

<b>TITLE:</b>	<b>BYLAW ENFORCEMENT PROCEDURE POLICY</b>		
<b>SECTION:</b>	<b>Council Organization and Process</b>	<b>POLICY No.</b>	<b>II-141</b>
<b>Adopted:</b>	January 25, 2016	<b>Resolution:</b>	024/2016
<b>Amended:</b>		<b>Resolution:</b>	

Municipal bylaws are enacted by Council, under the regulatory authority of the Community Charter and the Local Government Act. The primary goal in dealing with contraventions of these bylaws is to achieve **voluntary compliance** through communication and education; however, the bylaws do include provisions for further enforcement. The District of Highlands has no duty to take enforcement action with respect to every contravention of a bylaw that may occur within its jurisdiction. The District will use discretion on a case-by-case basis to evaluate contraventions, and take reasonable steps to investigate contraventions in accordance with this policy and operational guidelines of the District.

#### 1. REASON

The objective of the Bylaw Enforcement Policy is to obtain compliance with municipal bylaws through effective enforcement based on consistency and fairness.

#### 2. PROCESS

The District of Highlands does not have the resources or mandate to proactively review or inspect properties on a regular basis in order to determine whether its various bylaws are being complied with at all times. Given this, the District, like most municipalities, relies primarily on public complaints to identify potential non-compliance.

All bylaw enforcement complaints **must be submitted in writing**, with the exception of those that identify urgent contraventions (health and safety), before they will be considered for investigation. All complaints must include complete contact information for the complainant (name, address and telephone number). The complaint can be in the form of a letter, the District's complaint form or an email. The District will generally not respond to anonymous complaints.

Information regarding the complainant is kept confidential and is protected under the *Freedom of Information and Protection of Privacy Act*. However, a complainant may be identified if the issue proceeds to court and the complainant is required to act as a witness for the prosecution.

District of Highlands staff are not required to report bylaw violations observed unless it is during regular work hours, within that employees scope of duty and where the violation poses a risk to public health and safety or the environment.

### 3. INVESTIGATION

In response to a complaint staff will assess and investigate to determine compliance with District bylaws. The investigation may include a bylaw and file review, contacting the alleged contravener, contacting the complainant, and conducting a site inspection. **This initial investigation shall occur within five business days of receiving the complaint.**

If a violation is identified, the contravener will be instructed to take action to resolve the issue immediately or within a specified time period. Generally this time period will be **up to thirty days**. If further action is required to resolve the infraction, a bylaw file is subsequently created to track the violation, assessment, enforcement and outcome.

While encouraging compliance with District bylaws is important, staff safety is paramount. If a staff member is verbally or physically threatened while administering bylaws, then no further investigative action shall be carried out until a police officer accompanies the staff member on site inspections. Authorization requirements to enter a property or building will be followed as per Section 16 of the *Community Charter*. Tenant rights as specified in the Residential Tenancy Act will be respected during enforcement.

### 4. ASSESSMENT CRITERIA

When assessing the priority of the bylaw violation, staff will consider, but are not limited to, matters such as:

- potential risk to public health and/or safety;
- magnitude, nature and duration of the contravention;
- history of non-compliance on the property or by the contravener;
- potential short and long term impact on a structure, the community and the environment;
- potential for setting a precedent;
- resources available to resolve the matter;
- potential costs and liability associated with enforcement action; and,
- likelihood of obtaining the desired results.

## 5. ENFORCEMENT PRIORITY

To maintain consistency throughout the bylaw enforcement process, the staff members involved will meet as necessary to review file details. The bylaw violation will be assessed in accordance with the following hierarchy of priority levels.

### ***Low Priority***

**A bylaw violation unlikely to cause health or safety issues or negatively impact the community or the environment**

**Examples** of bylaw violations that may be considered as ***Low Priority*** would be:

1. Minor renovations without a building permit, where there are no concerns relating to health and safety; and the use and building comply with the Land Use Bylaw
2. Violation of municipal parks bylaw (Eagles Lake)
3. Minor encroachment into a setback
4. Noise bylaw violation

### ***Medium Priority***

**Multiple low priority violations or a bylaw violation with potential to cause health and/or safety issues and/or negatively impact the community or the environment**

**Examples** of bylaw violations that may be considered as ***Medium Priority*** would be:

1. Remove or deposit soil without a permit
2. Unsightly premises
3. Burning without permit
4. Noise bylaw violation (depending of circumstances)

### ***High Priority***

**Multiple medium priority violations or a bylaw violation likely to cause health and/or safety issues and/or negatively impact the community or the environment**

**Examples** of bylaw violations that may be considered as ***High Priority*** would be:

1. Construction without a building permit where there are multiple code infractions relating to safety
2. Non-conforming land use, development without a permit, encroachment into a development permit area
3. Remove or deposit soil without a permit within a Development Permit Area
4. Inadequate exiting and/or fire protection due to building alterations without a permit
5. Tree cut without permit, located in a Development Permit Area

## 6. ENFORCEMENT TOOLS

When compliance cannot be achieved through initial enforcement, staff may escalate enforcement by first determining the appropriate tools with which to do so. Examples of violations and the various options available to the District are provided below (see also Schedule A).

### **Stop Work Order**

Where a particular bylaw provides authority, a District official may order the cessation of any work that is proceeding in contravention of a bylaw by posting a Stop Work notice.

### **Municipal Ticket Information (MTI)**

The Municipal Ticket Information (MTI or municipal ticket) can be used for the prosecution of minor local government bylaw matters. The MTI is completed and personally delivered by an enforcement officer to the alleged offender. The alleged offender has the option of admitting the offence and paying the penalty within a specified time period, or disputing the offence and waiting for a court appearance. The MTI is typically used when it is felt that the ticket will be paid and will provide incentive to the offender to comply; however, MTI collections and enforcement can be expensive for the District.

### **District Solicitor involvement**

The District Solicitor may provide the contravener with a warning letter, and/or, if authorized by Council, will initiate court proceedings.

### **Section 57**

Under specific circumstances, such as a building bylaw contravention related to permits, inspections or safety, a building inspector may recommend to Council that it consider a resolution to place a notice on the title of a property as permitted in Section 57 of the Community Charter.

### **Remedial Action**

Council may impose remedial action requirements in relation to hazardous conditions, declared nuisances, or harm to drainage. A remedial action requirement may be imposed on the owner or lessee of the matter or thing, and/or the owner or occupier of the land on which it is located. A remedial action requirement may require the person to remove or demolish the matter or thing; fill it in, cover it over or alter it; bring it up to a standard specified by bylaw, or otherwise deal with it in accordance with the directions of Council or a person authorized by Council.

## Prosecution by Long Form Information

Section 263 of the *Community Charter* authorizes a municipality to proceed with a quasi criminal prosecution of a bylaw offence with a maximum fine of up to \$10,000. Local governments can commence proceedings under the *Offence Act* in B.C. Provincial Court by swearing an information before a court official that sets out the details of the offence. The information must be served on the accused, and once it is served, the offence comes under the jurisdiction of the Provincial Court. However, as provincial Crown Counsel will not prosecute bylaw offences, municipalities shall either hire their own lawyers, or enforcement officers could act as prosecutors. Although long-form prosecutions involve a lengthy Provincial Court process, they are appropriate for major offences if a larger fine is warranted. In addition to the penalty imposed, the court may make a compliance order prohibiting the offender from repeating the offence as well as directing the offender to remedy any harm done. Council approval may be required prior to commencing proceedings.

### Consent Order

This is an order where legal proceedings have commenced, however, prior to appearing before a judge or master of the court, the parties agree to a Consent Order. Once the order is signed by all parties it is then registered with the court and has the same effect as a court order. Council approval is required prior to filing the initial statement of claim, and may also be required to accept the terms of a consent order.

### Injunction proceedings

An injunction is a Supreme Court Order directing a person to do, or not to do, a specified act. Council approval is required prior to seeking an injunction.

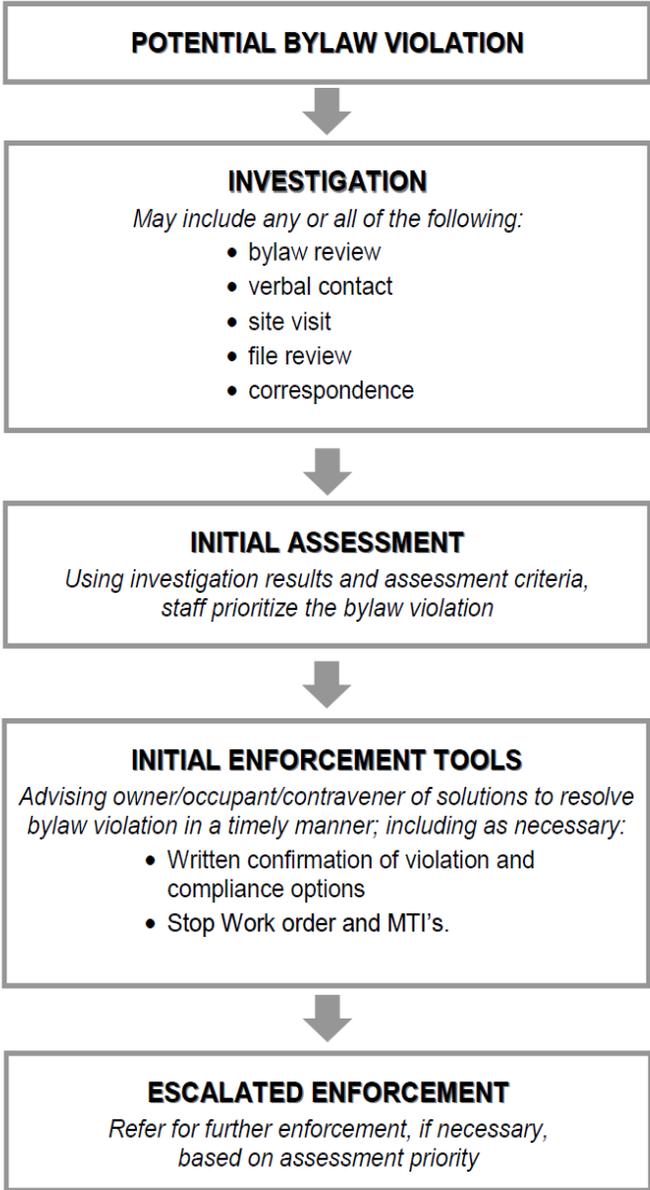
## 7. PROCEDURE

To guide staff through the enforcement procedure, flow charts have been created outlining the possible steps to compliance (Schedule B).

Where illegal or unauthorized activity has not ceased, or where compliance is not achieved through voluntary compliance or initial enforcement, a report will be brought forward to Council. The report will indicate options for further action and may request approval to commence legal proceedings. Council will decide whether to provide funding for legal action, decline to do so, or recommend other actions. Staff, with the assistance of legal counsel, will follow up with Council's motion to initiate legal proceedings. At the end of the proceedings, and the resolution of the bylaw violation, the file will be closed.



# BYLAW VIOLATION



# LOW PRIORITY

**CONFIRM ASSESSMENT**

*Based on investigation, previous assessment, and any recent events, staff confirm LOW priority.*



**WRITTEN NOTIFICATION**

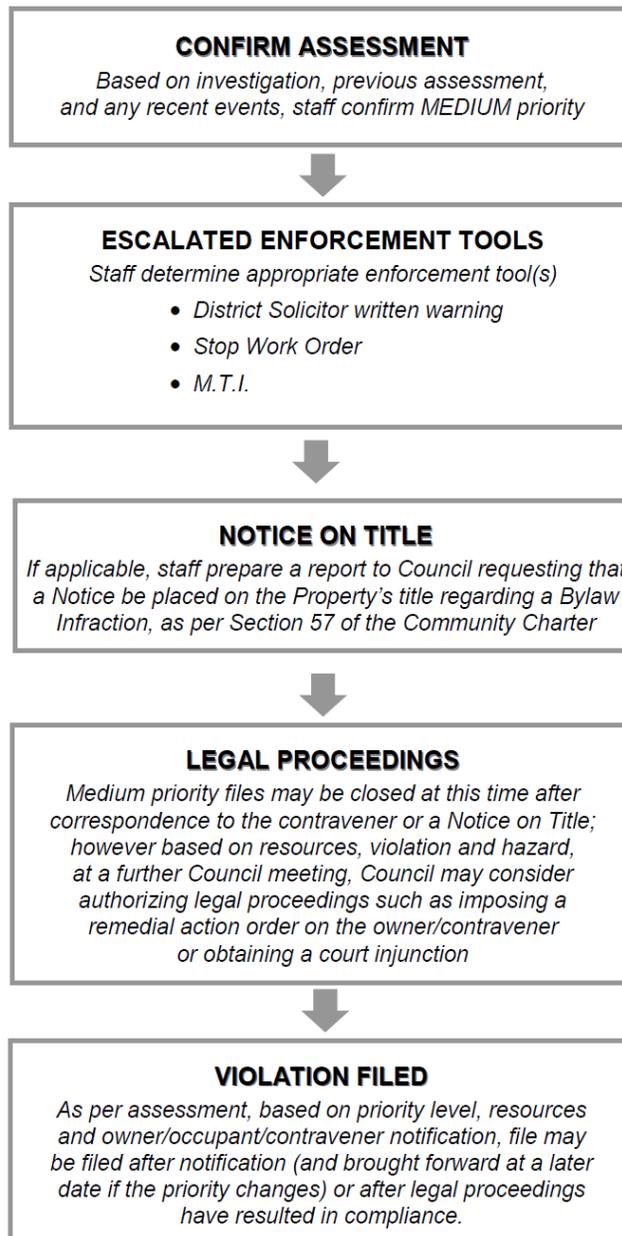
*If compliance has not been achieved, staff will again remind owner/occupant/contravener of the requirement to comply with District Bylaws, and advise of possible further action including MTI and Notice on Title if warranted. In the meantime, the District is not authorizing or approving the current violation, nor taking immediate further action.*



**VIOLATION FILED**

*As per assessment, based on priority, district resources and owner/occupant/contravener notification, violation may be filed at this time, but could be brought forward if priority changes.*

# MEDIUM PRIORITY



# HIGH PRIORITY

