



Administration and Operations Committee Report

To: To the Chair and Members of the Administration and Operations Committee
From: Greg Bergeron, Director of Enforcement and Regulatory Services
Date: July 16, 2024
Report #: RPT-311-24
Subject: Implementation of Administrative Penalty System (APS)
Purpose: For Approval

Recommendation

WHEREAS, staff presented RPT-198-23 at Policy Development Committee meeting on May 23, 2023 to bring forward the necessary by-law amendments to implement an Administrative Penalty System; and

WHEREAS, on July 25, 2023, Council enacted By-law #88-23, being a by-law to establish and operate an Administrative Penalty System for violations of by-laws enacted under the authority of the Municipal Act;

THAT the Committee receive this report; and

THAT By-law #88-23 and its schedules been repealed; and

THAT the Committee and Council approve the enactment of the Administrative Penalty By-law and Schedules, attached as **Appendix 1**, being a by-law to establish and operate an Administrative Penalty System for violations of the County of Brant Parking By-law and future designated non-parking by-laws enacted under the authority of the Municipal Act, 2001 and the Building Code Act; and

THAT the Committee approve, and Council enact by By-law, the mandatory policies attached as **Appendix 2.1 to 2.5**, which support the operationalization and integrity of the Administrative Penalty System; and

1. Policy to Prevent Political Interference
2. Conflict of Interest Policy
3. Policy Regarding Financial Management and Reporting
4. Public Complaints Policy
5. Undue Hardship Policy

THAT the proposed amendments to the County of Brant Parking By-law #004-19, attached as **Appendix 3**, be approved; and

THAT Schedule 17 of the County Parking By-law 004-19 be repealed; and

THAT, pursuant to By-law #87-23 being a By-law to establish the positions of Screening and Hearing Officers, Madeline Huether and Julie McKeen be appointed as Screening Officers for the purpose of conducting screening reviews for Penalty Notices issued under the County Parking By-law and non-parking By-laws; and

THAT the attached Administrative Penalty System By-law, Schedules, and Parking By-law No. 004-19 amendments simultaneously come into force and effect upon the execution and delivery of the Authorized Requestor Agreement between the County of Brant and the Ontario Ministry of Transportation, governing Administrative Penalties.

Executive Summary

An Administrative Penalty System (hereafter referred to as APS) is an enhanced procedural justice system which will allow the County to administer and deal with Penalty Notices in a timely manner as authorized under the Municipal Act, 2001 and Ontario Regulation 333/07.

When a Penalty Notice is challenged, municipalities assign internal Screening and external Hearing Officers to assist notice holders by providing a fair and efficient dispute resolution process.

APS is a customer service-based program, with a focus on early resolution. APS moves disputes out of the court system and provides municipalities with the discretion to resolve tickets during an internal screening review. If a notice holder disagrees with the decision of the Screening Officer, they can request a Hearing Review before a Hearing Officer.

Under this new process, most Penalty Notices can be resolved within approximately 120 days, much faster than the previous, court-based system. The APS program will provide for the same open, transparent, and impartial process as is currently in place with the Provincial Offences Act (herein referred to as POA) system.

As a first step, (Phase 1) the introduction of the APS in the County of Brant will commence with the administration and enforcement of Parking By-law No. 004-19.

Phase 2 of the implementation program will be the processing and adjudication of Automated Speed Enforcement contraventions which is currently in development.

Phase 3 of the APS implementation will be to incorporate Municipal Act and Building Code Act By-laws into the APS program.

Strategic Plan Priority

Strategic Priority 2 - Effective Communication

Strategic Priority 5 - Healthy, Safe, and Engaged Citizens

Strategic Priority 6 – Stable and Responsive Governance

Impacts and Mitigation

Social Impacts

An Administrative Penalty System is an established approach to deal with by-law infractions in a manner that is fair, effective, and efficient. The system is more user friendly and less intimidating, while maintaining the fundamental principles of justice and due process. This

approach has been adopted by numerous municipalities, the province, and the federal government, and is designed to streamline the enforcement process and to increase compliance County by-laws.

Environmental Impacts

There are no Environmental Impacts associated with this report.

Economic Impacts

Unpaid parking Penalty Notices ultimately result in plate denial until payment, including administrative fees, are paid in full.

Confirmed and unpaid non-parking Penalty Notices can be either sent to a Collection Agency or Small Claims Court or reported to a Credit Bureau as determined by the municipality. The APS system for non-parking violations also gives municipalities the ability to have unpaid Penalty Notices and administrative fees applied to the property tax roll if the offending party owns property located in the municipality.

Additional resources will likely be required in 2025 to successfully deliver the Administrative Penalty System and Automated Speed Enforcement program.

Report

Background

Staff presented RPT-198-23 at Policy Development Committee meeting on May 23, 2023, to bring forward the necessary by-law amendments to implement an Administrative Penalty System;

Council enacted By-law #88-23 being a by-law to establish and operate an Administrative Penalties System for violations of by-laws constituted under the Municipal Act on July 25, 2023;

This project was delayed due to the County having to procure new parking enforcement software. Staff are working with the new service provider in developing the software for the processing of Penalty Notices issued under the APS framework.

Analysis

The APS program provides for a two-step resolution process when someone chooses to dispute a parking ticket. The ticket holder will conveniently be able request a “screening” online through the County’s website. This will replace the POA system which requires the ticket recipient wishing to dispute a ticket to request a trial which is adjudicated in a provincial courtroom by a Justice of the Peace.

The APS process provides staff with an increased level of discretion to resolve the ticket (Penalty Notice) through a screening. If the ticket holder chooses not to accept the resolution offered by the Screening Officer, they can request a hearing before a Hearing Officer. Screenings will primarily be conducted in writing but may occasionally take place over the phone, virtually or at an office within the County. All hearings will be conducted virtually.

A Hearings Officer has already been appointed through By-Law #87-23 being an independent and impartial person appointed by Council. The decisions of Hearing Officers are final and binding.

As part of this process, staff have undertaken a review of the existing set fines for parking offences. There have been no increases to the previously established set fine amounts.

In efforts to encourage prompt payment of parking Penalty Notices, staff are maintaining the “early payment” option to all parking Penalty Notices. The early payment option provides notice holders to pay a reduced fine amount if paid within seven (7) days from the effective date of service. Staff are recommending that Schedule 17 be repealed as mentioned in section 44 of the Parking By-law. Although voluntary payment within seven (7) days will continue to be an option, the framework will be removed from the Parking By-law and moved to the APS By-law.

Process overview

Uncontested Penalty Notices

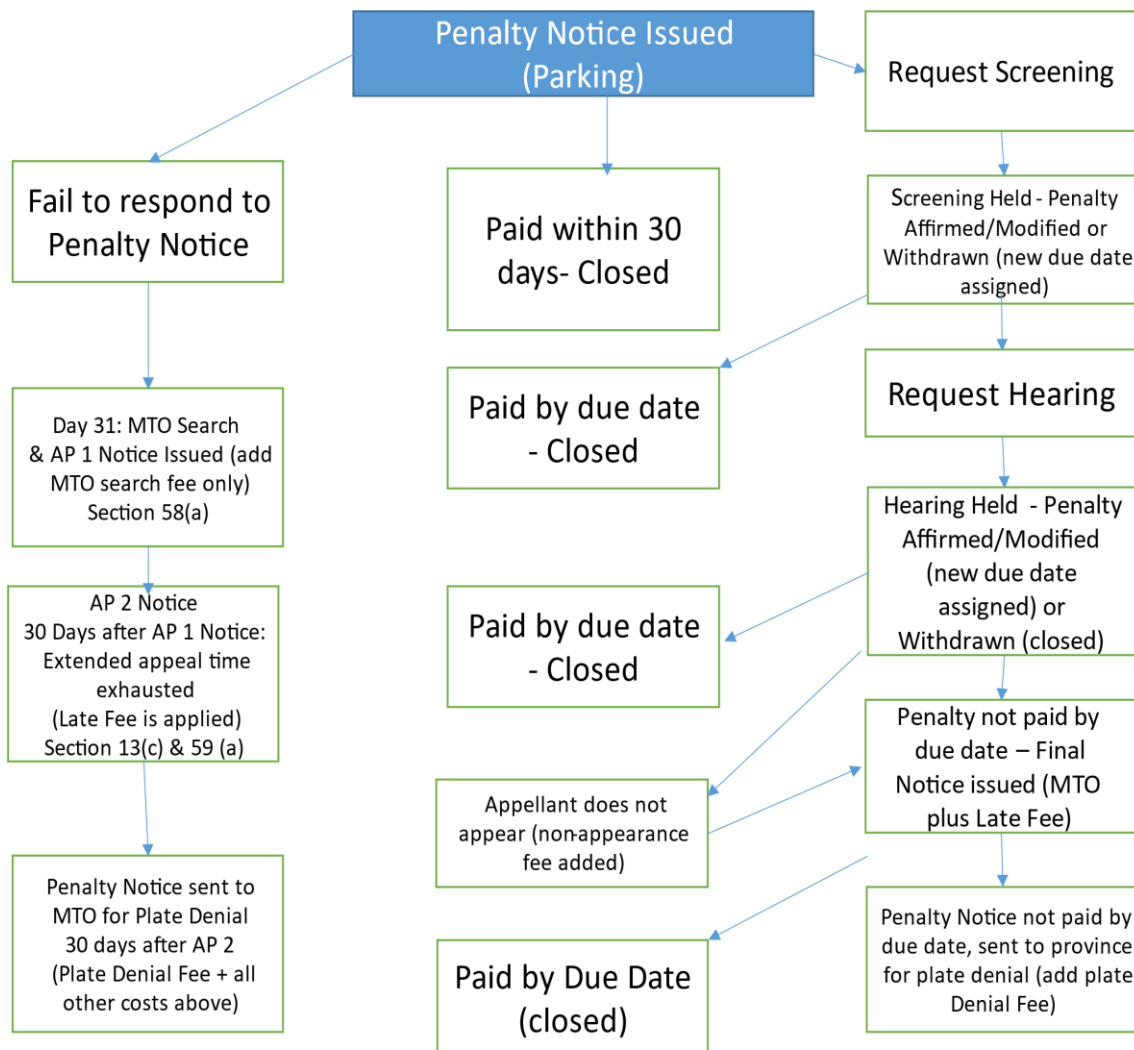
- When a penalty notice is issued, recipients will have thirty (30) days from the effective date of service to pay the set amount as per Schedule “A” of the draft By-law. If the amount is paid, the penalty notice will be satisfied with no further action.
- Should a penalty notice not be paid within thirty (30) days, a reminder notice (AP1) will be mailed to the registered owner after an MTO search has been conducted which will occur on or after day thirty-one (31). The owner shall be responsible for the MTO search fee.
- If the penalty notice is not paid by the due date set out in the AP1 notice, a late fee will subsequently be applied, approximately fifteen (15) days after the due date.
- A second notice (AP2) will be mailed out approximately thirty (30) days after the AP1 notice advising the vehicle owner of the outstanding fees, including the late fee. The notice will set out a final due date to pay and advising that failure to pay will result in the County submitting a request for plate denial (including costs) to the province.
- If not paid approximately fifteen (15) days after final due date established in the AP2 notice, the County will proceed with the plate denial process through the Defaulted Fine Control Centre (DFCC) which will result in the registered owner not being able to renew their vehicle permit plate until the outstanding debt to the County has been paid.
- The provincial government recently announced that plates for passenger vehicles, light-duty trucks, motorcycles, and mopeds will renew automatically 90 days before expiry if the vehicle owner has valid insurance and no outstanding fines or tolls. If there are outstanding tickets or fines, that person must pay them before the licence plate renewal process can begin.

Contested Penalty Notices

- When a person wishes to dispute a Penalty Notice, they can submit a screening request form online or by attending the By-law Enforcement office at any time during normal business hours;
- Screening requests will generally need to be completed within the thirty (30) day window.

- As required under the Provincial regulations, the proposed By-law provides for an extension of time to request a screening or hearing for extenuating circumstances.
- Upon review, a Screening Officer can affirm, cancel, reduce, or extend the time for payment of the Administrative Penalty.
- The APS program provides staff with discretion to attempt to resolve Penalty Notices. This may include the potential to reduce the fine or provide for a payment program, if appropriate. Under the current POA process, the only option to resolve a Provincial Offence Notice, is to pay it, request an early resolution date or a trial;
- If the person is not satisfied with the outcome of the screening meeting, they can request a hearing. This would be similar to requesting a trial under the current process; however, the hearing process follows the Statutory Powers and Procedures Act and will be less formal and timelier;
- The existing Hearings Officer will be utilized to adjudicate matters at a hearing. The Hearings Officer is independent of County staff and Council;
- The timelines associated with screenings and hearings will vary based on the due dates established by the Screening Officer and, if applicable, by the Hearing Officer.
- The flowchart below provides a general overview of the APS process.

APS Flow Chart



Mandatory APS Policies

Section 7 of Ontario Regulation 333/07 made under the authority of the Municipal Act, 2001 requires municipalities to develop standards relating to the administration of the system of administrative penalties;

(a) policies and procedures to prevent political interference in the administration of the system;

(b) guidelines to define what constitutes a conflict of interest in relation to the administration of the system, to prevent such conflicts of interest and to redress such conflicts should they occur;

(c) policies and procedures regarding financial management and reporting;

(d) procedures for the filing and processing of complaints made by the public with respect to the administration of the system.

As required by regulations, staff are recommending that the County of Brant adopt the following five policies which are briefly explained below:

- APS Policy 1 - Prevention of Political Interference Policy - Appendix 2.1

This policy is to prevent political interference of any kind in the administration of the APS program, and to minimize and restrict opportunities for political interference, intentionally or unintentionally.

- APS Policy 2 – Conflict of Interest Policy - Appendix 2.2

This policy defines what constitutes a conflict of interest in relation to the APS program, to prevent such conflicts of interest and to redress such conflicts should they occur, to maintain the integrity of the program.

- APS Policy 3 - Financial Management and Reporting Policy – Appendix 2.3

This policy applies to the financial management and reporting of the APS program for transparency and accountability.

- APS Policy 4 -, Public Complaints Policy - Appendix 2.4

This policy is to ensure the APS program is a responsive and effective system for enforcement of County By-laws and to ensure any public complaints are addressed in a timely and responsible manner as prescribed in the policy.

APS Policy 5 – Undue Financial Hardship Policy -Appendix 2.5

- This policy assists Screening and Hearing Officers in responding to requests by persons with a penalty notice for relief from paying all, or part, of an Administrative Penalty, including any Administrative Fees, on the basis that they would suffer undue hardship if required to pay the penalty or fee.

BENEFITS OF APS

Staff believe there are several significant benefits to implementing an APS program. The following is a brief overview of these benefits:

- The APS allows for the municipality to control all the timelines associated to the life of a Penalty Notice. The timelines for such things as late payment fees, screening and hearings are established by the County. The program provides enhanced customer service, and is less formal and less intimidating for the public as compared to the Provincial Offences Court process;
- Removing Provincial Offence tickets issued for by-law violations from the court process will allow the local court administration to reallocate time and resources to address other pressures;
- Staff will have increased flexibility and discretion to attempt to resolve disputes in the early stages of the process, through the screening process, which will be available through email, phone, in person or virtually;
- The APS program will provide for less formal (quasi-judicial) hearings to be held virtually;
- The hearings schedule will be within the County's control and will not have to be dependent upon the court schedules at the Brantford courthouse. With the current volume of Provincial Offence Notices, under the current system, the wait time for a court date could be as much twelve (12) months after the ticket is issued. Under the APS program, staff are anticipating significantly reduced wait times;
- Increased ability for Officers to issue Penalty Notices to out-of-area persons who have committed a by-law violation through different methods of service, which are not available in the POA system;
- Under the current POA system, fine amounts are recommended by the municipality, but require final approval by the Ministry of the Attorney General. This approval process often takes several weeks and limits a municipality's ability to have full control of the approved fines. APS allows for Council to approve fines provided they are not punitive in nature and reasonable to promote compliance with the By-laws of the municipality, and therefore, permits for a new approach to setting fines to effectively deal with local issues;
- Through the APS program, the County has established the fees to be imposed on late/defaulted penalties. Imposing fees for defaulted penalties can serve two (2) purposes, the first being an incentive to resolve the penalty notice as early as possible and secondly, to function as cost recovery for the added staff resources required to process Penalty Notices where the defendant fails to respond accordingly. As an example, Parking Penalty Notices that are completely ignored will cost the registered vehicle owner an additional \$61.00 over and above the set penalty amount.
- The proposed By-law provides for escalated fines for non-parking by-law violations for repeat offenders to encourage compliance.

FINANCIAL IMPLICATIONS

The factors that influence annual ticket activities may increase given the fact that under that APS, parking tickets can be issued after the fact which is not the case under the POA framework. Staff expect that APS will have a positive impact on parking enforcement in school zones, where offending drivers often drive away before a ticket is issued. Under the

APS program, Penalty Notices for violations observed by Municipal Law Enforcement Officers can be mailed to the registered owner after the fact.

The APS program will also reduce the amount of time Legal staff and By-law Officers spend at court, therefore increasing staff availability with existing staffing resources for other priorities and responding to customer concerns.

Compensation for the Hearings Officer (third party contractor) to adjudicate hearings will be required and staff estimate that hearings will take place approximately six times per year. On this basis, staff are forecasting an additional expense of \$3,000 to \$4,000 annually, which will be funded through the By-law Division's operating budget.

The implementation of the APS program is not likely to significantly alter the annual ticket issuance rates and the resulting revenue from the face value of the tickets. However, staff believe that there will be an increase in fine revenue in 2025 as it relates to the continued growth and the collection of late fees imposed where someone fails to fulfill their obligations to respond appropriately to resolve their Penalty Notices.

Additional resources

Depending on the volume of Penalty Orders, the number of screening reviews and appeals related to Administrative Penalties combined with the additional responsibilities for the impending implementation of the Automated Speed Enforcement program (Phase 2), additional human resources will likely be required to handle and process all Penalty Notices (APS & ASE), conduct screening reviews and to act as the County representative during hearings. Additional resources will form part of a Decision Package during 2025 divisional budget planning process. Staff are also in the process of developing a permit parking system for residents of the Paris BIA.

COMMUNICATION

Staff will focus on educating the public to inform them on the process through a communications plan which will include a comprehensive APS page on the County of Brant website.

Summary and Recommendations

That the Committee receive this report as information;

THAT By-law #88-23 and its schedules been repealed; and

THAT the Committee and Council approve the enactment of the Administrative Penalty By-law and Schedules attached as Appendix 1, being a by-law to establish and operate an Administrative Penalty System for violations of the County of Brant Parking By-law and future designated non-parking by-laws enacted under the authority of the Municipal Act, 2001 and the Building Code Act; and

THAT the Committee approve, and Council adopt the mandatory policies attached as Appendix 2.1 to 2.5, which support the operationalization and integrity of the Administrative Penalty System (APS); and

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THAT amendments to the County of Brant Parking By-law #004-19 as per the amending by-law, attached as Appendix 3, be approved; and

THAT Schedule 17 of the County Parking By-law 004-19 be repealed; and

THAT, pursuant to By-law #87-23 being a By-law to establish the positions of Screening and Hearing Officers, Madeline Huether and Julie McKeen be appointed as Screening Officers for the purpose of conducting screening reviews for Penalty Notices issued under the County Parking By-law and non-parking by-laws; and

THAT the attached APS By-law, Schedules, and Parking By-law No. 004-19 amendments simultaneously come into force and effect upon the execution and delivery of the Authorized Requestor Agreement between the County of Brant and the Ontario Ministry of Transportation, governing Administrative Penalties.

Attachments

- 1) Appendix 1 – Draft APS By-law & Schedules
- 2) Appendix 2.1 to 2.5 – APS Policies
- 3) Appendix 3 - Amending Parking By-law 004-19
- 4) Appendix 4 – Redline Version of By-law 004-19
- 5) Appointment By-law – Screening Officers

Reviewed By

Cindy Stevenson – General Manager Emergency and Protective Services

Copied To

Alison Newton – CAO
 Rochelle Welchman – Solicitor and Corporate Council
 Amanda Paine – Supervisor of Enforcement and Regulatory Services
 Adam Crozier – Director of Director of Corporate Strategy
 Suzie Keczan - Director of Communications and Public Relations

By-law and/or Agreement

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