



# Backgrounder

April 22, 2024

## 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 the 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 are under the Clerk's Department. By-Law services include issuing licences 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 licensing and permits have long been part of the Clerk's department.

The Clerk's department provides licensing and permit administration for municipal by-laws (ex. 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.

From 2014 – 2022 Municipal Enforcement Unit (MEU) Consulting was appointed by the Municipality to investigate complaints received about alleged violations of various Municipal By-Laws. Tenet Security Group Incorporated has been appointed by the Municipality for these services since 2022. The contractor 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.

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-Law. For example, if an investigation found 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 the By-Law Enforcement Officer generally take lead on these offences with enforcement and support from other departments.

The core business hours for by-law enforcement services are 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 Tenet for after-hours violation and patrols.

By-law enforcement services have a current staff complement of .15 allocated of Clerk's Department.

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 issuing a transient trader licence.

## 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 Tenet Security initiative for issues involving health and safety and mandated responsibilities, such as violations under the *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 includes information to clarify enforcement responsibility among departments and to assist in resolving issues related to duplication of efforts. A matrix can summarize the extent of the most frequent by-laws currently in effect and further reflect the current interpretation by Council of priorities. Staff can then use these priorities to implement an approach based on objective measures, such as health and safety.

Attached as Appendix 1 is the draft Service Level Matrix. Staff reviewed complaints received since the last term of Council and noted priority for review/updating this term of Council.

In moving forward with a service level matrix, Council will also need to consider the community's standards and expectations. Should Council approve the updated Matrix, it will be posted on the municipal website for public information.

The following criteria are suggested to continue 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 assists 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 resource to measure and compare how efficiently and effectively services are delivered and also provide direction to the community as to service level delivery. This assists Council and staff in identifying areas where there may be opportunities to improve services and make informed decisions and/or set policy based on service quality, levels and financial impact.

Staff continue to review KPI's as part of regular operations which include the following:

- as they relate to the acknowledgment of a complaint
- plan in place to resolve the concern
- input of complaints to managing/tracking software

## Complaint Tracking

In 2023 staff implemented Citywide software system for managing/tracking By-Law Enforcement Complaints. This has assisted in streamlining the complaint/by-law enforcement process.

## Financial Impact

Municipal Enforcement and Animal Control budgets are found under Protection Services in the Operational Budget. Any changes to the current service level 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 by-laws 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, in the future, may need 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.

Staff recommend that the attached matrix, which identifies, defines and prioritizes 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.

### Recommendations and Next Steps

That South Huron Committee of the Whole receives the By-Law Services Strategy Review Backgrounder and presentation for information; and

That South Huron Committee of the Whole recommend to Council the approval of the By-Law Enforcement Framework and endorse the Service Level Matrix.

Appendix 1 - Service Level Matrix

Appendix 2 - Framework: By-Law Enforcement