

# Town of Greater Napanee

## By-law Enforcement Policy



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|---------------------|----------------------|--------------|------------|
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| Department:         | Legislative Services | Contact:     | Clerk, CAO |
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### 1. Introduction

The Town of Greater Napanee aims to address complaints and inquiries equitably, comprehensively and in a timely manner.

Council has the discretion of deciding which by-laws to enact and enforce. By-laws have a profound and direct impact on the quality of life, health and safety, economic well-being, and the reputation of our community. Accordingly, Council must balance the impacts of enforcement with the expectations of members of the community, the efficient allocation of public resources, as well as the objective level of risk presented by the event.

### 2. Purpose

The purpose of this policy is to provide guidance to Staff, elected officials and the general public regarding by-law enforcement policies and practices in the receipt of complaints and initiation of investigation and enforcement proceedings related to regulatory by-laws of the Town of Greater Napanee.

The goal of by-law enforcement is to achieve compliance through information, education and voluntary compliance. If this is not achievable, then enforcement officers will take appropriate action such as the issuance of Orders to Comply, the issuance of a set fine ticket, or the laying of charges under the *Provincial Offences Act*, as appropriate. In certain circumstances, it will also be appropriate to enter onto private property and take action to remedy, remove or resolve non-compliance situations at the property owner's expense.

This By-law Enforcement Policy is based on the following four principles:

1. Avoid arbitrary or inconsistent decisions;
2. Ensure similar cases are treated in a similar way;
3. Provide By-law Enforcement Staff with guidance on, and limits to, exercising discretion; and

4. Provide the public with clarity and details on how and why enforcement decisions have been made.

### 3. Scope

This policy applies to all employees, and contractors of the Town of Greater Napanee who are involved in enforcing the Town's by-laws and Council Members in the administration and process.

### 4. Definitions

- 4.1. **Anonymous Complaint** means an issue where the complainant has not provided otherwise required identifying information, such as name, address and/or contact information, and which will not be investigated unless pressing and substantial issues of safety or health are identified in the complaint.
- 4.2. **Business Day** means a day in which normal business operations are conducted and is generally considered to be between the hours of 8:30a.m. to 4:30p.m. Monday through Friday. A business day excludes weekends, public holidays and when the Town Administration Office is closed (i.e. for inclement weather).
- 4.3. **Discretion** means the freedom to decide what should be done in a situation given all the available information.
- 4.4. **Frivolous Complaint** means a complaint that is reasonably perceived by Town Staff to be (a) without reasonable or probable cause, (b) without merit or substance, or (c) trivial.
- 4.5. **Legislative Enforcement Service Level** means a service level where the Town of Greater Napanee has a statutory obligation to inspect, investigate and potentially enforce legislative requirements. Examples include, but are not limited to, the *Ontario Building Code* and the *Ontario Fire Code*. Legislative enforcement typically has its own specific rules, such as guidelines on time of entry, purpose of inspection, special powers to compel co-operation and other factors.
- 4.6. **Officers (also By-law Enforcement Officers)** means provincial offenses officers or employees, contractors, or agents appointed, or hired by the municipal council of the Corporation of the Town of Greater Napanee to enforce municipal by-laws of the Town.
- 4.7. **Patrol Service Level** means an Officer tasked with periodic or routine patrols through all or parts of municipality to seek out violations. By-law cases with patrol status are generally considered high priority.
- 4.8. **Proactive Service Level** means a level of service applied to a serious violation observed during course of duties, where an Officer will take necessary steps to correct the violation. By-law cases with proactive status are generally considered

medium priority.

**4.9. Reactive Service Level** means an Officer will initiate an investigation upon notification of a valid complaint from the public. By-law cases with reactive status are low priority.

**4.10. Valid Complaint** means a complaint that describes the location (municipal address) and general nature of a potential by-law contravention, which includes the complainant's name, address and telephone number, reported by a land owner, tenant, occupant business owner/operator, and which is reported in a timely manner with all completed forms, as applicable depending on the complaint type, and is not a vexatious complaint.

**4.11. Vexatious Complaint** means a complaint that is frivolous and/or which is pursued in a manner that is reasonably perceived by Town Staff to be (a) malicious, (b) intended to embarrass or harass the subject, or (c) intended to be a nuisance or in bad faith.

**4.12. Violation, High Priority** means a violation highly likely to cause health and safety issues to the public.

**4.13. Violation, Low Priority** means a potential violation unlikely to cause health and safety issues to public, negatively impact the community or environment. In general, this category includes violations that are cosmetic in nature.

**4.14. Violation, Medium Priority** means a violation with potential to cause health and safety issues to the public, negatively impacting the community or the environment. In general, such violations would affect quality of life issues, where only a minor risk to humans, human use or activity exists.

## **5. Responsibilities**

### **5.1. Council is responsible for:**

- a) Approval of this policy and the standards and priority assignments contained within, as well as any changes made to the policy;
- b) Supporting the implementation of this policy;
- c) Making decisions around changes to any established enforcement policies, services, or staffing levels.

### **5.2. Officers are responsible for:**

- a) Carrying out enforcement activities in accordance with this policy;
- b) Protecting the privacy of all individuals involved with an enforcement file as described within this policy; and
- c) Reporting to Council on enforcement statistics, trends, and needs.

### **5.3. Senior Management is responsible for:**

- a) Ensuring department staff are aware of and trained on this policy as

- applicable; and
- b) Supporting the communication and implementation of this policy.

## **6. By-law Enforcement Policy**

### **6.1. Principle of Administrative Fairness**

Administrative fairness refers broadly to an overall approach to administrative decision-making that is transparent, fair and accountable. With respect to By-law Enforcement, administrative fairness is characterized by:

- a) by-laws that are authorized by, and consistent with, Council direction and legislation;
- b) a written policy for fairly and reasonably exercising discretion when enforcing by-laws;
- c) written standards and expectations of conduct by By-law Enforcement Staff when they interact with the public;
- d) clear, consistent and available public information regarding by-laws and enforcement practices, and how to make complaints and appeal decisions;
- e) a process for receiving, assessing and responding to complaints in a timely manner;
- f) a consistently applied and well-documented investigative process that establishes a clear factual basis for enforcement;
- g) adequate notice to affected persons before any enforcement is taken;
- h) enforcement decisions that are authorized by applicable legislation and by-laws;
- i) enforcement decisions that are consistent with policy and with other similar decisions, are equitable, and are proportionate to the problem being addressed;
- j) reasons for enforcement decisions that are appropriate, that set out the basis for the enforcement and that provide information about how to appeal; and
- k) appeal processes that are accessible and fair, and that are communicated to affected persons in a timely manner.

Demonstrating a commitment to administrative fairness increases the public's confidence in our By-law Enforcement Program, and provides Council confidence that we are treating everyone in a fair manner.

### **6.2. By-law Enforcement General Provisions**

6.2.1. To ensure consistency and fairness to all residents, business owners and landowners within the Town of Greater Napanee, the following general provisions and guidelines will be followed by Officers:

- a) Complaints and violations will be identified, classified and prioritized using the By-law Enforcement Service Level Matrix, attached to this policy. Allegations or situations that have the potential to threaten health and safety will be given priority.
- b) During the regular course of their duties, Officers may seek out by-law

infractions for issues of public health and/or safety or other by-law violations.

- c) It is not possible to actively ensure that all of the Town's various regulatory by-laws are being complied with at all times. Enforcing the Town's own by-laws is, therefore, discretionary and not mandatory in most instances.
- d) The Town of Greater Napanee promotes an enforcement philosophy that seeks voluntary by-law compliance, which is often achieved through education, information, and non-penalty enforcement, including providing a reasonable time frame to comply.
- e) Compliance may be encouraged through notification of fines and other enforcement measures associated with the offence.
- f) Council is not involved in any way with the sanctioning of an investigation or making a decision on who shall be investigated.
- g) 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 By-law Enforcement Officers.

### ***Enforcement Options***

6.2.2. By-law Enforcement Officers, at their discretion, may use the following enforcement options:

- a) warnings and education;
- b) prosecution under the Provincial Offences Act;
- c) municipal ticketing;
- d) by-law offence notice, "Notice of Violation / Order to Comply";
- e) direct enforcement;
- f) civil proceedings; or
- g) no action may be taken.

### ***Progressive Enforcement***

6.2.3. Resolution of violations through cooperation as opposed to formal court or other action should always be the preferred solution. All violations should be approached with this intent, and the cooperation of the offender should be sought first in every instance.

6.2.4. Enforcement actions will consider the specific situation of the investigation.

- a) For situations where there is no previous history of non-compliance, Officers will consider providing compliance assistance (education and negotiation) as well as progressive compliance and enforcement action where appropriate to seek voluntary compliance.
- b) For situations where there is repeated history of non-compliance, Officers will consider using progressive compliance and enforcement actions.
- c) For situations where there is a threat to health and safety, any

appropriate action which remedies the threat is acceptable.

***Exception: Parking Tickets***

6.2.5. Enforcement of parking is conducted both on a proactive and reactive basis. Parking infractions do not fall under the provisions of progressive enforcement.

**6.3. Confidential Information**

6.3.1. Personal information collected by the Town as a result of a written complaint and any information collected during a By-law investigation is protected under the authority of the *Municipal Freedom of Information and Protection of Privacy Act*.

6.3.2. Officers and other involved Town Staff shall keep confidential any and all personal information collected from citizens and the public.

6.3.3. Officers will only collect personal information that is necessary for the monitoring and enforcement of a by-law infraction.

6.3.4. The identity of the requestor and the written complaint will not be disclosed to the alleged offender or any member of the public, or to any member of Staff or Council who does not need to know the information in order for the complaint to be considered. It is not necessary for the requestor to request confidentiality. Likewise, the response of the alleged offender will not be disclosed to the requestor, whether it is in writing or made orally.

6.3.5. Persons reporting the alleged infractions of Town by-laws are to be advised that their identity and any personal information they provide will be kept confidential unless they are required to testify in court or it is part of an audit or a similar process.

6.3.6. The anonymity and confidentiality given to requestors and alleged offenders cannot be assured if the investigation results in court, an audit, or similar proceedings.

6.3.7. Requestors and alleged offenders are to be advised that any personal information that they provide about other parties is subject to disclosure by order of the Information and Privacy Commissioner of Ontario.

6.3.8. While the investigation is ongoing or while a resulting matter is before the courts, no information regarding the matter will be made available to the public or the requestor.

**6.4. Applying Principles of Proportionality, Equity and Consistency**

6.4.1. By-law Enforcement Officers will apply principles of proportionality, equity

and consistency in by-law enforcement decisions by:

- a) Considering whether an enforcement measure is proportionate to the harm caused by the violation;
- b) Considering whether a person's circumstances would make enforcement unjust; and
- c) Considering whether an enforcement measure is consistent with policy and practice.

### ***Proportional Enforcement***

6.4.2. By-law enforcement action will be proportional to the nature of the violation. That is, enforcement measures should appropriately address the harm that is caused by the violation. For example, large fines are likely not an appropriate response to a minor by-law violation.

### ***Equitable Enforcement***

6.4.3. By-law enforcement action will be equitable – that is, applied in a way that is just in light of a person's circumstances. This means that Staff will consider a person's circumstances and ability to comply before determining whether enforcement is appropriate and what enforcement tools they should use.

6.4.4. This does not mean that by-laws cannot be enforced against disadvantaged individuals. Rather, equity is a principle of fairness in By-law Enforcement Staff discretion to decide whether and how to enforce Town by-laws.

### ***Consistent Enforcement***

6.4.5. Consistency is also an important part of a fair By-law Enforcement process and in the application of determinative principles and standards. Similar cases will be treated in a similar matter by following a generally consistent approach to by-law enforcement.

6.4.6. By-law Enforcement Officers are not required to follow the same approach in every case, however, if they enforce the same by-law differently in similar circumstances, their decisions may appear to be arbitrary. When deciding what action is appropriate an Officer should consider whether there is a compelling reason given the circumstances to deviate from policy and past practice.

6.4.7. When Officers do deviate from policy or practice, they will explain to the individual who is affected. For example, a different enforcement approach may be justified if an individual has a past history of non-compliance, the violation is more severe than other cases, or the circumstances would make enforcement in the usual way unjust.

6.4.8. In addition to this policy, the implementation of internal Standard Operating Procedures and forms is encouraged in support of consistent enforcement.

## **6.5. Making, Receiving and Recording Complaints**

### ***Method of Making a By-law Complaint***

- 6.5.1. All by-law complaints are required to be submitted in writing, and may be submitted by way of a complaint form, by letter, email or an online service request form on the Town website.
- 6.5.2. Notwithstanding Section 6.5.1, verbal complaints will be accepted in matters of serious and immediate health and safety or environmental concerns, and where all necessary information is provided as requested. Written confirmation of this complaint may be required afterward.
- 6.5.3. Complainants will be required to provide their full name, their address, their preferred method of contact and contact information, a brief description of the nature of their complaint, and the location where the alleged by-law contravention is occurring.
- 6.5.4. All complaints shall be processed in order of priority following the Council approved Service Level Matrix attached as an Appendix to this policy.

### ***Receiving and Responding to a By-law Complaint***

- 6.5.5. Staff will acknowledge the receipt of a valid by-law complaint to the complainant within two - three business days, in accordance with the Customer Service Standards Policy and established Department Service Level. The primary method of ongoing communication will be the customer portal for online service requests.
- 6.5.6. The complainant will be provided with an overview of the next steps and when to expect a response on the status of their concerns.
- 6.5.7. The complainant will be provided a case number to reference in future correspondences with Staff.
- 6.5.8. Staff will communicate to the complainant that some by-law matters will take a lengthy time before being resolved and may be deemed a civil matter in some instances.
- 6.5.9. Where a complaint relates to a matter that is not within the scope of a Town by-law or Officer jurisdiction, the complainant will be advised of such and directed to the appropriate provincial enforcement agency or private civil litigation, as the case may be.

### ***Recording and Tracking By-law Complaints***

- 6.5.10. Staff shall record the following information in the applicable data tracking system:

- a) The date the complaint was received;
- b) The location in question;
- c) The complainant's information;
- d) The details of the complaint;
- e) The potential By-law being violated; and
- f) All action and steps to resolve a by-law matter by By-law Enforcement Officers.

6.5.11. Information on the number and type of enforcement complaints received and closed shall be reported to Council on a monthly basis.

6.5.12. Information on the number and type of enforcement methods used (warnings, tickets, orders to comply, etc.) shall be reported to Council on a monthly basis.

6.5.13. Any action that would result in Town staff or Town contractors entering onto private lands and expending public monies where the expense is anticipated to exceed \$5,000 shall be reported to Council through a staff report prior to such action being taken.

6.5.14. Notwithstanding the requirement of Section 6.5.13, where there is not sufficient time to report to a Council meeting and there is risk to life, health, safety or property if action is not taken promptly, Officers may proceed with the approval of the Chief Administrative Officer, Chief Building Official, or Fire Chief as appropriate, and the matter will be reported to Council for information at the earliest opportunity.

## **6.6. Responding to Frivolous, Repeat or Multiple Complaints**

6.6.1. Repeat complaints on similar issues will be assessed on their merits, even if numerous, to determine the appropriate response and action, if any.

6.6.2. Previous attempts by Officers to address a repeat issue and steps taken will be reviewed.

6.6.3. Where compliance with a potential by-law infraction has been confirmed, further action on a repeat or frivolous complaint may not be acted upon unless new information is provided by the complainant.

6.6.4. Restricted contact to a repeat complainant on the same issue or a frivolous complaint may be considered in accordance with the Town's Reasonable Conduct Policy.

6.6.5. Where multiple complaints are received from different people about the same issue, Officers may assess and determine a response for the

complaints as a whole rather than individually. In doing so, however, Officers must consider any nuances of the different complaints and respond to each issue received from each complainant.

## **6.7. Communicating Enforcement Decisions**

- 6.7.1. By-law Enforcement Staff will provide a person affected by an enforcement decision with reasons for enforcement that:
- a) describe the concerns that led to the enforcement action and the evidence supporting those concerns;
  - b) set out the by-law section on which the decision is based;
  - c) are clear and easily understood by the person affected by the decision; and
  - d) provide information about options for review or appeal of the decision.

### ***Notice Given Prior to Enforcement***

6.7.2. Personal contact, save and except for parking infraction notices, will be the preferred method of communication prior to any enforcement action.

6.7.3. By-law Enforcement Staff will provide reasonable notice prior to taking enforcement action.

6.7.4. Notice includes:

- a) an explanation of the relevant by-law and how the person is alleged to have contravened it;
- b) reasonable time limits for compliance; and
- c) the potential consequences of failing to respond or comply within the time limits.

6.7.5. Officers will not take enforcement action before the expiry of the compliance time limits set out in a notice letter or verbal communication.

### ***Reasonable Time Limits***

6.7.6. Officers are authorized to use discretion to extend a time limit if necessary to achieve compliance, for example, to accommodate an out-of-country resident.

6.7.7. Officers should not, however, arbitrarily shorten a time limit, except in extraordinary circumstances, and not before attempting to communicate with the resident.

6.7.8. Officers shall be available if the resident has questions or wants to request an extension. These extension requests should be made in writing, acknowledging the matter and outlining why the request is being made.

### ***Notice of Potential Consequences***

- 6.7.9. When giving a Notice of Violation, Officers will advise the recipient in writing and/or verbally of the potential consequences of not complying with a by-law. For example, certain by-laws allow Officers to enter a person's property and clean it up at the owner's expense. The cost of the clean-up is then added to the property taxes if it is not paid within a specified period.
- 6.7.10. Prior to taking the above measures, Officers will follow a fair process by providing notice that explains any steps they are prepared to take if the owner does not comply.

### **6.8. Complaint Priorities: Service Level Matrix**

- 6.8.1. To ensure adequate resources to investigate all complaints, a Service Level Matrix will assist Officers to prioritize the level of service for each Town by-law and required legislation. The Matrix is designed to aid the Officers in their exercise of discretion.
- 6.8.2. The desired level of service has been assigned a corresponding service level category of legislative, proactive, patrol and reactive, as defined in this policy.
- 6.8.3. The Service Level Matrix is attached as Appendix A.
- 6.8.4. The Service Level Matrix appended to this policy will be reviewed by Senior Management on an annual basis, with recommended changes, if any, provided to Council for approval. The Matrix may also be updated from time to time by Council as Council makes by-law service change decisions including, but not limited to, increasing or reducing enforcement staff and adding or removing enforcement by-laws.

### ***Assigning Priority Levels***

- 6.8.5. When assessing the priority level of a by-law violation, Officers will consider such matters as:
- a) potential risk to public health and/or safety;
  - b) magnitude, nature and duration of the contravention;
  - c) history of non-compliance on the property or by the contravener;
  - d) potential short and long term, impact on a structure, property, the community, and the environment;
  - e) potential for setting a precedent;
  - f) resources available to resolve the matter;
  - g) potential costs associated with enforcement action; and
  - h) the likelihood of obtaining the desired results.

### ***High Priority Violations***

- 6.8.6. Action on High Priority Violations may be initiated on a proactive, reactive, or

patrol basis. Upon becoming aware of a High Priority Violation, Officers should begin steps to address the infraction as soon as reasonably possible.

6.8.7. Some examples of High Priority Violations include, but are not limited to:

- a) Unsafe dwellings (i.e. either structural or from a health and safety perspective);
- b) Issues of inadequate entering/exiting from residential units in multi-unit dwellings, including inadequate or unsafe hand railings and balustrades on stairways;
- c) Blocked, locked or inadequately signed fire exits;
- d) Lack of or non-operative smoke detectors;
- e) Abandoned refrigerators or trunks located outside with operative latches;
- f) Failure to adequately fence an outdoor pool;
- g) Unsafe building/structures which could collapse or from which parts of the building could become dislodged causing injury;
- h) Signs which block visibility around points of entering/exiting to a public street or sidewalk;
- i) Dogs running at large on public highway;
- j) Cars parked blocking fire routes and disabled parking spaces;
- k) Prohibited burning;
- l) Other property standards issues that have public health and safety or property damage implications, where a risk to humans or human use, health or activity exists.

### ***Medium Priority Violations***

6.8.8. Action on Medium Priority Violations will primarily be initiated on a reactive basis, but may also be initiated by staff on a proactive basis.

6.8.9. Some examples of Medium Priority Violations include, but are not limited to:

- a) Zoning violations;
- b) Unsafe electrical or plumbing conditions which could pose a health and safety concern;
- c) Decrepit or shabby buildings which do not pose immediate threat to public health and safety, but which pose risk of serious deterioration if not attended to, or which are visually obtrusive;
- d) A property with extensive rubbish or clutter;
- e) Outside storage of inoperative vehicles;
- f) Abandoned or unsafe buildings which are not secure from unauthorized entry;
- g) Significantly altering natural or engineered drainage patterns;
- h) Cars parked in breach of parking by-law;
- i) Minor yard waste/garbage issues where potential vermin problems may develop.

### **Low Priority Violations**

6.8.10. Action on Low Priority Violations will be initiated only on a reactive basis.

6.8.11. Some examples of Medium Priority Violations include, but are not limited to:

- a) Grass cutting or weed violations;
- b) Maintenance of fences, accessory buildings (i.e. sheds or garage) and structures;
- c) Nonconformity of the Town's sign by-law where structural or sight-line issues do not exist;
- d) Inadequate finishing or leveling of a site where significant off-site drainage issues do not exist;
- e) Yard waste/garbage issues;
- f) Noise violations;
- g) Altering a heritage building without obtaining necessary approvals;
- h) Other minor property standards or yard maintenance issues that do not have health, life, safety or property damage implications that pose a risk to humans, and tend to not have significant off-site implications.

### **6.9. External Influence and Interference**

6.9.1 No Town employee or Member of Council shall attempt directly or indirectly to influence any Officer or employee working within an enforcement area in the administration of their duties. Interference or undue influence is in contravention of the respective codes of conduct for Staff and Council. This policy is not intended to prevent or limit the ability of Members of Council or any other person to request information about the enforcement departments or their policies or procedures.

6.9.2 For greater clarity, Town employees and Members of Council retain the right to submit their own enforcement requests as private citizens. These requests shall be prioritized and responded to in the same manner as similar complaints filed by any other resident, and Town employees and Members of Council shall not be entitled to a higher level of information about the enforcement status or actions being taken.

6.9.3 In order to avoid any real or perceived conflict of interest, where either the complainant or person alleged to be in contravention of the by-law is a close friend or family member of an Officer, the Officer shall advise their supervisor of the potential conflict and if feasible, the case shall be assigned to a different Officer.

### **6.10. Complaints Against Town Staff or Elected Officials**

Any by-law enforcement complaints filed against members of Town Council or an employee of the Town with respect to an alleged by-law infraction shall be

treated in the same manner as all other complaints. Care shall be given to ensure that all records in relation to a complaint against a member of Council or a Town employee remain confidential.

### **6.11. Other Enforcement**

6.11.1. In addition to municipal law enforcement options by the Town, complainants also have independent legal rights, which may be explored and pursued by said persons.

6.11.2. The Ontario Provincial Police are responsible for emergency situations and should be contacted to deal with issues, including but not limited to loitering, trespassing, neighbour or domestic disputes, possible drug activity, vandalism or other criminal activity.

## **7. Review Schedule**

7.1. This Policy will be reviewed at least once every Council term. The Clerk, or other Senior Management responsible for enforcement services may bring forward recommended revisions to this policy on an as-needed basis.

## **8. Related Documents**

- Customer Service Standards Policy
- Respectful Conduct Policy
- *Municipal Act*
- *Municipal Freedom of Information and Protection of Privacy Act*

## **Appendices**

- Appendix A – By-law Service Matrix
- Appendix B – By-law Enforcement Seasonal Priorities

## **Revision History**

| Date              | Number     | Description   |
|-------------------|------------|---|
| February 10, 2009 | PO-2009-01 | Initial policy adoption   |
| February 13, 2018 | PO-2009-01 | Add response timelines; clarify role responsibility between building and by-law departments |
| July 25, 2023     | LS-2023-01 | Update policy layout; expand principles; add service levels matrix                          |
| March 25, 2025    | LS-2023-01 | Update service levels matrix; add seasonal priorities calendar                              |
| Spring 2026       | LS-2023-01 | Add Encroachments By-law to matrix, minor language amendments                               |