



Policy Development Committee Report

To: To the Chair and Members of the Policy Development Committee
From: Adam Crozier, Project Manager, Office of the CAO
Date: May 2, 2023
Report #: RPT-198-23
Subject: Development of Administrative Penalties System
Purpose: For Approval

Recommendation

Whereas the Province of Ontario has permitted municipalities to use an Administrative Penalties System to adjudicate certain municipal by-law offences since 2007;

And Whereas the use of Administrative Penalties Systems by municipalities reduces strain on the overburdened Provincial court system, and transfers the appeals process to a less formal and more appropriate system for minor offences involving only monetary penalties;

And Whereas the County of Brant is desirous of developing an Automated Speed Enforcement program, and in 2022, the Province of Ontario permitted municipalities to adjudicate Automated Speed Enforcement violations through an Administrative Penalties System;

Therefore, that the County of Brant implement an Administrative Penalties System in accordance with provisions of applicable Provincial legislation and regulation beginning with Phase 1 as articulated in RPT-198-23, being the transition of the County of Brant Parking By-law from the Provincial Offences Act to an Administrative Penalties System;

That staff be directed to develop the adjudication process for an Automated Speed Enforcement program through an Administrative Penalties System in accordance with Ontario Regulation 355/22 to be implemented during the launch of the County's Automated Speed Enforcement program;

That staff be authorized to bring forward the necessary by-law amendments for Council's consideration, and develop the policies required to implement an Administrative Penalties System as outlined in staff report RPT-198-23;

And that staff be directed to report back on any required additional resources necessary to operate an Administrative Penalties System for the County of Brant.

Executive Summary

This report outlines moving the way parking tickets and other County by-law offences are handled from the Provincial court system to a County operated "Administrative Penalties System." Also commonly referred to as an Administrative Monetary Penalties System, it is a

way to have a two-step appeal mechanism for parking and other by-law tickets without having offenders or County staff attend costly and time-consuming Court proceedings.

Importantly, moving to Administrative Penalties will allow the County to develop an Automated Speed Enforcement program as the volume of tickets issued through that program could not be processed by the Provincial court system, and the Province has recently allowed the County and other municipalities the option to do so.

County staff propose a 3 phased implementation plan and will require further approvals and by-law amendments from Council to completely implement the program.

Strategic Plan Priority

Strategic Priority 6 - Stable and Responsive Governance

Impacts and Mitigation

Social Impacts

The social impacts related to the recommendations and conclusions of this report would be enhanced customer service associated with the handling of County by-law infractions and which would permit the deployment of an Automated Speed Enforcement program for County roadways. The removal of minor and routine by-law offence processing from the Provincial Offences Act (POA) Court operated by the City of Brantford for each the City and the County will lead to additional capacity to deal with matters of greater significance than trials for parking tickets.

Environmental Impacts

There are no environmental impacts associated with this report.

Economic Impacts

With regard to the individual Phases proposed in this report, staff do not anticipate any significant cost associated with Phase 1 of the implementation of an Administrative Penalties System as it assumes functions currently undertaken by County staff. Additional resources will likely be required with the deployment of the County's Automated Speed Enforcement program and will be evaluated as both Phase 1 and Phase 2 progress, with further reporting to Council expected. Phase 3 would further see minimal impact on costs.

Additionally, the Administrative Penalties System permits the scheduling of the appeals process and for appeals to be conducted virtually or locally within the County of Brant, reducing the costs associated with a municipal law enforcement officer having to be present at the Courthouse in Brantford until their case is being heard.

Report

Background

What is an Administrative Penalties System?

An Administrative Penalties System (also referred to as Administrative Monetary Penalties System) is a dispute resolution process and method to impose a fine for the contravention of a law or regulation that is civil and not criminal in nature. In Canada Administrative Penalties are issued by all levels of government for a wide range of matters and have become

increasingly adopted as an alternate means to resolve contraventions of laws, by-laws, and regulations outside of the civil and criminal court system.

The general founding principles of Administrative Penalties are that they represent a reasonable and constitutionally acceptable means to impose a monetary penalty, known as a Penalty Order, on an individual with reasonable methods to appeal a contravention of a civil penalty, and importantly, for matters that do not involve further significant punitive means more appropriate in a criminal proceeding.

In Ontario, individual municipalities have been permitted to establish and operate an Administrative Penalties System since 2007 with changes to the *Municipal Act, 2001* (herein “the Municipal Act”) and the publication of [Ontario Regulation 333/07](#) (herein “the APS Regulation.”) Initially these additions to the Municipal Act only permitted municipalities to operate Administrative Penalties Systems for parking infractions and contraventions of licensing programs, but further authority was added in 2017 to cover the contravention of all by-laws with authority granted by the Municipal Act (e.g. Fence By-law, Roads Use By-law, Noise By-law, etc.) Notably, the *Building Code Act, 1992*, was amended at this time to permit Administrative Penalties for conventions of municipal Property Standards By-laws, but other major enforcement matters undertaken by the County such those under the *Planning Act, 1990*, are not authorized to be incorporated into an Administrative Penalty System.

Since this expansion to cover all Municipal Act by-laws the number of municipalities transitioning from the traditional Provincial Offences Act (POA) Court system to a municipally operated Administrative Penalties System has grown significantly, including its use by smaller municipalities.

While technically an expansion of municipal service offerings the creation of an Administrative Penalties System has several benefits, most significantly the removal of minor violations from the POA Court system. Through a variety of factors, the ability of the POA Court system to process offences has declined in the past few years and cannot keep up with the volume of offences processed, nor it cannot handle a proposed expansion in the volume considered by new program offerings such as Automated Speed Enforcement.

Administrative Penalties System in Ontario and Differences to Provincial Offences Act (POA) Court System

As outlined earlier, the structure of most municipal Administrative Penalties Systems are based on the initial rules set out by the APS Regulation, and adapted since 2007, mainly by larger municipalities.

The general premise of Administrative Penalties Systems is that they operate in a similar capacity to a court system with 2 levels of appeals and a final independent adjudicator, known as a “Hearing Officer.”

If an individual wishes to appeal a contravention the case would be referred to a “Screening Officer” who would review the case and issue a decision to deny the appeal, reduce the monetary amount of the penalty, or uphold the appeal and cancel the penalty order. If the appeal is denied the individual can further appeal to a “Hearing Officer,” who cannot be a municipal employee to maintain independence from the process but is appointed by the County, who would make the final decision on the appeal.

While the Administrative Penalties System for Automated Speed Enforcement contraventions is largely based on the Administrative Penalties System for Municipal Act violations, the

Province has included some specific provisions that will create certain differences in processes related to processing contraventions and appeals of Penalty Orders.

The main difference between the existing POA Court system and Administrative Penalties System is that the overall structure of the POA Court system is governed by the Province, and Administrative Penalties Systems are governed and operated by individual municipalities. In the POA Court system law enforcement officers can issue a set fine (Part I) or lay a charge with a summons to court (Part III) where the matter will be reviewed by a Judge or Justice of the Peace. Currently for Municipal Act by-laws the County must apply to the POA Court to have short form wording and set fines amounts for offences under the specific by-law approved. In the absence of having short form wording and set fines approved, the default position would be to summons individuals to court for Part III proceedings as provided for under the POA. Part III proceedings are generally costly and slow moving through the court system.

In an Administrative Penalties System, the County will have the independence to establish the fines for specific contravention under County By-laws and will have to establish a set amount for each violation of each by-law in order to issue a penalty order. The adoption of Administrative Penalties for parking offences will immediately enhance the effectiveness of Officers in the field as the service of Penalty Orders will not be limited to serving the notice during the commission of the offence. For the purposes of transitioning to an Administrative Penalties System for the County staff proposes that the existing set fines will be transferred under the authority of the Parking By-law and reviewed within 2 years to determine their continued applicability. With this system Council will have the authority to set fine amounts, with the APS Regulation noting they must be “reasonable,” without the need to apply to the Provincial court system.

Analysis

Current County of Brant Processes

The current process to handle by-law offences varies, but for the most part, the majority of offences issued by County municipal law enforcement officers are related to the County's Parking By-law. When an individual receives a parking ticket, they have 15 days to make payment or request a trial before an additional fee must be assessed. This fee is the cost associated with requesting the name and address of the registered owner of the vehicle through the Ministry of Transportation's Authorized Requestor Information System (commonly referred to as ARIS), as the individual will be sent a “Notice of Impending Conviction” (NIC.) County staff have also implemented a minor internal appeal mechanism whereby a designated staff member will review a ticket and have authority to cancel the ticket based on errors or circumstances identified after the issuance of the ticket. This process was implemented to avoid going to trial for tickets where exigent circumstances exists or with significant errors contained on them, which is a costly process for both the individual receiving the ticket and the County, and with photographic evidence now being used on each ticket.

Should the individual not pay for the ticket following receiving the NIC the ticket is then forwarded to the Provincial Offences Act (POA) Court in Brantford where the individual still has the opportunity to pay the offence. Finally, if the offence is still unpaid at the POA Court the registered owner's information is forwarded to the Defaulted Fines Control Centre (DFCC) operated by the Ministry of the Attorney-General, and the owner cannot renew their vehicle licence permit without paying the fine. This amount is remitted back to the County following the final payment of the ticket amount.

Brantford Provincial Offences Act (POA) Court

The County of Brant shares the services for POA Court administration with the City of Brantford through a shared services agreement, which was recently revised in 2021. In effect, the City provides for the administration of the court system and certain prosecution services, with the expenses apportioned between the partners and recovered from the fine revenue that is generated from offences occurring within each jurisdiction.

Following the cost reconciliation of the expenses resulting from operating the court, the County is remitted the remainder of the balance as revenue. In consultation with staff operating the Brantford POA Court it has been confirmed that the vast majority of this revenue generated is derived from fines issued by the Brant County OPP, representing 96.7% of all County POA revenue derived; these offences and the fine revenue generated will remain within the POA Court system and will maintain this source of operating funding for the POA Court. Currently, fine revenue resulting from County By-law offences, including Parking offences represents only 3.3% of fine revenue, noting that the majority of the fine revenue associated with enforcement of the Parking By-law (approximately \$60,000 in 2022) is collected by the County prior to the ticket entering the POA Court system. As such, the transition to Administrative Penalties is not expected to negatively impact the County's portion of the fine revenue currently generated to operate the Brantford POA Court.

A concerning trend in the overall court system is significant delays in having cases heard, which according to the Jordan Decision issued by the Supreme Court of Canada in 2016, is supposed to be no longer than 18 months for provincial court cases. Resulting from the onset of the COVID-19 pandemic the Brantford POA Court has focused on the processing of more serious offences, and as such, the 17 requests for trials related to parking offences in the County have not been held since 2020. While County by-law offences ultimately represent a small amount of the workload of the Brantford POA Court system, the removal of any number of cases from the Provincial court system will be an overall benefit to the justice system.

While the removal of further offences/contraventions from the POA Court system into an Administrative Penalties System is not anticipated pose an issue in the future, any potential issues occurring anticipated with the transfer of the remainder of by-law offences proposed to occur in Phase 3 of this transition, staff note that any revenues associated from the County's Administrative Penalties System can be directed to cover any potential shortfall with POA Court revenue. Staff do not foresee an issue as identified above as a near majority of the fine revenue collected through the POA Court system (tickets issued by the Brant County OPP) will still remain in the POA Court system.

Automated Speed Enforcement & Administrative Penalties System

While the implementation of an Administrative Penalties System for the County of Brant and the processing of municipal by-law offences will represent an overall administrative improvement, the importance of establishing an Administrative Penalties System is in its ability to provide for the processing and appeal mechanism for Automated Speed Enforcement violations. The Province permitted the use of an Administrative Penalties System for the adjudication of Automated Speed Enforcement violations in 2022 as it represents an efficient means to handle appeals of Automated Speed Enforcement tickets outside of the Provincial Offences Act (POA) Court system. Staff note that municipalities now have the option to direct Automated Speed Enforcement tickets to either a municipally operated Administrative Penalties System or the POA Court system, naturally subject to capacity in the Court system.

An Automated Speed Enforcement ticket is different from a traditional speeding ticket as it is issued to the registered owner of the vehicle instead of the vehicle driver and does not involve the issuing of demerit points against a driver's licence or further penalties. In essence, the penalties associated with an Automated Speed Enforcement violation are like that of receiving a parking ticket, albeit with pre-determined fine amount in line with a traditional speeding ticket.

During the initial formulations of the County's Automated Speed Enforcement program an area of concern identified was that it would generate a significant increase in volume of tickets and requests for trials that could lead to significant strain on the Brantford POA Court. Staff note this issue is common across the Province and that this concern is shared by the City who have directed that their proposed Automated Speed Enforcement program also operate under Administrative Penalties and not through the POA Court.

Using figures from other Automated Speed Enforcement programs operating in Ontario, it appears that each camera sees approximately 5,000 issued tickets per year, and unlike with parking tickets issued, each Automated Speed Enforcement ticket would have to be registered with the POA Court and paid through that process, adding significant workload to the existing Court system.

Next Steps

Phasing of Administrative Penalties System Roll Out

Staff propose that the County's Administrative Penalties System be rolled out in 3 distinct phases based on regulatory and procedural timelines, and the associated Automated Speed Enforcement program.

Phase 1 (Immediate): The first phase of the Administrative Penalties System implementation program will be to transfer administration of the Parking By-law from the Provincial Offences Act (POA) Court system to an Administrative Penalties System. While representing the greatest volume of County by-law offences, the foundation of municipal Administrative Penalties Systems are based on the Regulation that permitted municipalities to implement Administrative Penalties System for parking related offences in 2007. Notably, this regulation still is the basis for the expansion of Administrative Penalties Systems to other offences including to all Municipal Act by-laws permitted in 2017, and for Automated Speed Enforcement permitted in 2022.

These additional elements either do not have their own enacting Regulation (all other Municipal Act by-laws), or explicitly refer to the APS Regulation in their own regulations (Automated Speed Enforcement.) As such, it is prudent to use this Regulation as the foundation for the County's Administrative Penalties System and to phase in the additional elements. Finally, as County staff already manage an informal appeal mechanism for parking tickets that will be largely applicable to the "Screening" phase of the Administrative Penalties System, it serves to develop the program with minimal disruption and only with the need for the retention and appointment of a Hearing Officer.

Phase 2 (Near Term): The second phase of the implementation program will be the adjudication of Automated Speed Enforcement contraventions. The timeline for this phase will be largely dictated by the implementation of the County's Automated Speed Enforcement (subject to the responsiveness of the Province and Ministry of Transportation) which cannot function without an Administrative Penalties System to manage ticket appeals. As the various elements of the Automated Speed Enforcement program are developed, the need to present an established Administrative Penalties System will be a major element in securing an

agreement with the Province to receive access to the licence plate database (ARIS) to issue Automated Speed Enforcement tickets.

Phase 3 (Long Term): The third and final phase of the implementation program will be to incorporate all remaining Municipal Act by-laws into an Administrative Penalties System. This is recommended to be the final phase as it will involve amendments to several by-laws, a method to track contraventions and the appeals process will need to be identified, and as these by-laws typically have more nuanced but lower volumes of offences generated. That said, the incorporation of these by-laws into an Administrative Penalties System will reduce the time involved with court proceedings, notably for municipal law enforcement officers.

Development of By-laws and Operating Policies and Procedures

Following Council's consideration of this report, several steps remain by both staff and Council to implement an Administrative Penalties System for the County of Brant. Notably, Council must pass by-laws to:

1. Establish an Administrative Penalties System for Parking Violations
2. Amend the Parking By-law to transition the authority from the Provincial Offences Act Court to the Administrative Penalties System
3. Delegate appointment of Screening and Hearing Officers
4. Amend the Fees and Charges By-law to implement fees associated with the Administrative Penalties System
5. Establish an Administrative Penalties System for Automated Speed Enforcement
6. Establish an Administrative Penalties System for all other non-parking Municipal Act By-laws, and various amendments to each By-law.

Staff will further develop the policies required by Ontario Regulation 333/07, the APS Regulation, to govern the program, including but not limited to the following:

- Guidelines for Conflict of Interest
- Financial Management and Reporting
- Public Complaints
- Extension of Time for Payment
- Extension of Time to Request a Review
- Prevention of Political Interference
- Relief from Undue Hardship

Additional Administrative Fees

In addition to holding the authority to establish the specific fine amount for contraventions of County by-laws, the County will also be able to establish additional fees associated with the processing of a contravention and, for those who file an appeal and do not show for a screening or hearing appointment.

Most municipalities surveyed using an Administrative Penalty System have fees for the following matters, with fees assessed currently through the POA Court process identified:

- MTO Search (Currently Assessed, required to issue "Notice of Impending Conviction")
- Late Payment (Currently Assessed)
- MTO Plate Denial (Currently Assessed, includes fee collected by Province to administer DFCC program)
- No Appearance – Screening Appointment
- No Appearance – Hearing Appointment

Additional Resources

As noted above staff anticipate that current staff levels will be sufficient to transition Parking By-law enforcement from the POA system to the Administrative Penalties System as the informal appeals process is formalized into a Screening Officer process. Depending on the volume of Penalty Orders and appeals related to the proposed Automated Speed Enforcement program, additional human resources will likely be required to handle Screening Officer duties. Staff propose that a Hearing Officer be retained on a short-term basis to evaluate the volume of reviews requested of a Hearing Officer, and to provide for an opportunity for the City to establish an Administrative Penalties System, and to then evaluate the desire for a joint appointment benefitting both municipalities. In discussions with other municipalities operating Administrative Penalties Systems, Hearing Officers are required infrequently (anywhere from 1 day per every 4-8 weeks depending on receiving appeals of Screening Officer decisions) and are paid on a per diem basis.

Summary and Recommendations

The use of Administrative Penalties Systems has been permitted for municipalities by the Province of Ontario since 2007, and have been widely adopted as a means to handle minor offences outside of the traditional Provincial court system. As identified above the transition to Administrative Penalties System holds several advantages, notably:

- Reduces strain on the overburdened Provincial court system to handle more serious civil and criminal offences
- Moves the appeal process for minor by-law offences to a less formal and more appropriate setting
- Will permit appeals to be heard both virtually and in-person within the County of Brant and not requiring the offender or County municipal law enforcement officers to attend the Brantford Courthouse
- Council is provided the opportunity to establish reasonable fines for contraventions of County by-laws
- Will permit the establishment of an Automated Speed Enforcement program for the County will all aspects managed by County Council and staff

The recommendations of this report will permit County staff to finalize the necessary policies and procedures, and to prepare the necessary by-law amendments for Council's consideration to fully implement the Administrative Penalties System.

Attachments

None.

Reviewed By

Greg Bergeron, Manager of Enforcement and Regulatory Services
Jyoti Zuidema, Solicitor & Corporate Counsel
Alison Newton, Chief Administrative Officer

Copied To

None.

By-law and/or Agreement

By-law Required	Yes
Agreement(s) or other documents to be signed by Mayor and /or Clerk	No