

POLICY

Name of Policy: BY-LAW ENFORCEMENT POLICY	Policy Number: 003
By-law / Resolution Number: 2021/06/194	Approval Date: June 22, 2021
Administrative Responsibility: Fire and Emergency Services	Next Review Date: June 2023

Policy Statement

The objective of the By-law Enforcement Policy is to obtain compliance with municipal by-laws through effective enforcement based on consistency, education, and fairness.

This policy describes the procedures related to By-law enforcement, including the issues of confidentiality as set out in the *Municipal Freedom of Information & Protection of Privacy Act*, the setting of priorities for action, and includes provisions for further enforcement.

Purpose

The purpose of the policy is to provide a formal policy and procedure governing the enforcement of municipal by-laws and response to infractions to ensure a consistent, standardized, thorough, prompt, and courteous receipt, processing, investigation, and resolution thereof.

This policy applies to all by-laws of the Municipality of Callander and any requests for enforcement received by the Municipality. The scope of the policy is limited to the geographical boundaries of the Municipality of Callander.

Definitions

Administrator means the Senior Municipal Director of the Corporation of the Municipality of Callander or his/her designate.

Complainant means a person, group, or company who submits a formal complaint to the Municipality regarding a contravention of a municipal by-law.

Complaint, written means a complaint received by the Municipality, wherein the Complainant, using the required form, submits their full name, address, phone number, and nature of complaint that can be verified by Municipal By-law Enforcement personnel.

By-law Enforcement Officer means a person appointed, by By-law, by the Municipality for the purposes of municipal law enforcement.



By-law Enforcement Manager means the individual responsible for the day-to-day management of any By-law enforcement personnel.

Municipality means the Corporation of the Municipality of Callander.

Spite Complaint means a complaint submitted with ill will or with intention of malice towards another person or entity and may include retaliatory complaints and civil disputes.

A Spite Complaint may also be defined as frivolous and vexatious complaint, or a complaint that is part of a pattern of conduct by the complainant that amounts to an abuse of the complaint process. Such complaints shall be brought to the attention of the Administrator and the Administrator shall, at their sole discretion, determine if the complaint shall be investigated or rejected.

Legislative & Administrative Authorities

Section 224(d) of the Municipal Act, 2001 states that it is the role of Council:

“To ensure that administrative policies, practices and procedures and controllership policies, practices and procedures are in place to implement the decisions of Council to ensure the accountability and transparency of the operations of the municipality, including the activities of the senior management of the municipality”.

Part XIV of the Municipal Act, 2001 provides legislation regarding enforcement and the municipality’s ability to pass by-laws to enforce and set fines.

Policy Requirements

The safety of staff and/or agents of the Municipality is of the utmost importance. If staff are verbally or physically threatened while enforcing By-laws, then no further investigative action shall be carried out until a police officer accompanies the By-law Enforcement Officer.

The Municipality is committed to the delivery of municipal law enforcement services in a timely and effective manner.

By-law enforcement is both proactive as well as reactive in nature:

- By-law Enforcement Personnel, upon observation of a possible By-law violation, may undertake an investigation on their own initiative.
- The Municipality may act upon complaints received from the public.

By-law Enforcement Personnel have discretion to determine the appropriate response to a complaint. This may include decisions to act on some, all, or none of the complaint, assign priority between complaints; immediately issue an offence notice/ticket, or an emergency order to remedy a violation as determined at the staff’s sole discretion. This discretion is to be exercised based on the following criteria:

Notwithstanding the above, the goal of by-law enforcement is to achieve compliance with municipal by-laws through education and cooperation as opposed to enforcement. All violations should be approached with this intent, and the cooperation of the individual should be sought first in every instance.

Spite Complaints, as determined by the Administrator, shall not be investigated by a By-law Enforcement Officer.

The Municipality is not obliged to enforce any by-law or to pursue law enforcement action on any by-law infraction. Where a decision is made, by Council, not to enforce compliance with a by-law, the decision shall be documented.

Any decision made under this policy, including a decision not to respond to a complaint, enforce a by-law, or a decision by the Administrator, may at any time be revisited by the Administrator.

The North Bay Police Service is responsible for enforcement of the criminal code and emergency situations. They should be contacted to deal with issues, including but not limited to loitering, trespassing, noise related neighbour or domestic disputes, possible drug activity, vandalism, or other criminal activity.

Failure to comply with any provision of this policy shall not invalidate any proceeding or any step, document, or order in a proceeding otherwise in accordance with any municipal by-law, provincial, or federal legislation.

General Principles

1. Submission of a Complaint

Complaints regarding alleged by-law infractions shall be reported to a By-law Enforcement Officer.

When a complaint is received by the By-law Enforcement Officer, they shall contact the complainant. The By-law Enforcement Officer shall determine the nature of the complaint and determine if a written complaint is required. If a written complaint is required it must include the complainants name, address, and phone number. Where a written complaint is required and the complainant does not wish to provide one, then the complaint will not be acted upon.

Anonymous, incomplete complaints, and complaints communicated through third parties, including Members of Council, will not be acted upon unless the alleged infraction is a life, safety, or environment matter.

2. Confidentiality

Complainants and persons who are the subject of a complaint are protected under the *Municipal Freedom of Information and Protection of Privacy Act* and every complainant shall be kept completely confidential and not be intentionally divulged to any member of Council, non-essential municipal staff, the public, or media unless so ordered by a Court or privacy commissioner.

Pursuant to the above, once a complaint has been filed, information or documentation that would violate a complainant or defendants rights under *Municipal Freedom of Information and Protection of Privacy Act*, will not disclosed.

However, By-law Enforcement personnel dealing with a complaint will contact the complainant and provide a brief description of the action taken. If the complaint resulted in a Provincial Offense Notice (i.e., a ticket) being issued, the complainant must be informed that a ticket was issued and that they would be required to attend court if the person who was issued the ticket pleads not guilty.

It is important to note that the anonymity and confidentiality afforded complainants and alleged violators by this policy cannot be assured if the investigation results in court proceedings as the complainant may be required to act as a witness for the prosecution.

3. Issue Priority

Complaints shall first be ordered based on the date of receipt, and shall then be assigned a priority level of:

- Low Priority – A by-law violation unlikely to cause life, health, safety issues, and/or negatively impact the community or the environment.
- Medium Priority – Multiple low priority violations or a by-law violation with potential to cause life, health, safety issues, and/or negatively impact the community or the environment.
- High Priority – Multiple by-law violations or a by-law violation currently causing or imminently threatening to cause life, health, safety issues, and/or negatively impact the community or the environment.

The priority level shall determine the resources assigned to the resolution of an alleged infraction, and the flexibility with which the Municipality may achieve a resolution with the named person. In high priority cases, warnings and extended remedy times may be waived.

4. Processing Procedure

All complaints shall be logged, recorded, and actioned within five to ten business days of receipt. All complaints and subsequent investigations shall be kept on file in accordance with the Municipality's Records Retention Policy.

Upon receipt of a complaint, a preliminary review of the complaint shall be undertaken to set a priority to verify the information provided and research any supporting documentation which may be available in municipal records. If necessary, a site visit shall be completed to determine if a contravention exists.

If Enforcement Personnel are unclear of a possible contravention, they shall report the issue to the Enforcement Manager who shall in turn seek the advice of the Administrator.

The By-law Enforcement Officer shall notify any municipal departments and outside agencies that may need to be aware of an issue, or be required to assist (e.g., Fire, Operations, Building and Planning, provincial ministries). A record of the conversation shall be kept by the Officer and submitted to the Manager with the quarterly reports.

At the By-law Enforcement Personnel's discretion:

- the named individual(s) shall be notified by phone call, in-person, by email, or by registered letter and given the opportunity to provide their perspective and any supporting evidence.
- the named individual(s) shall be given the opportunity to voluntarily comply within a set timeframe, identified on a case-by case basis, before further action is taken. Individuals may also be requested to cease the activity until compliance is achieved.

By-law Enforcement Personnel may issue an emergency order to remedy a violation in lieu of an initial warning when such violation poses an immediate threat to health or safety.

When compliance with the warning and/or order is confirmed, the By-law Enforcement Manager shall close the file.

If the warning and/or order has not been complied with by the specified time, the issue shall be reviewed with the Administrator to determine whether to attempt a second written warning or proceed with the actions in accordance with municipal by-laws.

Any enforcement action that would result in the Municipality expending additional public monies in excess of \$5,000, in support of enforcement efforts, shall be reported to Council prior to such action being undertaken.

Roles and Responsibilities

1. Council:

- Adopts by-laws, policies, and any amendment thereto. Regulatory by-laws shall identify the enforcement jurisdiction and the person and/or agent authorized to enforce those regulations.
- All Council inquiries related to by-law enforcement shall be directed to the Administrator.

Individual members of Council shall not sanction, direct, investigate, assess, or interfere with a complaint or investigation.

2. Senior Municipal Director, or designate:
 - Serve as the Administrator of this policy or appoint a designate.
 - Make recommendations to Council for policy amendments.
 - Shall keep the Council advised of any significant enforcement actions that have direct legal or significant financial implications for the Municipality (\$5,000 and above).
3. By-law Enforcement Manager:
 - The Manager may attend or accompany the By-law Enforcement Officer on site investigations when a situation warrants it or when requested.
 - The Manager shall maintain a detailed reporting of enforcement activity in a database format and submit a quarterly report on enforcement activity to the Administrator.
4. By-law Enforcement Officer (BLEO):
 - BLEO shall coordinate all regulatory By-law enforcement actions.
 - BLEO shall investigate complaints and carry out enforcement actions.
 - Where the BLEO has reasonable and probable grounds to believe that a violation exists, he or she may enter upon private property to further an investigation or resolve any violation. The BLEO shall only conduct business on the property related to the issue of the complaint.
 - The BLEO shall maintain a detailed reporting of enforcement activity and submit a quarterly report on enforcement activity to the By-law Enforcement Manager.