

THE CORPORATION OF THE

TOWN OF PELHAM

BY-LAW #3505(2014)

Being a By-law to establish a system for Administrative Penalties respecting the Stopping, Standing and Parking of Vehicles, and to amend By-law #89-2000.

WHEREAS sections 8, 9 and 11 of the *Municipal Act*, 2001, S.O. 2001, c. 25, as amended, ("*Municipal Act*, 2001") authorize The Corporation of the Town of Pelham to pass by-laws necessary or desirable for municipal purposes;

AND WHEREAS subsection 102.1(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 failed to comply with any by-laws respecting the parking, standing or stopping of vehicles;

AND WHEREAS the Province adopted the "Administrative Penalties" regulation, O.Reg. 333/07 pursuant to the *Municipal Act*, 2001 which applies to administrative penalties in respect of the Parking, Standing or Stopping of vehicles;

AND WHEREAS pursuant to section 391 of the *Municipal Act*, 2001 authorizes a municipality to pass by-laws imposing fees or charges for costs payable by it for services or activities, and services or activities provided or done by or on behalf of the municipality;

AND WHEREAS The Corporation of the Town of Pelham has enacted by-laws regulating the parking, standing or stopping of vehicles, namely By-law No. 89-2000, as amended, being a By-law regulating traffic and parking on Town Roads and By-Law No. 97-2030, as amended, being a By-law to establish fire routes on private roadways,

AND WHEREAS the Corporation of the Town of Pelham will designate portions of By-law No. 89-2000, as amended and By-law no. 97-2030, as amended to be applicable to the Administrative Penalty System established through this By-law;

AND WHEREAS the Corporation of the Town of Pelham considers it desirable to have one Administrative Penalty System for all by-laws to which Administrative Penalties may apply and may designate other by-laws to be applicable to the Administrative Penalty System established through this By-law;

AND WHEREAS the Corporation of the Town of Pelham considers it desirable to enforce and seek compliance with the designated by-laws, or portions of those by-laws, through the Administrative Penalty System;

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

PART 1 – SHORT TITLE

1. This By-law may be referred to as the “Administrative Penalty By-law”.

PART II - DEFINITIONS

2. For the purposes of this By-law:

“Administrative Fee” means any fee specified in this by-law and listed in Schedule “C”

“Administrative Penalty” means a monetary penalty as set out in Schedules “A” and “B” to this By-law for a contravention of a Designated By-law;

“By-law” means this by-law and any schedule to this by-law as they may from time to time be amended;

“Council” means the Council for the Town of Pelham;

“Designated By-law” means a by-law or provision of a by-law that is designated under this or any other by-law, as a by-law or provision of a by-law to which this By-law applies and is listed in Schedules “A”, “B”, “C” and “D” attached to this By-law;

“Director” means the person from time to time performing the functions of the Town's Director for Municipal Law Enforcement and By-Law Services;

“Fee – Appeal No-Show” means an administrative fee from time to time established by Council in respect of a Person's failure to pay an Administrative Penalty within the time prescribed in this By-law and listed in Schedule “C”;

“Fee – Late Payment” means an administrative fee from time to time established by Council in respect of a Person's failure to appear at the time and place scheduled for a hearing before a Hearings Officer and listed in Schedule “C”;

“Fee – MTO Plate Denial” means an administrative fee from time to time established by Council for notifying the Registrar of Motor Vehicles for the purpose of plate permit denial and listed in Schedule “C”;

“Fee – NSF” means an administrative Fee from time to time established by Council in respect for demand for payment received by the Town from a Person for payment of any Administrative Penalty or Administrative Fee, which has insufficient funds available in the account of which the instrument was drawn, and listed in the Town's Consolidated Fee Schedule from time to time.

“Fee – MTO Search” means an administrative fee from time to time established by Council for searching the records of the Ontario Ministry of Transportation and listed in Schedule “C”;

“Fee – Review No-Show” means an administrative fee from time to time established by Council in respect of a Person's failure to appear at the time and place scheduled for a review by a Reviewing Officer and listed in Schedule “C”;

“Hearing Officer” means each Hearing Officer from time to time appointed by Council pursuant to the Hearings Officer By-law and from time to time amended;

"Manager" means the person from time to time performing the functions of the Town's Manager for Municipal Law Enforcement and By-Law Services;

"Officer" means each of

- (a) the Director;
- (b) the Manager
- (c) a Municipal Law Enforcement Officer appointed by or under the authority of a Town by-law to enforce a Designated By-law; and
- (d) a police officer employed by a municipal police force, by the Ontario Provincial Police or by the Royal Canadian Mounted Police.

"Owner" means the registered owner of a motor vehicle as provided by the Ministry of Transportation of Ontario (MTO);

"Penalty Notice" means a notice given pursuant to sections 6 and 7;

"Penalty Notice Date" means the date specified on the Penalty Notice pursuant to subsection 7.2;

"Penalty Notice Number" means the number specified on the Penalty notice pursuant to subsection 7.3;

"Person" includes an individual, partnership, association, firm or corporation;

"Request for Parking Penalty Review Form" means the form that must be filed by the Person under subsection 12(a) and (b)

"Request for Parking Hearing Appeal Form" means the form that must be filed by the Person under subsection 23(a) and (b)

"Review Decision" means a decision made by a Screening Officer pursuant to section 16;

"Review Decision Date" means the date on which a Review Decision is made by the Screening Officer pursuant to section 16;

"Screening Officer" means a person from time to time appointed by Council, as set out in Schedule "D".

"Town" means The Corporation of the Town of Pelham

"Town Clerk" means the Clerk for the Town of Pelham and includes each person from time to time employed therein;

"Town Deputy Clerk" means the Deputy Clerk for the Town of Pelham and includes each person from time to time employed therein; and

"Traffic By-law" means the Town's Traffic and Parking By-law 89-2000 as from time to time amended.

PART III – DESIGNATED BY-LAWS

3. Town By-laws, or portions of Town By-laws, that are listed in Schedules "A" and "B" to this By-law shall be Designated By-laws and are hereby designated for the purpose of section 3(1)(b) of O.Reg. 333/07 and the provisions of this By-law shall apply to any contravention of a Designated by-law. Schedules "A" and "B", shall set out the short form wording to be used for the contraventions of Designated By-laws and also set out the Administrative Penalties imposed for the contraventions.

4. The Provincial Offences Act, R.S.O. 1990, c. P.33, as amended, does not apply to a contravention of a Designated By-law.

PART IV – PENALTY NOTICE

5. Each Person who contravenes a provision of a Designated By-law shall, when given a Penalty Notice in accordance with section 6, be liable to pay to the Town an Administrative Penalty in the amount specified in Schedules "A" and "B" for each day or part of a day on which the contravention continues.

6. An Officer who has reason to believe that a person has contravened any provision of a Designated By-law may issue a Penalty Notice to the Person.

(a) The Director or Manager may, before 4:30 pm of the tenth (10th) day after the Penalty Notice Date, cancel the Administrative Penalty.

7. The Penalty Notice shall be given to the Person as soon as is reasonably practicable and shall include the following information;

7.1 the vehicles licence plate number or vehicle identification number;

7.2 the date of the penalty Notice;

7.3 a reference number that is unique to that penalty Notice;

7.4 particulars of the contravention;

7.5 the amount of the Administrative Penalty;

7.6 such information as the Director determines is appropriate respecting the process by which the person may exercise the Person's right to request a review of the Administrative Penalty; and

7.7 a statement advising that an Administrative Penalty will, unless cancelled or reduced pursuant to the review and appeal processes, constitute a debt of the Person to the Town.

8. A Person who is given a Penalty Notice and who does not pay to the Town the amount of the Administrative Penalty within fifteen (15) days of the penalty Notice Date shall pay to the Town a Fee – MTO Search.

9. A Person who is given a Penalty Notice may request that the Administrative Penalty be reviewed by a Screening Officer pursuant to PART V.

PART V – REVIEW BY SCREENING OFFICER

10. A Person's right to request a review expires if it has not been exercised in the manner prescribed in subsection 12(a) and 12(b) before 4:00 p.m. on the fifteenth (15th) day after the Penalty Notice Date.

11. A Person's right to request an extension of the time to request a review expires if it has not been exercised in the manner prescribed in section 12 before 4:00 p.m. on the Thirtieth (30th) day after the Penalty Notice Date at which time:

- (a) The Person shall be deemed to have waived the right to request a review;
- (b) the Administrative Penalty shall be deemed to be affirmed; and
- (c) the Administrative Penalty shall not be subject to review, including review by any Court.

12. A Person's rights to request a review or to request an extension of time to request a review are exercised by giving to the Town written notice of the request to review by:

- (a) submitting a Request for Parking Penalty Review Form available at the Town's web page as set out in the Penalty Notice by mail, fax or email and scheduling the time and place for the review; or
- (b) attending in person at the location listed in the Penalty Notice to complete a Request for Parking Penalty Review Form and scheduling the time and place for the review.

13. The Request for Parking Penalty Review Form must include the following Information:

- (a) the Penalty notice Number;
- (b) the Person's mailing address and, if applicable, facsimile transmission number and e-mail address;
- (c) in the case of a request to extend the time to request a review, the reasons, if any, for having failed to exercise the right to request a review within the time limited by section 10;
- (d) particulars of all grounds upon which the request to review is based.

14. The Person shall be given notice of the date, time and place of the review by, facsimile, in-person, e-mail or mailing address as provided by the person in the Request for Review Form.

15. Where the Person fails to appear at the time and place scheduled for a review or fails to remain at such place until the Screening Officer has made a Review Decision respecting the Administrative Penalty, the subject of the Person's request for the review,

- (a) the person shall be deemed to have abandoned the request for the review;
- (b) the Administrative Penalty shall be deemed to be affirmed;
- (c) the Administrative Penalty shall not be subject to review, including review by any Court; and
- (d) the Person shall pay to the Town a Fee – Review No-Show.

16. Subject to sections 11 and 15 the Screening Officer may;
- (a) deny an extension of time for a review in which case the Administrative Penalty is deemed to be affirmed.
 - (b) grant an extension of time for a review;
 - (i) For the purposes of Section 16(b) the Screening Officer may only extend the time to request a review of an Administrative Penalty where the Person demonstrates, on a balance of probabilities, the existence of extenuating circumstances that warrant the extension of time.
 - (c) cancel, reduce or extend the time for payment of the Administrative Penalty and any administrative fees respecting that Administrative Penalty where the Review Officer is satisfied that doing so would maintain the general intent and purpose for the Designated By-law and 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 that
 - (iii) the cancellation, reduction or extension of the time for payment is necessary to relieve undue financial hardship.
17. After a Review is complete, the Screening Officer shall immediately serve the Person with a Review Decision.
18. The Person may appeal to a Hearings Officer against the Review Decision pursuant to PART VI.
19. A Screening Officer has no jurisdiction to consider questions relating to the validity of a statute, regulation or by-law or the constitutional applicability of operability of any statute, regulation or by-law.

PART VI – APPEAL TO HEARINGS OFFICER

20. The right to appeal is limited to the following:
- (a) a Person who has been given a Review Decision pursuant to section 17; and
 - (b) the Director or Manager
21. A Person's right to appeal expires if it has not been exercised in the manner prescribed in section 23 before 4:00 p.m. on the fifteenth (15th) day after the Review Decision Date.
22. A Person's right to request an extension of the time to appeal expires if it has not been exercised in the manner prescribed in section 23 before 4:00 p.m. on the thirtieth (30th) day after the Review Decision Date at which time:

- (a) the Person shall be deemed to have waived the right to appeal;
 - (b) the Review Decision and the Administrative Penalty as it may have been affected by the Review Decision shall be deemed to be affirmed; and
 - (c) the Review Decision and the Administrative Penalty as it may have been affected by the Review Decision shall be deemed to be final and not subject to any further review, including review by any Court.
23. A Person's rights to request an Appeal of a Screening Officers decision or to request an extension of time to request an Appeal to a Hearings Officer are exercised by giving to the Town written notice by:
- (a) submitting a Request for Appeal Hearing Form available at the Towns web page as set out in the Penalty Notice by mail, fax or email and scheduling the time and place for the review; or
 - (b) attending in person at the location listed in the Penalty Notice to complete a Request for Appeal Hearing Form and scheduling the time and place for the review.
24. The Request for Appeal Hearing Form must include the following Information:
- (b) the Penalty Notice Number;
 - (b) the Person's mailing address and, if applicable, facsimile transmission number and email address;
 - (c) In the case of a request to extend the time to appeal, the reasons, if any, for having failed to exercise the right to appeal within the time limited by sections;
 - (d) particulars of all grounds upon which the appeal is made; and
 - (e) A copy of the Person's completed Request for Parking Review Form showing the decision of the Screening Officer.
25. The Person shall be given no fewer than seven (7) days' notice of the date, time and place of the Hearing of the Appeal.
26. An Appeal request or a request for an extension of time to request an Appeal shall only be scheduled by Town if the Person has exercised his or her right to request an Appeal or an extension of time to request an Appeal within the time limits set out in sections 21 and 22.
27. Where the Person fails to appear at the time and place scheduled for a Hearing of the Appeal:
- (a) the Person shall be deemed to have abandoned the appeal;
 - (b) the Review Decision and the Administrative Penalty as it may have been affected by the Review Decision shall be deemed to be

final and are not subject to any further review or appeal, including review or appeal by any Court; and

(c) the Person shall pay to the Town a Fee - Appeal No-Show.

29. A Hearing Officer shall not make any decision respecting an appeal unless the Hearing Officer has given each of the Person, the Director, the Manager and the Officer who gave the Penalty Notice an opportunity to be heard at the time and place scheduled for the hearing of the appeal.
30. Subject to subsections 22 and 27 the Hearing Officer may;
- (a) deny an extension of time for an Appeal in which case the Administrative Penalty including any Administrative Fees are deemed to be affirmed.
 - (b) grant an extension of time for an Appeal Hearing;
 - (i) for the purposes of Section 30(b) the Appeal Officer may only extend the time to request a Hearing of an Administrative Penalty where the Person demonstrates, on a balance of probabilities, the existence of extenuating circumstances that warrant the extension of time.
 - (c) cancel, or vary the Screening Officers Review Decision and extend the time for payment of the Administrative Penalty, including any Administrative Fee, on the following grounds:
 - (i) where the Person establishes a balance of probabilities, that he or she did not contravene the Designated By-law as described in the Penalty Notice; or
 - (II) where the Person establishes on a balance of probabilities, that the reduction or extension of time for payment of the Administrative Penalty including any Administrative Fee, is necessary to relieve any undue hardship.
31. All Appeal Hearings conducted by the Hearing Officer shall be in accordance with the *Statutory Powers and Procedures Act*, R.S.O. 1990, c. S.22, as amended.
32. After an Appeal Hearing is complete, the Hearing Officer shall immediately serve the Person with a Hearing Decision.
33. If a person fails to remain at such place until the Hearing Officer has made a Hearing Appeal Decision respecting the Administrative Penalty, than that Decision and the Administrative Penalty is deemed to be affirmed.
34. The decision of a Hearings Officer is final and not subject to any further review including review by any Court.
35. A Hearings Officer has no jurisdiction to consider questions relating to the validity of a statute, regulation or by-law or the constitutional applicability of operability of any statute, regulation or by-law.

PART VII – SERVICE OF DOCUMENTS OR NOTICE

36. Service of any document or notice, including a Penalty Notice, respecting this By-law may be given in writing in any of the following ways and is effective;
- (a) affixing it to the vehicle in a conspicuous place at the time of the violation;
 - (b) when a copy is served on the owner or operator of the vehicle by delivering it personally to the person having care and control of the vehicle at the time of the contravention of the Designated By-law;
 - (c) when a copy is delivered to the Person to whom it is addressed;
 - (d) on the fifth (5th) day after a copy is sent by registered mail or by regular letter mail to the person's last known address;
 - (e) upon the conclusion of the transmission of a copy by facsimile transmission to the Person's last known facsimile transmission number or,
 - (f) upon the sending of the notice or document or a copy thereof by e-mail transmission to the Person's last known e-mail address.
37. For the purpose of section 36(d), (e) and (f), a Person's last known address, last known facsimile transmission number and last known e-mail address are deemed to include those provided by the Person pursuant to sections 13 and 24
38. Any notice or document respecting this by-law to be given to the Town shall be in writing, shall be given in any of the following ways and is effective:
- (a) when a copy is delivered to the Public Reception Desk, Town Of Pelham Municipal Building, 20 Pelham Town Square, Fonthill ON L0S 1E0 during normal business hours;
 - (b) on the fifth (5th) day after a copy is sent by registered mail or by regular letter mail to "Parking Administrative Penalties, Att: Town Clerk, Town of Pelham Municipal Building, 20 Pelham Town Square, Fonthill ON, L0S 1E0
 - (c) upon conclusion of the transmission of a copy by facsimile transmission to (905) 892-5055; or
 - (d) upon the sending of the notice or document or a copy thereof by e-mail transmission to AMPappeals@pelham.ca

PART VIII - Financial Administration

39. No Officer who gives a Penalty Notice may accept payment of the Administrative Penalty respecting the penalty Notice.
40. An Administrative Penalty that is affirmed or reduced or in respect of which the time for payment has been extended pursuant to this By-law is due and

payable and constitutes a debt to the Town of each Person to whom or to which the Penalty Notice was given.

41. Where a person has paid an Administrative Penalty or an Administrative Fee that is then cancelled or reduced pursuant to this By-law, the Town shall refund the amount cancelled or reduced.
42. Where an Administrative Penalty or any Administrative Fees respecting that Administrative Penalty are not paid within fifteen (15) days after the date that they become due and payable, each Person to whom the Penalty Notice was given shall pay to the Town a Fee – Late Payment.
43. Where an Administrative Penalty or any Administrative Fees respecting that Administrative Penalty are not paid within thirty (30) days after the date that they become due and payable, each Person to whom the Penalty Notice was given shall pay to the Town a Fee – MTO Plate Denial.
44. Where a Person provides a demand for payment to the town for payment of any Administrative Penalty or Administrative Fee, which has insufficient funds available in the account on which the instrument was drawn, shall pay to the Town a Fee – NSF
45. Where a Person fails to appear at the time and place scheduled for a Review by a Screening Officer that Person to whom the Penalty Notice was given shall pay to the Town a Fee – Review No-Show.
46. Where a Person fails to appear at the time and place scheduled for an Appeal Hearing that Person to whom the Penalty Notice was given shall pay to the Town a Fee – Appeal No-Show.

PART IX – ADMINISTRATION OF THE BY-LAW

47. The Director shall administer the By-law and establish any practices, policies and procedures necessary to implement the By-law and may amend such practices, policies and procedures from time to time as the Director deems necessary.
48. The Director shall prescribe all forms and notices, including the penalty Notice, necessary to implement the By-law and may amend such forms and notices from time to time as the Director deems necessary
49. The Director may designate areas within the Town for conducting Screening Reviews and Appeal Hearings under this By-law.

PART X – GENERAL PROVISIONS

50. Where an Administrative Penalty is not paid within 30 days after it becomes due and payable, the Town shall notify the Registrar of Motor Vehicles of the default and the Registrar shall not validate the permit of a person named in the default notice nor issue a new permit to that person until the penalty is paid.
51. Where an Administrative Penalty is cancelled by a Screening Officer or a Hearing Appeal Officer, any Administrative Fee is also cancelled.

52. Any time limit that would otherwise expire on a holiday is extended to the next day that is not a holiday.
53. Any schedule attached to this By-law forms part of this by-law.

PART XI – COMPLAINTS AND COMMENTS

54. Complaints and comments respecting the administration of the Town's system of parking administrative penalties may be given to the Director or Manager of By-law Services. The Director or Manager shall consider each such complaint or comment in relation to the Director's or Manager's consideration of opportunities for improvements to the Town's system of Parking Administrative Penalties.

PART XII – AMENDMENTS TO PARKING AND TRAFFIC BY-LAW 89-2000

55. The Parking and Traffic By-law 89-2000 is amended by adding the following subsections:

“205.01.12 Interference with Traffic: No person shall Stop a Vehicle on a Highway in such a manner as to interfere with the movement of Traffic. For clarity, and without limitation, if an oncoming vehicle must change its course to avoid a stopped Vehicle, that Vehicle is deemed to be interfering with Traffic.

205.01.13 Interference with Snow Clearing: No person shall Stop a Vehicle on a Highway in such a manner as to interfere with the clearing of snow or the application of sand or salt to the Highway. For clarity, and without limitation, if a Snow Clearing Vehicle must change its course to avoid a Stopped Vehicle, or is prevented from entering an area it would otherwise have entered to clear or plow snow or ice because of a Stopped Vehicle, that Vehicle is deemed to be interfering with the clearing of snow or the application of sand or salt to the Highway.

1001.02.01 Designation re: Administrative Penalties

Subsection 1001.02.02, Schedule “A1” and the parts of this By-law to which that Schedule relates are designated as parts of this By-law to which the Town's parking Administrative Penalty System By-law 3505(2014) applies.

1001.02.02 Penalties Created

Each person who permits a vehicle to be Parked, Stopped or Standing contrary to a part of this By-law that is designated pursuant to subsection 1001.02.01 and each owner of that Vehicle are, when given a Penalty Notice in accordance with the Town's Parking Administrative Penalty System By-law 3505(2014), is liable to pay to the Town an Administrative Penalty in the amount specified in Schedule “A1” to this By-law

for each day or part of a day on which the contravention continues.”

56. The Parking and Traffic By-law 89-2000 Section 1001.04 as amended is further amended by deleting the first word “Everyone” and by substituting the phrase, “Subject to subsections 1001.02.01 and 1001.02.02 each person”
57. The Parking and Traffic By-law 89-2000 Section 1102.01 is amended by deleting all wording in the section and replacing it with:

“A Provincial Offences Officer appointed for the carrying out of the provisions of this By-law, upon observing any vehicle Parked, Stopped or Standing in contravention of this By-law, may cause it to be moved or taken away and stored in a suitable place. Towing may occur in addition to any other enforcement mechanism. All costs and charges for removing, taking away and storage, shall be a lien upon the Vehicle, which may be enforce in the manner provided by the Repair and Storage liens Act R.S.O. 1990, c R.25.”

PART XIII – VALIDITY

58. If a Court or Tribunal of competent jurisdiction declares any provision or part of a provision of this By-law to be illegal or unenforceable, then that particular provision or provisions or part of the provision shall be severed and the remainder of this By-law shall continue to remain in full force and shall be valid and enforceable to the fullest extent permitted by law.

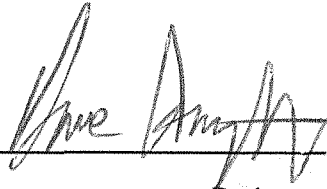
PART XIV – EFFECTIVE DATE

59. This By-law shall come into force on July 1, 2014

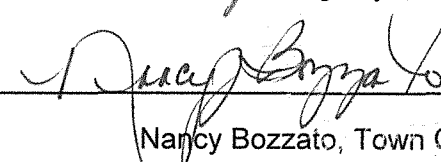
READ A FIRST, SECOND AND THIRD TIME

AND FINALLY PASSED BY COUNCIL THIS

2ND DAY OF JUNE, 2014 A.D.



D. Augustyn, Mayor



Nancy Bozzato, Town Clerk