

Town of Whitby

Staff Report

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Report Title: Implementation of Administrative Penalty System for parking infractions in Whitby & School Zone Parking Enforcement Update

Report to: Committee of the Whole

Date of meeting: March 4, 2024

Report Number: LS 04-24

Department(s) Responsible:

Legal and Enforcement Services

Submitted by:

Francesco Santaguida, Commissioner of Legal and Enforcement Services/Town Solicitor

Acknowledged by M. Gaskell, Chief Administrative Officer

For additional information, contact:

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Andre Gratton, Manager of Enforcement Services

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1. Recommendation:

1. That staff be directed to facilitate and implement an Administrative Penalty System (“APS”) for the Town of Whitby for Parking infractions with an implementation date of May 1, 2024.
2. That upon passing of the Administrative Penalty System By-law and new Traffic By-law, that Traffic By-law # 1862-85, as amended, is repealed after the transition period.
3. That the proposed new Administrative Penalty System By-law, be brought forward to the next Council meeting for consideration and adoption, substantially in accordance with Attachment 2 to this Report, and in a form satisfactory to the Commissioner of Legal and Enforcement Services/Town Solicitor.

4. That the proposed new Traffic By-law, be brought forward to the next Council meeting for consideration and adoption, substantially in accordance with Attachment 1 to this Report, and in a form satisfactory to the Commissioners of Legal and Enforcement Services/Town Solicitor and Planning and Development.
5. That Council approve the proposed Prevention of Political Interference Policy and Conflict of Interest Policy, substantially in accordance with Attachments 3 and 4, respectively.
6. That the Commissioner of Legal and Enforcement Services/Town Solicitor be directed to draft and implement a Standard Operating Procedure for public complaints in relation to the Administrative Penalty System.
7. That the Commissioner of Legal and Enforcement Services/Town Solicitor be delegated the authority to appoint both a Screening Officer and a Hearings Officer for the administration of the APS, and that the Clerk be directed to update the Policy G 020, Delegation of Powers and Duties Policy, accordingly.
8. That staff be directed to transition other applicable municipal by-laws to an Administrative Penalty System.
9. That Item GG-0020 be removed from the New and Unfinished Business List.

2. Highlights:

- Currently the Town of Whitby's (the "Town") Enforcement Services Division enforces parking infractions through the Town's Traffic By-law #1862-85, as amended (the "Traffic By-law"), the *Provincial Offences Act* and Provincial Offences courts.
- In 2006 – Bill 130 Amended the *Municipal Act, 2001* authorizing municipalities to implement Administrative Monetary Penalty Systems ("AMPS", now known as the Administrative Penalty System or "APS").
- The City of Oshawa implemented a regulatory AMPS in 2008 for Business Licensing followed by Parking in 2011 and are leaders within the Region of Durham and Ontario.
- APS models have been utilized to assist overburdened courts by streamlining ticket disputes, providing better customer service and allowing municipalities a more efficient process to enforce by-laws.
- The Town seeks to implement an APS system, starting with parking infractions, and looking at transitioning to other by-law infractions.

- Staff have developed policies, forms, processes and have prepared modifications the Town's website to facilitate a seamless transition of parking infractions from the Ontario Court of Justice, Provincial Offences Court to a quasi-judicial internal APS system within the Town of Whitby.
- The policies have also been created to ensure a fair and impartial process for defendants who wish to challenge their parking infraction.

3. Background:

The Traffic By-law regulates traffic within the municipality, including, but not limited to, no parking and no stopping restrictions. The Traffic By-law is enforced by Town-appointed staff in the Enforcement Services Division. Enforcement of the Traffic by-law is mostly done on a complaint basis, except for health and safety matters, including vehicles illegally parked in fire routes, school zones, and accessible permit only parking spaces. Transportation Services is responsible for the administration of major transportation planning initiatives, management of traffic calming programs (i.e. traffic control devices, signage, lane marking, speed humps), active transportation program delivery, master planning and operational management of on-street and off-street municipal parking lots/assets and the Road Watch program. The Transportation Services Section also provides a coordinating role of the administrative support for the Active Transportation and Safe Roads Advisory Committee (ATSRAC) for the Town of Whitby.

In 2021, staff recommended that the Town of Whitby transition to an Administrative Penalty System and this initiative was included in the Legal and Enforcement Services Department business planning. Due to the pandemic, this initiative was delayed to 2023.

The *Municipal Act, 2001* permits the municipality to issue infractions for by-laws passed under that Act that allow for offences to be issued if the by-law has been violated. This includes by-laws related to parking, noise, public nuisances, animal control, etc. It is important to note that *Planning Act* infractions (i.e. Zoning by-law infractions) and *Building Code Act, 1992* infractions (i.e. Property Standards infractions) are not yet permitted to be subject to APS.

4. Discussion:

The current dispute resolution process, and the aims of the APS program in Whitby

As noted above, enforcement of the Traffic By-law utilizes infraction notices (i.e. tickets) issued by dedicated Town staff under Part II of the *Provincial Offences Act*. Additionally, the Traffic By-law contains a limited number of traffic or moving related offences, which are addressed through Part III's under the *Provincial Offences Act*. Where a vehicle owner or person wishes to dispute or challenge the infraction/charge, the dispute is heard at a trial before the Ontario Court of Justice, Provincial Offences Court. This

process is a slow, time consuming and frustrating process for municipal staff, residents and the public.

The proposed changes involve the implementation of an in-house quasi-judicial process for hearing and resolving disputes related to parking tickets, and therefore removing the process from the court system. The APS program aims to shorten the time and resources for staff, residents and the public to resolve disputes related to parking infractions.

APS has been implemented by many municipalities in the province of Ontario, including Oshawa within the Region of Durham who implemented this system in 2008.

Staff researched many APS systems currently utilized by Greater Toronto Area municipalities, including reviewing systems and processes in Oshawa, Newmarket, Mississauga, Burlington, Milton, Brampton, Burlington, Hamilton, Markham, Richmond Hill, and Vaughan. All the municipalities have had a high degree of success in transitioning to the APS model. Staff have analyzed these models and incorporated the best practices and lessons learnt to develop a solution for a Town of Whitby system. Staff recommend that the system be noted as an Administrative Penalty Systems.

The Proposed APS By-law and Process

Pursuant to Section 102.1 and 434.1 of the *Municipal Act, 2001*, the Town is required to pass a by-law and several policies to implement the APS. After a review of municipal APS by-laws, staff have created an APS by-law for the Town in Attachment 2. Through the APS model, the Town of Whitby will have governance over hearing processes, scheduling, and the ability to provide timely and efficient reviews for all ticket disputes. This will ensure that the public receives a faster, simpler and more convenient response to ticket disputes.

The presentation accompanying this Report shows the process for which a dispute proceeds through the Administrative Penalty System. Given that the dispute resolution process is administered by the Town, resolutions and hearings may be held at times that may be more convenient for vehicle owners wishing to dispute their parking tickets. For instance, the Town would have the ability to modify the system to hold meetings and hearings in the evening as well as either in-person or virtually.

The proposed by-law also delegates the administration of the APS to the Commissioner of Legal and Enforcement Services/Town Solicitor. Town staff do not anticipate that additional staff will be required to administer the APS system at this time. The Town currently holds a part-time Screening Officer position, which will be continued. To implement an APS, the Town will be required to retain a hearings officer to act as an independent adjudicator for disputes, who will operate on a per diem basis similar to other adjudicators of the Town's quasi-judicial committees (e.g. the Municipal Licensing and Standards Committee).

If approved, the APS By-law will also give delegated authority to the Commissioner of Legal and Enforcement Services/Town Solicitor to implement supporting policies and procedures required under the *Municipal Act, 2001*.

APS is a net benefit to the Town and its residents

APS allows the Town to improve both the enforcement of certain by-laws, and the resolution of any disputes that may arise as a result of an infraction. For instance, APS will allow the Town to issue parking infractions without having to serve the ticket at the time the infraction takes place. This allows the Town to utilize License Plate Recognition technology for enforcement of challenging areas, like School Zones, and be able to attend multiple School Zones in one pick-up/drop-off period in a day. It will also simplify the adjudication process for Town Enforcement Staff, as well as improve officer safety.

For residents, APS will help improve road safety through consistent enforcement. Where infractions occur and are mailed later to the owner of a vehicle, this will help create a “ghost effect” in challenging enforcement areas (like automated speed enforcement) to ensure more consistent compliance over time. Should a resident or member of the public wish to dispute an infraction, APS offers greater flexibility and convenience for residents and the public to address their concerns through a staged process (using screening to resolve disputes at the outset, and if the dispute is not able to be resolved, proceeding to a hearing) and an in-person, online or written appeal process. The hearing process, while less formal than a Court proceeding, still has certain procedural requirements to ensure that hearings are conducted in a fair and impartial manner.

Staff have developed policies and procedures to implement APS

To provide clear and concise processes for both staff and the public in transitioning to the APS system, Town Staff have developed the following key documents:

- Information Guides;
- APS Penalty Notice workflow (ticket issuance to completion)
- A Communications Plan;
- Penalty Notice (ticket) dispute forms;
- Notification Letters;
- Screening Officer Checklist, review forms, and decision letters;
- Hearing Officer Checklist, review forms, and decision letters; and
- A Public Complaints Procedure for the Administrative Penalty System (APS).

To facilitate the transition to an APS system in the Town of Whitby, the following by-laws will need to be adopted or repealed:

- The repeal of the Town’s current Traffic By-law #1862-85, as amended;
- The passing of a new Traffic By-law, a proposed draft of which is included as Attachment 1, which was developed using the most recent consolidated version of the Traffic By-law # 1862-85, as amended;
- The passing of an Administrative Penalty System By-law, a draft of which is included as Attachment 2;
- The appointment of a Hearings Officer to adjudicate hearings for penalty notices;

- A Prevention of Political Interference Policy, a draft of which is included as Attachment 3; and
- A Conflict of Interest Policy, a draft of which is included as Attachment 4.

Changes to the Traffic By-law are to implement the APS, and consolidate a number of road and vehicle related by-laws in to one by-law

The majority of the regulations, restrictions and provisions of the current Traffic By-law have not been changed and the proposed changes to the Traffic By-law allow for the implementation of APS. The proposed new Traffic By-law is being implemented to facilitate the APS program, to support Transportation Services and to improve road safety through enforcement. Additionally, to streamline and create efficiencies, the proposed new Traffic By-law will repeal the current the Town's Fire Route, Towing and Municipal Parking Lot By-law and consolidate those provisions into one single Traffic by-law. The proposed additions to the Traffic By-law are substantially similar to the current provisions in effect.

Enhanced School Zone Parking Enforcement: Response to New and Unfinished Business List Item GG-0020

At it's February 27, 2023 meeting, the Council adopted the following resolution which was added to the New and Unfinished Business list as item GG-0020:

That Staff be directed to review the opportunity for enhanced school zone parking enforcement through additional staffing resources and include an analysis of whether such resources would be revenue neutral.

Since that time, staff have reviewed the Town's current parking enforcement resources and have experimented with various scheduling and external contracted resources to address school zone enforcement. The Enforcement Services Division has also converted several Municipal Law Enforcement Officer ("MLEO") positions to Enforcement Services Officer positions, which has given us greater scheduling flexibility to address afternoon school zone parking enforcement. Further, Council's recently approved change to the Enforcement Services complement by combining two part-time positions into a single full-time Enforcement Services Officer, as well as the addition of a new Enforcement Services Officer, will assist in addressing the parking enforcement challenges we have faced.

The implementation of an APS in Whitby will also allow for the issuance of infractions to be streamlined. This will allow for infractions to be issued faster and without the need for the infraction to be served at the time of the offence. Enforcement Services has also recently acquired License Plate Recognition technology to allow for officers to attend multiple schools during school pick up and drop off.

Through this combination of efforts, staff do not believe that additional parking resources are currently required to specifically address school zone enforcement at this time. Should additional parking enforcement resources be necessary staff will request them through the annual budget process.

Staff propose for APS to be implemented starting May 1, 2024

If this report is accepted, staff will bring the APS and Traffic by-laws to the next available Council Meeting for adoption. While Council will adopt the by-laws, they will be drafted to ensure that they will not come into force until May 1, 2024. This delay in implementing the APS By-law will allow time for staff to transition from the current system to the new APS system, and allow for staff to communicate the changes to the public.

During the implementation time period, staff will finalize the policies, systems and materials required to implement APS in Whitby.

5. Financial Considerations:

The Town recognizes parking ticket revenues at time of collection (vs. time of issuance). The proposed implementation of an APS is expected to result in an improvement in revenues from fines as the time between issuance to adjudication/resolution/payment is shortened and costs related to prosecutions in the Provincial Offences Court will be avoided. Further, the proposed tiered penalty provisions and administrative fees (e.g. search, registered mail) will better recover the Town's costs to process parking infractions. With implementation planned in May 2024, the Town will track actuals for the balance of fiscal 2024 and make appropriate adjustments in future operating budgets.

A Screening Officer position will be appointed as part of the implementation process of APS. This part-time position currently exists and will continue. Through delegated authority, the Commissioner of Legal and Enforcement Services will appoint an adjudicator for disputes that are unable to be resolved through the screening process. The Hearing Officer will be paid on a per diem basis, like the member of the Municipal Licensing and Standards Committee. It is anticipated that the incremental costs to implement the APS will be offset by the incremental revenues, noted above. Subject to approval of this report, the actual revenues and expenditures related to the APS program will be tracked for the balance of the year and budget adjustments for the APS program will be included in future operating budgets.

6. Communication and Public Engagement:

Staff have provided notice of the APS program to the Whitby Community Safety Roundtable, which includes representatives from Council, Durham Regional Police Service, Durham District School Board and Durham Catholic District School Board. Enforcement Services has worked and will continue to work collaboratively with the Town's Corporate Communications and Creative Services to notify residents and the public of the forthcoming APS changes. Residents and the public will be notified via the Town's website and social media channels to promote awareness of the changes in enforcement and dispute resolution.

7. Input from Departments/Sources:

Staff have discussed the recommendations contained in this Report with Organizational Effectiveness Division (Communication and Creative Services and Human Resources), Financial Services Department and the Planning and Development Services Department (Transportation Services).

8. Strategic Priorities:

This report generally advances Strategic Pillar 1: Whitby's Neighbourhoods, Objective 1.1: Improve community safety, health and well-being, Action 1.1.3: Identify opportunities to improve road safety by developing and implementing a traffic calming and safety policy and identify opportunities to reduce traffic congestion. The APS program will improve the enforcement of the Traffic By-law, particularly in areas like School Zones, which improves overall road safety.

This report also advances Strategic Pillar 4: Whitby's Government, Objective 4.3: Deliver exceptional customer service and community engagement, Action 4.3.1: 4.3.1 Continually improve the customer experience through the use of technology, more flexible payment and service options, and the implementation of a consolidated customer contact centre. Enforcement services is utilizing new technology to efficiently enforce parking infractions and improve road safety through the implementation of license plate recognition technology. In addition, by streamlining the resolution process for ticket disputes, staff aim to improve customer service for residents through a simplified single process.

9. Attachments:

Attachment 1 - Proposed New Traffic By-law

Attachment 2 - Proposed New Administrative Penalty By-law

Attachment 3 - Prevention of Political Interference Policy

Attachment 4 - Conflict of Interest Policy