



# Backgrounder

September 29 2021

## By-Law Services Strategy Review

The purpose of this backgrounder is to provide Council information on South Huron's current strategy for By-Law services.

### Key Points

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#### Legislative Framework

Under the *Municipal Act*, 2001, S.O. 2001, c. 25. Section 11, the Act states that within its municipal boundaries that a municipality may provide any service or thing that the municipality considers necessary or desirable for the public may, by By-Law; regulate, prohibit and impose requirements in relation to certain spheres of jurisdiction. In addition to the *Municipal Act*, By-Law Enforcement Services is guided by other provincial legislation such as the *Building Code Act*, *Highway Traffic Act*, and *Provincial Offenses Act* to name a few.

Council has the sole discretion of deciding which By-Laws to enact and enforce. It is important to note however that once the municipality commences enforcement proceedings, in effect there has been a policy decision to enforce and if there is no further action, there may be consequences as a result of a failure to enforce. For example, some questions to consider:

- Will someone be injured? (whether physically or economically) if the municipality does not proceed with enforcement? (And if so, compensation?)
- Is the municipality acting at a reasonable speed? If a notice of contravention requiring certain action is slow, are staff waiting too long for a response?

Council must weigh the impacts of non-enforcement, the expectations of members of the community, the level of risk exposed for non-enforcement and the actual costs of enforcement.

South Huron does not have a specific By-Law Enforcement policy however South Huron does have a Complaint Policy (By-Law 22-2016) and By-Law Enforcement framework (Appendix 2) which provides the framework for By-Law Enforcement services in the municipality. In addition, certain By-laws such as Animal Control By-Law have specific standard operating procedures.

The Complaint Policy however further clarifies under Section 3 "Definition" that a complaint is distinct from:

"A request for service made on behalf of a citizen for a specific service, or to notify the municipality that a scheduled service was not provided on time, (Examples of Request for Service: reporting a burnt out street light, notifying the municipality of a missed garbage collection, reporting a By-Law infraction)."

### Current Composition of By-Law Services

By-Law services is under Legislative Services. By-Law services includes issuance of licencing and permits, education, enforcement including parking control and management of animal control. By-Law enforcement services moved from Building Services to the Clerk's department in 2018 while licencing and permits have long been part of the Clerk's department.

The Clerk's department provides licencing and permit administration for municipal By-Laws, for example Taxi and Transient Trader By-Laws. The Clerk's department is also involved in research and development of By-laws, reporting and Council directed initiatives with respect to By-Law Enforcement services.

By-Law Enforcement is responsible for:

- Investigating By-Law complaints;
- Enforcing By-Law regulations and standards;
- Achieving resolutions to By-Law infractions through voluntary compliance or prosecution;
- The administration and inspection of By-Law enforcement
- Educating the public on relevant standards.

Complaints from the public are required in writing and staff will assist those complainants as required on the submissions so that complaints are tracked. Anonymous complaints are not investigated, unless the alleged complaint relates to an immediate health and safety issue. Personal information including the complainant's name is kept confidential, however, if the matter goes to Court, the complainant could be called to testify and give evidence.

In 2014, the municipality appointed Municipal Enforcement Unit (MEU) Consulting to investigate complaints received about alleged violations of various Municipal By-Laws. MEU provides services for municipal By-Law enforcement including but not limited to Parking, Property Standards, Zoning, Animal Control and Licensing.

In 2020 South Huron entered into an agreement with the South Huron Veterinary Clinic for the provision of Animal Pound Services. Council also appointed FPO Hebert as the municipality's Animal Control Officer. Currently as noted in Legislative Op Notes, South Huron is meeting with other lower tier municipalities to investigate whether there is potential for the provision of Animal Control services on a County-wide basis.

It is important to note that staff from other departments have roles and/or responsibilities with respect to certain By-Laws including but not limited to Property Standards, Waste By-Law, Parking By-Law, Burning By-Law and Sign By-Laws. For example, if an investigation has found that there is a contravention to the Property Standards By-Law that involves a building or a structure, a referral must be made to the Building Services for action and they will launch a separate investigation. The Clerk's department with MEU generally take lead on these offences with enforcement and support from other departments.

The core business hours for By-Law enforcement services is defined as 8:30 a.m. to 4:30 p.m. Monday to Friday and is coordinated through the Clerk's department. Where deemed urgent, staff will contact MEU for after-hours violation and patrols, such as ongoing patrols this summer on Waterworks Road for parking infractions.

By-Law enforcement services has a current administrative staff complement of .05 position of Director/Clerk and is incorporated as part of Clerk's department general duties. Staff are proposing an increase of .10 allocation of Legislative Services administrative staff for a total of .15 for the 2022 budget, to be more reflective of the administrative workload in coordinating By-Law services.

The municipality uses the following tools for compliance with respect to By-Law Enforcement.

Education	Can be verbal or formalized through a written warning
Notice of Violation	Typically used to identify an illegal use and may require remedial work for compliance. Commonly used in relation to zoning matters.
Order to Comply	Used to identify By-Law deficiencies and require remedial work for compliance.

	Commonly used in relation to property maintenance matters. May result in the undertaking of remedial work to obtain compliance.
Administrative Penalty Notice	Commonly used for a variety of offences in parking enforcement. Can carry a fine or be a warning notice that carried no fine.
Provincial Offences Act Offence Notice or Summons	May result in appearing before a Justice of the Peace. Can be used for a variety of offences, including those related to parking, zoning, property use and Property Standards.

## By-Law Enforcement Framework

The By-Law Enforcement Framework supports staff in guiding the enforcement process. The framework does not circumvent the need for professional judgment, discretion, and direction when required. The framework does not supersede the mandatory requirements of a By-Law and is to provide guidance only.

The purpose of a By-Law Enforcement Framework is to:

1. Establish clear expectations and customer service standards for By-Law Enforcement and ensure similar cases are being treated in a similar way.
2. Promote the efficient use of Staff resources; and
3. Manage public expectations while promoting transparency and accountability and provides the public with clarity and detail on how and why enforcement decisions are being made.

The framework is not prescriptive so that staff are able to exercise discretion to make independent enforcement decisions, especially when circumstances require an exception. The framework is based on an enforcement continuum that focuses on voluntary compliance, education and outreach. The framework is being provided to Council as part of this report for information and review to ensure the framework remains relevant to Council priorities and community expectations.

In addition to the Complaint Policy and By-Law Enforcement Framework, the municipality has Standard Operating Procedures (SOP). There are SOPs for enforcement of specific By-Laws, for example Animal Control and for licensing such as under Taxi By-Law.

## Service Level

Council determines when a particular By-Law or area would benefit from proactive enforcement, however in the majority of cases, the municipality responds reactively to complaints. Reactive enforcement entails responding to written complaints as they are submitted by members of the public and/or staff and Council. Proactive enforcement involves Staff or MEU initiative for issues involving health and safety and mandated responsibilities, such as violations under *Building Code Act*.

The goal of the current service level is to achieve compliance through information, education and voluntary compliance. If compliance is not achievable then municipal enforcement takes appropriate action such as the laying of charges and/or direct enforcement, such as remove or resolve a non-compliance at the property owner's expense.

As noted earlier in the report, there are overlapping enforcement responsibilities between municipal departments including building services, fire services, planning services, clerk services, recreation services, roads and water services. As a result, staff from multiple areas are often required to respond to a complaint to ensure that it is fully resolved. This can cause confusion for residents as it can be difficult for the public to understand who to contact for different enforcement complaints and can create duplication of effort among responding staff.

A Service level matrix could include information to clarify enforcement responsibility among departments and to assist in resolving issues related to duplication of efforts. A matrix could summarize the extent of the most frequent By-Laws currently in effect and further reflect the current interpretation by Council of priorities. Staff could then use these priorities to implement an approach based on objective measures, such as health and safety.

Council has had the opportunity to provide input on priority of By-Laws in the matrix and to add other by-Laws to be considered. Staff reviewed the complaints for the last three years for by-Laws most often enforced and for those that receive the most complaints. A consolidation of comments received along with a copy of the circulated form are attached to Appendix 1 for Council reference with a proposed matrix.

In moving forward with a service level matrix, Council will also need to consider the community's standards and expectations. The matrix, if approved could be posted on the municipal website for public information

Subject to Council approval, the following criteria is suggested to be used by municipal enforcement to identify and classify significant violations in order to help establish priorities for enforcement efforts.

**1. High Priority:**

Service level is a high priority investigation on matters that are highly likely to pose an immediate and substantial health & safety risk to any member of the public.

**2. Medium Priority:**

Service level is a medium priority investigation on matters that have a potential to pose a moderate, indirect or cumulative negative impact to our community and the environment; there are no immediate life safety concerns.

**3. Low Priority:**

Service level is a low priority investigation on matters that are unlikely to cause health & safety issues to public; negative impact community, environment or are a minor threat to residents, visitors or businesses and are purely regulatory in nature; no intent, history or life safety concerns.

If Council wishes to increase the proposed service level of a particular By-Law, a review of staff resources should be undertaken to assess the impact on the delivery of services versus the expected delivery of same.

## Key Performance Indicators

The municipality is facing the pressures of increased service level expectations by citizens and pressures around keeping costs low. Key Performance Indicators (KPI's) are a tool for managing finances, unit cost efficiency and quality of services when dealing with a public that is funding the services or relying on the services, or both. This has resulted in a need for staff and Council to demonstrate that services are delivered in an efficient and effective manner that meets measurable performance targets.

Establishing performance measures will assist in creating benchmarks so Council and staff get a clear understanding with respect to usual and/or normal response times versus available staff and financial resources. Data collected would provide a source to measure and compare how efficiently and effectively services are delivered and also provide direction to the community as to service level delivery. This will assist Council and staff in identifying areas where there may be opportunities to improve services and

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make informed decisions and/or set policy based on service quality, levels and financial impact.

Staff have been reviewing KPI's as part of regular operations and at least initially are suggesting at least the following:

- as they relate to the acknowledgment of a complaint
- first attendance/action as they relate to specific types of complaint
- associated response to the complainant so that service level expectations are clearly set-out.

## IT Service Delivery Review

As part of the IT Service Delivery Review, By-Law enforcement was selected as one of the 10 business processes to be reviewed for potential improvements. The following items were highlighted in the report:

- The bylaw complaints tracking process is currently managed manually. The process has many disjointed data sources with multiple duplicate entries:
  - Physical property files.
  - Excel tracking sheet.
  - Online Report a Problem form.
  - Email communications.
  - Asyst for property owner information.
  - Documents saved in the network drive.
- The online Report a Problem form is duplicated in an Excel tracking sheet and emails are sent to the 3rd party service provider (MEU) to take action on complaints. Some parts of the process are managed by the Municipality (e.g., issuing orders) with a significant gap in communication between the service provider, customer and the Municipality.

The report identified that the entire process should be digitized within an integrated Planning, Permitting, Licensing System (PPLS) to digitize all processes related to properties. The report further noted that implementation of a PPLS to digitize the end-to-end bylaw processes would improve administrative process and communication internally and externally. In addition, a PPLS would also provide By-Law case information with secure access to other relevant department users, e.g., Fire, Building, etc.

## Financial Impact

Municipal Enforcement and Animal Control budgets are found under Protection Services in the Operational Budget. Staff are researching costs associated to implement an electronic system. Any changes to the current service level and/or technology improvements will have impacts to the budget.

## Legal Impact

There are legal impacts on the Corporation in the development, the regulation and enforcement of By-Laws. The failure to adequately prepare and enforce bylaws can be a liability for the municipality.

### **Duty of Care**

The Courts have shifted away from the discretionary enforcement principle as the only test to be applied when determining whether a municipality has an obligation to enforce its by-laws and this no longer holds strictly true to determine whether a duty of care is owed. A duty of care comes from one of two ways: common law or statutory imposition. This requires consideration of whether the municipality's passing of a by-law is by way of permissive/discretionary authority, or is a mandatory obligation imposed on the municipality.

### **What does this mean?**

For discretionary by-laws, when a By-Law is silent to the existence of a duty to enforce, the duty must be determined according to the common law. Once a duty of care is established, and the appropriate standard of care is determined, the analysis shifts to whether a municipality has met the applicable standard.

The Courts have stated that if a duty of care exists, it must be founded on the language of the municipal by-law in question. This highlights the importance of reviewing and consulting with counsel prior to enacting a by-law, as language can have unintended consequences such as potentially creating unintended duties.

## Future Considerations for Council

Council may need in future to examine pressures on the current service delivery model as a result of the long-term effects of increased development and population growth, increasing expectations of the public and changing social demands. The impact on By-Law Enforcement demands is beyond the scope of this report however we can reasonably expect an increase in the following calls-for-service: Animal control, Parking, Property Standards and maintenance.



In future, technology would allow staff to effectively and efficiently interact with residents during investigations to achieve enhanced customer service. Software will provide By-Law enforcement services the ability to configure the system to track the relevant KPI's and provide staff all of the business facing functionality required to properly track the enforcement process from start to finish.

Staff recommend that a matrix to identify, define and prioritize Council's determined service levels be endorsed and reviewed at least once every term of Council. In addition, staff will continue with the current strategy with the addition of key performance measures and indicators.

### Recommendations and Next Steps

That South Huron Committee of the Whole receive By-Law Services Strategy Review Backgrounder; and

That the Committee recommends South Huron Council direct staff to develop a service level matrix for Council consideration.

Appendix 1 - Draft Service Level Matrix

Appendix 2 - Draft Framework: By-Law Enforcement