

Corporate Policy and Procedure



Policy	Hearing Officer Guide to Adjudication of Offences in the Administrative Penalty System
Category	Departmental
Authority	Legal and Court Services
Related Policies	Listed below
Approved By	General Manager, Legal and Court Services
Effective Date	Tuesday, April-01-2025
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Policy Statement

The Corporation of the City of Guelph requires and values that its Administrative Penalty System ("APS") be administered in a transparent and ethical manner in accordance with applicable legislation and Council-approved by-laws. Accordingly, the City requires that all City employees and appointees involved in the administration of the APS conduct their responsibilities in accordance with fundamental principles of justice, which include decision-making and procedural independence, fairness, impartiality, competence and integrity.

Purpose

This Guide provides a framework for Hearing Officers in their decision-making function in the APS. This guide will assist Hearing Officers by:

- (a) Identifying their decision-making powers;
- (b) Identifying the grounds for decision making; and
- (c) Establishing key procedures.

Definitions

For the purposes of this Guide, the following terms are defined in accordance with the Administrative Penalty By-law and the Hearing Officer By-law:

Administrative Fee means any fee specified in the Administrative Penalty By-law;

Administrative Penalty means an administrative penalty imposed for a contravention of a Designated By-law, as set out in the Administrative Penalty By-law;

Administrative Penalty By-law means By-law No. (2025) - XXXX passed by the City to establish administrative penalties for parking, as amended from time to time, or any successor thereof;

Administrative Penalty System or **APS** is a City-administered system established by the Administrative Penalty By-law for the administration of civil penalties in respect of the failure to comply with a Designated By-law;

AODA means *Accessibility for Ontarians with Disabilities Act, 2005*, S.O. 2005, c. 11;

City means The Corporation of the City of Guelph;

Council means the Council of the City of Guelph;

Designated By-law means a by-law that is designated by the City as a by-law to which the City's Administrative Penalty System applies and, if only a part of a by-law is designated, includes only the designated part of the by-law;

Financial Hardship means a significant financial difficulty or expense and focuses on the resources and circumstances of the Person owing an Administrative Penalty or Administrative Fee, in relation to the cost or difficulty of paying the Administrative Penalty or Administrative Fee;

General Manager means The General Manager of Legal and Court Services / City Solicitor for the City of Guelph, or anyone designated by them to perform their duties of General Manager relating to APS;

Guide means this Hearing Officer Guide to Adjudication of Offences in the Administrative Penalty System, as amended from time to time, or any successor thereof;

Hearing Decision means a notice which contains the decision of a Hearing Officer, as set out in Section 6 of the Administrative Penalty By-law;

Hearing Officer means any individual appointed from time to time pursuant to this by-law to perform the functions of a hearing officer in accordance with this by-law and the Administrative Penalty By-law;

Hearing Review means the process related to review of a Screening Decision, as set out in Section 6 of the Administrative Penalty By-law;

Issuing Officer means a person assigned to issue Penalty Notices, including municipal by-law compliance officers;

Mitigating or Extenuating Circumstances means situations that do not provide an excuse or justify the infraction but which, in fairness and mercy, may be considered as reducing the degree of responsibility;

Penalty Notice means a penalty notice as described in Section 4 of the Administrative Penalty By-law;

Person includes an individual, corporation, or other legal entity;

Policy for Appointment of Screening and Hearing Officers means the policy of the City for the appointment of screening and hearing officers, as amended from time to time, or any successor thereof;

O. Reg. 333/07 means Ontario Regulation 333/07: Administrative Penalties, made under the *Municipal Act, 2001*, as amended from time to time, or any successor thereof;

Screening and Hearing Officer By-law means By-law No. (2025) - XXXX passed by the City of Guelph to establish the positions of Screening Officer and Hearing Officer and to provide for the appointment of Screening Officers and Hearing Officers, in relation to administrative penalties, as amended from time to time, or any successor thereof;

Screening Decision means a notice which contains the decision of a Screening Officer, as set out in the Administrative Penalty By-law;

Screening Officer means any person appointed from time to time pursuant to this by-law, to perform the functions of a screening officer in accordance with this by-law and the Administrative Penalty By-law;

Screening Review means the process related to review of a Penalty Notice, as set out in Section 5 of the Administrative Penalty By-law; and

Statutory Powers and Procedures Act means the *Statutory Powers and Procedures Act*, R.S.O. 1990, c. S.22, as amended from time to time, or any successor thereof.

Procedure

1. Review by a Hearing Officer

- 1.1 O. Reg. 333/07 provides the legislative authority of the Hearing Officer to review a decision made by a Screening Officer concerning a Penalty Notice.
- 1.2 O. Reg. 333/07 stipulates that the Statutory Powers and Procedures Act applies to a review by a Hearing Officer.
- 1.3 In accordance with O. Reg. 333/07, the Hearing Officer has no authority to consider questions relating to the validity, constitutional applicability or operability of a statute, or regulation or by-law.
- 1.4 The Administrative Penalty By-law specifies the amount of the monetary penalty for each type of parking violation or by-law infraction. The amount of the monetary penalty and the due date for payment of the penalty appear on each Penalty Notice.
- 1.5 Section 6 of the Administrative Penalty By-law outlines the requirements for review by a Hearing Officer.

2. Procedure to Request a Hearing Review

- 2.1 A Person is eligible to request a review of the Screening Officer's Decision by a Hearing Officer only if a screening review has been held.
- 2.2 A Person may request a review of the Screening Officer's Decision by a Hearing Officer on or before the Payment Due Date indicated on the Decision of Screening Officer and the request must be made by:
 - (a) submitting a request by email to: aps@Guelph.ca; or

- (b) completing the Hearing Request Form on the City's website.

3. Hearing Officer's Guide for Decision-Making

- 3.1 A Hearing Officer shall not make a determination with respect to a review of a Screening Decision unless the Hearing Officer has given the Person and the City's staff an opportunity to be heard at the time and place scheduled for the hearing.
- 3.2 After the Person presents their case, the Hearing Officer shall review and consider all material submitted by the City's staff.
- 3.3 The Issuing Officer or a representative from the City shall be present at the Hearing.
- 3.4 The Person shall be provided with an opportunity to question the attending Issuing Officer or City representative.
- 3.5 If, during the presentation of the Person's case, the Hearing Officer determines that an issue of fact or law is raised that requires a response from the appropriate City staff, the Hearing Officer may adjourn the proceedings to a date convenient to all parties or call a recess to allow the City's staff to respond.
- 3.6 The Hearing Officer may adjourn a Hearing at any time and on such conditions as they consider just.
- 3.7 The Hearing Officer shall state the reasons for any decision to adjourn.
- 3.8 If the Hearing Officer adjourns a matter for the City's staff to attend the review, the Hearing Officer shall advise the General Manager accordingly and will provide direction regarding which City representative is required to attend (for example, a Bylaw Compliance Officer or Prosecutor).
- 3.9 The Hearing Officer does not have the ability to award costs of the Hearing Review to a party.
- 3.10 During a Hearing Review, the Hearing Officer may:
 - (a) cancel the Penalty Notice (inclusive of any Administrative Fees);
 - (b) affirm the Penalty Notice (inclusive of any Administrative Fees);
 - (c) vary the amount of the payment indicated on the Penalty Notice (inclusive of any Administrative Fees);
 - (d) change the due date of the Penalty Notice (inclusive of any Administrative Fees), which shall not be more than 6 months from the date of the Hearing Review.
- 3.11 The Hearing Officer shall provide a decision to the Person at the conclusion of the Hearing Review, unless the decision is reserved.
- 3.12 If the decision is reserved (*i.e.*, after the Hearing Review, the Hearing Officer does not immediately deliver a decision but, instead, takes time to review evidence and decides to deliver a Hearing Decision at a later time), the Hearing Officer will provide the Hearing Decision to the City's Court Administration and the decision shall be forwarded by Court Administration to the Person and the City.

- 3.13 The Hearing Officer may at any time correct a typographical error, calculation error, misstatement, ambiguity, technical error or other similar errors made in his or her decision, direction or order.
- 3.14 The decision of a Hearing Officer is final.

4. Justifications to Cancel, Vary or Affirm a Penalty Notice

- 4.1 The process of reviewing the Screening Officer's Decision includes a 3-stage approach:
- (a) confirming the Penalty Notice;
 - (b) consideration of any evidence adduced by the Person; and
 - (c) determination of the Administrative Penalty, if any.
- 4.2 The Hearing Officer shall consider the evidence presented by the Person and all applicable legislation, City by-laws, policies and procedures, before making a decision and will use the following as a guideline when making a decision during a Hearing Review:
- (a) The Hearing Officer may affirm the Screening Officer's Decision, or cancel, reduce or extend the time for payment of the amount shown on the Penalty Notice, including any Administrative Fees, on the following grounds:
 - (i) The vehicle was not parked, standing or stopped contrary to the By-law (written documents may be requested to verify the Person's statements); or
 - (ii) the Person did not contravene the designated By-law as described in the Penalty Notice; or
 - (iii) the cancellation, reduction or extension of time for the payment of the Penalty Notice (Including any Administrative Fees) is necessary to relieve any hardship, in accordance with the City's APS Policy regarding Undue Hardship; or
 - (iv) by evidence, there is a mistake on the Penalty Notice (example: plate error, date or time error).
 - (b) If the Person fails to provide justification and establish the grounds for cancellation or variation of the Penalty Notice, the Penalty Notice should be affirmed and the Hearing Officer may rely on the facts on the Penalty Notice to affirm the penalty amount.

5. Not Parked Contrary to By-law

- 5.1 A Person may present a number of scenarios including, but not limited to, the following which may determine the outcome of the Hearing Decision:
- (a) vehicle was not parked where alleged (ex., not parked on a sidewalk);
 - (b) vehicle was in the process of loading or unloading (ex. while in a fire route);
 - (c) location is not a fire route (or improperly signed);

- (d) stolen plate/vehicle (in this case, the vehicle owner is not liable because their vehicle was taken without consent);
- (e) insufficient signage (if signage is required in the by-law);
- (f) license plate error (vehicle parked contrary to the by-law is not the vehicle indicated in the Penalty Notice);
- (g) multiple Penalty Notice issuance (same contravention and location within a 3-hour period);
- (h) registered owner is deceased (should not be held liable to pay the Penalty Notice);
- (i) parking exemption was obtained;
- (j) police, fire vehicles, ambulance/City vehicle on duty; or
- (k) necessity (example: imminent danger and no other reasonable alternative).

6. Mitigating or Extenuating Circumstances

- 6.1 Although the City's Administrative Penalty By-law does not reference "extenuating" or "mitigating" circumstances as a ground upon which the Screening Officer or Hearing Officer may exercise the power to vary a Penalty Notice, a fair review process requires an allowance for this consideration in certain, limited circumstances.
- 6.2 These are situations that do not provide an excuse or justify the infraction, but which in fairness and mercy may be considered as reducing the degree of responsibility. These are very special circumstances and if proven that the existence of such special circumstances warrants a variation of the Penalty Notice, the Hearing Officer may take this into consideration when adjudicating the matter. These are also circumstances that render a contravention less serious and may lessen the degree of responsibility.
- 6.3 The Person claiming Mitigating or Extenuating Circumstances shall provide proof of their claim with oral evidence and documented proof, if available.

7. Burden of Proof and Presenting Evidence at a Hearing Review

- 7.1 The burden of providing the necessary grounds for cancellation or variation of a Penalty Notice falls upon the registered vehicle owner, property owner, or Person.
- 7.2 Documents relating to evidence do not need to be submitted in advance of a hearing. The Person shall bring to the hearing three (3) legible copies of any documents which they intend to rely upon relating to the Penalty Notice (i.e. financial documents, death certificate, police report, any documents that may support a request for extension of time to pay, photographs, etc.).
- 7.3 Where the Hearing Officer is satisfied as to its authenticity, a copy of a document may be admitted as evidence at a hearing.
- 7.4 At the Hearing Review, the Person may:
 - (a) present evidence and submissions;

- (b) call and examine witnesses and conduct cross-examination of witnesses reasonably required for a full and fair disclosure of all issues relevant to the Hearing Review, and/or;
 - (c) question the Officer.
- 7.5 The Hearing Officer may allow evidence at a hearing, whether or not given or proven under oath or affirmation or admissible in court:
 - (a) any verbal testimony; and
 - (b) any document or anything relevant to the subject matter of the Hearing Review and may act on such evidence, but the Hearing Officer may exclude anything excessively repetitious and anything that cannot be retained as part of the Hearing Review record such as electronic copies of photographs.
- 7.6 Nothing is admissible in evidence at a Hearing Review that would be inadmissible in a court by reason of any privilege under the law of evidence or that is inadmissible by the statute or by-law under which the Hearing Review arises or any other statute.
- 7.7 Witnesses at a Hearing Review shall be verbally examined and the examination may consist of direct examination, cross-examination and re-examination.
- 7.8 The Hearing Officer may ask questions of a witness at any time.
- 7.9 The Hearing Officer may determine whether or not evidence from a witness needs to be given under oath or affirmation.
- 7.10 The Hearing Officer may disallow a question put to the witnesses that is vexatious or irrelevant to any matter that may be properly inquired into at the Hearing Review.
- 7.11 The Hearing Officer may at any time during a Hearing Review direct that a witness be recalled for further examination.
- 7.12 Where a witness appears unwilling or unable to give answers to the questions being asked, the Hearing Officer may permit the party calling the witness to examine the witness by means of leading questions.

8. Disclosure

- 8.1 A Person who has received a Penalty Notice has the right to know the case against them. As a result, that Person has a right to review the Issuing Officer's notes, photographs, reports or records that concern them and the Penalty Notice in question. The information gathered by the Issuing Officer leading to the issuance of a Penalty Notice is not the property of the City solely for securing an affirmation of the Penalty Notice but it is the property of the public to ensure that justice is completed fairly.
- 8.2 Disclosure pertains to the material the City will submit for the Hearing Officer's consideration at the Hearing Review and may consist of the following:
 - (a) Penalty Notice details;

- (b) photographs;
 - (c) investigative notes of the Issuing Officer; or
 - (d) any other material relevant to the matter.
- 8.3 The right to disclosure is founded in the principle of fair play between the Person and the City.
- 8.4 Disclosure will be provided upon the request of the Person and as soon as is reasonably practicable.
- 8.5 Disclosure will be provided once without cost. Subsequent requests for disclosure in a matter for which disclosure was previously provided shall be subject to a fee as outlined in the City's User Fees By-law.
- 8.6 The general principle is that all relevant information must be disclosed, whether or not the City intends to introduce it in evidence at the Hearing Review. The City must disclose relevant information, whether it is inculpatory or exculpatory, and must provide all information which may assist the Person.
- 8.7 Information will not be considered for disclosure where it is:
 - (a) irrelevant;
 - (b) not in control of the City;
 - (c) privileged.
- 8.8 A Hearing Officer may, at any stage of the proceeding, make orders for the exchange of documents and any other form of disclosure.

9. Hearing Review Decorum

- 9.1 All Hearing Reviews shall be verbal hearings.
- 9.2 Hearing Reviews shall be open to the public, subject to hearing room capacity limits.
- 9.3 All parties in a proceeding are expected to conduct themselves in a respectful and courteous manner.
- 9.4 In addition to the power to maintain order or give direction for the maintenance of order at the Hearing Review, and the ability to call for the assistance of a peace officer to enforce the order or direction pursuant to Section 2 of the *Statutory Powers and Procedures Act*, the Hearing Officer may also exercise the discretion to remove the offending party from the hearing meeting room.
- 9.5 No person shall record the Hearing Review proceedings or take photographs unless:
 - (a) the recordings are routine public safety recordings made via the City's online meeting hosting platform; or
 - (b) the person is permitted by the Hearing Officer to record the proceedings.

10. Documenting the Hearing Decision

- 10.1 The Hearing Officer shall provide a Hearing Decision to the Person at the conclusion of the scheduled Hearing Reviews of that day.
- 10.2 The Hearing Decision shall be made on "Hearing Decision Letter", where the Hearing Officer has decided to:
- (i) affirm or vary the amount of the penalty on the Penalty Notice (inclusive of any Administrative Fees);
 - (ii) vary the time for payment of the Penalty Notice (inclusive of any Administrative Fees); or
 - (iii) cancel the Penalty Notice (inclusive of any Administrative Fees).

11. Time to Pay

- 11.1 The Hearing Officer shall provide the Person with sufficient time, which shall not be more than six months from the date of the Hearing Review, to pay the outstanding penalty amount shown on the Penalty Notice and any applicable Administrative Fees.
- 11.2 An extension of time to pay the outstanding penalty amount shown on the Penalty Notice shall only be granted where Mitigating or Extenuating Circumstances have been demonstrated by the Person.
- 11.3 If the extension of time to pay is denied and the Screening Decision is affirmed, the payment due date will be affirmed as set by the Screening Officer on the Screening Decision letter.

12. Rescheduling a Hearing Review

- 12.1 A Hearing Review appointment may be rescheduled no later than 3 business days prior to the scheduled appointment by:
- (a) attending in person at the location listed on the back of the Penalty Notice (59 Carden Street, Guelph, Ontario); or
 - (b) calling the telephone number listed on the back of the Penalty Notice; or
 - (c) submitting a request by e-mail to: [\[aps@Guelph.ca\]](mailto:aps@Guelph.ca).
- 12.2 Only one (1) rescheduling of a Hearing Review is permitted.

13. Authorized Representatives

- 13.1 A Person may authorize another individual to act on their behalf.
- 13.2 If a Person authorizes another individual (including a lawyer or agent) to act on their behalf during the Hearing Review, the authorized individual must complete a "Authorization to Act as an Agent" form in advance of the Hearing Review. This form can be located at [\[www.Guelph.ca/aps\]](http://www.Guelph.ca/aps).

14. Failure to Attend a Scheduled Hearing Review

- 14.1 At the allocated time for the Hearing Review, the Hearing Officer shall allow a grace period of 15 minutes in the event the Person or City representative or Officer is not present at the scheduled time.
- 14.2 Where a Person fails to attend a scheduled Hearing Review appointment:
- (a) the Person is deemed to have abandoned the request for review of the Screening Officer's Decision on the Penalty Notice; and
 - (b) the Penalty Notice is deemed affirmed and is not subject to any further review; and
 - (c) the Person shall pay to the City a Hearing Non-appearance fee and any applicable Administrative Fees and costs as set out in the Administrative Penalty By-law.

15. Accommodations and Accessibility Information

- 15.1 It is the responsibility of the Person to bring an interpreter to the Hearing Review if language interpretation is required.
- 15.2 Any Person requiring accommodation pursuant to the AODA, shall submit a request for accommodation in advance of the Hearing Review.

16. Video Conferencing and Telephone Appointments

- 16.1 The City will primarily utilize video conferencing to conduct Hearing Reviews.
- 16.2 The City may choose to utilize teleconferencing in situations of accessibility, lack of computer resources, or any situation deemed appropriate by the General Manager.
- 16.3 The Hearing Officer will conduct the Hearing Review in accordance with the procedures in this Guide.
- 16.4 The Hearing Officer shall provide a Hearing Decision which shall be sent to the Person via email or by regular mail.

Roles and Responsibilities

This Guide shall form part of the orientation for all Hearing Officers and shall be adhered to in the exercise of their duties in the APS. This Guide may be amended, from time to time, by the General Manager.

Related By-laws and Policies

- By-Law No. (2025) - XXXX Administrative Penalty By-law
- By-Law No. (2025) - XXXX Screening and Hearing Officer By-law
- APS Policy – Appointment of Screening Officers and Hearing Officers
- APS Policy – Conflict of Interest and Code of Conduct
- APS Policy – Preventing Political Interference
- APS Policy – Public Complaints
- APS Policy – Undue Hardship
- APS Policy – Financial Management and Reporting

References

- *Municipal Act, 2001*, S.O. 2001, c. 25, as amended.
- O. Reg. 333/07: Administrative Penalties made under the *Municipal Act, 2001*, as amended.
- *Statutory Powers and Procedures Act*, R.S.O. 1990, c. S.22, as amended.

Review Timeline

This Guide will be reviewed two years from the initial Effective Date, and at two-year intervals thereafter.