

 <p>The Corporation of the Town of Oakville</p> <p>PROCEDURE</p> <p>Administrative Monetary Penalties</p>	Procedure Number MS-REG-001-003	Page: 1 of 14
	Parent Policy No.: MS-REG-001 Author: Municipal Enforcement Services Department Authority: CAO	
Section: Municipal Services Sub-Section: Regulatory	Effective Date: 2009 June 18	Replaces/Last Modified: 2015 Sept 21 2017 Feb 28
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Purpose Statement

The Town of Oakville regulates and enforces the parking, standing or stopping of vehicles, the licensing of various businesses, and other applicable by-laws. Enforcement may result in the issuance of an Administrative Monetary Penalty. This procedural document is intended to clarify the roles, responsibilities, and general administration of Administrative Monetary Penalties.

Scope

This procedure applies to the process of issuing and administering Administrative Monetary Penalties for parking, licensing and other by-law contraventions within the Town of Oakville.

Procedure

PENALTY NOTICE

1. Every person who contravenes a provision of a Designated By-law, the Licensing By-law and any other applicable by-laws ("the By-laws") shall, upon issuance of a Penalty Notice, be liable to pay to the Town an Administrative Penalty in the amount specified and shall be liable to pay to the Town any applicable Administrative Fees.
2. Where an Officer responds to the same violation repeated by the same person, the person shall be liable to pay an escalated administrative penalty in the amounts prescribed in the rates and fees schedule approved by Council as part of the annual budget approval process.

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Forma

3. Administrative penalties escalate as follows:
 - (a) First Offence: the administrative penalty set out in the appropriate by-law or as revised in the rates and fees schedule;
 - (b) Second Offence: the amount of the penalty is greater than the penalty for a first offence; and
 - (c) Third and subsequent Offence(s): the amount of the penalty is greater than the penalty of a second offence.
4. If the violation is related to a property, Officers must ensure the ownership of the property has not changed before applying escalating administrative penalties
5. Escalating penalties for the same violation apply to a property in perpetuity as long as the owner of the property has not changed.
- ~~4.6.~~ Officers have discretion on whether to apply escalating administrative penalties.
- ~~2.7.~~ The *Provincial Offences Act* does not apply to contravention of a Designated By-law.
- ~~3.8.~~ An Officer who has reason to believe that a person has contravened any provision of the By-laws, may issue a Penalty Notice as soon as reasonably practicable.
- ~~4.9.~~ The Penalty Notice issued to the person shall include the following information:
 - (a) the date of the Penalty Notice;
 - (b) the Penalty Notice Number;
 - (c) particulars of the contravention;
 - (d) the amount of the Administrative Penalty;
 - (e) information respecting the process by which the person may pay the Administrative Penalty or request a review of the Administrative Penalty; and
 - (f) a statement advising that an Administrative Penalty will constitute a debt of the person to the Town.

SERVICE OF NOTICE OR DOCUMENTS

- ~~5.10.~~ Any notice or document that is mailed is deemed effective on the seventh (7th) calendar day after the date of mailing.

Parking

- ~~6.11.~~ A Penalty Notice issued or served related to the parking, standing or stopping of vehicles may be served in any of the following means and is deemed effective by:
- (a) affixing it to the vehicle in a conspicuous place at the time of the contravention;

- (b) delivering it personally to the operator of the vehicle or the person having care and control of the vehicle at the time of the contravention;
- (c) mailing it to the Owner as soon as reasonably practicable; or
- (d) delivering it personally to the Owner as soon as practicable.

Licensing and other applicable by-laws

7-12. A Penalty Notice issued for contravention of the Licensing by-law and any other applicable by-laws may be served in any of the following means and is deemed effective by:

- (a) delivering personally to the person to whom or to which it is addressed;
- (b) sending it by mail to the person's last known address;
- (c) sending it by facsimile transmission to the person's last known facsimile transmission number; or
- (d) sending it by e-mail transmission to the person's last known e-mail address.

FINANCIAL MANAGEMENT

8-13. An Administrative Penalty that is deemed to be affirmed is due and payable and constitutes a debt to the Town.

9-14. No Officer may accept payment in respect of the Administrative Penalty.

10-15. Payment of an Administrative Penalty or an Administrative Fee can be made either by cash, cheque, credit card, debit card, through an approved online payment system or through a town approved payment system. Partial payments or payment plans will not be accepted.

11-16. Payments of an Administrative Penalty must be received by the due date and will not be credited until received by the Town.

12-17. Where a person has paid an Administrative Penalty or an Administrative Fee that is cancelled or reduced by a Screening Officer or Hearing Officer, the Town shall refund the amount cancelled or reduced.

Parking

13-18. _____ F
or an Administrative Penalty related to the parking, standing or stopping of vehicles:

- (a) Any person who is served a Penalty Notice and who does not pay to the Town the amount of the Administrative Penalty within fifteen (15) days of the Penalty Notice date shall pay to the Town an MTO Search fee and a notice will be mailed to the Owner.
- (b) Where an Administrative Penalty and any applicable Administrative Fees are not paid within 15 days after the date that it becomes due and payable, it shall be deemed to be affirmed, and each person to whom the Penalty Notice was issued

shall pay to the Town a Late Payment fee, and a notice will be mailed to the Owner.

- (c) Where a person makes a request for an extension of time for a review or a request for an extension of time for payment and the request is granted, the Penalty Notice will not be subject to the Late Payment fee, until after the extension of time has expired.
- (d) Where an Administrative Penalty and any applicable Administrative Fees are not paid within 15 days after the date that it becomes due and payable, each person to whom the Penalty Notice was issued shall pay to the Town an MTO Plate Denial fee. A notification will be sent to the Registrar of Motor Vehicle to collect the outstanding penalty and fees prior to vehicle licence registration.
- (e) Any person who is served a Penalty Notice by mail shall pay to the Town a Service By Mail Fee.
- (f) The Town may impose Administrative Fees as established annually through the rates and fees schedule approved by Council as part of the annual budget approval process:

ADMINISTRATIVE FEES FOR PARKING	
Description	
	Hearing No-show
	Late Payment
	MTO Plate Denial
	MTO Search
	Screening No-show
	Service By Mail

Licensing and other applicable by-laws

44-19. For an Administrative Penalty related to a system of licences,

- (a) Where a Penalty Notice is served and is not paid within fifteen (15) days of the Penalty Notice date, it shall be deemed to be affirmed and a Late Payment fee shall be paid to the Town.
- (b) Where a Penalty Notice and any applicable Administrative Fees are not paid within 30 days, a notice will be mailed to the person to whom the Penalty Notice was issued.

- (c) Where a Penalty Notice and any applicable Administrative Fees are not paid, renewal of a licence will be denied until payment is made.
- (d) The Town may impose Administrative Fees as established annually through the rates and fees schedule approved by Council as part of the annual budget approval process:

ADMINISTRATIVE FEES FOR LICENSING AND OTHER APPLICABLE BY-LAWS	
Description	
Fail to Appear - Screening	
Fail to Appear - Hearing	
Late Payment	
Adjournment Request	

REVIEW BY SCREENING OFFICER

15-20. A person who receives a Penalty Notice may request a review by a Screening Officer within 15 days after the Penalty Notice date.

16-21. A person may request that the Screening Officer extend the time to request a review within 45 days after the Penalty Notice date, failing which, the Administrative Penalty shall be deemed to be affirmed.

17-22. The Screening Officer may extend the time to request a review of the Administrative Penalty when the person requesting the extension demonstrates extenuating circumstances for failing to take action that warrants the extension of time. Where an extension of time is not granted by the Screening Officer, the Administrative Penalty is deemed to be affirmed.

18-23. A request for an extension of time to review shall include the Penalty Notice Number and the person's contact information. The Screening Officer will consider the request for extension before reviewing the Administrative Penalty.

19-24. If a person is granted an extension of time to pay, the Screening Officer shall record the extension so that the Town's records can be updated accordingly.

20-25. On a review of the Administrative Penalty, the Screening Officer may affirm the Administrative Penalty, or the Screening Officer may cancel, reduce or extend the time for payment of the Administrative Penalty, including any late payment Administrative Fees, on the following grounds:

- (a) where the person establishes, on a balance of probabilities that the person did not commit the act as described in the Penalty Notice ; or
- (b) the cancellation, reduction or extension of the time for payment of the Administrative Penalty, including any Administrative Fees, is necessary to reduce hardship.

21-26. Where a person fails to request a review or extension of time before the Screening Officer:

- (a) the Person shall be deemed to have waived the right to a screening and hearing;
- (b) the Administrative Penalty shall be deemed to be affirmed; and
- (c) the Administrative Penalty shall not be subject to review.

22-27. Where the person fails to Appear for Screening at the time and place scheduled for a review by the Screening Officer:

- (a) the person shall be deemed to have abandoned the review;
- (b) the Administrative Penalty shall be deemed to be affirmed;
- (c) the Administrative Penalty shall not be subject to review; and
- (d) the person shall pay the applicable fee.

REVIEW BY HEARING OFFICER

23-28. Any person who has received a Screening Decision may request a review of the Screening Decision by a Hearing Officer within 15 days after the Screening Decision was issued, failing which, the Administrative Penalty shall be deemed to be affirmed.

24-29. A person may request that the Hearing Officer extend the time to request a review within 45 days after the Screening Decision was issued.

25-30. The Hearing Officer may extend the time to request a review of the Screening Decision when the person requesting the extension demonstrates extenuating circumstances for failing to take action that warrants the extension of time. Where an extension of time is not granted by the Hearing Officer, the Screening Decision shall be deemed to be affirmed.

26-31. A request for an extension of time to review by the Hearings Officer shall include the Penalty Notice Number and the person's contact information. The Hearings Officer will consider the request for extension before reviewing the decision of the Screening Officer.

27-32. If a person is granted an extension of time to pay, the Hearings Officer shall record forthwith the extension so that the Town's records can be updated accordingly.

28-33. On a review of the Screening Decision, the Hearing Officer may affirm the Screening Decision, or the Hearing Officer may cancel, reduce or extend the time for payment of the Administrative Penalty, including any Administrative Fees, on the following grounds:

- (a) where the person establishes, on a balance of probabilities that the person did not commit the act as described in the Penalty Notice; or
- (b) the cancellation, reduction or extension of the time for payment of the Administrative Penalty, including any Administrative Fees, is necessary to reduce hardship.

29-34. Where a person fails to request a review of the Screening Decision or extension of time before the Hearing Officer in accordance with the By-laws:

- (a) the Person shall be deemed to have waived the right to a hearing;
- (b) the Screening Decision and the Administrative Penalty shall be deemed to be affirmed; and
- (c) the Screening Decision and the Administrative Penalty shall not be subject to review.

30-35. Where the person fails to appear at the time and place scheduled for a review by the Hearings Officer:

- (a) the person shall be deemed to have abandoned the hearing;
- (b) the Screening Decision and the Administrative Penalty shall be deemed to be final; and
- (c) the person shall pay the applicable fee.

31-36. The Hearing Officer may amend the Penalty Notice as may be necessary if it appears that it fails to state or states defectively anything that is requisite to the violation. In considering whether or not an amendment should be made, the Hearing Officer shall consider whether the person has been misled or prejudiced by the error or omission and whether the proposed amendment can be made without injustice being done. Amendments to the Penalty Notice may include vehicle make, street name, fire route address, business name or business address.

EXTENSION OF TIME TO PAY

32-37. A person who receives a Penalty Notice and is appearing before the Screening Officer or Hearings Officer may request an extension of time to pay the penalty. The Screening Officer or Hearings Officer may extend the time for payment of an administrative penalty taking into consideration such factors as:

- (a) the amount of the Administrative Penalty and any Administrative Fees, and
- (b) whether the person is employed, a student, retired or other circumstances that would render the payment an undue hardship.

~~33-38.~~ The extension of time should not exceed 60 days from the date of the Screening or Hearings Officer's review.

~~34-39.~~ If a person is granted an extension of time to pay, the Screening or Hearings Officer shall record the extension so that the Town's records can be updated accordingly.

UNDUE HARDSHIP

~~35-40.~~ The Screening Officer or Hearings Officer may excuse a person from paying all or part of the Administrative Penalty, including any Administrative Fees if requiring them to do so would cause undue hardship.

~~36-41.~~ Any person claiming undue hardship must provide documented proof substantiating financial hardship, for example: Old Age Security, Canada Pension, Guaranteed Income Supplement, Disability Pension, student loans, Ontario Works, etc. All information and documentation shall be treated in a confidential manner.

CONFLICT OF INTEREST

~~37-42.~~ The Screening Officer is a Town employee who conducts reviews of Administrative Monetary Penalties. The Screening Officer must abide by the Town's Employee Code of Conduct.

~~38-43.~~ The Hearing Officer is appointed by the Town Solicitor (through delegated authority) to undertake reviews of a Screening Decision related to Administrative Monetary Penalties. Any Hearing Officer shall not be an employee of the Town, but is bound by the *Statutory Powers and Procedure Act* R.S.O. 1990, c. S.22 and is obligated to conduct hearings in an impartial manner.

~~39-44.~~ To prevent conflicts of interest, the Screening and Hearing Officer are required to disclose and withdraw from any decisions in which they have a financial interest, including any personal benefit, or any benefit to a relative of the Officer. A Screening or Hearing Officer shall not conduct or otherwise participate in a review of an administrative penalty issued to a relative or close personal relationship.

~~40-45.~~ The Screening and Hearing Officer shall disclose any actual or potential conflicts to the Town Solicitor, withdraw from the review and decision making process relevant to the conflict, and request for another Screening or Hearing Officer to conduct the review to avoid actual or potential conflicts of interest.

~~41-46.~~ If all Screening and Hearing Officers have a conflict with a particular penalty, then the Town Solicitor shall retain another Screening or Hearing Officer.

~~42-47.~~ Screening and Hearing Officers are not permitted to challenge their own or their relatives' Penalty Notices.

~~43-48.~~ The Town Solicitor shall retain another Screening or Hearing Officer, at their discretion, where public confidence in administration of justice may be eroded.

INTERFERENCE

~~44-49.~~ No person shall attempt, directly or indirectly to influence a Screening Officer or a Hearing Officer respecting their review or decision in a proceeding that is or will be before the Screening Officer or Hearing Officer. Exceptions include:

- (a) person who is entitled to be heard in the proceeding or the person's lawyer or licensed paralegal; and
- (b) only by that person or the person's lawyer or licensed paralegal during the hearing of the proceeding in which the issue arises.

~~45-50.~~ If a person attempts to influence a Screening or Hearing Officer contrary to this procedure, such incidents shall be addressed through the procedures of the applicable Town Code of Conduct. No action shall be taken against the Screening or Hearing Officer for making any such report in good faith.

Appendices:

Appendix A - Hearing Process

Appendix B - Complaints Process

References and Related Documents

Regulatory Services Policy MS-REG-001

Accountability and Transparency Policy G-GEN-009

Parking Administrative Monetary Penalties By-law

Licensing By-law

Other applicable by-laws

Screening and Hearing Officer By-law

Municipal Act, 2001

Statutory Powers and Procedures Act

Employee Code of Conduct

Code of Conduct for Members of Council and Local Board Members

Definitions

“Administrative Fee” means any Fee specified in the Parking Administrative Monetary Penalties By-law, the Licensing By-law, and any other applicable by-law which may be revised in the rates and fees schedule approved by Council as part of the annual budget approval process.

“Administrative Penalty” means an administrative penalty established in the Parking Administrative Monetary Penalties By-law, the Licensing by-law, and any other applicable by-

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law or as revised in the rates and fees schedule approved by Council as part of the annual budget approval process.-

“Appear for Screening” means to attend in person or call by telephone at the time, place or phone number scheduled for review by a Screening Officer.

“Designated By-law” means a by-law with respect to the parking, standing or stopping of vehicles that is designated under the Parking Administrative Monetary Penalties By-law and, if only a part of a by-law is designated, includes only the designated part of the by-law.

“Hearing Officer” means each person appointed from time to time performing the functions of a Hearing Officer pursuant to the By-laws.

“Officer” means any person authorized by the Corporation of the Town of Oakville to enforce by-laws and includes Municipal Law Enforcement Officers, provincial offences officers and Halton Regional Police Officers.

“Owner” means the registered owner of a vehicle as provided by the Ministry of Transportation (“MTO”) or similar authority.

“Penalty Notice” means a notice issued pursuant to the By-laws.

“Person” means an individual, firm, corporation, sole proprietorship, association or partnership.

“Screening Decision” means a decision made by a Screening Officer.

“Screening Officer” means each person performing the functions of a Screening Officer pursuant to the By-laws.

Responsibilities

The Director of Municipal Enforcement Services or designate shall be responsible for the administration of this procedure. ~~The Town Clerk or designate shall be responsible for the administration of this procedure as it relates to Administrative Penalties for licensing.~~

The Hearings Officer shall be responsible for ensuring that the hearing follows the process outlined in Appendix A.

The Town Solicitor shall be responsible for appointing Screening and Hearing Officers in accordance with the applicable Town By-laws and Policy. Preference shall be given to candidates possessing the following qualifications:

- Licensed paralegal
- knowledge of the *Provincial Offences Act*, *Highway Traffic Act*, Traffic/Parking and Licensing By-laws, and other related Town by-laws and Provincial Statutes
- experience with conflict resolution and negotiating skills.

Appendix A Hearing Process

This procedure applies to all hearings to review a Screening Officer's decision for Administrative Monetary Penalties issued for parking and licensing contraventions within the Town. The *Statutory Powers and Procedures Act* applies to a review by a Hearings Officer.

The format and responsibilities of the hearing shall be as follows:

1. Hearings Officer:

- (a) Call proceedings to order
- (b) Record participant(s) name(s) and relevance to the Hearing
 - Advise attendees of procedures to be followed, including:
 - All hearings shall be open to the public unless the Hearings Officer is of the opinion that the hearing should be held in the absence of the public in accordance with section 9(1) of the *Statutory Powers and Procedures Act*
- (c) Town staff will present first and then the Appellant.
- (d) Administer oaths or affirmations from any witnesses
- (e) Maintain order of the hearing
- (f) Review applications for extensions of time to request a review of a Screening Decision
- (g) Record all persons who fail to appear at the time and place scheduled for a review by the Hearings Officer
- (h) Ask questions of witnesses, Town staff, Appellant
- (i) The decision of the Hearings Officer is final

2. Town Staff:

- (a) Present any opening remarks
- (b) Call witnesses for town
- (c) May ask questions of Appellant/witnesses
- (d) Answer questions of Hearings Officer

3. Appellant:

- (a) Take Oath or make Affirmation – if giving evidence
- (b) Present his/her testimony
- (c) May ask questions of witnesses
- (d) Answer questions of Town Staff and/or Hearings Officer

4. Any Witnesses:
 - (a) Take Oath or make Affirmation
 - (b) Present his/her testimony
 - (c) Answer questions of Town Staff, Appellant and/or Hearings Officer
5. Appellant:
 - (a) Present any closing remarks
6. Town Staff:
 - (a) Present any closing remarks
 - (b) Speak to penalty
7. Hearings Officer:
 - (a) If required, ask for any further clarification
 - (b) Amend the Penalty Notice as may be necessary
 - (c) Announce final decision providing brief reasons, not disclosing any confidential matter
 - (d) Record the final decision and provide copy to Appellant.

Appendix B Public Complaint Process

1. A member of the public who has a complaint with respect to the administration of the system of Administrative Penalties (“APS”) may file the complaint provided that the member of the public has been directly affected by the administration of the system. This procedure is not intended to replace other Town or legal processes available to address the Complainant’s concerns, such as allegations of misconduct by an employee(s) of the Corporation or a Hearings Officer.
2. The following procedure will be followed should a complaint be made with respect to the administration of the system of APSs:

Format of Complaint

- (a) Complaints must be in writing and must identify the name and full contact particulars of the Complainant. Complaints that are anonymous will not be accepted. The Complainant may be asked to provide additional written details, supporting documentation, and records concerning the complaint before the investigation can be commenced

Designated Complaints Investigator:

- (b) For complaints with respect to the administration of the system of APS, the Director, Municipal Enforcement Services or designate.

Time Limitation

- (c) The written complaint must be received within 7 days of the occurrence date. This time limitation may only be extended when, in the opinion of the Designated Complaints Investigator, extenuating circumstances exist to justify the extension.

Process

- (d) Upon receipt of a Formal Complaint, the Designated Complaints Investigator will first make a determination whether the issue falls within the scope of this procedure and may consider Complaints that are frivolous, vexatious, trivial or made in bad faith.

Declining Investigation

- (e) If the Designated Complaints Investigator declines to investigate the formal complaint under this procedure, he or she shall:
 - i. Notify the Complainant of the decision by a written letter within 10 working days from the date the complaint was received; and
 - ii. Provide any employee or Hearings Officer that is the subject of the complaint, a copy of the written complaint and the Decline Investigation Letter.

Investigation

- (f) The Designated Complaints Investigator determines that the issue falls within the scope of this procedure, he/she will commence a full investigation and may:
- i. Meet with the Complainant and the subject employee(s) or Hearings Officer independently;
 - ii. Attempt to obtain as much information as possible;
 - iii. Obtain and review any applicable documents, information or records;
 - iv. Meet with other individuals or witnesses, who have relevant information regarding the matter(s) under investigation;
 - v. Obtain assistance from other senior staff when investigating a complaint of a very serious nature; and
 - vi. Request a third party investigation if deemed necessary.

Decision

- (g) Upon conclusion of the investigation, the Designated Complaints Investigator will:
- i. Provide a written response to the Complainant within 30 working days from the date of the complaint was received setting out his or her decision.

Withdrawal of Complaint

- (h) A Complainant may withdraw his/her complaint at any time; notwithstanding any withdrawal, the Town may continue to deal with the complaint if it considers it appropriate to do so. Any request to withdraw the complaint must be submitted in writing

Confidentiality

- (i) The public complaint resolution mechanism will be handled in as confidential a manner as possible. Complaints, respondents and witnesses will be advised to maintain confidentiality concerning complaints or incidents.