



**TOWNSHIP OF ESSA
ADMINISTRATIVE PENALTY SYSTEM
AUTOMATED SPEED ENFORCEMENT (ASE) PROGRAM**

Guideline for Reviews

The Automated Speed Enforcement Provincial Administrative Penalty regime came into effect on July 1, 2022, consisting of provincial law, rules and requirements that municipalities can deliver at the municipal level. The Provincial Administrative Penalty Regime consists of section 21.1 of the *Highway Traffic Act*, Ontario Regulation 355/22, agreements between municipalities and the Ministry of Transportation, the Ministry of Attorney General, and the MTO Administrative Penalties Guidance Document. It is important to note that the ASE Provincial Administrative Penalty Regime is in contrast to the municipal AP regime utilized for parking and other municipal by-laws and requires strict adherence to the various components and requirements.

These guidelines have been drafted to assist Screening and Hearing Officers in making informed decisions regarding Penalty Orders issued as a result of HTA infractions captured utilizing automated speed enforcement cameras/devices. The purpose of this guideline is to provide for consistency, fairness, and transparency in the decision-making process when a review of the Penalty Order has been requested by the registered owner of the vehicle. These guidelines are intended to provide information to the public to support understanding of review decisions.

1. Options for Registered Owner of Vehicle, re: Receipt of Penalty Order

Where the registered owner of a vehicle has been served with a Penalty Order, the registered owner may:

- a. Voluntarily pay the Penalty Order; or
- b. Commence the Appeal (Review) Process by requesting a review of the Penalty Order by a Screening Officer. This must be initiated by the registered owner of the vehicle within 30 calendar days after the date of issuance on the Penalty Order. Should the registered owner disagree with the decision of the Screening Officer, they may request a review of the screening decision by a Hearing Officer. This must be initiated within 30 days from the date of the decision of the Screening Officer.

2. Conduct of an Appeal

- a. All appeal hearings shall be conducted using an electronic platform such as Microsoft Teams and/or phone. No in person screenings will be provided unless an accommodation request is made to the Director.
- b. The registered owner (and/or agent representative) shall attend at the set date and time.
- c. Where Stage 1 of the appeal (screening review) process has commenced, and a review of the subject Penalty Order has been requested by the registered owner (or their representative), Screening Officer(s) may:

- Confirm the Penalty Order
 - Vary the Penalty Order
 - Set Aside the Penalty Order
- d. Where the decision of the Screening Officer is appealed to a Hearing Officer, the Hearing Officer will conduct a review of the Screening Officer's decision. Following review of the Screening Officer's Decision, the Hearing Officer may:
- Confirm the Penalty Order, thereby upholding the decision of the Screening Officer
 - Vary the Penalty Order
 - Set Aside the Penalty Order
- e. Screening and/or Hearing Officer(s) shall not decide whether to confirm, vary or set aside a Penalty Order unless the registered owner (or their representative) has been provided an opportunity to make submissions to the Screening and/or Hearing Officer(s) in the same manner in which the review is to be conducted.
- f. In accordance with O. Regulation 355/22, witnesses are not permitted to be called upon during a review/hearing.
- g. The appellant or their authorized representative is required to be in attendance at the review/hearing. If they do not show, the following Administrative Fee(s) shall be added to the Penalty Order:
- i. No Show fee for a screening review - \$60.00
 - ii. No Show fee for hearing review - \$60.00
- h. In accordance with O. Regulation 355/22, the decision of the Hearing Officer is final.

3. Determination of an Appeal

3.1 Stage 1 of Appeal Process – Screening Officer Review

In accordance with O. Regulation 355/22, the first stage in the appeal (review) process allows for the Screening Officer to review the subject Penalty Order, and to make a decision to:

- Confirm the Penalty Order, or
- Vary the Penalty Order, or
- Set Aside the Penalty Order

3.2 Stage 2 of Appeal Process – Hearing Officer Review

In accordance with O. Regulation 355/22, the second (and final) stage in the appeal (review) process allows for the Hearing Officer to review the Decision of the Screening Officer, and to make a decision to:

- Confirm the Penalty Order, or
- Vary the Penalty Order, or
- Set Aside the Penalty Order

3.3 Items for Consideration in Appeal

In accordance with O. Regulation 355/22, ss.13(1); the Screening Officer shall determine whether it was reasonable for the authorized person (Provincial Offences Officer) to impose the penalty order. Further, ss.13(2) states that the Hearing Officer shall determine whether the decision of the Screening Officer was reasonable.

In making this determination, the Screening and/or Hearing Officer may consider the following information as outlined in ss.13(3) paragraphs 1 through 6:

- Photographs or images taken by the ASE camera system
- Statements, including certified statements, made by the authorized person who imposed the penalty order
- Documents including certified documents, setting out the name and address of the person who is subject to the Penalty Order, a description of the permit and the plate number of the motor vehicle
- Statements made by the appellant either in writing or in the manner in which the appeal is conducted
- Statements by or on behalf of the municipality in which the contravention that is the subject of the penalty order occurred, made either in writing or in the same manner in which the appeal is conducted
- Any other information, materials or submissions that the Screening or Hearing Officer considers to be credible or trustworthy in the circumstance.

Please Note: Screening and Hearing Officer(s) do not have jurisdiction to consider questions relating to the validity of a statute, regulation or By-law, or the constitutional applicability or operability of any statute, regulation or By-law.

4. Decision(s) of Screening Officer / Hearing Officer

Upon review by the Screening or Hearing Officer, a decision shall be made to:

- Confirm the Penalty Order, or
- Vary the Penalty Order, or
- Set Aside the Penalty Order

4.1 Confirm the Penalty Order

- a. If the Screening and/or Hearing Officer is not satisfied that the penalty order should be varied or set aside, the penalty order is confirmed.
- b. Where a Penalty Order has been confirmed by a Screening and/or Hearing Officer following review/hearing, the registered owner shall be required to pay the Penalty Order within 30 days from the date of the decision, unless 4.2 applies. This date must be included on the Notice of Decision.

4.2 Vary the Penalty Order and/or Schedule Periodic Payments

4.2.1 Extend Timeline to Pay or Provide for Schedule of Periodic Payments

The Screening and/or Hearing Officer may consider extending the timeline for payment only where they consider it fair and appropriate in the circumstances, and only if the appellant provides sufficient documentation to support the request.

- a. Documentation required for extending the payment timeline:
 - i. A written explanation of the reasons for the extension request; and
 - ii. Supporting evidence such as financial statements or other relevant documents.
- b. Where the registered owner is claiming that payment of the Penalty Order will result in undue financial hardship, the following documentation can be utilized to support the claim:
 - Copy of Canada Revenue Agency Notice of Tax Assessment for the last full calendar year; and
 - Proof of receipt of any income supplement and the amount of such supplement including Old Age Security, Canada Pension and other pension information; Guaranteed Income Supplement; Disability Pension; Ontario Student Assistance Program; any Child and or Spousal Support Orders.
- c. Where the Screening and/or Hearing Officer has extended the timeline to pay and/or has provided for periodic payments on the Penalty Order, a proposed Periodic Payment Plan outlining when and how the registered owner intends to fulfill the Order is required.

Approval of periodic payments is conditional on the payment of a specified amount(s) being made on or before a specified date.

In considering a request to either extend the payment timeline and/or provide for periodic payments:

- i. Unforeseen Financial Hardship: When the contravener faces unexpected financial difficulties that prevent timely payment.
 - ii. Payment Plan Viability: Is the payment plan realistic and is the contravener committed to compliance.
- d. Where the Screening and/or Hearing Officer has approved an extension of time pay a Penalty Order, and/or has imposed a plan of periodic payments, the due date(s) and/ or plan are required to be entered on the Notice of Decision.

4.2.2 Reduction of the Administrative Penalty:

- a. The amount of the administrative penalty is established in law by Ontario Regulation 355/22. Penalty Orders are issued when a vehicle is travelling above the posted speed limit in a school or community safety zone and passes through an area where automated speed enforcement is being used. Any area where automated speed enforcement cameras are being used, is required to have the mandated signage posted in accordance to the regulation. Registered owners receiving a Penalty Order who, due to economic circumstances, cannot pay the full amount of the penalty within the prescribed time may request more time to pay or a periodic payment plan.

4.3 Cancel Penalty Order

4.3.1 Reasons to cancel a Penalty Order.

The following defects support the cancellation of a penalty order:

- The penalty order is incomplete – it is missing plate holder information, including name, alpha numeric plate characters and jurisdiction; the number of the penalty order; date of contravention; location of contravention; signature of the issuing provincial offences officer; date of issue; date of deemed service; amount of the penalty or the unique penalty order number.
- The penalty order was not issued by an authorized person.
- The image and license plate enlargement are not clear (the enlargement of the license plate attached to the motor vehicle is required to be clearly read). To be clear, the image or images are those certified by a provincial offences officer and provided to the Screening and/or Hearing Officer for consideration on the review/appeal. The clarity of images and enlargements on the penalty order is irrelevant.
- The penalty order does not meet the technical requirements set forth in the regulation.
- The information displayed in the image or images does not match the information set out in the corresponding certified statement.
- The recipient of the penalty order provides a copy of an occurrence or incident report from a police service reporting the vehicle and/or vehicle plates as stolen, and that report relates to a period of time relevant to the issuance of the penalty order, the report may result in the cancellation of the penalty order.

There are specific requirements in Ontario Regulation 398/19 and any non-compliance with those requirements will result in the cancellation of the penalty order. The requirements will either be addressed in the penalty order or should be canvassed in the certified statement of the issuing provincial offences officer. The penalty order should be cancelled if:

- The location of the contravention is not stated to be a community safety or school zone
- The speed of the motor vehicle at the time of the contravention is not indicated in the penalty order
- The posted speed limit is not indicated in the penalty order
- There is no marker in the image provided with the certified statement or the marker does not “touch” the motor vehicle
- There is no date indicated, in the certified statement, for the certificate of accuracy or the date indicated is outside of the time allowed (within 12 months of the date of the contravention)
- There is no indication in the certified statement that the signage, required by section 8 of the Regulation, was posted.

Additionally, if the registered owner submits credible evidence that the speed of the vehicle at the time of the contravention was otherwise than that which was recorded by the ASE system, then the penalty order may be varied or canceled

5. Decisions:

Screening and/or Hearing Officers shall provide decisions and shall:

- a. Document reasons for all decisions made.
 - b. Date all decisions.
 - c. Include information regarding further appeals (Screening Officer Decisions only).
 - d. Communicate all decisions in writing, providing reasons for the outcome.
- a. Make all decisions in accordance with applicable laws and regulations.