



<b>Policy Name: By-law Enforcement Policy</b>	<b>Policy No: S502-05</b>
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Department/Division:	By-law Enforcement

## 1. Purpose

The purpose of this policy is to provide guidelines for the philosophical approach to Municipal Law Enforcement in the Town of Pelham. This document identifies a range of options to achieve compliance with Pelham by-laws, which will be adhered to by the Town's Municipal Law Enforcement Officers (MLEOs).

The goal of Municipal Law Enforcement is to achieve compliance through information, education and voluntary compliance. If this is not achievable then Pelham MLEOs will take appropriate action such as the issuance of "Orders to Comply", the issuance of an Administrative Monetary Penalty ("AMP") or the laying of charges under the *Provincial Offences Act* ("POA"), as appropriate. In certain circumstances, it will also be appropriate to enter onto private property and take action to remedy, remove or resolve non-compliance situations at the property owner's expense, in all instances pursuant to law.

MLEOs are encouraged to be compliance-focused on the objectives of the regulatory by-law and policy and to consider the most innovative, efficient and effective method of achieving compliance. A compliance-focused approach enables all citizens to better understand and comply with the rules, and to better pursue their social, economic and recreational activities in a safe, productive and responsible manner.

This policy applies to all enforcement actions taken by MLEOs, or any other staff involved in the MLEO enforcement activity. Each MLEO plays an important role in promoting compliance with the laws that protect the public interest. The Municipal Law Enforcement Policy operates collectively with existing policies and procedures that continue to support regulatory compliance and MLEO enforcement practices; and embraces a Customer Service and Problem Solving principle for resolving the issues to ensure customer satisfaction.



## **2. Policy Statement**

The Municipal Law Enforcement Department provides a proportionate compliance strategy that emphasizes health and safety above all other considerations.

Enforcement is both proactive and reactive, depending on the nature of the potential infraction and the availability of resources.

## **3. General Provisions**

### **3.1. Progressive Enforcement**

Progressive enforcement action is undertaken on an escalating continuum, starting with public education on by-law requirements to encourage voluntary compliance, progressing to warnings, and finally with notices/orders and/or commencing legal action. The foundation of a progressive investigative process is based on the following guiding principles:

- i. Complainant Communication
- ii. Reasonable, Transparent and Proportionate Enforcement
- iii. Voluntary Compliance
- iv. Investigations, Enforcement and Compliance

MLEOs must ensure that their actions and reactions are reasonable and based on legal authority, and that the measures taken are proportionate with the alleged violation. The goal is to achieve consistency in responses to non-compliance, and predictability when determining the appropriate enforcement action.

### **3.2. Public Complaints**

Public complaints are the mechanism by which the community can inform by-law staff as to the potential existence of non-compliance. In order to ensure positive relations are maintained and appropriate information is provided to the community, MLEOs shall follow the Town of Pelham Work Step Procedure guidelines in addressing public complaints. Public complaints with regard to non-parking by-law violations will ideally be submitted in writing using the Town's online Public Service Request System (PSR) or by submitting a Town of Pelham By-law Service Request Form (BLSRF). It is also recognized that complaints may initially be received by other means including by phone or email.



Informal or non-written complaints of alleged violations will not be given the same weight or priority unless the complaint pertains to a situation that could impact life safety or pose a significant threat to the natural environment.

In all cases, a complainant may be requested to sign an affidavit and/or be prepared to stand as a witness should enforcement action proceed to court.

### 3.3. Level of Service

**Reactive Service** is the dominant form of by-law enforcement in the Town of Pelham. Reactive enforcement requires complainant communications to be filed by members of the public with Town administration. Typically, formal complaints represent significant issues. Pragmatically, this is also necessary because of human resource and financial constraints on the municipality.

**Proactive Service** occurs when Pelham MLEOs conduct routine patrols. Enforcement activities in this category occur as the result of direct observation by officers, and by attending locations of frequent infractions and known incidents when time and workflow allow.

**Legislative Enforcement Service** occurs where the Town of Pelham has a statutory obligation to inspect, investigate and potentially enforce legislative requirements. Examples include, but are not limited to the *Ontario Building Code*, the *Ontario Fire Code* and Pelham's Short-term Rental Licensing By-law. Pursuant to the legislative regimes, Town staff perform duties and tasks required by the enabling legislation. Legislative enforcement typically has its own specific rules, such as guidelines on time of entry, purpose of inspection, special powers to compel co-operation and other factors.

### 3.4. Reasonable, Transparent and Proportionate Enforcement

In determining the relative significance of each contravention, the MLEO must clearly understand the applicable regulations and possible outcomes should evidence prove a violation has occurred. When a contravention has been identified, Pelham MLEOs will be guided by the following three principles in determining what will constitute an appropriate response:

1. **Health/Life Safety/Harm to Property** – this considers the seriousness of the contravention, such as the health or life safety impact on residents, or potential damage to property



2. **History** – the compliance history of the property or individual is considered with respect to previous investigations and/or violations for the same issue, and/or the seriousness of previous contraventions
3. **Intent** – the alleged violator is a repeat offender, or the evidence demonstrates that the individual knowingly contravened the by-law or was willfully ignorant or indifferent towards compliance

### 3.5. Utilization of AMPs v POA Charges

When a given situation requires enforcement action, it is the sole prerogative of the Pelham MLEO to determine which specific actions will be taken and in which forum charges, if any, shall be laid. Most Town of Pelham by-laws have been moved into the Town's administrative penalty system, thereby allowing AMPs tickets to be issued. AMPs tickets result in modest fines relative to charges issued in the POA system. For particularly serious conduct or for multiple time offenders it will be more appropriate to proceed by way of a Part III summons under the POA. Part III charges have the capacity to lead to Court Orders and fines up to \$100,000.

### 3.6. Voluntary Compliance

While the majority of residents comply with the Town's by-laws, some may be unaware of a given by-law, have difficulty understanding regulations, be in error taking the steps to achieve compliance, or simply lack the necessary resources.

Pursuant to s. 81 of the POA, ignorance of the law is not an excuse for non-compliance with Town of Pelham by-laws or provincial regulatory regimes. Although "intent" is not a required element in the prosecution of regulatory by-laws, it speaks to the penalty when a progressive enforcement process demonstrates that the defendant knowingly contravened the by-law and did not avail themselves of the opportunities presented by the MLEO.

The first step on the progressive enforcement continuum is voluntary compliance, which requires education to ensure that the offending party and the public is aware of the Town's by-laws that apply to them. This includes understanding the intent and purpose of the by-laws.

It is imperative that the MLEO exhaust all methods available to personally contact the offender (in-person, business card, telephone, email, written correspondence,



otherwise). Engaging in dialogue provides the opportunity to inform and educate the offending party to their obligations and the requirements under the Town's by-laws; and to establish a reasonable enforcement plan for voluntary compliance where appropriate.

A compliance-focused approach focuses on the objectives of regulatory law and policy and then considers the safest most efficient and most effective method of achieving compliance. This leads to an approach based on education and assistance/guidance to gain compliance, rather than solely focusing on the issuance of charges and similar enforcement action.

### **3.7. Investigations, Enforcement and Compliance**

Even with a strong voluntary compliance program in place, violations may occur and will require MLEOs to respond and conduct investigations based on complaint and risk assessment.

A risk-based focus identifies potential hazards, undesirable events, and repeat offenders and uses an understanding of the likelihood and consequences of the undesirable events (health/life safety issues) to determine the steps needed to reduce the risk. When combined with a compliance-based focus, this approach can help achieve maximum compliance effectively and efficiently.

It is important that all investigations be conducted with the notion that evidence collected may need to be presented in court or records released under the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA). Investigative procedures are followed by MLEOs, with evidence gathered in accordance with professional law enforcement standards, and the integrity of every investigation maintained at all times.

### **3.8. Prioritizing Violations**

Complaints and violations will be identified, classified and prioritized using the By-law Department's Work Step Procedure. Any allegation or situation that has the potential to threaten health and safety will be given priority.

### **3.9. Service Principles: Achieving Compliance**

The compliance strategy in the Municipal Law Enforcement Policy is dependent upon the specific circumstances of any investigation:



- a) For situations where there is **no previous history of non-compliance**, MLEOs will consider providing compliance assistance (education and negotiation) as well as progressive compliance and enforcement action where appropriate to seek voluntary compliance.
- b) For situations where there is **repeated history of non-compliance**, consider using progressive compliance and enforcement actions.
- c) For situations where there is a threat to health and safety, any appropriate action which remedies the threat is acceptable.

### **3.10. Escalated Enforcement Options**

The goal of an MLEO is to achieve compliance through information, education and voluntary compliance. If this is not achievable then the MLEO may take further enforcement action. Depending on the provisions contained within a By-law or statute, and at the discretion of the MLEO, escalated enforcement options may include the issuance of an Administrative Monetary Penalty (AMP), the laying of a Provincial Offence Notice, (PON), issuance of a Municipal ORDER, the laying of a Provincial Part III Information, or a combination of the foregoing.

The Town of Pelham has no obligation to take enforcement action with respect to every contravention of every by-law that may be occurring within its jurisdiction, allowing discretion guided by this policy. Complaints which have been reviewed by the Director of Fire and By-law Services and have been identified as retaliatory, vexatious or are insignificant in nature will or will not be acted upon, as appropriate.

### **3.11. Exception to Enforcement Philosophy: Parking Tickets**

Enforcement of parking is conducted both on a proactive and complaint basis. Parking infractions do not fall under the provisions of progressive enforcement. At the discretion of the MLEO, either a warning or Administrative Monetary Penalty notice will be issued for confirmed parking infractions.

### **3.12. Civil Action**

In rare cases it will be appropriate to proceed with enforcement activity by way of civil action, wherein a court order, mandatory order or injunction from the Superior Court of Justice is necessary to address complicated, ongoing or intractable problems. Where civil action is considered, the Town Solicitor will determine



whether and how to proceed, and will assume carriage of the file unless she/he declares a conflict on the matter.

#### **4. External Influence and Interference**

No Town employee or Member of Council shall attempt directly or indirectly to influence any MLEO or employee working within the By-law Department in the administration of his/her duties. This policy is not intended to prevent or limit the ability of Members of Council or any other person to request information about the By-law Department or its policies or procedures.

In the event that a member of Council attempts to apply undue influence upon an active investigation, enforcement staff will first explain the problem to the elected official. If the behaviour persists, enforcement staff will bring the matter to the attention of the Niagara Regional Police and/or local Crown Attorney.

#### **5. Complaints Against Town Staff or Elected Officials**

All by-law enforcement complaints filed against members of Town Council or an employee of the Town with respect to an alleged by-law infraction shall be treated in the same manner as all complaints. Care shall be given to ensure that all records in relation to a complaint against a member of Council or a Town employee remain confidential. In the event that the MLEO feels themselves to have a conflict, the matter shall be referred to the Fire Chief, the Town Solicitor or the Chief Administrative Officer, who will request the assistance and review of a MLEO from a neighbouring municipality.

#### **6. Privacy and Confidentiality**

Subject to MFIPPA, the identity of the complainant, any personal information they provide, and the complaint itself, shall not be disclosed to the alleged offender or any member of the public. The response of the alleged offender shall not be disclosed to the complainant, whether it is in writing or made orally. The complainant and the alleged offender shall be informed that this information will be kept confidential unless required by court proceedings. The anonymity and confidentiality given to complainants and alleged offenders under this policy cannot be assured if the investigation results in court proceedings.

#### **7. Policy Review**



This Policy will be reviewed at least once every Council term for necessary changes. The Chief Administrative Officer, Town Solicitor, Town Clerk or Director of Fire and By-law Services may bring forward revisions to this policy on an as-needed basis.

**8. Attachments**

By-law Work Step Procedure