

# REGIONAL DISTRICT OF NANAIMO

## POLICY

SUBJECT:	<b><i>Bylaw Enforcement Policy</i></b>	POLICY NO:	B3.2
		CROSS REF.:	
EFFECTIVE DATE:	April 27, 2021	APPROVED BY:	BOARD
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### PURPOSE

To establish procedures for accepting, processing and investigating bylaw complaints and enforcing bylaws in the Regional District of Nanaimo (RDN) Electoral Areas. This policy is intended to define roles and responsibilities, and provide guidance to staff, elected officials and the public to ensure administrative fairness in the enforcement of RDN regulations.

This Policy reflects best practices in bylaw enforcement and will be reviewed on a regular basis to remain current with evolving practices and changes in legislation.

### POLICY

#### 1.0 APPLICATION

1.1 This policy applies to all Electoral Areas within the RDN.

#### 2.0 DEFINITIONS

“Anonymous complaint”: a complaint received where the complainant has not been identified.

“Bylaw”: is an adopted bylaw by the Regional District of Nanaimo Board.

“Bylaw complaint”: a formal allegation submitted by a resident or agency regarding a potential violation of one of the RDN’s regulatory bylaws.

“Bylaw Enforcement Officer” or “BEO”: is a person who is designated by the RDN as a Bylaw Enforcement Officer.

“Frivolous complaint”: a complaint that lacks serious purpose or merit, is trivial, or has no reasonable basis in fact or law. These complaints do not raise a genuine bylaw concern and/or may be disproportionate to the issue.

“Minor clean up”: a clean up conducted on an unsightly property pursuant to RDN Unsightly Premises Bylaw No. 1073, where the estimated cost of clean up is under \$5,000.

“Repeat complaint”: a complaint submitted multiple times regarding the same matter after it has been

investigated and resolved, without presenting new evidence.

“Vexatious complaint”: a complaint made in bad faith or with malicious intent, including those intended to harass, annoy, or abuse a property owner using the bylaw complaint process. This may involve excessive, obsessive, or retaliatory submissions.

“Voluntary compliance”: a principle where individuals adhere to bylaws and regulations without the need for formal enforcement actions. It is the preferred first step involving education, guidance, and cooperation.

### **3.0 REFERENCES**

- 3.1 This policy contains references to the following:
  - 3.1.1 Bylaw Enforcement Officers Bylaw No. 857, 1992 as amended
  - 3.1.2 Community Charter
  - 3.1.3 Local Government Act
  - 3.1.4 Bylaw Notice Bylaw No. 1786, 2019
  - 3.1.5 BC Ombudsperson Bylaw Enforcement Best Practices Guide

### **4.0 GENERAL OVERVIEW**

- 4.1 General Board policy for bylaw enforcement is summarized as follows:
  - 4.1.1 The RDN tries to seek voluntary compliance through education and cooperation.
  - 4.1.2 In urgent situations involving imminent risks to public health, safety, environmental or RDN liability, Bylaw Enforcement Officers (BEO) can initiate immediate enforcement actions.
  - 4.1.3 Progressive enforcement actions through ticketing, fines and other sanctions will be imposed where voluntary compliance is not forthcoming in accordance with Sections 8 and 9.
  - 4.1.4 The RDN has no duty to enforce with respect to any bylaw contravention occurring within the RDN’s jurisdiction. Compliance and enforcement action shall be undertaken in general conformance with this policy but remains discretionary and based on complaint priority or urgency and available resources.
  - 4.1.5 Bylaw contravention investigations conducted by the RDN are generally initiated on a complaint-driven basis.
  - 4.1.6 The RDN shall rely on written complaints to identify and respond to possible bylaw contraventions. Operational enforcement decisions are delegated to designated staff pursuant to this Policy, and as per Bylaw Enforcement Officers Bylaw No. 857.
  - 4.1.7 RDN staff may exercise discretion on whether to investigate and prioritize a complaint by taking into consideration such factors as the seriousness of the alleged contravention in regards to public health, safety, environmental risks, and RDN liability; impact on the community, previous decisions on similar complaints; frivolous, vexatious or repeated complaints; and available resources.
  - 4.1.8 Compliance and enforcement action shall be undertaken in general conformance

with this Policy, but remains discretionary and based on community impact, available resources, urgency, and public safety.

- 4.1.9 RDN enforcement records and file contents shall be treated as confidential except as set out in this policy.

## **5.0 ROLE OF ELECTED OFFICIALS**

- 5.1 The Regional District of Nanaimo Board of Directors establishes overall priorities for enforcement, enacts bylaws, and adopts bylaw enforcement policies and standards of conduct for Bylaw Enforcement staff.
- 5.2 To maintain an administratively fair and unbiased bylaw enforcement system, the RDN maintains separation between the elected official's role to set overarching policy and priorities, and RDN bylaw enforcement staff's role to execute procedures as established and outlined in this policy. This Policy recognizes the challenges faced by elected officials to remain at arms-length from the day-to-day enforcement process when they are often the main point of contact for members of the public who have complaints or who have been the subject of enforcement. In these situations, it is important to support the bylaw enforcement team and request that the member of the public contact the RDN Bylaw Services office directly.
- 5.3 Individual Directors will remain uninvolved in specific bylaw enforcement decisions until the matter is put onto the agenda for the entire Board to consider.
- 5.4 Board or Director inquiries relating to bylaw enforcement matters shall be directed to the General Manager, Development and Emergency Services.

## **6.0 RECORDING COMPLAINTS**

- 6.1 Written complaints are to be submitted by email, mail, on-line (portal) or in person. Exceptions to written complaints may be considered where the complainant has a language or literacy barrier that prevents them from submitting a written complaint. Anonymous complaints will only be considered if imminent safety or environmental concerns are raised. Complaints shall include the following information:
  - 6.1.1 Complainants' name, address, telephone number that accepts messages, and email address.
  - 6.1.2 Description and location (address or lot number) of alleged contravention.
  - 6.1.3 Description of the alleged contravention.
  - 6.1.4 Impact of the alleged contravention on the complainant, and steps that the complainant may have taken to resolve the matter, if applicable.
- 6.2 Complaints will be considered, and case files will be opened as deemed appropriate. Upon receipt of a complaint, RDN administrative staff shall aim to:
  - 6.2.1 Provide a written acknowledgment of receipt of the complaint within 2 working days.
  - 6.2.2 Log and record the complaint within the RDN's electronic filing system before

being distributed to a BEO for follow-up and investigation.

- 6.2.3 Bylaw Enforcement staff will forward complaints to the appropriate BEO area of responsibility.
- 6.2.4 An investigation file will be opened for complaints that a BEO has determined are within the RDN's ability to investigate.
- 6.2.5 Direct the complainant to the appropriate agency if the complaint is outside the RDN's jurisdiction.
- 6.2.6 Direct matters relating to dog control to the RDN's Animal Control Contractor.

## 7.0 COMPLAINT INVESTIGATION

- 7.1 Upon assignment of a complaint, the BEO will conduct a preliminary assessment to determine if the complaint is substantiated and relates to an RDN bylaw and is within the RDN's jurisdiction. The investigation will be undertaken in accordance with the steps outlined in this policy and may include a review of property ownership, relevant bylaws, contact with the complainant, consultation with other RDN departments and a site investigation. If after a preliminary assessment the complaint is determined not to be substantiated; no further investigation will take place, and the complainant will be informed.
- 7.2 RDN Bylaw Enforcement Officers are authorized by *Bylaw Enforcement Officers Bylaw No. 857, Local Government Act and Community Charter* to enter, without warrant, upon private property to conduct an inspection and ascertain if there is a contravention to an RDN bylaw. Before conducting an inspection within private property, the BEO generally will:
  - 7.2.1 Determine if entry is necessary to investigate the alleged contravention or if the investigation can be conducted from a public road or other lands.
  - 7.2.2 Determine if it is possible to allow an individual time to comply with a bylaw without the need for an inspection.
  - 7.2.3 Where possible, provide reasonable notice and reasons for an inspection to the property owner/occupant in advance.
- 7.3 The BEO will not investigate an issue further if it is determined that:
  - 7.3.1 No contravention exists
  - 7.3.2 The issue is a private civil matter
  - 7.3.3 The matter falls outside the jurisdiction of the RDN
- 7.4 Staff will advise the complainant of the appropriate authority if their concerns are beyond RDN jurisdiction. The complainant will be notified of the RDN's decision not to investigate the issue.
- 7.5 If the contravention is within the jurisdiction of both the RDN and another agency, a joint investigation and enforcement may occur.

## 8.0 USE OF DISCRETION

- 8.1 A BEO may exercise discretion regarding whether to investigate a complaint. The

following guidelines define the circumstances in which staff may decide not to investigate a complaint and the factors to be considered in making that decision.

- 8.1.1 The nature and urgency of the complaint or alleged contravention.
- 8.1.2 The impact of the contravention on the complainant and community.
- 8.1.3 Previous decisions or legal precedents on similar complaints.
- 8.1.4 The matter appears to be a civil dispute, frivolous or vexatious in nature.
- 8.1.5 The impact of the complaint or alleged contravention on public health, safety, environment or RDN Liability; and,
- 8.1.6 The resources available to respond to the matter.

8.2 A BEO may commence an investigation and open a file without a written complaint, including when:

- 8.2.1 An observed bylaw contravention has health, safety, environmental implications or risks to RDN infrastructure.
- 8.2.2 A bylaw contravention is witnessed by a BEO or other RDN employee in the course of their duties.
- 8.2.3 A notification or referral is received from an external agency that identifies a possible contravention of an RDN regulatory bylaw.

## 9.0 ENFORCEMENT PROCEDURES

- 9.1 A property owner/occupant in contravention of an RDN regulation may be requested to take action within a specified deadline. More time may be authorized by the BEO depending on the circumstances of the contravention and according to this Policy. Staff may establish enforcement timing and deadlines based on individual circumstances, seasonal challenges, overriding legislation or other factors. The owner/occupant will be notified in writing of applicable timelines. Such timelines may be shared with complainants.
- 9.2 It is expected that a property owner will cease any unlawful activity until a determination on any RDN permit application has been made. The RDN may continue to pursue enforcement action during the consideration of a permit application.
- 9.3 If an owner or occupant fails to respond to direction provided within the stated timeline, the BEO may conduct further site inspections following the requested action date. Where the unlawful activity has not ceased, the individual will be advised in writing of possible or pending enforcement action. If compliance is not forthcoming, escalated enforcement actions may follow, including ticketing, direct action or legal action.
- 9.4 **Bylaw Notices** - BEO's may issue a ticket and fine on a daily basis until the contravention is corrected. The BEO may proceed with the issuance of Bylaw Notices without providing advance notice to the offender. Where Bylaw Notices are disputed, RDN staff will follow the dispute adjudication procedures as outlined in Bylaw Notice Bylaw No. 1786.
  - 9.4.1 **Payment Hearings** - Following issuance and non payment of Bylaw Notices the BEO may proceed with filing a certificate for a Payment Hearing through Small Claims Court (Provincial).

9.5 **Direct Enforcement Action** – is action by RDN staff or agents to enter property and address a contravention or hazardous condition. Board approval may be required to authorize staff to undertake remediation related to properties. Direct enforcement action involves the following procedures:

9.5.1 **Unsightly Premises Bylaw**

- 9.5.1.1 If RDN staff determine that a property is unsightly pursuant to RDN Unsightly Premises Bylaw No. 1073, written notice will be delivered to the property owner and/or occupant directing that the property be cleaned-up prior to the expiration of the notice period. The notice period shall be at the discretion of the BEO and be dependent upon season, scope and history of infractions. In general, the notice period shall be between 30 and 60 days.
- 9.5.1.2 Where the owner/occupant of the property has not cooperated, cleaned up the property and/or responded by the end of the notice period, one or more Bylaw Notices may be issued. If the property continues to be non-compliant, Bylaw Enforcement staff may issue a final notice and obtain estimates from contractors for clean-up of the property.
- 9.5.1.3 Where an estimated cost of clean up is under \$5,000, staff may conduct a Minor clean up on a discretionary basis. Where an estimated cost of clean up is over \$5,000, staff will provide a report to the RDN Board for consideration directing staff to conduct a clean up at the owner's expense.
- 9.5.1.4 Bylaw Enforcement staff may provide the property owner/occupant with estimates and direct the owner/occupant to clean up the property by a certain date, failing which, RDN staff or its agents are authorized to enter the lands and clean-up the property at the owner's expense. Should the cost of clean-up remain unpaid by the owner, the costs will be added to property taxes.

9.6 **Legal Action** - Where unlawful activity has not ceased following the issuance of Bylaw Notices or other enforcement action, legal action may be taken separately or concurrently with other enforcement measures. The BEO may consult with legal counsel in conjunction with the appropriate Manager who may issue instructions to legal counsel to commence legal action in Provincial or Supreme Court. This action is often in the form of civil injunctions that require a property owner to cease an unlawful activity or face court-imposed penalties.

- 9.6.1 In matters that have wide ranging community or significant financial implications, Bylaw Enforcement staff will prepare a report to the RDN Board outlining the circumstances and provide recommendations for the Board's consideration.
- 9.6.2 At the conclusion of legal proceedings, Bylaw Enforcement staff will advise the complainant(s) and the Board of the outcome.

**10.0 FRIVOLOUS, REPEAT AND VEXATIOUS COMPLAINTS**

10.1 In the case of frivolous, repeat and/or vexatious complaints, each complaint will be dealt

with on its own merits according to this Policy. However, BEOs will endeavor to focus on balancing fairly the interests of both the individual making the complaint and the individual who is subject of the complaint. The RDN retains the discretion not to intervene in civil matters that are disputes between individuals. The RDN may consider responding to new complaints only where the complainant provides new information or raises a new issue. Complaints received with new information are subject to following process and procedures as outlined in this policy.

- 10.2 A decision to cease responding to a person who is making frivolous, repeat or vexatious complaints about the same issue may be made by the Chief Administrative Officer and General Manager, Development and Emergency Services, after consideration of the circumstances. The applicable Manager or designate will communicate to the individual in writing, of the decision. Following this communication, the Board of Directors may be notified.
- 10.3 Restrictions on responding to complaints will only be considered as a last resort, and be tied only to the bylaw complaints process, the complainant will not be restricted from receiving other RDN services.

## 11.0 COMMUNICATIONS

- 11.1 Bylaw Services staff will aim to provide written acknowledgement of all complaints within 2 business days of receipt of a complaint, unless stated (i.e. Emergency Operations Center activation).
- 11.2 The BEO will aim to contact (telephone or in person) a complainant within 5 working days of being assigned to investigate the complaint to discuss their concerns, describe any planned enforcement action, the expected duration of the RDN investigation, or the reasons for not taking further action. The BEO will provide the complainant with their office contact information (telephone, email address) for ease of direct communication.
- 11.3 The BEO will update the complainant on the status of ongoing investigations on a quarterly basis or if a significant change has occurred.
- 11.4 The BEO will inform complainants when an investigation is concluded and the results thereof.
- 11.5 Electoral Area Directors will be provided a quarterly report on bylaw enforcement activity at the Electoral Area Services Committee meetings. Information contained within those updates shall be in accordance with applicable privacy and freedom of information legislation and shall include information on highlights of the reporting period. Highlights can include the number of files opened in the reporting period, types of files that have been opened, number of complaints received, number of files closed or in-progress, filing of tickets or adjudication; and identification of new complaint related trends if applicable.

## 12.0 ENFORCEMENT APPEALS

- 12.1 **Bylaw Notices** - For Bylaw Notices (tickets) issued in accordance with Bylaw 1786, appeals are via the Bylaw Dispute Adjudication System as set out in the *Local Government Bylaw Notice Enforcement Act* and *Bylaw Notice Bylaw No. 1786*. Investigations that resulted in Bylaw Notices being issued and subsequently overturned at adjudication, will be concluded and only re-opened if new information is received and investigated according to this Policy.

- 12.2 **Bylaw Enforcement Officer Decisions** - For decisions of a BEO, appeals may be made to the General Manager, Development and Emergency Services. Such requests must be made in writing within 30 days of the decision, outlining reasons for the appeal such as error of fact, omissions, or new evidence and are to be considered in accordance with this Policy.
- 12.3 **Direct Enforcement Action** - In the case of direct enforcement action taken pursuant to Section 9.5, the property owner may appeal to the Board of Directors in advance of the direct enforcement action taking place. Such request shall be made in writing and may include a delegation request to a Board meeting.
- 12.4 **Legal Action** - Where a file is escalated to legal action and the courts, then appeals are made via the courts.

## 13.0 STAFF SAFETY AND RESPECTFUL WORKPLACE

- 13.1 The safety of all staff and agents of the RDN is of the utmost importance. If a BEO or other RDN staff is verbally or physically threatened in the course of undertaking their duties, the matter may be escalated via any or all of the following:
  - 13.1.1 Staff may disengage from further communications with the threatening individual(s).
  - 13.1.2 The RCMP may be contacted.
  - 13.1.3 The RDN lawyer may be consulted.
  - 13.1.4 A threatening individual may be blocked electronically or by other means of communicating with RDN staff.
- 13.2 RDN staff, in accordance with the RDN Respectful Workplace Policy, will not tolerate verbal abuse or inappropriate behavior. Members of the public acting in such a manner will be advised accordingly.
- 13.3 Note: the above is intended to supplement but not replace the RDN Safe Work Procedures.

## 14.0 CONFIDENTIALITY

- 14.1 Subject to applicable privacy and freedom of information legislation, the identity of the complainant, any personal information they provide, and the complaint received will not be disclosed to the alleged offender or any members of the public. The complainant and the alleged offender will be informed that this information will be kept confidential unless required by court or adjudication proceedings. The anonymity and confidentiality given to complainants and alleged offenders under this policy cannot be assured if the investigation results in court or adjudication proceedings.