



# The Corporation of the Town of Milton

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Report To: Council

From: Meaghen Reid, Director, Legislative & Legal Services/Town Clerk

Date: March 25, 2024

Report No: CORS-011-24

Subject: Administrative Penalty System (APS) Program Expansion

Recommendation: THAT staff be directed to proceed with the expansion of the Town's Administrative Penalty System (APS);

AND THAT staff be directed to bring forward the necessary by-law for consideration at a future Council meeting, following consultation on the draft proposed by-law, included as Schedule A to this report;

AND THAT the policies attached to this report in Schedules B to G be adopted, upon enactment of the APS by-law, and be incorporated into the Town's Corporate Policy Manual;

AND THAT the necessary additional staffing resources be approved to implement and successfully maintain the program outlined in this report and to support future programs such as License Plate Recognition Software and Automated Speed Enforcement;

AND THAT a new funding transfer from the Tax Stabilization Reserve to the operating budget be approved for 2024 in an estimated amount of \$94,102 in order to implement the program, and that the estimated annual net annual cost of \$108,636 be considered as part of the 2025 Budget process.

AND THAT the new administration fees as set out in this report be approved and included in the Town's User Fee By-law at the next available opportunity.

## EXECUTIVE SUMMARY

The purpose of this report is to obtain Council approval to expand the Town's Administrative Penalties System (APS) that is currently in place for parking offences and parking penalty dispute resolution (or adjudication). Staff recommend that the Town proceeds with the expansion of this program to implement an Administrative Penalty



## EXECUTIVE SUMMARY

System (APS) for non-parking related offences, as outlined as Phase 1 in this report. The implementation of this first phase of the APS expansion will support the implementation of future programs, including license plate recognition software and automated speed enforcement (ASE).

Expanding the APS program to include administrative penalties and a dispute resolution process for the Town's enforcement of regulatory by-laws will transfer a significant number of by-law offence dispute hearings from the Provincial Offences Court to the Town's established APS program with the use of Screening and Hearing Officers.

APS provides faster resolution process for the public, more efficiencies for staff and will significantly promote compliance with Town by-laws. The APS dispute resolution process includes a Screening Officer's initial review of a disputed penalty infraction notice. If the matter cannot be successfully remedied through the Screening review process, a Hearing Officer may further review infraction notices upon request of the individual charged. The Hearing Officer has final and binding authority over the matter.

In order to proceed with the implementation of an APS program for non-parking penalties, the following is required in advance of the expansion of this program:

- A draft by-law has been presented for Council's review and, following consultation, staff will bring forward a final by-law for Council's consideration at a future meeting.
- Required policies, already in place with the existing APS program, have been reviewed and updated with necessary, minor amendments to reflect current practice and provide greater clarity. Staff recommend that the policies set out in Schedules B to G be adopted and replace the policies that were introduced through Staff Report [CORS-044-21](#).
- Additional staffing resources will be required and new user fees will need to be approved. The expansion of the APS program to non-parking matters is expected to result in a net annual cost to the Town of \$108,636, as outlined in this report. It is recommended that the incremental new cost for 2024 be funded from the Town's Tax Stabilization reserve, and that the full annual cost be considered as part of the 2025 Budget process.

## REPORT

### Background

Administrative Penalties are, as the name suggests, penalties imposed administratively by regulatory authorities to promote compliance with regulatory laws where there has been non-compliance. Administrative Penalties are distinct from fines and other sentencing provisions, which are imposed by courts for offences after a conviction. Administrative Penalties are not intended to punish an offence, but solely to promote compliance.

Administrative Penalties have long been used in the regulatory sector. However, they are a relatively new compliance tool for municipalities. In 2006, the Province introduced Administrative Penalties into the Municipal Act for parking contraventions. More recently, in 2017, section 434.1(1) was introduced, which 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 that Act. In addition, a person cannot be charged with an offence and issued an Administrative Penalty for the same contravention.

The Town began to introduce Administrative Penalties by first establishing an APS parking program. On February 1, 2022 the Town implemented the APS parking program to aid in the management of parking infraction notice disputes. To date, the APS parking program has increased efficiencies and expedited dispute resolutions.

Since the Town's introduction of the APS program for parking infraction dispute resolution (Screening and/or Hearing review), the average time to resolve a parking dispute is 17 days. Through POA proceedings previously, parking ticket resolutions were heard within 120 to 160 days of receiving the infraction notice. A review of the program, since it was introduced, shows that the cost of the program has been fully recovered by the associated fees charged, as projected through the initial business case.

Currently, the only way to address non-parking contraventions is through the Provincial Offences Act (POA). Currently, the dispute resolution process can take 6-8 months for less serious matters and can take 18 months or more for more serious matters due to limited court resources and delays, including defense delays. These delays and reduced systemic capacity are occurring at a time when the Town is experiencing increased enforcement pressures due, in large part, to serious contraveners who have financial incentives to prolong contravention as long as possible. In this context, delay in and of itself, assists in encouraging contravention.

As discussed further in this report, the expansion of the APS program to all regulatory by-laws will bring more expeditious resolution of by-law compliance matters in a fair and accessible manner, create a new and effective tool to promote compliance, and alleviate the burden on our over-strained court system.

The APS program expansion will also set the stage for future projects that will result in further efficiencies and enhancements to the Town's APS programs and priorities. Below are the anticipated phases of the full APS program expansion:

- Phase 1: APS expansion to regulatory by-laws (non-parking matters, as outlined in this report)
- Phase 2: Introduction of license plate recognition software
- Phase 3: Automated Speed Enforcement

## Discussion

As experienced with the Town's current APS program for parking offences, the expansion of the Town's APS program to include regulatory by-laws would allow for the opportunity to better manage disputes in a more timely and effective manner, while also encouraging compliance with municipal legislation.

Expanding the existing APS program has several benefits, which include:

- Improving service excellence.
- Enhancing staff efficiencies and effectiveness.
- Expedited and fair dispute process for customers.
- Easing the dispute resolution burden in the provincial court system.

In designing the Town's proposed non-parking APS program, Town enforcement staff have reviewed and spoken with enforcement staff from other municipalities about non-parking APS programs. These comparator programs have generally used administrative penalties to address minor matters that otherwise would have been issued charges under Part 1 of the Provincial Offences Act. While there will likely always be some matters that are best suited to bringing charges under the Provincial Offences Act, the Town of Milton's proposed non-parking APS program offers a program that is intended to provide a fair and effective approach for encouraging by-law compliance in both major and minor cases of non-compliance.

### Current experience with the court system

Currently, when a Municipal Law Enforcement Officers initiates POA charges for contravention of municipal by-laws (other than parking offences), voluntary payment and trial disputes are managed through Halton Court Services. The Town shares, with the City of Burlington, one half-day of scheduled court time per month when judicial resources are available- roughly 1.5 hours of court time. This is down 50% from pre-Covid-19 pandemic levels, where the half-day of the Town's court time was not shared. During these dates, procedural issues are addressed, guilty pleas may be entered and short trials take place. Halton Court Services requires that longer trials receive at least one judicial pre-trial before scheduling a trial, which can take 3-4 months to schedule due to limited judicial resources. Similarly, any pre-trial motions can also take several months to schedule. As a result, while simple matters can generally be tried during the Town's ¼ day per month, longer matters can take 18 months or more, risking dismissal under 11b of the Charter (one's right to a fair and speedy trial).

In 2022, Halton Court Services reported that, given the ongoing impacts of the pandemic, the backlog in matters set for trial and lack of judicial resources delays are expected to continue into future years. Even in 2024, this remains a very real issue. For instance, as recently as March 1, 2024, an entire court day was cancelled due to lack of judicial resources, and multiple Town matters were postponed.

## Discussion

The Town's proposed APS program for regulatory by-laws (non-parking matters) would relieve the pressure on the POA court and allow the Town to focus its limited court time on matters that must be heard in that venue.

Should the Town expand the APS program for non-parking matters, the POA court system is still available should the need arise to address the more serious offences. The POA court system may be deemed appropriate in some cases due to the following: POA maximum fines are significantly higher than the Town's proposed Administrative Penalties; additional enforcement powers of the Court may be required (such as prohibition orders or probation orders); or the stigma of conviction is needed. In addition, certain types of contraventions can only be dealt with through the POA system, such as Zoning By-Law matters or certain Building Code Act and Fire Protection and Prevention Act matters.

### **Key Features of the Expanded APS Program for Regulatory By-laws (Non-Parking Matters)**

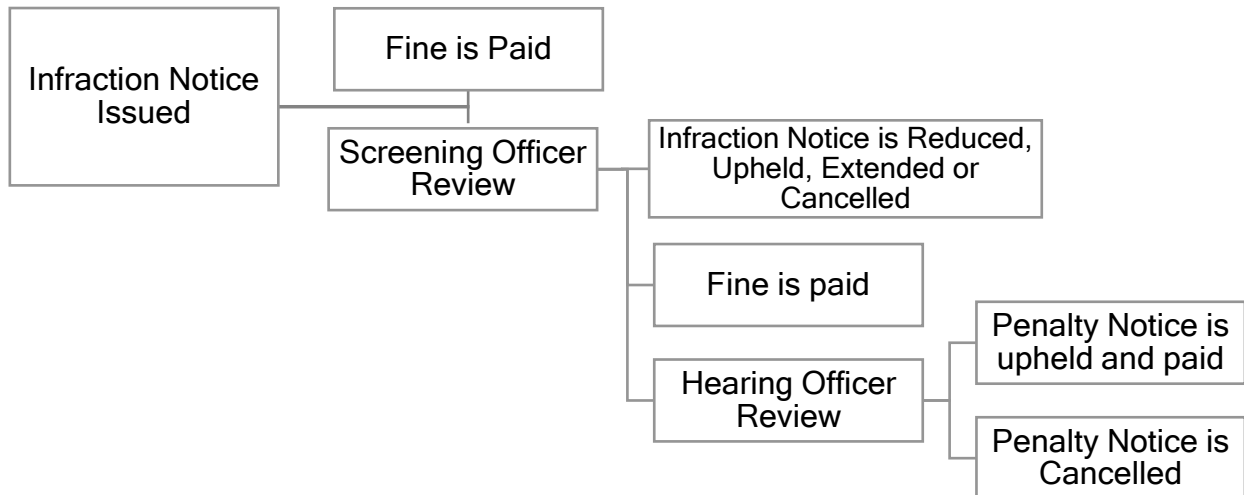
#### **1. Process and Review by Screening or Hearing Officers**

When a penalty infraction notice is issued by a Municipal Law Enforcement Officer in the APS program, a person can pay the penalty within 15 days or choose to dispute the penalty notice. If the dispute process is selected by the individual, then the individual can book a screening appointment to meet with a Screening Officer to have a screening review conducted. The Screening reviews can take place virtually for customer convenience and are scheduled online via the Town's webpage.

The Screening Officer has the authority to 1) reduce penalties, subject to a test that takes into account efforts at compliance and other relevant factors to assess whether a lesser penalty would be sufficient to encourage compliance, 2) provide extended time to pay a penalty or 3) cancel the penalty where the Screening Officer determines no contravention occurred. If a person is not satisfied with the decision of the Screening Officer, they have the option to request a Hearing with the Town-appointed Hearing Officer. A Hearing Officer will adjudicate matters and will make a final and binding decision about the penalty infraction notice.

The APS process is illustrated below:

## Discussion



## 2. Penalties

Staff have conducted a jurisdictional scan within the Region of Halton and neighbouring municipalities. Following a review of these comparator municipalities, many municipalities have standard amounts for penalties that differ depending on by-law being enforced. It is Town staff's understanding that these municipalities generally use Administrative Penalties for lesser or minor contraventions where they would normally have issued a Part 1 certificate of offence and continue to issue Part 3 charges for more serious contraventions.

There is nothing in the Municipal Act that restricts Administrative Penalties to minor contraventions, and the Province itself uses administrative penalties for major contraventions. For example, under Environmental Protection Act Regulation 222/07, penalties can be up to \$100,000 per day, and can exceed this amount where the contravention resulted in monetary benefits to the contravener.

In staff's view, there is a real need to address both major and minor contraventions in the Town's proposed APS system for regulatory by-laws (non-parking matters), as the Town is experiencing increased enforcement pressures due in large part to serious contraveners who have financial incentives to prolong contravention as long as possible and are treating the delays in the POA system as licence to continue to operate illegally.

Considerable attention has been spent on developing a system of penalties that will provide appropriate incentives to promote compliance over a variety of violations that range in gravity. In developing this system, particular attention was paid to (a) the manner in which by-laws are enforced and the characteristics typical of less serious vs. more serious contraventions witnessed by Town enforcement staff.

## Discussion

Historically, POA charges are a last resort for enforcement staff, with a first step generally being a written or verbal notice of non-compliance, and if practicable, direct engagement to further encourage compliance. Where these steps are unsuccessful or in the judgment of Town enforcement staff of little utility (such as in cases that require immediate action, cases where there has already been a history or non-compliance or where the nature of the contravention suggest that voluntary compliance is unlikely), enforcement staff may proceed to issue orders (depending on the by-law) or charges.

Typically, less serious contraventions are single events (such as a loud parties contravening noise by-laws) or ill-advised actions that are responsive to enforcement staff's efforts to encourage compliance (such as boulevard encumbrances). More serious contraventions tend to be ongoing in nature, unresponsive to efforts by enforcement staff to encourage voluntary compliance and unresponsive to orders. In Town enforcement staff's experience, there is a growing number of these contraventions, which take advantage of the financial incentives of non-compliance and the delays associated with POA enforcement. For instance, an illegal short-term rental, operating without a license, may financially benefit from continuing to operate as long as possible.

Based on their experience, Town staff have developed an APS system that (a) varies the penalty based on the type of contravention; (b) provides graduated penalties; (c) takes into account whether the contravention is ongoing or continuing and (d) offers opportunities for penalty reduction where efforts at compliance have been made. Key features include:

1. **Penalties Amounts:** penalties are set at levels Town enforcement staff believe are needed to encourage compliance:
  - a. on first contraventions range from \$200 - \$400 per day on most contraventions, with higher penalties (\$300-\$500 per day) for more serious types of violations such as contraventions of orders, operating without a license and similar contraventions.
  - b. penalties escalate on second and third (or more) contraventions, where Penalty Notices were previously issued for the contraventions (and not cancelled by a Screening or Hearing Officer).
  - c. penalties on third contraventions range from \$800 - \$2,000 per day for the most serious types of contraventions, such as contravening a site alteration order.
  - d. the graduated system of penalties reflects the need to increase penalties to promote compliance where prior penalties have not been sufficient to do so.
  
2. **Continuing Contraventions:** where the contravention continues or is ongoing (for instance operating without a licence or failing to comply with an order) the penalties apply for each day the contravention occurs or continues. This ensures that compliance continues to be incentivised and that a penalty is not treated as a mere



Discussion

licence fee for illegal activities. In the Town enforcement staff’s experience continuing contraventions most often occur where there are strong financial incentives to operate illegally, such as operating an illegal dump site in return for “tipping fees”, contrary to the Town’s Site Alteration By-Law.

- 3. Penalty Reduction: all penalties can be reduced by as much as 75% to the minimum penalties set out in each by-law, upon review by a Screening or Hearing Officer, where the Screening or Hearing Officer, determines based on a review of the relevant factors that a lesser penalty is sufficient to promote compliance. In making this assessment, a Screening or Hearing Officer is required to take into consideration whether compliance has been achieved or significant efforts toward compliance are being made, as well as any financial benefit received by the requestor as a result of non-compliance.

The ability to seek a fine reduction on review serves two important roles (a) it allows a Screening Officer or Hearing Officer to ensure the amount of the fine is appropriate, and (b) it creates yet another incentive promoting compliance.

New User Fees

In addition to existing user fees associated with the current APS program, new administrative fees are recommended to be established as follows for expansion of the APS program:

Table with 3 columns: Fee, Description, Amount. Rows include Adjudgment fee (\$1111.00), Service by registered mail (\$21.00), Service by standard mail (\$10.00), Corporate search (business) (\$143.00), and Parcel Assessment Search (terraview) (\$134.00).





## Discussion

The above fees have been set to recover costs associated with administration procedures undertaken by Town staff, as part of the APS program. The rationale for the calculated fees has been validated through a market scan of similar fees of neighboring municipalities, where possible. Staff recommend that the administrative fees be approved through this report and added to the Town's User Fee By-law at the next available opportunity where they will be subject to annual inflationary increases to ensure the fees continue to recover the cost of the service provided. These fees will only be applicable following approval of the APS Expansion By-law. Other administrative fees associated with this program such as fees for late payment, nonsufficient funds and failing to appear are already included in the Town's User Fee By-law.

## Staffing Resources

Additional staffing resources are required to support the administration of the APS program expansion. Staff are seeking approval for the following FTE positions:

**Screening Officer:** It is recommended that the part-time Screening Officer position be increased to a full-time position to support the regulatory program expansion and future opportunities for expansion, such as future phase of the APS program ie. Automated Speed Enforcement. The Town currently has one full-time Screening Officer that is working at full capacity conducting screening reviews for the parking program. An additional, part-time screening officer supports the remaining unscheduled parking infraction notice screening reviews. When compared with the previous year in 2022, scheduled screening review appointments have increased 18% in 2023. It is expected that this additional 0.5 FTE will be required to support additional screening appointments for regulator by-law contraventions.

**Coordinator, Administrative Penalty System:** It is recommended that one (1) full time equivalent (FTE) complement be introduced for an APS Coordinator, in order to move forward with implementation plans for the APS expansion program effective date. The Coordinator role provides APS parking and non-parking program support focusing on the review and authorization of infraction notices by certifying infraction notices that are sent through future, enhanced electronic processes. This position will later support future phases of the expanded APS program, such as Automated Speed Enforcement (ASE).

## Financial Analysis

As shown in the table below, expanding the APS program to non-parking infractions (Phase 1 of the APS program expansion) is expected to result in a net cost to the Town of \$108,636 per year. Moving the dispute process under the Town's APS program will result in increased staffing costs, largely related to the Coordinator position required to support both the APS expansion program and future APS projects. The increased costs will be partially offset by reduced legal expenses and increased revenues associated with increasing penalties for certain infractions.



**Discussion**

	<b>POA</b>	<b>APS</b>	<b>Variance</b>
Staffing Costs			
<i>Coordinator 1 FTE</i>		112,890	
<i>Screening Officer 0.5 FTE</i>		45,633	
Hearing Officer		2,128	
Legal expenses re: prosecution	37,392	-	
Visa/MC Charges		853	
<b>Total Expenses</b>	<b>37,392</b>	<b>161,627</b>	<b>124,235</b>
Incremental Penalty Fees		12,000	
Administrative Fees		3,476	
<b>Total Revenues</b>	<b>-</b>	<b>15,599</b>	<b>15,599</b>
<b>Net Cost</b>	<b>\$ (37,392)</b>	<b>\$ (146,028)</b>	<b>\$ (108,636)</b>

Although not reflected in the figures above as there is no direct financial impact, shifting the process from POA to APS will result in approximately 170 hours of MLEO time annually that will be able to be reallocated towards enforcement activity as these staff will no longer be required to attend court proceedings.

**APS Program Expansion - Establishing By-law, Fees and Policies**

In accordance with Ontario Regulation 333/07 and section and section 434.1 of the Municipal Act a municipality must pass a by-law to establish an APS program. A draft by-law for the establishment of APS for non-parking offences is included as Schedule A to this report. The draft by-law includes provisions related to penalties, notice, financial management, screening, hearings and other general regulations. Following consultation, staff will bring forward the final by-law for Council consideration.

Ontario Regulation 333/07 requires a municipality implementing an establishing any parking Administrative Penalty System (APS) to establish:

- policies and procedures to prevent political interference in the administration of the system;
- guidelines to define what constitutes a conflict of interest in relation to the administration of the system, to prevent such conflicts of interest and to redress such conflicts should they occur;
- policies and procedures regarding financial management and reporting;
- Procedures for the filing and processing of complaints made by the public with respect to the administration of the system.

Ontario Regulation 333/07 does not specifically apply to APS non-parking programs. However, to support program consistency, staff have updated the existing APS policies to apply to the expanded APS program. The updated policies have been included in

## Discussion

Schedules B to G of this report for consideration. Following the adoption of these updated policies, staff will proceed with implementing administrative and financial protocols, screening and hearing procedures, software changes, communication and public education tools in preparation for the APS program expansion.

### Future phases of the APS Program Expansion

#### **License plate recognition software (Phase 2):**

The APS expansion will allow the Town to proceed with the introduction of license plate recognition software. The overall goal of this improvement would be to automate, improve and enhance the ticket issuance process through the implementation of an automated plate reading software technology. The desired outcome would be increased efficiency and effectiveness of the process and a reduction of manual efforts within the process. Success of this initiative would include a re-allocation of resources from manual input to value-add services, cost avoidance as the Town continues to grow, and greater transparency within the ticket issuance process. Staff will begin implementation (including testing) in Q2 of 2024 with full implementation expected for Q3 of 2024.

#### **Automated Speed Enforcement (ASE) (Phase 3):**

The APS expansion will establish the framework needed to adjudicate a future Automated Speed Enforcement (ASE) program. ASE is a tool that uses technology in an effort to alter driver's behavior by enforcing traffic laws while promoting road safety.

This camera-based, ASE enforcement program has the potential to improve road safety outcomes by ensuring high-risk driving behaviour is consistently monitored by cameras, which helps keep all users safe on the roads. An APS program is required for the Town to implement ASE enforcement in future.

The ASE system captures an image of a vehicle exceeding the speed limit, the image is sent to a Processing Centre to be reviewed by a Provincial Offences Officer. During the review, the Officer will ensure all the evidence and data captured confirms there is a violation and a penalty order is created. The penalty order, which contains a digitized copy of the image and an enlargement of the license plate image, is mailed to the vehicles registered owner. Once the offender has received the penalty order, they will have an opportunity to dispute the ticket within 30 days from the date of issuance utilizing the Town Screening and Hearing Officer review process. On conviction, the ASE penalty would be considered a debt owed to the Town, where no demerit points are applied to the driver, however, a victim surcharge is applied based on the penalty amount, which is then remitted back to the Province.

Staff continue to monitor and develop an implementation plan for an ASE program and will report to Council in future.



## Discussion

### POA Charges Still Required for Planning Act and some other matters

Certain types of contraventions can only be dealt with through the POA system, such as Zoning By-Law matters or certain Building Code Act and Fire Protection and Prevention Act matters.

The POA court system is still available should the need arise for other matters as well should the need arise, whether because POA maximum fines are significantly higher than the Town's proposed Administrative Penalties; because the additional enforcement powers of the Court are required (such as prohibition orders or probation orders); or because the stigma of conviction is needed.

## Financial Impact

The extent of the financial impact in 2024 will be subject to the timing of recruitment of the new roles, as well as the extent of revenue collected. The net cost for 2024 is currently estimated to be \$94,102. Should Council approve this program to move forward, the net financial impact will be funded from the Tax Rate Stabilization Reserve in 2024 so that the current year operating budget is unaffected. As noted in the 2024 Budget process, the Tax Rate Stabilization Reserve is expected to end 2024 with a balance of \$6.1 million (or approximately 26% below the target balance).

The net financial impact of the program, currently estimated at \$108,636 per year, will then be considered as part of the 2025 Budget process and will represent an additional future pressure on the property tax rate of approximately 0.1%. The forecasted total pressure for 2025, as forecasted through the 2024 budget process, currently equals 12.36%.

The capital costs of the License Plate Recognition program are provided for in capital project C24012323 - Mobile Parking Enforcement which has a total approved capital budget of \$202,921. The implementation of License Plate Recognition will result in new operating costs for the Town associated with the software service agreement. The expected annual operating cost will be approximately \$54,848, which will be pro-rated in 2024 based on the implementation date of the program. Although the annual operating costs are approximately \$30,000 greater than what was incorporated into the 2024 budget, it is anticipated that they can be managed within the 2024 budget through a reallocation of IT spending and an expected reduction in the contractual cost of issuing tickets as this process will be made more efficient under this program.

The full financial impacts associated with Automated Speed Enforcement (ASE) will continue to be evaluated and reported to Council in a separate report prior to the introduction of this program.



Respectfully submitted,

Troy McHarg  
Commissioner, Corporate Services

For questions, please contact: Mary Beth Mitchell

Phone: Ext. 2133

### Attachments

- Schedule A - Draft Administrative Penalty System (APS) Non- Parking by-law
- Schedule B - Draft Complaint Policy for APS Program
- Schedule C - Draft Conflict of Interest Policy for APS Program
- Schedule D - Draft Extension of Time to Pay for APS Program
- Schedule E - Draft Extension of Time to Review for APS Program
- Schedule F - Draft Interference Policy for APS Program
- Schedule G - Draft Refund Policy for APS Program

Approved by CAO  
Andrew M. Siltala  
Chief Administrative Officer

### Recognition of Traditional Lands

The Town of Milton resides on the Treaty Lands and Territory of the Mississaugas of the Credit First Nation. We also recognize the traditional territory of the Huron-Wendat and Haudenosaunee people. The Town of Milton shares this land and the responsibility for the water, food and resources. We stand as allies with the First Nations as stewards of these lands.