



CITY OF WEST KELOWNA

COUNCIL POLICY MANUAL

Pages: 1 of 4

Date: February 8, 2022

SUBJECT: Bylaw Compliance and Enforcement Policy

Purpose:

To provide guidance to staff on the receipt of complaints and the initiation of investigation and enforcement proceedings related to contraventions of City bylaws.

The City of West Kelowna cannot take enforcement action with respect to every contravention of a bylaw that may occur within its jurisdiction. The City will use discretion on a case-by-case basis to evaluate contraventions, and take reasonable steps to investigate contraventions in accordance with this policy and operational guidelines of the City.

1. **Overview**

- 1.1 Bylaw Enforcement statistics and trends shall be reported to Council in a format and frequency as determined from time to time by Council.
- 1.2 Priority setting for Bylaw Enforcement matters shall be undertaken annually through Council's strategic priority meetings. The priority settings are at Council's discretion, and may identify enforcement goals for the year, focus on emerging bylaw enforcement trends, identify areas that may require greater proactive enforcement, or prioritize levels of proactive enforcement.

Council members are not involved in day-to-day bylaw enforcement decisions.

2. **General:**

- 2.1 For the purpose of this policy, a "Bylaw Officer" includes a peace officer, municipal officer, employee, agent, or any other person authorized by Council to enforce City bylaws.
- 2.2 Although the Bylaw Department operates on a complaint basis, a Bylaw Officer, acting in the regular course of his or her duties, may initiate investigations and conduct inspections to determine compliance with all regulations, prohibitions and requirements of City bylaws. Section 16 of the *Community Charter* allows a Bylaw Officer to enter onto private property for the following purposes:
 - (a) To inspect and determine whether all regulations, prohibitions and requirements are being met in relation to any matter for which the Council, a municipal officer or employee or a

person authorized by the Council has exercised authority under this or another Act to regulate, prohibit and impose requirements;

- (b) To take action authorized under section 17(1) [*municipal action at defaulter's expense*];
- (c) In relation to section 18 [authority to discontinue providing a service], to disconnect or remove the system or works of the service;
- (d) To assess or inspect in relation to the exercise of authority under section 8 (3) (c) [*spheres of authority – trees*].

2.3 Investigations may be initiated in person, by written complaint (e-mail or letter), or by phone. A complaint with respect to an alleged contravention of a municipal bylaw must provide:

- (a) The name, address and contact information of the complainant;
- (b) A description of the nature and location of the alleged contravention.

2.4 Complaints will be investigated on a priority basis and will be based on the following criteria:

- (a) Health, safety, and security of the public;
- (b) Damage to the environment;
- (c) The impact of the violation on the community;
- (d) The impact of the violation on the complainant;
- (e) The nature of the complaint and the allegation (i.e. repeat offence).

2.5 All complaints will be acknowledged within 48 hours and shall be placed in priority sequence for additional follow-up.

- (a) Details of the complaint will be recorded and assigned to a Bylaw Enforcement Officer for follow-up;
- (b) The Investigating Officer will review the file details and determine an appropriate priority response;
- (c) Depending on the nature of the complaint, the Investigating Officer may contact the complainant for additional detail and may provide expected timelines for the complaint to be addressed or provide reasons why the complaint will not be investigated;
- (d) Not all types of complaints necessitate that an Officer contact the complainant to advise of the file outcome.

2.6 Complaints that are frivolous or become repeat complaints, will be referred to the CAO for a determination on the outcome and the complainant will be notified in writing on the reason for imposing the outcome.

3. **Confidentiality:**

3.1 The identity of a complainant is confidential and will not be disclosed to anyone for any purpose, except as required by law, and in accordance with the following provisions:

- (a) The complainant's identity shall not be disclosed to the person under investigation or any member of the public;
- (b) Bylaw enforcement investigations may not necessarily be discussed with a complainant subsequent to the initial submission of a complaint.
- (c) Where a person submits a request pursuant to the *Freedom of Information and Protection of Privacy Act* for the disclosure of personal information contained in a bylaw enforcement file, it shall be the City's policy to release the records in accordance with the *Freedom of Information and Protection of Privacy Act*.

- (d) Despite the foregoing, the City shall not guarantee the anonymity and confidentiality of complainants and may disclose personal information in bylaw enforcement files in the following circumstances:
 - i. If disclosure is required pursuant to the provisions of the *Freedom of Information; and Protection of Privacy Act*;
 - ii. As otherwise required by law.

4. **Enforcement:**

- 4.1 In determining whether to commence enforcement proceedings, the City may consider one or more of the following criteria:
 - (a) The scale, nature, and duration of the contravention;
 - (b) The amount of time that has lapsed since the contravention occurred;
 - (c) The impact of the contravention on the community;
 - (d) The resources available to resolve the matter;
 - (e) The costs associated with enforcement action;
 - (f) The probability of a successful outcome;
 - (g) The policy implications of the enforcement action and the potential for precedents;
 - (h) Whether public safety is at risk;
 - (i) Whether enforcement may be a deterrent in future cases.
- 4.2 The City's primary enforcement objective shall be to obtain voluntary compliance.
- 4.3 If voluntary compliance is not achieved, the City may exercise enforcement powers in accordance with the following remedies:
 - (a) The issuance of an Order to Comply;
 - (b) The issuance of a Municipal Ticket or Bylaw Offence Notice;
 - (c) Quasi-criminal proceedings in Provincial Court, including prosecutions under the *Offence Act*, and any other remedy as set out in Section 260 of the *Community Charter*;
 - (d) Supreme Court injunction proceedings as set out in Section 274 of the *Community Charter*;
 - (e) Remedial action and any other remedy as set out in Part 3, Divisions 5-12 of the *Community Charter*, and the City may further seek to fulfill those requirements at the expense of the person in contravention, in accordance with the provisions of Section 17 of the *Community Charter*.
- 4.4 The City retains the discretion to not commence enforcement proceedings in accordance with one or more of the criteria listed in Section 4.1 of this policy.
- 4.5 The Bylaw Officer shall maintain a written record of inspections and investigations undertaken and record the disposition of all complaints received.

Appendix

Bylaw Enforcement Process

