

Development Services

Administrative Penalty System Conflict of Interest Policy

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Branch: By-law Enforcement

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Approved By: Jack Krubnik

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Prepared By: Jennifer Nichols

1.0 Purpose

This Policy addresses conflict of interest provisions in relation to the administration of the Administrative Penalty System (APS). This Policy establishes conflict of interest guidelines to ensure that APS responsibilities are conducted in accordance with fundamental principles of justice, which include judicial and prosecutorial independence, fairness, impartiality, competence and integrity.

In accordance with Ontario Regulation 333/07, the Town is required to define what constitutes a conflict of interest in relation to the APS, to prevent such conflicts of interest and to address such conflicts should they occur.

2.0 Scope

This Policy applies to all Screening Officers, Hearing Officers and all Town officials and staff involved in the administration of the APS.

For Town staff engaged in the administration of the APS, the Employee Code of Conduct, and any successor policy, shall also apply regarding the activities of an employee in the administration of the APS.

Regarding Members of Council, this Policy should be read and interpreted within the context of prevailing Provincial legislation (i.e., *Municipal Conflict of Interest Act*) and the Council Code of Conduct, including its related policies, procedures and guidelines.

3.0 Definitions

Term	Definition
<i>APS</i>	means Administrative Penalty System;
<i>Administrative Penalty System By-law or APS By-law</i>	means the Town's Administrative Penalty System By-law 2023-062 as amended or any successor by-law;
<i>Council</i>	means the Council of the Town of East Gwillimbury;
<i>General Manager</i>	means the Town's General Manager of Development Services, or anyone designated by the General Manager to perform duties pursuant to the APS;
<i>Hearing Officer</i>	means an individual appointed from time to time pursuant to By-law 2023-085 to perform the functions of a hearing officer in accordance with Section 7 of the APS By-law;
<i>Hearing Officer Review</i>	means the process set out in Section 7 of the APS By-law;
<i>Parent</i>	means the natural parent of a child and also an individual who has demonstrated a settled intention to treat a child as a member of his or her family whether or not that the individual is the natural parent of the child;
<i>Penalty Notice</i>	means a notice given to a Person pursuant to Section 4 of the APS By-law;
<i>Person</i>	Includes an individual or a sole proprietorship, corporation, partnership, or limited partnership, or authorized representative thereof, and, in relation to vehicle, parking or traffic-related contraventions, is the Person whose name appears on the vehicle permit as provided by the Ministry of Transportation. If the vehicle permit consists of a vehicle portion and licence plate portion, and different Persons are named on each portion, the Person whose name appears on the licence plate portion is the Person for the purposes of this Policy;
<i>Relative</i>	includes any of the following Persons: <ul style="list-style-type: none"> (a) spouse, common-law partner, or any person with whom the Person is living as a spouse outside of marriage; (b) parent or legal guardian; (c) child, including a step-child and grandchild; (d) siblings and children of siblings; (e) aunt, uncle, niece and nephew; (f) in-laws, including mother, father, sister, brother,

Term	Definition
	daughter and son; or (g) any Person, including but not limited to a dependant, who lives with the Person on a permanent basis;
<i>Screening Decision</i>	means a notice which contains the decision of a Screening Officer, delivered in accordance with Section 6 of the APS By-law;
<i>Screening Officer</i>	means an individual who performs the functions of a Screening Officer in accordance with Section 6 of the APS By-law;
<i>Screening Officer Review</i>	means the process set out in Section 6 of the APS By-law;
<i>Town</i>	means The Corporation of the Town of East Gwillimbury.

4.0 Appointment of Screening Officers and Hearing Officers

By-law 2023-085 sets out the rules regarding the appointment of Screening Officers and Hearing Officers and preference shall be given to candidates with knowledge and experience in administrative law and with demonstrated ethical and sound judgement.

Screening Officers are individuals appointed by the General Manager to conduct Screening Officer Reviews in the public interest.

Hearing Officers are individuals appointed by Council to conduct Hearing Officer Reviews in the public interest.

4.1 The following individuals are not eligible for appointment as a Screening Officer or Hearing Officer:

- a) A Member of Council or a Relative of a member of Council;
- b) an individual indebted to the Town other than:
 - I. in respect of current real property taxes; or
 - II. pursuant to an agreement with the Town, where the individual is in compliance with the terms thereof; and
- c) in the case of a Hearing Officer, an employee of the Town.

4.2 Conflict of Interest

A conflict of interest arises where a Screening Officer, Hearing Officer or Town staff involved in the administration of the APS has a personal or business interest that conflicts, might conflict, or may be perceived to conflict with the interests of the proper administration of the APS. A conflict of interest includes a pecuniary or non-pecuniary, actual, perceived or potential conflict and could arise in relation to personal or business matters including:

- a) directorships or employment;
- b) interests in business enterprises or professional practices;
- c) share ownership or beneficial interests in trusts;
- d) professional or personal associations with a Person;
- e) professional associations or relationships with other organizations; and
- f) personal associations with other groups or organizations, or family relationships including Relatives.

Screening Officers and Hearing Officers are bound by general administrative common law principles (i.e. procedural fairness, natural justice, impartial and unbiased decision making, etc.). In addition, the Statutory Powers Procedures Act applies to a Hearing Officer Review conducted by a Hearing Officer.

Screening Officers and Hearing Officers must conduct Screening Officer Reviews and Hearing Officer Reviews, as applicable, in an impartial manner, and be and appear to be impartial at all times. It is inappropriate for a Screening Officer and Hearing Officer to review a Penalty Notice or Screening Decision, as applicable, for a personal or business acquaintance or Relative.

Every Screening Officer, Hearing Officer and Town employee involved in the administration of APS, must disclose to the General Manager any obligation, commitment, relationship or interest that could conflict with or may be perceived to conflict with their duties to or interests in the administration of APS.

Additionally, a Screening Officer or Hearing Officer shall not represent any Person at a Screening Officer Review or Hearing Officer Review.

4.3 Conduct of Screening Officers and Hearing Officers

All Screening Officers and Hearing Officers shall:

- a) both be and appear to be independent, impartial, and unbiased;
- b) avoid all conflicts of interest, whether real or perceived, and are responsible for promptly taking appropriate steps to disclose, resolve, or obtain advice with respect to such conflicts when they arise;
- c) not be influenced by partisan interests, public opinion, or by fear of criticism;
- d) not use their title and position to promote their own interests or the interests of others;

- e) discharge their duties in accordance with the law, Town by-laws and APS policies, procedures and guidelines;
- f) maintain and upgrade their knowledge and competence through their work, by participating in training and education courses and by seeking guidance from their colleagues and the Town, as required;
- g) remain up to date on changes in the law, Town by-laws, policies and procedures relevant to their function;
- h) act with integrity, as they are subject to ongoing public scrutiny; respect and comply with the law and conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of APS;
- i) approach their duties in a calm and courteous manner when dealing with the public and others and present and conduct themselves in a manner consistent with the integrity of the APS and their appointment;
- j) convey their decisions in plain language;
- k) safeguard the confidentiality of information that comes to them by virtue of their work and not disclose that information except as required by law;
- l) in discharging their duties, treat those with whom they deal with in a respectful and tolerant manner regardless of the gender, sexual orientation, race, religion, culture, language, mental abilities, or physical abilities of those Persons;
- m) refrain from openly and publicly criticizing the administration of the APS or the conduct of others, including Members of Council and Town employees. Screening Officers and Hearing Officers shall acknowledge that only the General Manager may speak publicly on behalf of the Town's APS program. Any criticisms, suggestions or concerns related to the APS shall be communicated through appropriate channels;
- n) deal with the matters that come before them in a timely manner and make themselves accessible to those requiring their services; and
- o) not knowingly exercise a power or function for which they have not been trained or designated.

5.0 Preventing Conflict of Interest

The keys to preventing conflicts of interest are identification, disclosure and withdrawal from the power of decision with respect to a Screening Officer Review or Hearing Officer Review. The

need for identification, disclosure and withdrawal from a power of decision applies to any real, potential or perceived conflict of interest.

5.1 Disclosure

If a Screening Officer or Hearing Officer becomes aware of any real, perceived or potential conflict of interest in regard to a review of a Penalty Notice or Screening Decision, as the case may be, the Screening Officer or Hearing Officer shall notify the General Manager, of the conflict of interest and:

- a) in the case of a scheduled review of a Penalty Notice or Screening Decision that has not yet commenced, request another Screening Officer or Hearing Officer to conduct the review to avoid actual, perceived or potential conflict of interest; or
- b) in the case of a review of a Penalty Notice or Screening Decision that has commenced, adjourn the review and withdraw from the power of decision, and advise the General Manager. The Town will reschedule the Screening Officer Review or Hearing Officer Review with another Screening Officer or Hearing Officer, as the case may be.

If all appointed Screening Officers and/or Hearing Officers have a conflict of interest with a matter, the General Manager shall retain another Screening Officer or Hearing Officer to handle the matter that is subject to the conflict of interest.

Screening Officers and Hearing Officers are not permitted to dispute their own Penalty Notices and are expected to pay the Penalty Notice in a timely manner.

6.0 Addressing Conflicts if they Occur

The Town Employee Code of Conduct will address any breaches of the Code by employees.

If an individual suspects that a Screening Officer or Hearing Officer conducted a Screening Officer Review or Hearing Officer Review where there was a conflict of interest, they may make a:

- a) complaint to the General Manager; and/or
- b) formal complaint, in accordance with the Town's Public Complaints Respecting Administration of the APS policy.

Any finding of a conflict of interest may result in disciplinary action, up to and including termination of employment or revocation of appointment. Issues involving potential criminal matters will be forwarded to the police.

7.0 Influence

No Person shall attempt, directly or indirectly, to communicate with employees or other individuals performing duties related to the administration of APS for the purpose of influencing or interfering, financially, politically or otherwise, with the administration of APS or any particular Penalty Notice, except a Person who is entitled to be heard in a Screening Officer Review or Hearing Officer Review. These exceptions include:

- a) a Person who is entitled to be heard in the proceeding;
- b) the Person's lawyer, authorized agent or authorized representative.

If an individual attempts to influence a Screening Officer or Hearing Officer, contrary to the above, the Screening Officer or Hearing Officer shall report the incident to the General Manager as soon as possible. No action will be taken against the Screening Officer or Hearing Officer for making any such report in good faith.

8.0 Charges under the Criminal Code of Canada or Other Statutes or Regulations

Where a Screening Officer or Hearing Officer is charged with any offence under the Criminal Code of Canada, other Federal or Provincial statutes or Regulations, the charge shall be disclosed to the General Manager within 5 business days of the charge being laid.

A determination will be made by the General Manager as to whether or not an actual, potential or perceived conflict of interest exists or if public confidence in the administration of the APS has been compromised and, if so, the Screening Officer or Hearing Officer may be removed from his or her duties until the final disposition of the charge.

9.0 Implementation

This Policy shall form part of the orientation for all current and new Screening Officers and Hearing Officers and APS administration staff.

This Policy shall form part of the mandatory orientation for all members of Council at the start of each new term and shall be reviewed within 30 days of assuming office. All current and new municipal officials and APS related staff shall receive policy training upon hire or appointment, and on a refresher basis every Council term.

10.0 Accountability

All Screening Officers, Hearing Officers and Town staff involved in the administration of APS are responsible for adherence to this Policy. Accountability for interpretation of this Policy in relation to a real, potential, or perceived conflict of interest shall be determined by the General Manager. In making this determination, the General Manager may consult with the Town Solicitor or senior management.

11.0 Monitoring and Review

This Policy will be monitored and reviewed yearly by the General Manager. The General Manager is responsible for initiating the review in consultation with Legal Services and other applicable departments.

Contact:

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