

The Corporation of the City of Port Colborne

By-Law No. _____

Being a By-law to Adopt a Municipal By-law Enforcement Policy

Whereas Section 8 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, (the "*Municipal Act*") provides that the powers of a municipality shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues; and

Whereas Section 9 of the *Municipal Act* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purposes of exercising its authority under the *Municipal Act* or any other Act; and

Whereas Section 11(2)2 of the *Municipal Act* permits a municipality to pass by-laws respecting accountability and transparency of the municipality and its operations; and

Whereas Section 11(2)6 of the *Municipal Act* permits a municipality to pass by-laws respecting the health, safety and wellbeing of persons; and

Whereas Section 11(2)8 of the *Municipal Act* permits a municipality to pass by-laws respecting the protection of persons and property, including consumer protection; and

Whereas Council of the City of Port Colborne wishes to enact a policy in respect of by-law enforcement;

Now therefore the Council of The Corporation of the City of Port Colborne enacts as follows:

1. That the Municipal By-law Enforcement Policy attached to this By-law as Schedule "A" is hereby adopted; and
2. That this by-law shall come into force and take effect on the day that it is passed by Council.

Enacted and passed this _____ day of _____, 2021.

William C. Steele
Mayor

Amber LaPointe
City Clerk

Schedule “A” to By-law _____

City of Port Colborne

By-law Enforcement Policy

Part I Purpose

The City of Port Colborne (the “City”) is committed to ensuring compliance with municipal by-laws and providing enforcement in a timely, fair and efficient manner.

The City’s goal is to ensure compliance with municipal by-laws through both:

- Education
- By-law enforcement

The purpose of this policy is to set out a guide to govern the processing of municipal by-law education and enforcement within the City. The overriding goal is to ensure a fair, uniform and standardized process in respect of receipt and processing of complaints, and administration, investigation and enforcement.

Port Colborne shall pursue enforcement based on a modified proactive model. By-law enforcement will generally be complaint driven. However, in respect of matters pertaining to public health and safety, enforcement shall be pursued on a proactive basis in terms of priority matters and provided sufficient resources exist.

Enforcement will generally be through either (i) the issuance of *Provincial Offences Act* proceedings; or (2) the municipality’s framework for an administrative penalty system (“AMPS”). AMPS is a process in which the City imposes a penalty directly upon an offender within the context of an administrative process as opposed to the Province’s *Provincial Offences Act* process. The AMPS process allows the City to have an administrative process as opposed to a Court based punitive process in terms of enforcement options. The City’s enforcement will be primarily through the administrative monetary penalty process.

Where an administrative penalty is insufficient, by-law contraventions are to be dealt with through Provincial Offences proceedings. The AMPS, however, will enable the municipality to resolve disputes in a timely and efficient manner.

Subject to the terms of this policy, the mode of enforcement will be left to the discretion of by-law enforcement staff.

Where there is a conflict between a provision of this policy and a provision of a by-law or legislation, the provisions in the by-law or legislation shall prevail.

Failing to comply with any provision of this policy shall not invalidate any proceeding, document or order in a proceeding otherwise in accordance with any municipal by-law, any provincial or any federal legislation.

This Policy applies up to but not including the point in which any Penalty Notice, Provincial Offences or any other court proceedings is commenced.

Part II Municipal Enforcement Goals and Objectives

The City's main goals are:

1. To ensure public health and safety;
2. To ensure that enforcement measures are conducted properly;
3. To ensure that there is adherence to a policy or protocol that identifies priorities and is applied in a fair and efficient manner;
4. To ensure the appropriate allocation of resources;
5. To ensure investigations are carried out in a proper manner according to law;
6. To ensure that there is no political or other interference in the enforcement process.

Part III Definitions

“City” includes the City of Port Colborne;

“Clerk” means the Clerk of the City of Port Colborne;

“Complaint” means a complaint received by the City in circumstances in which a complainant provides a full name, address, phone number and the nature of a complaint which can be verified by municipal by-law enforcement staff in writing in the form provided by the municipality;

“Frivolous Complaint” means a complaint submitted with ill will or with the intention of malice toward another person and may include retaliatory complaints and civil disputes. A frivolous complaint includes a complaint that is part of a pattern of conduct that amounts to an abuse of the complaint process. A complaint may be deemed a frivolous complaint where 3 or more complaints are made to the City on matters that have been already dealt with by a municipal law enforcement officer. Deeming a matter, a frivolous complaint shall be at the decision of the Clerk in consultation with a Municipal Law Enforcement Officer;

“Municipal Law Enforcement Officer” means a person appointed by the City for the purposes of municipal by-law enforcement, including but not limited to a building

inspector, a Municipal Law Enforcement Officer, a police officer and any other person authorized by Council with the responsibility for enforcing or administering this policy;

Part IV Prioritization of Complaints

Schedule “1” to this Policy contains a priority scale which is intended to be used as a rating system to establish the priority of complaints and a reasonable time frame in which a complaint can be processed and resolved.

Council recognizes that for each particular case, there are a number of factors, which may affect the timing and outcome of an investigation and resolution. However, in approaching by-law enforcement, the City will be guided by the by-law priority scale attached as Schedule “1” to this policy.

The priority scale and associated timing is a guide. The failure to follow the priority scale in Schedule “1” does not affect any Penalty Notice, Provincial Offences or any other proceeding.

Part V Investigation

The City shall only respond to complaints received from a complainant. Anonymous and/or incomplete complaints shall not be investigated.

To give effect to the City’s desire for a stepped up or proactive enforcement in respect of public health and safety matters, a Municipal Law Enforcement Officer may undertake an investigation on their own initiative upon observation of any circumstances of a by-law violation where a matter is an immediate threat to health or safety. These enforcement initiatives shall proceed with “By-law” denoted as the complainant.

The name and address of any complainant is confidential and is subject to the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*. Under no circumstances shall the name of a complainant be intentionally divulged to any member of Council, any non-essential municipal staff, the public or the media unless required by the order of any Court or tribunal. Similarly, persons who are the subject matter of the complaint are also protected under the provisions of the *Municipal Freedom of Information and Protection of Privacy Act* and their personal information shall not be intentionally divulged to any of the above, subject only to an order of a Court or tribunal.

Upon receipt of a complaint, municipal staff will circulate the complaint internally to be dealt with by the appropriate department.

Upon receipt of a complaint, if necessary, a Municipal Law Enforcement Officer may contact a complainant for additional information.

A Municipal Law Enforcement Officer shall attend the site/property that is the subject matter of a complaint, in accordance with the entry provisions set out in the respective provincial legislation or by-law.

Where a Municipal Law Enforcement Officer is unable to determine whether reasonable and probable grounds exist in respect of a possible contravention, they may consult the municipal prosecutor or solicitor or the appropriate municipal staff member. In doing so, the Municipal Law Enforcement Officer shall respect the privacy of both the complainant and the subject of the investigation and only divulge necessary information.

Part VI Enforcement Options

Where a Municipal Law Enforcement Officer has determined that a contravention of a by-law exists, the Municipal Law Enforcement Officer may provide an initial warning.

In the alternative, in situations where an administrative monetary penalty or a *Provincial Offences Act* set fine has been established for violations of the particular by-law, a Municipal Law Enforcement Officer may, upon confirmation of the existence of the violation, issue an offence notice or penalty notice.

Notwithstanding any provision of this Policy, where provided for by by-law or provincial legislation, a Municipal Law Enforcement Officer may issue an emergency order to remedy a violation in lieu of an initial warning or offence notice/penalty notice when a violation poses an immediate threat to health or safety.

Where a warning has been obeyed and compliance is achieved, a Municipal Law Enforcement Officer shall enter a complaint finalized date and close the file.

If a warning has not resulted in compliance, the Municipal Law Enforcement Officer may proceed as follows

1. The Municipal Law Enforcement Officer may issue a second warning, which warning may identify timelines for compliance;
2. The Municipal Law Enforcement Officer may issue a penalty notice or a Provincial Offences notice; or
3. The Municipal Law Enforcement Officer may determine to proceed by way of a Part III Provincial Offences Information.

Nothing in this policy affects any decision by the City to pursue enforcement of any municipal matter before the Courts, including but not limited to Superior Court Injunction proceedings.

In determining how to proceed, a Municipal Law Enforcement Officer shall consider:

1. The nature of the offence and whether or not there is any potential for injury or property damage.
2. Whether or not there is a history of non-compliance.

3. In addition, other facts that the Officer believes, acting reasonably, are relevant.

Vexatious complaints grounded in a neighbour dispute shall not be investigated by a Municipal Law Enforcement Officer unless there is an immediate threat to health and safety or the potential for property damage.

Where there are multiple complaints from a single person or where a single person submits complaints to the City on an ongoing basis, the Municipal Law Enforcement Officer, in consultation with the Clerk and/or solicitor, shall have the discretion to decide on the appropriate level of a response to such complaints.

In making a decision on the appropriate level of response to such complaints, staff shall have regard to the following criteria:

1. Health and Safety factors;
2. Potential property damage;
3. Potential impact on the complainant;
4. Potential impact on the neighbourhood;
5. Available resources; and
6. History of complaints in respect of the same matter.

A Municipal Law Enforcement Officer may re-visit any decision not to respond to a complaint or enforce a by-law or a decision and any decision may be revisited at any time.

All complaints received by the City will be acknowledged and the complainant shall be advised that the complaint will be processed in accordance with this Policy

Part VII General Provisions

The Niagara Regional Police Service shall be contacted for all emergency situations including, but not limited to, loitering, trespassing, noise related neighbour or domestic disputes, vandalism or possible criminal activity.

Council may establish priorities for enforcement, enact by-laws, and adopt by-law enforcement policies, such as this Policy, but Council shall not get involved in day-to-day by-law enforcement decisions.

Specifically, individual members of Council shall not become involved in any matter after a complaint is initiated or after any type of enforcement initiative. If a member of Council wishes to make a complaint, they shall do so in the normal course as contemplated by this policy and be treated as every other complainant.

Council shall review this policy at minimum every three years.

By Law Priority Scale Schedule 1

This is intended as a rating system to be used by By-law Services to establish a reasonable time frame in which a Formal Request or Complaint could be received, processed and resolved. Times may vary for each for each particular case depending on a number of factors which may affect the outcome of the investigation and resolution.

Priority Scale

| Risk Rating Score | 46 to 64 | 25 to 42 | 12 to 24 | 5 to 10 | 0 to 4 |
|--|------------------|----------------|-----------------|----------------|-----------|
| Time to Resolve | 1 Immediately | 2 1-2 weeks | 3 2-4 weeks | 4 4-6 weeks | 5 open |
| Typical Priority Rating | | | | | |
| Typical Complaint | | | Priority | | |
| Building without a permit | | | | | |
| Business in a residential area | | | | | |
| Dumping | | | | | |
| Property standards | | | | | |
| Dogs barking | | | | | |
| Snow/Ice problems | | | | | |
| Fences | | | | | |
| Pool fencing | | | | | |
| Illegal signs | | | | | |
| Derelict vehicles | | | | | |
| Commercial vehicles in residential areas | | | | | |
| Overgrown weeds and or grass | | | | | |
| Noise trail bike, model planes | | | | | |
| Noxious weeds | | | | | |
| Parking violation | | | | | |
| Public nuisance | | | | | |
| Zoning | | | | | |
| Unsafe or hazardous condition | | | | | |

| By-law Risk Assessment Work Sheet | | | | | | | | |
|-----------------------------------|------------------------------------|-----------|---------------|---------|---|----------|--------|---------|
| | Extreme | Very High | High | Serious | Moderate | Minor | Slight | Minimal |
| Probability | 8 | 7 | 6 | 5 | 4 | 3 | 2 | 1 |
| Always 8 | 64 | 56 | 48 | 40 | 32 | 24 | 16 | 8 |
| Frequent 7 | 56 | 49 | 42 | 35 | 28 | 21 | 14 | 7 |
| Very Likely 6 | 48 | 42 | 36 | 30 | 24 | 18 | 12 | 6 |
| Likely 5 | 40 | 35 | 30 | 25 | 20 | 15 | 10 | 5 |
| Occasional 4 | 32 | 28 | 24 | 20 | 16 | 12 | 8 | 4 |
| Rare 3 | 24 | 21 | 18 | 15 | 12 | 9 | 6 | 3 |
| Exceptional 2 | 16 | 14 | 12 | 10 | 8 | 6 | 4 | 2 |
| Unlikely 1 | 8 | 7 | 6 | 5 | 4 | 3 | 2 | 1 |
| Range of Risk | | | | | | | | |
| 46 to 64 | Risk is Severe and Unacceptable | | | | Immediate Action Forthwith | | | |
| 25 to 42 | Risk is High | | | | Priority action to be taken to apply control measures | | | |
| 12 to 24 | Risk is Moderate | | | | Action to be taken as a matter of routine | | | |
| 5 to 10 | Risk is Low and Broadly Acceptable | | | | Low priority action | | | |
| 0 to 4 | Risk is Minimal | | | | Requires review | | | |
| Life Safety | | | Environmental | | | Property | | |