



Conflict of Interest In Relation To The Administration Of The Administrative Monetary Penalty System (AMPS)

Policy Category: Governance

Policy No.: GR-AMPS-001

Implementing Procedure No.:

- GR-AMPS-PR01
- GR-AMPS-PR02

Approving Authority:

City Clerk

Effective Date:

July 1, 2024

Last Reviewed Date:

Next Review Year:

Annually

Area(s) this Policy applies to:

Administrative Monetary Penalty System

Owner Department:

Legislative Services

Reference Authorities:

- Municipal Act, 2001
- Ontario Regulation 333/07 (Administrative Penalties)
- City of Markham AMPS By-law 2024-137
- City of Markham Screening and Hearing Officer By-law 2015-94
- Staff Code of Ethics and Conduct

1. Purpose Statement

This Policy addresses conflict of interest provisions in relation to the administration of the Administrative Monetary Penalty System (**AMPS**). This Policy establishes conflict of interest guidelines 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.

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

2. Applicability

This Policy applies to all **Screening Officers**, **Hearing Officers** and all **City** officials and staff involved in the administration of **AMPS**.

For **City** staff engaged in the administration of **AMPS**, the Code of Ethics and Conduct, and any successor policy, shall also apply in regard to the activities of an employee in the administration of **AMPS**.

In regard to 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.



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3. Definitions

For the purposes of this Policy, the following terms are defined in accordance with By-laws 2024-137 and 2015-94.

“**AMPS**” means Administrative Monetary Penalty System;

“**City**” means The Corporation of the City of Markham;

“**Clerk**” means the City Clerk, her or his delegate, or anyone designated by the Clerk to perform duties pursuant to the Administrative Monetary Penalty System;

“**Council**” means the Council of the **City**;

“**Hearing Officer**” means a person who performs the functions of a Hearing Officer in accordance with Section 6 of By-law 2024-137, and pursuant to the **City’s** Screening and Hearing Officer By-law 2015-94;

“**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 notice given to a **Person** pursuant to Section 2 of By-law 2024-137;

“**Person**” includes an individual or a business name, sole proprietorship, corporation, partnership, or limited partnership, or an authorized representative thereof, whose name appears on the vehicle permit as provided by the Ontario 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, as provided by the Ontario Ministry of Transportation, is the Person for the purposes of this Policy;

“**Relative**” includes any of the following persons:

- (i) spouse, common-law partner, or any person with whom the person is living as a spouse outside of marriage;
- (ii) **Parent** or legal guardian;
- (iii) child, including a step-child and grandchild;
- (iv) siblings and children of siblings;
- (v) aunt, uncle, niece and nephew;

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- (vi) in-laws, including mother, father, sister, brother, daughter and son; or
- (vii) any person, including but not limited to a dependant, who lives with the person on a permanent basis.

“**Hearing Review**” means the process set out in Section 6 of By-law 2024-137;

“**Screening Review**” means the process set out in Section 3 of By-law 2024-137;

“**Screening Decision**” means a notice which contains the decision of a **Screening Officer**, delivered in accordance with Section 3.2 of By-law 2024-137;

“**Screening Officer**” means a person who performs the functions of a **Screening Officer** in accordance with Section 3 of By-law 2024-137, and pursuant to the **City’s** Screening and Hearing Officer By-law 2015-94.

4. Policy

4.1 Appointment of Screening Officers and Hearing Officers

By-law 2015-94, 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 judgment.

Screening Officers are individuals appointed by the **Clerk** to conduct **Screening Reviews** in the public interest.

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

4.1.1 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 **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
- (c) in the case of a **Hearing Officer**, an employee of the **City** of Markham.

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4.2 Conflict of Interest

A conflict of interest arises where a **Screening Officer**, **Hearing Officer** or **City** staff involved in the administration of **AMPS** has a personal or business interest that conflicts, might conflict, or may be perceived to conflict with the interests of the proper administration of **AMPS**. 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 must be and appear to be impartial at all times. It is inappropriate for a **Screening Officer** to review a **Penalty Notice** for a personal or business acquaintance or **Relative**.

Hearing Officers are obligated to conduct **Hearing Reviews** in an impartial manner. **Hearing Officers**, in conducting a **Hearing Review**, are bound by the Statutory Powers and Procedures Act, as well as bound by 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. It is inappropriate for a **Hearing Officer** to review a **Screening Decision** for a personal or business acquaintance or **Relative**.

Every **Screening Officer**, **Hearing Officer** and **City** employee involved in the administration of **AMPS**, must disclose to the **Clerk** any obligation, commitment, relationship or interest that could conflict with or may be perceived to conflict with his or her duties to or interests in the administration of **AMPS**.

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

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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, **City** by-laws and **AMPS** 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 **City**, as required;
- (g) remain up to date on changes in the law, **City** 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 **AMPS**;
- (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 **AMPS** 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**;

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- (m) refrain from openly and publicly criticizing the administration of **AMPS** or the conduct of others, including the Mayor, Members of **Council**, **City** employees. **Screening Officers** and **Hearing Officers** shall acknowledge that only the **Clerk** 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;
- (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.

4.4 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 applies to any real, potential or perceived conflict of interest.

4.4.1 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 **Clerk**, or designate, 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 **Clerk**, or designate. The **City** will reschedule the **Screening Review** or **Hearing 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 **Clerk** shall retain another **Screening Officer** or **Hearing Officer** to handle the matter that is subject of 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.

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4.5 Addressing Conflicts if they Occur

The **City** Staff Code of Ethics and Conduct will address any breaches of the Code by employees.

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

- (a) complaint to the Manager, Administrative Monetary Penalty Systems (AMPS); and/or
- (b) formal complaint, in accordance with the **City's** Public Complaints Respecting Administration of the **AMPS**, Policy Number GR-AMPS-002.

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.

4.6 Influence

No person shall attempt, directly or indirectly, to communicate with employees or other individual performing duties related to the administration of **AMPS** for the purpose of influencing or interfering in, financially, politically or otherwise the administration of **AMPS** or any particular Penalty Notice, except a **Person** who is entitled to be heard in a **Screening Review** or **Hearing 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.

The **City's** By-law 2015-94 sets out a prohibition for influencing a **Screening Officer** or **Hearing Officer** and creates an offence under the Provincial Offences Act and the Municipal Act, 2001 for any contravention of the provisions of the By-law.

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 Manager of By-law and Regulatory Services as soon as possible. No action will be taken against the **Screening Officer** or **Hearing Officer** for making any such report in good faith.

4.7 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 **Clerk** within 5 business days of the charge being laid.



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A determination will be made by the **Clerk** as to whether or not an actual, potential or perceived conflict of interest exists or if public confidence in the administration of **AMPS** 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.

4.8 Implementation

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

4.9 Accountability

All **Screening Officers**, **Hearing Officers** and **City** staff involved in the administration of **AMPS** 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 **Clerk**. In making this determination, the **Clerk** may consult with the **City** Solicitor or senior management.

5. Administration

This Policy shall be administered by the **Clerk's** Office, Legislative Services Department. Procedures may be defined, and amended from time to time, by the **Clerk** to address specific implementation of this Policy.

City of Markham
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