



BYLAW COMPLIANCE AND ENFORCEMENT POLICY

Applicability: Electoral Areas

Effective Date: September 13, 2017

PURPOSE:

To establish a protocol for addressing bylaw-related concerns and working proactively with residents to achieve compliance with Cowichan Valley Regional District (CVRD) bylaws. This policy provides procedures for complainants and investigations. It also provides guidance to staff in dealing with bylaw-related complaints within the Electoral Areas in an effort to treat all residents (both complainants as well as alleged offenders) fairly and transparently.

SCOPE:

The process is intended to be progressive in nature with an initial focus on gaining voluntary compliance except where, in the opinion of the CVRD, health, safety or liability concerns necessitates more immediate and significant action(s). Unique circumstances may require alternative options to be considered by either staff or the Board where warranted.

The CVRD will adopt a consistent “common-sense” approach to achieve voluntary compliance. Everyone will be treated with dignity, fairness and respect. All cases will be considered on their own merits. Any response will be appropriate to the scale of the offence. A structured approach to bylaw enforcement will assist the CVRD in guiding citizens who are in bylaw violation to achieve compliance.

POLICY:

The CVRD’s bylaw complaint process has four distinct components:

1. Consideration;
2. Investigation;
3. Compliance Proceedings; and
4. Enforcement Proceedings.

All complainants will be contacted to acknowledge receipt of their complaint and provided with an update of any action taken by a Bylaw Enforcement Officer (BEO).

Appeals against CVRD action in relation to bylaw enforcement must be submitted in writing and addressed to the Manager of Building Inspections & Bylaw Enforcement. Details of the appeals process will be listed further below.

Consideration

All complaints will be considered and investigation files will be opened when deemed appropriate. All complainants **must** be willing to provide basic contact information. When considering the complaint, the BEO may take into consideration:

1. the nature of the complaint;
2. the impact of the violation on the community;
3. the impact of the violation on the complainant and other individuals; and
4. public safety and the urgency required.

Investigation

The preliminary step is to conduct an investigation to determine if there is or has been a bylaw infraction.

1. Complaints

- a. Alleged bylaw infractions shall be directed to the BEO for further investigation. Identities of complainants are protected under the *Freedom of Information and Protection of Privacy Act*. The following conditions may initiate an investigation by the BEO:
 - i. complaints from a member of the public in writing or in person (phone call, email, etc.) complete with their name, contact information, location and type of infraction occurring;
 - ii. observation by a member of staff or the Board of a bylaw infraction;
 - iii. apparent unsafe condition or failure to obtain a permit; or
 - iv. information from a credible third party source, such as a Police Officer, Peace Officer, Island Health Authority, Provincial or Federal Enforcement Official, Agricultural Land Commission, etc.
- b. The BEO may seek out bylaw infractions for issues of public health and/or safety or other bylaw violations during the regular course of their duties.

Note: All complaints received regarding animals are referred to the CVRD's animal control contractor.

2. Resources

- a. Typically, investigations will be conducted by the BEO; however, in some circumstances, it may be necessary to include staff from other Divisions or Departments depending upon the nature of the complaint. In these instances, the BEO, in consultation with the Manager of Building Inspections & Bylaw Enforcement, shall determine what resources are required to investigate the complaint. The Manager of Building Inspections & Bylaw Enforcement is authorized to investigate when required.

3. Property Information

- a. Relevant property information (e.g. ownership, legal description, civic address, zoning, active permits, etc.) will be confirmed upon receipt of the complaint including, where applicable, a review of the Title for the subject property/properties to determine related covenants, easements or rights of way that have been registered on Title that may influence bylaw compliance considerations and actions.

4. Vehicle License Information

- a. The BEO may use vehicle license plate information to trace owner information during the course of an investigation into a bylaw infraction in accordance with the Information Sharing Agreement between the CVRD and ICBC.

5. Recording of Complaints

- a. Where it is determined that a bylaw infraction is occurring, the information will be recorded by a BEO in a CVRD database, with an associated paper file, in compliance with the *Freedom of Information and Protection of Privacy Act*. These records are used to maintain an accurate history of calls, infractions and action(s) taken, and their outcomes relating to addresses, vehicles and individuals. Requests for this information must adhere to the *Freedom of Information and Protection of Privacy Act*. Building Inspections & Bylaw Enforcement Division staff will be responsible for recording complaints.

6. Site Visit

- a. CVRD staff may undertake a site visit to document the alleged bylaw infraction(s). In accordance with the *Local Government Act* and the *Community Charter*, BEOs have the authority to enter a property at reasonable times in a reasonable manner without consent of the owner or occupier. Inspections may include entering onto the property to determine whether local government regulations, prohibitions and requirements are being complied with.
- b. When visiting the exterior of the property, the BEO is not obligated to provide notice and may inspect the property at any time. When visiting a site without notice, the BEO will attempt to advise an owner/occupant that they are on site prior to conducting any site investigation.
- c. When visiting the interior of a personal residence to assess if a bylaw infraction has occurred or is occurring, the BEO will obtain the occupant's and/or property owner's consent to enter or give written notice to the occupant at least 24 hours before entering.
- d. The CVRD may also apply to the Provincial Court for an entry warrant if reasonable requests are refused.

7. Determination

- a. If, following consideration or investigation, no infraction is found to have taken place the complainant and the property owner will be so advised by the BEO and a record of the enquiry will be filed. If the BEO determines that an issue is not a bylaw enforcement matter, the affected parties involved will be notified, the investigation will cease and the file will be closed.
- b. Should the BEO determine that a bylaw infraction is occurring, they are responsible to the complainant for:
 - i. acknowledging receipt of the complaint;
 - ii. describing any steps taken to address the complaint;
 - iii. describing any enforcement action taken or planned or the reasons for no enforcement action; and
 - iv. providing any other relevant information.

Compliance Proceedings

In the event that a bylaw infraction is confirmed, a bylaw compliance file will be created and compliance proceedings will commence in accordance with the provisions set out below:

1. BEOs will maintain relevant documentation, including any investigation notes, communications, rationale, evidence gathering and references to any relevant bylaws. This evidence may be submitted and used in court or form the basis of reports submitted for court consideration.
2. Any response provided by the CVRD will be:
 - a. proportionate;
 - b. legal;
 - c. accountable;
 - d. necessary; and
 - e. justified.
3. Complainant Cooperation
 - a. For enforcement action required beyond verbal or written advice, the complainant must be willing to provide a statement and attend court to attest to their evidence as the primary witness to the infraction.
 - b. This commitment is required if a Municipal Ticket Information (see Enforcement Proceedings 1.a-d) is issued or if court action is initiated.

4. Bylaw Enforcement Logs

- a. The CVRD may request that complainants maintain an infraction log as ongoing evidence of repeat and continuous infractions. This is particularly relevant in noise complaints where the victim is the primary witness.
- b. This evidence will be required should enforcement proceedings be pursued.

5. Voluntary Compliance

- a. Verbal advice and education is the first step towards obtaining voluntary compliance. Should the infraction continue or be repeated the BEO may choose to:
 - i. write a letter and send it to the resident advising them of the alleged infraction;
 - ii. outline the steps required to rectify the situation;
 - iii. provide a timeline for specific actions; and/or
 - iv. provide the resident an opportunity to meet with staff to discuss further the alleged infraction(s).
- b. Individuals who are being investigated will be instructed to cease the activity and be given the opportunity to achieve voluntary compliance before further action is considered except in the case of an imminent health, safety or liability concern where the CVRD may be required to direct or take immediate action(s).
- c. The BEO, in consultation with the Manager of Building Inspections & Bylaw Enforcement or the General Manager of Land Use Services, will outline a required course of action prior to the commencement of enforcement proceedings. Following this, direction will be sought from the Board.

6. Should the CVRD conclude that enforcement proceedings are required due to non-compliance, the rationale behind the decision, including details of the appeals process, will be communicated to the person committing the infraction.

Enforcement Proceedings

In an effort to rectify the bylaw infraction(s), enforcement proceedings will typically commence where and when voluntary compliance cannot be achieved. Measures beyond Municipal Ticket Information may be considered by the Board.

1. Municipal Ticket Information

- a. Where initial voluntary compliance is not achieved, compliance will be sought through issuance of fines in accordance with the Municipal Ticket Information bylaw.
- b. The Manager of Building Inspections & Bylaw Enforcement and the BEO have the authority to issue tickets for various bylaw infractions.

- c. Depending on the nature and severity of the infraction/violation, authorized staff (other than the Manager and the BEOs) may also issue fines immediately under the Municipal Ticket Information bylaw prior to seeking voluntary compliance.
 - d. Where compliance has not been achieved following the issuance of fines under the Municipal Ticket Information bylaw or issuance of a second letter, the BEO may initiate court action to obtain a Court Order to address the infraction and achieve compliance.
- 2. Injunction or Court Order**
- a. Where warranted, the Board may consider undertaking an application for Injunction or a Court Order to stop work and/or force compliance with CVRD bylaws. Generally, Injunctions or Court Orders are only considered for health and safety hazard situations and are subject to the discretion of the CVRD.
- 3. Appeals Process**
- a. Should a member of the public wish to appeal a decision with regard to action taken by the CVRD Building Inspections & Bylaw Enforcement Division, the appeal must be submitted in writing to the Manager of Building Inspections & Bylaw Enforcement.
 - b. Appeal actions by the CVRD may consist of a series of steps:
 - i. Discussion with a BEO to further understand the justification and appropriateness of action taken. At this stage, documented history regarding the citizen will be discussed;
 - ii. Discussion with the General Manager of the Land Use Services Department regarding justification and appropriateness of action;
 - iii. Discussion with the Electoral Area Services Committee regarding justification and appropriateness of action;
 - iv. Seeking legal advice at any stage, and in particular, if an Injunction or Court Order are appealed; and/or
 - v. Seeking an independent adjudicator to provide an unbiased opinion to appeals.
 - c. Once an appeal decision has been reached the complainant will be notified and provided with an explanation of the decision in writing unless they specify that phone call or emails are adequate. Potential outcomes are listed below:
 - i. Enforcement action may cease if corrective action is taken;
 - ii. The ticket may be cancelled should compliance be achieved;
 - iii. Legal advice will be sought for Court Orders or Injunctions; or
 - iv. Other options may be available on a case-by-case basis.

4. Repeat Complaints

- a. CVRD reserves the right not to respond to anonymous complaints, multiple complaints about the same address or complaints about multiple addresses from the same complainant unless public safety is an immediate concern.
- b. In consultation with the Manager of Building Inspections & Bylaw Enforcement, a suitable response will be selected for dealing with such complaints. All complaints will be considered on their own merit to determine the appropriate response. The CVRD will focus on a fair balance between the interests of both the individual making the complaint and those of the broader community.
- c. When handling repeat complaints, the CVRD will review the history of calls regarding the address, the person(s) associated and any action taken. In addition, the facts of the call will be addressed to alleviate any ambiguity and ensure fairness and consistency in the CVRD's approach. All communication with the complainant and alleged offender will be documented and used to make informed decisions about future communication and action. When responding to multiple complaints about the same issue, the CVRD will address each person's specific concerns.
- d. Persistent callers making the same complaint but unwilling to provide evidence/statement(s) will be advised that their calls cannot be further investigated without their evidence and commitment to attest in court. As such the file will be closed and no further complaints accepted in relation to that complaint.
- e. Should the CVRD decide to disregard complaints due to their frivolous or repetitive nature, this decision is to be clearly communicated in writing to the complainant. The CVRD will not limit or prevent other necessary contact with staff that is unrelated to the person's complaints.
- f. CVRD staff will not tolerate verbal abuse or inappropriate behaviour. Members of the public acting in such a manner will be advised accordingly.

Approved by: CVRD Board Approval date: September 13, 2017
--