

BYLAW ENFORCEMENT POLICY

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| <p>Effective Date: April 3, 2018</p> | <p>Authorized By: Council – Regular Meeting</p> | <p>Replaces: May 24, 2016 October 15, 2003 February 13, 2001 July 15, 1986 March 1, 1994</p> |
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1.0 PURPOSE

- 1.1 To describe the District’s general approach to bylaw enforcement, including how bylaw enforcement investigations are prioritized and what steps are taken to ensure a fair and efficient complaint process.
- 1.2 To establish broad guidelines for a fair and consistent enforcement process. It is intended to:
 - Cover most situations where staff will be making discretionary enforcement decisions;
 - Provide an explanation of how to submit a *Report of a Bylaw Offence*;
 - Provide an explanation of how that report will be processed by District staff.
- 1.3 The Office of the Ombudsperson advises that “a properly applied enforcement policy should achieve four goals:
 - avoid arbitrary or inconsistent decisions
 - ensure similar cases are treated in a similar way
 - provide local government staff with guidance on, and limits to, exercising discretion
 - provide the public with clarity and details on how and why enforcement decisions have been made” (The Office of the Ombudsperson Special Report No. 36, p.53).
- 1.4 The purpose of the policy is also to provide processes and procedures to handle complaints and remedy situations when bylaw violations are alleged in a fair and consistent manner within the scope of service intended by Council.

2.0 SCOPE

- 2.1 The primary goals of bylaw enforcement in the District of Peachland are to ensure public safety and to maintain community harmony. The District does not have the resources to proactively monitor all areas of the District to confirm compliance with all potentially applicable bylaws. Public property violations are generally enforced proactively while private property violations are usually investigated in response to written complaints.

The District promotes an enforcement philosophy that seeks voluntary bylaw compliance in respect of most private property matters. Education is usually the first step and offenders are usually provided time to comply with the bylaw. Ticketing is generally seen as a tool to be used only where cooperation and compliance cannot reasonably be achieved.

Enforcement based on education and warnings is not appropriate in all circumstances. More direct enforcement approaches, including immediate ticketing, may occur in situations such as:

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- ◆ the infraction is occurring on public property;
 - ◆ environmental or human health, safety or security is at risk;
 - ◆ enforcement follows a widespread public education campaign;
 - ◆ Council has prioritized direct enforcement to address a specific issue or type of issue;
 - ◆ Where the offender knows or reasonably ought to know his or her conduct contravenes the District's bylaws (e.g. in the case of a parking violation).
- 2.2 This Policy applies to all persons associated with, employed by or contracted by ('staff'), the District of Peachland (the 'District') in the capacity of bylaw enforcement.
- 2.3 The policy is intended to be flexible enough to cover a variety of circumstance where staff are exercising discretion, but does not fetter staff discretion by requiring them to take the same steps in each case, regardless of the circumstances, or discourages individual responsibility for decisions.
- 2.4 The policy will set out the relevant considerations that bylaw enforcement staff should take into account when exercising discretion.

3.0 DEFINITIONS

- 3.1 **Allegation** is an unproven assertion or statement based on a person's perception.
- 3.2 **Complainant** is the person(s) bringing forward a complaint and/or alleging that a bylaw infraction has occurred.
- 3.3 **Valid complaint** is a complaint that describes the location and general nature of a potential bylaw contravention, which includes the complainant's name, address and telephone number, and which is not a vexatious complaint.
- 3.4 **Vexatious complaint** is a complaint that is made for retaliatory or bad faith purposes, or otherwise forms part of a pattern of conduct by the complainant that amounts to an abuse of the complaint process.

4.0 REQUIREMENTS

- 4.1 All persons associated with and employed by or contracted by the District have the responsibility to respect this policy.
- 4.2 All matters arising under this Policy will be dealt with in a fair, unbiased and timely manner.
- 4.3 Efforts at informal resolution normally will be made first in dealing with a complaint.
- 4.4 This Policy will be interpreted, administered and applied in conformity with the principles of procedural fairness and natural justice. In particular:
- a. All parties will be advised of the provisions of this Policy and of the procedures available to them under the terms of this Policy.
 - b. All complaints that proceed beyond the informal consultation phase must be submitted in writing and contain at a minimum the complainants name, address, phone number and email address (if available); the date of the alleged offence; the address of the property at or nearest the location of the offence and the name of the offender if known and the date of the report. A District of Peachland *Reporting a Bylaw Offence Form* is available for this purpose and will be the preferred format for submission of a complaint. All information related to the investigation and

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follow up will be recorded by staff on a copy of this form. The originally signed document will remain in the District Office and any copies of the form used in the field will omit the complainant's personal information in order to ensure complainant confidentiality.

5.0 RESPONSIBILITIES**Staff**

- 5.1 Staff must participate in appropriate training, familiarize themselves with this Policy and know their obligations arising from it.
- 5.2 Staff must treat every person with dignity and respect.

Management

- 5.3 The Director of Planning and Development Services has primary responsibility for the administration of this Policy and must have a thorough knowledge of this Policy. The Director of Planning and Development Services will set and enforce standards of appropriate bylaw enforcement conduct.

Public

- 5.4 The public is expected to voluntarily comply with the bylaws of the District and to engage with other members of the public and enforcement staff in a manner consistent with the District of Peachland Respectful Workplace Policy PER-180 as amended from time to time.
- 5.5 The public must participate in the process by reporting alleged bylaw infractions to the District with sufficient information to allow the District to address the concerns expressed.

6.0 PROCEDURES**Enforcement Guidelines**

- 6.1 The enforcement of District bylaws shall be on the basis of written report of a bylaw offence to the District. No action may be taken by a Bylaw Enforcement Officer if a complainant refuses to provide the information required on the *Reporting a Bylaw Offence* Form.

The Informal Process

- 6.2 Persons who experience a potential bylaw infraction are strongly encouraged to engage in a conversation with the other person(s) involved in the situation to clarify and resolve the concerns.

The Formal Process

- 6.3 Where the person is unable to have the conversation directly with the other person(s), or there is no resolution at the informal stage, the complainant should submit a written complaint on a *Reporting a Bylaw Offence* form to the District for action. A complaint/report must be filed within three (3) months of the alleged incident, or the last incident if there is more than one incident.
- 6.4 Complaints received when neither the Building Inspector/Bylaw Enforcement Officer nor Seasonal Bylaw Enforcement Officer are working (after the regularly scheduled shift as may be adjusted from time to time) will be handled the next working day. In the case of

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the Seasonal Bylaw Enforcement Officer this may be a weekend day. The Seasonal Bylaw Enforcement Officer will carry a cell phone which will be answered only during scheduled working hours. All emergency calls should be directed to the R.C.M.P. at "911".

- 6.5 Once a written complaint is received, a Bylaw Enforcement Officer will respond to the complainant as soon as practical to clarify and gather additional information, if required, to process the reported complaint and to let the complainant know that the issue is being investigated and addressed as may be appropriate. In due course, a Bylaw Enforcement Officer will communicate the results of the investigation to the complainant. For efficiency of recordkeeping, email will be the preferred method of communication unless otherwise requested by the complainant.
- 6.6 Complaints received will be prioritized by the Bylaw Enforcement Officer for action on the basis of immediate threat to public health and safety including assessment and action according to the following framework:

Priority #1: Safety – the alleged bylaw violation may adversely impact the environment or public safety. These violations will be investigated and enforced as soon as possible given the availability of staff and other resources. Prior warnings or education may not be appropriate or practical.

Priority #2: Significant negative impact to adjacent properties – the alleged bylaw violation is significantly impacting adjacent properties in a negative manner but does not pose an immediate risk to the environment or public safety. Generally, enforcement efforts are directed at seeking voluntary compliance without ticketing and staff will consider whether education is sufficient to prevent ongoing contraventions. Staff will often issue a warning and provide a short timeline for compliance before ticketing. However, staff may engage in proactive (i.e. non-complaint based) investigations and/or proceed directly to ticketing in response to repeat offences and offenders, or where the circumstances otherwise warrant.

Priority #3: General nuisance – the alleged bylaw violation may be a matter that is general neighbourhood concern. These violations tend to be cosmetic in nature and do not affect the environment or public safety. The District's investigation and enforcement of Priority #3 matters are initiated in response to written complaints. 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. Investigating staff will focus on education and will provide opportunities to bring the property or situation into compliance that are appropriate in the circumstances. If a confirmed violation is minor in nature and/or if it appears to the complainant may be vexatious complaint or is part of a larger neighbourhood conflict, staff may conclude it is not in the District's or community's best interest to pursue the matter.

- 6.7 Files will be processed in accordance with *Report of a Bylaw Offence Procedures*.
- 6.8 The Bylaw Enforcement Officer will consider the following each time they exercise discretion in enforcing a bylaw:
- a. Does the local government have authority to take enforcement action?
 - b. Is notice prior to enforcement necessary, and if it is, has it been provided?
 - c. If notice is given, is it in a form appropriate to the situation, does it provide reasonable time frames for compliance and does it describe potential consequences?
 - d. If the proposed enforcement measure proportionate to the nature of the violation?
 - e. Would the circumstances of the individual make enforcement unjust in the circumstances?

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- f. Is the proposed enforcement measure consistent with policy and practice?
- g. Has the decision-maker provided adequate and appropriate reasons for an enforcement decision?
- h. Has the person affected by an enforcement decision been provided with adequate information about how to appeal or seek review of the decision?

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