

THE CORPORATION OF THE CITY OF VAUGHAN

CORPORATE PROCEDURE

PROCEDURE TITLE: HEARINGS FOR APPEALS UNDER THE ADMINISTRATIVE PENALTY SYSTEM (APS) APPEALS

PROCEDURE NO.: PRC.51

Section:	By-Law & Compliance		
Effective Date:	Click or tap to enter a date.	Date of Last Review:	Click or tap to enter a date.
Policy Parent: Identify parent policy	Procedure Owner: DCM, Strategic Initiatives		

PROCEDURE STATEMENT

In accordance with the principles of natural justice and procedural fairness, any person accused of violating a by-law or statute under the Administrative Penalty System (APS) has the right to request a review of a Screening Officer's decision by a Hearing Officer.

A Hearing Officer's review of the Screening Officer's decision must be conducted in a standardized manner to ensure consistency in both process and outcomes, which is essential for maintaining the integrity of the APS.

PURPOSE

To establish a fair, open and accessible process for administering and conducting hearings under the Administrative Penalties ("APs") By-law in accordance with applicable policies and legislation.

SCOPE

This procedure is applied to the role of the City Clerk, Hearing Officers, Issuing Officers and staff in performing their duties under the APS, ensuring an open, fair, consistent and transparent approach.

LEGISLATIVE REQUIREMENTS

1. *Highway Traffic Act*, R.S.O. 1990 c H.8.
2. *Municipal Act*, 2001, S .O. 2001, c. 25, as amended, (the "Municipal Act").
3. *Ontario Regulation 333/07: Administrative Penalties*.

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4. *Ontario Regulation 355/22: Administrative Penalties for Contraventions Detected Using Camera Systems.*
5. *Statutory Powers & Procedures Act, R.S.O. 1990, c. S.22 (“SPPA”). To the extent any provision of the procedures relating to hearings conflicts with the SPPA, the SPPA shall take precedence.*

DEFINITIONS

1. **APS:** Administrative Penalties System.
2. **Administrative Penalty:** A penalty established under authority of the *Municipal Act* or the *Highway Traffic Act*.
3. **Administrative Penalties (“APs”) By-law:** By-law 240-2024, or its successor By-law.
4. **Appeal:** Either a screening review (first stage of appeal) or hearing review (second stage of appeal) of an Administrative Penalty as set out in the APs By-law, or its successor By-law.
5. **Automated Speed Enforcement System:** A system that consists of a combination of a camera and speed-measuring equipment that can be used to take a photograph of a motor vehicle and determine and record the rate of speed at which the motor vehicle is travelling at the time the photograph is taken, which may be permanently or temporarily located on or adjacent to any highway
6. **Balance of Probabilities:** Findings of fact are to be made on the basis that it is more likely than not, or more than 50% likely, that the event occurred.
7. **City:** The Corporation of the City of Vaughan.
8. **City Clerk:** The Person appointed by Council as Clerk pursuant to section 228 of the Municipal Act, or their designate.
9. **City Solicitor:** The City Solicitor of the City of Vaughan, or their designate.
10. **Contravener:** A Person who has contravened any provision of a Designated By-law, or a Motor Vehicle Owner whose Motor Vehicle has been left parked, standing or stopped in contravention of the Parking By-law or Motor Vehicle Owner whose Motor Vehicle has been involved in a speeding contravention under Highway Traffic Act.

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- 11. Decision:** The decision made by a Hearing Officer and delivered to the Contravener in accordance with the APs By-law.
- 12. Documentation:** Any paper or electronic document that supports or substantiates a claim or defense related to an alleged contravention.
- 13. Director:** The Director of By-law & Compliance, Licensing & Permit Services of the City of Vaughan, or their designate
- 14. Extenuating Circumstances:** Situations that do not excuse or justify the contravention but are demonstrated conditions or factors providing a broader context that explains why the contravention occurred. These circumstances may lessen the seriousness of the contravention and their level of culpability.
- 15. Extraordinary Circumstances:** An event (or events) that is outside of the control of the Contravener that has prevented the Contravener from adhering to the Designated By-law. The Contravener must provide Documentation to support claims of Extraordinary Circumstances.
- 16. Hearing Clerk:** A staff member within the Office of the City Clerk who is responsible for administering hearings under APS.
- 17. Hearing Officer:** A Person appointed by the City Clerk pursuant to the APs By-law.
- 18. Issuing Officer:** A Person authorized by the City to enforce the APs By-law, a Designated By-law, or the *Highway Traffic Act*.
- 19. Late Payment Fee:** An additional fee a Contravener must pay if they fail to pay an Administrative Penalty for a Penalty Notice within the prescribed time frame pursuant to the Fees and Charges By-law.
- 20. Legal Services Representative:** A staff member within the Office of the City Solicitor who provides legal support in various administrative and legal matters.
- 21. Parking By-law:** The City's Parking By-law 064-2019, as amended or its successor by-law.
- 22. Penalty Notice:** An Administrative Penalty issued for contravention of a Designated By-law.

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23. Penalty Order: An Administrative Penalty issued pursuant to the *Highway Traffic Act*, in relation to contraventions detected using Automated Speed Enforcement Systems.

24. Person: Includes an individual, sole proprietorship, corporation, partnership, or limited partnership, or an authorized agent thereof, to whom the context can apply according to law.

25. Request for Hearing Review (Appeal) Form: Is the form prescribed by the City Clerk which must be submitted by a contravener to formally request an appeal of a decision made by a screening officer.

26. Screening Officer: A Person appointed by the Director pursuant to the APs By-law or its successor by-law.

PROCEDURE

1. ROLES & RESPONSIBILITIES

- a. The City Clerk is required to (including but not limited to):
 - i. Take all reasonable actions to ensure that APs dispute hearings are conducted in compliance with all City policies, procedures, by-laws, and any applicable provincial or federal statutes, acts, laws, or regulations.
 - ii. Carry out routine reviews of APs dispute hearing proceedings and decisions to assess for any irregularities or contraventions of City policies, procedures, by-laws, or applicable legislation by Hearing Officers, or other City employees, and to evaluate the effectiveness of policies and procedures, making updates where necessary.
 - iii. Review and investigate reports of actual or perceived conflicts of interest involving a Hearing Officer, in accordance with the APS Conflict of Interest and Code of Conduct Policy (05.C.01) and other relevant policies and procedures.
 - iv. Review and investigate public complaints related to hearings or the conduct of Hearing Officers, in accordance with the APS Public Complaints Policy (05.C.04) and other relevant policies and procedures.
 - v. Review and investigate reports of political interference in accordance with the APS Preventing Political Interference Policy (05.C.02) and other relevant policies and procedures.

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- vi. Provide training and guidance to staff members and Hearing Officers on hearing procedures and protocols.
 - vii. Stay updated on changes in regulations and best practices related to administrative hearings.
- b. The Hearing Clerk is required to (including but not limited to):
- i. Coordinate and schedule hearing dates, times and locations.
 - ii. Notify all relevant parties, including the Hearing Officer, Contravener and their authorized agent, Issuing Officer and Legal Services Representative of scheduled hearing.
 - iii. Prepare and distribute hearing notices, disclosure and Hearing Officer decisions.
 - iv. Maintain accurate and organized records of all hearing proceedings and decisions.
 - v. Attend hearings and provide administration.
 - vi. Ensure all necessary materials and equipment are available for hearings.
 - vii. For an online hearing, the Hearing Clerk must be able to present all information (including evidence), ensure that evidence can be shared, and set permissions to allow the Contravener, their authorized agent, the Issuing Officer, and the Legal Services Representative to present information and evidence at the hearing, as required.
 - viii. Ensure hearings are conducted in accordance with these procedures and applicable policies and legislation.
 - ix. Serve as a primary point of contact for inquiries related to hearings.
 - x. Archive hearing records and ensure confidentiality and security of sensitive information.
 - xi. Record hearing decisions and penalties using the City's administrative penalty management system.
 - xii. Track and report on the status of hearings and any follow-up actions required.

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- c. The Hearing Officer is required to (including but not limited to):
- i. Conduct hearings in accordance with the SPPA and exercise the Delegated Power of Decision in the review of Screening Decisions, as set out in the AMPs By-law.
 - ii. Review case documentation in accordance with established policies, procedures and guidelines.
 - iii. Issue oral and written decisions in accordance with the APs By-law, including decisions on whether to affirm, reduce or cancel Administrative Penalties and/or to extend the time to pay Administrative Penalties in accordance with the APs By-law and established policies, procedures and guidelines.
 - iv. Ensure equal access, fair treatment and due process for all parties.
 - v. Ensure that all rulings and decisions are independent and free of outside influence.
 - vi. Regularly review and comply with all applicable by-laws, policies, procedures, guidelines, legislation and regulations.
 - vii. Maintain and upgrade their knowledge and competence by participating in training and education courses, as required.
 - viii. Perform all other services as outlined in the Retainer Agreement pursuant to the Hearing Officer Appointment Policy (03.C.17).
- d. The Issuing Officer is required to (including but not limited to):
- i. Conduct investigations to gather evidence of violations.
 - ii. Document findings and compile evidence.
 - iii. Issue Penalty Notices and Penalty Orders that clearly outline the nature of the contravention and the penalties.
 - iv. Prepare and present evidence at the hearing and respond to questions and provide clarification to the Hearing Officer, as required.
 - v. Coordinate with Legal Services Representative and other relevant parties to ensure all necessary Documentation is in order.

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- e. The Issuing Officer is not required to attend a hearing.
- f. Notwithstanding section 1 (e) the Issuing Officer may attend a hearing if the Manager of Enforcement Services, or their designate, determines that the Issuing Officer's expertise is necessary to support the submission of evidence.
- g. The Hearing Officer may adjourn a hearing to have the Issuing Officer attend and give evidence if they are satisfied that the Issuing Officer's oral evidence is necessary to ensure a fair hearing.
- h. The following may be regarded as the sworn testimony by the Issuing Officer:
 - i. Penalty Notice or Penalty Order;
 - ii. Both sworn and unsworn statements, as well as affidavits;
 - iii. Supporting Evidence, including but not limited to photographs and videos;
 - iv. Supporting evidence related to a charge issued under the Automated Speed Enforcement System in accordance with Ontario Regulation 355/22.
- i. The Legal Services Representative may be required to (including but not limited to):
 - i. Attend Hearings for the purposes of providing prosecutorial representation and may provide an overview of the relevant by-law sections and provide legal analysis and/or by-law interpretation as required.
 - ii. Assist the Issuing Officer with the production of evidence, as required.
- j. The Legal Services Representative is not required to attend a hearing.
- k. Notwithstanding section 1 (i), Legal Services Representatives may attend a hearing if it is determined by City Solicitor that their presence is necessary to support the Issuing Officer's testimony, assist with the enforcement action, and/or address any relevant legal matters.

2. GENERAL

- a. These procedures shall be observed in all proceedings of Hearings under the APs By-law.

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- b. Hearing Officers must conduct hearings and make decisions in compliance with this procedure, the APs by-law, the APS Screening and Hearing Officer Decision Policy (05.C.05), the APS Conflict of Interest and Code of Conduct Policy (05.C.01) and any other applicable policies or legislation.
- c. In the case of a conflict between these procedures and legislative requirements, the legislation prevails.

3. COMMUNICATION

- a. The Hearing Clerk must send any required communications to the Contravener and/or their authorized agent.

4. PROCESSING APPEAL OF SCREENING DECISION

- a. A request for a hearing review is to be filed with the Office of the City Clerk within the prescribed timelines outlined in the APs By-law.
- b. Any documents or communications relating to a hearing must be filed with the City Clerk by delivery to its office by any of the following methods at least 7 calendar days before the hearing date:
 - i. in person
 - ii. by electronic transmission;
 - iii. by mail or registered mail;
 - iv. by courier; or
 - v. by any other means that may be permitted by the City Clerk from time to time.
- c. The Hearing Clerk cannot process an Appeal where:
 - i) The Appeal form and supporting Documentation are incomplete; and/or
 - ii) The Administrative Penalty and any required fee has been paid by the Contravener.

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- d. Where the Hearing Clerk cannot process an Appeal under section 4.0 (c), the Hearing Clerk must give written notice of its decision to the Contravener and must set out the reasons for the decision and the requirements for resuming the processing of the Appeal.

5. SCHEDULING OF HEARINGS & ADJOURNMENTS

- a. All Hearings shall be scheduled by the Hearing Clerk.
- b. Prior to a hearing, a Contravener may request to reschedule a hearing once without needing to provide proof of necessity, as long as they submit a written request to the Hearing Clerk at least one business day prior to the scheduled hearing. Any additional rescheduling requests must include Documentation to support Extenuating Circumstances. Without such Documentation, the hearing will proceed as scheduled.
- c. Notwithstanding section 5 (b), a Contravener's request to reschedule a hearing may also be considered by a Hearing Officer under the following conditions:
 - i. No prior requests for adjournment have been made;
 - ii. There is sufficient time to notify the Contravener, including authorized agent of the new hearing date; and
 - iii. The length of the adjournment requested is six months or less.
- d. Notwithstanding Section 5.0 (c) (iii) where they City cannot schedule a hearing within six months due to processing capacity, this will not be held against the Contravener.
- e. When considering an adjournment, the Hearing Officer should take into account any relevant factors, including but not limited to:
 - i. The reason for the adjournment request;
 - ii. The extent to which prejudice will be suffered by the Contravener, if the adjournment is refused;
 - iii. The extent to which the Contravener gave advance notice of its request for an adjournment;
 - iv. The length of adjournment;

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- v. Previous delays, including the number and duration of prior adjournments requested by the Contravener;
 - vi. The efficient and timely conduct of proceedings; and
 - vii. Any other possible effects on the fairness of the proceedings.
- f. The Hearing Officer may refuse to grant an adjournment where:
- i. The adjournment was not requested prior to the scheduled hearing date;
 - ii. The Hearing Officer is not satisfied that the adjournment is necessary;
 - iii. The only ground for the adjournment is that the Contravener unreasonably delayed retaining an authorized agent;
 - iv. The adjournment would negatively affect the fairness of the proceedings; or
 - v. The Hearing Officer believes that granting the adjournment would be inappropriate under the circumstances.
- g. In granting an adjournment, the Hearing Officer may impose such conditions as they consider appropriate.
- h. A Hearing Officer may adjourn a hearing at any time where accommodation or an interpreter is required and has not been provided.
- i. If a hearing is adjourned for any reason, the Hearing Clerk must reschedule the hearing and issue a Notice of Hearing Review Appointment in accordance with the APs By-law.

6. FORMAT OF HEARINGS & ATTENDANCE

- a. All Hearings will be held in the English language.
- b. Hearings may be conducted in person or online.
- c. Notwithstanding section 6 (b) an online hearing can only be scheduled if the Contravener has a device with audio and video capabilities to share and receive information during the hearing.

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- d. The Contravener must attend in-person hearings at Vaughan City Hall located at 2141 Major Mackenzie Drive, Vaughan, Ontario.
- e. Notwithstanding section 6 (c) the City Clerk may direct the Contravener to attend a hearing in person where an online hearing cannot be accommodated due to technical or procedural matters.
- f. The Hearing Officer, Hearing Clerk, Issuing Officer, and Legal Services Representatives may attend the hearing online unless directed by the City Clerk to attend in person.
- g. Notwithstanding section 6 (f), the Hearing Clerk is required to organize and be present at an in-person hearing if the Contravener is attending in person.
- h. Hearings are open to the public except when the Hearing Officer determines that:
 - i. Matters involving public security may be disclosed; and/or
 - ii. Intimate financial or personal matters may be disclosed, and the Hearing Officer, considering the circumstances, determines that the interest of the Contravener outweighs the benefit of a public hearing; or
 - iii. In the case of an online hearing, it is not practical to hold the hearing in a manner that is open to the public.
- i. The Hearing Officer may set any conditions deemed appropriate for the conduct of the portion of a hearing that is closed to the public.
- j. Unless otherwise ordered by the Hearing Officer, where part of an in-person or online hearing is closed to the public, it may be attended by:
 - i. The Contravener and their authorized agent;
 - ii. The Hearing Clerk, Issuing Officer and Legal Representative, as applicable; and
 - iii. Such other persons as the Hearing Officer considers appropriate.
- k. No party shall take or attempt to take photographs, videos, or audio recordings by any means during a Hearing, unless authorized by the Hearing Officer. Such authorization will be subject to terms and conditions set by the Hearing Officer.

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- l. Hearings relating to contraventions of the City's Parking By-law and Automated Speed Enforcement will be limited to 15 minutes in duration.
- m. Notwithstanding section 6 (l), the City Clerk may alter the duration of hearings at any time.
- n. For hearings relating to contraventions of the City's Parking By-law and Automated Speed Enforcement, the Contravener will be provided 5 minutes to review their Appeal and present evidence.
- o. Notwithstanding section 6 (n), the Hearing Officer may permit additional time for the Contravener to present evidence during the hearing.

7. ACCESSIBILITY & ACCOMMODATION

- a. Parties requiring accommodation of a disability must provide notification as early as possible in advance of the Hearing.
- b. Where an interpreter is required, the Party requiring an interpreter may provide an interpreter.
- c. The City Clerk may establish and/or amend any procedure or process deemed necessary to facilitate accommodation.

8. AUTHORIZED REPRESENTATION

- a. A Contravener may authorize a Person to appear and communicate at a hearing on their behalf, provided there is written authorization in a form acceptable to the City Clerk.
- b. A Person authorized by the Contravener under section 8 (a) may enter a plea to any penalty and the Contravener is responsible to pay any fine determined by the Hearing Officer in accordance with the APs By-law.
- c. Hearing Officers shall not conduct a Hearing with a Person that has not been authorized by the Contravener to appear at a hearing or communicate on their behalf.
- d. If a Person appears at their first hearing on the Appeal without submitting the required authorization, the Hearing Officer must adjourn the hearing and direct the Hearing Clerk to reschedule the hearing.

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- e. Where a hearing has been adjourned under section 8 (d) the Contravener has seven calendar days to provide the required authorization.
- f. If a hearing has been rescheduled under section 8 (d) and the Contravener has not provided the required authorization at the rescheduled hearing, the Hearing Officer may deem the Contravener to have abandoned the Appeal, the Administrative Penalty may be affirmed, a Failure to Attend Fee may be imposed after which there will be no further right to Appeal.
- g. The Hearing Officer may exclude an authorized agent from a hearing if they determine that the agent is not competent to represent the Contravener adequately or fails to understand and follow the duties and responsibilities of an advocate or advisor.
- h. If a Person authorized by a Contravener stops representing them, they must promptly inform the Hearing Clerk, prior to the scheduled hearing.

9. NOTICE OF HEARING

- a. In accordance with the APs By-law, the Hearing Clerk must send a notice of hearing to the Contravener at least seven calendar days before the hearing advising of the date, time and place of the Appeal. The notice must inform the Contravener of the hearing method (in person or online).
- b. The notice of hearing must include:
 - i. The nature of the contravention;
 - ii. A statement that where a Contravener fails to attend a hearing review, a failure to attend fee (and any other applicable fees) will be added to the total Administrative Penalty amount. The Administrative Penalty will be affirmed, and the Contravener will no longer be able to dispute the penalty.
 - iii. Any other information or directions the City Clerk considers necessary for the proper conduct of the hearing.
- c. A notice of hearing under Section 9 must be sent by email to both the Contravener and the authorized agent. If an email address is not available, the notice will be mailed to the physical address of the Contravener or authorized agent as listed in the Request for Hearing Review (Appeal) Form.

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- d. In addition to section 9 (c), where a notice of hearing cannot be served by email, the Hearing Clerk may also call the Contravener or authorized agent at the phone number listed in the Request for Hearing Review (Appeal) Form to notify them of the hearing date at least seven calendar days before the hearing.

10. HEARING PROCEDURES

- a. Where the Contravener has requested a Hearing on multiple penalties the Hearing Clerk may combine the proceedings.
- b. If the Contravener or their authorized agent fail to attend a Hearing within 10 minutes after the scheduled start time the Contravener will be considered to have abandoned the Appeal, the Administrative Penalty will be affirmed, a Failure to Attend Fee may be added, and there shall be no further right to Appeal.
- c. Notwithstanding section 10 (b), a Hearing Officer may adjourn a hearing or remove a Failure to Attend Fee, if deemed appropriate.
- d. A Hearing Officer has the power to administer oaths and affirmations for the purpose of any proceeding and may require evidence before it to be given under oath or affirmation.
- e. Prior to reviewing an Appeal, the Hearing Officer must:
 - i. Declare any direct or indirect pecuniary interest on any matter before them in accordance with the APS Conflict of Interest and Code of Conduct Policy (05.C.01);
 - ii. Provide a statement advising that as a Hearing Officer, they have no authority to consider questions relating to the validity of a statute, regulation or by-law or the constitutional applicability or operability of any statute, regulation or by-law.
 - iii. Review the contravention as listed in the Penalty Notice or Penalty Order.
- f. The Hearing Officer must adhere to the following order of consideration when hearing an appeal:
 - i. Extension of Time to Appeal

If an Appeal is filed after the prescribed deadline the Hearing Officer must first, consider any Extenuating Circumstances that prevented the

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Contravener from submitting the Appeal on time and decide whether to grant an extension. If no extension is granted, the Hearing Officer must decide to affirm or cancel the penalty based on the Issuing Officer's evidence.

ii. Evidence (Legal Services Representative)

Where a Legal Services Representative is present, the Hearing Officer will first call them to provide any opening statements, remarks and preliminary motions, as required.

iii. Evidence (Issuing Officer)

Where an Issuing Officer is present, the Hearing Office will call upon them to review the evidence. If the Hearing Officer determines that the Penalty Notice or Penalty Order is substantively or procedurally defective, or if there is insufficient evidence from the Issuing Officer to support that the contravention occurred on the Balance of Probabilities, they must cancel the penalty.

iv. Contravener Evidence

The Hearing Officer must next consider evidence provided by the Contravener. After the Contravener's presentation of evidence, the Hearing Officer may provide the Issuing Officer and Legal Services Representative, if present, an opportunity to respond.

v. Oral Decision to Affirm or Cancel Penalty

After reviewing all evidence and Documentation, if the Hearing Officer determines, on the Balance of Probabilities, that the Contravener likely committed the act described in the Penalty Notice or Penalty Order, they must affirm the Administrative Penalty. If it is determined that the Contravener did not likely commit the act, the Hearing Officer must cancel the Administrative Penalty.

vi. Consideration of Extenuating and Extraordinary Circumstances and Financial Hardship

After affirming an Administrative Penalty, the Hearing Officer must review evidence from the Contravener regarding Extenuating and/or Extraordinary Circumstances and/or financial hardship, in accordance with the APS Screening and Hearing Officer Decision Policy (05.C.05),

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to determine whether to reduce or cancel the penalty in accordance with established criteria.

- g. Notwithstanding Section 10 (f), the Hearing Officer may provide parties an opportunity for cross examination and final remarks/closing arguments if deemed appropriate.
- h. Prior to concluding the hearing, the Hearing Officer must provide:
 - i. A brief overview of the infraction and the key points presented during the hearing.
 - ii. A summary of the evidence provided by both the Contravener and the Issuing Officer.
 - iii. A clear statement affirming or canceling the Penalty Notice.
 - iv. The Hearing Officer's findings based on the Balance of Probabilities, including any relevant considerations such as Extenuating or Extraordinary Circumstances or financial hardship.
 - v. The rationale behind the decision, explaining how the evidence and findings led to the conclusion.

11. DECISION

- a. The Hearing Officer must indicate their decision orally at the end of the hearing.
- b. The Hearing Clerk must electronically record the Hearing Officer's decision, including reasons, any comments, the set penalty amount, and the payment deadline in the City's administrative penalty management system. Additionally, the Hearing Clerk must orally provide the Contravener with payment instructions and the prescribed payment deadline prior to concluding the hearing.
- c. The Hearing Clerk must issue a copy of the Hearing Officer's decision, in accordance with the APS Screening and Hearing Officer Decision Policy (05.C.05) and the APS By-law, within 10 calendar days from the date the decision was made. The decision must be sent to the Contravener and their authorized agent by email. If no email address is provided, the notice must be mailed to the Contravener's physical address listed in the Request for Hearing form.

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- d. Notwithstanding section 11 (b), the City Clerk can direct a Hearing Officer to prepare a written decision. If the City Clerk directs the Hearing Officer to provide their decision in writing, the Hearing Officer must submit their decision, in a format approved by the City Clerk, within five calendar days of making the decision.
- e. If there is a discrepancy between the oral decision and the notice of decision, the Hearing Officer's oral decision will take precedence.
- f. Where the Hearing Officer is not required to provide a written decision under section 11.0(d) the decision is effective from the date on which it was made.
- g. Where the Hearing Officer is required to provide a written decision under section 11.0(d), the decision becomes effective on the date it is issued.
- h. The decision of the Hearing Officer is final.

12. CONFLICT OF INTEREST

- a. Hearing Officers shall abide by the APS Conflict of Interest and Code of Conduct Policy (05.C.01) and shall declare a real, potential, or perceived conflict of interest in accordance with the policy.
- b. Where a real, potential, or perceived conflict of interest is reported, the City Clerk shall assign another Hearing Officer in accordance with the APS Conflict of Interest and Code of Conduct Policy (05.C.01).

13. EVIDENCE

- a. Subject to sections 13 (b) and 13 (c), the Hearing Officer may admit any relevant oral testimony, documents, or other items as evidence at a hearing, regardless of whether they are given under oath or affirmation, or whether they would be admissible as evidence in a court.
- b. Section 13 (a) does not overrule any Act that specifically limits how or why oral testimony, documents, or other items can be used as evidence in any proceeding.
- c. Evidence that would be inadmissible in court due to legal privileges or because of specific laws cannot be admitted at a hearing.
- d. With the Contravener's consent, the Hearing Officer may consider evidence previously reviewed by the Screening Officer.

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- e. The Hearing Officer may refuse any document, including photos and electronic materials, as evidence if it was not submitted before the hearing in accordance with these procedures.

14. DISCLOSURE

- a. The Issuing Officer must disclose evidence they intend to rely on during the hearing at least seven calendar days before a scheduled hearing by uploading all evidence to the City's administrative penalty management system.
- b. If additional evidence is provided by the Issuing Officer after evidence disclosure under section 14 (a), the Hearing Clerk must provide this supplementary evidence to the Contravener as soon as possible prior to the hearing.
- c. The Contravener must disclose to the City Clerk the evidence they intend to rely on during the hearing at least seven calendar days before a scheduled hearing.
- d. If additional evidence is obtained after evidence disclosure under section 14 (c), the Contravener must provide this supplementary evidence to the Hearing Clerk as soon as possible prior to the hearing.
- e. The Hearing Clerk must compile all evidence disclosed under Section 14 and promptly distribute it to all hearing participants, including the Hearing Officer, Contravener, Issuing Officer, and Legal Services Representative, as required.
- f. These procedures do not restrict the Director from creating additional internal procedures for the Issuing Officer to disclose evidence.

15. POWER TO REVIEW

- a. If an Appeal has been made by a Contravener or their authorized agent and the Administrative Penalty is affirmed by a Hearing Officer in their absence, the Contravener may request in writing that the Hearing Officer's decision be set aside, and a new hearing be scheduled.
- b. The Contravener must provide written evidence and supporting Documentation to show that their failure to attend the hearing was through no fault of their own.
- c. Upon review of a Contravener's request to set aside a decision, the Hearing Officer may:

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- i. Approve the request to set aside the decision and direct a new hearing to be scheduled; or
 - ii. Refuse the request to set aside the decision.
- d. The Hearing Officer must submit their decision under section 15 (c) to the Hearing Clerk in writing within thirty calendar days of receiving the Contravener's request. The Hearing Clerk is then responsible for informing the Contravener of the decision.
- e. If the Contravener's request to set aside the decision is refused, the Hearing Officer must provide reason(s).
- f. If the Contravener's request to set aside the decision is refused, the original decision of the Hearing Officer stands, including the failure to attend fee, and a new hearing will not be granted.
- g. If the Contravener's request to set aside the decision is refused by the Hearing Officer, they cannot make any further requests to set aside the Hearing Officer's decision.

16. CORRECTION OF ERRORS

- a. The City Clerk may at any time correct a typographical error, error of calculation or similar error made in the decision of the Hearing Officer.

17. RECORDS

- a. The City Clerk must keep an electronic record of the Appeal, including the hearing review, for the period specified in the City's Enterprise Information Management Policy (03.A.15) or any other applicable retention period. This record shall include:
 - i. The Penalty Notice or Penalty Order;
 - ii. The Contravener's request to Appeal that initiated the hearing;
 - iii. The notice of the hearing;
 - iv. The Hearing Officer's decision;

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- v. All documentation and evidence filed with the Hearing Clerk, subject to any limitations imposed by other Acts;
- vi. Any other documents that in the opinion of the City Clerk or the Hearing Officer should be included in the record of the Appeal.

18. ADMINISTRATION

- a. The City Clerk may prescribe all necessary forms and notices and may amend these forms and notices as needed, without changing these procedures.
- b. Time limits that fall on a day when the City is not open during its regular hours of business will automatically be deemed to fall on the next day the City is open during its regular hours of business.
- c. Where a document is filed or served after 12:00 a.m. on any day or at any time on a weekend or holiday, the document shall be deemed to have been filed or served on the next day that is not a weekend or holiday

19. PROCEDURAL REQUIRMENTS & WAIVER

- a. The City Clerk may waive any provision of these procedures where they are of the opinion that it would be appropriate to do so in the circumstances.

20. IMPLEMENTATION

- a. These procedures must form part of the orientation for all Hearing Officers and City employees involved in the enforcement and administration of APS and all current and new employees, with the potential for interaction with the APS program.

ADMINISTRATION

Administered by the Office of the City Clerk.

Review Schedule:	SELECT If other, specify here	Next Review Date:	Click or tap to enter a date.
Related Procedure(s):			
Related By-Law(s):	240-2024 – Administrative Penalties (“APs”) By-law		
Supporting Documentation:			

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Revision History	
Date:	Description:
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