

POLICY	
Policy Number: DEV2020-006	Date Approved: April 2019
Department: Development Services	Date Reviewed: October 2020
By-law Enforcement Policy	

1. 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.

2. Purpose

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

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

3. Definitions

Administrator means the Chief Administrative Officer of the Municipal Corporation of the Town of Kirkland Lake or his/her designate.

Complainant means a person, group, or company that has an issue that contravenes a Municipal by-law and submits a formal complaint to the Municipality.

Complaint means a Complaint received by the Municipality, wherein the Complainant provides their full name, address, phone number and nature of Complaint that can be verified by the Municipal Law Enforcement personnel, using the required form submitted to the Municipality.

By-law Enforcement Personnel means a person or firm appointed or contracted by the Municipality by by-law for the purposes of municipal law enforcement.

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

Municipality means the Municipal Corporation of the Town of Kirkland Lake.

Spite Complaint, also known as a Frivolous and Vexatious 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 a Complaint that is part of a pattern of conduct by the Complainant that amounts to an abuse of the Complaint process. Such Complaints will 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.

4. Scope

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 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 may undertake an investigation on their own initiative upon observation of a possible situation of a by-law violation;
- 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 on the basis of the following criteria:

- Safety factors;
- History of attempts for compliance made by the Municipality and/or its agents;
- Available resources, including financial resources;
- Potential impact of not responding;
- Offer for formal mediation;
- Coordinating involvement with other relevant agencies;
- Likelihood of achieving compliance;
- Municipal jurisdiction and authority;
- Other enforcement avenues including civil processes.

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 offender 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 not to enforce compliance with a by-law, the decision will be documented on the by-law infraction file.

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

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.

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.

5. Policy & Procedures

Roles and Responsibilities

Council:

- Adopts by-laws and 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.

Chief Administrative Officer, 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).

By-law Enforcement Manager:

- The Manager shall coordinate all regulatory by-law enforcement actions and shall act as the contact for contracted By-law Enforcement Personnel engaged in carrying out enforcement.
- The Manager may attend or accompany By-law Enforcement Personnel on site investigations when a situation warrants it or when requested by Enforcement Personnel.
- 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.

By-law Enforcement Personnel:

- By-law Enforcement Personnel shall investigate complaints and carry out enforcement actions.
- Where By-law Enforcement Personnel have 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. By-law Enforcement Personnel will only conduct business on the property related to the issue of the complaint.
- By-law Enforcement Personnel shall maintain a detailed reporting of enforcement activity in a database format, and submit a monthly report on enforcement activity to the By-law Enforcement Manager.

General Principles

Submission of a Complaint

Complaints regarding perceived by-law infractions shall be reported to the Administrator. Verbal complaints, anonymous and/or incomplete complaints, and complaints communicated through third parties, including Members of Council, shall not be acted upon unless the alleged infraction is a life, safety or environment matter.

Complaints shall be assessed by the Administrator and, at the Administrator's sole discretion, forwarded to the By-law Enforcement Manager for follow up.

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 will 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 other tribunal body of competent jurisdiction.

Pursuant to the above; once a Complaint has been filed, 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*.

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.

Issue Priority

Infractions will first be ordered on the basis of the date the complaint was received, and will then be assigned a priority level of:

- Low Priority: A by-law violation unlikely to cause life, health and/or 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 and/or 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 and/or safety issues and/or negatively impact the community or the environment.

The priority level will 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.

Processing Procedure

All Complaints will be logged, recorded, and actioned within five to ten business days of receipt.

All Complaints and subsequent investigations will be kept on file in accordance with the Municipality's Records Retention Policy.

Upon receipt of a Complaint, a preliminary review of the Complaint will 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 will report the issue to the Enforcement Manager who will in turn seek the advice of the Administrator.

The Enforcement Manager shall notify any municipal departments and outside agencies that may need to be aware of an issue, or be required to assist (Fire, Public Works, provincial ministries). A record of conversation will be kept by the Manager and submitted with the quarterly reports.

At the By-law Enforcement Personnel's discretion:

- the named individual(s) will 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) will 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 will 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. The exception would be circumstances which do not afford sufficient time to have a matter presented to Council, in which case the CAO may, at their discretion, proceed as determined to be necessary.

6. Summary

This Policy guides Town staff and By-law Enforcement Personnel on the processing of by-law enforcement matters.