



# COUNCIL POLICY MANUAL

**POLICY:** Bylaw Enforcement

**SECTION:** Administration

**APPROVAL DATE:** July 15, 2019

**AMENDMENT DATE:** January 20, 2020

## **PURPOSE:**

To provide guidance to staff, stakeholders, and members of the public for the receipt of complaints and the initiation of investigation and enforcement proceedings related to bylaw contraventions in the City of Duncan.

## **DEFINITION:**

**Valid Complaint** means a complaint about a potential bylaw contravention that contains the following information:

- The complainant's name, address, and telephone number or email;
- The location and general nature of the potential bylaw contravention, such as the 'who', 'where', 'what', and 'when' of the issue;
- Any previous attempts by the complainant to resolve the issue; and
- Is not made as a retaliatory or vexatious complaint.

**Vexatious Complaint** means a complaint that was not made in good faith, including where, in the opinion of a Bylaw Enforcement Supervisor, the complaint was made for vindictive or bad faith purposes and forms part of a pattern of conduct by the complainant that amounts to an abuse of the complaint process.

## **POLICY:**

The main goals of bylaw enforcement in the City are to ensure public safety and to maintain community harmony.

The City's approach to bylaw enforcement is primarily complaint based. The City does not have the resources to proactively monitor all areas of the City to confirm compliance with all potentially applicable bylaws. The City will use discretion on a case-by case basis to evaluate bylaw contraventions, and take reasonable steps to investigate contraventions in accordance with the criteria and guidelines in this policy.

The City is not obliged to enforce any bylaw or to pursue law enforcement action on any bylaw infraction.

## **Bylaw Enforcement Investigations**

The investigation of an alleged bylaw contravention is at the discretion of the City. Complaints may not be investigated or otherwise acted upon if, in the opinion of the staff person responsible, they:

- a) Do not qualify as a valid complaint under this policy;
- b) Are not made by a person who is directly affected by the alleged violation; or
- c) Are primarily related to a dispute between two private parties, including *vexatious complaints* or situations where complaints are based on matters such as fences between privately-owned properties.

The City recognizes that resources are limited. As such, the City will prioritize investigations regarding complaints to ensure that health and safety matters are addressed in the most expedient fashion possible.

## 1. Pro-Active Investigation

The following bylaws will be enforced on a pro-active basis by the department indicated:

Bylaw	Infraction Type
Animal Regulation and Impounding Bylaw	Licensing; Animals At-Large; and Animal Welfare
Building Regulation Bylaw	Building Permits
Business Licence Regulation Bylaw	Licensing
Garbage, Recyclables & Organics Bylaw	Contamination
Good Neighbour Bylaw	Sidewalk Snow and Ice*
Panhandling Bylaw	All
Parks and Public Open Spaces Bylaw	Camping
Sign Bylaw	All
Streets and Parking Enforcement Bylaw	Parking
Smoke-Free Bylaw	All
Waterworks Regulation Bylaw	Water Restrictions

## 2. Investigation in Response to Complaints

Investigations regarding potential bylaw violations may be initiated after receiving a *valid complaint*. Complaints may be received through the following:

- a) Complaints from a member of the public about a bylaw contravention.\* Complainants should address the information requirements of a valid complaint. Complaints may be received by the City in person, by phone, in writing through the online form or by email;
- b) Observations of a member of staff of a bylaw infraction, apparent unsafe condition, or failure to obtain a permit;
- c) Information from a credible third-party source, such as a police officer, Provincial or Federal enforcement official, or Island Health; or
- d) During the regular course of their duties, the Bylaw Enforcement Supervisor or the Building Inspector may seek out bylaw infractions for issues of public health or safety violations.

\* For enforcement of sidewalk snow and ice clearing under the *Good Neighbour Bylaw*, the City will follow the *Sidewalk Snow and Ice Clearing Enforcement Policy*. For complaints regarding all other *Good Neighbour Bylaw* contraventions (i.e. noise, graffiti, litter, , unsightly property, weeds) the City will not investigate until two (2) separate complaints by unrelated complainants have been received unless potential safety, liability, or health issues are raised. Determination will be made by the Bylaw Enforcement Supervisor.

\* For complaints regarding *Maintenance of Property Bylaw* contraventions, the City will follow the *Enforcement Direction – Property Maintenance Bylaw Policy*.

The City will not respond to anonymous complaints unless potential safety, liability, or health issues are raised. Determination will be made by the Bylaw Enforcement Supervisor.

For a complaint to be considered, it shall be submitted by a person who is affected by the alleged infraction, or who owns, resides upon, or otherwise has an interest in property that is affected by the alleged infraction. Enforcement of City bylaws will be overseen by the applicable departments on a complaints basis in accordance with this policy.

Where applicable, the City may refer complaints to another agency with jurisdiction within the City. For example, all complaints received regarding animals are referred to the City's animal control contractor.

### **3. Confidentiality**

The complainant must be willing to provide a statement and willing to attend court to attest to their evidence as the primary witness to the infraction. This commitment is required if a Bylaw Offence Notice Enforcement Notice is issued or if court action is initiated. However, a complaint's name and any particulars of the complaint that may reveal the identity of the complainant will not be disclosed to the alleged offender or any member of the public.

The anonymity and confidentiality afforded complainants and alleged violators by this policy cannot be assured if the investigation results in court proceedings as the complainant may be required to act as a witness for the prosecution.

### **4. Recording of Complaints**

Where it is determined that a bylaw infraction is occurring or has occurred, the information will be recorded by the staff person receiving the complaint in the City's complaint database. This information will be stored in compliance with the *Freedom of Information and Protection of Privacy Act*. The database will be used to maintain an accurate recorded history of calls, infractions and action(s) taken, and the outcome relating to the bylaw infraction(s). The department who is responsible for investigating the complaint, in accordance with the Administrative Policy - Bylaw Enforcement, will be responsible for recording the complaint and documenting the enforcement action in the City's database.

### **5. Site Visit**

City staff may undertake a site visit to document the alleged bylaw infraction(s). When visiting the exterior of the property, staff are 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 infraction(s) are occurring or have occurred. When visiting a property without notice, staff will attempt to advise the owner or occupant that they are on site prior to conducting any site investigation.

When visiting the interior of a residence, staff will 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 occurred or is occurring. While encouraging compliance with bylaws is important, staff safety is paramount. If a staff member is verbally or physically threatened while administering the bylaws, then no further investigative action shall be carried out until a police officer accompanies the staff member on any site inspections. Authorization requirements to enter a property or building will be followed as per *Community Charter* (Section 16). Tenant rights as specified in the *Residential Tenancy Act* will be respected during enforcement.

### **6. Determination**

If, following consideration or investigation, no infraction is found to have taken place or the issue is found not to be a City bylaw enforcement matter, all affected parties will be advised by the staff person responsible, the investigation will cease and a record will be filed.

Should the staff person determine that a bylaw infraction is occurring, they will respond to the complainant with the following information (a response to the complainant may be withheld if legal action is pending):

- Acknowledge receipt of the complaint;
- Describe any steps taken to address the complaint;
- Describe any enforcement action taken or planned, or the reason for no enforcement action; and
- Provide any other relevant information.

## **Compliance Proceedings**

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

The staff person responsible will keep documentation, including any investigation notes, communications, rationale, evidence gathering, and references to any relevant bylaws. This evidence may be submitted and used in court or form the basis of reports submitted for court consideration.

Should the City decide that enforcement proceedings are required, the reason for this will be communicated to the person committing the infraction, including information on how to appeal the decision.

### **1. Staff Enforcement Tools**

The City will handle complaints and bylaw enforcement issues as operational matters to be handled at a staff level rather than at a Council level, but will advise Council on enforcement matters on an as-needed basis or in response to complaints received by Council about the implementation of this policy.

#### ***a) Voluntary Compliance***

Staff will provide verbal advice and education regarding City bylaws as a first step to obtaining voluntary compliance. Should the infraction continue or be repeated, staff may send a letter:

- Advising of the alleged infraction (including the full text of the bylaw section(s) that are in contravention);
- Outlining the steps required to rectify the situation, providing a timeline for specific actions; and providing an opportunity for the resident to meet with staff to further discuss the alleged infractions.

Alleged offenders will be asked to cease the activity and be given the opportunity to achieve compliance before further action is taken, except in the case of the imminent health safety or liability concerns, where the City may be required to take immediate action. Depending on the nature and severity of the offence, staff may also issue fines immediately, prior to seeking voluntary compliance, and may initiate court action to obtain a Court Order to address the infraction and achieve compliance.

#### ***b) Stop Work Order***

Where a particular bylaw provides the authority, the Building Inspector may order the cessation of any work that is proceeding in contravention of a bylaw by posting a Stop Work Order.

#### ***c) Suspension of Licence or Permit***

Where compliance with a bylaw is a condition of a licence or a permit, the City may suspend the licence or permit (i.e. business licences, building permits, or development permits) until the condition(s) have been rectified and the person, or persons, are in compliance with the provisions of the bylaw.

#### ***d) Direct Enforcement***

Direct enforcement involves carrying out enforcement remedies and adding the cost of doing so to the subject property's taxes. Council approval may be required, depending on the contravention.

**e) *Bylaw Offence Notice***

Where voluntary compliance is not achieved, compliance will be sought through the issuance of fines in accordance with the Bylaw Offence Notice Enforcement Bylaw. The Notice is completed and personally delivered or mailed by a staff person to the alleged offender. The alleged offender has the option of admitting the offence and paying the penalty within a specified time period, or disputing the offence and waiting for a bylaw adjudication appearance.

**f) *Solicitor Involvement***

Staff may request the assistance of a solicitor in providing the alleged offender with a warning letter.

**g) *Municipal Ticket Information***

The Municipal Ticket Information (MTI) Bylaw can be used for the prosecution of minor local government bylaw matters. The MTI is completed and personally delivered by an Enforcement Officer to the alleged offender. The alleged offender has the option of admitting the offence and paying the penalty within a specified time period, or disputing the offence and waiting for a court appearance.

**2. Council Enforcement Tools**

Enforcement proceedings will commence when compliance cannot be achieved through voluntary compliance or the issuance of fines. Any or all of the following measures may be considered and approved by Council, depending on the circumstances:

**a) *Notice on Title***

Where an investigation has confirmed that unauthorized construction has taken place that represents, in the opinion of the City, 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 in accordance with the *Community Charter* (Section 57).

Where Notice on Title has been registered against a property, 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 sufficiently rectified and the appropriate fee has been paid to remove the Notice. The Building Inspector will then notify the Director of Corporate Services who will submit the appropriate release documentation to the Land Title Office.

**b) *Remedial Action Requirements***

Council may impose remedial action requirements in relation to hazardous conditions or declared nuisances. A remedial action requirement may be imposed on the owner or lessee of the matter or thing, or the owner or occupier of the land on which it is located. A remedial action requirement may require the person to remove or demolish the matter or thing; fill it in, cover it over, or alter it; bring it up to a standard specified by bylaw, or otherwise deal with it in accordance with the directions of Council or a person authorized by Council.

**c) *Court Proceedings***

Staff will bring forward any recommendation for prosecution of an offence under the *Offence Act* or court action through civil proceedings, to Council for its consideration. The *Community Charter* (Section 263) authorizes a municipality to proceed with a quasi-criminal prosecution of a bylaw offence with a maximum fine of up to \$10,000.

Although these prosecutions involve a lengthy Provincial Court process, they are appropriate for major offences if a larger fine is warranted. In addition to the penalty imposed, the court may make a compliance order prohibiting the offender from repeating the offence as well as directing the offender to remedy any harm done. Council approval may be required prior to commencing proceedings.

**d) *Consent Order***

This is an order where legal proceedings have commenced, however, prior to appearing before a judge or master of the court, the parties agree to a Consent Order. Once the order is signed by all parties it is then registered with the court and has the same effect as a court order. Council approval is required prior to filing the initial statement of claim or petition and may also be required to accept the terms of a consent order.

**e) *Injunction Proceedings***

An injunction is a Supreme Court Order directing a person to do, or not to do, a specified act. Council approval is required prior to seeking an injunction.