

TOWN OF AMHERSTBURG - POLICY BY-LAW ENFORCEMENT

1.0 PURPOSE

The mandate of By-law Enforcement is to promote, facilitate, enforce and achieve compliance with The Town of Amherstburg By-laws. The purpose of this policy is to ensure economy and uniformity of administration and enforcement of Town of Amherstburg By-laws; to reduce the Town's potential liability; to ensure consistent information to the public; to ensure consistent, thorough, prompt and courteous receipt, processing, investigation and resolution thereof.

2.0 SCOPE

This policy shall govern the action of complainants, Council, and the Town of Amherstburg By-law Enforcement Officer and staff with respect to By-law enforcement. This policy excludes the task of retrieving dogs within the Town of Amherstburg.

3.0 POLICY STATEMENT

The Town of Amherstburg is committed to the thorough, prompt, courteous receipt, processing, investigation, and resolution of formal complaints within a reasonable amount of time in accordance with the outlined policy.

4.0 RESPONSIBILITY

The Manager, Council & Legislative Services/Clerk is responsible for ensuring this policy is applied objectively, promptly and consistently.

5.0 DEFINITIONS

- 5.1 "Clerk" means the Manager, Council & Legislative Services/Clerk for the Town of Amherstburg or is or her designate.
- 5.2 "Compliance Work" means the Town exercising its authority to perform tasks on a non-compliant property for the sole purpose of rendering the property free of By-law violations. The work can be carried out by Town employees or by an authorized contractor employed by the Town. This would include but is not limited to removing debris/waste, grading land, cutting grass/weeds, eliminating a dangerous situation, demolishing structures, providing essential services to an occupied dwelling, etc.
- 5.3 "Formal Complaint" means a complaint received wherein the complainant provides their full-name, address and phone number and nature of complaint in writing using the required form.
- 5.4 "Notice of Violation" means a formal document issued by the Town which serves as a written warning. This document would specifically communicate the By-law

contraventions that require remedy and include a date being a deadline for compliance. Photos may be included as part of the document.

5.5 "Officer" means a person appointed by the Town of Amherstburg for the purposes of Municipal By-law Enforcement including, but not limited to, Municipal By-law Enforcement Officer and Amherstburg Police.

5.6 "Order to Comply" means a formal document issued by the Town which serves as a mandatory directive. This document would specifically communicate the By-law contraventions that require remedy and include a date being a deadline for compliance. Photos may be included as part of the document.

5.6 "Town" means The Corporation of the Town of Amherstburg.

6.0 POLICY

6.1 Citizen Initiated Complaints

- a) The Town will rely on resident complaints as a means of initiating the enforcement of its By-laws.
- b) The Town will only respond to Formal Complaints received from a complainant who provides their full name, address and telephone number on the form provided. Anonymous complaints will not be investigated. Email is an acceptable form of written complaint.
- c) Frivolous or vexatious complaints, or complaints made in bad faith or in an abuse of process will not be accepted unless deemed by the Clerk or Officer to be an immediate threat to health or safety.
- d) Complainants are protected under the *Municipal Freedom of Information and Protection of Privacy Act*. Personal information provided by a complainant will remain in the strictest of confidence and will not be revealed to anyone unless so ordered by a Court or other tribunal or body of competent jurisdiction

6.2 Town Initiated Complaints

- a) During the regular course of their duties, an Officer may undertake an investigation on his/her own initiative upon observation of a By-law violation where the matter is considered to be in the public interest or of an immediate threat to health and safety.
- b) Municipal Council is encouraged to direct residents with issues regarding By-law enforcement to complete and file a Formal Complaint or the member may contact the Clerk for those matters that are of an immediate threat to health or safety.
- c) Individual members of Council wishing to make a complaint of an alleged By-law infraction or other similar matter shall submit a Formal Complaint.

- d) Municipal Council is not involved in any way with the sanctioning of an investigation or making a decision on who shall be investigated.

6.3 General

- a) The priority of enforcement of complaints shall be the following: any danger to health, safety or property; any inconvenience to the public or other property owners; and then routine matters related to zoning regulations. The priority of investigations shall be set by the Clerk and/or Officer.
- b) Consideration will be given by the Clerk and/or Officer of such matters as the scale, number and duration of the infraction(s), the current, short and long-term impacts caused by the infraction, the potential for precedents and the resources available to resolve the matter. The Town may not necessarily seek a legal or administrative remedy for all alleged infractions.
- c) Some instances when warranted may result in fines imposed without warning or in absence of any written compliance directive being issued. The Officer shall determine when a fine is warranted
- d) A failure to comply with a provision of this policy shall not vitiate any proceeding or any step, document or order in a proceeding otherwise in accordance with any municipal by-law or provincial or other legislation.

7.0 PROCEDURE

In order to encourage only valid complaints and to reduce the opportunity for intimidation and neighborhood conflict, the following procedures are established to balance accountability and confidentiality among the various parties to this process.

7.1 Receipt of Complaint

- a) All complaints are to be submitted to the Clerk's Department, 271 Sandwich Street South, Amherstburg, ON or by email at bylawcomplaints@amherstburg.ca and shall be in writing and contain the name, address and phone number of the complainant and shall describe the nature and location of the alleged infraction. In all cases, the complainant is to describe the matter in their own words, detailing the "who", "what", "why", "when" and "where" of the situation. The By-law Complaint Form (attached as Schedule "A"), shall be used by a complainant to record and submit a complaint. Town staff may offer assistance and direction with respect to a By-law infraction complaint made over the telephone, but all forms must be completed and signed by the complainant prior to the complaint being investigated.
- b) The Town will not respond to anonymous complaints.
- c) Email will be accepted as a form of written complaint.

7.2 Investigation

- a) The Officer will attend the site to witness and record the activity to determine if a contravention exists.
- b) If the Officer is uncertain whether the circumstances constitute a contravention, he/she may seek input from the Clerk, other departments, Health Unit, Town Solicitor if required, and/or the individual responsible for administering the By-law.
- c) If the Officer determines the matter is not a contravention of any By-law that the Town is responsible for enforcing, the Officer will advise the complainant, enter the complaint finalized date on the By-law Complaint Form and close the file.
- d) If the Officer determines that the matter is a contravention of a By-law, the Officer will proceed to the enforcement stage.

8.0 ENFORCEMENT

- 8.1 Upon determining that there is a violation of a Municipal By-law, enforcement shall proceed as outlined below.

8.2 Enforcement Measures and Options

- a) By-law Enforcement is sought, in most instances, through voluntary compliance. Individuals who are being investigated will be required to cease the activity and be given an opportunity to achieve compliance before further action is taken to the limits noted in the By-law or as outlined below. Most enforcement measures involve the offender given a period to comply by providing a date as a compliance deadline. Follow-up inspections may be conducted at the discretion of the Officer any time during the enforcement process. Extensions for compliance deadlines may be granted at the discretion of the Officer.
- b) If voluntary compliance is not reached, compliance may be sought through the issuance of a Notice of Violation or an Order to Comply.
- c) An Officer has no obligation to utilize a Notice of Violation or an Order to Comply unless mandated by the applicable By-law. However, these enforcement methods are encouraged with the intent of educating an offender and identifying what contraventions exist so that the offender can achieve compliance. The enforcement program is created to operate in a manner where imposing penalties is a last resort whenever possible and/or practical.
- d) In the event a Notice of Violation is issued in accordance with a By-law, it will serve as a “warning” and identify what contraventions require remedial attention by the offender within a specified period of time.
- e) Any time a Notice of Violation is issued and compliance is not achieved, an Order to Comply shall be warranted. An Order to Comply will serve as a “directive” to the

offender and again provide the offender with a specified date where compliance is now mandatory.

- f) An Officer has the authority to issue an Order to Comply, in absence of any Notice of Violation being issued unless the applicable By-law states otherwise.

8.3 Remedial Action

- a) Where an owner has not brought the property into compliance by the established deadline as outlined in the Order to Comply, the Officer in consultation with the Clerk and on behalf of the Town has the authority to perform/arrange the necessary work required in order to bring the property into compliance. The Town shall not perform compliance work on a property where a Notice of Violation was the only formal document issued.
- b) Absent of any Notice of Violation or Order to Comply, an Officer in consultation with the Clerk, and on behalf of the Town has the authority to perform/arrange compliance work in an emergent situation and when the applicable By-law grants such authority.

8.4 Recovery of Costs

- a) Any and all costs associated in performing or arranging for compliance work may be recovered in accordance with the applicable By-law or applicable legislation.

8.5 Legal Action

- a) If compliance is not reached and the Order has not complied with, the Officer may issue a Part I Offence under the Provincial Offences Act.
- b) If legal action in the form of a Part III Offence under the Provincial Offences Act is deemed to be appropriate, the Officer will provide the Clerk and/or the individual responsible for administering the By-law with a recommendation to proceed with legal action when it appears obvious compliance is not forthcoming. The Clerk shall bring all recommendations for legal action to the Director, Legislative Services and Chief Administrative Officer for direction to proceed.
- c) At any stage of the enforcement process, if, in the opinion of the Clerk and/or the Director, Legislative Services and/or Chief Administrative Officer that the matter is of significant consequence, the matter may be brought before Council.

9.0 LEVEL OF INVOLVMENT

- 9.1 In situations where the Officer is involved in a dispute between two or more people, where it has become obvious that the Officer's involvement will not be able to achieve a reasonable resolution to their dispute, the Officer is given the discretion to decide on an appropriate level of further involvement. The level of involvement by the Officer may include a decision to suspend further involvement or take no action

in the dispute. In making a decision as to the level of further involvement with the dispute, the Officer will consult with the Clerk and will have regard to the following criteria:

- ✓ safety factors;
- ✓ history of attempts to mediate by the Officer;
- ✓ coordinating involvement with other relevant agencies;
- ✓ the number of unfounded complaints;
- ✓ apparent attempts to purposely aggravate the situation;
- ✓ complaints that are frivolous and vexatious; and
- ✓ the number of complaints or concerns registered that do not fall within the jurisdiction of the Town and its by-laws.

10.0 PERSONAL INFORMATION AND PRIVACY

- 10.1 As a matter of practice, the identity of the complainant and the written complaint itself shall not be disclosed to the alleged violator or any member of the public. Further, any response from the alleged violator shall not be disclosed in recognition of the fact that many complaints take place in the context of other disputes between neighbors.
- 10.2 The anonymity and confidentiality given to the parties under this policy cannot be assured if any investigation results in court proceedings.
- 10.3 Any requests for personal information will be addressed under Municipal Freedom of Information and Protection of Privacy Act,

11.0 EFFECTIVE DATE OF POLICY

- 11.1 This policy shall take effect on the date approved by Council of the Town of Amherstburg.