

<b>Policy Title:</b>	<b>Enforcement Policy</b>
<b>Policy #:</b>	<b>xxx</b>
<b>Report #:</b>	<b>LGS-005-20</b>
<b>Resolution:</b>	<b>xxx</b>
<b>Effective Date:</b>	<b>December 14, 2020</b>
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<b>Notes:</b>	

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**1. Purpose:**

To establish a transparent, consistent, fair, unbiased, and effective process for enforcement and prosecution of relevant laws.

**2. Definitions:**

“Council” means the Council of the Municipality of Clarington;

“Officer” means a person appointed by the Municipality to enforce or prosecute a Relevant Law;

“Relevant Law” means any Municipal by-law, or Provincial legislation, for which the Municipality has a responsibility to enforce or prosecute.

**3. Roles**

**Reporting Infractions**

- 3.1. Any person who has reason to believe that an infraction of a Relevant Law has occurred, may report the matter to the Municipal Law Enforcement Division.
- 3.2. A person who reports an infraction may be summonsed to testify before a court or tribunal in the prosecution of an alleged contravention of a relevant law.

**Council**

- 3.3. Council Members will respect and abide by the legally recognized principle that Officers have a duty to enforce and prosecute Relevant Laws in a manner that is fair and impartial and in a manner that is independent of political direction.
- 3.4. Council Members will respect that Officers have an independent discretion to make enforcement decisions based on their knowledge, experience, and educated judgement.
- 3.5. Council Members will acknowledge that the independence of an Officer includes, for example, the discretion to investigate (or not) and to issue a ticket (or not).

- 3.6. Council Members will not interfere with an Officer in the exercise of their duties or attempt to influence the actions of an Officer except in the circumstances specifically provided in this policy.
- 3.7. Consistent with the provisions of the Code of conduct for Members of Council, no member shall use or attempt to further his or her authority or influence by intimidating, threatening, coercing, commanding or influencing improperly any staff member of interfering with that staff person's duties, including the duty to disclose improper activity.
- 3.8. As with any other person, a Council Member who has reason to believe that an infraction of a Relevant Law has occurred may report the matter to the Municipal Law Enforcement Division.
- 3.9. Upon submitting a report, a Council Member shall be treated with the same courtesy, and with the same restrictions on access to information, as would any other complainant.
- 3.10. In reporting an infraction, a Council Member shall simply communicate the facts and not express an opinion about how a Relevant Law should be enforced. Thereafter, in order to avoid influencing or interfering with municipal law enforcement, the Council Member shall not communicate with an Officer about how the matter should be handled.
- 3.11. It is only legitimate for a Council Member to communicate with an Officer about a law enforcement matter if the Council Member does not seek to influence the discretion of the Officer in the performance of their duties.
- 3.12. A Council Member will not inquire with an Officer about the status of any particular enforcement matter except to query whether a file has been opened or closed, whether an inspection has occurred, or whether a ticket has been issued. In the case of a matter that has been fully resolved, a Council Member is also permitted to inquire as to the outcome. In making such inquiries, Council Members will refrain from stating or insinuating an opinion about any action taken, or decision made, by the Officer with respect to the matter.
- 3.13. It is also consistent with the objectives of this policy for a Council Member to inquire with the Director of Legislative Services or the Manager of Municipal Law Enforcement about general concerns that do not relate to a specific enforcement decision, or about standard operating procedures, processes, or practices of the Municipal Law Enforcement Division.
- 3.14. Reports from a Council Member must be based on direct (first-hand) knowledge.
- 3.15. Council Members will refrain from relying on second-hand information as the basis of their complaint. If information about the alleged infraction originates from a third party, the Council Member should explain how to contact the

Municipal Law Enforcement Division so that the third party may, if desired, make the report directly.

- 3.16. Council Members shall refrain from forwarding third party communications or complaints to an Officer for a response.
- 3.17. In referring a third party to the Municipal Law Enforcement Division, a Council Member will only provide contact information and information about the reporting process and will neither encourage nor discourage the third party from taking action. Reporting a matter must be an independent decision.
- 3.18. A Council Member will refrain from the exercise of any official function that could impact the outcome of any complaint or investigation.
- 3.19. With respect to enforcement of Relevant Laws, Council may,
  - a) From time to time establish, amend or repeal Municipal by-laws;
  - b) Establish the budget for and policies related to the enforcement of Municipal by-laws; or
  - c) At meetings of Council or one of its Standing Committees, ask general questions of, and receive information from, the Director on general questions relating to the enforcement activities of the Municipality.

**Staff**

- 3.20. In consultation with a supervisor, it is the responsibility of an Officer to,
  - a) receive complaints regarding alleged contraventions of relevant laws;
  - b) continuously communicate and coordinate call investigations to provide the most efficient time management and customer service;
  - c) screen complaints to determine if the subject matter of the allegation(s) falls within their jurisdiction;
  - d) undertake investigations by making one of the following determinations:
    - i. there is insufficient evidence to proceed with enforcement in response to the complaint;
    - ii. the subject matter of the complaint has been resolved through compliance;
    - iii. the complaint is trivial, frivolous, vexatious or made in bad faith; or

- iv. the matter the subject of the complaint requires enforcement action.
- e) For such matters for which a determination has been made pursuant to clause d), cause to be undertaken enforcement by such means as may result in compliance as efficiently and effectively as possible, including as applicable, by
  - i. request;
  - ii. commencement of a proceeding pursuant to the Provincial Offences Act; or
  - iii. commencement of remedial work by the Municipality.

#### **4. Complaint Requirements**

- 4.1. A complaint related to an infraction of a Relevant Law may be submitted to the Municipal Law Enforcement Division via email, telephone, on-line form, or in person. The following information must be provided by the complainant:
  - a) name;
  - b) address;
  - c) contact number; and
  - d) details regarding the issue (e.g. address/area, timing, alleged violation)
- 4.2. Inaction will result if there is failure to provide this necessary information, unless there is an apprehension of a significant risk to health or safety of the public, in which case the matter will be dispatched with an emergency priority.
- 4.3. Notwithstanding the above requirements, a complaint about property standards shall be submitted in writing (including email, or online complaint form). Where a person is unable to submit in writing, they shall be offered the option to attend the Municipal Law Enforcement Office where a staff member can assist them in documenting their concerns.

#### **5. Prioritizing Calls**

- 5.1. Investigations will be distributed by the Manager of Municipal Law Enforcement, or their delegate, to Officers based on their assigned patrol areas and by priority.
- 5.2. The priority ratings of files in descending order are:
  - a) Emergency – matter of public safety; immediate threat such as uncovered well, hazardous broken tree limbs, or aggressive animal at large (i.e. not confined nor restrained);

- b) High - time sensitive; a pressing necessity to act such as a vehicle blocking driveway, active site alterations, boulevards and fill operations, injured animal/wildlife, dog bites, or confined animal;
  - c) Low – long-term issue which is just now being reported such as long grass, weeds, public nuisance, parked more than 3 hours, or failure to retrieve pet waste;
  - d) Routine – matter is a known re-occurring issue affecting multiple residents such as 3-5 a.m. parking, snow removal, school zone enforcement, or dog off leash patrols; and
  - e) Information Only – e.g. wildlife sighting.
- 5.3. Investigative response to all files shall be attended/completed in a timely manner, within the established policies and procedures. The following shall be a guideline to assist in initiating investigations to calls as prioritized:
- a) Emergency priority calls will be attended at the earliest opportunity by the most available Officer. The most available Officer may be determined by response time, ability to attend based on active field investigations, and will be assisted by the Officer assigned to the area at the earliest opportunity;
  - b) Investigations of High prioritized calls will be initiated by the Officer within 12 business hours after being assigned; and
  - c) Investigations of Low and Routine prioritized calls shall be initiated by the Officer based on existing call load.
- 5.4. In addition to the above, several factors shall be taken into account when determining appropriate timelines for an initial response and complete processing of any complaints up to, and including, voluntary or court ordered compliance. It is acknowledged that an officer's ability to process any complaint efficiently and effectively is greatly impacted by issues and factors beyond their individual control. Some examples of factors that could impede an enforcement response include:
- a) threats to public safety (which always take priority over other complaints);
  - b) Council requests;
  - c) court preparation and appearance;
  - d) ticket review session attendance;
  - e) special projects (e.g. taxi, mobile signs);

- f) administration and revisions of current by-laws (e.g. research and drafting of new by-laws);
- g) Municipal events (e.g. Canada Day, Ribfest, Food Truck Frenzy, Municipal Elections);
- h) scheduled review and administration of license and permit applications (e.g. mobile signs, taxi drivers);
- i) responding to calls for actions from other departments and agencies;
- j) coordination with contractors for completion of work orders on private property;
- k) holidays and vacation;
- l) illness;
- m) staff vacancies;
- n) inclement weather; or
- o) Provincial Order.

## **6. Investigations**

- 6.1. All investigations shall follow the appropriate Policies and Procedures with due diligence with the objective of fairness and consistent application of Relevant Laws.
- 6.2. Once assigned a file, an Officer shall undertake an investigation to better understand the situation. All investigations shall be initiated based on the priority system identified in this policy, and in accordance with any other applicable policies and procedures.
- 6.3. For by-law matters which have a high frustration level or emotional component for complainants (e.g. noise, dog incident), the Officer shall contact the complainant to acknowledge the complaint and discuss the matter before initiating any action.
- 6.4. If requested, an Officer shall maintain contact with a complainant to keep them apprised of the investigation as it progresses and of the outcome.

## **7. Frivolous, Vexatious or Malicious Complaints**

- 7.1. For the purposes of this policy, frivolous or vexatious refers to any action made with the intention to embarrass or annoy the recipient or that is part of a pattern of conduct that amounts to an abuse of the infraction reporting process.

- 7.2. In the assessment of whether a pattern of conduct has been established in relation to the above, the factors to be considered include but are not limited to:
- a) whether the complaint concerns an issue which staff have already investigated and determined to be groundless, or an issue which is substantially similar to an issue which staff have already investigated and determined to be groundless (e.g. with respect to the same neighbour or same property);
  - b) whether the complainant engages in any unreasonable conduct or aggravating behaviour, including, but not limited to:
    - i. harassment, verbal abuse or intimidation;
    - ii. making excessive or multiple lines of enquiry regarding the same issue (e.g. pursuing a complaint with staff in multiple departments and/or elected officials simultaneously) while their complaint is in the process of being investigated;
    - iii. repetitious and unreasonable criticism of an investigation or outcome;
    - iv. repetitious and unreasonable denial that an adequate response has been given;
    - v. unreasonable refusal to acknowledge that an issue falls outside the Municipal jurisdiction;
    - vi. unreasonable demands (e.g. insisting on responses to complaints and enquiries within an unreasonable timeframe);
    - vii. statements or representations that the complainant knows or ought to know are incorrect, or influencing others to make such statements;
    - viii. demanding special treatment from staff (e.g. ignoring established complaint protocols);
    - ix. shifting basis of the complaint and/or denial of previous statements made;
    - x. refusal to cooperate with the investigation process while still wanting their complaint to be resolved; or
    - xi. failure to clearly identify the precise issues of the complaint, despite reasonable efforts of staff to assist.
- 7.3. If an Officer concludes that a complaint is frivolous, vexatious, or malicious, the Officer shall provide to the Manager of Municipal Law Enforcement any

documents or other materials in support of their conclusion, together with any relevant details, including but not limited to the number of interactions with the complainant, the amount of time invested, the repetitiousness of interactions, and presence of any of the above-mentioned factors, and the Manager shall make a final determination. In making a final determination, the Manager may contact the complainant to discuss the background information.

- 7.4. If the Manager of Municipal Law Enforcement determines that a complaint is frivolous, vexatious, or malicious, the Manager may issue a warning letter to the complainant which may include the imposition of limitation concerning future interactions with staff (e.g. restricting interaction with a single point of contact with the Municipality, instructing staff to not respond to further written correspondence, or ensuring no staff member is left alone in the presence of the complainant).
- 7.5. If the Officer, in consultation with the Manager, determines that a complaint is frivolous, vexatious, or malicious in nature, the file shall be closed, the reasons for the decision documented, and the complainant shall be advised of the status. No further action will be taken on the file.
- 7.6. Notwithstanding a determination that a complaint is frivolous, vexatious or malicious, a file may be re-opened in the future where there is sufficient reason to do so, or the situation has changed.

## **8. Communication about a Particular Enforcement Matter**

- 8.1. A complainant shall be notified at the first opportunity, that their complaint has been received, together with the name of the Officer who will be investigating the matter, and the Occurrence Tracking System File Number.
- 8.2. Where the complaint is received through a channel other than in person or over the phone, prior to assigning the complaint to an Officer, and where deemed necessary, a staff member will contact the complainant within one business day of receipt to clarify the information that has been previously provided.
- 8.3. Staff will ensure that complainants are provided the information required to adequately understand the role of the Officer, and the extent of their ability to assist them with their concern. General information may be provided to assist them in finding a solution, including information on our website or re-directing to another Department or agency.
- 8.4. An Officer shall not disclose any confidential information including personal information gained in the performance of their duties except as required for prosecution purposes or otherwise as legally authorized.
- 8.5. Every Officer shall report to the Manager of Law Enforcement, who will in turn report to the Director of Legislative Services, any attempt at improper influence



or interference, financial, political or otherwise, respecting the Officer's performance of his or her duties.

- 8.6. Each Officer who is contacted by a member of Council with respect to an outstanding complaint or investigation matter, other than a complaint made by or against the Council member, or in which the Council member is a witness, shall immediately report such contact to the Manager of Law Enforcement who will in turn report it to the Director of Legislative Services.
- 8.7. The Director may report to Council with the particulars of any reports received from an Officer pursuant to Section 8.5 and 8.6.
- 8.8. No action shall be taken against an Officer or the Director, as the case may be, for reporting in good faith pursuant to sections 8.5, 8.6, or 8.7.

## **9. General**

- 9.1. Enforcement related records shall be managed through the Occurrence Tracking System Database. Access to this system is limited to those staff members who require access in the performance of their duties. Records shall include personal information pertaining to complainants and any witnesses, investigation notes and details, communications, photos and any other supporting materials.