



POLICY AND PRIORITIES COMMITTEE AGENDA

P&P-02/2020 - Immediately Following Council

March 2, 2020

Town of Pelham Municipal Office - Council Chambers

20 Pelham Town Square, Fonthill

Meeting will convene immediately following Council. If you require any accommodations for a disability in order to attend and participate in meetings or events, please contact the Office of the Clerk at 905 892-2607, ext. 315 or 320. Taping and/or recording of meetings shall only be permitted in accordance with the Procedure By-law. Rules of Decorum apply to observers.

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1. Call to Order and Declaration of Quorum	
2. Adoption of Agenda	
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4. New Business	
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Subject: Administrative Monetary Penalty system

Recommendation:

THAT Committee receive Report #2020-0022 and recommend to Council:

THAT the administrative monetary penalty bylaw be approved and staff be directed to prepare the necessary bylaw for council consideration on March 23, 2020

Background:

Administrative Penalties

Through the enactment of By-law #3505(2014), the system for administrative penalties relating to stopping, standing and parking of vehicles was established. As a result, the Town of Pelham was successful in the implementation of the Administrative Municipal Penalty System (AMPS) for parking-related offences, wherein the system is administered by the municipality and replaces the former Provincial Offences Act (POA) Court system. The result achieved a more efficient and customer-focused process to adjudicate parking penalties and effectively removed the Prosecution of Part II Parking Citations from the Niagara Provincial Offences Courts, placing the responsibility for a review/screening forum at the municipal level. Implementation across Niagara municipalities took effect July 1, 2014.

Administrative penalties are a civil mechanism for promoting compliance with municipal by-laws. Administrative penalties can be imposed through administrative processes, rather than fines imposed in quasi-criminal court processes.

Currently parking offence penalties are issued by the municipality, and individuals receive a municipal penalty notice, rather than a POA Certificate of Offence. Any person wishing to dispute a penalty notice may request a review by a Screening Officer, and the decision of the Screening Officer can be subsequently appealed to a Hearing Officer. Schedule "D" of By-law #3505(2014) designates the Town Clerk as the Screening Officer, and provides for the Town Deputy Clerk to act in the same capacity.

It is up to the municipality to decide the by-laws for which to impose administrative penalties and to decide the amount of an administrative penalty that a person would be required to pay. However, the amount of an administrative penalty cannot be punitive in nature and cannot exceed the amount reasonably required to promote compliance with a by-law.

Administrative penalties are imposed without a court hearing. However, other protections are typically put in place to help ensure that the process for imposing a penalty is fair. It is up to municipalities to set up processes and procedures for an administrative penalty system, such as putting in place a review process for a person who has received an administrative penalty.

If a municipality requires a person to pay an administrative penalty for a by-law contravention, the person cannot be charged with a Provincial Offences violation for the same contravention.

Any administrative penalty imposed on a person constitutes a debt of that person to the municipality. An unpaid administrative penalty can be added to the tax roll for any property in the local municipality for which all of the owners are responsible for paying the administrative penalty and can be collected in the same manner as taxes.

Analysis:

The Town of Pelham bylaw division has been engaged in writing and revising bylaws which give the municipality the ability to enforce and gain compliance, moving enforcement away from the POA courts supports the Region of Niagara's goal to reduce the number of POA offences clogging up its courts and costing the tax payers large sums of money. Using the AMP process to enforce and gain compliance will simplify and expedite this process.

Financial Considerations:

Increasing the utilization of the AMP system will likely create revenues, which traditionally have been paid to the Region of Niagara. In the current system, the Region pays the Town of Pelham approximately 1% of its POA revenues. AMP charges which will be set at a fixed rate of 250.00 per charge for any offence established in by Town by-law. The one exception is the Town's Parking By-law 89-2000, which has lower fines for parking offences.

Alternatives Reviewed:

Remain with the current POA system

Strategic Plan Relationship: Strong Organization

A faster, more flexible and customer-focused adjudication process will be fostered through an augmented AMPS and review process.

Consultation:

Bylaw officers, CAO, Clerk, Ontario Association of Property Standards Officers.

Other Pertinent Reports/Attachments:

Various by-laws will be impacted by the changes to the AMPS program, each on a standalone basis.

Prepared and Recommended by:

Bob Lymburner, Fire Chief
Nancy J. Bozzato, Town Clerk

Prepared and Submitted by:

David Cribbs, BA, MA, JD, MPA
Chief Administrative Officer

THE CORPORATION OF THE
TOWN OF PELHAM
BY-LAW NO. 0000 (2020)

Being a by-law to Establish an Administrative Monetary Penalty System for Non-Parking Related Offences and to amend all By-Law's referenced in Schedule A

WHEREAS section 434.1(1) of the *Municipal Act, 2001*, S.O. 2001, c.25 as amended (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

WHEREAS section 434.1(2) of the *Municipal Act, 2001*, provides that the purpose of a system of administrative penalties established by a municipality under this section shall be to assist the municipality in promoting compliance with its by-laws; and,

WHEREAS section 15.4.1 of the *Building Code Act, 1992* as amended, authorizes a municipality to pass a by-law that may require a person 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 the *Building Code Act, 1992*, as amended or an order of an officer authorized under 15.2(2) or 15.3, 2017, c.34, Schedule 2, s.10 of the *Building Code Act, 1992*, as amended; and,

WHEREAS section 434.2(1) of the *Municipal Act, 2001*, provides that an administrative penalty imposed by a municipality on a person under section 434.1 constitutes a debt of the person to the municipality; and,

WHEREAS section 391(1) of the *Municipal Act, 2001*, provides that without limiting sections 9, 10, and 11, those sections authorize a Municipality to impose fees or charges on persons; and,

WHEREAS the Council of 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 an administrative penalty system;

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

DEFINITIONS

1. In this By-law:
 - 1.1. "Administrative Penalty" means an administrative penalty established by a Designated By-law;
 - 1.2. "By-law" means this by-law and any schedule to this by-law as they may from time to time be amended;
 - 1.3. "Town" means The Corporation of the Town of Pelham;
 - 1.4. "Council" means the Town's Council;
 - 1.5. "Designated By-law" means each by-law that is designated by the Town as a by-law to which this By-law applies;

- 1.6. "Director" means the person, or his delegate, from time to time performing the functions of the Director of Fire and By-law Services.
- 1.7. "Fee – Appeal No-Show" means an administrative fee in respect of a Person's failure to appear at the time and place scheduled for a hearing before a Hearings Officer;
- 1.8. "Fee – Late Payment" means an administrative fee in respect of a Person's failure to pay an Administrative Penalty by the date on which it is due and payable;
- 1.9. "Fee – Review No-Show" means an administrative fee in respect of a Person's failure to appear at the time and place scheduled for a review by a Screening Officer;
- 1.10. "Hearings Officer" means each Hearing Officer(s) from time to time appointed by Town Council
- 1.11. "Officer" means each of
- (a) the Director;
 - (b) a Municipal Law Enforcement Officer appointed by or under the authority of a Town by-law to enforce a Designated By-law; and
 - (c) a police officer employed by a municipal police force, by the Ontario Provincial Police or by the Royal Canadian Mounted Police; and
 - (d) An Animal Control Officer employed by any local or provincial S.P.C.A.
- 1.12. "Penalty Notice" means a notice given pursuant to sections 3 and 5;
- 1.13. "Penalty Notice Date" means the date specified on the Penalty Notice pursuant to subsection 5.1;
- 1.14. "Penalty Notice Number" means the number specified on the Penalty Notice pursuant to subsection 5.2;
- 1.15. "Person" includes an individual, partnership, association, firm or corporation;
- 1.16. "Screening Decision" means a decision made by a Screening Officer pursuant to subsection 7.6;
- 1.17. "Screening Decision Date" means the date on which a Screening Decision is made pursuant to subsection 7.6;
- 1.18. "Screening Officer" means each person from time to time performing the functions of a Screening Officer pursuant to this By-law and appointed by Town Council

Penalty Notice

2. Each Person who contravenes a provision of a Designated By-law shall, when given a Penalty Notice in accordance with section 3, be liable to pay to the Town an Administrative Penalty in the amount specified by the Designated By-law, for each day or part of a day on which the contravention continues.
3. An Officer who has reason to believe that a Person has contravened any provision of a Designated By-law may give to the Person a Penalty Notice.

4. The Director may, before 4:30 pm of the tenth (10th) calendar day after the Penalty Notice Date, cancel the Administrative Penalty. If the 10th calendar day is a Statutory Holiday, then cancellation may occur on the 11th day.
5. The Penalty Notice shall be given to the Person within fourteen (14) calendar days of the infraction date and shall include the following information:
 - 5.1. the date the infraction occurred;
 - 5.2. the date the Penalty Notice was issued;
 - 5.3. a reference number that is unique to that Penalty Notice;
 - 5.4. particulars of the contravention;
 - 5.5. the amount of the Administrative Penalty;
 - 5.6. 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
 - 5.7. 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.
6. A Person who is given a Penalty Notice may request that the Administrative Penalty be reviewed by a Screening Officer pursuant to section 7.

Review by Screening Officer

7. The following applies to reviews of an Administrative Penalty by a Screening Officer:
 - 7.1. A Person's right to request a review expires if it has not been exercised in the manner prescribed in subsection 7.3 before 4:30 p.m. on the date on which the Administrative Penalty is due and payable.
 - 7.2. 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 subsection 7.3 on or before 4:30 p.m. on the date on which the Administrative Penalty is due and payable; and
 - (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.
 - 7.3. A Person's rights to request a review and to request an extension of time to request a review are exercised by giving to the Town written notice of the request to review that includes:
 - (a) the Penalty Notice Number;
 - (b) the Person's mailing address and, if applicable, facsimile transmission number and/or 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 subsection 7.1;
- (d) particulars of all grounds upon which the request to review is based; and
- (e) the Person's election to
 - (i) meet with a Screening Officer for the review; or to
 - (ii) have the review undertaken by a Screening Officer in writing in respect of the particulars provided by the Person pursuant to paragraph 7.3(d).

7.4. Where the Person elects to meet with a Screening Officer pursuant to clause 7.3(e)(i), the Person shall be given notice of the date, time and place of the review.

7.5. Where the Person elects to meet with a Screening Officer pursuant to clause 7.3(e)(i) and 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 Screening 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".

7.6. Subject to subsections 7.2 and 7.5, the Screening Officer may

- (a) extend the time to request a review; and may
- (b) cancel, reduce or extend the time for payment of the Administrative Penalty and any administrative fees respecting that Administrative Penalty where the Screening Officer is satisfied that doing so would maintain the general intent and purpose of 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.

7.7. The Screening Decision shall be given to the Person in writing.

7.8. The Person may appeal to a Hearings Officer against the Screening Decision pursuant to section 8.

Appeal to Hearings Officer

8. The following applies to appeals to a Hearings Officer against Screening Decisions:

8.1. The right to appeal is limited to the following:

- (a) a Person who has been given a Screening Decision pursuant to subsection 7.7; and
 - (b) the Director.
- 8.2. A Person's right to appeal expires if it has not been exercised in the manner prescribed in subsection 8.4 before 4:30 p.m. on the due and payable date for the Administrative Penalty listed on the Screening Decision.
- 8.3. 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 subsection 8.4 before 4:30 p.m. on the due and payable date for the Administrative Penalty listed on the Screening Decision
- (a) the Person shall be deemed to have waived the right to appeal;
 - (b) the Screening Decision and the Administrative Penalty as it may have been affected by the Screening Decision shall be deemed to be affirmed; and
 - (c) the Screening Decision and the Administrative Penalty as it may have been affected by the Screening Decision shall not be subject to review, including review by any Court.
- 8.4. A right to appeal or request an extension of time to appeal is exercised by giving to the Town written notice of the request that includes:
- (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 appeal, the reasons, if any, for having failed to exercise the right to appeal within the time limited by subsection 8.2; and
 - (d) particulars of all grounds upon which the appeal is made.
- 8.5. The Person shall be given no fewer than seven (7) days' notice of the date, time and place of the hearing of the appeal.
- 8.6. 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 Screening Decision and the Administrative Penalty as it may have been affected by the Screening Decision shall be deemed to be affirmed;
 - (c) the Screening Decision and the Administrative Penalty as it may have been affected by the Screening Decision shall not be subject to review, including review by any Court; and
 - (d) the Person shall pay to the Town a "Fee - Appeal No-Show".
- 8.7. A Hearings Officer shall not make any decision respecting an appeal unless the Hearings Officer has given each of the Person, the Director 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.
- 8.8. Subject to subsections 8.3, 8.6 and 8.7, a Hearings Officer may

- (a) extend the time to request an appeal; and may
 - (b) make any decision that the Screening Officer could have made pursuant to this By-law.
- 8.9. The decision of a Hearings Officer is final and not subject to review including review by any Court.

Notice

9. Subject to section 11, any notice or document respecting this By-law may be given in writing in any of the following ways and is effective:
- 9.1. when a copy is placed on or affixed in any manner to a Person's vehicle;
 - 9.2. when a copy is delivered to the Person to whom it is addressed;
 - 9.3. 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;
 - 9.4. upon the conclusion of the transmission of a copy by facsimile transmission to the Person's last known facsimile transmission number; or
 - 9.5. 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.
10. For the purpose of section 9, 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 paragraphs 7.3(b) and 8.4(b) and/or any contact information the Town of Pelham may have on record for that person.
11. 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:
- 11.1. when a copy is delivered to the Town of Pelham Public Reception Desk, Lower Level Town Hall, 20 Pelham Town Square, Fonthill, Ontario L0S 1E0
 - 11.2. on the fifth (5th) day after a copy is sent by registered mail or by regular letter mail to "Administrative Penalties, Att: Town Clerk, Town of Pelham, P.O. Box 400, 20 Pelham Town Square, Fonthill, ON, L0S 1E0
 - 11.3. upon the conclusion of the transmission of a copy by facsimile transmission to 905-892-5055; or
 - 11.4. upon the sending of the notice or document or a copy thereof by e-mail transmission to "AMPappeals@pelham.ca".

Financial Administration

12. No Officer who gives a Penalty Notice may accept payment of the Administrative Penalty respecting that Penalty Notice.
13. 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.
14. 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 original amount cancelled or reduced.

15. 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.
16. An Administrative Penalty imposed on a person constitutes a debt of the person to the municipality as per section 434.2(1) of the *Municipal Act, 2001*.
17. If an Administrative Penalty imposed on a person is not paid within 15 days after the day that it becomes due and payable, the Town of Pelham Treasurer may add the Administrative Penalty to the tax roll for any property in the local municipality for which all of the owners are responsible for paying the Administrative Penalty, and collect it in the same manner as municipal taxes as per section 434.2(2) of the *Municipal Act, 2001*.
18. **Fees**
 - 18.1 "Fee - Late Payment" means a fee of \$50.00 to be added to the original Administrative Penalty Notice for failing to pay to the Town the amount of the Administrative Penalty within fifteen (15) days after the date of issue.
 - 18.2 "Fee - Review No-Show" means a fee of \$50.00 to be added to the original Administrative Penalty Notice should a person fail to attend a review for an Administrative Penalty by a Screening Officer.
 - 18.3 "Fee – Appeal No-Show" means a fee of \$150.00 to be added to the original Administrative Penalty Notice should a person fail to attend a Hearing for an Administrative Penalty by a Hearings Officer.

Complaints and Comments

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

General

20. Town Council may appoint Screening Officers, such individuals and on such terms as Town Council considers appropriate.
21. Council for the Town of Pelham hereby appoints the Town Clerk as the Screening Officer to conduct the Review Process as more particularly outlined in Part 7 of this By-law, and further, to appoint the Town Deputy Clerk to act in the same capacity as the Town Clerk in his/her absence.
22. Nothing in this By-law limits the Town's right to enforce a Designated By-law by all legal means.
23. It is Council's opinion that the delegations in this By-law to the Director, the Town Clerk, to Hearings Officers and to Screening Officers are of a minor nature. In forming this opinion, Council has had regard to the number of people, the size of geographic area and the time period affected by the exercise of each delegated power.

24. The short title of this By-law is the “Administrative Penalty Process By-law”.

COMMENCEMENT

25. This By-law shall be effective as of the date it is passed by Council.

READ, ENACTED, SIGNED AND SEALED THIS ____ DAY OF _____, 2020

Mayor, Marvin Junkin

Nancy J. Bozzato, Town Clerk

DRAFT

SCHEDULE A TO BY-LAW #####(2020) – Administrative Monetary Penalty System for Non-Parking Related Offences

Pursuant to By-law #####(2020), the following By-laws, or as may be amended from time to time, are included in the Non-Parking Related Offences, and/or are hereby amended:

1. **Fence By-law 4157 (2019)** is amended by inserting the following sections:

21.1 Administrative Penalty

21.2 Administrative Penalty Process By-law 0000(2020) applies to each administrative penalty issued pursuant to this By-law.

21.3 Each person who contravenes any provision of this By-law shall, upon issuance of a penalty notice in accordance with Administrative Penalty Process By-law 0000(2020), be liable to pay to the Town an administrative penalty in the amount of \$250.00 for each day on which the contravention occurs or continues.

2. **Noise By-law 3130 (2010)** is amended by inserting the following sections:

11.1 Administrative Penalty

11.2 Administrative Penalty Process By-law 0000(2020) applies to each administrative penalty issued pursuant to this By-law.

11.3 Each person who contravenes any provision of this By-law, shall, upon issuance of a penalty notice in accordance with Administrative Penalty Process By-law 0000(2020), be liable to pay to the Town an administrative penalty in the amount of \$250.00 for each day on which the contravention occurs or continues.

3. **Parks and Facilities By-law 1608 (1993)** is amended by inserting the following sections:

12.1 Administrative Penalty

12.1 Administrative Penalty Process By-law 0000(2020) applies to each administrative penalty issued pursuant to this By-law.

12.2 Each person who contravenes any provision of this By-law, shall, upon issuance of a penalty notice in accordance with Administrative Penalty Process By-law 0000(2020), be liable to pay to the Town an administrative penalty in the amount of \$250.00 for each day on which the contravention occurs or continues.

4. **Prohibit Possession of Liquor in Recreational Areas By-law 1583 (1993)** is amended by inserting the following sections:

4. **OFFENCES**

4.1 Any person who contravenes this by-law is guilty of an offence and on conviction is liable to a penalty as prescribed by the Provincial Offences Act

5. **ADMINISTRATIVE PENALTY**

5.1 Administrative Penalty Process By-law 0000-(2020) applies to each administrative penalty issued pursuant to this By-law.

5.2 Each person who contravenes any provision of this By-law shall upon issuance of a penalty notice in accordance with Administrative Penalty Process By-law 0000-(2020), be liable to pay to the Town an administrative penalty in the amount of \$250.00 for each day on which the contravention occurs or continues.

5. **Pool By-law 3389 (2013)** is amended by inserting the following sections:

6.4 **Administrative Penalty**

6.5 Administrative Penalty Process By-law 0000-(2020) applies to each Administrative Penalty issued pursuant to this By-law.

6.6 Each Person who contravenes any provision of this By-law shall, upon issuance of a penalty notice in accordance with Administrative Penalty Process By-law 0000-(2020), be liable to pay to the Town an administrative penalty in the amount of \$250.00 for each day on which the contravention occurs or continues.

6. **Deposit Snow and Ice on Highway By-law 3013 (2008)** is amended by inserting the following sections:

(8) a. Administrative Penalty Process By-law 0000(2020) applies to each administrative penalty issued pursuant to this By-law.

b. Each person who contravenes any provision of this By-law shall, upon issuance of a penalty notice in accordance with Administrative Penalty Process By-law 0000(2020), be liable to pay to the Town an administrative penalty in the amount of \$250.00 for each day on which the contravention occurs or continues.

7. **Exotic Pet By-law 3348 (2013)** is amended by inserting the following sections:

10.9 **Administrative Penalty**

a) Administrative Penalty Process By-law 0000(2020) applies to each administrative penalty issued pursuant to this By-law.

b) Each person who contravenes any provision of this By-law shall, upon issuance of a penalty notice in accordance with Administrative Penalty Process By-law 0000(2020), be liable to pay to the

Town an administrative penalty in the amount of \$250.00 for each day on which the contravention occurs or continues.

8. Dogs which are an Annoyance or Nuisance By-law 1450 (1992) is amended by inserting the following sections:

(2.1) **Administrative Penalty**

- a) Administrative Penalty Process By-law **0000(2020)** applies to each administrative penalty issued pursuant to this By-law.
- b) Each person who contravenes any provision of this By-law shall, upon issuance of a penalty notice in accordance with Administrative Penalty Process By-law **0000(2020)**, be liable to pay to the Town an administrative penalty in the amount of \$250.00 for each day on which the contravention occurs or continues.

9. Animals at Large By-law 2174 (2000) is amended by inserting the following sections:

- 4. b) Administrative Penalty Process By-law **0000(2020)** applies to each administrative penalty issued pursuant to this By-law
- c) Each person who contravenes any provision of this By-law shall, upon issuance of a penalty notice in accordance with Administrative Penalty Process By-law **0000(2020)**, be liable to pay to the Town an administrative penalty in the amount of \$250.00 for each day on which the contravention occurs or continues.

10. Skateboarding By-law 3424 (2013) is amended by inserting the following sections:

- 7.2 a) Administrative Penalty Process By-law **0000(2020)** applies to each administrative penalty issued pursuant to this By-law
- b) Each person who contravenes any provision of this By-law shall, upon issuance of a penalty notice in accordance with Administrative Penalty Process By-law **0000(2020)**, be liable to pay to the Town an administrative penalty in the amount of \$250.00 for each day on which the contravention occurs or continues.

11. Property Standards By-law 2025 (1998) is amended by inserting the following sections:

- 6.2 a) Administrative Penalty Process By-law **0000(2020)** applies to each administrative penalty issued pursuant to this By-law.
- b) Each person who contravenes any provision of this By-law shall, upon issuance of a penalty notice in accordance with Administrative Penalty Process By-law **0000(2020)** is liable to pay to the Town an administrative penalty in the amount of \$250.00 for each day on which the contravention occurs or continues.

12. Sign By-law 0000 (2020) is amended by inserting the following sections:

3.12.12 Administrative Penalty

- (a) Administrative Penalty Process By-law **0000(2020)** applies to each administrative penalty issued pursuant to this By-law.
- (b) Each person who contravenes any provision of this By-law shall, upon issuance of a penalty notice in accordance with Administrative Penalty Process By-law **0000(2020)** is liable to pay to the Town an administrative penalty in the amount of \$250.00 for each day on which the contravention occurs or continues.

13. Licensing By-law 3186 (2011) is amended by inserting the following sections:

13.1 Administrative Penalty

- (a) Administrative Penalty Process By-law **0000(2020)** applies to each administrative penalty issued pursuant to this By-law.
- (b) Each person who contravenes any provision of this By-law shall, upon issuance of a penalty notice in accordance with Administrative Penalty Process By-law **0000(2020)** is liable to pay to the Town an administrative penalty in the amount of \$250.00 for each day on which the contravention occurs or continues.

14. Fireworks By-law 2951 (2008) is amended by inserting the following sections:

10.2 Administrative Penalty

- (a) Administrative Penalty Process By-law **0000(2020)** applies to each administrative penalty issued pursuant to this By-law.
- (b) Each person who contravenes any provision of this By-law shall, upon issuance of a penalty notice in accordance with Administrative Penalty Process By-law **0000(2020)** is liable to pay to the Town an administrative penalty in the amount of \$250.00 for each day on which the contravention occurs or continues.

15. Environmental By-law 3357 (2013) is amended by inserting the following sections:

23. Administrative Penalty

- (a) Administrative Penalty Process By-law **0000(2020)** applies to each administrative penalty issued pursuant to this By-law.
- (b) Each person who contravenes any provision of this By-law shall, upon issuance of a penalty notice in accordance with Administrative Penalty Process By-law **0000(2020)** is liable to pay to the

Town an administrative penalty in the amount of \$250.00 for each day on which the contravention occurs or continues.

16. Open Air Burning By-law 0000 (2020)

DRAFT

Subject: Environmental protection bylaw amendment
2020

Recommendation:

THAT Committee receive Report #2020-0025 and recommend to Council:

THAT council approves the amendment to the environmental protection bylaw 3357 (2013) at the March 23rd, 2020 regular meeting of council.

Background:

In 2013 staff developed an environmental protection bylaw to address the movement of fill within the Town of Pelham. Bylaw 3357 (2013) was approved by council and has been in effect since 2013.

Analysis:

Due to the amount of development within the Town, staff has been tasked with processing a high number of fill applications. Anyone applying to bring in fill is required to complete an application which details the original location of the fill and the final destination. In some cases bylaw requires soil test documents to confirm the cleanliness of the fill as well as a site visit from an officer. Bylaw has discovered that fill from outside the region is extremely difficult to control and to verify its cleanliness, this amendment will prevent any fill from outside the region of Niagara to be brought into the Town of Pelham.

Financial Considerations:

There are no direct costs associated with this report.

Alternatives Reviewed:

None

Strategic Plan Relationship: Grow Revenue - Promote Cultural Assets and Protect Environment

Ensuring that only clean, local fill enters. The Town will reduce or eliminate potential environmental contamination.

Consultation:

Bylaw officers, Director of Public works.

Other Pertinent Reports/Attachments:

None

Prepared and Recommended by:

Bob Lymburner, Fire Chief

Prepared and Submitted by:

David Cribbs, BA, MA, JD, MPA
Chief Administrative Officer

THE CORPORATION OF THE
TOWN OF PELHAM
BY-LAW 0000 (2020)

**Being a By-law to amend Environmental Protection By-law 3357
(2013) to prohibiting or regulating the placing or dumping of fill
within Pelham.**

WHEREAS it deemed necessary and desirable to amend By-law 3357(2013), in reference to prohibiting the dumping of any fill within Pelham where the origin site is outside of the Niagara Region or is undetermined.

**NOW THEREFORE COUNCIL OF THE CORPORATION OF THE TOWN OF
PELHAM ENACTS AS FOLLOWS:**

(1) THAT Environmental Protection By-law 3357 (2013) be amended by adding the following to Section 5:

“a. No person shall import, or otherwise bring, any fill into the Town where the origin of the material is located outside of the geographic area of the Niagara Region or where the origin of the material is undetermined;”

READ, ENACTED, SIGNED AND SEALED THIS ____ DAY OF

_____, 2020

Mayor, Marvin Junkin

Nancy J. Bozzato, Town Clerk

Subject: Open air burn bylaw 2020

Recommendation:

THAT Committee receive Report #2020-0020 and recommend to Council:

THAT the Town of Pelham open air burn bylaw 2020 be approved and staff be directed to prepare the necessary bylaw for council consideration on March 23, 2020

Background:

The current open air burn bylaw #3160-2010 has been reviewed by staff and identified the need to update the bylaw to meet current standards and regulations.

Analysis:

The new bylaw being presented for Council's consideration has the following changes:

1. Section 1.1 (j) definition has been changed.
2. Section 2.3 has been added
3. Section 2.4 (a) wording changed
4. Section 2.6 barbeques section has been expanded
5. Section 3.7 new
6. Section 4.1 language changed
7. Section 4.4 removed. Bylaw will also be adding this bylaw to the Towns AMP program for enforcement purposes.

Financial Considerations:

There are no direct costs associated with this report.

Alternatives Reviewed:

The proposed changes reflect an increase in fire safety and enforcement to which there are no alternatives.

Strategic Plan Relationship: Risk Management

This by-law is fundamentally for public health and safety. The modernization amendments address gaps and reflect current best practice.

Consultation:

Fire Prevention Officer, Bylaw Officer, CAO

Other Pertinent Reports/Attachments:

None.

Prepared and Recommended by:

Bob Lymburner, Fire Chief

Prepared and Submitted by:

David Cribbs, BA, MA, JD, MPA
Chief Administrative Officer

THE CORPORATION OF THE TOWN OF PELHAM
BY-LAW# 0000 (2019)

Being a By-law to regulate Open Air Burning in the Town of Pelham, and to Repeal and Replace By-law # 3160(2010).

WHEREAS Section 7.1(1) of the *Fire Protection & Prevention Act, 1997, S.O. 1997, c. 4*, provides that the council of a municipality may pass By-laws regulating fire prevention, including the prevention of the spreading of fires; regulating the setting of open air fires, including establishing the times during which open air fires may be set and designating public and private roads as fire routes along which no parking of vehicles shall be permitted and providing for the removal and impounding of any vehicle parked or left along any of the fire routes at the expense of the owner of the vehicle;

AND WHEREAS Section 7.1(3) of the *Fire Protection & Prevention Act, 1997, S.O. 1997, c.4*, states that a By-law passed under Section 7.1 (1) may deal with different areas of the municipality differently;

AND WHEREAS Section 7.1(4) of the *Fire Protection & Prevention Act, 1997, S.O. 1997, c. 4* provides that a municipality may appoint an officer to enter upon land and into structures at any reasonable time to inspect the land and structures to determine whether By-laws enacted in accordance with this section are being complied with;

AND WHEREAS Section 13(1.1) of the *Fire Protection & Prevention Act, 1997, S.O. 1997, c. 4* provides that a firefighter or such other person as may be authorized by the fire chief may, without a warrant, enter on lands or premises on which a fire is occurring, or that are adjacent to those lands or premises, for the purposes of pulling down or removing buildings, structures or things on or attached to the lands or premises on which a fire is occurring or that are adjacent to those lands or premises if, in the opinion of the fire chief, it is necessary to do so to prevent the spread of the fire;

AND WHEREAS Sections 390 to 400 of the *Municipal Act, S.O. 2001, c.25* provides that despite any Act, a municipality and a local board may pass By-laws imposing fees or charges on any class of persons:

- (A) for services or activities provided or done by or on behalf of it;
- (B) for costs payable by it for services or activities provided or done by or on behalf of any other municipality or local board; and,
- (C) for the use of its property including property under its control;

AND WHEREAS Section 398(1) of the *Municipal Act 2001, S.O. 2001, c.25*, provides that fees and charges imposed by a municipality constitute a debt of the person to the municipality;

AND WHEREAS Section 398(2) provides that the treasurer of a local municipality may add fees and charges imposed by the municipality to the tax roll for any property for which all of the owners are responsible for paying the fees and charges, and collect them in the same manner as municipal taxes;

AND WHEREAS Section 2.6.3.4 of the Ontario Fire Code provides that Open Air Burning shall not be permitted unless approved, or unless such burning consists of a small confined fire, supervised at all times, and used to cook food on a grill or a Barbecue;

AND WHEREAS it is deemed desirable to regulate Open Air Burning in the Town of Pelham;

NOW THEREFORE THE CORPORATION OF THE TOWN OF PELHAM ENACTS AS FOLLOWS:

PART 1 - DEFINITIONS AND ADMINISTRATION:

1.1 Definitions:

For the purposes of this By-law:

- (A) "Applicant" shall mean the person, organization, company or group that makes

application to the Fire Chief for permission to hold an Open Air Burning and includes such persons who contact the Fire Chief with notification of an intention to hold an Open Air Burning of brush in the rural area;

- (B) "Barbecue" appliances include a hibachi, a permanent structure designed and intended solely for the cooking of food in the open air and other similar devices designed and intended solely for the cooking of food in the open air, but does not include devices predominantly designed for personal warmth, fire burn areas or camp fires;
- (C) "Open Air Burning" shall mean a fire in any open place, yard, field or area which is not contained or enclosed by a building or structure, and includes agricultural fires, chimineas, and campfires;
- (D) "Open Burning Device" shall mean a commercially manufactured or homemade device for the purpose of containing a recreational fire;
- (E) "Town" shall mean The Corporation of the Town of Pelham;
- (F) "Fire Chief" shall mean the Fire Chief for the Town of Pelham Fire Department or designate;
- (G) "Rural Area" shall mean all areas outside the urban boundaries as defined in the Town's Official Plan.
- (H) "Recreational Open Air Burning" shall mean a small contained fire used for recreational purposes in accordance with the provisions of Section 2.3 herein;
- (I) "Non-Recreational Open Air Burning" shall mean any Open Air Burning that is not a recreational Open Air Burning.
- (J) "Clean, dry seasoned wood" shall mean wood that has been seasoned by stacking and storing to reduce its moisture content.

1.2 Administration:
The Fire Chief or his designate shall administer this By-law.

1.3 Fire Services - Exempt:
The Town of Pelham Fire Department shall be exempt from the provisions of this by-law with respect to Open Air Burning set for the purposes of educating and training individuals.

PART 2 - GENERAL PROVISIONS:

2.1 Short Title:
The short title of this By-law shall be "THE OPEN AIR BURNING BY-LAW".

2.2 Open Air Burning - Regulations:
Subject to Sections 2.2 and 2.3 herein, no person shall conduct or permit to be conducted, an Open Air Burning within the boundaries of the Town of Pelham unless permission has first been granted by the Fire Chief or designate.

2.3 Non-recreational Open Air Burning shall be prohibited in the urban areas of the Town of Pelham as defined by the Town's Official Plan.

2.4 The use of flying lantern, sky lanterns or traditional Chinese style lanterns shall be prohibited in all areas of the Town of Pelham.

2.5 Exception – Open Air-Burning

Notwithstanding Section 2.1 herein, permission to conduct recreational open-air burning associated with the use of open burning devices or fire burn areas specifically designed for Open Air Burnings may be granted by obtaining written permission from the Fire Chief or designate for a given calendar year. If written permission is being obtained for the first time, an inspection will be conducted by the Fire Chief or designate to ensure the regulations detailed in this Section have been

complied with. The following regulations shall be complied with before recreational Open Air Burning is attempted:

- (A) Open Air Burning shall be confined to open burning devices or to a fire burn area with a burn area no larger than two (2) feet (61cm) by two (2) feet (61cm) by two (2) feet (61cm) or 8 cubic feet (0.26 cubic metres) in size.
Open burning devices shall be:
 - (i) designed of a non-combustible material;
 - (ii) of a size not larger than described in Section 2.3 herein; and,
 - (iii) shall be installed in accordance with the manufacturer's recommendation.
- (B) Steps shall be taken to ensure that adjacent properties and individuals are protected from any fire hazard and are not adversely affected by the products of combustion.
- (C) No materials other than commercially produced charcoal, briquettes or clean, dry seasoned wood, but not including painted wood, pressure treated wood or creosote treated wood, may be burned;
- (D) The dimensions of the wood being burnt shall not be greater than the size of the open burning device or fire burn area and shall be totally confined within the open burning device or fire burn areas at all times;
- (E) An Open Air Burning shall be confined to a location that provides for a minimum distance of 13 feet (4m) in all directions from adjacent properties;
- (F) Open Air Burnings shall be confined to an area that is a minimum of 10 feet (3m) from combustible structures or objects;
- (G) An effective extinguishing agent of sufficient size and with the capability of extinguishing the fire shall be immediately available for use;
- (H) Open Air Burnings shall be attended, controlled and supervised at all times and shall be completely extinguished before the open air burn site is vacated;
- (I) Open Air Burnings shall not be permitted when the wind speed exceeds 20 km per hour or during rainy or foggy weather or at times when a smog alert has been declared by the Ontario Ministry of the Environment, Conservation Parks, or any successor and relevant Ministry;
- (J) Open Air Burning may be permitted on Town property in appliances approved and provided by the Town when first authorized, in writing, by the Fire Chief;
- (K) A campfire in a campground approved pursuant to the Town of Pelham Comprehensive Zoning By-law #1136 (1987), as amended, is permitted.
- (L) Open Air Burning shall only be permitted between the hours of 1200 hrs. and 2400 hrs.
- (M) An Open Air Burning permit shall be secured, the fee for which shall be in accordance with the Town of Pelham Fee for Services By-law.
- (N) An "open air burn ban" has not been declared by the Fire Chief

2.6 Response to Complaints:

- (A) Should the Pelham Fire Department be dispatched to a complaint regarding public safety due to a fire hazard created by a recreational Open Air Burning, or upon notification of a prohibited Open Air Burning not authorized under this by-law, the Fire Chief can order the landowner or occupant to immediately extinguish the fire.
- (B) Should the Pelham Fire Department rescind a recreational open burning permit, it shall be rescinded from the time of the incident for one (1) calendar year from that date, after which the resident may then apply for a new permit

renewal.

- (C) Should any landowner or occupant fail to extinguish a recreational Open Air Burning, or a prohibited Open Air Burning when ordered to do so by the Fire Chief, the Fire Chief may take action to have the fire extinguished, and the person who owns or occupies the land on which the recreational Open Air Burning or prohibited open air burning is located shall be responsible for any and all costs incurred by the Town of Pelham Fire Department in its efforts to extinguish the fire.

2.7 Exception - Barbecues:

Despite Section 2.1 herein, permission is not required from the Fire Chief for the use of Barbecues to cook food, provided the following regulations are complied with:

- (A) The Barbecue shall be placed on non-flammable material and not be located or placed on a porch or verandah of a building, inside any garage, tent, vehicle or structure, in or near dry vegetation that is conducive to the development or spread of fire or explosion;
- (B) The Barbecue shall be supervised at all times;
- (C) The fuel used shall be clean dry natural wood or a commercially produced fuel for the purpose of cooking such as charcoal or briquette, natural gas or propane.
- (D) The Barbecue shall not be placed on a balcony unless the following are complied with:
 - 1) The barbeque is propane-fired, electric, or infrared,
 - 2) The propane cylinder used does not exceed a net weight of greater than 1.02 pounds (465 grams),
 - 3) The propane cylinder must be stored outdoors,
 - 4) A maximum of one propane cylinder may be stored outdoors at any given time provided it is securely attached to the Barbecue,
 - 5) The Barbecue must be clear of all combustible materials,
 - 6) No walls or closures have been erected on the balcony, and
 - 7) The barbeque must be at least 3ft (1m) horizontally from any building opening, and 10ft (3m) from a building air intake.

PART 3 - SPECIAL REGULATIONS FOR RURAL AREA NON-RECREATIONAL OPEN AIR BURNING:

3.1 Permit - Non-Recreational Open Air Burning:

- (A) Any person intending to conduct a Non-Recreational Open Air Burning shall make application at least 24 hours prior to the proposed date of the non-recreational open air burning on either verbal or written permission from the Fire Chief and shall comply with Section 3.2 herein and the Fire Chief shall have the authority to issue such permit.
- (B) The Fire Chief may issue a permission to allow a non-recreational Open Air Burning to re-occur over an extended period of time.

3.2 Regulations - Non-Recreational Open Air Burning:

The following regulations shall apply to non-recreational Open Air Burnings in any rural area:

- (A) Any person conducting a rural non-recreational Open Air Burning shall have the authorization to conduct this activity, verifiable by the Fire Chief;
- (B) No person or persons shall light or cause to be kindled any non-recreational open air burning in a rural area before sunrise or after sunset;
- (C) No materials other than dry clean brush or other clean dry natural vegetation may be burned;
- (D) Non-recreational Open Air Burnings shall be attended, controlled and supervised at all times and shall be completely extinguished before the burn site is vacated;

- (E) Non-recreational Open Air Burnings are not permitted during rainy or foggy weather or on smog alert days as declared by the Ministry of the Environment, Climate Change and Parks or any successor and relevant Ministry;
 - (F) Non-recreational Open Air Burnings are not permitted when the wind speed exceeds 20 km per hour;
 - (G) A non-recreational Open Air Burning shall be confined to an area which is at least 200 feet (60m) from any building, highway, road or wooded area and shall be clear of any overhead objects (i.e. wires);
 - (H) The burn area shall be of a manageable size not exceeding 10 feet by 10 feet (3m by 3m);
 - (I) Steps shall be taken to ensure that smoke caused by a non-recreational open air burning does not have a negative impact on the visibility of motorists using highways in the vicinity of the non-recreational Open Air Burning or upon the owner(s) or occupant(s) of the surrounding properties.
- 3.3 Permission - Open Air Burning - Telephone Notification - Non-Recreational Open Air Burning:
Upon receipt of a permit, as described in Section 3.1 of this By-law, no person shall conduct or permit to be conducted a non-recreational Open Air Burning in the rural area without first notifying the Pelham Fire Department in person or by telephone and complying with the provisions of Section 3.1 and Section 3.2 of the By-law.
- 3.4 Notification at Conclusion of Burning - Rural Area:
Any person who has given notification pursuant to Section 3.3 above, shall notify the Pelham Fire Department in person or by telephone at the conclusion of the non-recreational Open Air Burning.
- 3.5 Notification to Extinguish:
Any person conducting a non-recreational Open Air Burning in any rural area shall immediately extinguish the fire upon notification by the Fire Chief, that in the Fire Chief's opinion:
- (A) The said fire presents a fire hazard; or,
 - (B) The fire is having a negative impact on persons using a highway adjacent to the burn site; or,
 - (C) The regulations of this By-law are being contravened; or,
 - (D) Any combination of these matters exists or applies.
- 3.6 Failure to Extinguish - Liable for Costs:
Should any landowner or occupant fail to extinguish a prohibited Open Air Burning in a rural area when ordered to do so by the Fire Chief, the Fire Chief may take action to have the fire extinguished. The person who owns or occupies the land on which the Open Air Burning is located shall be responsible for any and all costs incurred by the Town of Pelham Fire Department in its efforts to extinguish the fire.
- 3.7 An Emergency Response resulting from an authorized burn by an owner or occupant is subject to charges under the Town of Pelham Fees and Charges Schedule.

PART 4 - ENFORCEMENT:

- 4.1 Regulation - Offence
The set fines, charges or fees for an offence under this By-law are set out in "User Fees and Charges" regulated by the Town of Pelham as appointed by Council.

- 4.2 **Prohibited Open Air Burning - Repeated:**
Should any landowner or occupant repeat the offence of conducting a prohibited Open Air Burning, the person who owns or occupies the land on which the Open Air Burning is located, shall be responsible for any and all costs incurred by the Town of Pelham Fire Department in responding to the prohibited Open Air Burning.
- 4.3 **Causing False Response:**
Should it be determined that the landowner or occupant of adjacent property(s) falsely notified the Pelham Fire Department of an Open Air Burning contrary to Sections 2.1, 3.1 and 3.2, the person who owns or occupies the property in which the false call originated, shall be responsible for any and all costs incurred by the Pelham Fire Department response.
- 4.4 **Default – Collection of Costs**
The Town shall have the right to collect any unpaid costs as authorized by this by-law by adding such charges to the tax roll where they may be collected in like manner as municipal taxes, all of which is in accordance with Section 427 of the *Municipal Act 2001*, S.O. 2001, c.25, as amended.

PART 5- ENACTMENT:

- 5.1 **Severability:**
If any section or sections of this By-law or parts there of shall be found by any court to be beyond the power of Municipal Council of the Town of Pelham to enact, such section or sections or parts thereof shall be deemed to be severable and all other sections or parts of this By-law shall be deemed to be separate and independent therefrom and shall continue in full force and effect unless and until similarly found and this By-law shall be enacted as such.
- 5.2 **Clerk's Authority:**
In the event the Ministry of the Attorney General directs or recommends housekeeping modifications or corrections to this By-law or its schedules then pursuant to the provisions of Section 227 of the *Municipal Act 2001*, the Clerk of the Town of Pelham is hereby authorized to effect any such modifications or corrections of a numerical, semantically, grammatical or descriptive nature or kind.
- 5.3 **Effective Date:**
This By-law shall come into force and effect on its final passage thereof.
- 5.4 **Repeal:**
That By-law# 3160 (2010) be and is hereby repealed.

READ A FIRST, SECOND AND THIRD TIME
AND FINALLY PASSED BY COUNCIL THIS
____ DAY OF _____ 2020 A.D.

Marvin Junkin, Mayor

Town Clerk, Nancy J. Bozzato

Subject: Management Options for the Reconstruction and Roadway Improvements of Sulphur Springs Road between Luffman Drive and Orchard Hill Road

Recommendation:

THAT Committee of the Whole receive Report #2020-0024 for information;

AND THAT Committee recommend that Council approve the award of an engineering assignment to complete a Municipal Class Environmental Assessment Study to determine the preferred alternative with respect to rehabilitation options, and complete the detailed design and preparation of tender documents to CIMA+ in the amount of \$129,878 (plus HST).

Background:

Sulphur Springs Drive has been eroding at two locations since it was first reported in February 2016. Site 1 is located 200 meters north of Luffman Drive, and Site 2 is located 200 meters south of Orchard Hill Drive (please see Appendix A for Site Location Map). Since then, conditions have deteriorated and the road has been closed from accepting local traffic from Effingham Street.

Water's Edge Environmental Solutions Team were retained to complete a feasibility study and prepare a report with recommended rehabilitation solutions for both sites.

In the report received from Water's Edge the recommendation was to complete the restoration of both sites using an engineered reinforced slope. The scope of work for both sites included removal and replacement of the existing roadway and creek bank and reinstatement with a new two lane roadway and stabilizing the banks of the creek using steep bank grades so the roadway remained on its existing footprint. The rehabilitation involved the reconstruction of the creek banks using layers of geo-grid to provide stability, along with a 1:1 mechanically engineered slope. In addition, in order to mitigate negative impacts against species at risk it was contemplated to place riverstone at the toe of the slope to provide additional

stability while enhancing fish habitat.

The rehabilitation options provided for Site 1 and Site 2 were the preferred reinstatement techniques following consultations and discussions with both the design consultant and Trout Unlimited. The approach was considered as a soft approach which will be environmentally sustainable and provide an engineered solution that will not negatively impact the 12 Mile Creek.

Because there are residents located between the two failure sites it was contemplated that both sites would need to be restored using a staged approach. Site 1 would need to be completed before Site 2 to ensure road access to the existing properties being removed during construction.

The cost to complete the rehabilitation work at both sites was estimated at \$500,000. The approved budget in 2019 was \$250,000. Based on the recommendations in the feasibility report prepared by Water's Edge the budget was increased by \$300,000 in 2020 for a total project budget of \$550,000 (excluding applicable taxes).

In a report to Council on July 15th, 2019, (Report 2019-0031), staff recommended proceeding with the rehabilitation of both sites and restoring the roadway to its original condition. At this meeting Council directed Staff to look into the possibility of permanently closing Sulphur Springs Drive at Site 1. In order to permanently close the roadway, the Town of Pelham will need to follow the requirements under the *Ontario Environmental Assessment Act*. The purpose of the Act is to provide for the protection, conservation and wise management of the environment. In applying the requirements under the EA Act to undertakings, the EA Act identifies two types of environmental assessment planning and approval processes: Individual Environmental Assessments and Class Environmental Assessments. The Class EA establishes a process whereby municipal projects can be planned, designed, constructed, operated, maintained, rehabilitated and retired without having to obtain project-specific approval under the EA Act. (See Appendix B – Municipal Class EA Planning and Design Process Flow Chart).

Analysis:

Following-up on the request of Council, Staff prepared a Request for Proposal (RFP) for an engineering assignment to complete a Class EA study on Sulphur Springs Drive. In addition, the terms of reference in the RFP included the development of the preferred solution, completing the detailed design for the rehabilitation project, obtaining the necessary permits from approval and review agencies (such as the NPCA, NEC, MOE, and the DFO) and to prepare the tender documents and assist in

the tendering phase.

The Town received one (1) submission with respect to the above RFP from CIMA+ (Canada Inc.) located in Burlington, Ontario. The cost to complete the Municipal Class EA, complete the detailed design based on the preferred alternative, and obtain the necessary permits and approvals from the approval and review agencies is estimated at \$129,878 (excluding applicable taxes).

CIMA+ has identified the requirements to complete additional studies in order to successfully complete a restoration project at one or both sites such as a Natural Heritage Assessment, a DFO review, a Species at Risk Assessment, a Tree Inventory, Archaeological Investigation, a Cultural Heritage, Air Quality, Noise and Vibration Assessment. These additional studies were not completed by the previous consultant as part of the feasibility study. It is recommended that these actions be completed in order to successfully complete the Municipal Class EA process and to obtain the necessary permits and approvals for the successful rehabilitation of Sulphur Spring Drive based on the preferred alternative.

Due to the sensitivity with respect to the 12 Mile Creek the timing for construction can only occur (in-water) between July 1st and September 15th. In the consultant's proposal they have provided a schedule to complete the Municipal Class EA, complete the detailed design based on the preferred alternative, and obtain the necessary permits and approvals from the review agencies. It is expected that the Municipal Class EA will take approximately 6 months to complete. Further, it is expected that the permits required to complete the preferred rehabilitation from the various review and approval agencies will not be obtained in time to permit construction in 2020.

As a result, the rehabilitation of the roadway will most likely be deferred until July 1st of 2021. As a precautionary measure CIMA+ is prepared to work with Town Staff to ensure that the roadway remains open to the public and emergency services until such time that the preferred alternative is implemented.

Staff have reviewed the submission by CIMA+ and recommend awarding the assignment to complete the Municipal Class EA process, complete the detailed design, obtain the necessary permits and approvals from the review agencies and assist Town Staff with the tendering of a rehabilitation project based on the preferred alternative.

Financial Considerations:

The current approved project budget for the rehabilitation of Sulphur Spring Drive is \$550,000. The engineering assignment to complete a Municipal Class EA, perform the studies and investigations required to receive approvals from the applicable review and approval agencies, complete the detailed design based on the preferred alternative and to assist the town in the preparation of contract documents for public tendering is \$129,878 (excluding applicable taxes).

In addition, the Town may be required to complete additional geotechnical work including advancing additional boreholes at Site 2 as this exercise was not completed as part of the original assignment awarded to Water's Edge. It is estimated that the additional geotechnical work would be approximately \$15,000 to complete.

There are sufficient funds available in the 2020 Capital budget to award the above assignment to CIMA+ and complete the above works in preparation of a 2021 rehabilitation project.

The remaining budget to be carried forward in 2021 (following the engineering assignment awarded to CIMA+ and the additional geotechnical investigations) will be approximately \$405,122. Staff will prepare a follow-up report to Council with estimated costs for construction based on the result of the Municipal Class EA process and the development of the preferred alternative. If there are insufficient funds available to complete the rehabilitation works in 2021, with the available budget carried forward, a recommendation will be made to increase the project budget as part of the 2021 capital budget request.

Alternatives Reviewed:

Council may choose not to approve the works, and Sulphur Springs Drive would remain closed to through traffic. The condition of the roadway will continue to be monitored by Public Works Staff.

Strategic Plan Relationship: Risk Management

Providing an environmentally friendly engineering solution to address the roadway failure on Sulphur Spring Drive will ensure that the risk associated with negatively impacting the 12 Mile Creek and the risk associated with not providing safe access to private properties is minimized.

Consultation:

Town of Pelham Engineering Staff have consulted with representatives from CIMA+ to discuss the details of their proposal.

Other Pertinent Reports/Attachments:

Appendix A – Site Location Map

Appendix B – Municipal Class EA Planning and Design Process Flow Chart

Prepared and Recommended by:

Jason Marr, P. Eng.
Director of Public Works

Derek Young
Manager of Engineering

Prepared and Submitted by:

David Cribbs, BA, MA, JD, MPA
Chief Administrative Officer

APPENDIX A – Sulphur Spring Drive Location Map



"APPENDIX B - Municipal Class EA Planning and Design Process Flow Chart"

Figure 1-2: Overview of the Municipal Class Environmental Assessment Process

