



DISTRICT OF CLEARWATER COUNCIL POLICY

TITLE: BYLAW INVESTIGATION AND ENFORCEMENT POLICY	NO: 1901
AUTHORITY: COUNCIL	SECTION: ADMINISTRATION
DATE ADOPTED:	RES #:

POLICY

The objective of the Bylaw Enforcement Policy is to obtain compliance with municipal bylaws through effective enforcement based on consistency, education and fairness. This policy describes the procedures related to bylaw investigation and enforcement, including the issues of confidentiality as set out in the *Freedom of Information & Protection of Privacy Act*, the setting of priorities for action, and includes provisions for further enforcement.

PURPOSE

Municipal bylaws are enacted by the District of Clearwater under the regulatory authority of the *Community Charter* and the *Local Government Act*, to preserve the quality of life to which each citizen is entitled.

Every attempt shall be made to achieve voluntary compliance with bylaws through education and information prior to initiating any manner of enforcement action. Wherever possible, it is recommended that residents attempt to resolve their issues amicably between neighbours before contacting the District for assistance.

The District has no duty to take enforcement action on any bylaw within the municipality. Discretion will be exercised by the District on a case-by-case basis as outlined in this policy.

DEFINITIONS

“Bylaw Enforcement Officer” means a person in a class prescribed under section 273(c) of the Community Charter who is designated by a local government as a bylaw enforcement officer”.

“Chief Administrative Officer” means the position established by municipal bylaw whose powers, duties and functions include the overall management of the operations of the municipality.

“Discretion” means the freedom to decide what should be done in a particular situation given all the available information.

“District” means the District of Clearwater.

“Frivolous Complaint” means a complaint not having any serious purpose or value.

“**Nuisance**” means any conduct, activity, or condition that unreasonably interferes with a person’s use and enjoyment of a public area or of land he or she owns or occupies, or which annoys or gives trouble, or is offensive, irritating, or pest to anyone within the District.

“**Person**” includes a natural person, a company, corporation, partnership, firm, association, society, or party and the personal or other legal representatives of a person to whom the context can apply according to law.

“**Personal Information**” means anything that would reveal the name, address, phone number, race, national or ethnic origin, colour, religious or political beliefs, age, gender, marital status, or family status.

“**Property**” means all real property, including, but not limited to, front yards, backyards, driveways, walkways, boulevards, and sidewalks, together with any and all structures or fences located thereon.

“**Valid Complaint**” means a complaint that describes the location and general nature of a potential bylaw contravention, including the requestor’s name, address, and telephone number, and that is not a frivolous or vexatious complaint.

“**Vexatious Complaint**” means a complaint that is made for retaliatory or bad faith purposes, or otherwise forms a part of a pattern of conduct by the requestor that amounts to an abuse of the complaint process.

CONFIDENTIALITY

The Corporate Services Department will ensure that the personal information of its clients is protected in accordance with the Freedom of Information and Protection of Privacy Act. The department will only collect information that is necessary for the monitoring and enforcement of a bylaw infraction.

- The identity of the requestor and the written complaint will not be disclosed to the alleged offender or any member of the public. It is not necessary for the requestor to request confidentiality. Likewise, the response of the alleged offender will not be disclosed to the requestor, whether it is in writing or made orally.
- Persons reporting the alleged infraction of municipal bylaws are to be advised that their identity and any personal information they provide will be kept confidential unless they are required to testify in court or it is part of an audit or a similar process.
- The anonymity and confidentiality given to requestors and alleged offenders cannot be assured if the investigation results in court, an audit, or similar proceedings.
- Requestors and alleged offenders are to be advised that any personal information that they provide about other parties is subject to disclosure by order of the BC Information and Privacy Commission.
- While the investigation is ongoing or while a resulting matter is before the courts, no information regarding the matter will be made available to the public or the requester.

As a matter of practice, the identity of the complainant(s) and the written complaint itself shall not be disclosed to the alleged offender or any member of the public. It is not necessary for the

complainant(s) to request confidentiality. Likewise, the response of the alleged offender shall not be disclosed to the complainant(s), whether it is in writing or made orally.

SCOPE OF BYLAW ENFORCEMENT RESPONSIBILITIES

District staff will be responsible for responding to complaints and conducting investigations. Their roles and responsibilities for doing so are outlined in specific District bylaws. The Mayor and Council are not to be involved in the investigation of a complaint.

District staff are not required to report bylaw violations observed unless it is during regular work hours, within that employee's scope of duty and where the violation poses a risk to life, health and/or safety.

STAFF SAFETY

The safety of staff and/or agents of the District is of utmost importance. If staff are verbally or physically threatened while administering bylaws, then no further investigative action shall be carried out until a police officer accompanies them.

Authorization requirements to enter a property or building will be followed as per Section 16 of the Community Charter. Tenant rights as specified in the Residential Tenancy Act will be respected during any enforcement action.

SUBMISSION OF A COMPLAINT

To be considered a valid complaint, reports of alleged infractions of bylaws are to be reported by the complainant to the District office, preferably in writing using the Complaint Form in Schedule "A". Anonymous complaints of alleged infractions will not be acted upon.

To be considered an enforceable complaint, a complainant must:

- a) Provide their name, address and telephone number;
- b) Describe the nature and location of the alleged infraction; and
- c) Describe any attempts made by the complainant to resolve the problem.

Complaints to the Bylaw Enforcement Officer may be initiated by phone, although a formal written complaint will be required. Anonymous complaints will not be accepted through a member of Council.

PROCESSING PROCEDURE

All complaints directed to the District will be logged, recorded, and acknowledged within three (3) business days of receipt. A preliminary review of the complaint will be undertaken to set a priority level and ensure that the complaint is credible and in the best interest of the District and its residents.

The named individual(s) will be notified by phone call, in-person, by email, or by registered letter and given the opportunity to provide their perspective and any supporting evidence.

Following a review of this information, established violations, if any, will be identified and the individual will be given the opportunity to achieve voluntary compliance within a set timeframe, identified on a case-by-case basis, before further action is taken. Individuals may also be requested to cease the activity until compliance is achieved.

Where a complaint is deemed credible, all actions associated with investigation and enforcement will be documented in a bylaw infraction file.

COMMUNICATION WITH COMPLAINANT DURING PROCESS

The timeframe for conducting reviews and investigations will vary depending on the facts of the case, however, if an investigation proceeds beyond one month the complainant will be contacted and advised of the status of the complaint, understanding that no guarantee can be given to the potential completion date; every effort will be made to respond to complainants in an efficient, expedient manner.

As the review progresses:

- a) If no violation is found or;
- b) If the individual voluntarily complies within the set timeframe; or
- c) If the District requests the actions cease and they do

the bylaw infraction file will be closed and the complainant will be advised of the conclusion of the review/investigation by email, or by registered letter if no email is available. Note: all bylaw related matters must be permanently retained.

A response to the complainant may be withheld if legal action is pending.

PRIORITY OF INVESTIGATION

Upon receipt of a bylaw complaint, infractions will first be ordered on the basis of the date the complaint was received, and will then be assigned a priority level of:

- **Priority 1:** Multiple bylaw violations or a bylaw violation currently causing life, health and/or safety issues and/or negatively impact the community or the environment.
- **Priority 2:** Multiple low priority violations or a bylaw violation with potential to cause life, health and/or safety issues and/or negatively impact the community or the environment.
- **Priority 3:** A bylaw violation unlikely to cause life, health and/or safety issues and/or negatively impact the community or the environment.
- **Third Party Complaints** will be evaluated on a case-by-case basis. Investigations will generally proceed where there are potential safety, health, or liability issues or a clear linkage to an identifiable requestor.
- **Anonymous Complaints** will not be investigated unless potential safety, health, or liability issues are identified.

- **Frivolous or Vexatious Complaints** the District may receive multiple complaints from the same person on the same issue, which may be minor in nature and considered frivolous and vexatious. Bylaw related complaints will be investigated to ascertain their validity. If it is determined that all steps have been taken to resolve the complain or issue, the complaints continue to be unabated, and there is no bylaw contravention and/or it is a high priority, the District maintains the right to not respond to or seek resolution to complaints that are deemed:
 - To not be in the public interest to mitigate
 - To not be in the jurisdiction of the District
 - More appropriately managed by the requestor through his or her own access to civil resolution process options such as stratas, the Residential Tenancy Branch, legal action, etc.
 - To not directly impact the requestor with the exception of Priority 1 violations.

DECISION NOT TO ENFORCE

Where a decision is made not to enforce compliance with a bylaw, the decision will be documented on the bylaw infraction file and an email, or registered letter if email is not available, will be sent to both the individual with the established violation and the complainant. The correspondence will include the reasons that the bylaw will not be enforced in the specific case.

ENFORCEMENT TOOLS

Staff will attempt to obtain voluntary compliance of District bylaws before any bylaw enforcement action is taken unless there is a record of previous bylaw violations by that individual.

Staff will consider the use of restorative justice principles in suitable situations and where both the complainant and the alleged violator agree to participate. In such circumstances, both the complainant and the alleged violator must agree to waive their rights to confidentiality between the parties and the applicable confidentiality provisions of this policy would not apply.

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

In situations where voluntary compliance is not achieved, particularly where the non-compliant behavior is willful, repetitive, is harmful to public health or safety, is harmful to infrastructure or is harmful to the environment, staff may escalate enforcement. All enforcement actions will be documented in the bylaw infraction file and may be appealed.

COUNCIL AUTHORIZATION OF LEGAL ACTION

Where illegal or unauthorized activity has not ceased, or where compliance is not achieved through voluntary compliance or initial enforcement a staff report will be brought forward to

Council. The report will indicate whether or not legal proceedings should be initiated and in particular whether the proceedings should involve:

- i) Remedial Action Order;
- ii) Prosecution under the *Offence Act*;
- iii) An application for a Provincial Court compliance order under the *Local Government Act*;
- or
- iv) An application for a Supreme Court injunction.

Council will decide whether to provide funding for legal action, decline to do so, or recommend other actions. Staff, with the assistance of legal counsel, will follow up with any motion to initiate legal proceedings.

At the end of legal proceedings, the Chief Administrative Officer (CAO) will advise the complainant and any other affected parties of the outcome and close the enforcement file once compliance has been established (ie. completion of any on-going monitoring requirements).

APPEAL PROCESS

The BC Ombudsperson has jurisdiction over a wide range of provincial public agencies, including local governments. They can investigate complaints to ensure that they have been handled in an administratively fair manner. If there is a disagreement with an enforcement action that has been taken by the District, several options are available to submit a complaint:

- Call toll-free at 1-800-567-3247 from anywhere in BC or 250-387-5855 if you are calling from the Capital Region. Our phone lines are answered between 8:30 a.m. and 4:30 p.m., Monday to Friday
- Use the Online Complaint Form at <https://bcombudsperson.ca/complaints/make-online-complaint>
- Make a written complaint using a printable complaint form at <https://bcombudsperson.ca/complaints/make-written-complaint> and faxing the completed form to 250-387-0198, or mailing it to PO Box 9039 STN PROV GOVT, Victoria, BC V8W 9A5

AUTHORITY: Council



Mayor



Corporate Officer