means a monetary penalty issued pursuant to this By-law.

"Appeal" means an appeal to the Hearing Officer from a Screening Review Decision.

"Council" means the Council of the Town.

"Designated By-law" means a by-law designated by the Town as one to which this By-law applies.

"Director" means the Director of Fire and By-law Services of the Town or their designate.

"Electronic Hearing" means an Appeal hearing conducted virtually in accordance with the Rules of Electronic Hearings of the Town.

"Electronic Screening Review" means a Screening Review conducted virtually.

"Enforcement Authority" means the Director, a by-law enforcement officer of the Town, any Person appointed under this By-law to enforce Designated By-laws, a member of the Niagara Regional Police Service, a member of the Ontario Provincial Police and any other provincial offences officer designated under the *Provincial Offences Act*, R.S.O. 1990, c. P.33.

"Hearing Officer" means a Person appointed by the Town to conduct Appeal hearings under this By-law.

"Hearing Non-Attendance Fee" means an administrative fee imposed by the Town in respect of a Person's failure to appear at the time and place scheduled for the hearing of an Appeal.

"In-Person Hearing" means an Appeal at which the Person making the Appeal attends in person and at which the Town and/or the Hearing Officer may attend in person or virtually.

"In-Person Screening Review" means a Screening Review conducted by way of personal attendance of the Person requesting the review and the Screening Officer.

"Late Payment Fee" means an administrative fee imposed by the Town in respect of a Person's failure to pay an Administrative Penalty, Screening Review Non-Attendance Fee or Hearing Non-Attendance Fee by the date on which it is payable.

"Ministry Records Search Fee" means an administrative fee imposed by the Town to undertake a search of the records of the Ontario Ministry of Transportation.

"Non-Sufficient Funds Fee" means an administrative fee imposed by the Town where a Person makes a payment to the Town under this By-law and there are insufficient funds to make the said payment in the account from it was drawn.

"Notification of Default Fee" means an administrative fee imposed by the Town to notify the provincial Registrar of Motor Vehicles

"Owner" means the Person whose name appears on a permit for a motor vehicle and, if the vehicle permit consists of a vehicle portion and a plate portion, the Person whose name appears on the plate portion.

"Penalty Notice" means a notice issued to a Person pursuant to section 4 of this By-law.

"Penalty Notice Date" means the date on which the Person to whom the Penalty Notice is issued failed to comply with a Designated By-law.

"Penalty Notice Number" means a unique number assigned by the Town to a Penalty Notice for identification and reference purposes.

"Person" means an individual, corporation, partnership or association.

"Property" means any land or premises within the Town.

"Screening Officer" means a Person appointed by the Town to conduct Screening Reviews under this By-law.

"Screening Review" means a review of an Administrative Penalty by a Screening Officer, which may be conducted in writing or by way of an attendance with the Screening Officer at the election of the Person to whom the Administrative Penalty was issued.

"Screening Review Decision" means a decision made by a Screening Officer pursuant to section 5 of this By-law.

"Screening Review Decision Date" means the date on which the Screening Officer delivers a Screening Review Decision.

"Screening Review Non-Attendance Fee" means an administrative fee imposed by the Town in respect of a Person's failure to appear at the time and place scheduled for an in-person Screening Review or Electronic Screening Review.

"Town" means the Corporation of the Town of Pelham or the geographic location of the municipality, as the context requires.

"Written Screening Review" means a Screening Review conducted by a Screening Officer by reviewing written information provided by the Person requesting the review and without an in person or virtual attendance.

3. Designated By-laws and Administrative Fees

- 3.1. The Designated By-laws of the Town and the applicable Administrative Penalties for Designated By-law contraventions are listed in Schedule "A", as amended or updated from time to time, which is attached hereto and forms part of this By-law.
- 3.2. The *Provincial Offences Act*, R.S.O. 1990, c. P.33 does not apply to the contravention of a Designated By-law.
- 3.3. The Administrative Fees under this By-law are listed in Schedule "B", as amended or updated from time to time, which is attached hereto and forms part of this By-law.

4. Penalty Notice Issuance

- 4.1. An Enforcement Authority who has reason to believe that a Person has contravened any provision or provisions of a Designated By-law may issue a Penalty Notice to that Person in respect of each contravention.
- 4.2. Where the Person to whom a Penalty Notice is issued is not the Owner of the vehicle to which the Administrative Penalty relates, the Town shall provide the Owner with reasonable notice that an Administrative Penalty is payable under this By-law.
- 4.3. The Director may, within ten (10) calendar days of the Penalty Notice Date, cancel an Administrative Penalty where the Director determines, in their sole discretion, that cancellation is warranted.
- 4.4. A Penalty Notice shall be provided to the Person to whom it is issued within fourteen (14) calendar days of the Penalty Notice Date and shall include the following information:
 - (a) the Penalty Notice Date;
 - (b) the date on which the Penalty Notice was issued;
 - (c) the Penalty Notice Number;
 - (d) the name of the issuing Enforcement Authority;
 - (e) particulars of the non-compliance with a Designated By-law;
 - (f) the licence plate number or vehicle identification number of the vehicle in relation to which Administrative Penalty relates;
 - (g) the amount of the Administrative Penalty;
 - (h) the date by which the Administrative Penalty is payable;
 - (i) information about the process by which a Person may request a Screening Review; and
 - (j) a statement advising the Person that unless an Administrative Penalty is cancelled, varied or reduced by a Screening Review or an Appeal, it shall constitute a debt of the Person to the Town.

5. Screening Reviews

- 5.1. Subject to subsections 5.2 and 5.3, a Person to whom a Penalty Notice is issued may request a Screening Review in which the Administrative Penalty is reviewed by a Screening Officer.
- 5.2. A Person must request a Screening Review or an extension of time to request a Screening Review prior to 4:30 p.m. on the date on which the Administrative Penalty is payable.

- 5.3. Where a Person fails to make a request for a Screening Review or an extension of time to request a Screening Review within the prescribed time:
- (a) the right of the Person to make the request expires;
 - (b) the Person is deemed to have waived the right to request a Screening Review;
 - (c) the Administrative Penalty is deemed to be affirmed; and
 - (d) the Administrative Penalty is not subject to review or appeal, including by any tribunal or court.
- 5.4. Where a Person fails to make a request under subsection 5.3 and fails to pay the Administrative Penalty within fifteen (15) calendar days of the date on which it is payable, the Town shall search the records of the Ontario Ministry of Transportation records to identify the Owner of the vehicle to which the Administrative Penalty relates and shall notify the Registrar of Motor Vehicles of the default such that the Registrar shall not validate or issue a permit to the Owner for that vehicle until the Administrative Penalty is paid. The Town shall add a Ministry Records Search Fee and a Notification of Default Fee to the Administrative Penalty.
- 5.5. The right of a Person to request a Screening Review or an extension of time to request a Screening Review is exercised by giving the Town written notice in the form determined by the Director from time to time, which shall include the following information:
- (a) the Penalty Notice number;
 - (b) the Person's name;
 - (c) the Person's address, telephone number and email address;
 - (d) if applicable, the name, address, telephone number and email address of the Person's legal representative;
 - (e) in the case of a request for an extension of time to request a Screening Review, the reason(s) the Person failed to make the request within the time prescribed by subsection 5.2;
 - (f) in the case of a request for a Screening Review, a factual and detailed explanation of the reason(s) for the request, including any supporting documentation;
 - (g) in the case of a request for a Screening Review, the Person's election to have the Screening Review conducted in writing or by way of an attendance with the Screening Officer; and
 - (h) in the case of a request for an attendance with the Screening Officer, the Person's election for an Electronic Screening Review, an In-Person Screening Review or a Written Screening Review.
- 5.6. Where a Person elects to have an Electronic Screening Review or an In-Person Screening Review, the Person shall be notified of the date, time and place of the Screening Review.
- 5.7. If a Person fails to appear at an Electronic Screening Review or an In-Person Screening Review or fails to remain at the Screening Review until the Screening Officer has made the Screening Decision:
- (a) the Person is deemed to have abandoned the request for a Screening Review;

- (b) the Administrative Penalty is deemed to be affirmed;
- (c) the Administrative Penalty is not subject to review or appeal, including by any tribunal or court; and
- (d) the Person shall pay a Screening Review Non-Attendance Fee to the Town.

5.8. Subject to subsections 5.3 and 5.7, the Screening Officer may:

- (a) approve or modify a request for an extension of time to request a Screening Review where the Screening Officer is satisfied that the circumstances warrant an extension of time;
- (b) deny a request for an extension of time to request a Screening Review, in which case the Administrative Penalty is deemed to be affirmed;
- (c) affirm the Administrative Penalty;
- (d) cancel the Administrative Penalty where the Screening Officer is satisfied that doing so would maintain the general intent and purpose of the Designated By-law and further that:
 - i. there is reason to doubt that the Person contravened the Designated By-law; or
 - ii. the Person took all reasonable steps to prevent the contravention; or
- (e) cancel or reduce the Administrative Penalty or extend the time for payment of the Administrative Penalty where the Screening Officer is satisfied that doing so would maintain the general intent and purpose of the Designated By-law and further that the cancellation, reduction or extension of time for payment is necessary to relieve undue financial hardship for the Person.

5.9. A Person who claims financial hardship bears the onus of establishing financial hardship to the satisfaction of the Screening Officer.

5.10. Where a Screening Officer cancels an Administrative Penalty, any associated Administrative Fee(s) shall be deemed to be cancelled.

5.11. Upon completion of the Screening Review, the Screening Officer shall make a Screening Review Decision and shall provide it in writing to the Person as soon as reasonably practicable.

5.12. The Screening Officer has no 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.

6. Appeals to the Hearing Officer

6.1. Subject to subsections 6.2 and 6.3, a Person to whom a Screening Review Decision is provided may request an Appeal in which the Screening Review Decision is reviewed by a Hearing Officer.

6.2. A Person must request an Appeal or an extension of time to request an Appeal prior to 4:30 p.m. on the date on which the Administrative Penalty is payable as directed in the Screening Review Decision.

6.3. Where a Person fails to make a request for an Appeal or an extension of time to request an Appeal within the prescribed time:

- (a) the right of the Person to make the request expires;

- (b) the Person is deemed to have waived the right to request an Appeal;
 - (c) the Screening Review Decision is deemed to be affirmed;
 - (d) the Administrative Penalty, as modified by the Screening Review Decision if applicable, is deemed to be affirmed; and
 - (e) the Screening Review Decision and Administrative Penalty, as modified by the Screening Review Decision if applicable, are not subject to review or appeal, including by any tribunal or court.
- 6.4. Where a Person fails to make a request under subsection 6.3 and fails to pay the Administrative Penalty within fifteen (15) calendar days of the date on which it is payable as directed in the Screening Review Decision, the Town shall search the records of the Ontario Ministry of Transportation records to identify the Owner of the vehicle to which the Administrative Penalty relates and shall notify the Registrar of Motor Vehicles of the default such that the Registrar shall not validate or issue a permit to the Owner for that vehicle until the Administrative Penalty is paid. The Town shall add a Ministry Records Search Fee and a Notification of Default Fee to the Administrative Penalty.
- 6.5. The right of a Person to request an Appeal or an extension of time to request an Appeal is exercised by giving the Town written notice in the form determined by the Director from time to time, which shall include the following information:
- (a) the Penalty Notice number;
 - (b) the Person's name;
 - (c) the Person's address, telephone number and email address;
 - (d) if applicable, the name, address, telephone number and email address of the Person's legal representative;
 - (e) in the case of a request for an extension of time to request an Appeal, the reason(s) the Person failed to make the request within the time prescribed by subsection 6.2;
 - (f) in the case of a request for an Appeal, a factual and detailed explanation of the reason(s) for the request, including any supporting documentation; and
 - (g) in the case of a request for an Appeal, the Person's election for an Electronic Hearing or an In-Person Hearing.
- 6.6. Where a Person elects to have an Electronic Hearing, the Town shall notify the Person of the date and time of the Electronic Hearing and provide the access link not less than seven (7) calendar days before the Electronic Hearing.
- 6.7. Where a Person elects to have an In-Person Hearing, the Town shall notify the Person of the date, time and place of the In-Person Hearing not less than seven (7) calendar days before the In-Person Hearing.
- 6.8. If a Person fails to appear at the date and time set for the hearing of an Appeal or fails to remain until the end of the hearing:
- (a) the Person is deemed to have abandoned the Appeal;
 - (b) the Screening Review Decision is deemed to be affirmed;

- (c) the Administrative Penalty, as modified by the Screening Review Decision if applicable, is deemed to be affirmed; and
 - (d) the Screening Review Decision and Administrative Penalty, as modified by the Screening Review Decision if applicable, are not subject to review or appeal, including by any tribunal or court; and
 - (e) the Person shall pay a Hearing Non-Attendance Fee to the Town.
- 6.9. A Hearing Officer shall not make any decision in respect of an Appeal unless the Hearing Officer has given each of the Person, the Director, the Enforcement Authority that issued the Penalty Notice and their legal representatives if applicable, an opportunity to be heard at the Electronic Hearing or the In-Person Hearing, as the case may be.
- 6.10. The Hearing Officer shall conduct all Appeal hearings in accordance with the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22.
- 6.11. Subject to subsections 6.3 and 6.8, the Hearing Officer may:
- (a) approve or modify a request for an extension of time to request an Appeal where the Hearing Officer is satisfied that the circumstances warrant an extension of time;
 - (b) deny a request for an extension of time to request an Appeal, in which case the Screening Review Decision and Administrative Penalty, as modified by the Screening Review Decision if applicable, are deemed to be affirmed;
 - (c) deny the Appeal and affirm the Screening Review Decision and Administrative Penalty;
 - (d) allow the Appeal in full and cancel the Screening Review Decision and Administrative Penalty where the Hearing Officer is satisfied that doing so would maintain the general intent and purpose of the Designated By-law and further that:
 - i. there is reason to doubt that the Person contravened the Designated By-law;
 - ii. the Person took all reasonable steps to prevent the contravention; or
 - iii. the cancellation is necessary to relieve undue financial hardship for the Person; or
 - (e) allow the Appeal in part and vary the Screening Review Decision to reduce the Administrative Penalty and/or extend the time for payment of the Administrative Penalty where the Hearing Officer is satisfied that doing so would maintain the general intent and purpose of the Designated By-law and further that the reduction or extension of time for payment is necessary to relieve undue financial hardship for the Person.
- 6.12. A Person who claims financial hardship bears the onus of establishing financial hardship to the satisfaction of the Hearing Officer.
- 6.13. Where the Hearing Officer cancels an Administrative Penalty, any associated Administrative Fee(s) shall be deemed to be cancelled.
- 6.14. The Hearing Officer has no 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.

- 6.15. Upon completion of an Electronic Hearing or In-Person Hearing, as the case may be, the Hearing Officer shall make a decision and provide it in writing to the Town as soon as reasonably practicable.
- 6.16. The Town shall provide the decision of the Hearing Officer to the Person and their legal representative if applicable, within fourteen (14) calendar days of receipt.
- 6.17. The decision of the Hearing Officer is final and is not subject to review or appeal, including by any tribunal or court.

7. Notice

- 7.1. Any document or notice that is required to be provided to a Person under this By-law, including a Penalty Notice, shall be given in writing and may be delivered in any of the following ways:
- (a) by serving or personally delivering it to the Person to whom it is addressed, in which case delivery is effective immediately;
 - (b) by sending it to the Person to whom it is addressed by regular mail or registered mail to the Person's last known address, in which case delivery is effective five (5) calendar days after the date on which it is sent; or
 - (c) by sending it to the Person to whom it is addressed by email to the Person's last known email address, in which case delivery is effective on the date the email is sent unless the email is sent after 4:30 p.m., in which case delivery is effective the next day.
- 7.2. For the purpose of subsection 7.1, a Person's last known address and last known email address include those provided by the Person as part of a request for a Screening Review or an Appeal and any address or email address for the Person contained in the records of the Town.
- 7.3. Any document or notice that is required to be provided to the Town under this By-law, shall be given in writing and may be delivered in any of the following ways:
- (a) by addressing it to the Town Clerk and serving or personally delivering it to Town Hall at 20 Pelham Town Square in Fonthill, in which case delivery is effective immediately;
 - (b) by addressing it to the attention of the Town Clerk and sending it by regular mail or registered mail to 20 Pelham Town Square, P.O. Box 400, Fonthill, Ontario, L0S 1E0, in which case delivery is effective five (5) calendar days after the date on which it is sent;
 - (c) by emailing it to AMPappeals@pelham.ca, in which case delivery is effective on the date the email is sent unless the email is sent after 4:30 p.m., in which case delivery is effective the next day.

8. Administration

- 8.1. Council shall appoint Screening Officers and Hearing Officers from time to time on such terms as Council considers appropriate. The Screening Officers and Hearing Officers appointed by Council are listed in Schedule "C", as amended or updated from time to time, which is attached hereto and forms part of this By-law.

- 8.2. The Director may establish any rules, policies, practices or procedures necessary to administer this By-law and may further amend, rescind or replace any such rules, policies, practices or procedures from time to time as the Director deems necessary.
- 8.3. The Director shall prescribe all forms and notices required under this By-law and may amend such forms and notices from time to time as the Director deems necessary.
- 8.4. No Enforcement Authority who issues a Penalty Notice may accept any payment of the Administrative Penalty imposed by the Penalty Notice.
- 8.5. Where a Person has paid an Administrative Penalty or Administrative Fee that is subsequently cancelled or reduced in accordance with this By-law, the Town shall refund the amount by which the Administrative Penalty or Administrative Fee was varied.
- 8.6. Where an Administrative Penalty, Screening Review Non-Attendance Fee or Hearing Non-Attendance Fee is not paid within fourteen (14) calendar days of the date on which it is payable, the Person to whom it was issued shall pay to the Town a Late Payment Fee in respect of, and in addition to, each Administrative Penalty, Screening Review Non-Attendance Fee and/or Hearing Non-Attendance Fee.
- 8.7. Where a Person makes a payment to the Town in full or partial satisfaction of an Administrative Penalty, Screening Review Non-Attendance Fee, Hearing Non-Attendance Fee or Late Payment Fee and there are insufficient funds to make the said payment in the account from which it was drawn, the Person shall pay to the Town a Non-Sufficient Funds Fee for each such payment.
- 8.8. Any Administrative Penalty or Administrative Fee imposed on a Person in accordance with this By-law constitutes a debt of the Person to the Town under the *Municipal Act, 2001*.
- 8.9. Where a Person fails to make payment of any Administrative Penalty or Administrative Fee imposed upon that Person within thirty (30) days after the Administrative Penalty or Administrative Fee becomes payable, the Town may add the outstanding amount to the tax roll for any Property owned by the Person and may collect it in the same manner and with the same priority as municipal taxes.

9. Enforcement

- 9.1. This By-law shall be implemented, administered and enforced by the Town, the Director and Enforcement Authorities.
- 9.2. All Administrative Penalties and Administrative Fees shall be issued and enforced in accordance with this By-law.
- 9.3. Notwithstanding subsection 9.2, nothing in this By-law limits, or shall be taken to limit, the authority of the Town to enforce Designated By-laws by all means available to it in law.

10. General

- 10.1. The short title of this By-law is the "Administrative Penalty Process By-law for Traffic and Parking By-laws".

- 10.2. If any provision of this By-law is found by any court or tribunal of competent jurisdiction to be illegal or inoperative, in whole or in part, the balance of the By-law shall not be affected and shall remain in full force and effect.
- 10.3. If there is a conflict between a provision of this By-law and a provision of any other By-law of the Town, the provision that establishes the higher standard shall prevail.
- 10.4. This By-law shall be read with all changes in number or gender as are required by context.
- 10.5. Any reference to legislation in this By-law includes the legislation and any amendment, replacement, subsequent enactment or consolidation of such legislation.
- 10.6. The Town Clerk is hereby authorized to effect any minor modifications or corrections solely of an administrative, clerical, numerical, grammatical, semantical or descriptive nature or kind to this By-law as are determined to be necessary.

11. Repeal and Enactment

- 11.1. By-law No. 4353(2022), being the Parking Administrative Penalty By-law, is hereby repealed and replaced.

12. Effective Date

- 12.1. This By-law shall come into force on the date that it is enacted.

Read, enacted, signed and sealed this 20th day of December, 2023.



Marvin Junkin, Mayor



William Tigert, Town Clerk