

REGIONAL DISTRICT OF OKANAGAN-SIMILKAMEEN BOARD POLICY

POLICY: Bylaw Enforcement Procedures

AUTHORITY: Board Resolution dated April 19, 2018

INTRODUCTION

Respecting the rights of our neighbours and preserving the quality of life in our unincorporated communities and electoral areas are important aspects of community living. The goal of any proactive Bylaw Enforcement program is not to penalize residents but rather to achieve voluntary compliance with reasonable standards through increased public education and awareness of our regulations and the rationale for them.

While certain areas of enforcement are health and safety related that may require proactive enforcement, the majority of our regulations are enforced on a complaint only basis. RDOS may investigate complaints received from the public about alleged violations of various regulatory bylaws and regulations such as property maintenance, excessive noise, animal and dog control, and land use issues.

Some complaints may be considered either as a civil dispute between property owners, such as storm drainage, or as a minor non-enforceable issue, such as trees overgrowing property lines. These will not be acted upon by the Regional District.

In all cases, the Regional District supports balancing accountability and confidentiality among the parties in the bylaw enforcement process.

1. POLICY STATEMENT

It is the policy of the RDOS to rely primarily on written citizen complaints as a means of enforcing regulatory bylaws; and, to refuse disclosure of complainant or responder information unless consent is obtained from the person who supplied the information or ordered to do so by a higher authority.

The Regional District has no duty to take enforcement action with respect to every contravention of every bylaw that may be occurring within its jurisdiction, allowing discretion based on need and urgency.

2. PURPOSE

The purpose of this policy is to provide guidance to staff, elected officials, and members of the public on the receipt of complaints and initiation of investigation and enforcement proceedings as they related to contravention of designated RDOS regulatory bylaws.

3. ROLES & RESPONSIBILITIES

.1 Board of Directors:

- Adopts bylaws and policy and any amendment thereto. Regulatory bylaws shall identify the enforcement jurisdiction and the person and/or agent authorized to enforce those regulations.

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- The Board shall consider all enforcement matters that may require Supreme Court decision or Direct Enforcement action. Direct Enforcement action is referred to cases where the Regional District requires a person to take action to comply with a bylaw, and if not completed, the Regional District will complete the action and then recover compliance costs (as per the *Local Government Act*).
 - The Board shall hear and make decision on valid appeals of enforcement actions.
 - All Board inquiries related to bylaw enforcement shall be directed to the Chief Administrative Officer. Individual members of the Board shall not sanction, direct, investigate or assess a complaint.

.2 Chief Administrative Officer, or designate, shall:

- Enforce regulatory bylaws, make recommendations to the Board for policy amendments and shall keep the Board advised of any significant enforcement actions.
- Direct enforcement functions relating to voluntary compliance and quasi-criminal proceedings in Provincial Court.
- Consider the validity of appeals prior to authorizing a Board hearing of the appeal. The validity of an appeal may be based on the following factors:
 - That the RDOS has a bylaw that deals with the subject issue.
 - That the subject issue is not a civil matter.
 - That the subject issue occurs within the jurisdiction of where a bylaw's powers reside.
 - That the subject issue is not frivolous and may have an impact to a person's enjoyment of their personal property or well-being.

.3 Designated Officer:

- The Designated Officer shall coordinate all regulatory bylaw enforcement actions and shall act as the contact for contracted Bylaw Enforcement Officers engaged in carrying out enforcement.
- The Designated Officer may attend or accompany a Bylaw Enforcement Officer on site investigations when a situation warrants it or when requested by the Officer.

.4 Bylaw Enforcement Officer(s):

- Bylaw Enforcement Officer(s) shall attend at site to investigate complaints and carry out enforcement actions.
- Where a Bylaw Enforcement Officer has reasonable and probable grounds to believe and does believe that a violation exists, he or she may enter upon private property to further an investigation or resolve any violation. The Regional District will take all reasonable steps to notify the owner or occupant before an Officer conducts an on-site inspection. Officers will only conduct business on the property related to the issue of the complaint.
- Bylaw Enforcement Officer(s) shall maintain a detailed reporting of enforcement activity in a database format, and provide a monthly report on enforcement activity for submission to the Designated Officer.

4. SUBMISSION OF A COMPLAINT

- .1 All bylaw enforcement complaints are required to be made in writing and all complaints are to be submitted by the complainant to the Designated Officer.
- .2 Each individual complaint shall be in writing – a letter, an email or the Regional District's Bylaw Complaint Form (see attached) – and shall contain the complainant's:
 - i) name;
 - ii) address;
 - iii) phone number; and
 - iv) a description of the nature and location of the alleged infraction as well as its impact on the complainant.
- .3 Complaints will be prioritized on the basis of the date the complaint was received, unless the complaint is determined to involve a matter that may adversely impact the environment or the health, safety, and security of citizens or may result in a liability incurred by the Regional District of Okanagan-Similkameen.
- .4 The Designated Officer may commence an investigation without written complaint where:
 - i) notification of bylaw violations related to an Animal Control, Dog Control, or Noise Bylaw that are directed to a Bylaw Enforcement Officer;
 - ii) bylaw violations are observed by an employee or agent of the Regional District;
 - iii) involves a matter that may adversely impact the environment or the health, safety, and security of citizens or may result in a liability incurred by the Regional District of Okanagan-Similkameen;
 - iv) a notification or referral is received from an external agency that identifies bylaw violations on a subject property;
 - v) advertisements for uses believed to be illegal have been observed; and
 - vi) correspondence and/or communications undertaken with the Regional District that identify a bylaw violation (i.e. property and zoning inquires, requests for comfort letters, etc.).
- .5 Anonymous complaints or observed infractions may not be acted upon unless the alleged infraction is a life, safety or environment matter.
- .6 A complainant may be requested to sign an affidavit and/or be prepared to stand as a witness should an enforcement proceed to court.
- .7 All written complaints are to be acknowledged of receipt within five (5) business days.

5. PROCESSING PROCEDURE – WRITTEN COMPLAINTS

- .1 The procedures contained within this section apply to all regulatory bylaws, except those that contain specific procedures for processing complaints included within the bylaw (i.e. Untidy and Unsightly), as well as the Animal Control, Dog Control, Building and Electoral Area Noise Bylaws. In all cases, procedures provided in a bylaw will take precedence over those provided in this policy.
- .2 All bylaw enforcement complaints shall be directed to the Designated Officer to be logged, recorded, and acknowledged. On receipt of a written complaint, a preliminary review of the complaint is undertaken to ensure that the complaint is well founded.

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- .3 If upon preliminary review, it is determined that a complaint is not well founded or and that no violation exists, the Designated Officer will advise the complainant of such within a written letter format, together with reasons provided for making this determination.
 - .4 If the Designated Officer determines the alleged violation may be in relation to the Building Bylaw, the complaint will be forwarded to a Building Official for assessment, investigation, and enforcement of the Building Bylaw provisions.
 - .5 If the Designated Officer determines that the alleged violation may be in violation of a regulatory bylaw, an Enforcement Assessment Form will be completed. A site inspection may be requested of a Bylaw Enforcement Officer to confirm the infraction and to provide a report of findings. The Bylaw Enforcement Officer's report, together with an Enforcement Assessment Form will be referred to the applicable department that manages the regulatory bylaw for comments and provision of options to rectify.
 - .6 Upon receipt of the completed Enforcement Assessment form, the content will be reviewed by the Designated Officer who will determine whether to proceed with enforcement action. The Designated Officer shall determine the appropriate action in accordance with this policy.
 - .7 If no action is determined, a letter will be provided to the complainant that describes any additional steps taken to assess the complaint (i.e. on-site inspections), the reasons for no enforcement, and provide any other relevant information to the complainant.
 - .8 If action is initiated, the process as set out in Section 6.0 Investigation and Enforcement will be implemented.
 - .9 When exercising discretion for determining a course of action, the following factors shall be considered:
 - i) the scale, number and duration of the infraction(s);
 - ii) the current, short and long term impacts caused by the infraction;
 - iii) frivolous, repeat and/or multiple complaints of an alleged infraction;
 - iv) the potential for precedent; and
 - v) the resources available to resolve the matter.

The Regional District retains the right to not commence enforcement proceedings in accordance with one or more of these criteria.

- .10 In the case of frivolous, repeat and/or multiple complaints, each complaint will be dealt with on its own merits and according to this policy. However, Regional District staff and contractors will endeavour to focus on balancing fairly the interests of both the individual making the complaint and the broader community. The Regional District retains the right to not intervene in civil matters that are clearly disputes between individuals. The Regional District may consider responding to repeat complaints only where the complainant provides new information or raises a new issue. New information may be referred to the appropriate department for further assessment.
- .11 Complaints not related to a Regional District bylaw will not be investigated and no file will be opened. Staff will make best efforts to educate complainants of the applicable regulatory agency that may address their concerns and how complainants can lodge their concerns with the applicable regulatory agency for their information and follow-up.

6. INVESTIGATION AND ENFORCEMENT

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- .1 Should a violation be determined to have occurred, the person(s) who committed the infraction (i.e. offender) and/or the property owner will be notified in writing with a warning letter. The required elements to be included in the warning letter include:
- i) explaining the terms of confidentiality for both the complainant and offender;
 - ii) providing an explanation of the relevant bylaw and how the person is alleged to have contravened it;
 - iii) the time limit for voluntary compliance;
 - iv) notification of fines and other potential enforcement measures associated with the offence.

Depending on the severity of the infraction, offenders may be given the opportunity to respond and achieve voluntary compliance before further action is taken. Offenders should cease the activity or construction immediately until the necessary action to rectify is completed.

- .2 The offender/property owner may be requested to take action within thirty (30) days, or a time limit determined by the Designated Officer. Additional time may be authorized by the Chief Administrative Officer, upon receipt of a written request for such extension from the offender/property owner.
- .3 Intermediate enforcement steps may include a second field inspection or monitoring of the property following the initial time set for voluntary compliance and negotiation of further time to comply.
- .4 Enforcement action may be taken without providing notice where a violation requires immediate action in response to an immediate risk to health, safety or the environment. After enforcement action is taken, the affected person will be provided with a written letter explaining the reasons to commence the enforcement action.
- .5 Enforcement action may be taken without providing notice in cases where a previously enforced violation is on file that is similar to the current violation.
- .6 Where unlawful activity has not ceased or where compliance is not being actively pursued (i.e. submission of a land use application to the Regional District) within the time period provided for voluntary compliance, the following action(s) may occur:
- a) The Designated Officer directs the Bylaw Enforcement Officer(s) to proceed with the enforcement action set out in the warning letter, including, but not limited to, issuing Notices for bylaws listed within the Bylaw Notice Enforcement Bylaw.
 - b) The Designated Officer will prepare a report indicating that legal proceedings or direct enforcement action should be initiated. The report should identify whether the proceedings should involve:
 - i) prosecution under the *Offence Act*;
 - ii) Direct Enforcement action in accordance to the *Local Government Act* ;
 - iii) an application for a Provincial Court compliance order under the *Local Government Act*; or
 - iv) an application for a Supreme Court injunction.

If legal proceedings are recommended, the report will identify options to the recommended course of action and the implication of those options.

If Direct Enforcement action is recommended, the report will outline the recommended action by the Regional District, the anticipated expense, and the process to recover the costs incurred by the Regional District from the offender as debt.

- .7 Enforcement through the courts is a Board decision and a report will be processed in accordance with the Regional District's Decision-Making Guidelines Policy.
- .8 If legal proceedings are to be withheld, through resolution of the Board, for cause (i.e. budget, investment of staff time, not deemed to be in the public interest, etc.), the complainant and offender will be so advised in writing, and the enforcement file closed.
- .9 If legal proceedings are approved, through resolution of the Board, the file will be assigned to legal counsel with all reports, correspondence, title documents and a certified bylaw, and preparation of a witness list.
- .10 At the end of legal proceedings or direct enforcement action, the Designated Officer will advise the complainant and the Board of the outcome, and close the enforcement file once compliance has been established or the court decision renders continuing enforcement unnecessary.
- .11 An enforcement file may be reactivated if the Regional District is made aware through either the monitoring of the Bylaw Enforcement Officer, or receipt of new information, that the offender/property owner is no longer in compliance after closure of the initial investigation.

7. APPEALS

- .1 The Regional District will consider the inclusion of an appeals section in the review and update of all regulatory bylaws to ensure a mechanism and process for members of the public to appeal the provisions of these bylaws to the Board.
- .2 For all bylaw notices issued under the Bylaw Notice Enforcement Bylaw, appeals will be subject to the bylaw notice adjudication system as set out in the *Local Government Bylaw Notice Enforcement Act*.
- .3 For all bylaw enforcement actions other than bylaw notices or legal proceedings (i.e. direct action, notices on title, etc.) the alleged offender may appeal to the Board of Directors for reconsideration of the action by submitting a letter (with reasons cited to justify reconsideration) to the Chief Administrative Officer. The Chief Administrative Officer, after considering the reasons of appeal and the validity of justification, may schedule a time for the alleged offender to appear before the Board to present its case to reconsider the action. Following the presentation and submission of any evidence, the Board of Directors has full discretion to either uphold the action or revoke the action.
- .4 Following the hearing of an appeal, staff will prepare a letter of correspondence to the appellant to provide notice of the decision of the Board and the reasons for the decision.

8. CONFIDENTIALITY

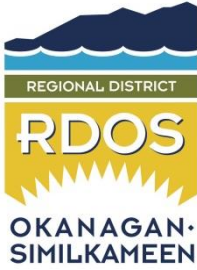
- .1 The identity of a complainant and the written complaint itself shall not be disclosed to the alleged offender or any member of the public. It is not necessary for the complainant to request confidentiality. Likewise, the response of the alleged offender shall not be disclosed to the complainant, whether it is in writing or made orally. It is recognized that

many complaints take place in the context of other disputes between neighbours and the motivation for the complaint itself may be retribution. Disclosure could serve to exacerbate the dispute and may put persons or property at risk of harm.

- .2 While the investigation is ongoing, or while a resulting matter is before the courts, only information regarding the matter shall be made available to the public or the complainant.
- .3 If persons apply to the Regional District for disclosure of personal information about them in complaints and responses to the complaints under the *Freedom of Information and Protection of Privacy Act*, the Regional District shall refuse disclosure unless consent is obtained from the person who supplied the information and who would otherwise be assured of confidentiality under this policy.
- .4 Despite the foregoing, the Regional District will not guarantee the anonymity and confidentiality of complainants and may disclose personal information in bylaw enforcement files in the following circumstances:
 - i) If the investigation results in RCMP enforcement proceedings;
 - ii) If disclosure is required pursuant to the provisions of the *Freedom of Information and Protection of Privacy Act*;
 - iii) If an order for disclosure is issued by the Information and Privacy Commissioner under the *Freedom of Information and Protection of Privacy Act*;
 - iv) As otherwise required by law.

9. STAFF SAFETY

- .1 The safety of staff and/or agents of the Regional District is of utmost importance. If a Bylaw Enforcement Officer or other Regional District staff is verbally or physically threatened while administering the bylaws of the Regional District, then no further investigative action shall be carried out until a private security firm can be hired or RCMP accompanies the Bylaw Enforcement Officer or other Regional District staff.



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Office use only	
File No:	
Date:	
Received by:	
Type:	

Bylaw Complaint Form

Personal information contained on this form is received by the Regional District in confidence. This confidentiality cannot be guaranteed if this complaint results in court proceedings. Release of this information is governed by the provisions of the *Freedom of Information and Protection of Privacy Act*.

COMPLAINANT:

Name:	
Address:	
City/Town:	
Province:	Postal Code:
Day Phone:	Cell Phone:
Email:	

INCIDENT INFORMATION:

Address (where alleged bylaw violation is taking place):
Name of Occupier of Property (if known):
Name of Registered Property Owner (if known):
Detailed description of alleged bylaw violation and how it affects you, your property, or daily life. (<i>attach as a separate sheet if required</i>):
Date(s) and Time(s) of alleged bylaw violation:

DECLARATION:

By signing this complaint form, I confirm that I understand that the Regional District of Okanagan-Similkameen will be unable to guarantee confidentiality of the above information if this matter results in court action or an order from the Provincial Information and Privacy Commission.

Signature

Date

Print name