

## COUNCIL POLICY

|                                       |                                   |
|---------------------------------------|-----------------------------------|
| <b>NAME:</b> Bylaw Enforcement Policy |                                   |
| <b>ISSUED:</b> September 17, 2018     | <b>INDEX REFERENCE:</b>           |
| <b>AMENDED:</b>                       | <b>COUNCIL REFERENCE:</b> 18/CNCL |

### PURPOSE

To describe the District's general approach to bylaw enforcement and provide for the consistent enforcement and management of complaints relating to District bylaws.

### POLICY

The primary goals of bylaw enforcement in the District are to ensure public safety and to maintain community standards through effective enforcement based on consistency and fairness. There is no duty to take enforcement action on any bylaws within the municipality and enforcement discretion will be exercised on a case-by-case basis in accordance with the principles outlined in this Policy.

For the purpose of this Policy "Bylaw Enforcement Officer" includes any person authorized by Council to enforce District bylaws.

#### 1. INVESTIGATION

- 1.1 As the District does not have the resources to proactively ensure compliance with all bylaws at all times, bylaw contravention investigations will primarily be initiated by public complaints.
- 1.2 A complaint with respect to an alleged contravention of a bylaw may be submitted by phone, fax, email, letter or direct interaction with appropriate municipal representatives. A complaint must contain:
  - 1.2.1 The name, address, telephone number or other relevant contact information of the complainant; and
  - 1.2.2 A description of the nature and location of the alleged contravention.
- 1.3 Complaints concerning alleged illegal secondary suites will only be investigated upon receipt of two separate written complaints registered by two or more residents from separate dwellings located within 100 metres of the alleged illegal suite and who are not occupants of the property that is subject to the complaint.
- 1.4 Notwithstanding sections 1.1 and 1.3, bylaw contravention investigations may be undertaken in response to complaints or observations from municipal staff, police or other agencies, or initiated proactively by Bylaw Enforcement Officers.

- 
- 1.5 Anonymous complaints will generally not be acted upon unless the alleged violation involves health and safety concerns or concerns a matter that the municipality otherwise proactively enforces.
  - 1.6 All complaints will be received and entered into the District's complaint database for tracking, follow-up and statistical information.
  - 1.7 Vexatious complaints will not be acted on. A vexatious complaint is a complaint that is made for retaliatory or bad faith purposes, or otherwise forms part of a pattern of conduct by a complainant that amounts to an abuse of the process.

## 2 ENFORCEMENT

- 2.1 Where investigation reveals a contravention, the primary goal of enforcement action is to achieve voluntary compliance with District bylaws through communication, education and non-penalty enforcement, including providing a reasonable timeframe to comply.
- 2.2 Enforcement through communication, education and non-penalty enforcement is not appropriate in all circumstances. More direct enforcement approaches, including immediate ticketing, may occur in situations including, but not limited to:
  - 2.2.1 Environmental or human health, safety or security is at risk;
  - 2.2.2 Enforcement follows a widespread public education campaign;
  - 2.2.3 Council has prioritized enforcement to address a specific issue or type of issue;
  - 2.2.4 Where the offender knows or reasonably ought to know his or her conduct contravenes the District's bylaws;
  - 2.2.5 Where there has been a history of repeated offences regarding the same or similar violations;
  - 2.2.6 Where, owing to the nature of the contravention, obtaining voluntary compliance is not possible or practicable.
- 2.3 If voluntary compliance is not appropriate or is not achieved, any remedy authorized by the *Community Charter* may be exercised, including:
  - 2.3.1 Municipal ticketing;
  - 2.3.2 Direct enforcement measures, where authorized by bylaw;
  - 2.3.3 Quasi-criminal proceedings in Provincial Court, including prosecutions under the *Offence Act*;
  - 2.3.4 Civil enforcement proceedings;
  - 2.3.5 Remedial action and any other remedy as set out in Part 3, Divisions 5-12 of the *Community Charter*, and the District may further seek to fulfill those requirements at the expense of the person in contravention.

- 2.4 Bylaw Enforcement Staff will exercise discretion in accordance with the following criteria, as applicable, and the priorities set out in section 2.5 to determine whether or not to proceed with enforcement and, if enforcement is appropriate, the best method to gain compliance:
- 2.4.1 The scale, nature and duration of the contravention;
  - 2.4.2 The amount of time that has elapsed since the contravention occurred;
  - 2.4.3 The impact of the contravention on the community;
  - 2.4.4 The resources available to resolve the matter;
  - 2.4.5 The costs associated with enforcement action;
  - 2.4.6 The probability of a successful outcome;
  - 2.4.7 The policy implications of the enforcement action and the potential for setting precedents;
  - 2.4.8 Whether environmental or human health, safety or security is at risk;
  - 2.4.9 Whether enforcement may be a deterrent in future cases.
- 2.5 The District's response to complaints is generally prioritized as follows:
- 2.5.1 Priority #1: Health and safety – an alleged bylaw violation may adversely impact the environment or public health and safety. These violations will be investigated and enforced as soon as possible given the availability of staff and other resources. Investigations and enforcement will generally be initiated by public complaints, municipal staff or proactively by Bylaw Enforcement Officers.
  - 2.5.2 Priority #2: Public Property and Infrastructure – an alleged bylaw violation may negatively impact public property or infrastructure but does not pose an immediate risk to the environment or public health and safety. Investigations and enforcement will generally be initiated by public complaints, municipal staff or proactively by Bylaw Enforcement Officers.
  - 2.5.3 Priority #3: Significant negative impact to adjacent properties – an alleged bylaw violation may significantly impact adjacent properties in a negative manner but does not pose an immediate risk to the environment or public health and safety. These violations will generally be investigated and enforced in response to public complaints.
  - 2.5.4 Priority #4: General nuisance – the alleged bylaw violation may be a matter that is a general neighbourhood concern. These violations tend to be cosmetic in nature and do not affect the environment or public health and safety. Staff receiving a complaint will use discretion to determine whether there is sufficient geographic or other connection between the complainant and the location of the alleged violation to constitute a valid complaint. If a confirmed violation is minor in nature or if it appears the complaint may be a vexatious complaint or is part of a larger neighbourhood conflict, it may be concluded that it is not in the District's best interest to pursue the matter.
  - 2.5.5 Frivolous complaints – the District may receive multiple complaints from the same person on the same issue which may be minor in nature or concern

matters that are the subject of a concluded bylaw contravention investigation. If it is determined that all steps have been taken to resolve the complaint or issue, the District may decide not to respond or take further action with respect to these complaints. If the issue concerns a Priority #3 or #4 contravention, the District may decide not to respond or take further action where the complaint:

- a. is not in the public interest to mitigate;
- b. would be more appropriately managed by the complainant through his or her own access to civil resolution process options; or
- c. has no direct impact on the complainant.

- 2.6 Within the categories outlined in section 2.5, priority will be generally determined on the basis of the order in which complaints are received and the efficiency to be gained through investigating several complaints at once.
- 2.7 The District's bylaw enforcement resources are prioritized to ensure the timely receipt and investigation of complaints. It is not the District's practice to proactively provide follow-up information to complainants in every case. Bylaw Enforcement Officers will respond to specific requests for information (subject to confidentiality requirements) as time permits.
- 2.8 Bylaw Enforcement Officers will maintain written records of inspections and investigations undertaken and record the disposition of all complaints received.
- 2.9 Where the District seeks to recover the expense of direct or remedial enforcement measures from a person in contravention of a bylaw, reasonable efforts will be made to provide the person with an estimate of the cost of the expense prior to undertaking the direct or remedial action.

### **3 CONFIDENTIALITY**

- 3.1 Confidentiality is necessary to ensure complainants are not exposed to retaliation or other adverse actions as a result of the complaint, and to maintain effective investigation techniques. The identity of the complainant and any identifying information will not be disclosed to the alleged offender or any member of the public, except as required by law. Likewise, the details of an investigation or enforcement steps will not be disclosed to the complainant.
- 3.2 Despite the foregoing, the District will not guarantee the anonymity and confidentiality of complainants and may disclose personal information in bylaw enforcement files in the following circumstances:
  - 3.2.1 If the complaint has been publicly disclosed by the complainant;
  - 3.2.2 If the investigation results in enforcement proceedings and disclosure is necessary to proceed with enforcement;

- 3.2.3 If disclosure is required pursuant to the terms of the *Freedom of Information and Protection of Privacy Act* or pursuant to an order issued by the Information and Privacy Commission under the *Act*; and
- 3.2.4 Where disclosure is otherwise required by law.

#### **4 GENERAL**

- 4.1 The individual members of Council will not be involved in day-to-day bylaw enforcement matters. Council may, through a formal decision of Council, direct staff to investigate or enforce with respect to a specific complaint or enforcement issue. An individual member of Council may refer a matter to the appropriate Department for review by a Bylaw Enforcement Officer.
- 4.2 The safety of District staff is of utmost importance. If a Bylaw Enforcement Officer is verbally or physically threatened or assaulted while administering the bylaws of the District, no further action will be carried out until a written statement has been completed and forwarded to the Saanich Police and appropriate security measures are taken to safeguard the Bylaw Enforcement Officer, which may include but is not limited to arranging for a police officer to accompany the Bylaw Enforcement Officer in carrying out his or her duties.
- 4.3 Bylaw Enforcement Officers may enter on or into property without the consent of the owner or occupier for the purposes of bylaw enforcement in accordance with the applicable provisions of the *Community Charter*, including section 16 thereof.
- 4.4 A decision made by a Bylaw Enforcement Officer in handling a complaint or enforcement matter is subject to review by the Officer's supervisor or management staff responsible for the Department that has conduct of the file.