

Committee of the Whole (2) Report

DATE: Tuesday, February 11, 2025

WARD(S): ALL

TITLE: ADMINISTRATIVE PENALTY SYSTEM (APS) POLICIES & PROCEDURES

FROM:

Micheal Genova, Deputy City Manager, Strategic Initiatives

ACTION: DECISION

Purpose

To seek Council approval for the adoption of the following policies required by Ontario Regulation 333/07 (Administrative Penalties) and procedures related to Hearings under the Administrative Penalty System (APS) to ensure a fair, open, and accessible process for administering and conducting appeals.

- 05.C.01 - APS Conflict of Interest and Code of Conduct Policy
- 05.C.02 - APS Preventing Political Interference Policy
- 05.C.03 - APS Financial Management and Reporting Policy
- 05.C.04 - APS Public Complaints Policy
- 05.C.05 - APS Screening and Hearing Officer Decision Policy
- PRC.51 - Hearings for Appeals Under the Administrative Penalty System

Report Highlights

- Seeking Council approval for the adoption of policies required by Ontario Regulation 333/07 and the implementation of procedures related to Hearings under the Administrative Penalty System (APS).
- The APS Conflict of Interest and Code of Conduct Policy establishes standards for ethical behavior, conflict of interest identification, and management to prevent undue influence or bias in decision-making.
- The APS Preventing Political Interference Policy ensures that the administration of the APS remains free from political influence, with measures to identify, report, and address any attempts at interference.
- The APS Financial Management and Reporting Policy outlines procedures for budgeting, expenditure tracking, and financial reporting.

Report Highlights continued

- The APS Public Complaints Policy provides a framework for receiving, investigating, and resolving public complaints related to the APS.
- The APS Screening and Hearing Officer Decision Policy outlines procedures and standards for decision-making by Screening and Hearing Officers, including criteria for evaluating cases, assessing evidence, and issuing decisions.
- The procedures for Hearings under the APS establish comprehensive guidelines for conducting appeals, including scheduling, notification, evidence submission, decision-making, and ensuring accessibility and accommodation for all parties involved.

Recommendations

1. THAT Council approve the following policies and the APS Hearing Procedures, substantially in the form attached:
 - a) 05.C.01 - APS Conflict of Interest and Code of Conduct Policy (Attachment #1)
 - b) 05.C.02 - APS Preventing Political Interference Policy (Attachment #2)
 - c) 05.C.03 - APS Financial Management and Reporting Policy (Attachment #3)
 - d) 05.C.04 - APS Public Complaints Policy (Attachment #4)
 - e) 05.C.05 - APS Screening and Hearing Officer Decision Policy (Attachment #5)
 - f) PRC.51 - Hearings for Appeals Under the Administrative Penalty System (Attachment #6); and

2. THAT staff be authorized to take the necessary actions to implement these policies and procedures.

Background

Ontario Regulation 333/07 mandates the establishment of specific policies to govern the operation of the APS. These policies are designed to ensure that the APS operates with integrity, transparency, and accountability. The proposed policies address key areas such as decision-making, public complaints, financial management, political interference, and conflict of interest.

Previous Reports/Authority

[Administrative Monetary Penalties Adjudication Review Report](#) from the June 6, 2023, Committee of the Whole meeting.

[Hearing Officer Appointment Policy Report](#) from the June 18, 2024, Committee of the Whole Meeting.

[Administrative Penalties By-law Amendments Report](#) from the December 3, 2024, Committee of the Whole meeting.

Analysis and Options

The proposed policies have been drafted to align with the requirements of Ontario Regulation 333/07 and best practices in municipal governance. These policies are designed to ensure that the APS operates with transparency, accountability, and fairness. By adhering to these standards, the policies aim to enhance the effectiveness and credibility of the APS, providing a robust framework for managing administrative penalties within the municipality.

05.C.01 - APS Conflict of Interest and Code of Conduct Policy (Attachment #1)

The APS Conflict of Interest and Code of Conduct Policy ensures that all individuals involved in the APS, including officers, staff, and decision-makers, adhere to the highest standards of ethical behavior. By clearly defining acceptable conduct and outlining procedures for managing conflicts of interest, the policy helps prevent any undue influence or bias in the decision-making process. Key elements include:

| Policy Element | Description |
|---|--|
| Conflict of Interest Identification and Prevention | Defines conflicts of interest and sets measures to prevent and address them, including identifying personal or financial interests that could influence decision-making or job performance. |
| Disclosure Requirements | Requires Screening Officers, Hearing Officers, and City employees involved in APS administration to disclose any obligations, commitments, relationships, or interests that pose a real, potential, or perceived conflict. |
| Conduct Standards | Establishes a code of conduct for Screening and Hearing Officers, emphasizing independence, impartiality, and unbiased decision-making. Prohibits activities that could create conflicts of interest and provides guidelines for managing such situations. |
| Reporting and Managing Conflicts | Sets procedures for reporting conflicts of interest and assigning alternate officers when conflicts arise, ensuring the APS operates without bias and maintains public confidence. |

| Policy Element | Description |
|--------------------------------|---|
| Training and Compliance | Mandates ongoing training and education for Screening and Hearing Officers to ensure they remain knowledgeable about relevant laws, by-laws, and procedures. Requires adherence to the Ontario Human Rights Code and other applicable laws. |

05.C.02 - APS Preventing Political Interference Policy (Attachment #2)

The APS Preventing Political Interference Policy ensures that the administration of the APS remains free from political influence, with all decisions based on established procedures and merit. By clearly separating political activities from administrative functions, the policy safeguards the integrity of the APS. It includes measures to identify, report, and address any attempts at political interference, promoting a fair and unbiased process. Key elements include:

| Policy Element | Description |
|--|--|
| Definition and Scope | Defines political interference in relation to the APS and establishes requirements for City personnel to carry out their responsibilities according to principles of justice, independence, fairness, impartiality, and integrity. |
| Prohibition of Political Interference | Prohibits any person from attempting to influence or interfere with the administration of the APS, including communication with Screening or Hearing Officers to influence decisions. |
| Accountability and Reporting | Requires Screening Officers, Hearing Officers, and City employees to report any attempts at political interference to the Director or City Clerk. Ensures no action will be taken against individuals for making such reports in good faith. |
| Implementation and Compliance | Forms part of the orientation for all relevant personnel and includes procedures for addressing policy violations. Mandates training for members of Council to ensure understanding and compliance. |

05.C.03 - APS Financial Management and Reporting Policy (Attachment #3)

The APS Financial Management and Reporting Policy establishes financial management and reporting requirements. This policy outlines the procedures for budgeting, expenditure tracking, and financial reporting, ensuring that all financial activities are conducted transparently and efficiently. This policy excludes all financial management and reporting responsibilities and accountabilities related to the Automated Speed Enforcement System. These responsibilities will be governed by separate policies and procedures established during the system’s implementation. Key elements include:

| Policy Element | Description |
|--|---|
| Financial Management and Reporting Requirements | Outlines the financial management and reporting responsibilities for APS, ensuring adherence to corporate policies and procedures. This includes budget preparation, financial performance monitoring, and compliance with procurement policies. |
| Payment Procedures | Specifies the acceptable methods for paying Penalty Notices and Penalty Orders, ensuring secure and transparent payment processes. Prohibits Issuing Officers, Screening Officers, and Hearing Officers from directly accepting payments. |
| Refunds and Administrative Fees | Details the conditions under which refunds will be provided and outlines the administrative and appeal fees associated with APS. Ensures that fees are refunded if a Penalty Notice or Penalty Order is canceled by a Screening or Hearing Officer. |
| Implementation and Compliance | Mandates that all relevant personnel receive orientation and training on financial management and reporting procedures. Includes provisions for addressing policy violations and ensuring compliance. |

05.C.04 - APS Public Complaints Policy (Attachment #4)

The APS Public Complaints Policy establishes a comprehensive framework for receiving, investigating, and resolving public complaints related to the APS. This policy ensures that all complaints are handled in a systematic, transparent, and timely manner. It outlines the procedures for submitting complaints, the steps for conducting investigations, and the protocols for resolving issues effectively. Key elements include:

| Policy Element | Description |
|--|---|
| Complaint Handling Framework | Establishes a framework for handling public complaints regarding the administration of APS, ensuring thorough investigation and prompt resolution. |
| Scope and Applicability | Applies to all aspects of the APS program, covering complaints against City staff, contracted Hearing Officers, and the system itself. Does not serve as an appeal mechanism for decisions made by Screening or Hearing Officers. |
| Complaint Submission Requirements | Requires complaints to be submitted in writing within 90 calendar days of the event. Outlines necessary information for processing, including complainant's contact details and a description of the issue. |

| Policy Element | Description |
|--------------------------------------|--|
| Confidentiality and Reporting | Ensures complaints are treated confidentially and shared only as required for investigation. Mandates that frivolous, vexatious, or bad faith complaints will not be processed. |
| Implementation and Compliance | Forms part of the orientation for all relevant personnel and includes procedures for addressing policy violations. Ensures public complaints are handled to maintain the integrity and effectiveness of the APS. |

05.C.05 - APS Screening and Hearing Officer Decision Policy (Attachment #5)

The APS Screening and Hearing Officer Decision Policy outlines the procedures and standards for decision-making by Screening and Hearing Officers. This policy provides a clear framework for evaluating cases, ensuring that decisions are made consistently, fairly, and in accordance with established guidelines. It details the steps officers must follow during the screening and hearing processes, including the criteria for assessing evidence and the protocols for issuing decisions. By standardizing these procedures, the policy aims to enhance the transparency and reliability of the decision-making process. Key elements include:

| Policy Element | Description |
|--|---|
| Roles and Responsibilities | Outlines the responsibilities of the Director and City Clerk in ensuring compliance with City policies, procedures, and applicable laws. Includes routine reviews of APS dispute proceedings and decisions. |
| General Provisions | Affirms the right of any person who receives an Administrative Penalty to appeal the Penalty Notice or Penalty Order. Grants Screening and Hearing Officers the authority to affirm, cancel, or vary the penalties. |
| Criteria for Decision | Provides guidelines for Screening and Hearing Officers to consider all relevant evidence and determine the reasonableness of the penalties. Includes criteria for affirming, varying, or canceling penalties. |
| Criteria for Cancelling an Administrative Penalty | Specifies conditions under which a penalty can be canceled, such as lack of evidence, extraordinary circumstances, or procedural defects. |
| Criteria for Reducing a Penalty Notice | Allows for the reduction of penalties based on extenuating circumstances that lessen the severity of the contravention and the contravener's level of culpability. |
| Criteria for Considering Financial Hardship | Outlines documentation required to substantiate claims of financial hardship. Provides guidelines for extending |

| Policy Element | Description |
|--------------------------------------|---|
| | payment deadlines or reducing penalties to alleviate hardship. |
| Implementation and Compliance | Mandates orientation and training for all relevant personnel. Includes procedures for addressing policy violations. |

PRC.51 - Hearings for Appeals Under the Administrative Penalty System (APS)
(Attachment #6)

The procedures for Hearings under the APS establish comprehensive guidelines and standards for conducting appeals. These procedures ensure that the appeal process is fair, transparent, and accessible to all parties involved. They outline procedures for scheduling, notification of hearing, evidence submission and decision-making. Key elements include:

| Procedure Element | Description |
|--|---|
| Roles & Responsibilities | Details the duties of the City Clerk, Hearing Clerk, Hearing Officer, Issuing Officer, and Legal Services Representative in the hearing process. |
| Scheduling of Hearings & Adjournments | Outlines the process for scheduling hearings, requesting adjournments, and the conditions under which adjournments may be granted or refused. |
| Format of Hearings & Attendance | Specifies that hearings can be conducted in person or online and outlines the requirements for attendance and public access to hearings. |
| Accessibility & Accommodation | Ensures that parties requiring accommodation for disabilities or interpreters are provided with the necessary support. |
| Authorized Representation | Allows contraveners to authorize representatives to appear on their behalf, provided there is written authorization. |
| Notice of Hearing | Details the requirements for notifying contraveners of hearing dates, times, and locations. |
| Hearing Procedures | Describes the order of consideration during hearings, including the presentation of evidence, decision-making process, and handling of extenuating and extraordinary circumstances. |
| Decision | Specifies that the Hearing Officer must indicate their decision orally at the end of the hearing and outlines the process for recording and communicating the decision. |
| Conflict of Interest | Requires Hearing Officers to declare any conflicts of interest and provides procedures for addressing such conflicts. |

| Procedure Element | Description |
|----------------------------------|--|
| Evidence & Disclosure | Sets out the requirements for submitting and disclosing evidence before hearings. |
| Power to Review | Allows contraveners to request a review of a Hearing Officer's decision if they were absent from the hearing due to no fault of their own. |
| Correction of Errors | Permits the City Clerk to correct typographical or similar errors in the Hearing Officer's decision. |
| Records | Mandates the maintenance of electronic records of appeals and hearings in accordance with the City's retention policies. |
| Administration | Specifies that the Office of the City Clerk administers the procedures and may prescribe necessary forms and notices. |

Financial Impact

There are no financial impacts associated with the approval of these policies and procedures. Implementation will be managed within the existing budget allocations.

Operational Impact

Implementation of these policies and procedures will provide a consistent framework for conducting appeals within the Administrative Penalty System.

Staff from Legal Services, By-law and Compliance, Licensing and Permit Services and the Office of the City Clerk have reviewed and provided input for this report.

Broader Regional Impacts/Considerations

There are no regional impacts/considerations.

Conclusion

The proposed policies and procedures are essential for the effective and fair administration of the Administrative Penalty System, in accordance with Ontario Regulation 333/07. By establishing clear guidelines and standards for decision-making, public complaints, financial management, political interference, and conflicts of interest, these policies will enhance the transparency, accountability, and governance of the APS.

For more information, please contact: Christine Vigneault, Adjudicative and Risk Management Services ext. 8332.

Attachments

1. 05.C.01 - APS Conflict of Interest and Code of Conduct Policy (Attachment #1)
2. 05.C.02 - APS Preventing Political Interference Policy (Attachment #2)
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Prepared by

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