

# ***Staff Report***



*Community Services Department*

*www.kitchener.ca*

---

**REPORT TO:** Finance and Corporate Services Committee

**DATE OF MEETING:** January 8, 2024

**SUBMITTED BY:** Gloria MacNeil, Director of Enforcement, 519-741-2200 ext. 7952

**PREPARED BY:** Gloria MacNeil, Director of Enforcement, 519-741-2200 ext. 7952

**WARD(S) INVOLVED:** All

**DATE OF REPORT:** December 18, 2023

**REPORT NO.:** CSD-2023-121

**SUBJECT:** Administrative Penalty System – Other By-law Offences

---

## **RECOMMENDATION:**

**That City Council authorize and direct staff to expand the Administrative Monetary Penalty System, as set out in report CSD-2023-121; and,**

**That City Council approve the Administrative Penalty By-law for Non-Parking By-laws (Schedule A); and,**

**That City Council approve the By-law to repeal and replace By-law 2019-040, being the Screening and Hearing Officer By-law (Schedule B); and,**

**That City Council approve amendments to the following By-laws:**

- **Parks By-law Chapter 270, as amended**
- **Animals Regulations Chapter 408, as amended**
- **Dog Designations Chapter 420, as amended**
- **Responsible Dog Ownership Chapter 421, as amended**
- **Noise By-law Chapter 450, as amended**
- **Public Nuisances - Chapter 467, as amended**
- **Management of Shopping Carts Chapter 475, as amended**
- **Alternative Massage Centres Chapter 508, as amended**
- **Fences Chapter 630, as amended**
- **Graffiti Chapter 637, as amended**
- **Heat in Rented Dwellings Chapter 640, as amended**
- **Lot Maintenance Chapter 650, as amended**
- **Standards of Maintenance and Occupancy of Property Chapter 665, as amended**
- **Signs Chapter 680, as amended**
- **Snow and Ice Removal from Roofs and Sidewalks Chapter 687, as amended**

- **Trees Chapter 690, as amended**
- **Tree – Protection-Destruction-Injury Chapter 691, as amended**
- **Vacant Building Secured Chapter 694, as amended**
- **Open Air Burning Chapter 711, as amended**
- **Fireworks and Fire Crackers Chapter 739, as amended**
- **Vehicles Tracking or Spilling Soil onto Public Streets and Construction Vehicles Chapter 820, as amended**
- **Excavations within Highways Chapter 827, as amended**
- **Hedges and Other Objects Traffic Hazards Chapter 842, as amended**
- **Work Permit – Work on Roadways Chapter 890, as amended**
- **Boulevard Beautification and Maintenance Chapter 895, as amended**

**That City Council approve the amendments to the following policies relating to the Administrative Monetary Penalty System:**

- **GOV-COU-2015 - Conflict of Interest and Code of Conduct**
- **GOV-COU-2016 – Public Complaints**
- **GOV-COU-2017 - Recruitment and Selection of Screening and Hearing Officers**
- **GOV-COU-2018 - Financial Management and Reporting**
- **GOV-COU-2019 - Preventing Political Interference**
- **GOV-COU-2020 - Undue Hardship**

#### **REPORT HIGHLIGHTS:**

- The City of Kitchener moved to an AMPS system for parking related matters in June 2019. That transition has been highly successful.
- Staff are proposing the transition of non-parking related by-laws such as noise, graffiti, snow and ice removal from sidewalks, signs, etc. from the traditional court system under the POA to an Administrative Monetary Penalty System (AMPS).
- AMPS is a customer service-based program, with a focus on early resolution, making the legal process more efficient and user friendly and less intimidating.

#### **EXECUTIVE SUMMARY:**

The City's By-law Enforcement Division successfully implemented the AMPS system for parking matters in June 2019. This transition proved to be very successful and has resulted in reduced wait times for resolving a parking ticket. At the time, the City partnered with the City of Waterloo to implement AMPS. This partnership has allowed for several shared efficiencies as part of the development process and will continue to provide further efficiencies as the program develops.

Staff have now turned their attention to transitioning other, non-parking by-law matters to AMPS. Currently, tickets for non-parking by-law infractions such as noise, graffiti, snow and ice removal from sidewalks, signs, etc. issued by City staff are adjudicated pursuant to the Provincial Offences Act (POA), and are heard in the Ontario Court of Justice (Provincial Offences Court). The POA prescribes the process, and as a result, under this system there is limited opportunity for a municipality to provide a revised process that may be more flexible and suit the nature of the municipality.

Staff are proposing that the City transition the adjudication of non-parking by-law tickets away from the traditional court system under the POA to an Administrative Monetary Penalty System (AMPS) as provided for in the Municipal Act, 2001 and the Building Code Act, 1992. Staff are of the opinion that there are several key benefits of this transition, with the key focus on making the legal process more efficient, user friendly, and less intimidating. Further, there will be a positive impact on the regional court system in terms of making court resources available for more serious matters. An AMPS program will provide for the same open, transparent and impartial process as is currently in place with the POA system, maintaining the fundamental principles of open court and due process.

Similar to the existing dispute resolution process for parking matters, there will be two steps in the resolution process when someone chooses to dispute a non-parking by-law ticket. The ticket holder can conveniently request a “screening” online through the city’s website. This will replace the POA system, which requires a ticket holder wishing to dispute a ticket to mail the provincial courts or to visit the courthouse in Kitchener.

The AMPS process provides staff with an increased level of discretion to resolve the ticket through a screening. If the ticket holder chooses not to accept the resolution offered by staff, they can request a hearing before a “hearings officer”. These hearings will primarily be conducted virtually, but occasionally may take place at an office within City Hall. The hearings officer will be an independent person appointed by City Council, on staff’s recommendation. The decision of the hearing officer will be final and binding.

The implementation plan will require the enactment of an AMPS Procedural By-law, similar to what was enacted by Council in 2019, that provides for the administrative process, replacing the current POA process. In addition, a by-law is required to amend a number of the City’s existing by-laws to provide for the penalty provisions to refer to the AMPS process, as opposed to the current POA process.

Further, the current Screening and Hearings Officer By-law will require amendments to provide for the appointment of screening officers and hearings officers.

Finally, the proposed AMPS process will require Council’s endorsement of amendments to several policies which inform and guide the process going forward.

#### **BACKGROUND:**

The AMPS process for parking infractions was introduced in Kitchener in mid 2019. The program has been very successful and staff have been able to gain experience with the program and have seen a significant reduction in the length of time it takes for a ticket holder to dispute their tickets. It has also reduced the burden on Legal Services staff to attend the provincial court to represent the City on parking ticket matters.

In 2018-19, The City of Kitchener partnered with the City of Waterloo to develop and implement AMPS for parking infractions. This time around, the City is again partnering with Waterloo, as well as the City of Cambridge. Research and development resources will continue to be shared going forward, and staff are developing a plan to share operational resources on an on-going basis whenever possible.

## REPORT:

Staff now believe it is time to transition non-parking by-law tickets currently issued, processed and adjudicated pursuant to the *Provincial Offences Act* (POA), and heard in the Ontario Court of Justice (Provincial Offences Court) to the AMPS process. The POA prescribes the process, and as a result, under this regime there is limited opportunity for a municipality to provide a revised process that may be more flexible and suit the nature of the municipality.

A municipality establishing an AMPS program must pass a Procedural AMPS By-law, which designates the by-laws and provisions to which AMPS will apply, and establishes the adjudication process. A Procedural By-law for parking infractions was enacted in 2019. Staff are proposing a separate by-law for non-parking by-laws, given the variation in the process between the two (2) types. The POA process will still apply to the designated by-laws/provisions, allowing the City to utilize the system that is most appropriate for the situation at hand.

Similar to the parking AMPS process, this proposed AMPS process will also provide for resolution of a dispute at a screening review. If the screening decision is contested, the individual can then request a hearing. The resolution decision at a hearing is final.

The following is an overview of how the proposed AMPS program would function:

- The process to issue a by-law ticket was formally a Provincial Offence Notice (PON), which will now to be known as a Penalty Notice;
- Staff are investigating a transition from issuing a Penalty Notice from a hand-written template document to an electronically inputted and printed format, with a hand-written template document still available as a secondary option;
- When a person wishes to dispute a Penalty Notice that they received, they can submit a screening request form online or by attending at the By-law Enforcement office, at any time during normal business hours;
- Requests for screenings will be accepted at the By-law Enforcement office and will be forwarded to legal staff who will be appointed as Screening Officers and will have the authority to conduct screening meetings.
- The AMPS program provides staff with discretion to attempt to resolve the Penalty Notice. 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 PON is to pay it or request an early resolution date or a trial and attempt to resolve the matter at Court;
- 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 staff have experienced through the parking ticket program that the hearings process will be less formal and more timely;
- The existing Hearings Officer process will be utilized to adjudicate matters at a hearing. The "Hearings Officer" will be independent of City staff and City Council;
- Hearings would primarily take place virtually, with an option for occasional Hearings to take place in-person at City Hall.
- As in the current POA process, a Penalty Notice that remains unpaid, whether it goes through the full adjudication process or not, would eventually be sent to a third-party collections agency. The AMPS system also gives Municipalities the

ability to have unpaid fines applied to the property tax roll if the owner of a property located in the municipality is the offender.

As was required with the parking by-laws in 2019, this proposed transition will require amendments to the City's existing enforcement by-laws. These amendments will add definitions making reference to the AMPS Administrative By-law, as well as amending the by-law's penalty sections to allow for the new penalty notices, in addition to the existing penalties under the POA process.

The proposed amending by-law will amend the following by-laws listed below. Staff have included the transition of our most commonly utilized by-laws such as noise, waste material, snow and ice on sidewalks, signs, fireworks, etc. into the AMP system as this will provide customers with the ability to dispute and resolve charges in a quicker, less intimidating and more effective manner.

- Parks By-law Chapter 270, as amended
- Animals Regulations Chapter 408, as amended
- Dog Designations Chapter 420, as amended
- Responsible Dog Ownership Chapter 421, as amended
- Noise By-law Chapter 450, as amended
- Public Nuisances - Chapter 467, as amended
- Management of Shopping Carts Chapter 475, as amended
- Alternative Massage Centres Chapter 508, as amended
- Fences Chapter 630, as amended
- Graffiti Chapter 637, as amended
- Heat in Rented Dwellings Chapter 640, as amended
- Lot Maintenance Chapter 650, as amended
- Standards of Maintenance and Occupancy of Property Chapter 665, as amended
- Signs Chapter 680, as amended
- Snow and Ice Removal from Roofs and Sidewalks Chapter 687, as amended
- Trees Chapter 690, as amended
- Tree – Protection-Destruction-Injury Chapter 691, as amended
- Vacant Building Secured Chapter 694, as amended
- Open Air Burning Chapter 711, as amended
- Fireworks and Fire Crackers Chapter 739, as amended
- Vehicles Tracking or Spilling Soil onto Public Streets and Construction Vehicles Chapter 820, as amended
- Excavations within Highways Chapter 827, as amended
- Hedges and Other Objects Traffic Hazards Chapter 842, as amended
- Work Permit – Work on Roadways Chapter 890, as amended
- Boulevard Beautification and Maintenance Chapter 895, as amended

## **BENEFITS OF AMPS**

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

- 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 Regional 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, or virtual meetings;
- The AMPS program will provide for less formal hearings to be held virtually or at City Hall (governed by the rules under the Statutory Powers Procedure Act and the Policies to be established in accordance with the Regulation)
- The hearings schedule will be within the City's control, and will not have to be dependent upon the Court schedules at the Regional Courthouse. With the current volume of Provincial Offence Notices, under the current system, the wait time for a Court date could be as much as 6 to 12 months after the ticket is issued. Under the AMPS program, staff are anticipating for a significantly reduced wait time of approximately 2 to 6 weeks;
- Increased ability for officers to issue Penalty Notices to out-of-area person's who have committed a by-law violation, through different methods of service, which are not available in the POA system;
- Increase ability for the municipality to collect on unpaid tickets, adding heightened accountability to persons who commit a by-law violation.
- Under the current POA system, fine amounts are recommended by the municipality, but require final approval by the Provincial Ministry of the Attorney General. This approval process often takes several months and limits a municipality's ability to have full control of the approved fines. AMPS allows for council to approve fines, and therefore, permits for a new approach to setting fines.

As part of this process staff have undertaken a review of the existing set fines for offences where tickets currently exist. Staff have provided for adjustments to existing fines, now to be known as penalties. Further, staff are proposing an increased penalty (escalating fines) in situations where a person has been identified as a repeat offender regarding the same or similar by-law violation (ie. second or subsequent violations). Staff recommend that these escalated fines be increased based on a percentage of the original penalty amount.

The current system under the POA, does not provide for much in the way of cost recovery for the work required by municipal staff to follow-up on, and process tickets where a person fails to respond to their ticket appropriately. Through the AMPS program, the City would establish the fees to be imposed on late/defaulted penalties, and all fees would remain with the municipality. 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 act as cost recovery for the added staff resources required to process penalty notices where the defendant fails to respond accordingly.

The current legislative process for collecting defaulted non-parking by-law fines provides limited options. In many instances, the unpaid penalty will have to be sent to a collection agency. In this scenario, such agencies typically provide for a fee (often a percentage of the amount collected) from the municipality. The AMPS process allows for a fee to be

added when a defaulted penalty is forwarded for collections. Staff are proposing a collection fee of fifteen percent (15%) of the applicable penalty amount.

As a result, there may be an increase in the revenue anticipated as a result of fees relating to late/defaulted penalties. Staff propose to monitor the program throughout 2024 and begin to make budget adjustments based on revenues generated through the 2025 budget process.

The following chart outlines the proposed fees for the City of Kitchener and provides a comparison of fees set by other municipalities using the AMPS program.

<b>Municipality</b>	<b>Late Fee</b>	<b>Screening/Hearing Non-Appearance Fee</b>	<b>Collection Services and Tax Roll Fee</b>
<b>Kitchener Proposed</b>	<b>25% of the original penalty amount</b>	<b>\$100</b>	<b>15% of the total amount owing when sent to collections or added to taxes</b>
Waterloo	25% of the original penalty amount	\$100	15% of the total amount owing when sent to collections or added to tax roll
Cambridge	25% of the original penalty amount	\$50	No collection fee at this time.
Oshawa	\$25	\$100	No collection fee at this time.
Richmond Hill	\$27	\$104	No collection fee at this time.
Oakville	\$50	\$100	No collection fee at this time.
Mississauga	\$25	\$100	Collection process in place, but limited information was provided
Hamilton	\$64	\$125	No collection fee at this time.
Vaughan	\$63.50	\$142	\$46

The proposed fees listed for late penalties are an incentive to resolve the penalty notice as early as possible. The collection service fee has been added as cost recovery, as noted above, collection agencies typically charge a fee for their services which is generally a percentage of the overall amount being collected.

**STRATEGIC PLAN ALIGNMENT:**

This report supports the delivery of core services.

**FINANCIAL IMPLICATIONS:**

The implementation of an AMPs program does not significantly alter our current processes with respect to how tickets (now penalty notices) are issued or how many are issued.

Statistics relating to ticket violations and the resulting fine revenue can fluctuate slightly from year to year, depending on circumstances, special initiatives, etc. and it is anticipated that this trend will continue.

Staff do not foresee a significant increase or decrease in the total number of tickets/notices issued, as a result of the implementation of the AMPS program. The factors that influence annual ticket activity, currently, will continue to do so going forward.

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

Compensation for Hearings Officers (third party contractors) to adjudicate hearings will be required and 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.

As mentioned, the implementation of the AMPS 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 as it relates to the collection of late fees, imposed where someone fails to fulfill their obligations to respond appropriately to resolve their ticket.

#### **COMMUNITY ENGAGEMENT:**

The Administrative Monetary Penalties System is an administrative process that must fit within the Provincial regulations as set out in the Municipal Act. Staff will focus on engaging the public to inform and educate them on the process through a communications plan as well as information provided on our website.

#### **PREVIOUS REPORTS/AUTHORITIES:**

- CSD-19-008 – Administrative Monetary Penalty System (AMPS)
- CSD-19-010 – Administrative Monetary Penalties – Policies
- CSD-19-022 – Appointment of Hearings Officers – Administrative Monetary Penalties System – AMPS

**APPROVED BY: Michael May, DCAO**

#### **ATTACHMENTS:**

Schedule A – Administrative Penalty System for violations of Non-Parking By-laws within the City of Kitchener

Schedule B - Screening and Hearing Officer By-law

Schedule C – By-law to Amend Several Chapters of the Municipal Code

Schedule D - GOV-COU-2015 - Conflict of Interest and Code of Conduct

Schedule E – GOV-COU-2016 – Public Complaints

Schedule F – GOV-COU-2017 – Recruitment and Selection of Screening and Hearing Officers

Schedule G – GOV-COU-2018 - Financial Management and Reporting

Schedule H – GOV-COU-2019 - Preventing Political Interference

Schedule I – GOV-COU-2020 - Undue Hardship