

CORPORATE POLICY



Policy Title: **Conflict of Interest and Code of Conduct in Relation to the Administration of the Administrative Monetary Penalty System (AMPS)**

Policy Category: **Administrative Monetary Penalty System**

Policy No.: AMPS-002

Department: Community Services

Approval Date:

Revision Date:

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Attachments: n/a

Related Documents/Legislation:
Municipal Act, 2001
O. Reg. 333/07
Parking Administrative Penalty By-law
Screening and Hearing Officer By-law
AMPS Program Policies and Procedures
Employee Code of Conduct and Ethics Policy

Key Word(s): Conflict of Interest
Conduct
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AMPS
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POLICY STATEMENT:

The City of Waterloo is committed to ensuring that the Administrative Monetary Penalty System operates in a fair and impartial manner, free of conflicts of interest.

PURPOSE:

Ontario Regulation 333/07 ("the Regulation") pursuant to the *Municipal Act, 2001* requires a municipality establishing an Administrative Monetary Penalty System (AMPS) for parking to have a policy relating to conflicts of interest. In accordance with the Regulation, the Policy must define what constitutes a conflict of interest in relation to AMPS, contain provisions to prevent such conflicts and to redress such conflicts should they occur.

Mandatory Policy, *Municipal Act*: Yes

Policy Administration Team, Review Date: April 25, 2019

Corporate Management Team, Review Date: April 24, 2019

This Policy addresses conflict of interest provisions in relation to the administration of AMPS. The Policy set out requirements relating to Screening Officers, Hearing Officers and City staff in order to prevent actual, potential and perceived conflicts of interest, and to ensure that AMPS responsibilities are conducted in accordance with fundamental principles of justice, which include judicial and prosecutorial independence, fairness, impartiality, competence and integrity.

DEFINITIONS:

“AMPS” means Administrative Monetary Penalty System, established pursuant to the Parking Administrative Penalty By-law;

“City” means The Corporation of the City of Waterloo;

“Clerk” means the City Clerk, or anyone designated by the City Clerk to perform his or her duties relating to AMPS;

“Council” means the Council of the City;

“Director of Municipal Enforcement Services” means the Director of Municipal Enforcement Services of the City, or anyone designated by the Director to perform his or her duties relating to AMPS;

“Employee Code of Conduct and Ethics Policy” means the policy adopted by the City to govern employee conduct, provide ethical standards and conflict of interest, as amended from time to time, or any successor thereof;

“Hearing Officer” means any person appointed by the City from time to time pursuant to the Screening and Hearing Officer By-law, to perform the functions of a hearing officer in accordance with the Screening and Hearing Officer By-law and the Parking Administrative Penalty By-law;

“Hearing Review” means the process related to review of a Screening Decision, as set out in section 6.0 of the Parking Administrative Penalty By-law;

“Parking Administrative Penalty By-law” means the by-law passed by the City to establish administrative penalties for parking, as amended from time to time, or any successor thereof;

“Parent” means a person who has demonstrated a settled intention to treat a child as a member of her or his family, whether or not that person is the natural parent of the child;

“Penalty Notice” means a penalty notice as described in Section 4.0 of the Parking Administrative Penalty By-law;

“Person” includes an individual or a corporation;

“Policy for Appointment of Screening and Hearing Officers” means the policy adopted by the City to govern the Appointment of Screening and Hearing Officers, as amended from time to time, or any successor thereof;

Power of Decision – means a power or right, conferred by or under this By-law and the Parking Administrative Penalty By-law, to make a decision deciding or prescribing the legal rights, powers, privileges, immunities, duties or liabilities of any Person:

“Relative” includes any of the following persons:

- 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, daughter and son; or
- g) any person who lives with the person on a permanent basis.

“Screening and Hearing Officer By-law” means the by-law passed by the City to establish the positions of screening and hearing officers and to provide for the appointment of screening and hearing officers, in relation to administrative penalties for parking, 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 Section 5.8 of the Parking Administrative Penalty By-law;

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

“Screening Review” means the process related to review of a Penalty Notice, as set out in Section 5.0 of the Parking Administrative Penalty By-law; and

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

SCOPE:

This Policy applies to all Screening Officers, Hearing Officers, and all City employees involved in the administration of the AMPS program.

The following shall apply in addition to this Policy:

- a) For City employees involved in the administration of the AMPS program: the Employee Code of Conduct and Ethics Policy, shall also apply in regard to the activities of an employee in the administration of the AMPS program. In the event of a conflict between the provisions of this Policy and the provisions of the Employee Code of Conduct and Ethics Policy, in relation to AMPS, this Policy shall supersede.
- b) For Hearing Officers: the provisions of any agreement governing the retainer between the City and a Hearing Officer(s), shall also apply in regard to the activities of the Hearing Officer. In the event of a conflict between this Policy and the agreement, the provisions of this Policy shall supersede.

This Policy shall apply in addition to all applicable law (i.e. Municipal Conflict of Interest Act, etc.). A breach of applicable law relevant to any matters set out in this Policy shall be deemed to be a breach of this Policy.

POLICY COMMUNICATION:

- a) This Policy will be posted on the City’s website and intranet.
- b) Staff will be advised of the new Policy via distribution to the Operational Leadership Team and Corporate Management Team; and
- c) This Policy shall form part of the orientation for all Screening Officers, Hearing Officers and AMPS enforcement and administration staff

POLICY:

1.1 Appointment of Screening Officers and Hearing Officers

The Screening and Hearing Officer By-law and Policy For Appointment of Screening and Hearing Officers, establish the rules regarding the appointment of Screening Officers and Hearing Officers.

Screening and Hearing Officers shall be appointed and recruited in accordance with the Policy For Appointment of Screening and Hearing Officers.

The following persons shall not be eligible for appointment as or to remain as a Screening Officer or Hearing Officer:

- a) a member of Council;
- b) a Relative of a member of Council;
- c) an individual indebted to the City other than:

- i) in respect of current real property taxes; or
 - ii) pursuant to an agreement with the City, where the individual is in compliance with the terms thereof; and
- d) in the case of a Hearing Officer, an employee of the City of Waterloo

1.2 Conflict of Interest

A conflict of interest arises where a Screening Officer, Hearing Officer or City employee involved in the administration of AMPS, or any Relative of same, has a direct or indirect personal or financial interest:

- a) such that they could influence a decision made in relation to AMPS;
- b) that may affect the performance of their job duties in relation to AMPS;
- c) that conflicts, might conflict, or may be perceived to conflict with the interests of the proper administration of AMPS; or
- d) that may adversely affect the reputation of the City as a public authority in relation to AMPS.

A conflict of interest includes a pecuniary or non-pecuniary interest, actual, perceived or potential conflict, that could arise in relation to personal or financial matters, including but not limited to:

- i) directorships or employment;
- ii) interests in business enterprises or professional practices;
- iii) share ownership or beneficial interests in trusts;
- iv) professional or personal associations with a Person;
- v) professional associations or relationships with other organizations;
- vi) personal associations with other groups or organizations; or
- vii) family relationships, including Relatives.

Screening Officers

Screening Officers are employees of the City of Waterloo and therefore must also abide by the City's Employee Code of Conduct and Ethics.

Screening Officers must be and appear to be impartial at all times. Screening Officers shall not review a Penalty Notice for a personal or business acquaintance or Relative.

Hearing Officers

Hearing Officers, in conducting a Hearing Review, are bound by and shall comply with the *Statutory Powers Procedures Act*, as well as general administrative common law principles (i.e. procedural fairness, natural justice, impartial and unbiased decision making, etc.).

Hearing Officers must be and appear to be impartial at all times. A Hearing Officer shall not review a Screening Decision for a personal or business acquaintance or Relative.

Hearing Officers must also abide by the terms of any agreement governing the retainer between the Hearing Officer and the City.

1.3 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, potential or perceived, and promptly take appropriate steps to disclose, resolve, or obtain advice with respect to any such conflict should it arise;
- c) not represent any Person at a Screening Review or Hearing Review;
- d) not dispute their own Penalty Notices and are expected to pay the Penalty Notice in a timely manner;
- e) not be influenced by partisan interests, public opinion, or by fear of criticism;
- f) not use their title and position to promote their own interests or the interests of others;
- g) discharge their duties in accordance with the law, City by-laws and AMPS policies, procedures and guidelines in effect from time to time;
- h) maintain and upgrade their knowledge and competence through their work, by participating in training and education courses as required by the City, including training relating to implicit bias, and by seeking guidance from their colleagues and the City, as necessary;
- i) remain up to date on changes in the law, City by-laws, policies and procedures relevant to their function;
- j) act with integrity, as they are subject to ongoing public scrutiny;
- k) 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 AMPS;
- l) 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 AMPS and with their appointment;
- m) convey their decisions in plain language, including the reasons therefor where such are required;
- n) safeguard the confidentiality of information that comes to them by virtue of their work and not disclose that information except as required by, and in accordance with, the law;
- o) 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, and without limiting the foregoing, comply in all respects with the Ontario Human Rights Code;
- p) refrain from openly and publicly criticizing the administration of AMPS or the conduct of others, including City employees or members of Council. Screening Officers and Hearing Officers shall acknowledge that only the Clerk or Director of Municipal Enforcement may speak publicly on behalf of the City's AMPS program. Any criticisms, suggestions or concerns related to AMPS shall be communicated through appropriate channels to the Clerk or the Director of Municipal Enforcement Services;
 - q) deal with the matters that come before them in a timely manner and make themselves accessible to those requiring their services; and
 - r) not knowingly exercise a power or function for which they have not been trained or designated.

Without limiting the foregoing, Screening Officers, Hearing Officers and all persons involved in the administration of AMPS shall avoid activities or circumstances that create conflicts, whether real, potential or perceived, between their personal interests and their responsibilities in relation to AMPS, including situations where their personal interests or the perception that their personal interests could influence any decisions they make on behalf of the City. Any obligation, interest or participation, which would or could interfere with the fair and impartial administration of AMPS or the exercise of judgment in relation to AMPS, constitutes conflict of interest.

Every Screening Officer, Hearing Officer or City employee involved in the administration of AMPS, must disclose, in accordance with this Policy, any obligation, commitment, relationship or interest that poses a real, potential or perceived conflict with his or her duties in relation to or interests in the administration of AMPS.

1.4 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 Review or Hearing Review.

The need for identification, disclosure and withdrawal from a Power of Decision or administrative role in relation to AMPS applies to any real, potential or perceived conflict of interest.

1.5 Reporting Conflicts of Interest

Screening Officers and City Employees

Screening Officers and City employees involved in the administration of AMPS shall notify the Director of Municipal Enforcement Services of any conflict of interest, real, potential or perceived, that they may have in relation to a matter.

Hearing Officers

If a Hearing Officer becomes aware of any real, potential or perceived conflict of interest, the Hearing Officer shall notify the Director of Municipal Enforcement Services.

1.6 Assignment of Alternate Screening Officer or Hearing Officer

Where a real, potential or perceived conflict of interest is reported by a Screening Officer or Hearing Officer, as set out in this Policy:

- a) in the case of a review of a Screening Review or Hearing Review that has not yet commenced, the Director of Municipal Enforcement Services shall assign another Screening Officer or Hearing Officer to conduct the review to avoid actual, potential or perceived conflict of interest; or
- b) in the case of a review of a Screening Review or Hearing Review that has commenced:
 - i) the Screening Officer or Hearing Officer, as the case may be, shall adjourn the review and withdraw from the Power of Decision; and
 - ii) the Director of Municipal Enforcement Services shall cause the Screening Review or Hearing Review to be recommenced and rescheduled with another Screening Officer or Hearing Officer.

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

The Director of Municipal Enforcement may consult with the City Solicitor, or his/her designate, for further guidance in regard to this Policy.

Where a Screening Officer or Hearing Officer is charged with any offence under the Criminal Code of Canada, or under any other Federal or Provincial statute or Regulation where continuing to perform duties may erode public confidence in the administration of justice, the Screening Officer or Hearing Officer shall disclose same to the Director of Municipal Enforcement Services within 5 business days of the charge being laid, and appropriate action will be taken by the City, which, if determined appropriate, may include suspension from duties until the final disposition of the charge and, upon final disposition, may include, but is not limited to, termination of duties related to AMPS and/or revocation of appointment.

COMPLIANCE

1.7 Policy Violation

In cases of Policy violation, the City may investigate and determine appropriate corrective action.