

## **Municipality of South Huron Framework: By-Law Enforcement**

### **1. Purpose**

The purpose of this framework is to provide guidance to Staff, elected officials and the general public regarding the framework for the by-law enforcement process. This framework includes overarching guidelines for By-Law Services for the receipt of complaints and initiation of investigation and enforcement proceedings related to regulatory by-laws of the Municipality of South Huron.

The Municipality is committed to the delivery of municipal law enforcement services in a timely and effective manner. The goal of these services is to achieve compliance with municipal by-laws through education and enforcement. Nothing in the framework can override the mandatory requirements of a by-law.

### **2. Goals**

Administrative Fairness:

- To avoid arbitrary or inconsistent decisions
- To ensure similar cases are treated in a similar way
- To provide staff with guidance on, and limits to, exercising discretion
- To provide the public with clarity and details on how and why enforcement decisions are made
- To improve consistency in staff responses to complaints
- To provide the public information about the process that is followed once a complaint is made
- To establish a framework for evaluating the effectiveness of a response to a particular complaint and provide guidance on responding to frivolous, repeat or multiple complaints
- To establish a clear factual basis for enforcement and ensure enforcement decisions that are authorized by applicable legislation and by-laws
- To ensure appeal processes are accessible and fair, and are communicated to affected persons in a timely way

### **3. Enforceability of By-Laws**

A by-law that is too vague, uncertain or unspecific may be struck down as unenforceable. Council and staff will consider enforceability when developing or adopting a new by-law.

Council has the sole discretion of deciding which by-laws to enact and enforce. By-laws have a profound and direct impact on the quality of life, health and safety and the reputation of our community. Council must weigh the impacts of non-enforcement to that of the expectations of the members of the community and the level of risk exposed for non-enforcement versus the benefits of cost saving measures.

## 4. Complaints

South Huron Complaint policy includes direction for complaint submissions. The municipality must have an accessible process that allows people to make complaints in a variety of ways. Staff will record all by-law complaints and supporting information.

The name and any personal information provided by the complainant shall remain in the strictest confidence in accordance with the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA) and shall not be intentionally divulged to any member of Council, non-essential municipal staff, the public or media unless so ordered by a Court or other tribunal or body of competent jurisdiction.

Staff will document all interactions, whether written or verbal, with complainants and acknowledge receipt of the complaint. Once a complaint has been filed, other than acknowledgement of receipt of the Complaint, no follow up, involvement, information or correspondence regarding the complaint shall be provided to the complainant as the process is protected by *the Municipal Freedom of Information and Protection of Privacy Act*.

## 5. By-Law Investigation and Enforcement

The Municipality operates on a reactive complaint-based process regarding by-law enforcement except for a violation that is an immediate threat to health or safety. The Municipality only responds to complaints received from a complainant who provides their full name, address, telephone number and nature of the complaint in writing. Anonymous and/or incomplete complaints will not be investigated. Verbal complaints will only be received in instances of serious health and safety or environmental concerns.

A By-Law Enforcement Officer or staff may undertake an investigation on their own initiative should they observe a possible situation of a by-law violation where the matter is of a public or environmental safety concern. A By-Law Enforcement Officer may, upon confirmation of the existence of a violation, issue a Provincial Offence Notice or a Monetary Penalty Notice. Where provided for by municipal by-law or otherwise a By-Law Enforcement Officer may issue an emergency

order to remedy a violation in lieu of an initial warning when such a violation poses an immediate threat to health or safety.

Staff and/or By-Law Enforcement will provide reasonable notice prior to taking enforcement action. Any action is not to be taken before the expiry of the compliance time limits set out in a notice letter or verbal communication.

If the warning and/or order has not been complied with within the specified time, a By-Law Enforcement Officer may review the non-compliance and determine whether to attempt a second written warning or proceed with the actions necessary to address the situation in accordance with municipal by-laws or otherwise.

- A By-Law Enforcement Officer cannot stop people from contravening by-laws; they can only enforce the by-laws. Compliance with by-laws may be achieved in the following manner:
  - Giving verbal or written warnings and providing copies of the appropriate by-laws;
  - Issuing a Part 1 ticket in accordance with the Provincial Offenses Act (short form wording and set fines);
  - Summoning a defendant to court, usually initiated for a second, third or more serious offense where a larger fine or a Court Order is appropriate.

Resolution of infractions through cooperation as opposed to formal court or other action shall always be the preferred solution. All infractions shall be approached with this intent, and the cooperation of the offender shall be sought in every instance.

## 6. Options For Dealing with an Order/Fine

The offender/property owner holding an Order or receiving a fine can either:

- Comply; or
- Fail to comply; or
- Appeal the Order.

If all work under the Order has not been satisfactorily completed by the due date(s) and the Order has not been appealed within the Appeal period, it will be considered that the offender/property owner failed to comply, the Order will be deemed confirmed and no further appeal will be allowed. The Municipality may take legal action against an offender/property owner through the Court.

## 7. Jurisdiction

The Ontario Provincial Police are responsible for emergency situations and 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.

In addition to municipal by-law enforcement options by the Municipality, persons also have independent legal rights, which may be explored and pursued by said persons

## 8. Guidelines for Exercising Discretion

Each complaint is different, and the enforcement proceedings are decided based upon the individual case. Enforcement proceedings, in most cases, are completed within one month of the initial complaint. Depending on the volume of complaints, co-operation of the property owner or person in violation, specific circumstances of the case, and enforcement proceedings required, completion of the procedure may take longer.

By-Law enforcement services are based on administrative fairness principles and set out the relevant considerations that staff should take into account when exercising discretion. This may include decisions to act on some, all or none of the complaint and assign priority between complaints.

All complaints shall be processed in priority of the Council approved “Service Level Matrix”. Staff and the By-Law Enforcement Officer have the discretion to determine the appropriate response to a complaint and apply principles of proportionality, equity and consistency in by-law enforcement decisions by:

- considering whether an enforcement measure is proportionate to the harm caused by the violation
- considering whether a person’s circumstances would make enforcement unjust
- considering whether an enforcement measure is consistent with policy and practice

This discretion is to be exercised based on the following criteria:

- a) Safety factors;
- b) History of attempts for compliance made by a By-Law Enforcement Officer;
- c) Available resources, including financial resources;
- d) Coordinating involvement with other relevant agencies;
- e) Likelihood of achieving compliance;

- f) Municipal jurisdiction and authority;
- g) Other enforcement avenues including civil processes.

## 9. Frivolous, Repeat or Multiple Complaints

If it becomes deemed necessary to restrict a person from making complaints on a specific matter, that decision is made only by the Clerk in consultation with the Chief Administrative officer. The decision must be clearly communicated to the person in writing, outlining the nature of the restrictions, reasons for the restrictions, and when the restrictions will be reconsidered. This restriction does not prevent or limit other necessary contact with staff that is unrelated to the person's complaints.

When responding to multiple complaints about the same issue, staff address each person's specific concerns but may record the complaints under a single file for reference purposes.

## 10. Reporting and Records Management

Written occurrence reports are required for every alleged and kept in the appropriate file in accordance with the Municipality's Records Management Policy. Staff will track and report statistical data pertaining to by-law enforcement activities on a quarterly basis or as requested by Council. An annual summary of the enforcement activities shall be presented to Council.

### Further References to Consult

- a) Service Level Matrix (as approved by Council)
- b) Specific SOP for further process specific to certain by-laws ex. Animal Control By-Law SOP
- c) [Report It Form](#)