



POLICY

Bylaw Enforcement Procedures Policy 2018

DISCLAIMER

Unless an image, photograph or diagram is explicitly referred to in the text of the Bylaw as being part of a bylaw, any image, photographs or diagrams do not form part of the Bylaw and are provided as supplementary materials for convenience only.

AMENDMENTS

Number	Date	Amendment

DISTRICT OF SEHELDT
Council Policy

Bylaw Enforcement Procedures Policy 2018

1.0 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 District of Sechelt.

2.0 DEFINITIONS

In this policy:

Building Inspector means an individual designated by Council as a building inspector for the municipality.

Bylaw means a bylaw adopted by the District of Sechelt

Bylaw Enforcement Officer means any person appointed or designated by the Council of the District under the *Community Charter* or *Police Act*, or both, to enforce the provisions of the District Bylaws.

CAO means the Chief Administrative Officer for the District of Sechelt

Corporate Officer means the municipal officer assigned responsibility under section 148 of the Community Charter.

Council means the Municipal Council of the District of Sechelt

District means the Corporation of the District of Sechelt

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 Officer or Building Inspector, the complaint was made for vindictive or bad faith purposes; forms part of a pattern of conduct by the complainant that amounts to an abuse of the complaint process.

3.0 POLICY STATEMENT

- 3.1 The main goals of bylaw enforcement in the District are to ensure public safety and to maintain community harmony.
- 3.2 The District's approach to bylaw enforcement is primarily complaint based. The District does not have the resources to proactively monitor all areas of the District to confirm compliance with all potentially applicable bylaws. The District 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.

4.0 SCOPE

- 4.1 This policy applies to all staff engaged in bylaw enforcement activities on behalf of the District.

5.0 COMPLAINTS

- 5.1 Investigations regarding potential bylaw violations may be initiated after receiving a 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 District in person, by phone, in writing or via email;
 - b) Observations of a member of staff or Council 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, Vancouver Coastal Health, the Agricultural Land Commission and the like;
 - d) During the regular course of their duties, the Bylaw Enforcement Official or the Building Inspector(s) may seek out bylaw infractions for issues of public health and/or safety or other bylaw violations.
- 5.2 Complaints regarding the Building Bylaw are referred to the Building Inspectors, who are appointed by the District to enforce that Bylaw.
- 5.3 Where applicable, the District may refer complaints to another agency with jurisdiction within the District. For example, valid complaints regarding animals may be referred to Society for the Prevention of Cruelty to Animals (SPCA) or Conservation Officers.

6.0 INVESTIGATIONS

- 6.1 The investigation of an alleged bylaw contravention is at the discretion of the District. Complaints may not be investigated or otherwise acted upon if, in the opinion of a Bylaw Enforcement Officer, 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 situations where complaints are based on matters such as fences between privately-owned properties.
- 6.2 The District recognizes that resources are limited. As such, the District will prioritize investigations regarding complaints to ensure that health and safety matters are addressed in the most expedient fashion possible. Complaints are investigated in consideration of the following priorities:

- a) **Priority #1-Health & Safety.** This includes bylaw violations which affect the health, safety, and security of the public or a property, or multiple medium-priority violations. Examples of bylaw violations that may be considered high priority:
 - Construction without a valid building permit where there are multiple code infractions relating to safety
 - Inadequate exiting and/or fire protection due to building alternations without a permit
 - Tree cutting without permit in a Development Permit Area

- b) **Priority #2 – Community Impact.** This includes bylaw violations that affect surrounding properties, negatively affect the community or the environment. Examples of bylaw violations that may be considered medium priority:
 - Unsightly premises
 - Burning without permit
 - Noise bylaw violation
 - Multiple low priority violations on the same property.

- c) **Priority #3 General Nuisance.** This includes bylaw violations that are general nuisances or minor infractions that do not affect the health, safety and security of the surrounding properties. Examples may include:
 - Minor renovations without a permit, where there are no concerns relating to health and safety, and the use and building comply with the Zoning Bylaw.
 - Minor encroachment into a setback
 - Noise bylaw violation (depending on circumstances)

6.3 **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 or vexatious. Staff will investigate all bylaw-related complaints to ascertain their validity. If it is determined that all steps have been undertaken to resolve the complaint or issue, the complaints continue unabated, and there is no bylaw contravention or it meets the definition noted in policy, staff may prepare a report to the CAO or designate recommending conclusion of the investigation. The CAO or designate will declare a complaint or complainant as Frivolous or Vexatious and will instruct staff on how to respond to these complaints.

6.4 The District is not required to proactively provide follow-up information to complainants. Staff may respond to specific requests for information, subject to confidentiality requirements. A response to a complainant may be withheld if legal action is pending.

6.5 The District will record valid complaints for the purpose of tracking, follow-up and statistical analysis of bylaw contraventions.

7.0 ENFORCEMENT

7.1 Bylaw Enforcement is at the discretion of the CAO or designate. In determining whether to commence bylaw enforcement proceedings, the District may consider one or more of the following criteria:

- a) The potential risk to public health and/or safety;
- b) The scale, nature, extent, and severity of the bylaw contravention(s);
- c) The history of non-compliance on the property or by the contravener;
- d) Whether it is in the best interests of the public and/or District;

- e) The resources available to resolve the matter;
 - f) Whether or not enforcement may be a deterrent against future bylaw contraventions.
- 7.2 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 or organization.
- 7.3 Enforcement proceedings will generally commence when voluntary compliance to correct any bylaw infraction is not achieved. The enforcement proceedings that the District may rely on include, but are not limited to:
- a) An Order to Comply;
 - b) A Municipal Ticket or Bylaw Offence Notice, including under section 264 of the *Community Charter*;
 - c) A Bylaw Contravention Notice (Notice on Title), as set out in section 57 of the *Community Charter*;
 - d) Remedial action, with the costs of the remedial action to be at the expense of the person in contravention of the bylaw, as set out in section 17 of the *Community Charter*;
 - e) Injunctions or Court Orders, including prosecutions under the *Offence Act*, and any other remedies as set out in sections 260 and 274 of the *Community Charter*;
 - f) Other remedies available under the relevant legislation and at common law.
- 7.4 District staff will bring forward any recommendation for prosecution of an offence under the *Offence Act*, court action through civil proceedings, and remedial action to Council for its consideration.
- 7.5 The District is committed to the safety of its Bylaw Enforcement Officers and staff. Where Bylaw Enforcement Officers or staff have concern for their safety in the performance of their bylaw enforcement duties, they may be accompanied by the Royal Canadian Mounted Police (RCMP).

8.0 CONFIDENTIALITY

- 8.1 The District is committed to its privacy and confidentiality obligations under the *Freedom of Information and Protection of Privacy Act* (FOIPA). If a person submits a request under the *Freedom of Information and Protection of Privacy Act* for the disclosure of information or records contained in any complaint or in a response to a complaint, other than for that person's own personal information, it is the District's policy to refuse disclosure under Sections 15 and 22 of the Act.
- 8.2 The District will make best efforts to inform the complainant if the identity of the complainant is to be disclosed as part of a bylaw enforcement proceeding. Situations in which complainant information or information about an individual's alleged bylaw contraventions may be disclosed include where the information is:
- a) Required by Court order, warrant or other similar judicial or quasi-judicial process;
 - b) Required as part of the disclosure process in the event of a prosecution or civil proceedings; and;
 - c) Disclosed with the consent of the person to whom the personal information pertains.

APPENDIX 1 ENFORCEMENT OPTIONS & AUTHORITIES

In addition to voluntary compliance, the District is authorized to use a number of bylaw enforcement options, all of which are set out in provincial legislation.

Municipal Tickets

The Municipal Ticket Information System, set out in the Community Charter, allows a designated bylaw enforcement officer to issue a ticket for specified bylaw violations. The Municipal Ticket includes a description of the bylaw violation; the penalty associated with the violation; and the methods to pay the penalty.

The maximum penalty under the municipal ticket information system is \$1,000 per violation. Tickets may be appealed through the Provincial Court System

Bylaw Enforcement Notices

The Local Government Bylaw Notice Enforcement Act establishes a process for enforcing a bylaw by issuing a Bylaw Notice. The process is initiated when a bylaw enforcement officer issues a Bylaw Notice for an alleged violation.

Bylaw Notice Dispute Adjudication System

This system allows the District of Sechelt to process Bylaw Notice disputes at the local level rather than through the Provincial Court system. This more efficient system can benefit both the community and the person(s) involved in a dispute by reducing the associated costs and the time required to deal with a dispute.

The Bylaw Notice imposes a fine that the recipient can dispute through an adjudication system rather than through the courts. An independent adjudicator can hear an appeal and can cancel the fine if he/she finds that the violation did not occur. Adjudication may also include a first-level review by an internal screening officer who can cancel or reduce the fine, or enter into a compliance agreement with the recipient. A bylaw that has been disputed by a municipality under the *Local Government Bylaw Notice Enforcement Act* cannot be enforced by prosecution under the *Offence Act*.

Bylaw Contravention Notice: Section 57 Community Charter (Notice on Title)

Where an investigation has confirmed that unauthorized construction or development has taken place that represents, in the opinion of the District, a potential health, safety or liability concern, staff may prepare a report for Council recommending that a Bylaw Contravention Notice be registered against the subject property(ies), in accordance with Section 57 of the Community Charter.

Where such a Notice has been registered against the property(ies) it may not be removed until such time the CAO or delegate has confirmed that all issues related to the Bylaw Contravention Notice have been rectified and the appropriate fee has been paid to remove the Notice. The Corporate Officer shall be notified and will then submit the appropriate release documentation to the Land Title Office.

Remedial Action: Section 72-74 Community Charter

The District has authority under the Community Charter to enforce some bylaws directly. For example, the District may require a property owner to clean up a property that contravenes the Unsightly Premises Bylaw. If the owner fails to take the required action as outlined in the resolution, the District can, after a date specified in the resolution, enter onto the property, undertake the work on the owner's behalf and add the cost of doing so to the taxes on the property. The date specified allows for notice to any tenants

affected in accordance with the Residential Tenancy Act and a reasonable subsequent period to perform the work.

Injunction or Court Order

Where warranted, Council may consider an application for injunction or court order to stop work, and/or force compliance with District bylaws. Injunctions or court orders are generally only considered for health and safety hazard situations, subject to the discretion of the District.

APPENDIX 2: BYLAW ENFORCEMENT PROCEDURE EXAMPLE

