

COUNCIL POLICY:

BYLAW COMPLIANCE AND ENFORCEMENT



Council Approval Date: May 20, 2015

Department: Bylaw

Amended:

1. PURPOSE

The purpose of this Council policy is to establish a protocol for addressing bylaw-related concerns and working proactively with property owners to achieve compliance with Municipal bylaws. This policy provides general guidance for staff in dealing with bylaw-related complaints within the Municipality in an effort to treat all property owners (both complainants as well as alleged offenders) fairly and equitably.

The process is generally intended to be progressive in nature with an initial focus on gaining voluntary compliance, except where, in the opinion of the Municipality, health, safety or liability concerns necessitates more immediate and significant action(s). Unique circumstances may require alternative options to be considered by either staff or Council where and when warranted.

2. POLICY

The Municipality's process can generally be described as having three (3) distinct components:

- Investigation;
- Compliance Proceedings; and
- Enforcement Proceedings.

2.1. INVESTIGATION

The preliminary step for all alleged bylaw infractions will be to conduct an investigation to determine if there is or has been a bylaw infraction.

a) Complaints

All alleged bylaw infractions shall be directed to the Bylaw Compliance Officer (BCO) for further investigation. The Municipality reserves the right to not respond to anonymous complaints or complaints about multiple addresses from the same complainant. Identities of complainants are protected under the Freedom of Information and Protection of Privacy Act. The following conditions may initiate an investigation by the Municipality:

- Complaints from a member of the public in writing or in person (phone call, email, in-person, etc.) complete with their name and contact information;

- Observation of a member of staff or Council of a bylaw infraction, apparent unsafe condition, or failure to obtain a permit Information from a credible third party source, such as a Peace Officer, Vancouver Island Health Authority (VIHA), Electrical Safety Authority, Provincial or Federal enforcement official, Agricultural land Commission, etc.; or
- During the regular course of their duties, the BCO may seek out bylaw infractions for issues of public health and/or safety or other bylaw violations.

Note: All complaints received regarding animals are referred to the Municipality's contractor for animal services for investigation and action.

b) Resources

Investigations will typically be conducted by the Bylaw Compliance Officer (BCO); however, in some circumstances, it may be necessary to include staff from other divisions or departments depending upon the nature of the complaint. In these instances, the BCO, in consultation with the Manager of Building & Compliance and/or the Director of Development Services, shall determine what resources are required to investigate the complaint.

Where resources are required from another division or department, the Manager or Director will work with the appropriate Department Heads to arrange for appropriate resources.

c) Property Information

Relevant property information (e.g. ownership, legal description, civic address, zoning, active permits, etc.) will be confirmed upon receipt of the complaint, including, where applicable, a review of the title for the subject property(ies) to determine related covenants, easements, or rights of way that have been registered on title which may influence bylaw compliance actions.

d) Site Visit

- Municipal staff will undertake a site visit and document the alleged bylaw infraction(s).
- Where visiting the exterior of the property, the BCO is not obligated to provide notice and may inspect the property at any time. In accordance with provincial legislation, local government inspections may include entering onto the property, at reasonable times and in a reasonable manner, to determine whether local government regulations, prohibitions and requirements are being met. When visiting a site without notice, the BCO will attempt to advise an owner/occupant that they are on site (e.g. knock on the door) prior to conducting any site investigation.

- Where visiting the interior of a personal residence, obtain the occupant's consent to enter, or give written notice to the occupant at least 24 hours before entering, to assess if a bylaw infraction has or is occurring.
- Local governments may also apply to the Provincial Court for an entry warrant if reasonable requests are refused.

e) Determination

If, following an investigation, no infraction is found to have taken place, the complainant and the property owner are so advised by the BCO and a record of the enquiry will be filed. If during an investigation, the BCO determines that an issue is not a municipal matter, the affected parties involved will be notified and the Municipal investigation will cease and the file will be closed.

2.2. COMPLIANCE PROCEEDINGS

In the event that a municipal bylaw infraction is confirmed, a Bylaw Compliance file will be created and compliance proceedings will commence generally in accordance with the provisions set out below.

a) Voluntary Compliance

A standard letter will be prepared and sent to the property owner advising them of the alleged infraction and outlining steps required to rectify the situation, a timeline for specific actions, and will include an opportunity for the owner to meet with Municipal staff to further discuss the alleged infraction(s).

- Individuals who are being investigated will generally be instructed to cease the activity and given the opportunity to achieve voluntary compliance before further action is taken, except in the case of an imminent health, safety or liability concern, where the Municipality may be required to direct or take immediate action(s).
- Alleged infractions which appear to require assistance or involvement from other government or third-party agencies (VIHA, ALC, Provincial Ministries, BC Safety Authority, etc.) may also warrant referrals and involvement from those other agencies.
- Where an investigation has confirmed that unauthorized construction that requires a building permit has taken place, a **Stop Work Order** will be issued by the Building and Compliance Division immediately.
- Depending on the nature and severity of a situation involving unauthorized construction, staff may also take immediate action to recommend to Council that a Notice on Title, in accordance with section 57 of the *Community Charter*, should be registered against the subject property in

order to protect potential purchasers and limit liability exposure for the Municipality – see also Section 2.3 (a).

- Other Municipal approvals, business licences, occupancy permits and building or development permits may be suspended until the condition(s) have been rectified. Where compliance with a bylaw is a condition of a licence or permit, the licence or permit may be suspended or cancelled until the person, or persons, comply with the provisions of the bylaw.
- Where initial voluntary compliance is not achieved, compliance will be sought through issuance of fines in accordance with the Municipal Ticket Information Bylaw. The Director of Development Services, Manager of Building & Compliance, and the Bylaw Compliance Officer have the authority to issue tickets for various bylaw infractions. Depending on the nature and severity of the infraction/violation, staff may also issue fines under the Municipal Ticket Information Bylaw immediately, prior to seeking voluntary compliance.
- Fines will only be issued by the Bylaw Compliance Officer following consultation with the Manager or Director.
- Where compliance has still not been achieved following the issuance of fines under the Municipal Ticket Information Bylaw and issuance of a second letter outlining a required course of action, the Bylaw Compliance Officer, in consultation with the Manager of Building & Compliance and/or the Director of Development Services, shall make a determination whether Enforcement Proceedings should be commenced.

2.3. ENFORCEMENT PROCEEDINGS

Enforcement proceedings will generally commence where and when voluntary compliance cannot be achieved to rectify the bylaw infraction(s). Any or all of the following measures may be considered and approved by Council at this stage depending upon the circumstances:

a) Section 57 (*Community Charter*) – Notice on Title

Where an investigation has confirmed that unauthorized construction has taken place that represents, in the opinion of the Municipality, a potential health, safety or liability concern, staff may prepare a report for Council recommending that a Notice on Title be registered against the subject property(ies), in accordance with Section 57 of the *Community Charter*.

Where a Notice on Title has been registered against a property(ies) it may not be removed until such time that the Building Inspector has confirmed that all issues related to the Notice on Title have been rectified and the appropriate fee has been paid to remove the Notice. The Building Inspector shall then notify

the Corporate Officer who will submit the appropriate release documentation to the Land Title Office.

b) Sections 72-74 (*Community Charter*) – Remedial Action

Where warranted, Council may consider issuance of an order under sections 72-74 (inclusive) of the *Community Charter* requiring the owner to undertake work to alter a property such that it is in compliance with relevant Municipal bylaws, and providing that on the owner's failure to do so that the Municipality may, after a date specified in the report, enter on the property, undertake the work on the owner's behalf and add the cost of doing so to the taxes on the property. The date specified will allow for notice to any tenants affected in accordance with the *Residential Tenancy Act* and a reasonable subsequent period to perform the work.

c) Injunction or Court Order

Where warranted, Council may consider an application for an injunction or court order to stop work, and/or force compliance with Municipal bylaws. Injunctions or court orders are generally only considered for health and safety hazard situations, subject to the discretion of the Municipality.