



# THE CORPORATION OF THE DISTRICT OF CENTRAL SAANICH

## COUNCIL POLICY

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**POLICY NO. 11.ADM**

File : 0340-50-2014-01

**SUBJECT: BYLAW ENFORCEMENT**

**Category:** Administration

### Purpose

The objective of the Bylaw Enforcement Policy is to obtain compliance with municipal bylaws through voluntary compliance and with effective, fair and consistent enforcement tools.

### Introduction

Municipal bylaws are enacted by District Council, under the regulatory authority of the Community Charter and the Local Government Act, in order to preserve the quality of life in the District. 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 recognizes that with limited resources, it is not possible to pursue full compliance in every case. This policy will provide guidance to staff regarding the receipt of bylaw complaints, initiation of investigation, priority assessment and the use of appropriate enforcement tools.

### Guiding Principles

- Democracy and equality – Enforcing regulations fairly and consistently.
- Community safety – hold paramount the safety, health and welfare of the public and protection of the natural environment. Promote community safety through effective enforcement.
- Equity – Ensuring unbiased treatment of individuals.
- Public trust – Acting with integrity and transparency.
- Community engagement and service – Recognizing that enforcement is a partnership between officers and the public.

### Complaint Process

The District of Central Saanich 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. Nonetheless, there is no duty to take enforcement action with respect to every contravention of a bylaw that may occur within the jurisdiction.

All bylaw enforcement complaints, with the exception of those that identify urgent contraventions, must be submitted in writing before they will be considered for investigation. All complaints must include complete contact information for the complainant (name, address and telephone number). The complaint must be in the form of a letter, complaint form via the District website, or an email to [bylaw@csaanich.ca](mailto:bylaw@csaanich.ca).

The District will not respond to anonymous complaints unless significant potential safety, liability or health issues are raised, and confirmed by the Bylaw Enforcement Officer and/or the Chief Administrative Officer. Except as stated elsewhere in this policy, in order to prompt enforcement action by the District, complaints must be received in accordance with the following criteria:

- Two (2) complete written bylaw complaints submitted by unrelated complainants whose properties are located within the District of Central Saanich; or
- One (1) complete written bylaw complaint submitted by a complainant whose property is located within 100 metres of the subject property; or
- One (1) written complaint from Council, a Central Saanich Police Officer or any other Central Saanich staff member.

Additional criteria to consider for specific complaints:

- Violations classified as High Priority require only one (1) written bylaw complaint.
- Complaints alleging that an unauthorized secondary suite or an additional dwelling unit has been constructed must be received from occupants residing within 100m of the subject property.

Bylaw Enforcement Officers will endeavor to focus on balancing fairly the interests of both the individual making the complaint and the broader community. In doing so, Bylaw Enforcement Officers may decline to investigate complaints based on:

- the nature of the complaint and alleged violation,
- the impact of the violation on the community,
- the impact of the violation on the complainant or other individuals, and,
- in accordance with this policy.

In the case of frivolous, retaliatory, repeat and/or multiple complaints about the same issue, each complaint will be dealt with on its own merits and according to this policy. However, **staff may consider responding to repeated complaints only where the complainant provides new information or raises a new issue.**

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 in elements of escalated enforcement, such as the issue proceeds to court and the complainant is required to act as a witness for the prosecution.

Criteria for the District of Central Saanich staff to report observed bylaw violations are as noted:

- observed during regular work hours,
- within that employee's scope of duty, and
- where the violation poses a risk to public health and safety or the environment.

For clarity, this includes Building Bylaw violations discovered as a result of an application submitted to the District, such as a building permit, plumbing permit, business licence or planning permit application.

## Investigation

In response to a complaint, or acting in the regular course of his or her duties, staff will 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. If a violation is identified, the contravener will be instructed to take action to resolve the issue immediately or within a specified time period. All matters pertaining to a bylaw complaint will be tracked in a bylaw file attached to the subject address or closest place of reference.

While encouraging compliance with District bylaws is important, staff safety is paramount. If a staff member is verbally or physically threatened while administering the bylaws, then no further investigative action shall be carried out until a police officer accompanies the staff member on any 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.

### Exterior Protocol & Decorum for Property Inspections

Regular property inspections require a bylaw officer to attend a property when a complaint is received in accordance with the complaint process outlined in this policy. The purpose of the inspection is to make contact with the owner or occupant to direct compliance measures if a violation is documented. Advance notice is not usually delivered as per Section 16 of the Community Charter for external inspections.

When conducting an external inspection, the bylaw officer will:

- Park the District of Central Saanich vehicle in a location visible from the front door of the subject property when possible
- Wear insignia clothing identifying them as a District of Central Saanich employee and have identification
- Make reasonable attempt to alert occupant of the residence of their presence (e.g. knock and or ring bell a few times and allow time for someone to respond)
  - If no answer place the “Bylaw Notice” decal or leave a business card in conspicuous location and proceed with exterior inspection
  - Call out when entering side and rear yards (e.g. Hello – Central Saanich Bylaw)
- Take photos of the bylaw contraventions as needed to provide supportive evidence

### Consent for Internal Property Inspections

In order to ensure fairness, consistency and transparency, the municipality requires the following criteria to be met prior to entering into a private dwelling for an inspection related to an alleged bylaw violation:

- Bylaw officer makes attempt at first contact with owner or occupier of subject property by:
  - Searching for contact phone number or email in municipal records, if found make attempt to contact the owner and document the attempts in the bylaw file; and/or,
  - Attending property and knocking on door, leaving the “Bylaw Notice” decal or leave a business card in conspicuous location, taking a photo of the notice and documenting the attempt in the bylaw file; and,
  - Sending registered Notice of Inspection Letter to the owner advising a complaint has been received and an interior inspection is required. Document and attach letter to the bylaw file.

- Registered Owner responds to Notice of Inspection Letter:
  - Inspection of interior for identified buildings is scheduled, owner has completed and returned the consent form. Document and add to file.
- Registered Owner does not respond to Notice of Inspection Letter within 5 business days:
  - Bylaw officer issues a second Notice of Inspection Letter to the owner advising a complaint has been received and an interior inspection is required with deadline specified for their response.
- Registered Owner does not respond to Notice of Inspection Letter by deadline specified:
  - Bylaw officer issues third and final Notice of Inspection Letter by registered mail and by attending subject property to post on front door. Document with photos and attach to the file. Notice must be no less than 24 hours and no more than 72 hours from the requested inspection date and time.

#### Internal Protocol and Decorum for Property Inspections

- Bylaw officer meets registered owner or designated representative at agreed upon date and time as submitted on the consent form
- Registered owner or designated representative hosts the inspection by leading the way through required building(s) and or room(s)
- Bylaw officer inspects areas that only pertain to the nature of the complaint (e.g. if a secondary suite, inspect the area where the suite is alleged to exist, not the rest of the house)
- Bylaw officer takes photos of the relevant components which confirm the violation and must not include the persons present
- Bylaw officer is to take photos in such a way as to respect the privacy of the persons who reside in the dwelling unit (e.g. avoid when possible any identifying or personal effects)
- Bylaw officer is to be accompanied at all times by the registered owner or designated representative and / or another staff when necessary

## Assessment Criteria

Council recognizes staff's discretion in accordance with the following criteria, as applicable, and the priorities set out below, to determine whether or not to proceed with enforcement and, if enforcement is appropriate, the best method and enforcement tools to gain compliance:

- potential risk to public health, safety, or the environment;
- magnitude, nature and duration of the contravention;
- amount of time elapsed since the contravention occurred;
- history of non-compliance on the property or by the contravener;
- policy implications of the enforcement action and potential for setting a precedent;
- resources available to resolve the matter;
- potential costs associated with enforcement action; and,
- likelihood of obtaining the desired results.

## 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 (low, medium or high) in accordance with the following hierarchy of priority levels.

1. Health and Safety

A bylaw violation may adversely impact the environment or public health and safety. Investigations and enforcement will generally be initiated by public complaints or municipal staff.

2. Public Property and Infrastructure

A bylaw violation may negatively impact public property or infrastructure but does not pose an immediate risk. Investigations and enforcement will generally be initiated by public complaints or municipal staff.

3. Significant Impact to Adjacent Properties

A bylaw violation may impact adjacent properties in a negative manner, but does not pose an immediate risk. These violations will generally be investigated and enforced in response to public complaints.

4. General Nuisance

A bylaw violation may be a general neighbourhood concern, however tend to be cosmetic in nature and do not pose any risk to health, safety or the environment. Staff will use discretion to determine if it is minor in nature, vexatious or part of a neighbourhood conflict, and if so, may conclude that it is not in the District's best interest to pursue the matter.

5. Frivolous Complaints

The District may receive multiple complaints from the same person, on the same issue, and if minor in nature, or the subject of a concluded investigation, the District may decide not to respond or take further action if it is not in the public interest. (See also "Complaint Process")

Determination of priority will generally align with the order in which complaints are received and the efficiency to be gained through investigating several complaints at once. The District's bylaw enforcement resources are prioritized to ensure the timely receipt and investigation of complaints. It is not the District's practice to proactively provide follow-up information to complainants in every case. Bylaw Enforcement Officers will respond to specific requests for information (subject to confidentiality requirements) as time permits.

## Priority Examples

### ***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 Zoning Bylaw (Building Bylaw)
2. Minor encroachment into a setback (Zoning Bylaw)
3. Protected tree pruned without permit, where there is no harm done to the tree (Tree Bylaw)

### **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 (Soil Removal and Deposit Bylaw)
2. Noxious weeds or unsightly premises (Noxious Weeds Bylaw or Zoning Bylaw)
3. Burning without permit (Open Burning Bylaw)
4. Secondary suite constructed without a building permit where there are limited health/safety issues (Building Bylaw)
5. Additional unauthorized dwelling unit (Zoning Bylaw)

### **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. Non-conforming land use, inadequate parking and site development without a Development Permit (Zoning Bylaw and OCP Bylaw)
2. Unauthorized secondary suite with multiple code violations such as inadequate smoke alarms, interconnected duct systems, or no egress windows due to alterations without a building permit (Building Bylaw)
3. Inadequate exiting and/or fire protection due to building alterations without a permit (Building Bylaw)
4. Cut down tree, that is protected and located in the Erosion District, without permits (Tree Bylaw)

## **Compliance Options (for building bylaw violations)**

Building bylaw violations are generally related to construction without a building permit and could include renovations (other than maintenance) and the creation of an additional dwelling unit. In most cases, a building permit (and plumbing permit if applicable) is required to either authorize the construction or to document the removal of the construction and/or unauthorized use, with examples noted below.

Obtain a building permit to authorize unpermitted work by showing bylaw and building code compliance on the permit plans. Example information noted below:

- Confirm alignment with the Zoning Bylaw.
- If plumbing fixtures can remain (based on use, zoning and code), a ticketed plumber can provide a declaration confirming substantial compliance with the plumbing code.
- If construction can remain (based on use, zoning and code), registered professionals such as an architect (completed enclosed building envelope) and a structural engineer (structural aspects of enclosed construction) would be required to confirm substantial compliance with the building code and/or indicate necessary upgrades on the permit plans.
- Other code or bylaw compliance as appropriate for the project.

Obtain a building permit to decommission unpermitted work, noting on plans the following information, as applicable:

- Permanently cap unauthorized plumbing in the wall or floor assembly.
- Decommission an unauthorized cooking facility by removing stove and vent hood wiring to the panel and the stove venting and duct assembly with a building permit.
- Remove or otherwise alter completed construction, as required by a building inspector and/or bylaw enforcement officer

## Enforcement Tools

When compliance cannot be achieved through initial enforcement steps, staff may escalate enforcement by first determining the appropriate tools with which to do so. Details of 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.

### Bylaw Offence Notice

A bylaw notice may be written by a bylaw enforcement officer and delivered in various ways, including in person or by being left on a vehicle. Pursuing an administrative penalty may have some similarities to a court proceeding but is less formal and occurs outside of the court system as an adjudication. The penalties under the bylaw notice enforcement system are strictly monetary, the burden of proof is substantially less, and the adjudicator does not have the ability to adjust the penalty amount.

### Compliance Agreement

A compliance agreement sets out terms and conditions within which a confirmed bylaw contravention may be rectified. The terms of the agreement may vary depending on the purpose and it may be offered to provide a measure of relief from monetary fines. A compliance agreement can only be offered if it is available as an option within the District of Central Saanich Bylaw Notice Enforcement Bylaw (when in effect).

### No Occupancy Posting

For Building Bylaw violations, a No Occupancy notice may be posted after other attempts to resolve the issues have failed and/or if significant or serious health and safety issues are suspected. The owner of the property on which a No Occupancy notice has been posted, and every other person, shall cease occupancy of the building or structure immediately.

### District Solicitor involvement

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

### Direct enforcement

Direct enforcement involves carrying out enforcement remedies and adding the cost of doing so to the subject property's taxes. Council approval may be required, depending on the contravention.

### Mediation

Mediation is a process for resolving neighbour disputes collaboratively by meeting with the affected parties individually and potentially together as well. Mediation offers an opportunity for an integrated solution where affected parties can be heard and potentially contribute to a reasonable solution and/or agreement. It is voluntary, confidential, and encourages collaboration. Mediation for bylaw matters can be conducted by District staff trained in mediation or by a professional mediator hired by the District who is preferably registered with Mediate BC or ADRBC and insured.

### Notice on Title (Section 57)

When a building violation occurs, such as unauthorized construction, and is discovered by a complaint or by permit application and the owner fails to comply voluntarily, staff will trigger a workflow to recommend that Council place a notice of the contravention on the title of a property pursuant to 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 or petition 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.

## **Procedure for Building Bylaw Enforcement**

To guide staff through the enforcement procedure, flow charts have been created outlining the possible steps to compliance (Schedule A). Where illegal or unauthorized activity has not ceased, or where compliance is not achieved through voluntary compliance or initial enforcement, a building bylaw violation will be brought forward to Council with a request to place a notice on the land title record (Section 57).

For those violations deemed as “high” priority, staff will provide further details to council recommending escalated action, based on the enforcement options and/or legal advice.

Building Bylaw contravention files will be considered closed when any of the following has occurred:

1. Voluntary compliance;
2. Registration of a Notice on Title for a Low/Medium Priority violation and further development may be permitted if unrelated to the unauthorized construction; or,
3. At the resolution of legal proceedings or otherwise resolved to the satisfaction of the Chief Building Inspector.

## Bylaw Violation Enforcement Steps

**1**

### **Investigate Potential Violation**

May include any or all of the following:

- review District bylaws
- research and file review
- verbal and/or written contact with owner
- site visit

**2**

### **Priority and Assessment Criteria**

Analyze priority of violation and use assessment criteria to determine scope of initial enforcement

**3**

### **Initial Enforcement Tools**

Advising owner of options to resolve violation through the use of enforcement action tools, as necessary:

- written options and expected timeframe
- ticketing (MTI's, Bylaw Offence Notice)
- stop work order/no occupancy (building bylaw)

**4**

### **Building Bylaw Violations**

For non-compliant building bylaw violations, a Notice on Title request will be made to Council. Low or medium violations will be closed after filing notice (Section 57)

**5**

### **Escalated Enforcement**

If assessment and priority warrants, staff will proceed with escalated enforcement, which could include:

- correspondence from the District Solicitor
- mediation
- compliance agreement
- additional ticketing (MTI's, Bylaw Offence Notice)

With Council's support, further action could be taken such as:

- direct enforcement
- remedial action
- consent order
- injunction
- long form prosecution