



# Corporation of the City of Fernie

501-3<sup>rd</sup> Avenue, Box 190, Fernie, B.C. V0B 1M0

(T) 250.423.6817 | (F) 250.423.3034 | (E) [cityhall@fernie.ca](mailto:cityhall@fernie.ca) | (W) [www.fernie.ca](http://www.fernie.ca)

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**Policy Title:** Bylaw Enforcement & Response to Citizen Complaints

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**Department:** Corporate Administration Services

**Approval Date:** 25-Aug-2014

**Approved By:** Regular Council Meeting

**Amended Date:** 23-Oct-2017

**Approved By:** Regular Council Meeting

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## PURPOSE OF POLICY

To provide a formal process governing the handling and management of bylaw complaints received by the municipality and to ensure thorough, prompt and courteous receipt, processing, investigation and resolution thereof. In order to encourage only valid complaints and to reduce the opportunity for intimidation and neighbourhood conflict, the City of Fernie wishes to establish a policy with a balance of accountability and confidentiality among the various parties to this process.

## SUMMARY

The City of Fernie does not have the resources to formally review all properties on a regular basis in order to determine whether or not its various bylaws are being complied with at all times. Therefore, it is the policy of the City of Fernie to rely on citizen complaints as a means of enforcing its bylaws. However, Bylaw Services shall patrol neighbourhoods on a daily basis to encourage voluntary compliance with a focus on seasonal issues such as unsightly properties, graffiti, unleashed dogs, bear aware/garbage, camping in parks, winter parking regulations, etc.

## SCOPE AND APPLICABILITY

This policy applies to bylaw complaints and violations only, and shall govern actions of City of Fernie municipal employees and elected officials in relation to violations of municipal bylaws only. It does not apply to complaints to the Office of the Ombudsperson or the Office of the Information & Privacy Commissioner in relation to requests for information under the *Freedom of Information & Protection of Privacy Act*.

## POLICY STATEMENT

The City of Fernie operates, and is seen to operate, in an environment of respect and professional behaviour and is committed to the thorough, prompt and courteous receipt, processing, investigation and resolution of formal complaints within a reasonable amount of time in accordance with the appropriate process and procedures.

## OBJECTIVES

The objectives of this policy are to:

- Provide a system to effectively investigate expressed citizen concerns related to alleged bylaw violations;
- Develop an organizational culture that accepts complaints as an opportunity to improve the service to the community and public awareness;
- Ensure commitment to efficient and reasonable resolution of complaints;
- Ensure the privacy and fair treatment of complainants;
- Ensure the privacy and fair treatment of members of Council, City employees, contractors and volunteers in relation to bylaw complaints; and
- Provide a framework for the recording of complaints to assist with continuous improvement of Council's policies and City work practices.

Opportunities for continuous improvement of processes and procedures can be identified, implemented and thereby improve municipal service.

## RECEIPT OF COMPLAINT

The City of Fernie will only respond to formal complaints received from a complainant who has provided their full name, address and contact information. Anonymous complaints will not be investigated due to limited staff resources.

Formal complaints can be submitted in person at City Hall, 501-3<sup>rd</sup> Avenue; by email to [cityhall@fernie.ca](mailto:cityhall@fernie.ca); by fax to 250.423.3034; or online through the City's online reporting system, [Report Problem / Request Service](#), at [www.fernie.ca](http://www.fernie.ca). Complainants are encouraged to provide their email address so that they can be provided electronically with a tracking link to follow the progress made on their complaint. It shall be the responsibility of the complainant to follow up on the progress of their complaint either online or by contacting Bylaw Services at 250.423.6817 or by email at [bylaw@fernie.ca](mailto:bylaw@fernie.ca).

In all cases, the complainant shall be encouraged to provide the complaint in their own words, detailing the "who", "what", "where", "when" and "why" of the situation and detailing the described outcome, but City staff may provide assistance if required.

Complaints related to privately owned premises are required to be provided in writing. Spite complaints, or complaints based on neighbour disputes will not be accepted.

## CONFIDENTIALITY

The complainant shall be assured that their name and any personal information provided by them will remain in the strictest confidence in accordance with the *Freedom of Information and*

*Protection of Privacy Act* and will not be revealed to anyone unless so ordered by a Court of competent jurisdiction.

Despite the abovementioned, the City shall not guarantee the anonymity and confidentiality of complainants and may disclose personal information in bylaw enforcement files under the following circumstances:

1. If the complaint has been publicly disclosed by the complainant;
2. If the investigation results in legal proceedings;
3. If disclosure is required pursuant to the provisions of the *Freedom of Information and Protection of Privacy Act*;
4. If an order for disclosure is used by the Information and Privacy Commissioner under the *Freedom of Information and Protection of Privacy Act*;
5. As required by law.

## LEGISLATIVE PROVISIONS AND REQUIREMENTS

Specific provisions are contained within the relevant provincial legislation and municipal bylaws relating to the appointment of authorized Bylaw Enforcement Officers, powers of entry, inspections and investigations, appeals and penalties as identified under [Related Legislation](#) and [Related Policies, Procedures, Agreements, etc.](#)

## INVESTIGATION OF ALLEGED OFFENCES AND BREACHES

For the purpose of this policy, a “Bylaw Enforcement Officer” includes the RCMP, municipal officer, employee, agent or any other person authorized by Council to enforce City bylaws. A bylaw enforcement officer may undertake an investigation on their own initiative upon observation of a possible situation of a bylaw violation.

Where possible, service requests or complaints regarding regulatory matters will be investigated and acted upon within a reasonable timeframe and it shall be the complainant’s responsibility to be kept informed of progress status through the City’s online reporting system, [Report Problem / Request Service](#). However, the response of the individual whose property is under investigation may not be disclosed to the complainant. Complainants are encouraged to keep the Bylaw Enforcement Officer apprised of the status of their complaint, if the situation improves, worsens or stays the same.

All complaints and alleged unlawful activities will be investigated by a Bylaw Enforcement Officer, except where:

- Advice has been provided to relevant parties and no further investigation is necessary;
- The matter has already been investigated and resolved to the satisfaction of the relevant Director or Chief Administrative Officer;

- The City is not the appropriate authority or has no jurisdiction to take regulatory action in relation to the particular matter;
- The activity is considered to be lawful without further investigation;
- The complaint is considered to be trivial, frivolous or vexatious; or
- The relevant Director or Chief Administrative Officer has determined that investigation and/or regulatory action is not warranted (ie. Action would be unreasonable or not in the public interest).

If a decision has been made not to investigate or act upon a complaint or matter, the complainant must then be advised of the decision and the reasons for not taking further action.

### **DETERMINING APPROPRIATE ACTION AND ENFORCEMENT**

A range of matters are required to be taken into consideration when determining the appropriate course of action and enforcement of a regulatory matter, including:

- 1) The nature, extent and severity of the offence or breach;
- 2) The impact or potential impact of the offence or breach upon the environment;
- 3) The impact or potential impact of the offence or breach upon the health, safety and amenity of the community;
- 4) Whether or not the breach is of a technical, inconsequential or minor nature;
- 5) Whether or not Council is legally prohibited from taking action;
- 6) The time period that has lapsed since the date of the offence or breach;
- 7) Whether or not the breach has been remedied or rectified;
- 8) Whether or not an informal warning or provision of education would be appropriate in the circumstances;
- 9) Whether or not the particular matter satisfies relevant regulations, standards and requirements (ie. BC Building Code);
- 10) Whether or not the person has demonstrated contrition;
- 11) Whether or not the person has been proactive in the resolution of the matter and assisted with any requirements and instructions;
- 12) Whether or not a relevant development approval has been authorized or sought for a particular matter (ie. Development variance permit);
- 13) Whether or not any previous warnings, instructions or advice was provided which has not been followed;
- 14) Whether or not it was likely that consent would have been issued for the particular matter is consent was sought;
- 15) Whether or not any relevant requirements have been or will be satisfied to address or minimize any potential impacts of the particular matter;

- 16) Whether or not it was likely that the person was aware or should have been aware of the relevant regulatory provisions and requirements;
- 17) Whether or not the person has demonstrated genuine mitigating circumstances or hardship;
- 18) Whether or not the action would be reasonable and proportionate in the particular case;
- 19) Whether or not the City has sufficient admissible evidence to prove each element of the offence or breach;
- 20) The likely chances of success if the enforcement action was challenged in court;
- 21) The costs and benefits of taking enforcement action or implementing proceedings (ie. Cost of proceedings, allocation of extensive staff resources compared to the likely outcome);
- 22) The circumstances of the particular case; or
- 23) The public interest.

## ENFORCEMENT OF OFFENCES & BREACHES

The issuance of fines for breaches and non-compliance with City regulatory bylaws shall follow the phased approach identified in the [Municipal Bylaw Education and Enforcement Implementation Plan](#). It is the City's intent to educate the public to encourage voluntary compliance with the City's regulatory bylaws.

A Bylaw Enforcement Officer may undertake an investigation on their own initiative upon observation of a possible situation of a bylaw violation. The [Seasonal Bylaw Enforcement Priorities](#) identify the types of bylaw infractions to be monitored by a Bylaw Enforcement Officer on a seasonal basis, by order of priority.

### 1. Offences

Specific provisions for offences are contained within relevant City bylaws and provincial legislation.

Offences include, but are not limited to:

- Failure to comply with a particular bylaw regulatory provision;
- Failure to obtain a permit or licence where required;
- Carrying out development or other activity contrary to relevant bylaw requirements, development or other approvals;
- Failure to comply with the terms of a stop work order;
- Causing a public nuisance; or
- Parking a vehicle contrary to the [Streets and Traffic Bylaw](#).

## 2. Warnings

Upon determining that there is a violation of a municipal bylaw (excluding set fine situations of documented chronic violations or where otherwise warranted; or Dog at Large violations), the Bylaw Enforcement Officer shall proceed to the enforcement stage by providing an initial warning to the suspect/violator preferably by at least two (2) of the three (3) means in accordance with the [Municipal Bylaw Education and Enforcement Implementation Plan](#):

- (a) in person; or
- (b) by telephone; and,
- (c) in writing/email.

The Bylaw Enforcement Officer shall proceed directly to the penalty stage after steps have been taken to educate the public on the City's bylaws. Where provided for by bylaw or otherwise, a Bylaw Enforcement Officer may issue an emergency order to remedy a violation in lieu of a warning when such violation poses an immediate threat to health or safety.

## 3. Enforcement & Action Related to Unsightly Properties

In response to a citizen complaint or upon observation of an unsightly property, the Bylaw Enforcement Officer shall give notice to property owner(s) to clean up their property within a reasonable amount of time of not less than five (5) business days.

If the owner(s) fails to take action within the specified time a municipal ticket shall be issued for non-compliance and authorization by Council for the City to complete the work shall be sought by City staff. All fees incurred by the City would be payable by the property owner.

- a) Authorization is obtained by resolution of Council directing the City to complete the work and invoice the property owner(s) for the fees incurred by the City to complete that work.
- b) A notice is sent to the property owner(s) advising of the date that the City will be entering his property to complete the work.
- c) If the owner(s) continues to fail to take action by that date, City staff or contractor hired by City shall complete the work on the date indicated in the notice and invoice the owner(s) for all fees incurred by the City.
- d) Any unpaid fees would be added to the owner's municipal tax bill.

## 4. Enforcement Action Related to Dogs at Large

The Bylaw Enforcement Officer shall enforce *Dog Licencing, Regulating and Impounding Bylaw No. 1995*, s. 13 Control of Dogs, subsection (a) and (b) by means of a ticket in the prescribed form without prior warning for the offence. *(Amendment No. 1, Feb 22-2016)*

## 5. Enforcement Action Related to Short-Term Rentals

Notwithstanding section 3 above, the Bylaw Enforcement Officer shall enforce the *Business Licencing and Regulation Bylaw* as it pertains to the illegal operation or advertising of Short-

Term Rentals by means of a ticket in the prescribed form without prior warning for the offence.

## 6. Penalties

A person is guilty of a contravention of City bylaws and commits an offence who:

- Violates provisions of City bylaws;
- Causes or permits any act or thing to be done in contravention or violation of any provisions of City bylaws;
- Neglects or omits to do anything resulting in a contravention of City bylaws.

For each day that a contravention of a City bylaw occurs, such shall constitute a separate and distinct offence.

Every person who commits an offence under a City bylaw is liable to:

- A fine and penalty of not more than \$1,000.00 and not less than \$30.00 for each offence if issued a violation ticket;
- A fine and penalty of not more than \$10,000.00 and not less than \$500.00 for each offence if prosecuted pursuant to the provisions of the *Offence Act*, R.S.B.C., Chapter 338.

Fines for violation of City bylaws are listed as Appendices to Schedule 1 of the [Municipal Ticket Information Bylaw](#). Municipal tickets that have not been disputed within fourteen (14) days or paid within thirty (30) days will be sent for collection.

## 7. To Dispute a Municipal Ticket (MTI)

To dispute a bylaw ticket, the disputant must complete the [MTI Ticket Dispute Form](#) (see Schedule "A") within 14 days of receiving the ticket. Forms are available online or at City Hall.

The person disputing the ticket (disputant) will have the opportunity to speak with a Bylaw Enforcement Officer or the City Clerk. The ticket will be reviewed and cancelled if appropriate. Once the form has been submitted, the dispute will be reviewed and the disputant will be notified of the decision within seven (7) business days.

If the ticket is not cancelled, the matter will go to hearing before a Judge in Provincial Court.

## 8. Education and Awareness

The City shall take steps to educate the public on the City's bylaws through periodic advertising in the local newspaper, the City's website and reminder notices to be posted on the City's public notice posting places to encourage voluntary compliance.

## REPORT PROCESS

The Bylaw Enforcement Officer will provide regular monthly reports to Council regarding bylaw enforcement activities.

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<b>Related Legislation:</b>	<a href="#">Part 8, Community Charter, [SBC 2003] Chapter 26</a> <a href="#">Community Charter Bylaw Enforcement Ticket Regulation</a> <a href="#">Offence Act, R.S.B.C., Chapter 338</a>
<b>Related Policies, Procedures, Agreements, etc.:</b>	<a href="#">Municipal Ticket Information Bylaw No. 2041</a> Seasonal Bylaw Enforcement Priorities Daily Park & Neighbourhood Patrol Log Municipal Bylaw Education & Enforcement Implementation Plan Municipal Bylaw Response & Enforcement Procedure Guide
<b>Communication Strategy:</b>	Regular advertisements shall be placed in the Free Press and notices posted on the public notice places and the City's website.

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SCHEDULE "A" – MTI TICKET DISPUTE FORM



THE CORPORATION OF THE CITY OF FERNIE  
MTI Ticket Dispute

\*\*\*This Does Not Guarantee the Ticket Will Be Re-Assessed\*\*\*

I dispute the charges indicated within Municipal Ticket Information

Ticket # \_\_\_\_\_

Date of Offence: \_\_\_\_\_

I am eighteen (18) years of age (please check one)  Yes  No

Licence Plate# (if applicable): \_\_\_\_\_

Location of Offence: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Outstanding Fine Amount: \_\_\_\_\_

Name (please print): \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Daytime phone# \_\_\_\_\_ Work Phone # \_\_\_\_\_

***For the Provincial Court to provide you with Notice of Hearing date, it is important that a complete mailing address and telephone number are provided***

Details of Dispute: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

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PO Box 190, 501-3<sup>rd</sup> Avenue, Fernie, BC V0B 1M0  
Tel. (2500 423-6817, Fax (250) 423-3034