

To: Safety and Facilities Services Committee

From: Tracy Adams, Chief Administrative Officer,
Office of the C.A.O.

Report Number: SF-23-09

Date of Report: March 15, 2023

Date of Meeting: March 20, 2023

Subject: Municipal Law Enforcement tools, Enforcement Approach and
Cost Recovery Efforts

Ward: All Wards

File: D-2200

1.0 Purpose

The purpose of this report is to respond to direction CORP-21-45, provide information regarding Municipal Law Enforcement's (M.L.E.) enforcement tools and areas of cost recovery.

2.0 Recommendation

That the Safety and Facilities Services Committee recommend to City Council:

That Council direct Municipal Law Enforcement to continue with a compliance-focused and risk-based enforcement approach with an emphasis on continuing and/or implementing the action items as detailed in Sections 5.3 and 5.4 of Report SF-23-09, "Municipal Law Enforcement Tools, Enforcement Approach and Cost Recovery Efforts", dated March 15, 2023.

3.0 Executive Summary

Not applicable.

4.0 Input From Other Sources

Legal Services was consulted in the preparation of this report.

The following municipalities were benchmarked in the preparation of this report:

- Clarington
- Whitby

The Town of Ajax and City of Pickering were not able to provide a response in time for the release of this report.

5.0 Analysis

5.1 Background

At the September 27, 2021 Council meeting, staff were directed to report back on a motion concerning strategies to amend administrative penalties and other fees to those creating offences, as follows:

“That the City of Oshawa adopt in principle the concept of ‘Offender Pay’ wherever possible and work on strategies to amend the Administrative Penalties and other fees to place more of the cost of enforcement and compliance on those creating offences in the City of Oshawa and to provide relief to the general property taxpayer.”

The concept of “Offender Pay” referred to the idea that offenders should pay a larger share of the enforcement costs in order to provide relief to the general taxpayer.

5.1.1 Current Enforcement Approach and Compliance

Report [CORP-21-43](#), “2021 Municipal Law Enforcement Operational Review”, dated September 8, 2021 detailed the City’s compliance-focused approach to the enforcement of municipal by-laws. M.L.E. specifically uses a two-fold approach to enforcement, focusing on both compliance and risk:

- a) M.L.E. uses a combination of proactive and complaint responses to various by-law issues, as detailed in Section 5.1.2
- b) M.L.E. has a compliance-focused, risk-based approach to obtaining compliance with by-laws through the use of a variety of enforcement “tools” along a continuum from education to more punitive measures, as detailed in Section 5.1.3

Officers are focused on customer service and whenever possible, work to gain voluntary compliance through education and warnings. Officers are guided by the objectives and overall intent of the specific by-law or legislation while using the most innovative, efficient and effective method of achieving compliance. Given their exposure in the community, Officers are ambassadors who work to promote safety and a positive image for the city.

Officers also consider risks associated with files and complaints: identifying potential hazards and undesirable events, the likelihood of reoccurrence, any history of noncompliance and consequences of continued action, while taking steps to reduce risk and promote safety. Depending on these factors, Officers may also use tools such as orders, notices and fines to gain compliance.

Whichever tools are used, M.L.E. strives to interpret, apply and enforce by-laws in a fair, consistent and reasonable manner and in accordance with the standards of Enforcement By-law 92-2014 (“Enforcement By-law”). As per the Enforcement By-law, the goal of the City’s enforcement activities is compliance with standards established by the City’s by-laws

and applicable provincial legislation employing the most efficient and effective means. The enforcement team prioritizes complaints that have health and safety implications and require immediate action while ensuring that enforcement action is proportional to the nature of the violation. Protocols are established for proactive versus complaint based files.

5.1.2 Proactive, Complaint-Based and Hybrid Approaches

Enforcement can be proactive or complaint-based or a hybrid approach (combination of the two). Complaint investigations are undertaken when a call for service is received. Proactive enforcement is undertaken when workload permits and is generally for issues that fall into one of these categories:

- Safety and well-being of the public;
- Liability risk management and due diligence;
- Address the community's/city's image;
- Property with a history of contravening by-laws;
- Relates to a similar complaint nearby.

Examples of proactive responses include:

- Animal
 - Dog running at large;
- Property
 - Apartment building audits;
 - Use of alcohol or barbecues in parks;
 - Business (includes Residential Rental Housing Licensing and Short-Term Rental), Property (e.g. Lodging House) and Vehicle-for-Hire Licensing;
- Parking
 - Parking in front of fire hydrants;
 - Parking vehicles where they overhang the road or sidewalk;
 - Interfere with snow clearing and no parking on the street between 2:00 a.m. to 6:00 a.m.;
 - School zone safety and parking enforcement.

M.L.E. has resources dedicated to proactive enforcement of downtown parking in an effort to ensure a continual turnover of available parking spaces for downtown customers and to ensure compliance with the Municipal Parking System.

A hybrid approach may result when an Officer is responding to a complaint but also undertakes proactive enforcement of similar issues in the nearby vicinity of the complaint.

Additionally, special projects are also undertaken and are generally initiated on a seasonal basis. They are intended to address contraventions before they become larger issues that generate complaints from the public.

Examples of the various by-law violations and typical enforcement approaches utilized are listed in **Table 1**.

Note:

- **Primary Enforcement Approach** – refers to how enforcement is generally undertaken. Notwithstanding this, M.L.E. may undertake periodic proactive enforcement projects to address by-law compliance concerns.
- **Secondary Enforcement Approach** – refers to a subsequent enforcement approach to address a by-law compliance concern. For example, if an Officer is investigating a Lot Maintenance complaint and notices a Fence and Sight Triangle issue, the Officer will proactively address the Fence and Sight Triangle issue.
- These are examples of the enforcement approach typically used; however, enforcement of most by-laws may include complaint or proactive responses and may also involve special project responses.

Table 1 Examples of Typical Enforcement Approaches

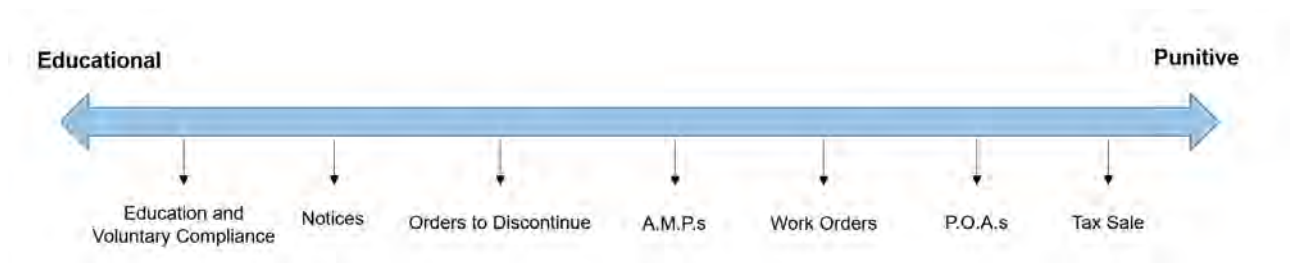
	Primary Enforcement Approach	Secondary Enforcement Approach
Property-Related By-law Enforcement	Complaint - Examples: <ul style="list-style-type: none"> • Adequate Heat • Boulevard • Fence and Sight Triangle • Licensing • Lot Maintenance • Noise • Nuisance • Pool Enclosure • Property Standards • Refuse • Signs • Site Alteration • Zoning and Use 	Proactive - Examples: <ul style="list-style-type: none"> • Nuisance • Parks • Licensing • Lot Maintenance
Parking-Related Enforcement	Complaint and Proactive (based on violation)	
Animal-Related Enforcement	Complaint – Examples: <ul style="list-style-type: none"> • Animal Welfare • Bite/Aggressive • Injured – Domestic/Wildlife • Prohibited • Running at Large • Stoop and Scoop • Unlicensed 	Proactive – Examples: <ul style="list-style-type: none"> • Running at Large

5.1.3 Compliance Tools

There are a number of compliance tools that the City and Municipal Law Enforcement Officers (M.L.E.O.) have available which range from educational to punitive (e.g. education, notices, Administrative Monetary Penalties (A.M.P.s), Remedial Orders, Fees,

and Provincial Offences Act (P.O.A.) Charges) (see **Figure 1**). The compliance tools available to M.L.E.O. are also detailed in report [CNCL-20-123](#) "Municipal Enforcement and Judicial Processes for Certain Bylaw Violations".

Figure 1 Compliance Tools



Note: there are additional court processes (e.g. injunctions, prohibition orders, etc.), that may be considered in special circumstances.

a) Education and Voluntary Compliance

- Educating the public on municipal standards is an important tool for Officers to achieve voluntary and lasting compliance considering that in many instances, the non-compliant individual may not be aware of the standard that they are contravening.
- Education may take the form of Officers speaking to the non-compliant individual, issuing a verbal or written warning, and educating the public through community engagement events and making information available on the City's website.

b) Notices

- Notices outline the contravention(s) and prescribe a date when compliance is required by.
- When there is non-compliance with a notice, M.L.E. proceeds with the P.O.A. court processes to address the matter in front of a Justice of the Peace.

c) Orders to Discontinue

- If an Officer believes there has been a by-law violation or one is continuing to occur, they may issue an Order to Discontinue.
- The order sets out the particulars of the contravention and the date by which compliance is required.
- Failure to comply may result in the issuance of A.M.P.s or initiating court processes under the P.O.A.

d) Administrative Monetary Penalties

- An A.M.P. is a monetary penalty imposed directly by the City through an administrative process rather than a judicial one. A.M.P.s are intended to encourage

compliance with a by-law without the threat of more serious administrative action (e.g. a P.O.A. charge).

- There are regulatory limits to how a municipality can establish A.M.P.s. The Municipal Act O. Reg. 333/07: Administrative Penalties states that penalties shall not be punitive in nature, nor exceed the amount reasonably required to promote compliance.
- The City's A.M.P. amounts take into consideration the severity of the infraction, meaning that for by-laws and violations that are considered higher risk or where violations may have greater impact, the penalty amounts have been set accordingly.
- Additionally, A.M.P. amounts have historically been established with consideration given to the direct and indirect cost associated with issuing the A.M.P.
- The City also uses tiered and escalating A.M.P.s, where the penalty amount is increased every time an A.M.P. is issued for the same offence within a certain period in order to deter repeat offenders.
- The City's highest non-parking A.M.P. is \$500. A.M.P.s in other by-laws typically range from \$75 and \$350.
- The A.M.P. program is administered "in-house" and penalties are directly payable to the City, rather than through a more laborious P.O.A. court system, where only a portion of the fine amount is received by the City.
- Confirmed and unpaid non-parking A.M.P.s are sent to a Collection Agency, Small Claims Court, or are added to a violator's tax roll.
- Confirmed and unpaid parking A.M.P.s are required to be paid as part of the Provincial licence plate renewal process.

e) Work Orders

- Work orders are a tool frequently issued in relation to violations of the Property Standards By-law and other Municipal Act by-laws (e.g. Fence and Sight Triangle and Lot Maintenance).
- They outline specific work the property owner must undertake in order to meet all applicable standards of the by-law they contravened.
- When there is non-compliance with a work order, the City may undertake the corrective work and invoice the property owner. This invoice includes fees such as contractor time, materials, disposal costs, equipment costs, etc. It also includes costs related to having the Officer on-site during the remedial work and the associated City burden rates. If the invoice remains unpaid, it can be added to the tax roll.

f) Provincial Offences Act, R.S.O. 1990, c. P. 33

- A P.O.A. fine is a criminal or quasi-criminal proceeding after a determination of guilt, where fines are intended to punish offenders. The P.O.A. is provincial legislation that sets out the rules for the enforcement of municipal by-laws and provincial statutes.
- Part 1 of the P.O.A. is used for minor offences when there is a desire to not proceed through the A.M.P. process, with maximum fines of \$1,000.

- Part 2 of the P.O.A. is used for parking infractions; however, the City now uses A.M.P.s to enforce the Traffic By-law 79-99 and no longer issues Part 2 P.O.A. offences.
- Part 3 P.O.A. proceedings are commenced for matters that are more serious, or for repeat offenders (e.g. non-compliance with a Property Standards Order).
- Part 3 proceedings are used to seek higher penalties, and can charge an individual up to \$100,000 depending on the enabling legislation of the by-law contravened. Part 3 penalty amounts are at the discretion of the presiding Justice of the Peace/Judge.
- The City has a memorandum of understanding with the Region of Durham regarding the City’s use of their staff and courts. All fines from P.O.A. convictions are paid directly through the Region’s fine payment system and a percentage of those fines are remitted back to the City in monthly reports.

5.1.4 Provincial Regulator’s Code of Practice

The Province of Ontario has a “Provincial Regulator’s Code of Practice”, which provides a set of principles that establish expectations for the carrying out of regulatory duties by provincial ministry regulators. It is focused on compliance and education, and incorporates risk assessment in order to prevent and address issues. The Code encourages proactive approaches to compliance “based on prevention by communicating expectations, providing compliance assistance, information, guidance, education or other tools [...] to facilitate compliance”. The tools are applied “in a manner that is proportionate to the circumstances, based on a compliance continuum”. While the Provincial Regulator’s Code of Practice applies only to provincial regulatory agencies, the best practices within the Code are consistent with the approach currently utilized by M.L.E.

5.1.5 Municipal Benchmarking

Staff reached out to the enforcement groups at Region of Durham lakeshore municipalities to confirm the enforcement approach employed at their municipalities. The results of the benchmarking scan are found in **Table 2**.

Table 2 Region of Durham Lakeshore Municipality Benchmarking

Municipality	Approach
Ajax	Response was not received in time for the release of the report.
Clarington	<ul style="list-style-type: none"> • Education and compliance-focused. • Enforcement may be escalated for repeat offenders. • Generally reactive and complaint-driven, although some aspects (e.g. safety issues and school parking enforcement) are addressed proactively
Pickering	Response was not received in time for the release of the report.
Whitby	<ul style="list-style-type: none"> • Education and compliance focused. • Some circumstances may be addressed with an immediate charge (e.g. repeat offenders or high-risk issues).

Municipality	Approach
	<ul style="list-style-type: none"> • Generally reactive and complaint-driven, although some aspects (e.g. health, safety and emergency matters) are addressed proactively.

5.1.6 Cost Recovery Limitations

The primary objective of M.L.E. is to achieve compliance with municipal standards to ensure public health and safety, consumer protection and nuisance control. A full cost recovery approach is not consistent with a compliance-focused objective of achieving voluntary compliance whenever possible. Furthermore, specific to A.M.P.s, Provincial O. Reg. 333/07 establishes reasonable limits for penalty amounts in that the amount of an A.M.P. “shall not be punitive in nature [and] shall not exceed the amount reasonably required to promote compliance with a designated bylaw”.

In addition, a full cost recovery model is not achievable as, per Report CORP-21-43 “2021 Municipal Law Enforcement Operational Review”, approximately 42% of enforcement files are closed with no violation and a number of services are offered that do not result in a fee or fine. A detailed breakdown for parking and animal related files by resolution can be found in Report INFO-22-102 “Municipal Law Enforcement and Licensing Services 2021 Annual Report”. For example:

- Sick or injured wildlife;
- Compliance achieved through education;
- Apartment Building Audits (note: A.M.P.s and/or P.O.A. charges may be issued for violations and non-compliance. Additionally, work orders may be issued and should the work be conducted by the City or its contractors, the property owner is invoiced for related costs);
- Proactive educational campaigns (e.g. Parks patrols, coyote awareness and dogs running at large);
- Found animals when owner is not able to be located;
- Uncollectable non-parking fines (e.g. unable to locate individual, etc.);
- Officer and staff time spent at screenings, hearings and court proceedings (this associated time varies based on each case);
- Administrative functions;
- Policy research and by-law creation and amendments;
- General by-law inquiries.

Furthermore, education and compliance are the first tools of choice for M.L.E.O. If compliance is immediately achieved and the offender has no history of that violation, A.M.P.s and/or P.O.A. charges would be inappropriate. Additionally, when a penalty or fine is issued, and subsequently appealed, the final amount of the penalty or fine amount is subject to the discretion of the relevant judicial or appeal systems (e.g. Screenings or Hearings Officer, Justice of the Peace, and/or Judge). The amount of the final penalty may not cover the enforcement costs associated with investigating and issuing the penalty.

Enforcement costs may be recovered through the work order process whereby the City undertakes remedial work on a property owner’s behalf, at their expense, after failing to

comply with a work order issued pursuant to a by-law (e.g. Lot Maintenance By-law). The following by-laws use work orders as a compliance and cost recovery tool:

- Boulevard By-law 136-2006;
- Dust and Mud Control By-law 64-2020;
- Fence and Sight Triangle By-law 23-2014;
- Fouling of Highways By-law 65-2020;
- Fortification By-law 103-2005;
- Lot Maintenance By-law 127-2007;
- Pool Enclosure By-law 79-2006;
- Property Standards By-law 1-2002;
- Responsible Pet Owner's By-law 14-2010;
- Site Alteration By-law 85-2006;
- Unauthorized Parking By-law 97-2009;
- Waste Collection By-law 113-2008;
- Winter Access By-law 92-2009.

Additionally, standards in the Responsible Pet Owner's By-law 14-2010, as amended, and the Pounds Act, R.S.O. 1990, c. P.17 allow the City to charge animal owners any veterinarian fees the City incurred when retrieving and/or attending to their pet. There are also additional fees levied at the time of claiming the animal, including impound and board fees.

5.2 Current Projected Level of Cost Recovery

The current projected level of cost recovery is approximately 43% based on the approved 2023 Operating Budget. More specifically, the total cost of M.L.E.L.S.' program is approximately \$5.6 million with an estimated recovery of \$2.4 million in revenue from penalties, fines and licensing revenue and other recoveries.

5.3 Steps Towards Greater Cost Recovery

Increased education and communications with residents in conjunction with community outreach have helped to increase voluntary compliance. Additionally, staff have implemented a number of improvements in recent years to increase the cost recovery of enforcement activities and decrease the burden on taxpayers:

- Tiered and escalating A.M.P. to address and deter repeat offenders;
- New A.M.P.s added to a variety of by-laws;
- Implemented increased and consistent application of Hearing Officer fees;
- Implemented increased and consistent application of exemption request fees;
- Lean reviews to implement efficiencies in various administrative processes, hours of work and the continued improvement of technology;
- A focus on determining licence fees based on the cost of administering the licence;
- An enforcement-focused approach to sidewalk snow and ice removal as well as winter parking.

Staff recommend continuing to explore opportunities to increase cost recovery while maintaining a balanced approach to enforcement, including reviewing existing communication tools (e.g. pamphlets, flyers, etc.) to ensure robust communication efforts to promote education and voluntary compliance.

The following subsections provide greater detail on recent steps taken to improve cost recovery and propose various recommended actions to continue improving cost recovery within Municipal Law Enforcement and Licensing Services (M.L.E.L.S.).

5.3.1 Establishment and Review of Licensing Fees

With regard to the establishment and review of licensing fees, staff have taken a focus on ensuring licensing fees contemplate the cost of administering the licensing system (e.g. direct and indirect costs, including staff time, cost of vehicles, general overhead costs including training and uniforms, etc.). This applies to both new and existing licensing systems.

Recommended Actions:

- As part of the Licensing By-law Review in 2023, staff will reassess licensing fees to ensure they are still sufficiently covering costs.
- Staff will continue to incorporate the cost of general enforcement into the estimated cost recovery models when determining new licensing fees.

5.3.2 Tiered and Escalating AMPs and General Review of AMP Amounts

Actions taken related to A.M.P.s include:

- Recently updating A.M.P.s amounts;
- The introduction of A.M.P.s to various by-laws that previously relied solely on P.O.A. processes in order to increase efficiency and cost recovery;
- The introduction of a system of tiered and escalating A.M.P.s to deter repeat offenders;
- A recent review of the approach to Winter Access By-law enforcement resulted in a shift away from issuing warnings. Instead, in most cases an A.M.P. with a penalty amount is issued followed by subsequent tier increases for additional violations pursuant to the process for the issuance of tiered and escalating A.M.P.s. This is in addition to any invoices that are issued should City staff need to attend the property to clear the snow and/or ice if the violation persists after a notice of violation is given.

Recommended Actions:

- Continue to reassess A.M.P. amounts as appropriate in the future, recommending any amendments to Council;
- Continue to consider the inclusion of tiered and escalating A.M.P.s to future by-laws, where appropriate.

5.3.3 City's Website

As noted, education and communication is a key factor to compliance. To help educate residents and visitors about Oshawa's standards, the following action has recently been undertaken with regard to the City's website:

- Recent review of webpage content to ensure accuracy and ease of access to information;
- Recent modernization of the City's Business Licensing webpage to ensure greater ease of access and clarity to the City's licensing requirements; and,
- There has been a focus on making more licence applications and forms available online to promote easier compliance and increased convenience to property, business, and pet owners.

Recommended Actions:

- Continue to ensure webpages related to by-law compliance and licensing provide clear information;
- Continue to strive to promote easy, convenient compliance through online applications.

5.3.4 Officer Inspection Fee (General Fees and Charges By-law 13-2003, as amended)

M.L.E. has the ability to charge an Officer Inspection Fee, in the amount of \$110, which is currently charged in relation to on-site property remedial work, in addition to the costs incurred for the contracted service to complete the remedial work ordered by M.L.E.O. which was not complied with by the Property Owner. This fee is intended to recover the costs associated with having the Officer and the vehicle on-site due to non-compliance.

This fee is invoiced in addition to any A.M.P.s issued related to the violation or the non-compliance with the work order.

There may be the possibility of expanding the use of this fee; however, given the novelty of the tiered and escalating A.M.P. system, staff recommend assessing this in the future. At this time, the number of repeat offenders is not yet known and the implications of the tiered and escalating A.M.P. system have not yet been fully realized. Before considering the implementation of additional fees, it is desirable to first see the impact of the tiered penalty system in deterring repeat offenders and the implementation of future continuous improvement and technological solutions.

Recommended Action:

- Staff will continue to assess the implications of tiered and escalating A.M.P.s as well as the potential expanded use of the Officer Inspection Fee in relation to repeated excessive or unnecessary attendance by Officers to a property for continued non-compliance.

5.3.5 Updates to the Property Clean-up Invoicing Process

Invoices for property-related clean-ups associated with work orders issued by M.L.E.O. currently apply a set fee to recover some costs associated with M.L.E.O. time. This is in addition to the costs incurred for running a title search prior to undertaking remedial work to confirm ownership, and the costs incurred by the City from the contracted service doing the remedial work. The City could potentially better recover costs by shifting to a process that charges an hourly rate for the time spent by the M.L.E.O. and their City vehicle on-site in relation to the remedial work and by including an administrative overhead cost for the administrative time spent addressing the file. This would enable the City to better recoup the extra costs associated with having to undertake remedial work for a property owner's failure to comply with a work order.

Recommended Actions:

- Update the Officer charge for cleanups to be an hourly charge as part of the remedial work invoicing process;
- Include the hourly rate for City vehicles at the clean-up as part of the remedial work invoicing process;
- Apply the City's approved burden rate to all remedial work invoices.

5.4 Proposed Next Steps

Staff have identified a number of recommended actions for Council's approval to assist with increasing compliance, deterring repeat offenders, and improving cost recovery, including the continuation of:

- The existing enforcement approach as detailed in Section 5.1 of this report;
- Reviewing new and existing licensing fees with cost recovery in mind (Section 5.3.1);
- Reviewing new and existing A.M.P. amounts and the use of tiered and escalating A.M.P.s with cost recovery and deterrence as a focus (Section 5.3.2);
- Reviewing and updating content on the City's website to ensure information is clearly presented and applications are conveniently available online, where appropriate (Section 5.3.3);
- Assessing the implications of tiered and escalating A.M.P.s as well as the potential expanded use of the Officer Inspection Fee in relation to excessive or unnecessary attendance by Officers to a property for continued non-compliance (Section 5.3.4);
- Implementing changes to the invoicing process for property clean-ups related to remedial work orders to account for staff and equipment time, as well as the applicable burden rate (Section 5.3.5).

6.0 Financial Implications

There are no financial implications related to the recommendation in this report.

7.0 Relationship to the Oshawa Strategic Plan

The recommendations in this report relate to the following Oshawa Strategic Plan Goals:

- 4.1 Economic Prosperity and Financial Stewardship
- 4.2 Accountable Leadership
- 4.3 Social Equity



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