

Township of Brock Corporate Policy



Policy Name: By-Law Enforcement Policy

Policy Type: Protection to Personnel & Property

Policy Number: PP2

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Point of Contact: By-law Enforcement Branch

1. PURPOSE

The purpose of this policy is to provide guidance to staff, elected officials, and the public regarding a transparent, consistent, fair, unbiased, and effective process for enforcement and prosecution of relevant by-laws of the Township of Brock.

2. DEFINITIONS

By-law Enforcement is the process of promoting compliance with Townships regulatory by-laws that are established to safeguard and improve the health, safety, and well-being of the public and the community.

Business Day means a day in which normal business operations are conducted and is generally considered to be between the hours of 8:30a.m. to 4:30p.m. Monday through Friday. A business day excludes weekends, public holidays and when Township is closed (i.e. for inclement weather).

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

By-Law Enforcement Officer includes a provincial offenses officer or an employee, agent appointed by Council of the Corporation of the Township of Brock to enforce Relevant Law.

Relevant Law means any Municipal by-law, Building Code Act, or Provincial legislation, for which the Municipality has a responsibility to enforce or prosecute.

3. BACKGROUND

The goal is to make the Township of Brock a great place to live, work and play. By-laws are a core part of the structure in place to achieve this goal as they promote safety, create standards

to support good neighbour interactions, and prevent behaviours that undermine the quality of life in the community, such as litter, graffiti, noise, and unsightly properties.

In supporting this goal, the Township's By-law Enforcement Policy aims to achieve voluntary compliance with Township by-laws in all instances and to provide proactive enforcement through optimum solutions as needed to maintain community standards.

This By-law Enforcement Policy is based on the following four principles:

- i. Avoid arbitrary or inconsistent decisions.
- ii. Ensure similar cases are treated in a similar way.
- iii. Provide By-law Enforcement Staff with guidance on, and limits to, exercising discretion.
- iv. Provide the public with clarity and details on how and why enforcement decisions have been made.

Administrative Fairness

Administrative fairness refers broadly to an overall approach to administrative decision-making that is transparent, fair, and accountable. With respect to By-law Enforcement, administrative fairness is characterized by:

- by-laws that are authorized by, and consistent with, Council direction and legislation.
- clear, consistent, and available public information regarding by-laws and enforcement practices, and how to make complaints and appeal decisions.
- a process for receiving, assessing, and responding to complaints in a timely manner.
- a consistently applied and well-documented investigative process that establishes a clear factual basis for enforcement.
- adequate notice to affected persons before any enforcement is taken.
- enforcement decisions that are authorized by applicable legislation and by-laws.
- enforcement decisions that are consistent with policy and with other similar decisions, are equitable, and are proportionate to the problem being addressed.
- reasons for enforcement decisions that are appropriate, set out the basis for the enforcement and that information about how to appeal; and
- appeal processes that are accessible and fair, and that are communicated to affected persons in a timely manner.

Demonstrating a commitment to administrative fairness increases the public's confidence in the Township's By-law Enforcement Program and provides Council confidence that staff are treating everyone in a fair manner.

4. SCOPE

This policy applies to all Township of Brock employees; Council Members; and members of the public.

5. BY-LAW ENFORCEMENT POLICY

5.1 General Provisions

To ensure consistency and fairness to all residents, business owners and landowners

within the Township of Brock, the following general provisions and guidelines will be followed by By-Law Enforcement Officers:

- a) In responding to formal complaints, except in cases related to public health and safety, the highest priority will be to respond to valid complaints.
- b) During the regular course of their duties, the By-Law Enforcement Officer may seek out by-law infractions for issues of public health and/or safety.
- c) It is not possible to actively ensure that all the Townships various regulatory by-laws are being complied with at all times. Enforcing the Township's own by-laws is, therefore, discretionary, and not mandatory.
- d) The Township of Brock promotes an enforcement philosophy that seeks voluntary by-law compliance, which is often achieved through education, information, and non-penalty enforcement, including providing a reasonable time frame to comply.
- e) Compliance may be encouraged through notification of fines and other enforcement measures associated with the offence.
- f) Council is not involved in any way with the sanctioning of an investigation or making a decision on who shall be investigated.
- g) Some complaints may be considered as a civil dispute between property owners. These will not be acted upon by By-law Enforcement Staff.

5.2 Enforcement Options

By-Law Enforcement Officers, at their discretion, may use the following enforcement options:

- a) Prosecution under the Provincial Offences Act.
- b) Municipal ticketing.
- c) By-law offence notice, "Notice of Violation".
- d) Direct enforcement.
- e) Civil proceedings.

5.3 Confidential Information

- 5.3.1** Personal information collected by the Township as a result of a written complaint and any information collected during a By-law investigation is protected under the authority of the *Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M-26*.
- 5.3.2** Township Staff shall keep confidential any and all personal information it collects from its citizens and the public.
- 5.3.3** Township Staff will only collect personal information that is necessary for the monitoring and enforcement of a by-law infraction.
- 5.3.4** 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.

- 5.3.5** Persons reporting the alleged infractions of Township by-laws 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.
- 5.3.6** The anonymity and confidentiality given to requestors and alleged offenders cannot be assured if the investigation results in court, an audit, or similar proceedings.
- 5.3.7** 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 Information and Privacy Commissioner of Ontario.
- 5.3.8** 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 requestor.

5.4 Applying Principles of Proportionality, Equity and Consistency

By-law Enforcement Officers aim to provide consistent enforcement and where discretion is used, will apply principles of proportionality, equity, and consistency in by-law enforcement decisions by:

- a) Considering whether an enforcement measure is proportionate to the harm caused by the violation.
- b) Considering whether a person's circumstances would make enforcement unjust and;
- c) Considering whether an enforcement measure is consistent with policy and past practice.

5.4.1 Proportional Enforcement

By-law enforcement action will be proportional to the nature of the violation. That is, enforcement measures should appropriately address the harm that is caused by the violation. For example, large fines are likely not an appropriate response to a minor by-law violation.

5.4.2 Equitable Enforcement

- a) By-law enforcement action will be equitable – that is, applied in a way that is just considering a person's circumstances. This means that the By-law Enforcement Officer will consider a person's circumstances and ability to comply before determining whether enforcement is appropriate and what enforcement tools they should use.
- b) Does not mean that by-laws cannot be enforced against disadvantaged individuals. Rather, equity is a principle of fairness in By-law Enforcement Officer's discretion to determine whether and how to enforce Township by-laws.

5.4.3 Consistent Enforcement

- a) Consistency is an important part of a fair By-law Enforcement process and a key principle of this policy. Similar cases will be treated in a similar manner by following a generally consistent approach to by-law enforcement.
- b) By-law Enforcement Officers are not required to follow the same approach in every case, however, if they enforce the same by-law differently in similar circumstances, their decisions may appear to be arbitrary. When deciding what action is appropriate, a By-Law Enforcement Officer should consider whether there is a compelling reason given the circumstances to deviate from policy and past practice.
- c) When By-law Enforcement Officers do deviate from policy or past practice, they will explain to the individual who is affected. For example, a different enforcement approach may be justified if an individual has a past history of non-compliance, the violation is more severe than other cases, or the circumstances would make enforcement in the usual way unjust.

5.5 Making, Receiving and Recording Complaints

5.5.1 Reporting Infractions

- a) Any person who has reason to believe that an infraction of a Relevant Law has occurred, may report the matter to the By-Law Enforcement Division in the manner and form described in this policy.
- b) It is important to note that a person who reports an infraction may be summonsed to testify before a court or tribunal in the prosecution of an alleged contravention of a Relevant Law.

5.5.2 Method of Making a By-law Complaint

- a) All by-law complaints are required to be submitted in writing by way of the prescribed complaint form found online on the Township website. All by-law complaints will be submitted and tracked through the on-line system.
- b) If a complainant is unable to submit the complaint on-line then staff may receive the complaint via written letter, email, telephone, or in person subject to the complainant acknowledging that staff will fill out the on-line form on their behalf with the information provided and with the understanding that the complainant may be summonsed to testify before a court or tribunal.
- c) Complainants shall provide their full name, their address, contact information and a detailed description of the infraction/complaint. Any supporting evidence such as pictures or videos may be uploaded along with the on-line complaint form and may be used as evidence in any prosecution. All noise complaints must be accompanied by the required noise log found on-line.
- d) Incomplete or anonymous complaints will not be accepted and no investigation will be conducted.
- e) All complaints will be processed in priority of the "Service Levels" as set out in this policy.

5.5.3 Receiving a Responding to a By-law Complaint

- a) By-law Enforcement Officers will acknowledge the receipt of a valid by-law complaint to the complainant within 2 business days.
- b) The complainant will be provided with an overview of the next steps and when to expect a response on the status of their concerns.
- c) The complainant will be provided a case number to reference in future correspondence with By-law Enforcement Officers.
- d) By-law Enforcement Officers will communicate to the complainant that some by-law matters may take a lengthy time before being resolved and may be deemed a civil matter in some instances.

5.5.4 Recording a By-law Complaint

- a) By-law Enforcement Officers shall record the following information in the by-law tracking database:
 - The date the complaint was received.
 - The location in question.
 - The complainant's information.
 - The details of the complaint.
 - The potential By-law infraction.
 - All action and steps to resolve a by-law matter by By-law Enforcement Officers (including the date of any notices filed, court date(s), and the date the case is considered closed).

5.6 Council Involvement

- 5.6.1** Council Members will respect and abide by the legally recognized principle that By-law Enforcement Officers have a duty to enforce and prosecute Relevant Laws in a manner that is fair and impartial and in a manner that is independent of political direction.
- 5.6.2** Council Members will respect that By-law Enforcement Officers have an independent discretion to make enforcement decisions based on their knowledge, experience, and educated judgement.
- 5.6.3** Council Members will acknowledge that the independence of a By-law Enforcement Officer includes, for example, the discretion to investigate (or not) and to issue a ticket or fine (or not).
- 5.6.4** Council Members will not interfere with a By-law Enforcement Officer in the exercise of their duties or attempt to influence the actions of an By-law Enforcement Officer.
- 5.6.5** Consistent with the provisions of the Code of Conduct for Members of Council, no member shall use their authority or influence for the purpose of intimidating,

threatening, coercing, commanding, or influencing any staff member with the intent of interfering with staff duties.

- 5.6.6** As with any other person, a Council Member who has reason to believe that an infraction of a Relevant Law has occurred and has direct (firsthand) knowledge of the infraction, may report the matter to the By-Law Enforcement Division through the online by-law complaint form.
- 5.6.7** Council Members will refrain from relying on second-hand information as the basis of their complaint. If information about the alleged infraction originates from a third party, the Council Member should explain the complaint procedures as outlined in this policy.
- 5.6.8** Upon submitting a complaint, a Council Member shall be treated with the same courtesy, and with the same restrictions on access to information, as would any other complainant.
- 5.6.9** It is also consistent with the objectives of this policy for a Council Member to inquire with the CAO or Department Head about general concerns that do not relate to a specific enforcement decision, or about standard operating procedures, processes, or practices of the By-Law Enforcement Division.
- 5.6.10** Council Members shall refrain from forwarding third party communications or complaints to a By-Law Enforcement Officer for a response.
- 5.6.11** With respect to enforcement of Relevant Laws, Council may:
 - a) From time to time, establish, amend, or repeal Municipal by-laws.
 - b) Establish the budget for and policies related to the enforcement of Municipal by-laws.
 - c) At meetings of Council, ask general questions of, and receive information from, the CAO or Department Head, relating to the enforcement activities of the Municipality.

5.7 Responding to Frivolous, Repeat or Multiple Complaints

- 5.7.1** Repeat or multiple complaints on similar issues will be assessed individually, to determine the appropriate response and action, if any.
- 5.7.2** Previous attempts by By-law Enforcement Officers, to address a repeat issue and steps taken, will be dealt with in accordance with the 'Consistent Enforcement' section of this policy.
- 5.7.3** Where compliance with a potential by-law infraction has been confirmed, further action on a repeat or frivolous complaint may not be acted upon unless new information is provided by the complainant.

- 5.7.4** Restricted contact to a repeat complainant on a same issue or a frivolous complaint will be considered by the Department Head or the Supervisor of By-Law Enforcement, after carefully assessing the circumstances.
- 5.5.5** For the purposes of this policy, frivolous or vexatious refers to any action made with the intention to embarrass or annoy the recipient or that is part of a pattern of conduct that amounts to an abuse of the infraction reporting process.
- 5.5.6** In the assessment of whether a pattern of conduct has been established in relation to a frivolous or vexatious complaint, the factors to be considered include but are not limited to:
- a) Whether the complaint concerns an issue which By-Law Enforcement Officers have already investigated and determined to be groundless, or an issue which is substantially similar to an issue which staff have already investigated and determined to be groundless.
 - b) Whether the complainant engages in any unreasonable conduct or aggravating behaviour, including, but not limited to:
 - i. Harassment, verbal/physical abuse or intimidation.
 - ii. Making excessive or multiple lines of enquiry regarding the same issue (e.g. pursuing a complaint with staff in multiple departments and/or elected officials simultaneously) while their complaint is in the process of being investigated.
 - iii. Repetitious and unreasonable criticism of an investigation or outcome.
 - iv. Repetitious and unreasonable denial that an adequate response has been given.
 - v. Unreasonable refusal to acknowledge that an issue falls outside the Municipal jurisdiction.
 - vi. Unreasonable demands (e.g. insisting on responses to complaints and enquiries within an unreasonable timeframe).
 - vii. Statements or representations that the complainant knows or ought to know are incorrect or influencing others to make such statements.
 - viii. Demanding special treatment from staff (e.g. ignoring established complaint protocols).
 - ix. Shifting basis of the complaint and/or denial of previous statements made.
 - x. Refusal to cooperate with the investigation process while still wanting their complaint to be resolved; or
 - xi. Failure to clearly identify the precise issues of the complaint, despite reasonable efforts of staff to assist.
- 5.5.7** If the Supervisor of By-Law Enforcement concludes that a complaint is frivolous or vexatious, the Supervisor of By-Law Enforcement shall provide to the Department Head any documents or other materials in support of their conclusion, together with any relevant details, including but not limited to the number of interactions with the complainant, the amount of time invested, the

repetitiousness of interactions, and presence of any of the above-mentioned factors, and the Department Head shall make a final determination. In making a final determination, the Department Head may contact the complainant to discuss the background information.

- 5.5.8** If the Department Head determines that a complaint is frivolous or vexatious, the Department Head may issue a warning letter to the complainant which may include the imposition of limitation concerning future interactions with staff.
- 5.5.9** If the Supervisor of By-Law Enforcement, in consultation with the Department Head, determines that a complaint is frivolous or vexatious, the file shall be closed, the reasons for the decision documented, and the complainant shall be advised of the status. No further action will be taken on the file.
- 5.5.10** Notwithstanding a determination that a complaint is frivolous, vexatious or malicious, a file may be re-opened in the future where there is sufficient reason to do so, or the situation has changed.

5.8 Communicating Enforcement Decisions

- 5.6.1** By-law Enforcement Officers will provide a person affected by an enforcement decision with reasons for enforcement that:
 - a) Describe the concerns that led to the enforcement action and the evidence supporting those concerns.
 - b) Set out the by-law section on which the decision is based.
 - c) Are clear and easily understood by the person affected by the decision; and
 - d) Provide information about options for review or appeal of the decision.

5.9 Notice of Violation Prior to Enforcement Action

- 5.9.1** Personal contact, save and except for parking infraction notices, will be the preferred method of communication prior to any enforcement action.
- 5.9.2** By-law Enforcement Officers will provide reasonable notice prior to taking enforcement action.
- 5.9.3** The notice of violation shall include:
 - a) An explanation of the relevant by-law and how the person is alleged to have contravened it.
 - b) Potential options or solutions to remedy the infraction(s).
 - b) Reasonable time limits for compliance; and
 - c) The potential consequences of failing to respond or comply within the time

limits.

5.9.4 By-law Enforcement Officers will not take enforcement action before the expiry of the compliance time limits set out in a notice of violation or verbal communication unless the matter is a health and safety issue.

5.10 Reasonable Time Limits

5.10.1 By-law Enforcement Officers are authorized to use discretion to extend a time limit if necessary to achieve compliance.

5.10.2 By-law Enforcement Officers should not, however, arbitrarily shorten a time limit, except in extraordinary circumstances, and not before attempting to communicate with the resident.

5.10.3 Further, it is essential that By-law Enforcement Officers are available if the resident has questions or wants to request an extension.

5.11 Complaint Priority Service Levels

5.11.1 To ensure all complaints are properly investigated, the following complaint priority service levels will be assigned as follows:

a) **High Priority:** High priority investigation on matters that are highly likely to pose a substantial health & safety risk to any member of the public.

High Priority Response Protocol

1. Respond immediately.
2. Call in staff and other external agencies as needed to deal with issue.
3. Priority continues until health & safety issue has been mitigated.
4. Once health & safety issue has been dealt with, issue may be downgraded to medium priority call if further response is required.

b) **Medium Priority:** A medium priority investigation includes matters which have a potential to pose a moderate, indirect, or cumulative negative impact to our community and the environment, and there are no immediate health & safety issues.

Medium Priority Response Protocol

1. Acknowledge the complaints concerns within 2 business days.
2. Assign a case number and conduct investigation within 1-3 business days.

c) **Low Priority:** A low priority investigation includes matters that are

generally routine, have no negative impact to the community or the environment, and no health & safety concerns.

Low Priority Response Protocol

1. Acknowledge the complaints concerns within 2 business days.
2. Assign a case number and conduct investigation within 1-5 business days.

5.12 Assessing Complaint Priorities

5.12.1 When assessing the priority of the bylaw infraction, By-Law Enforcement Officers will consider, but are not limited to, matters such as:

- a) Potential risk to public health & safety.
- b) Magnitude, nature, and duration of the contravention.
- c) History of non-compliance on the property or by the contravener.
- d) Potential short & long term impact on a structure, the community, and the environment.
- e) Potential for setting a precedent.
- f) Resources available to resolve the matter.
- g) Potential costs associated with enforcement action; and
- h) The likelihood of obtaining the desired results.