



Town of Whitby Policy

Policy Title:	Prevention of Political Interference in the Administrative Penalty System
Policy Number:	G 140
Reference:	O.Reg. 333/07, Council Resolution #52-24
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Point of Contact:	Legal and Enforcement Services

Policy Statement

The Corporation of the Town of Whitby is committed to ensuring that Town employees, members of Boards and members of Council conduct themselves with personal integrity, honesty and diligence in the performance of their duties. This policy builds on this commitment by preventing political interference in the administration of the Administrative Penalty System program.

Purpose

Ontario Regulation 333/07 under the Municipal Act, 2001 requires the Town to develop policies and procedures to prevent political interference in the administration of the APS program. This Policy has been developed to address this requirement, to define what constitutes political interference in relation to the APS program and to ensure that the responsibilities of individuals involved in the APS program are conducted in accordance with the principals of fundamental justice, which include procedural fairness, independent decision making, impartiality and integrity, without political interference.

Scope

This Policy applies to all Screening Officers, Hearing Officers, elected members of Council and all Town employees involved in the administration of the APS program.

The following shall apply in addition to this Policy:

- (a) For Town employees involved in the administration of the APS program, the Employee Code of Conduct shall also apply in regard to the activities of an employee in the administration of the APS program. In the event of a conflict

between the provisions of this Policy and the provisions of the Employee Code of Conduct in relation to the APS program, this Policy shall apply.

(b) For Screening Officers and Hearing Officers, the provisions of any agreement governing the retainer between the Town and a Screening Office and/or a Hearing Officer and the provisions of the APS By-Law shall also apply.

(c) For members of Council, the Council Code of Conduct shall also apply. In the event of a conflict between the provisions of this Policy and the provisions of the Council Code of Conduct in relation to the APS program, this Policy shall apply.

This Policy shall apply in addition to all applicable laws, including but not limited to the *Municipal Act*, 2001, as amended and the *Municipal Conflict of Interest Act*, as amended. A breach of applicable law relevant to any matters set out in this Policy shall be deemed to be a breach of this Policy.

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1. Definitions

- 1.1. "Administrative Penalty" means a monetary penalty for a contravention of a Designated By-Law;
- 1.2. "APS" means the Administrative Penalty System for the Town, established by the APS By-Law;
- 1.3. "APS By-Law" means the Administrative Penalty By-Law 8056-24, passed by the Town, as amended, or any successor thereof;
- 1.4. "Commissioner" means the Commissioner of Legal and Enforcement Services/Town Solicitor or their designate;
- 1.5. "Council Code of Conduct" means the Code of Conduct for Members of Council adopted by the Town to govern the conduct of members of Council, as amended from time to time, or any successor thereof;
- 1.6. "Council" means the Council of the Town of Whitby;

- 1.7. "Employee Code of Conduct" means the policy adopted by the Town to govern employee conduct, provide ethical standards and conflict of interest, as amended from time to time, or any successor thereof;
- 1.8. "Designated By-law" means a that is designated by the Town as a by-law to which the APS By-Law applies and, if only a part of the by-law is designated, includes only the designated part of the by-law;
- 1.9. "Hearing Decision" means a notice that contains the decision made by a Hearings Officer and delivered in accordance with Section 6 of the APS By-Law;
- 1.10. "Hearing Officer" means a Person designated by the Commissioner of Legal and Enforcement Services/Town Solicitor who performs the duties of a Hearing Officer in accordance with Section 5 of the APS By-law;
- 1.11. "Hearing Review" means the process related to the review of a Screening Decision, as set out in Section 5 of the APS By-Law;
- 1.12. "Penalty Notice" means a ticket issued pursuant to Section 3 of the APS By-Law;
- 1.13. "Person" includes an individual or business name, sole proprietorship, corporation, partnership, or limited partnership, or an authorized representative thereof, to whom the context can apply according to law;
- 1.14. "Power of Decision" means a power or right, conferred by or under the APS By-Law to make a decision deciding or prescribing the legal rights, powers, privileges, immunities, duties of liabilities of any Person;
- 1.15. "Reprisal" means any measure taken or threatened as a direct result of disclosing or being suspected of disclosing an allegation of wrongdoing, initiating or cooperating in an investigation into an alleged wrongdoing, and includes but is not limited to:
 - 1.15.1. Disciplinary measures;
 - 1.15.2. Demotion of the employee or individual;
 - 1.15.3. Termination of the employee or individual;
 - 1.15.4. Intimidation or harassment of the employee or individual;
 - 1.15.5. Any measure that adversely affects the employment or working conditions of the employee or individual; and
 - 1.15.6. Directing or counselling someone to commit a reprisal.

- 1.16. "Screening Decision" means a notice that contains the decision made by a Screening Officer and delivered in accordance with Section 6 of the APS By-Law;
- 1.17. "Screening Officer" means a person who performs the functions of a Screening Officer in accordance with Section 4 and is designated by the Commissioner of Legal and Enforcement Services;
- 1.18. "Screening Review" means the process related to review of a Penalty Notice as set out in Section 4 of the APS By-Law;
- 1.19. "Town" means the Corporation of the Town of Whitby.

2. Principles of Preventing Political Interference

- 2.1. No Person shall attempt, directly or indirectly, to communicate with any Town employee or other person performing duties related to the administration of the APS for the purpose of influencing or interfering, financially, politically, or otherwise, with the administration of the APS or with any particular Penalty Notice or Screening Decision.
- 2.2. No Person shall attempt, directly or indirectly, to communicate with a Screening Officer or Hearing Officer for the purpose of influencing or interfering with, financially, politically, or otherwise, the Screening Officer or the Hearing Officer respecting a Penalty Notice and/or respecting a Power of Decision in a proceeding that is or will be pending before a Screening Officer or Hearing Officer.
- 2.3. The only Persons who may communicate with a Screening Officer or Hearing Officer with respect to a Penalty Notice and/or a Power of Decision in a proceeding that is or will be pending before a Screening Officer or Hearing Officer are:
 - 2.3.1. A Person who is entitled to be heard in the proceeding; or
 - 2.3.2. The Person's lawyer, licensed paralegal or authorized representative.
- 2.4. No Person may communicate with a Screening Officer or Hearing Officer with respect to a Penalty Notice and/or a Power of Decision in a proceeding that is or will be pending before a Screening Officer or Hearing Officer other than during the hearing of the proceeding. A Person or their legal representative may contact the Town's legal representative outside of the hearing of the proceeding, if necessary.
- 2.5. All individuals involved with the enforcement and administrative functions of the APS shall carry out such duties in a manner which upholds the integrity of the administration of justice.
- 2.6. Nothing in this section shall prohibit the giving or receiving of legal advice.

- 2.7. In addition to this Policy, the APS By-Law sets out a prohibition on attempting to influence a Screening Officer or Hearing Officer and creates an offence for a contravention of the provisions of the APS By-Law. Any penalty imposed as a result of the breach of the APS By-Law is in addition to any action taken pursuant to this Policy.

3. Implementation

- 3.1. The following shall apply in addition to this Policy:
- 3.1.1. For Town employees involved in the administration of the APS, the Employee Code of Conduct;
 - 3.1.2. For Hearing Officers, the provisions of the APS By-Law, the APS Conflict of Interest Policy and the provisions of any agreement governing the retainer between the City and a Hearing Officer. In the event of a conflict between this Policy and the retainer between the Town and a Hearing Officer, the provisions of this Policy shall apply;
 - 3.1.3. For members of Council, the Council Code of Conduct. In the event of a conflict between the Council Code of Conduct and this Policy, in relation to the administration of the APS, the provisions of this Policy shall apply.
- 3.2. All members of Council shall be provided with a copy of this Policy;
- 3.3. This Policy shall form part of the orientation for all members of Council at the start of a new term of Council, as well as all current and new Town employees with the potential for interaction with the administration of the APS ; and
- 3.4. This Policy shall form part of the orientation for all current and new Screening Officers and Hearing Officers.

4. Accountability

- 4.1. A Screening Officer, Hearing Officer, Town employee or any other individual performing duties related to the APS shall report any attempt at influence or interference, financial, political, or otherwise, by any Person to the Commissioner as soon as possible. No action shall be taken against the Screening Officer, Hearing Officer, employee, or other person(s) for making such a report in good faith.
- 4.2. Where any employee, Screening Officer, Hearing Officer, or other person performing duties related to the APS is contacted by a member of Council or a Town official with respect to the administration of the APS or a specific Penalty Notice or Screening Decision, he or she shall immediately disclose such contact to the Commissioner in order to maintain the integrity of the APS.

- 4.3. Any interference with or attempt to interfere with the APS by any Person may result in charges under the Criminal Code of Canada, Provincial Legislation, or any other applicable law, in addition to any disciplinary action; and
- 4.4. Any interference with the APS or attempt to interfere with the APS by a member of Council will be addressed pursuant to the Council Code of Conduct.

5. Reprisal

- 5.1. In addition to and without limiting Section 3.1, no Person shall take any Reprisal against a Town employee or other individual performing duties related to the administration of the APS because the employee or individual, in good faith:
 - 5.1.1. Has sought information or advice about making a disclosure about wrongdoing contrary to this Policy;
 - 5.1.2. Has made a disclosure about wrongdoing contrary to this Policy in good faith;
 - 5.1.3. Has initiated or cooperated in an investigation or other process related to a disclosure of wrongdoing contrary to this Policy;
 - 5.1.4. Has appeared as a witness, given evidence or participated in any proceeding relating to the wrongdoing contrary to this Policy, or is required to do so;
 - 5.1.5. Has alleged or reported a Reprisal; or
 - 5.1.6. Is suspected of any of the above actions.
- 5.2. The identity of employees or other individuals performing duties related to the administration of the APS involved in an investigation, including the identity of an individual alleging political influence contrary to this Policy, will be protected to the fullest extent possible.
- 5.3. If an employee believes that he or she has suffered Reprisal, this should be reported immediately to the Commissioner.

6. Policy Violation

- 6.1. In cases of a violation of this Policy, the Town may investigate and determine appropriate corrective action.

This Policy is hereby approved by Council Resolution #52-24 on this 18th day of March, 2024.