

BYLAW ENFORCEMENT:

BEST PRACTICES GUIDE FOR LOCAL GOVERNMENTS



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The Office of the

ombudsperson

B.C.'s Independent Voice For Fairness

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FROM THE OMBUDSPERSON

Bylaw enforcement occupies an important and complex place in the work of local governments. It brings together such diverse factors as community aspirations, dispute resolution, effective planning, procedural and substantive fairness and even the administration of justice. Fair, reasonable and transparent practices in bylaw enforcement can enhance citizen confidence in local governments and can save public dollars by resolving disputes early and efficiently. Through fair treatment, local governments can ensure residents – be they those complaining of a bylaw infraction or those alleged to be in contravention of a bylaw – are dealt with respectfully. Ultimately, good bylaw enforcement practices can foster community harmony.

Unfortunately, our experience is that bylaw enforcement does not always achieve those goals. Our office has investigated and evaluated bylaw enforcement complaints over the years. This is a field that can be fraught with conflict, unfairness, frustration and cost. The consequences affect both private individuals and the staff of local governments.

Surprisingly, there are few resources available for local government officials in British Columbia to help establish and administer a high quality bylaw enforcement program. That's where this best practices guide comes in. It is designed to provide information and tools to promote fairness in the administration of local government bylaws. To that end this guide:

1. *Sets out the role of council in developing and enforcing bylaws;*
2. *Outlines how complaints about possible bylaw infractions are best handled;*
3. *Describes the importance of a consistent, transparent approach to bylaw investigations and enforcement;*
4. *Clarifies the key role that a fair and accessible appeal process can play; and*
5. *Provides some practical checklists to assist staff of local governments.*

Many of the values and perspectives inherent in this best practices approach to bylaw enforcement are similar to those that guide the Office of the Ombudsperson: transparency, consistency, evidence-based decision-making and, above all, a commitment to fairness. These values are essential to ensuring British Columbians are treated fairly and reasonably by all public authorities, and specifically those British Columbians who are affected by local government bylaw enforcement.

Following the best practices set out in this guide will help local governments achieve these critically important goals as they administer and enforce their bylaws. Greater public confidence in the work of local governments is the outcome of doing so. This is to the benefit of citizens and local governments alike.



Jay Chalke
Ombudsperson
Province of British Columbia

FROM THE OMBUDSPERSON



Fair, reasonable and transparent practices in bylaw enforcement can enhance citizen confidence in local governments and can save public dollars.



Since 1995, the Office of the Ombudsperson has had jurisdiction to investigate complaints about local governments in British Columbia, including municipalities (cities, towns, villages, districts, townships, resort municipalities and regional municipalities), regional districts, the Islands Trust and improvement districts.¹

Each year, approximately 8 per cent of the complaints we receive are about local governments, and we investigate and seek to resolve these matters on an individual basis.

Of those complaints, a significant number are about how local governments enforce their bylaws, such as those about animal control, unsightly premises, permitting, zoning, noise and other common issues. While the complaints vary widely in subject, they raise recurring concerns of administrative fairness in how local governments respond to complaints and enforce their bylaws.

Identifying, encouraging and upholding best practices in administrative fairness are central to the Ombudsperson's role. Through individual complaint investigations, our office has gained significant knowledge and understanding of fair practices in local government bylaw enforcement. However, with almost 200 municipalities and regional districts in British Columbia, it has been difficult for us to share best practices broadly for the benefit of all local governments.²

In the 20 years that we have had jurisdiction to investigate complaints about local governments, we have seen that it can be challenging for elected officials and staff to balance serving the demands of the community and individuals with ensuring fairness in bylaw enforcement. Few tools are available in British Columbia to help local governments develop, adopt and implement best practices that encourage fairness in bylaw enforcement.

The *Bylaw Enforcement: Best Practices Guide for Local Governments* seeks to fill that gap by providing information and practical tools, such as checklists, to promote administrative fairness in bylaw enforcement.

Who This Guide Is For

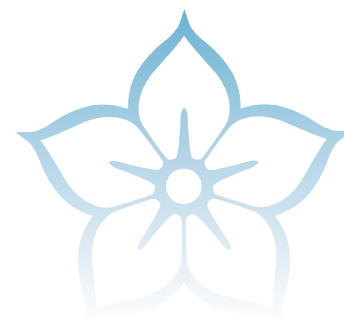
This guide is for anyone interested in bylaw enforcement, but is intended primarily to be a resource for three key groups.

- *Elected officials for local government who are responsible for enacting bylaws and establishing a fair framework for bylaw enforcement* – Many of the best practices highlighted in this guide will be most effective if they are incorporated directly into the bylaws passed and policies approved by a council or board.

The guide also highlights best practices for the role that elected officials should play in setting policy and ensuring it is implemented well.

¹ *Ombudsperson Act*, R.S.B.C. 1996, c. 340, Schedule, ss. 4-11.

² In addition to 162 municipalities and 27 regional districts, there are 211 improvement districts in the province that provide defined services to residents living within the district boundaries. In this guide, we use the term "local government" primarily to mean municipalities (including the City of Vancouver) and regional districts. To the extent that improvement districts are involved in bylaw enforcement, this guide includes them as well. We refer specifically to municipalities, regional districts or the City of Vancouver where certain rules apply to those entities only. The City of Vancouver is governed by the *Vancouver Charter*, S.B.C. 1953, c. 55, which makes it legally distinct from other municipalities. However, for the purpose of this report, we have not treated it differently from other municipalities except where the statutory framework for the City of Vancouver differs, in which case we note the unique situation that applies to that city.



Administrative fairness is an approach to dealing with the community that is transparent, fair and accountable.

- *Local government staff, from front desk staff to bylaw enforcement officers and chief administrative officers* – Administratively fair bylaws, policies and practices can make more efficient use of resources and help local governments save money and time. Enforcing bylaws in a consistently fair manner provides good service to the community. It can also increase compliance with bylaws and reduce the number of complaints made to local government staff or to the Office of the Ombudsperson.
- *Community members* – The guide articulates standards of fairness and reasonableness that people in a community can expect their local government to follow, whether a person is making a complaint about a bylaw infraction or is the subject of enforcement action. The guide also provides benchmarks against which people can evaluate their local government's bylaw enforcement practices.

This guide is not meant to be prescriptive or to cover all aspects of bylaw enforcement. It is not a training guide for bylaw enforcement officers, nor does it explain the bylaw drafting process. Rather, it offers local governments and residents a starting point from which to consider the fairness of their bylaws and related enforcement policies, practices and procedures, to identify gaps, and to improve bylaw enforcement.

Throughout the guide, we give examples (shown in italics) from our own investigations. In some cases, these examples illustrate best practices; in other cases, they describe practices that fell below the standards we expect of local governments but were addressed through the collaborative work of our office and local government staff. Names in all of the examples have been changed to protect the confidentiality of our investigations.

How We Developed This Guide

To understand the diverse context of bylaw enforcement in the province, we conducted a systemic review of complaints about bylaw enforcement that our office has received and investigated. We also researched relevant case law and reports and guides related to bylaw enforcement in British Columbia, Canada and internationally. As well, we analyzed a number of frequently enforced bylaws from a sample of local governments in the province.

In addition to this research, we consulted with 38 local governments of all sizes from every corner of the province – cities, towns, villages, districts, resort municipalities and regional districts. We also spoke with the Union of BC Municipalities (UBCM), the Local Government Management Association, the Licence Inspectors and Bylaw Officers Association, and the Justice Institute of British Columbia (which runs a training course for bylaw enforcement officers). We presented our preliminary work in a clinic at the UBCM Convention in September 2015 and invited feedback.

The Diversity of Local Governments and Their Approach to Bylaw Enforcement

The almost 200 local governments in British Columbia vary widely in type, population, area, budget and composition.

Some have existed longer than British Columbia has been part of Canada (e.g. the City of New Westminster is 155 years old); others are relatively young, such as the Districts of Clearwater, Barriere and West Kelowna, all incorporated in 2007.

In geographic size, local governments range from 63 hectares (Silverton, slightly larger than Vancouver's Queen Elizabeth Park) to 11.9 million hectares (Peace River Regional District, which covers about 12 per cent of the total area of the province).³ Most municipalities, urban and rural, have an area of less than 10,000 hectares. Most regional districts have an area greater than 2 million hectares.

The financial resources of local governments vary significantly too. In 2013, a total of 141 of the 160 municipalities had an annual revenue under \$100 million, and for most the amount was less than \$10 million.⁴ In the same year, 25 of the province's 27 regional districts had an annual revenue under \$100 million, and for 20 of those it was under \$50 million.⁵

While local governments with large budgets may be able to devote substantial resources to bylaw enforcement, those jurisdictions also likely have larger populations and so more bylaw enforcement issues to address. Conversely, jurisdictions with large geographic areas or limited financial resources may have small populations and thus fewer bylaw enforcement issues, yet face significant challenges in establishing an effective enforcement program.

Bylaws Evolve as Values and Standards Change

Bylaws enacted by local governments reflect community values and standards. Those values and standards are not uniform across the province. Rather, they vary based on each jurisdiction's history, location, size and the political direction set by its governing council or board. For example, a historically rural community with a strong industrial base may have very different noise bylaws from those in a suburban, primarily residential community.

These values and standards are not static; they evolve over time as a community changes – for example, transitioning from rural to urban, or away from or toward an economy based on primary industries. Changes in the composition of communities over time mean that bylaws and enforcement practices need to evolve as well to respond to the inevitable conflicts that arise in the “interface” areas between different types of land uses and competing priorities.

Bylaw Enforcement Practices Vary Widely

Local governments in British Columbia use a wide variety of bylaw enforcement practices and approaches.

- Large local governments have specialized teams enforcing different types of bylaws, such as those related to the environment, parks or building inspection. By contrast, smaller local governments may rely on their chief administrative officer or a single bylaw enforcement officer to carry out all bylaw enforcement functions. Some local governments have agreements with an external agency (such as a private company, municipal police or another local government) to carry out all or part of their bylaw enforcement. For example, local governments

³ In addition to total area, the Ministry of Community, Sport and Cultural Development provides statistics for each municipality on Taxable Land Area, Taxable Water Area, Exempt Parkland, and Other Exempt Area. British Columbia is 94,473,500 hectares.

⁴ Based on figures reported by the Ministry of Community, Sport and Cultural Development for 2013 (the most recently reported consolidated revenue figures). The information is for the calendar year 2013 (January 1 to December 31) and reported in form 401 on the ministry's website: <http://www.cscd.gov.bc.ca/lgd/infra/library/Schedule401_2013.xls>.

⁵ Based on figures reported by the Ministry of Community, Sport and Cultural Development for 2013 (the most recently reported consolidated revenue figures). The information is for the calendar year 2013 (January 1 to December 31) and reported in form 901 on the ministry's website: <http://www.cscd.gov.bc.ca/lgd/infra/library/Schedule901_2013.xls>.

Our goal is to help local governments, when exercising their discretion to enforce bylaws, do so in a manner that is, and is seen to be, administratively fair.

may contract with external agencies for specialized services such as animal control. Or, they may contract externally as a means of increasing the capacity of existing enforcement teams when they are busy.

- Bylaw enforcement staff or contractors may be designated as bylaw enforcement officers under provincial legislation.⁶ Only bylaw enforcement officers designated in this way have the authority to issue a municipal ticket information or a bylaw notice.⁷ In communities with a municipal police force, an individual appointed under the *Police Act* is also considered a bylaw enforcement officer, but would report to the local police chief or detachment head rather than to the local government directly.⁸ These individuals must also be specifically designated by council before they can issue a municipal ticket information or bylaw notice.

Besides the designated officers, many other local government staff have a role in bylaw enforcement, such as responding to questions, recording complaints, explaining enforcement processes and encouraging voluntary compliance.

Therefore, when we refer in this guide to “bylaw enforcement staff,” we mean (unless otherwise stated) all individuals who may be involved in bylaw enforcement in a community, whether or not they are designated as bylaw enforcement officers under the relevant legislation.

- Local government bylaw enforcement programs exist on a continuum between voluntary compliance and enforcement. The exact position on this continuum reflects the priorities set by a local government’s council or board. Compliance-focused programs incorporate strategies such as public education, informal resolution, warnings, and alternatives for dispute resolution or mediation. Enforcement-focused programs carry out strategies such as issuing bylaw offence notices or tickets, seeking injunctions, taking direct enforcement action, and prosecuting.

The bylaw enforcement programs of most local governments in British Columbia adopt elements of both approaches.

Despite differences in the content of bylaws and in approaches to enforcement, and despite the unique challenges that face each local government, residents anywhere in the province should be able to expect that their local government will interpret, apply and enforce its bylaws fairly and reasonably.

This expectation of fair treatment is the underlying premise of this guide. Our goal is to help local governments, when exercising their discretion to enforce bylaws, do so in a manner that is, and is seen to be, administratively fair.



⁶ Section 264(1)(b) of the *Community Charter*, S.B.C. 2003, c. 26, allows a council to designate a person as a bylaw enforcement officer. This section also applies to regional districts under s. 414 of the *Local Government Act*, R.S.B.C. 2015, c. 1. Section 482.1(1)(b) of the *Vancouver Charter*, S.B.C. 1953, c. 55, serves a similar function for the City of Vancouver.

⁷ Section 264(2) of the *Community Charter*, S.B.C. 2003, c. 26 gives a designated officer the authority to issue a municipal ticket information. Section 482.1(2) of the *Vancouver Charter*, S.B.C. 1953, c. 55, serves a similar function for the City of Vancouver. Persons designated as bylaw enforcement officers in this manner are also considered bylaw enforcement officers under the *Local Government Bylaw Notice Enforcement Act*, S.B.C. 2003, c. 60, s.1 and can therefore issue bylaw notices for designated bylaw offences under s. 4 of that act.

⁸ Appointed under s. 36 of the *Police Act*, R.S.B.C. 1996, c. 367.

THE IMPORTANCE OF FAIRNESS

The Office of the Ombudsperson upholds democratic principles of accountability and transparency by investigating both individual complaints and broad systemic issues and recommending resolutions.

The work of our office is guided by principles of natural justice and administrative fairness. These principles establish a framework within which we developed the best practices set out in this guide.⁹

Administrative Fairness in a Local Government Context

Administrative fairness refers broadly to an overall approach to administrative decision-making that is transparent, fair and accountable.

For local governments involved in bylaw enforcement, administrative fairness is characterized by:

- bylaws that are authorized by, and consistent with, the governing legislation
- a written policy for fairly and reasonably exercising discretion when enforcing bylaws
- written standards and expectations of conduct by bylaw enforcement staff when they interact with the public
- clear, consistent and available public information about bylaws and enforcement practices, and how to make complaints and appeal decisions
- a process for receiving, assessing and responding to complaints in a timely manner
- a consistently applied and well-documented investigative process that establishes a clear factual basis for enforcement
- adequate notice to affected persons before any enforcement is taken
- enforcement decisions that are authorized by applicable legislation and bylaws
- enforcement decisions that are consistent with policy and with other similar decisions, are equitable, and are proportionate to the problem being addressed
- reasons for enforcement decisions that are appropriate, that set out the basis for the enforcement and that provide information about how to appeal
- appeal processes that are accessible and fair, and that are communicated to affected persons in a timely way



⁹ See Office of the Ombudsperson, *Code of Administrative Justice 2003*, Public Report No. 42, British Columbia Legislative Assembly, March 2003, 15 <<https://www.bcombudsperson.ca/sites/default/files/Public%20Report%20No%20-%2042%20Code%20of%20Administrative%20Justice.pdf>>.

Why Administrative Fairness Is Important

Demonstrating a commitment to administrative fairness increases the public's confidence in their local government's enforcement program, and gives local governments confidence that they are treating everyone fairly. Adopting bylaw enforcement practices that are based on administrative fairness principles benefits local governments in several important ways.

- *Abiding by principles of administrative fairness can help staff of large and small local governments reduce conflict in matters of bylaw compliance and enforcement* – When enforcing bylaws, local government staff interact with the public, sometimes in high conflict situations. Enforcement decisions often affect people on their property or in their home. When enforcement decisions are seen to be reasonable and appropriate, conflict may be reduced.
- *Establishing and promoting fair bylaw enforcement processes can help local governments both reduce the number of complaints received and resolve issues more quickly and effectively, thus saving time and money* – Bylaw enforcement processes that are clearly laid out and accessible to all involved enable staff not only to work more efficiently in dealing with complaints, but also to be consistent in the actions taken when problems arise. This clear, open approach can lead to fewer bylaw complaints. Furthermore, a fair enforcement framework can also help local governments with limited resources build their enforcement capacity.
- *Adopting a consistently fair and reasonable approach to bylaw enforcement can help local governments build strong community relationships* – A local government that clearly demonstrates a commitment to administrative fairness helps increase its public perception of being responsive, transparent and accountable.

The *Bylaw Enforcement: Best Practices Guide for Local Governments* can help local governments to realize these benefits by building administrative fairness principles into their bylaw enforcement programs.



Municipal councils and regional district boards are responsible for developing a fair and reasonable bylaw enforcement framework for their communities. This section describes best practices that councils and boards can adopt to fulfill this role. We have used the term “council” throughout this guide to refer to the body through which local government elected officials exercise their decision-making powers. Unless otherwise stated, the term should be read to also include the boards of regional districts and, where appropriate, improvement districts.

Provincial legislation gives local governments broad powers to create and enforce bylaws. For municipalities, this authority is found in the *Community Charter*.¹⁰ The City of Vancouver’s authority to make and enforce bylaws is found in the *Vancouver Charter*.¹¹ The *Local Government Act*¹² grants regional districts and improvement districts the authority to make and enforce bylaws, and the *Islands Trust Act*¹³ gives this power to the Islands Trust local trust committees. The *Local Government Bylaw Notice Enforcement Act* allows local governments listed in the *Bylaw Notice Enforcement Regulation* to deal with bylaw violations through bylaw notices.¹⁴

The different enabling statutes mean that not all local governments have the same enforcement powers. The best practices in this guide take into account the variations in legislative requirements so as to be relevant to all local governments in British Columbia.

Developing Bylaws

An important role of council is to develop bylaws that establish, maintain and reflect community standards. The bylaw-making power possessed by local governments “permits a highly diverse, localized regulatory response, including the choice not to regulate at all, in accordance with locally determined priorities and approaches.”¹⁵

Administrative fairness in bylaw enforcement begins with council developing bylaws that can be fairly and reasonably enforced. This guide is not intended to be a comprehensive manual on bylaw drafting.¹⁶ Instead, we have identified key points for council to consider during bylaw development that will contribute to an administratively fair bylaw enforcement framework.

¹⁰ *Community Charter*, S.B.C. 2003, c. 26.

¹¹ *Vancouver Charter*, S.B.C. 1953, c. 55.

¹² *Local Government Act*, R.S.B.C. 2015, c. 1.

¹³ *Islands Trust Act*, R.S.B.C. 1996, c. 239.

¹⁴ *Local Government Bylaw Notice Enforcement Act*, S.B.C. 2003, c. 60; *Bylaw Notice Enforcement Regulation*, B.C. Reg. 153/2015, 31 July 2015.

¹⁵ William Buholzer, *Local Government in British Columbia*, The Continuing Legal Education Society of British Columbia, current to 1 January 2013, s.5.1.

¹⁶ For some resources on bylaw development and drafting, see the following: Ontario Ministry of Municipal Affairs and Housing, *The Municipal Councillor’s Guide 2014*, 6-7 and 32-44 <<http://www.mah.gov.on.ca/AssetFactory.aspx?did=4965>>; Municipalities Newfoundland and Labrador, *Municipal Council Handbook*, revised 2014, 79-81 <http://www.miga.gov.nl.ca/publications/training/Councillor_Handbook_2014.pdf>; Alberta Municipal Affairs, *Municipal Resource Handbook, Basic Principles of Bylaws* <http://www.municipalaffairs.alberta.ca/documents/ms/Basic_Principles_of_Bylaws_2013.pdf>; and Donald Lidstone, Lidstone Young Anderson, Local Government Administration Association, *Bylaw Drafting Manual*, 1st ed., 2 January 2003.



Can a Bylaw Be Enforced?

A bylaw that is too vague, uncertain or unspecific may be struck down as unenforceable.¹⁷ It is a matter of common sense that a bylaw should be drafted in such a way that it can be fairly enforced. A local government seeking compliance must be able to point to a specific bylaw that clearly sets out how and why a person's actions (or non-actions) are prohibited. If a bylaw is drafted in an unclear way that prevents its enforcement, or leads to inconsistent decision making, then its administration will be problematic. To help avoid such situations, council should consider at the outset whether the bylaw it is adopting is clear, specific and enforceable.

Do Staff Know How to Enforce a Bylaw?

The existence of a bylaw does not necessarily mean that staff know how the bylaw can be enforced. The following example, from a complaint we investigated, illustrates the problems that can arise when the language of a bylaw makes local government staff question whether it can be enforced. In this case, ambiguity in the bylaw led to inaction by staff.

Enforcement at a Standstill

Beth called our office with a complaint about her local government. She told us that her neighbours operated an incinerator in their backyard, which caused large amounts of noxious smoke to drift across her property. Beth had complained to the city repeatedly about the smoke, but no investigation or enforcement resulted. According to Beth, the city told her that the relevant sections of its air quality bylaw were not enforceable and that it had no plans to amend the bylaw.

Beth thought it was unfair that the city had not taken enforcement action against her neighbours for operating their incinerator in a way that negatively affected the use and enjoyment of her property.

We investigated whether the city followed a reasonable process investigating Beth's complaints about the incinerator and the smoke drifting across her property. We also investigated whether the city followed a reasonable process to inform her of the steps it planned to take to change its bylaw.

In our investigation, we learned that the city had been aware of Beth's and other residents' concerns about air quality for many years. However, city staff had been uncertain whether the city's existing air quality protection bylaw was enforceable. In addition, several years previously, the city's bylaw enforcement officer had investigated Beth's concerns and concluded that no enforcement action was required.

In response to our investigation, the city obtained information that confirmed its existing bylaw was enforceable. We then consulted with the city to determine whether it would consider taking several steps to address Beth's concerns. The city agreed:

- *to investigate any new complaints about burning to determine whether the activity contravened the bylaw*

¹⁷ *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*, [2004] 1 S.C.R. 485. See also *Puslinch (Township) v. Monaghan*, [2015] O.J. No. 2136. In the *Puslinch* case, the Ontario Superior Court of Justice refused to uphold the local government's zoning bylaw enforcement actions because the bylaw itself was "unacceptably vague, uncertain and unspecific" and therefore of no force and effect.

- *as part of its investigation(s), to obtain statements from Beth and other residents, as required, about the impact of the smoke on their quality of life to determine whether the burning activity contravened the bylaw*
- *to consider amending some parts of the bylaw in accordance with the legal advice it received with a view to making enforcement action easier in the future*
- *to write to Beth to explain the approach it intended to take in the future to address her concerns, and to provide written reasons why no enforcement action was appropriate if it concluded none was required at the end of its investigation(s)*

In our view, the steps the city agreed to take responded to Beth's concerns.

The above example emphasizes the importance of local governments understanding whether and how their bylaws can be enforced.

In some cases, enforceability is a legal question that council needs to consider before implementing a new bylaw. In other cases, it may arise as staff attempt to respond to complaints. In these instances, local governments that have a process for dealing with questions about a bylaw's enforceability when they arise are in a good position to take remedial action in a timely manner.

In Beth's case above, it was several years before the question of the bylaw's enforceability was finally resolved. A more proactive process would allow staff who have identified a concern about enforceability to communicate the necessary information to council. Council can then take steps to either amend or repeal the bylaw, or to address any other issues preventing enforcement.

Best Practices: Enforceability of Bylaws

Council considers enforceability when developing or adopting a new bylaw.

Local government enforcement staff can quickly and easily raise a concern about the enforceability of a bylaw with council.

Enforcement Capacity

The public expects local governments to enforce the regulatory bylaws council adopts. When passing a new bylaw, it is important for council to consider whether local government has the capacity – staff, equipment and other resources – to meet those public expectations through adequate enforcement of the bylaw. Insufficient enforcement capacity may defeat the purpose of enacting the bylaw in the first place.

We heard from local governments that geography, a lack of staff or other resource shortages can make enforcement difficult. Smaller local governments, with one person or a small team responsible for all bylaw enforcement, may find it especially difficult to respond to complaints about bylaw infractions. Many local governments address these challenges by placing a significant focus on voluntary compliance. While voluntary compliance is cost-effective, it is still important for local governments to take enforcement action when necessary. Failure to do so will, over time, reduce the credibility of a local government's bylaws and will likely reduce voluntary compliance.

The local governments we spoke with as we developed this report have developed creative ways for enforcing bylaws despite resource or geographic challenges. Most commonly, local governments develop ways to share enforcement resources across

A bylaw enforcement policy allows council to outline, in a public way, the goals of the local government's bylaw enforcement program and to set clear expectations and standards for bylaw enforcement.

jurisdictional boundaries – whether on a particular matter such as animal control, or more generally.

Regardless of the approach a local government chooses, enforcement capacity should be one of the issues that council anticipates and addresses when adopting a new bylaw and when providing direction to staff about enforcement priorities.

Guidelines for Exercising Discretion: Developing a Bylaw Enforcement Policy

Local governments have wide discretion in whether to enforce a bylaw in a particular circumstance. As long as a local government can point to a bylaw violation, the courts will generally not interfere with the resulting bylaw enforcement decision.¹⁸ The existing case law does not, however, provide much guidance for local governments on how to fairly and reasonably exercise their discretion when making enforcement decisions. The principles of administrative and procedural fairness require that local governments use their discretion in a fair, reasonable and transparent manner.

A written policy can assist enforcement staff in exercising this discretion. Given the breadth of bylaw types, local governments must consider whether one policy on exercising discretion is sufficient, or whether separate policies are needed for each bylaw.

By developing and implementing a policy on exercising discretion, local governments can make decisions in a manner that is, and is seen to be, administratively fair.

Why Develop a Bylaw Enforcement Policy?

A bylaw enforcement policy allows council to outline, in a public way, the goals of the local government's bylaw enforcement program and to set clear expectations and standards for bylaw enforcement.

A bylaw enforcement policy provides a framework against which council or others can evaluate the enforcement process and is a useful tool for training staff. By addressing matters that frequently arise, a bylaw enforcement policy can promote the efficient use of resources. In cases where staff may be enforcing bylaws against their neighbours, friends or relatives – perhaps because of a small population – a well-written enforcement policy that is appropriately followed can help staff defend against allegations of conflict or unfair process. A clearly articulated bylaw enforcement policy can help a local government respond fairly to the inevitable question, “why me?” when it takes enforcement action against an individual.

With local government elections being held every four years, a written bylaw enforcement policy promotes consistency and certainty against a backdrop of political change, and protects against potentially inconsistent, unfair or arbitrary decision making.

Managing public expectations about enforcement in the face of limited resources is a challenge for all local governments, and particularly for small ones. Establishing a framework for enforcement within a bylaw enforcement policy, and making it readily accessible to the public, can help local governments with few resources manage public expectations while promoting transparency and accountability.

¹⁸ For examples, see *Burnaby (City) v. Oh*, 2011 BCCA 222, and *Powell River (City) v. Sliwinski*, 2013 BCSC 737.

Content of a Bylaw Enforcement Policy

An effective bylaw enforcement policy meets the following criteria, which are based on administrative fairness principles. The policy:

- is written in plain language that is easily understood and applied
- sets out clearly what the policy is intended to achieve
- is flexible enough to cover a variety of circumstances where staff must exercise discretion
- does not fetter staff in exercising discretion by requiring them to take the same steps in each case, regardless of the circumstances, or discouraging individual responsibility for decisions
- sets out the relevant considerations that staff should take into account when exercising discretion
- sets out its relationship to – and accurately reflects – governing legislation and bylaws
- is communicated to staff
- is readily accessible to the public (e.g. on an easily found website)
- is reviewed and revised as appropriate given changing circumstances in the community¹⁹

The remaining sections of this guide address issues specific to the steps in the enforcement process. They also provide suggestions on how local governments can ensure staff exercise discretion when enforcing bylaws and follow a fair process every step of the way.

Applying a Bylaw Enforcement Policy

An enforcement policy establishes broad guidelines for a fair and consistent enforcement process. It covers most situations where staff must make discretionary enforcement decisions. A properly applied enforcement policy should achieve three goals:

- result in similar cases being treated in a similar way
- provide local government staff with guidance on, and limits to, exercising discretion
- provide the public with clarity and detail on how and why enforcement decisions are being made

It is important for staff applying an enforcement policy to guide their decision making to understand the nature and limits of that policy. Local governments must keep in mind two important caveats that apply to any policy that provides such guidelines.

First, nothing in the policy can override the mandatory requirements of a bylaw. For example, if a bylaw requires a bylaw enforcement officer to provide notice in a particular way, this requirement must be met even if a general policy provides several options for providing notice.

¹⁹ This list is adapted from Ombudsman Western Australia, *Guidelines: Exercise of Discretion in Administrative Decision-Making*, revised October 2009 <<http://www.ombudsman.wa.gov.au/Publications/Documents/guidelines/Exercise-of-discretion-in-admin-decision-making.pdf>>. See also Ministry of Attorney General, *The Development and Use of Policies and Guidelines in the Decision-Making Process: A Discussion Paper*, 2009 <http://www.llbc.leg.bc.ca/public/pubdocs/bcdocs/458061/policy_paper_draft9.pdf>.

Second, a policy is not a bylaw. It cannot be so prescriptive that staff are unable to exercise discretion to make an independent enforcement decision, especially when circumstances require an exception. Achieving fairness in discretionary decision making means considering the circumstances of the particular matter.

Best Practices: Developing and Applying a Bylaw Enforcement Policy

Council develops a written policy to assist staff in exercising discretion when making enforcement decisions.

Council and senior local government officials provide guidance to staff on how to apply the enforcement policy in their day-to-day decision making.

Standards of Conduct

In addition to having clear bylaws and a bylaw enforcement policy, council can enhance bylaw enforcement by developing standards of conduct for bylaw enforcement staff. As a set of expectations for how staff will act, standards of conduct help local governments define appropriate enforcement practices, whether enforcement is done by designated bylaw enforcement officers, other staff or contractors.

It is important that those responsible for enforcement are adequately trained and have sufficient understanding of bylaws, enforcement policies and the principles of administrative fairness. Most of the local governments we spoke with have established mandatory training requirements for their bylaw enforcement staff, whether they are employees or contractors.

Bylaw enforcement staff regularly try to reach practical resolutions for often intractable problems by using the enforcement tools available to them. Bylaw enforcement staff may have to be persistent in the face of resistance or even outright hostility. Standards of conduct can assist local government staff in navigating those difficult enforcement situations and in making fair and unbiased enforcement decisions.

Most of the time, local government staff act in good faith when they enforce bylaws. However, there are cases in British Columbia where the courts have found that the conduct of bylaw enforcement officers constituted an abuse of power. These cases illustrate how important it is for local governments to recognize that bylaw enforcement staff must act within certain boundaries.

Abuse of power occurs when public officials operate without authority and know that their conduct would probably cause harm to a person or his or her property. In one case, bylaw enforcement officers removed items from a resident's property even though no bylaw authorized the removal of these items. The resident challenged the local government's actions. The court found that the bylaw enforcement officers had acted without authority and with indifference to any harm arising from their actions. This conduct constituted an abuse of power. The court awarded the resident \$1,000 in damages and ordered the local government to return his property.²⁰

However, the same resident had also argued that bylaw enforcement officers had harassed him by ordering him, on several occasions, to clean up his property. The local government did not act on all of these orders, and the court found that they were part of an ongoing dialogue between the city and the resident. The court

Standards of conduct can assist local government staff in navigating difficult enforcement situations.

found that the resident deliberately set himself up to challenge the city and that he had baited staff with his extreme and self-interested interpretations of city bylaws.²¹

This case shows that as long as actions are authorized and appropriate, it is not unreasonable for local governments to persist with enforcement even in the face of refusal or hostility from a resident.

In another case, a resident alleged in court that bylaw enforcement officers were excessively persistent, as well as “arrogant, hostile, and inappropriate” when inspecting her secondary suite. The court noted that this behaviour, for which there was no evidence, was likely a consequence of the defendant’s refusal to grant the bylaw officers access to the suite as they were legally entitled to have. This refusal, the court noted, provided a justifiable reason for the city’s persistence in enforcement.²²

These cases demonstrate the importance of distinguishing between enforcement actions that are necessary and reasonable (but a resident may vehemently disagree with) and those that are clearly beyond the authority of local government enforcement staff. Persisting in multiple attempts to enforce is not unreasonable if such action is both authorized and necessary.

Individuals who contact our office with a complaint rarely assert that a bylaw enforcement officer abused his or her power. More frequently, individuals complain that they were treated poorly by local government staff. Individuals may be angry, frustrated or rude when dealing with local government staff. Fairness is not just about the process followed in making decisions – it also involves communicating about the process and resulting decisions in an appropriate and respectful way.

Treating people well in an enforcement context can help resolve conflicts, encourage voluntary compliance and shape positive public perceptions of a local government. Written standards of conduct are a useful tool to outline the professionalism that local governments expect of their bylaw enforcement staff. For example, one local government’s website describes professional conduct expectations for bylaw enforcement staff, emphasizing accountability, impartiality, integrity, protection, respectfulness and service.²³ Such standards can also prevent bylaw enforcement officers from inadvertently acting outside the scope of their authority.

Best Practice: Standards of Conduct

Council and senior local government officials establish and make public standards of conduct for bylaw enforcement staff.

The Role of Council in the Enforcement Process

When we spoke with bylaw enforcement staff, managers and chief administrative officers as we were developing this guide, we heard concerns about council members becoming personally involved in bylaw enforcement investigations on behalf of residents, and directing bylaw enforcement staff to take a specific course of action.

As discussed in previous sections, council establishes overall priorities for enforcement, enacts bylaws, and adopts bylaw enforcement policies and standards of conduct for bylaw enforcement staff. Council may also provide direction on

²¹ *Prince George (City) v. Reimer*, 2010 BCSC 118.

²² *Burnaby (City) v. Oh*, [2010] B.C.J. No. 2857.

²³ Town of Creston, “Bylaw Compliance” <<http://www.creston.ca/2169/Bylaw-Compliance>>.

specific types of bylaw enforcement issues. For example, council may direct its enforcement staff to prioritize enforcement of certain bylaws, or to issue warnings rather than tickets for specific categories of violations.

Within this framework, everyday enforcement decisions are delegated to staff. Defining and maintaining separation between council and front-line enforcement staff is essential to an administratively fair bylaw enforcement system. It is important for council members to be aware of how their own actions can affect the fairness of an enforcement process. This means that while council sets policy and provides general direction on enforcement priorities, its individual members should not become directly involved in enforcement action by directing enforcement against specific residents, groups or businesses, or by directing that enforcement action not occur in a particular circumstance. Rather, individual enforcement decisions should be made by delegated bylaw enforcement staff or contractors.²⁴

It can be difficult for council members to remain a step removed from the day-to-day enforcement process when they are a main point of contact for members of the public who have complaints or who have been the subject of enforcement. It is understandable that council members want to be responsive to the concerns of those who elected them. In such situations, it is certainly appropriate for a member of council to seek assurance that bylaw enforcement staff have fairly responded to a person's concerns.

However, even if motivated by good intentions, council members should not advocate either publicly or privately for a particular result in a specific case. Doing so can create the appearance of bias, particularly if council later hears an appeal on the same matter after bylaw enforcement action is taken. Moreover, any action by a council member that is motivated by favouritism or personal animosity toward an individual may be perceived as an improper use of discretion.²⁵ Each member of council should strive to remain uninvolved in a specific bylaw enforcement decision unless and until the matter is put on the agenda for the entire council to consider.

Best Practices: The Role of Council

Council and senior local government officials develop a written policy to clearly define the separate roles of bylaw enforcement staff, council as a whole and individual members of council.

Local government policy clearly articulates that council members are not to be involved in day-to-day bylaw enforcement decisions.

²⁴ The City of Toronto Ombudsman has investigated concerns about elected local government officials interfering with the work of local government staff. In one investigation, the Ombudsman found that the Mayor's office was improperly directing security staff at city hall and was not following its own policy: Office of the Ombudsman, *Ombudsman Report: An Investigation into Toronto City Hall Security*, April 2015 <<http://ombudstoronto.ca/ombudsman-report-investigation-toronto-city-hall-security>>. In another investigation, the Ombudsman found that the Mayor's office directly influenced the public appointment process that resulted in inadequate vetting: Office of the Ombudsman, *An Investigation into the Administration of the Public Appointments Policy*, 25 September 2012 <<http://ombudstoronto.ca/sites/default/files/Final%20Report%20September%2025%20Post.pdf>>.

²⁵ Office of the Ombudsperson, *Code of Administrative Justice 2003*, Public Report No. 42, British Columbia Legislative Assembly, March 2003, 15 <<https://www.bcombudsperson.ca/sites/default/files/Public%20Report%20No%20-%2042%20Code%20of%20Administrative%20Justice.pdf>>.

Providing Information to the Public

Any local government bylaw enforcement program is enhanced by clear and accessible public information. Council can promote accessibility and transparency by requiring staff to make information about bylaw enforcement public.

Our review of local government websites found significant inconsistencies in the amount and type of information that is posted. Some local governments do an excellent job of providing useful and up-to-date bylaw and enforcement information for their residents, while others have websites that contain little information or out-of-date bylaws. We noted that these disparities were not necessarily related to the size of a government; some small local governments provided high-quality public information while some larger ones did not.²⁶

Making information available and accessible to the public helps to proactively manage public expectations about enforcement by. Bylaw enforcement information is most easily provided through an up-to-date website that includes:

- all current bylaws
- enforcement policies
- information about the complaints process, including any applicable forms
- information about the bylaw enforcement review or appeal process and potential outcomes
- contact information for bylaw enforcement staff

Local governments should review their websites regularly to ensure their information is current and complete.

Public information increases the transparency of the bylaw enforcement process, improves accountability and may reduce the time staff have to spend answering questions. When the public is aware of the bylaw enforcement process, they are less likely to make complaints to the local government or to the Office of the Ombudsperson.

Best Practices: Public Information

Post all current bylaws, enforcement policies and complaint information on the local government's website.

Review bylaw enforcement information on the website on a regular basis to ensure information is current, accurate and complete.



²⁶ Two small municipalities with good information on their websites, including online complaint forms, are the Town of Smithers <<http://www.smithers.ca/municipal-hall/departments-services/bylaw-enforcement-animal-control>> and District of Central Saanich <<http://www.centrialsaanich.ca/hall/Departments/planning/Bylaw.htm>>.



DEALING WITH BYLAW COMPLAINTS

All local governments receive complaints from the public about possible bylaw violations. Members of the public observe what is occurring in their community and can report to their local government when they believe a bylaw is being violated. Bylaw complaints may be about a traffic violation, a long-standing neighbour dispute over unsightly premises, an off-leash dog, a property with safety hazards, or many other issues.

A significant number of the matters brought to the attention of our office are about a perceived failure of a local government to enforce a bylaw in response to a complaint made by the public.

The public is well served when local government staff respond fairly and in a timely manner to complaints about potential bylaw violations. This includes providing decisions (with reasons) not to pursue enforcement. The following example, from a complaint we investigated, shows one such response.

Unsightly but Acceptable

Michelle's house was located in an elevated position with a view over several properties below. She contacted our office because she believed the city had not adequately responded to her complaint that the property owners below should maintain the overgrown area of their land that lay between her house and theirs. The city had not previously required these property owners to maintain that part of their lots.

We investigated whether the city followed a reasonable process in responding to Michelle's concerns and informing her why enforcement action was not taken. The reply we received from the city showed that Michelle had submitted a complaint to its bylaw enforcement department. Bylaw enforcement officers met with Michelle within one day of receiving her complaint and then began an investigation that lasted about 10 days. After the investigation was complete, a bylaw enforcement officer met with Michelle and told her that the city did not consider the properties to be overgrown and that no additional steps would be taken. The city concluded that the slope of the hillside was too steep to be mowed, the land had never been established as a landscaped area, and the existing vegetation contributed to the stability of the hillside.

Because the city conducted a timely investigation and provided Michelle with an explanation for its decision not to pursue enforcement that was reasonable in the circumstances, we concluded that the complaint was not substantiated.

Developing a Complaints Policy

Many local governments, especially smaller ones with few resources, do not conduct proactive bylaw enforcement. Instead, the standard approach used by every local government we spoke with in developing this guide is bylaw enforcement in response to public complaints.

However, despite their reliance on this approach, most local governments we spoke with when we were developing this guide do not have a formal written process for receiving, recording and responding to those complaints.

Receiving, recording and responding to complaints is made easier when a local government has a written and publicly available policy explaining its process. From a fairness perspective, the benefits of a written policy include:

- consistency in staff responses to complaints
- public information about the process that is followed once a complaint is made
- a framework for evaluating the effectiveness of a response to a particular complaint

Best Practices for a Complaints Policy

Creating and following a policy for complaints is something that all local governments can do, regardless of size. For example, one small local government we spoke with (responsible for a population of 5,300) has written a thorough bylaw enforcement complaints policy. It includes direction on how complaints should be submitted to it and how a bylaw incident log can be used to record complaints and their outcomes.

A complaints policy does not have to be complex. In fact, it should be clear and simple, focused on helping local government staff respond fairly and effectively to people who make a complaint about a bylaw violation. An effective policy:

1. Outlines how a person can make a complaint and what information must be included in that complaint.
2. States which staff will be responsible for receiving, recording and responding to complaints.
3. States whether and how the local government prioritizes complaints for response.
4. Sets out a process for recording each complaint and the outcome, and expected timelines for staff to respond to complainants.
5. Lists steps staff must follow to assess a complaint and determine any necessary follow-up, including whether to investigate.
6. Sets out procedures for dealing with frivolous, repeat or multiple complaints.
7. Sets out a process for acknowledging a complaint and communicating the results to the complainant.

All of these components are discussed in the following sections of this guide.

A local government can also develop processes for responding to specific kinds of common complaints. The following example, from a complaint we investigated, shows how a local government responded to a complaint about barking dogs by referring an individual to an established process for that type of complaint.

Dog Barking Log a Reasonable Request

Fran came to us because she was disturbed by her neighbours' barking dogs and did not agree with how her city had responded to her complaints about the noise. Fran said she had asked the neighbours to stop their dogs from barking so much, but they had not taken any effective action. She then contacted the city for help.

The city sent Fran's neighbours a warning letter, but she didn't think that had made a difference and called the city again. This time, a bylaw enforcement officer sent Fran a letter asking her to keep a log of when the dogs barked, and suggesting she ask two other sets of neighbours to do so as well.

A complaints policy does not have to be complex. In fact, it should be clear and simple.

Fran was reluctant to approach her other neighbours with this suggestion because she did not know them well. She thought it should be the city's job to maintain a log and to get other residents in the neighbourhood involved. At that point, Fran decided to contact our office.

After receiving Fran's complaint, we contacted the city's bylaw enforcement supervisor. The supervisor explained that the city's general counsel had advised that asking for noise logs from two other affected local residents would help demonstrate that the noise concern was general and not just a conflict between two parties. As well, the city was aware that any fine it issued for violating its noise bylaw could be challenged in court. If this happened, having evidence from more than one source would help the city defend its position. The enforcement supervisor also said that if Fran could supply the names of two neighbours who she thought were also disturbed by the barking dogs, the city would send them blank noise logs so she wouldn't have to do so herself.

We were satisfied that in responding to Fran, the city was following its established initial process for dealing with complaints about barking dogs. The city had good reasons for asking for noise logs, and did the right thing by agreeing to send noise logs to Fran's neighbours for filling in. We considered this to be a satisfactory resolution.

Best Practice: Developing a Complaints Policy

Local governments develop and implement a bylaw complaints policy that provides direction to staff and information for the public about:

- how to make complaints
- which staff members are responsible for receiving, recording and responding to complaints
- how staff will record and respond to complaints
- how complainants will be informed of outcomes

Making, Receiving and Recording Complaints

A consistent process that enables people to make bylaw enforcement complaints and also enables staff to receive those complaints is key to ensuring that:

- the public has a fair opportunity to raise bylaw concerns with local government
- local government staff can make efficient use of their time handling those complaints

As well, a clear process for recording complaints helps staff identify and organize important information consistently, and initiate any necessary actions in a timely manner.

A local government may receive complaints from the public in person, over the telephone or in writing, sometimes online.

The public must be made aware of the procedures to follow in making a complaint, and of the process that local government staff will follow when they receive a complaint.

A bylaw complaint form can help ensure that complainants provide the information necessary for a local government to record, assess and determine how to respond to the matter. If used, a complaint form should clearly outline what information is required and should have instructions about how to submit the completed form (e.g. email, fax, mail or in person). The form should also be publicly accessible – for example, available on the government’s website. Nine of the 25 local government websites we reviewed when we were developing this guide included complaint forms.

However, even if using an online or written complaint form, a local government should be flexible about how people can make complaints. For example, people with language or literacy barriers may have difficulties completing a written complaint form. Similarly, some complainants may feel more comfortable speaking to a person about their complaint on the telephone or in person. In such cases, staff can use a complaint form to guide their conversation with the complainant and ensure that relevant information is collected.

However people make complaints, a local government must have a consistent way of recording the complaint information. The following example, from a complaint we investigated, shows that not properly recording a complaint when it is made can result in critical delays and a frustrated complainant.

If a Tree Falls...

Kelly complained to her city about a neighbour who had begun cutting down trees on forested property, contrary to a local bylaw. Eight weeks later the city responded, issuing a stop work order to the neighbour, although by this time most of the trees had been cut down. Unhappy with the eight-week delay, Kelly called us.

We investigated why it took so long for the city to respond to Kelly’s complaint. The city admitted that the complaint had not been handled properly: staff responsible for taking action were not even aware of the complaint.

As a result of our investigation, the city provided training to its staff to ensure that all complaints in future are forwarded to the appropriate staff person in a timely fashion.

The system for receiving and recording complaints does not have to be complicated or costly, but it does need to be reliable and used regularly to be effective. The system – whether electronic or not – must allow government staff to record any decisions made about a complaint and to identify the next actions that need to be taken. This will help staff organize relevant information and ensure they have considered and responded to all complaints in a timely way based on urgency or any other considerations.

A clearly defined process for receiving and recording complaints and supporting information may also provide staff with better evidence to support bylaw enforcement action or decisions.

The policies and procedures for complaints submission and handling should also be made publicly accessible, on websites, in brochures or through other means of communication. The key information to be conveyed is:

- how to make a complaint
- how the local government will assess, investigate and respond to a complaint

A local government should not require complaints to be made in a particular form because it is convenient for staff. Doing so may improperly discriminate against those who cannot use that method and may not be administratively fair.

Best Practices: Making, Receiving and Recording Complaints

Local governments develop and implement an accessible complaints process that allows people to make complaints in a variety of ways.

Local government staff use one system to record all bylaw complaints and supporting information.

Local governments make all complaints processes and procedures publicly available.

Responding to Complainants

Most local governments we spoke with when we were developing this guide did not have a policy guiding how they follow up with people who make complaints. Responding thoroughly to a complaint demonstrates a local government's commitment to fairness and to providing good service to its residents. The following example, from a complaint we investigated, shows the value of this approach.

Beach Access Blocked

Pete had trouble accessing the beach near his home. He complained to the district about a derelict vehicle and debris, a rock barrier and an unstable tree all located on the public right-of-way. When the district's bylaw enforcement department did not respond to Pete's concerns in what he considered to be a timely and satisfactory manner, he contacted our office.

We investigated what enforcement action, if any, the district had taken in response to Pete's complaints. We found that although Pete had communicated at length with the district, the district had not responded sufficiently to the three specific concerns he raised, or explained why it had not taken action sooner.

As a result of our investigation, the district wrote a letter to Pete, explaining the reasons for the delay in taking enforcement action to remove the vehicle and debris from the beach access; clarifying its jurisdiction with regard to the rock barrier at the foreshore; and providing a detailed response about the unstable tree. Pete was happy to receive the information and even happier when the district followed up by ensuring that the public right-of-way was cleared.

In practice, some local governments do not follow up with complainants at all, while others only follow up if the complaint is serious or the complainant has specifically requested a response. Many complaints to the Office of the Ombudsperson are prompted by a person's belief that a local government has failed to respond to his or her complaint.

As a matter of fairness, it is important for a local government to respond to a person who makes a complaint. Local government staff can explain any action that has or has not been taken and the reasons for the decision. Such information provides the complainant with confirmation that his or her concerns have been heard by the local government, even if the desired action will not be taken.

The response from staff should be specific to the complaint. For example, in the above example, "Unsightly but Acceptable," the local government gave the complainant three reasons to explain why it did not enforce its bylaws in the circumstances. Individuals who have not received an adequate response to their

complaints may believe that the local government has not acted on their concerns, even if this is not the case.

Based on our experience investigating complaints about a perceived lack of response by a local government, we suggest that the following information be included in any response to a complainant, whether written or verbal:

- acknowledgement that the complaint has been received
- steps taken to assess the complaint
- any enforcement action taken or planned, or the reasons for no enforcement action
- any other relevant information

A verbal response to a complainant may be adequate if staff clearly document the conversation and the matter is routine or uncomplicated.

In all cases when responding to a complainant, local governments should be mindful of their obligation to protect the personal information of both the complainant and other parties involved. This may mean that certain information must not be shared, but in virtually all cases, some meaningful information can be given to a complainant.

Best Practices: Responding to Complainants

Local government staff document all interactions, whether written or verbal, with complainants.

When local government staff respond to a complainant, whether in writing or verbally, they:

- acknowledge receipt of the complaint
- describe any steps taken to assess the complaint
- describe any enforcement action taken or planned, or the reasons for no enforcement action
- provide any other relevant information

Responding to Frivolous, Repeat or Multiple Complaints

Local government staff have often asked us questions about how to respond adequately and appropriately to individuals who make frivolous, repeat or multiple complaints. This is a particularly challenging issue for all local governments.

As a basic principle of administrative fairness, it is important to respond to all complainants. However, there may be times when responding to a repeat complainant or to a complainant whose concern has no basis in fact will result in staff expending significant resources on a single issue. Furthermore, continuing to follow up on multiple complaints about the same issue can result in the person who is the subject of the complaints feeling unfairly targeted. In these situations, the focus for local governments must be on balancing fairly the interests of both the individual making the complaint and the broader community.

The following example, from a complaint we investigated, shows how local government staff responded to multiple complaints from a single individual by

The focus for local governments must be on balancing fairly the interests of both the individual making the complaint and the broader community.

assessing those complaints and providing a reasoned explanation for the decision not to investigate.

The More Is Not the Merrier

When he contacted our office, Bret explained that he had complained to his district about a number of bylaw violations. He told us that the district had not taken reasonable enforcement measures in response to his complaints. We decided to investigate the matter.

In Bret's complaints to the district, he had alleged bylaw violations pertaining to at least 11 different properties. The district explained to us that its enforcement resources were focused on violations that raised demonstrable risks to human health or safety or to the environment. The district said that it was aware of acrimony between residents in Bret's neighbourhood and that it had chosen not to intervene in matters that were clearly disputes between individuals. The district also said that if it did receive complaints alleging a bylaw violation that could have serious consequences for human health or safety or to the environment, staff would investigate and take action in accordance with the district's policy.

The district was also able to demonstrate to us that the complaints raised by Bret were not ones that, according to the district's policy, would trigger an investigation.

We therefore concluded that the district's response to the complaints was in keeping with its policy and not unreasonable, and we determined Bret's complaint to our office to be unsubstantiated.

To ensure they deal with all complainants fairly and consistently, local governments should include in their written complaints policy a process for handling repeat complainants. Processes such as clearly documenting all communications with the complainant and all attempts by staff to address the concerns can help a local government track the steps it has already taken, which in turn can help it make informed decisions about future communication and action.

The above example shows a good practice for responding to multiple complaints. Instead of dismissing Bret's complaints because he had made many of them, the district was able to point to a clear policy basis for its response. It is important for local governments to assess complaints on their merits – even if numerous – to determine the appropriate response.

In contrast, the following example, from a complaint we investigated, shows how one local government acknowledged that it had gone too far in preventing a person from continuing to make complaints.

The Right to Raise Concerns

Elda was being driven to distraction by the activities of her neighbour. She told us she had complained repeatedly to the local government about her neighbour skinning animals in his backyard and leaving the carcasses lying around. She said that the smells and view from her property were intolerable and that the local government would not do anything.

We investigated on Elda's behalf and learned that she had complained to the local government several times about her neighbour. Her complaints were documented and investigated by bylaw enforcement officers.

We also learned that the local government had finally written to Elda to tell her that it would not investigate any further complaints from her about the neighbour's

property. When we spoke to a senior official about the letter, he explained that it had been written because several of Elda's complaints turned out to be unfounded. The local government was concerned that her repeated complaints were using up scarce staff resources unnecessarily. Moreover, the neighbour in question was himself complaining of being harassed by government staff. As the official noted, the local government has to balance the rights of all residents, including the right of being free from excessive visits by enforcement officers.

While the intent of the letter sent to Elda had been to put an end to unnecessary complaints, the official agreed it had gone further than intended. The official agreed to write another letter to Elda, reassuring her that she had the right to make complaints about activities she believed to be in violation of the city's bylaws, but also pointing out the local government's duty to be responsive to the needs of all residents. It also invited Elda to call if she was unsure whether an activity was allowed under the current bylaw.

The initial letter that denied Elda the right to complain should not have been written. However, we concluded that the action was corrected by the second letter.

In this case, the local government did some things well: it clearly documented its earlier responses to Elda, it investigated her concerns, and it took steps to ensure her neighbour's property was in compliance with the bylaws. Nevertheless, it acted too quickly to prohibit her from making further complaints. Once the local government agreed to change course – taking the time to explain its process to Elda in writing and to leave the door open for her to raise future concerns or ask questions – it was able to appropriately balance the interests of both Elda and the broader community.

As a last resort, local governments may consider limiting the extent to which they will respond to frivolous complaints or repeat complainants (e.g. by responding only if the complainant in question provides new information or raises a new issue). However, such limits should be imposed only after careful consideration, as a person's ability to contact his or her local government is a fundamental component of the democratic values of openness and accountability.

If a local government does decide to restrict contact with a person who is making repeated complaints about the same issue, it is essential that:

- the decision be made by a senior official in the local government
- the local government clearly communicate to the complainant, in writing, the nature of the restrictions, the reasons for them and when they may be reconsidered
- the local government does not prevent or limit other necessary contact with staff that is unrelated to the person's complaints

Sometimes a local government may receive multiple complaints from different people about the same issue. In these cases, staff may assess and determine a response for the complaints as a whole rather than individually. In doing so, however, staff must consider any nuances of the different complaints and respond to each issue received from each complainant.

For example, a local government may receive multiple noise complaints about a residence, but one of the complainants also raises a concern about offensive odours coming from the same residence. In such a case, a blanket response from local government to all complainants about the noise is appropriate, but staff should also respond individually to the concern about odours raised by the one complainant.

Best Practices: Responding to Frivolous, Repeat or Multiple Complaints

Local governments develop and implement a written policy for dealing with frivolous, repeat or multiple complaints.

If a local government decides to restrict a person from making complaints to the local government:

- that decision is made only by a senior local government official
- that decision is clearly communicated to the person in writing, outlining the nature of the restrictions, reasons for the restrictions, and when the restrictions will be reconsidered
- the local government does not prevent or limit other necessary contact with staff that is unrelated to the person's complaints

When responding to multiple complaints about the same issue, local government staff address each person's specific concerns.



Whether acting in response to a complaint or on their own initiative, the investigations conducted by bylaw enforcement staff are an important step in the bylaw enforcement process. Before taking any enforcement action, bylaw enforcement staff must collect and assess the relevant evidence so they can determine if a complaint about a potential bylaw violation is valid.

This section describes best practices that local governments can adopt to ensure that their investigations of potential bylaw violations are conducted fairly, impartially, consistently and thoroughly.

A Consistent Approach to Investigations

A consistent approach to bylaw investigations helps local governments to ensure that any resulting decisions are fair, defensible, and have considered all relevant information.

Consistency does not mean that previous enforcement decisions are binding precedents from which decision makers cannot deviate. Rather, it means that similar cases should be treated in a similar way, unless there is a compelling reason not to do so.

The following sections describe how local governments can consistently approach investigation decisions by developing and implementing guidelines and by using investigation plans to focus and document an investigation.

Deciding Whether to Investigate

Local governments lacking the resources to investigate all complaints may prioritize the complaints that require immediate action, recommend that complainants take additional steps before making a complaint, and decline to investigate some complaints entirely. A local government can reasonably exercise its discretion not to investigate by considering the circumstances of the complaint and reviewing previous decisions for similar complaints. However, a local government should not have a blanket policy of not investigating particular kinds of complaints at all. Such a policy prevents bylaw enforcement staff from exercising their discretion.

As a best practice, staff who are deciding whether or not to investigate a complaint should have guidelines to assist them in making consistent and defensible decisions. Those guidelines should define the circumstances in which staff can decide not to investigate a complaint and outline the factors staff should consider when making that decision. Some factors that local government staff can reasonably consider when deciding whether or not to investigate include:

- the nature of the complaint and alleged violation
- the impact of the violation on the community
- the impact of the violation on the complainant (if there is one) or other individuals
- any general directives from council

Such guidelines can be contained in the local government's broader enforcement policy (see "Guidelines for Exercising Discretion" in The Role of Council section of this guide for more discussion).



The primary goal of an investigation plan is to ensure enforcement occurs only after an appropriate, fair and thorough investigation.

Best Practice: Deciding Whether to Investigate

Local governments provide bylaw enforcement staff with guidelines to assist them in making consistent and defensible decisions on whether to investigate a complaint. These guidelines define the circumstances in which staff can decide not to investigate a complaint and outline the factors staff should consider when making that decision.

Developing an Investigation Plan

The nature of the investigation that bylaw enforcement staff will need to conduct depends on the circumstances of the alleged violation. In some cases, such as a minor parking offence, the investigation will be minimal. Other bylaw violations, however, are more complex and require a significant investigation before staff can make an enforcement decision. One way to approach these complex cases in a consistent way is to develop an investigation plan.

Investigation plans can be customized by a local government to meet the needs of the community, and to reflect the nature of the investigations staff usually conduct. However, every investigation plan should include at least four key elements:

1. A summary of the complaint or alleged infraction.
2. The relevant bylaw and the test that must be met to confirm that a bylaw violation has occurred. In some cases, the bylaw will have multiple elements all of which must be proven to show that a bylaw has been violated.
3. The evidence staff will need to gather to meet that test and where and how they will obtain that evidence.
4. Any applicable timelines for completing steps in the investigation.

Local governments can simplify the process of developing an investigation plan by adopting a template for bylaw enforcement staff to follow. The primary goal of an investigation plan is to ensure enforcement occurs only after an appropriate, fair and thorough investigation.

By developing an investigation plan before beginning an investigation, bylaw enforcement staff can:

- ensure they have a clear understanding of the applicable bylaw
- consider what evidence they will need to gather from the investigation and how they will obtain that evidence
- identify potential issues they will need to address
- consider different options for resolving an issue
- clearly document the investigation

Most importantly, an investigation plan will assist staff in conducting thorough, timely and fair investigations. A well-developed investigation plan allows bylaw enforcement staff to remain objectively focused on the key issues that need to be resolved and ensures that all necessary steps – such as providing adequate notice – are taken.

Best Practices: Developing an Investigation Plan

Bylaw enforcement staff create an investigation plan before initiating a complex investigation, and follow the plan to the conclusion of the investigation.

Each investigation plan developed by bylaw enforcement staff includes, at a minimum:

- a summary of the complaint or alleged infraction
- the relevant bylaw and the test that must be met to confirm that a bylaw infraction has occurred
- the evidence staff will need to gather to meet the test and where and how they will obtain that evidence
- any applicable timelines for completing steps in the investigation

Documenting an Investigation

Adequate documentation of an investigation will support a decision to enforce or not to enforce a bylaw. A local government's investigation file should include all steps taken during the investigation, all evidence collected (including the source), any investigative decisions staff have made, and references to all relevant legislation, bylaws and policy.

A well-documented file can help later reviewers such as council or the Office of the Ombudsperson understand what steps enforcement staff took in an investigation and, importantly, the reasons those steps were taken. It can also help to demonstrate that the investigation followed an administratively fair process. The example below, from a complaint we investigated, shows the importance of a well-documented investigative file.

Good Documentation Pays Off

Alonso contacted us because he believed the city was not enforcing its bylaws. He had made several complaints alleging that a neighbour was running a business and keeping an illegal secondary suite at his residence. He said the city had not taken enforcement action.

We investigated whether the city had responded reasonably to Alonso's complaints. As part of our investigation, we met with the city's manager of bylaw enforcement, and reviewed the city's files on the matter.

The city had substantial documentation about Alonso's complaints and the steps its bylaw enforcement officers had taken in response. In keeping with the broad direction set by council, bylaw enforcement officers had sought voluntary compliance from Alonso's neighbour. The bylaw enforcement officers worked with the neighbour so that he would comply with the secondary suite bylaw, and determined that he was not violating the city's home-based business bylaw. The bylaw enforcement officers had canvassed other nearby neighbours who said they believed the matter had been resolved satisfactorily. The city also continued to monitor the situation on a regular basis.

After considering the actions taken by the bylaw enforcement officers, supported by the documentation on the city's file, we decided that the bylaw enforcement officers had responded reasonably to Alonso's complaint and had communicated the outcome of their investigation to Alonso.

Another example, “The More Is Not the Merrier” (see the Dealing with Bylaw Complaints section of this guide) highlights the importance of clearly documenting decisions not to investigate a complaint. In that case, the local government’s documentation allowed staff to demonstrate to the complainant and our office that they had followed appropriate policy and procedures.

Best Practice: Documenting an Investigation

Bylaw enforcement staff thoroughly document their investigation and any resulting decisions. Each investigation file includes:

- the investigation plan
 - significant steps taken during the investigation
 - material evidence collected and the source of that evidence
 - significant decisions made and the rationale for those decisions
 - references to all relevant legislation, bylaws or policy
-

Inspecting Private Property as Part of a Bylaw Enforcement Investigation

Local government staff will sometimes need to enter private property as part of a bylaw enforcement investigation. This constitutes a significant intrusion into a space that would otherwise be private, so it is important for local governments to understand their obligations when entering property to ensure that any inspection is conducted fairly and appropriately. The following example, from a complaint we investigated, demonstrates that a lack of clear understanding of a local government’s authority to inspect can lead to conflict.

Get Off My Lawn!

Paul contacted us with a complaint that a city bylaw enforcement officer had entered his property on several occasions at various hours of the day and night, without permission and without notice. Paul said the officer told him that he had the right to inspect Paul’s property in this manner. Paul complained that the bylaw enforcement officer’s actions were unfair and that he did not get a response from the city when he raised his concerns.

We investigated whether the city had followed a reasonable process to inform Paul of his rights and obligations when the bylaw enforcement officer sought entry onto his property, and whether it had responded to the concerns Paul raised. The city’s existing bylaw granted bylaw enforcement officers broad powers to enter property at all reasonable times and did not require prior notice to the resident. After discussing the matter with city staff, we learned that the city did not have any written policy that addressed the steps bylaw enforcement officers were expected to take when inspecting private property. It was also unclear whether the information the city provided verbally to bylaw enforcement officers was consistent with the provisions of the Community Charter.

We therefore questioned whether the city’s application of its bylaw enforcement powers was inconsistent. In this case, the bylaw enforcement officer had not taken steps to notify Paul before entering his property, and the inspections were not always carried out at reasonable times. The city agreed to look at implementing a formal written policy to assist bylaw enforcement officers to comply with the legislation. As a result of this commitment, we considered the complaint settled.

Using the Authority to Inspect Fairly

Local government officers and other employees and individuals authorized by council can enter private property to determine if bylaws are being followed.²⁷

Regional districts and the Islands Trust must set out their authority to enter property in a bylaw.²⁸ By contrast, municipalities are not required to do so. Authorized individuals can exercise their authority to inspect under the *Community Charter* to determine if a municipality's bylaw is being followed.²⁹ A municipality can also specify who can exercise this authority and for what purposes – for example, all municipal employees, bylaw enforcement officers, or specific persons such as animal control or building inspectors.

Some local governments use contractors rather than their own employees to conduct these inspections. Local governments must ensure that contractors are clearly and specifically authorized by council to enter private property. To minimize any confusion, a contractor's authority to enter a property should be clarified in writing. This written authorization should identify the contractor, describe the scope of his or her authority to inspect, and state the date on which that authority expires.

A local government (other than the City of Vancouver, discussed below) does not need a warrant or permission from the owner or occupier to enter property. However, an inspection must be done in a reasonable manner and at a reasonable time. The inspector must also take reasonable steps to advise the owner or occupier before entering the property.³⁰

The City of Vancouver's authority to enter property is more limited. The *Vancouver Charter* authorizes the city to enter property for certain specified purposes, such as building inspection and identification of fire hazards.³¹ For some situations, the City of Vancouver must create bylaws setting out this authority.³² In other situations, the *Vancouver Charter* itself gives city employees the authority to enter property.³³ All City of Vancouver inspections must be conducted at a reasonable time. However, unlike the *Community Charter*, which also requires inspectors to carry out inspections in a reasonable manner and provide reasonable notice, the *Vancouver Charter* does not.

In some situations, an inspection conducted by a local government employee or contractor without a warrant may be considered an unreasonable search and a violation of the *Canadian Charter of Rights and Freedoms*. Courts in British Columbia have decided that a routine spot check and a brief inspection of the exterior of a house

²⁷ *Community Charter*, S.B.C. 2003, c. 26, s. 16; *Local Government Act*, R.S.B.C. 2015, c. 1, s. 419; *Vancouver Charter*, S.B.C. 1953, c. 55, s. 300.1, 306, 311, 313, 560A. Improvement districts do not have this authority. Section 16 of the *Community Charter* provides authority to officers, employees or "other persons authorized by the council." Similarly, the *Local Government Act* provision applies to "officers, employees and agents of the regional district." This can be interpreted to apply to contracted bylaw enforcement officers; however, local governments may wish to set this out clearly in their bylaws if they do use contracted workers to enforce bylaws.

²⁸ *Local Government Act*, R.S.B.C. 2015, c. 1, s. 419; *Islands Trust Act*, R.S.B.C. 1996, c. 239, s. 28.

²⁹ *Community Charter*, S.B.C. 2003, c. 26, s. 16(6)(a).

³⁰ *Community Charter*, S.B.C. 2003, c. 26, s. 16(4). These requirements from the *Community Charter* apply to regional districts and Islands Trust through the *Local Government Act*, R.S.B.C. 2015, c. 1, s. 284.

³¹ *Vancouver Charter*, S.B.C. 1953, c. 55, s. 281(a), 306(1)(h), 311(a), 313, 324.1(4) and 560.A.

³² *Vancouver Charter*, S.B.C. 1953, c. 55, s. 281(a) (business tax), 300.1(3)(j) (energy utility systems), 306(1)(h) (building inspections) and 311(a) (fire hazards).

³³ *Vancouver Charter*, S.B.C. 1953, c. 55, s. 313 (electrical works), 324.1(4) (animal control) and 560.A (zoning).

does not violate the Charter.³⁴ However, an intrusive and warrantless inspection of a residence by municipal employees to identify potential marijuana grow-operations does violate the Charter.³⁵

In determining whether an inspection has violated the Charter, courts consider a resident's reasonable expectation of privacy, the intrusiveness of the search, the stigma associated with the offence, the feasibility of obtaining a warrant, and the usefulness of a warrant.

Even if there is no potential Charter violation, any local government employee entering private property to investigate a potential bylaw infraction must ensure that his or her actions are carried out in good faith and in a careful manner. As discussed in "Standards of Conduct" in The Role of Council section of this guide, abuse of power may occur if a bylaw enforcement officer removes or damages property in a reckless manner. This, in turn, may leave a local government liable for damages and cause negative public perception.

Local governments can adopt best practices that will assist staff in using their authority to inspect private property in a reasonable manner. The best practices listed below would, in our view, be consistent with both legislative requirements and principles of administrative fairness. All local governments that have inspection powers should consider adopting them.

Best Practices: Inspecting Private Property

A local government develops a publicly accessible bylaw or policy that outlines when and how it can inspect private property and who may conduct those inspections.

The bylaw or policy describes any circumstances where local government staff may be exempt from providing notice of an inspection.

Before conducting an inspection, local government staff:

- determine whether an inspection is necessary to adequately investigate the alleged bylaw violation
- determine whether it is possible to allow a resident time to comply with the bylaw without the need for an inspection
- provide notice to the resident unless the situation is one in which the local government has stated in a bylaw or policy that notice is not necessary
- include the reasons for the inspection in the notice

When conducting an inspection, local government staff are as minimally intrusive as possible, only inspect what is relevant to the bylaw being enforced, and complete the inspection in a reasonable amount of time.



³⁴ In *R. v. Bichel*, 1986 BCCA 102, a building inspector inspected a residential premise for compliance with municipal zoning bylaws. In *Roback v. Chiang*, 2003 BCPC 509, a bylaw enforcement officer inspected the exterior of a house in response to a complaint about an unsightly premise. Neither inspection was found to infringe section 8 of the Charter.

³⁵ In *Arkininstall v. City of Surrey*, 2010 BCCA 250, an intrusive inspection of a residential premises' electrical systems for safety risks for the purpose of determining whether the residence was used for marijuana grow-operations, was found to infringe section 8 of the Charter.

In most cases, a local government has full discretion to decide whether to enforce a particular bylaw.³⁶ Such broad discretion in enforcement means local governments can be creative in dealing with bylaw non-compliance. Local governments told us they are particularly proud of the strategies they use to seek voluntary bylaw compliance, which include:

- creating general public education materials
- educating individual residents in response to a complaint
- resolving matters informally
- using mediation and alternate dispute resolution
- issuing warnings prior to enforcement

Enforcement Options

In addition to the voluntary compliance strategies described above, local governments can use a variety of bylaw enforcement options, all of which are set out in provincial legislation.

Local governments other than improvement districts can use the following enforcement options:

- prosecution under the *Offence Act*³⁷
- municipal ticketing³⁸
- bylaw offence notice³⁹
- direct enforcement⁴⁰
- civil proceedings⁴¹

In addition to the above, all local governments can suspend a license, permit or approval where the conditions have not been followed, and municipalities other than Vancouver can discontinue providing a service where the rules about that service have not been followed.⁴²

³⁶ See, for example, *Burke v. Sunshine Coast (Regional District)*, 2011 BCSC 1636; *Myer Franks Agencies v. Vancouver (City)*, 2010 BCSC 1637. However, a local government that uses mandatory language in a bylaw, for example, “the bylaw officer must enforce...” may create a duty to enforce the bylaw, and could be liable for failing to do so: see *Kamloops v. Neilson*, 1984 SCC 21, [1984] 2 S.C.R. 2.

³⁷ *Local Government Act*, R.S.B.C. 2015, c. 1, s. 416; *Vancouver Charter*, S.B.C. 1953, c. 55, s. 333; *Community Charter*, S.B.C. 2003, c. 26, s. 263. A bylaw may establish the minimum or maximum fine that the local government can seek; however, if no penalty is specified, those under the *Offence Act* apply.

³⁸ *Community Charter*, S.B.C. 2003, c. 26, s. 264; *Vancouver Charter*, S.B.C. 1953, c. 55, s. 482.1.

³⁹ *Community Charter*, S.B.C. 2003, c. 26, s. 260(2)(b); *Vancouver Charter*, S.B.C. 1953, c. 55, s. 333B(1)(c); *Local Government Act*, R.S.B.C. 2015, c. 1, s. 415.

⁴⁰ *Community Charter*, S.B.C. 2003, c. 26, s. 17; *Vancouver Charter*, S.B.C. 1953, c. 55, s. 336; *Local Government Act*, R.S.B.C. 2015, c. 1, s. 418.

⁴¹ *Community Charter*, S.B.C. 2003, c. 26, s. 274; *Local Government Act*, R.S.B.C. 2015, c. 1, s. 420; *Vancouver Charter*, S.B.C. 1953, c. 55, s. 334.

⁴² *Vancouver Charter*, S.B.C. 1953, c. 55, s. 161 B and 277; *Local Government Act*, R.S.B.C. 2015, c. 1, s. 335; *Community Charter*, S.B.C. 2003, c. 26, ss. 15 and 18.



Islands Trust local trust committees have the same enforcement options as regional districts.⁴³ Improvement districts can take legal action under the *Offence Act* after giving notice and providing time to comply, but cannot issue tickets.⁴⁴

Municipal Tickets

The municipal ticket information system set out in the *Community Charter* allows a designated bylaw enforcement officer to issue a ticket for specified bylaw violations. If the recipient disputes the ticket, this is heard in provincial court. The *Community Charter* authorizes local governments and regional districts⁴⁵ to implement this ticket information system by enacting a bylaw specifying which violations are subject to municipal ticketing, who is authorized to issue the tickets, and what penalties may be imposed.⁴⁶ The maximum penalty under the municipal ticket information system is \$1,000 per violation.⁴⁷

The City of Vancouver is also authorized to issue municipal tickets under the *Vancouver Charter*.⁴⁸

Bylaw Notices

The *Local Government Bylaw Notice Enforcement Act* establishes a process for enforcing a bylaw by issuing a bylaw notice.⁴⁹ A local government must designate the bylaw violation that can be dealt with under the Act.

The process is initiated when a bylaw enforcement officer issues a bylaw notice for an alleged violation. The bylaw notice imposes a fine that the recipient can dispute through an adjudication system rather than through the courts. The adjudication system is created by local governments, often as a shared service with other communities. An independent adjudicator hears the appeal and can cancel the fine if he or she finds that the violation did not occur.

Adjudication may also include a first-level review by an internal screening officer who can cancel or reduce the fine, or enter into a compliance agreement with the recipient.⁵⁰ A bylaw that has been designated by a local government under the *Local Government Bylaw Notice Enforcement Act* cannot be enforced by prosecution under the *Offence Act*.⁵¹

⁴³ *Islands Trust Act*, R.S.B.C. 1996, c. 239, s. 28(1).

⁴⁴ Ministry of Community, Sport and Cultural Development, *Improvement District Manual*, 2006, 17 <http://www.cscd.gov.bc.ca/lgd/gov_structure/library/improvement_district_manual.pdf>.

⁴⁵ Under the *Local Government Act*, R.S.B.C. 2015, c. 1, s. 414, Division 3 of Part 8 of the *Community Charter* applies to regional districts.

⁴⁶ Ministry of Community, Sport and Cultural Development, "Municipal Ticketing" <http://www.cscd.gov.bc.ca/lgd/governance/municipal_ticketing.htm>.

⁴⁷ *Community Charter Bylaw Enforcement Ticket Regulation*, B.C. Reg. 239/2010, s. 2.

⁴⁸ *Vancouver Charter*, S.B.C. 1953, c. 55, s. 482.1.

⁴⁹ *Local Government Bylaw Notice Enforcement Act*, S.B.C. 2003, c. 60, Part 2.

⁵⁰ *Local Government Bylaw Notice Enforcement Act*, S.B.C. 2003, c. 60, Part 3.

⁵¹ *Offence Act*, R.S.B.C. 1996, c. 338, s. 13(3).

The bylaw notice process is available to local governments listed in the *Bylaw Notice Enforcement Regulation*. The Regulation includes municipalities, local trust committees and regional districts.⁵²

Direct Enforcement

Municipalities, regional districts, the Islands Trust and the City of Vancouver have the authority to enforce some bylaws directly. This means that these local governments can require a person to take action to comply with a bylaw, and, if the person does not, they can seek to recover compliance costs. For example, a local government may require a property owner to clean up a property that contravenes its unsightly premises bylaw. If the property owner fails to take the required action, the local government may directly enforce the bylaw by cleaning up the property and charging the property owner for the cost of the clean-up.⁵³

The following sections describe best practices that local governments can adopt to ensure that their enforcement processes are fair and reasonable.

Jurisdiction and Authority to Act

In deciding whether to take enforcement action to address a bylaw infraction, local government staff must first consider whether the matter is within their jurisdiction and authority to act. This means looking at whether the matter is something that is regulated by the local government, whether the proposed enforcement action is permitted by the relevant legislation and whether staff have authority to take that action.

Residents may expect local government to resolve a wide array of issues through bylaw enforcement, even when doing so is not their responsibility. Local governments can, of course, become involved informally when seeking resolution to an issue, but both staff and the public should be made aware that in such circumstances, a local government can take enforcement action only if it is authorized by its enabling legislation.

Mediation or informal resolution of an issue may be practical if local government has the resources for it. For example, one local government we spoke with told us that in an effort to address complaints about a sign on a private property, its bylaw enforcement officers informed the owner of concerns about the sign, even though

⁵² *Local Government Bylaw Notice Enforcement Act*, s. 2. As of January 6, 2016, the following local governments were listed in the *Bylaw Notice Enforcement Regulation*: City of Abbotsford, Barriere, Bowen Island Municipality, Burnaby, Cariboo Regional District, Central Kootenay Regional District, Central Okanagan Regional District, Chilliwack, Coldstream, Coquitlam, Cranbrook, Creston, Dawson Creek, Delta, Denman Island Local Trust Committee, Duncan, Enderby, Esquimalt (Township), Fraser Valley Regional District, Fruitvale, Gabriola Island Local Trust Committee, Galiano Island Local Trust Committee, Gambier Island Local Trust Committee, Gibsons, Golden, Greater Vancouver Regional District, Harrison Hot Springs, Hope, Hornby Island Local Trust Committee, Kelowna, Kent, Lake Country, Langley (Township), Lasqueti Island Local Trust Committee, Lions Bay, Maple Ridge, Mayne Island Local Trust Committee, Nanaimo, Nelson, New Westminster, Northern Rockies Regional Municipality, North Pender Island Local Trust Committee, North Vancouver (City), North Vancouver (District), Okanagan-Similkameen Regional District, Oliver, Parksville, Peace River Regional District, Peachland, Penticton, Pitt Meadows, Port Alberni, Port Coquitlam, Richmond, Salt Spring Island Local Trust Committee, Saturna Island Local Trust Committee, South Pender Island Local Trust Committee, Sechelt (District), Squamish, Squamish-Lillooet Regional District, Summerland, Sun Peaks Mountain Resort Municipality, Sunshine Coast Regional District, Surrey, Thetis Island Local Trust Committee, Thompson-Nicola Regional District, Tofino, Valemount, Vancouver (City), Vernon, Victoria, Wells, West Kelowna, West Vancouver, Williams Lake.

⁵³ *Community Charter*, S.B.C. 2003, c. 26, s. 17; *Vancouver Charter*, S.B.C. 1953, c. 55, s. 336; *Local Government Act*, R.S.B.C. 2015, c. 1, s. 418.

they could not order the sign to be removed. This local government considered such informal resolution to be a successful approach.

In many cases, however, a local government may not want to expend its resources investigating an issue when it cannot take enforcement action. If a local government does become involved in an effort to address the concerns of residents, bylaw enforcement staff must act within the limits of their authority (see “Standards of Conduct” in The Role of Council section of this guide for further discussion).

A local government must also ensure that its bylaw enforcement officers, employees and contractors who carry out enforcement, are given authority to act under the appropriate legislation. Some bylaw enforcement measures, such as municipal tickets or bylaw offence notices, require the bylaw enforcement officers using them to be designated by council through a bylaw. Regional districts and municipalities appoint bylaw enforcement officers under the *Community Charter*, while the City of Vancouver appoints its bylaw enforcement officers under a similar section in the *Vancouver Charter*.⁵⁴ Bylaw enforcement officers that are not properly designated through a bylaw would not have authority to take some enforcement actions, such as issuing municipal tickets or bylaw offence notices.

Best Practices: Jurisdiction and Authority to Act

Local government bylaw enforcement staff consider whether a matter falls within their jurisdiction and authority before taking enforcement action.

Council designates through bylaws the enforcement officers who issue municipal tickets or bylaw offence notices.

Notice Prior to Enforcement

Except in the specific circumstances discussed below, local governments should provide notice of potential enforcement action to the resident who will be affected by it. This notice is a key part of a fair enforcement process and affords local government an opportunity to inform a resident of its concerns. Providing notice gives the resident a chance to comply with the bylaw or question whether it applies to his or her situation. Notice helps to ensure that enforcement action occurs only after a resident has had a fair opportunity to be heard.

Some bylaws establish a progressive enforcement process where a local government issues a number of notices before taking action. An initial notice letter can be part of an educational approach, which may also include speaking with a resident to explain the bylaw and the local government’s expectations for compliance. For example, one local government we spoke with during our investigations issued notice letters about unsightly premises as a proactive measure. These notice letters reminded residents of the bylaw requirements and, as a result, owners of several

⁵⁴ *Community Charter*, S.B.C. 2003, c. 26, s. 264(1)(b), grants the authority to municipalities to designate through a bylaw, bylaw enforcement officers who may issue a municipal ticket information. *Local Government Act*, R.S.B.C. 2015, c. 1, s. 414, states that division 3 of Part 8 of the *Community Charter* applies to regional districts, therefore granting regional districts the same power to appoint bylaw enforcement officers under s. 264(1)(b) of the *Community Charter*. *Vancouver Charter*, S.B.C. 1953, c. 55, s. 482.1(1)(b), grants the City of Vancouver the same powers to designate bylaw enforcement officers through a bylaw. The *Local Government Bylaw Notice Enforcement Act*, S.B.C. 2003, grants all individuals who have been designated as bylaw enforcement officers under the *Community Charter*, or the *Vancouver Charter*, the authority to issue bylaw offence notices for bylaws that are themselves properly designated.

of the properties cleaned up their yards. Taking the time to communicate with a resident before enforcement can produce positive results.

It is equally important to allow a person reasonable time to comply with a notice after it is given, and to not arbitrarily change the deadlines that have been imposed. The example below, from a complaint we investigated, illustrates this issue.

Just Give Me a Chance!

Pam lived in the United States and owned a residential rental property in a medium-size British Columbia city.

The city inspected Pam's property and then sent her a bylaw compliance order directing her to clean the property up because it had become unsightly. The city did not provide Pam with any warning before making the order. The city sent the order by registered mail to Pam's American address and set a 10-day deadline for completing the clean-up work. Pam, however, didn't receive the notice until the deadline day. She called the city the same day only to learn the clean-up work had already been done. She was told she would be billed for the costs plus penalties. Shortly after, Pam travelled to the city and spoke with bylaw enforcement officials about her situation. She asked the city to contact her by email if there were any similar problems in the future and to allow her enough time to arrange the clean-up work herself.

About six months later, the city inspected Pam's property again and sent another bylaw compliance order by registered mail to her American address. Again, the city did not give Pam any warning before issuing the order. This second order was similar to the first, except this time the city set a 15-day deadline for compliance. Despite the longer deadline, Pam explained she still didn't receive the order until the deadline day. She tried to make arrangements to do the clean-up, but when she contacted the city, she learned staff had already carried out the work and billed her for the costs plus penalties. Although Pam paid the costs and penalties for both orders, she felt the city treated her unfairly. She complained the city did not give her enough notice to do the cleanup work herself and that the city should have contacted her earlier, as she had asked, if any other problems arose.

We questioned whether the city provided Pam with adequate warning or notice prior to each of the enforcement measures it took. We identified areas of concern including:

- whether compliance deadlines set by the city were reasonable since staff knew Pam lived in the United States*
- whether it was reasonable for the city to send the second compliance order by registered mail given the problems Pam told them she experienced with the first notification*
- whether out-of-date information included in the bylaw compliance orders and template notice letters had the potential to create uncertainty*
- whether it was reasonable for the city to do the clean-up work before the compliance deadlines had expired*

Based on the questions and concerns we identified, we consulted with the city and made several proposals aimed at resolving Pam's concerns and helping the city improve its bylaw enforcement process.

As a result of our investigation, the city agreed to refund Pam the fee that she paid the city for the clean-up of her property. The city also agreed to:

- *review its bylaw enforcement process for unsightly premises*
- *review its communications to ensure they were up to date and accurately referenced the city's bylaws*
- *take measures to ensure staff were clear on the scope of the city's bylaw enforcement authority under the Community Charter*
- *look at developing policies concerning compliance orders*

In this example, the city's failure to provide Pam with adequate notice even after she had informed them of her willingness to comply made the situation worse.

The following sections highlight information that staff can include in enforcement notices to achieve a positive outcome for both residents and local governments.

Include Reasonable Time Limits

Local governments can avoid situations like the one Pam experienced by establishing clear time limits for residents to comply with a bylaw. Time limits must allow local governments the discretion to extend a time limit if necessary – for example, to accommodate an out-of-country resident. Local government staff should not, however, arbitrarily shorten a time limit, except in extraordinary circumstances, and not before attempting to communicate with the resident. A local government must also ensure that its staff are available if the resident has questions or wants to request an extension.

Describe Potential Consequences

When giving notice, local government staff should advise residents about the potential consequences of not complying with a bylaw. This can be done whether notice is verbal or written. For example, as in Pam's case, many unsightly premises bylaws allow local government staff 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 of time. A local government enforcing its unsightly premises bylaw can follow a fair process by providing notice that explains any steps it is prepared to take if the owner does not comply.

Provide Timely Notice

If a local government has concerns about a resident's activities, it should provide notice of those concerns to the resident in a timely way.

In the following example, from a complaint we investigated, a local government took enforcement action with no notice to the resident. In this case, the local government had been aware of complaints about activities on her property months earlier. This was not a case where the urgency of the situation outweighed the need to provide notice and give the resident an opportunity to respond. A phone call to the resident might have saved the local government a great deal of time.

Call First Next Time

Nara contacted us about the procedures used by her city to enforce its noise bylaw. Nara had received a letter from the city stating that neighbours were being disturbed by noise caused by welding and associated work being performed in the

garage on her property. With the letter, she also received two bylaw offence notices fining her \$1,000 for noise infractions that allegedly occurred on two occasions.

Nara learned that her neighbours had made several noise complaints approximately four months earlier, but the city had not brought those concerns to her attention. Nara thought the bylaw officer should have contacted her by phone or in person to discuss the noise problem and work with her to seek an amicable solution before taking enforcement action.

We investigated the process followed by the city in enforcing its noise bylaw. As a result of consultation with our office, the city offered to review Nara's situation, agreed to refund the \$1,000 fine and wrote Nara a sincere apology.

In Nara's case, it was apparent that she was interested in complying with the city's bylaws. Had she been given adequate notice or a warning about potential bylaw enforcement, she may have taken steps to comply, and further action may not have been necessary.

Not all bylaw offences require bylaw enforcement staff to give formal written notice. In many cases, it is sufficient for bylaw enforcement staff to telephone the person alleged to be violating the bylaw.

Use Template Notice Letters Carefully

In Pam's case, the city used a template notice letter to inform her of its concerns. Template letters should be used with caution. Although they allow local government staff to provide consistent information to residents, this benefit can be undermined, as it was in Pam's case, if the information is inaccurate, not followed by the staff, out of date, or simply confusing.

Use Signs to Provide Notice

For minor bylaw offences, local governments can provide sufficient general notice of potential enforcement by placing a sign describing the prohibited behaviour – such as a no parking sign. Many local governments take this approach, posting signs informing the public of bylaws on off-leash dogs, smoking, making noise late at night and other activities that contravene community standards in public spaces. Along with the relevant bylaw, such signs often post the maximum fine. When local government staff enforce these bylaws against individuals, they can point to the signs as providing notice.

Taking Action without Notice

As described above, a procedurally fair process provides a person with notice of pending administrative action that may affect his or her rights or interests. In a bylaw enforcement context, there may be situations where, due to the need for immediate action, a local government may not provide notice or a warning to an individual before taking enforcement action. Generally, this occurs when a bylaw violation creates an immediate risk to health, safety or the environment.

Posting signs as described above may not be feasible if the geographical area covered by a bylaw is too great, if the nature of the bylaw makes posting signs or providing individual notice impractical, or if a violation occurs infrequently. In such circumstances, taking enforcement action without notice may be justified, especially when the general public is likely to be aware of a bylaw, such as one prohibiting littering or riding bicycles on sidewalks.

If a local government intends to take action without notice to address an immediate risk to health, safety or the environment, or other urgent circumstances, the relevant bylaws should include a clear provision for local government staff to take such immediate action. Such provisions, and accompanying policy, should also require staff to document their reasons for deciding to take immediate action (as discussed in “Guidelines for the Exercise of Discretion” in The Role of Council section of this guide).

Taking action without notice, even when warranted, does not mean a local government is exempt from following a fair process after that point. After enforcement action is taken, local government staff should provide the affected person with adequate reasons for the decision and information about how to appeal it.

Best Practices: Notice Prior to Enforcement

Local government bylaw enforcement staff provide reasonable notice prior to taking enforcement action. Notice includes:

- an explanation of the relevant bylaw and how the person is alleged to have contravened it
- reasonable time limits for compliance
- the potential consequences of failing to respond or comply within the time limits

Local government bylaw enforcement staff do not take enforcement action before the expiry of the compliance time limits set out in a notice letter or verbal communication.

Local governments define the circumstances in which notice may not be provided prior to enforcement.

Enforcing Bylaws Proportionally, Equitably and Consistently

Administratively fair enforcement decisions are proportional, equitable and consistent. A decision or action that fails to adhere to these principles may be unreasonable, unjust or arbitrary.⁵⁵ This section defines each of these principles and describes how local governments can make decisions that are consistent with them.

Proportional Enforcement

Bylaw enforcement action should 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 bylaw violation. In sentencing a company after finding it had contravened standards of maintenance and fire bylaws, a British Columbia provincial court judge relied in part on the principle that “a sentence must be proportionate to the gravity of the offence” to determine the appropriate penalty.⁵⁶

⁵⁵ Office of the Ombudsperson, *Code of Administrative Justice 2003*, Public Report No. 42, British Columbia: Legislative Assembly, March 2003, 4, 11 and 12 <<https://www.bcombudsperson.ca/sites/default/files/Public%20Report%20No%20-%2042%20Code%20of%20Administrative%20Justice.pdf>>.

⁵⁶ *R. v. Picadilly Investments Ltd.*, [2008] B.C.J. No. 1570, 2008 BCPC 235, para 19.

Equitable Enforcement

Bylaw enforcement should be equitable – that is, applied in a way that is just in light of a person's circumstances.⁵⁷ This means that local government staff consider a person's circumstances and ability to comply before determining whether enforcement is appropriate and what enforcement tools they should use. This does not mean that local governments can never enforce bylaws against disadvantaged individuals. Rather, equity is a principle of fairness that goes to the heart of local governments' discretion to decide whether and how to enforce their bylaws.

For example, many local governments have a snow removal bylaw that requires residents and businesses to clear their sidewalks within a certain time after a snowfall. If a senior or person living with a disability is unable to comply, levying a fine or other similar enforcement measure for failing to clear the sidewalk without considering the person's circumstances would be unjust and unlikely to result in compliance. By first contacting a person who has failed to comply with a bylaw, local government staff can better understand his or her circumstances and explore alternatives.

As another example, some local governments have teamed up with health authorities and mental health experts to deal with unsightly premises of residents who may be dealing with a mental illness. This coordinated approach shows how local governments can take the particular circumstances of residents into consideration when deciding whether and how to take enforcement measures.

Consistent Enforcement

Consistency is also an important part of a fair bylaw enforcement process. As we state in our *Code of Administrative Justice*:

Administrative justice requires consistency in the application of determinative principles and standards. When the law spells out a test to apply, or when an authority has adopted a reasonable policy as a guide to the exercise of its discretion, the test or policy ought to be applied so that similar cases are treated in a similar way. Otherwise the authority acts arbitrarily, and an arbitrary decision is an unjust decision.⁵⁸

It is easier for local governments to meet public expectations about enforcement when staff follow a generally consistent approach to bylaw enforcement. Bylaw enforcement staff are not required to follow the same approach in every case, but if they enforce the same bylaw differently in similar circumstances, their decisions may appear to be arbitrary. When deciding what action is appropriate, bylaw enforcement officers should consider whether there is a compelling reason given the circumstances to deviate from policy and past practice.

When bylaw enforcement staff do deviate from policy or practice, they should be able to explain that 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. The following example, from a complaint we investigated, shows how a local government initially took an inconsistent approach in enforcing its noise bylaw, leading to complaints of

⁵⁷ For further discussion of this principle in a local government context, see City of Toronto, Office of the Ombudsman, *Defining Fairness: The Office of the Ombudsman and the City of Toronto Public Service*, October 2010, 9 <http://ombudstoronto.ca/sites/default/files/FairnessHandFINALWEB_0.pdf>.

⁵⁸ Office of the Ombudsperson, *Code of Administrative Justice 2003*, Public Report No. 42, British Columbia Legislative Assembly, March 2003, 6 <<https://www.bcombudsperson.ca/sites/default/files/Public%20Report%20No%20-%2042%20Code%20of%20Administrative%20Justice.pdf>>.

unfairness. It was unclear to the complainant why the city required compliance in one case, but not in another similar one.

No More Noise

Mark called us because he was dissatisfied with how the city responded to his complaints about noise from a restaurant located in a park adjacent to his home. The park was owned by the city and leased to a private individual to operate a restaurant. The restaurant proprietor held weddings and other special events at the restaurant, especially during the summer months. Four years before he contacted us, Mark began complaining to the city about noise from the restaurant. He was especially concerned about noise from weddings, which often went on late into the night. Mark wanted the city to enforce its noise control bylaw.

Mark pointed out that the city had required other private facilities that hold weddings to enclose their patios and monitor their outdoor areas with a decibel meter to ensure the noise didn't unduly disturb the surrounding neighbourhood. Mark thought it was unfair that the city didn't require the same sound mitigation strategies to be employed at the restaurant near his home – particularly when that restaurant was on property owned by the city.

Mark met with city staff and the commissionaires at the park. The city then implemented a plan to reduce noise that was consistent with the noise reduction actions the city takes with private facilities. Because the actions taken by the city were now consistent, we considered the matter settled.

Best Practice: Enforcing Bylaws Proportionally, Equitably and Consistently

Local government bylaw enforcement staff apply principles of proportionality, equity and consistency in bylaw enforcement decisions by:

- considering whether an enforcement measure is proportionate to the harm caused by the violation
- considering whether a person's circumstances would make enforcement unjust
- considering whether an enforcement measure is consistent with policy and practice

Providing Reasons for Enforcement Decisions

When taking any enforcement action, local governments must provide adequate information about, and reasons for, the enforcement.

In some cases, this is required by legislation. A bylaw notice under the *Local Government Bylaw Notice Enforcement Act* must include details about the violation and the bylaw, the penalty amount and any discounts or surcharges for early or late payment, how to pay the penalty, how to dispute the notice, and any other information required by the bylaw.⁵⁹

Similarly, a municipal ticket must be signed by the enforcement officer and must describe the alleged violation and state the fine, the date, and the time and location of the violation. The back of the municipal ticket provides the recipient with

⁵⁹ *Local Government Bylaw Notice Enforcement Act*, R.S.B.C. 1996, c. 323, s. 4(4).

information on how to pay or dispute the ticket, describes the consequence of not paying, and sets out the timeframe for disputing it.⁶⁰

In all cases, whether or not required by legislation, bylaw enforcement staff should provide clear, complete, and consistent information about a violation, the enforcement action being taken, any options for complying, any important deadlines, how to appeal the decision, how to pay fines, and how to contact the local government with questions about the enforcement action.

In particular, it is essential for staff to provide reasons for enforcement action. This means that bylaw enforcement staff explain why the bylaw is being enforced in those circumstances. Written reasons in particular can help a person understand the decision and are especially useful if the decision is appealed. Whether written or verbal, adequate reasons should:

- directly and completely describe the concerns that led to the enforcement action and the evidence that supports those concerns
- set out the bylaw section on which the decision is based
- be clear and easily understood by the person affected by the enforcement measure
- provide information about options for reviewing or appealing the decision

Using a standard form to provide reasons can be useful and make the process less time consuming for staff. However, it is important that any reasons address the specific circumstances that led to enforcement action.

Best Practice: Providing Reasons for Enforcement Decisions

Bylaw enforcement staff provide a person affected by an enforcement decision with reasons for enforcement that:

- describe the concerns that led to the enforcement action and the evidence supporting those concerns
- set out the bylaw section on which the decision is based
- are clear and easily understood by the person affected by the decision
- provide information about options for review or appeal of the decision

Discontinuing a Service

Services provided by municipalities vary widely and can include water, electricity, garbage removal, as well as libraries and community centres. The *Community Charter* allows municipalities other than the City of Vancouver to make a bylaw permitting them to discontinue a municipal utility or service for unpaid fees or for non-compliance with the terms of that service.⁶¹ This section of the *Community Charter* does not apply to regional districts.

⁶⁰ *Community Charter*, S.B.C. 2003, c. 26, s. 266; *Vancouver Charter*, S.B.C. 2003, c. 26, s. 482.3; *Community Charter Bylaw Enforcement Ticket Regulation*, B.C. Reg. 239/2010, s. 5, forms A2 and B2.

⁶¹ *Community Charter*, S.B.C. 2003, c. 26, s. 18(1). Because this section of the *Community Charter* only applies to municipalities, we have used that term rather than the broader term “local government” in this section of the guide. Section 18(1) requires that the unpaid fee is “in relation to the service,” which suggests that services can only be discontinued for unpaid fees relating specifically to that service.

The *Community Charter* establishes minimum requirements for procedural fairness that municipalities must meet when discontinuing a service. In all cases, a municipality must provide reasonable notice that it is considering ending the service. When discontinuing a service because a person has not complied with the terms of that service, a municipality must provide the person with an opportunity to make representations before council.⁶²

Discontinuing important services can have a significant impact on an individual, particularly if that person is vulnerable due to age, income or other factors. A municipality should apply more than just the minimum requirements of the *Community Charter* when considering the discontinuation of services. A municipality should provide written notice of pending enforcement that contains a clear explanation of why such action is being considered. The notice should outline the options for compliance and explain clearly how the individual can dispute the decision, including how to appear before council, if applicable.

In most cases, ending a service is a last resort that should only be pursued after a municipality has exhausted all other avenues to deal with non-compliance, such as encouraging individuals to honour payment plans or compliance agreements.

Best Practices: Discontinuing a Service

Local governments only end a service after all other options have been exhausted.

Before ending a service, bylaw enforcement staff provide a person with:

- written notice of the pending enforcement decision
- reasons for the local government's decision
- information about how the person can comply with the requirements, if that is an option
- information about the person's right to dispute the decision and, if applicable, make representations to council before a final decision is made



APPEALS OF ENFORCEMENT DECISIONS

Through enforcement, local governments may impose fines, seize animals, cancel business licenses, stop providing services or charge fees for cleaning up unsightly premises. All of these decisions can have a significant impact on the people subject to enforcement measures. As the previous sections of this guide describe, local governments can take enforcement action in a number of ways. Some enforcement processes and any resulting appeals involve the courts, for example, civil action, prosecutions or appeals of municipal tickets.

This section focuses on best practices in reviews or appeals of enforcement decisions where the review or appeal is heard by local government staff or local government administrative bodies instead of the courts.

Fairness requires that a person has an adequate opportunity to dispute a decision by an administrative body that affects his or her rights or interests. In the bylaw enforcement context, a review or appeal process should allow a person who is the subject of enforcement measures to dispute the enforcement decision. A fair review or appeal process is especially important when a person had no opportunity to be heard before the enforcement decision was made.

Establishing Appeal Processes

Bylaw Notice Appeals

The *Local Government Bylaw Notice Enforcement Act* establishes an appeal process for bylaw notices that is implemented by local governments. To use the bylaw notice adjudication process set out in this Act, a local government must be listed in the *Bylaw Notice Enforcement Regulation* and must specify in a bylaw which violations will be dealt with under this system.⁶³ Local governments can use a screening officer as a first point of review if a bylaw notice is disputed. This officer reviews the notice prior to the dispute adjudication process and can cancel the notice, refer it to adjudication, or make a compliance agreement with the affected person.⁶⁴

If the screening officer does not cancel a dispute notice or make a compliance agreement, or if there is no screening officer, the bylaw dispute is heard by a third-party adjudicator. These dispute adjudicators are appointed by the province, must have the prescribed qualifications, and must not be an employee of a local government or hold an elected office in a local government.⁶⁵ The process is intended to be less formal than the court system.⁶⁶

⁶³ *Bylaw Notice Enforcement Regulation*, B.C. Reg. 153/2015, Schedule 1.

⁶⁴ *Local Government Bylaw Notice Enforcement Act*, S.B.C. 2003, c. 60, ss. 2(2)(a), 4, and 10.

⁶⁵ The prescribed qualifications for an adjudicator include: has not been convicted of an offence in the previous 10 years; is not named in a bylaw notice or ticket in relation to a penalty that is outstanding and overdue; has at least one year's experience as an adjudicator of disputes; and has post-secondary training in adjudication. See *Bylaw Notice Enforcement Regulation*, B.C. Reg. 153/2015, s. 6 and *Local Government Bylaw Notice Enforcement Act*, S.B.C. 2003, c. 60, s. 15.

⁶⁶ *Local Government Bylaw Notice Enforcement Act*, S.B.C. 2003, c. 60, Part 3. See also Ministry of Community, Sport and Cultural Development, "Bylaw Enforcement" <http://www.cscd.gov.bc.ca/lgd/governance/bylaw_enforcement.htm>.



Other Administrative Review or Appeal Processes

Every local government we consulted with as we developed this guide had some type of review or appeal process for bylaw enforcement decisions. For many of these local governments, however, the appeal process was informal and not written in bylaw or policy. For example, we reviewed a sample of 26 noise bylaws from local governments in British Columbia. Only one of the 26 noise bylaws we reviewed included an appeal process in the bylaw.

Where a complete administrative appeal process does not exist in legislation, local governments should establish a review or appeal process for enforcement decisions that are not dealt with through the courts. Local governments can do this by stating in their regulatory bylaws:

- what decisions can be reviewed or appealed
- who has authority to review decisions made under the bylaw
- how a person can request a review or appeal
- the possible outcomes of a review or appeal

The details of an appeal process can be further specified in a policy and include applicable timelines, processes for submitting evidence and the process for conducting a review or appeal.

Enforcement decisions, as noted above, may significantly affect interests and rights. Informal appeal processes, especially those that are unwritten are hard for the public to access and equally hard for local government staff to understand and apply consistently. Including appeal provisions in bylaws and developing a written appeal policy promotes consistency and procedural fairness.

Best Practices: Establishing Review and Appeal Processes

Local governments describe in their bylaws:

- what decisions can be reviewed or appealed
- who has authority to review or hear an appeal of those decisions
- how a person can request a review or appeal
- the possible outcomes of a review or appeal

Local governments develop and implement a policy that describes how reviews or appeals will be conducted.

Implementing a Fair Appeal Process

In all cases, even where a framework for appeals is set out in legislation, local governments have a responsibility to ensure that those processes are implemented in a way that is reasonable and fair. This section describes the steps local governments can take to create an appeal process that is consistent with the principles of procedural and administrative fairness.

The following example, from a complaint we investigated, is a continuation of “Call First Next Time” (see “Notice Prior to Enforcement” in the Taking Enforcement Measures section of this guide). This example shows that an appeal process will not be fair if its outcome appears to be a foregone conclusion.

An Appeal in Name Only

Nara contacted us after she received bylaw notices from her city that levied fines of \$1,000 for contravening a noise bylaw. Nara paid \$25 to attend an adjudication hearing to dispute the bylaw notices. Nara said the hearing lasted only a few minutes and the adjudicator simply announced that he had determined the infraction had occurred, and that she was required to pay the full penalty plus the adjudication fee. Nara said she was not given an opportunity to present her case or dispute the information from the city. We investigated.

The city informed us that it participates with eight other municipalities in providing a bylaw adjudication system which allows local governments to manage most bylaw violations at the local level rather than through the provincial court system.

The city did not have any documentation or information to demonstrate that Nara had an adequate opportunity to present her case. In response to our investigation, the city agreed to review Nara's situation. As a result of that review, the city refunded the \$1,000 fine and the \$25 adjudication fee, and wrote Nara a sincere apology.

Opportunity to Be Heard

As Nara's case demonstrates, an appeal process should be structured to allow a person a meaningful opportunity to be heard. This is particularly important for people who have not received any prior notice of the enforcement measures taken against them as the appeal may be their first opportunity to make their case.

With the wide range of bylaw enforcement decisions local governments make on a daily basis, appeal processes can allow a person to be heard with varying degrees of formality. For example, an appeal process for a straightforward matter with minimal impact on an individual may be conducted entirely by email.

For complex cases or cases with a significant impact on a person's rights, procedural fairness may require a hearing in person, by telephone or electronically instead of, or in addition to, written submissions.

A local government must determine what type of appeal process to apply to different bylaw infractions in a principled way. Most importantly, the person who is subject to an enforcement decision must have an adequate opportunity to be heard when disputing the decision. The process by which the local government will hear from an individual appealing a decision should be clearly set out in either the bylaw or written policy.

An Unbiased Decision-Maker

As Nara's experience above shows, a fair appeal process requires an unbiased decision-maker who approaches the appeal in good faith and with an open mind. The decision-maker should not have an interest in the outcome of the decision and should not have pre-judged the issue. For example, the person who hears the appeal should not be the same person who made the original decision. In some cases, council has a role in the appeal process and may be the final decision-maker in a dispute. To avoid the risk of bias or pre-judgement in these cases, council should not be involved in earlier steps in the bylaw enforcement process. This role of council should also be clearly set out in bylaw or policy (see The Role of Council section of this guide for more information).

Adequate and Appropriate Reasons

A fair appeal process also requires the decision-maker to provide adequate and appropriate reasons. These reasons should directly and completely address the applicant's concerns, demonstrate that the decision-maker has considered the evidence presented, and clearly set out how and why the appeal decision was reached. These reasons should be clear and understandable to the person who is appealing the decision. The following example, from a complaint we investigated, illustrates that providing notice, a chance to be heard, and adequate reasons helps to ensure a fair enforcement process.

A Decision Explained

Neale disputed a parking ticket a city bylaw enforcement officer issued to him. He alleged that the procedure used by the city to dispute parking tickets was unfair.

We learned that a photograph of Neale's vehicle and the meter was taken at the time the ticket was issued and was available for him to review. The photograph was part of the evidence package available to the city's screening officer who reviewed disputed parking tickets as well as to the adjudicator if the dispute resulted in a hearing.

After the city's screening officer determined that there was nothing obscuring the view of the meter and there was no mistake in the identity of the vehicle, Neale received a letter informing him that the ticket would stand as issued. He was told in the letter the amount that was due and the date at which an adjudication hearing would be scheduled if the ticket was left unpaid. Neale chose to attend the hearing.

At the hearing, Neale had an opportunity to be heard and the adjudicator provided reasons that directly addressed concerns Neale had raised about the factual evidence for his parking ticket.

We told Neale that our investigation did not find anything that would suggest the procedures of city staff or the adjudicator were unreasonable in considering the matter.

Best Practices: Implementing a Fair Appeal Process

Local government staff or adjudicators hearing appeals of enforcement decisions:

- provide the person disputing the bylaw enforcement decision with a meaningful opportunity to be heard that is appropriate to the nature of the bylaw violation
 - are unbiased and have an open mind
 - provide adequate and appropriate reasons for their decisions
-

Public Information about Reviews and Appeals

Accessibility is a key component of a fair review or appeal process. When we spoke with local governments as we were developing this guide, we learned local governments do not always make information about review or appeal processes publicly available. For example, 16 of the 26 local governments whose noise bylaws we reviewed did not have any publicly accessible information about how to seek a review of or appeal a noise bylaw enforcement decision.

When information about appeals is accessible, people affected by bylaw enforcement decisions know how to seek a review of or appeal a decision in a timely way. Review or appeal processes should, at a minimum, be described on the local government's website.

Best Practice: Public Information about Reviews and Appeals

Local governments make information about bylaw enforcement reviews and appeals easily accessible to the public by posting it on the local government's website.





RESPONDING TO AN OMBUDSPERSON INVESTIGATION

Most people contact the Office of the Ombudsperson as a last resort, after they have unsuccessfully tried to resolve their concerns with local government staff. This section describes the process we follow when we investigate a complaint and provides some suggestions for local governments on how to respond to our investigations.

Our Process

When we receive a complaint about any authority under our jurisdiction, we first assess whether there is a matter for us to investigate. This involves determining whether a person may have been treated unfairly with respect to an act, omission, decision or procedure used by the authority in question.⁶⁷ In evaluating the substance of any complaint, and throughout the investigation process, we reference the *Code of Administrative Justice*, which explains the grounds on which the Ombudsperson can make a finding of unfairness.⁶⁸

In our initial assessment, we:

- speak with the complainant
- review relevant documentation, bylaws, policies and information provided by the complainant
- look at similar previous complaints
- consider whether the complainant has tried to resolve the concern with local government staff first and, if he or she has not, we may suggest the person do that

After examining all the relevant information, we then decide whether to investigate the complaint.⁶⁹

If we decide to investigate, our investigations include the following steps:

- notifying the local government of our investigation, verbally or in writing⁷⁰
- requesting information from the local government and other relevant sources, such as documentation of how the local government responded to a complainant's concerns, copies of applicable bylaws and policies, and copies of correspondence between government staff and the complainant⁷¹
- assessing the information provided by the local government and, if necessary, requesting additional information or clarification of the information already provided
- if appropriate, consulting with the local government to reach a fair resolution of the complaint⁷²

⁶⁷ *Ombudsperson Act*, R.S.B.C. 1996, c. 340, s. 10.

⁶⁸ *Ombudsperson Act*, R.S.B.C. 1996, c. 340, s. 23; Office of the Ombudsperson, *Code of Administrative Justice 2003*, Public Report No. 42, British Columbia Legislative Assembly, March 2003 <<https://www.bcombudsperson.ca/sites/default/files/Public%20Report%20No%20-%2042%20Code%20of%20Administrative%20Justice.pdf>>.

⁶⁹ *Ombudsperson Act*, R.S.B.C. 1996, c. 340, s. 13.

⁷⁰ *Ombudsperson Act*, R.S.B.C. 1996, c. 340, s. 14.

⁷¹ *Ombudsperson Act*, R.S.B.C. 1996, c. 340, s. 15.

⁷² *Ombudsperson Act*, R.S.B.C. 1996, c. 340, s. 14(2).

- notifying the complainant and local government in writing of the outcome of the investigation and providing reasons for our decision⁷³

We approach each investigation impartially, without prejudging the merits of the complaint, and keep an open mind in determining whether the local government acted fairly in the circumstances.

We recognize that not all local governments are familiar with our office and its role. During our investigations, we therefore invite local governments to ask questions about our process or to suggest appropriate resolutions of a complaint.

How Local Governments Can Respond

Local governments can facilitate our investigative process in several ways.

All of our investigations are guided by the facts of the particular complaint they address. Therefore, when we give notice to a local government that we are investigating a complaint, we identify the specific issue we will be examining. That helps staff to provide us with the pertinent documentation to show how and when they responded to the complainant or otherwise addressed the issue in question.

Local government staff are welcome to contact our office to ask questions about the investigation and to discuss any relevant background information about the complaint that might be useful to the investigator.

During an investigation, we will usually request specific documentation (e.g. correspondence) from the local government. When that happens, it is important that the local government provide the entire documents and not a summary of them or an excerpt. If the volume of the materials is such that it would take considerable staff resources to copy them all, our office will look for other options, such as copying the documents ourselves.

Our investigations are confidential, and any information or records the complainant or local government provides to us during the case will not be disclosed except to the extent necessary to further our investigation or to explain the outcome.⁷⁴

We also often ask local governments for copies of the bylaws or policies relevant to the investigation. As discussed earlier in this guide, bylaws and policies provide a framework for local government action. We then consider whether the local government action or inaction complained about is consistent with a bylaw or policy, and whether that bylaw or policy is reasonable and fair. This assessment is made easier if we are able to access the bylaw and policy on the local government's website.

If, after investigating, we have identified an apparent unfairness, we propose a possible settlement of a complaint to the local government. In making a settlement proposal, we are not advocating for the complainant or acting as a mediator. Rather, we are advocating for a settlement that is reasonable for all parties and consistent with the principles of administrative fairness.

We expect all local governments to consider our proposed settlements of complaints. If a local government is unwilling to do so, then we expect it to explain the reasons for its position and to propose an alternative settlement.

⁷³ *Ombudsperson Act*, R.S.B.C. 1996, c. 340, s. 22(1)(d).

⁷⁴ *Ombudsperson Act*, R.S.B.C. 1996, c. 340, s. 9.

It is important to emphasize that if we have made a settlement proposal, it is because we have identified an apparent unfairness. If a settlement cannot be reached, the Ombudsperson may make findings and recommendations that may then be reported publicly.

Examples of settlements of complaints we have made involving local governments include:

- reimbursing fines, fees or penalties
- reconsidering an enforcement decision
- providing written or verbal reasons for a decision
- meeting with the complainant
- apologizing
- investigating a bylaw complaint or taking enforcement steps
- changing or developing a policy or practice
- amending a bylaw

Some of these settlements are illustrated in the examples used throughout this guide.

How an Ombudsperson Investigation Can Help

The majority of our investigations are focused on the impact of local government action on an individual. As a result of our work, we may confirm that a local government's processes are fair and have been reasonably followed. Or, we can identify ways for a local government to deal more fairly with the individual who has made a complaint. We can help resolve disputes between a local government and an individual where administrative fairness issues are at stake.

Through our investigations, we sometimes also identify broader systemic issues in bylaw enforcement and suggest ways that local governments can address them.

One key outcome of our work is to assist local governments in treating individuals fairly in all aspects of their operations.





1. Enforcement Policy: Guidelines for Exercising Discretion

An enforcement policy establishes broad guidelines for a fair and consistent enforcement process. It should cover most situations where staff will be making discretionary enforcement decisions.

A properly applied enforcement policy should achieve four goals:

- avoid arbitrary or inconsistent decisions
- ensure similar cases are treated in a similar way
- provide local government staff with guidance on, and limits to, exercising discretion
- provide the public with clarity and details on how and why enforcement decisions have been made

Is the bylaw enforcement policy written in plain language that is easily understood and applied?

Does the policy describe clearly what it is intended to achieve?

Is the policy flexible enough to cover a variety of circumstances where staff are exercising discretion?

Does the policy avoid fettering staff discretion by requiring them to take the same steps in each case, regardless of the circumstances, or discouraging individual responsibility for decisions?

Does the policy set out the relevant considerations that bylaw enforcement staff should take into account when exercising discretion?

Does the policy describe its relationship to – and accurately reflect – governing legislation and bylaws?

Is the policy communicated to bylaw enforcement staff?

Is the policy easily available to the public, such as on a website?

2. Bylaw Complaints Policy

Dealing with complaints is made easier when a local government has a written and publicly available policy explaining its process.

From a fairness perspective, a written policy offers three key benefits:

- consistency in staff responses to complaints
- public information about the process that is followed once a complaint is made
- a framework for evaluating the effectiveness of a response to a particular complaint

Does the policy outline how a person can make a complaint and what information must be included in that complaint?

Does the policy state which staff will be responsible for receiving, recording and responding to complaints?

Does the policy state whether the local government prioritizes complaints for response, and if the policy does say that, does it also explain how that prioritization works?

Does the policy set out a process for recording each complaint and the outcome, and expected timelines for staff to respond to complainants?

Does the policy list steps staff must follow to assess a complaint and to determine any necessary follow-up?

Does the policy set out reasonable procedures for dealing with frivolous, repeat or multiple complaints?

Does the policy set out a process for acknowledging a complaint and communicating the results to the complainant?

Is the complaint process publicly available, such as on the local government's website?

3. Investigation Plans

One way to approach complex cases in a consistent way is to develop an investigation plan.

Investigation plans can be customized by a local government to meet the needs of the community and to reflect the nature of the investigations that staff conduct. However, every investigation plan should include at least the following four key elements: a summary, a list of relevant bylaws, requirements for gathering evidence, and timelines for completing the work.

Does the investigation plan include a summary of the complaint or alleged infraction?

Does the investigation plan reference the relevant bylaw and the test that must be met to confirm that a bylaw infraction has occurred?

Does the investigation plan describe the evidence that must be gathered to meet that test, and where and how the evidence will be obtained?

Does the investigation plan set out timelines for completing steps in the investigation?

Does the investigation plan allow for the process to be adequately documented?

4. Taking Enforcement Measures

A local government demonstrates its fairness in the methods its staff choose to enforce bylaws. The checklist below includes elements of procedural and administrative fairness that staff should review and consider every time they enforce a bylaw.

Does the local government have authority to take enforcement action?

Are the responsible bylaw enforcement staff properly designated to enforce the bylaw?

Have bylaw enforcement staff considered whether notice prior to enforcement is necessary, and if they have determined it is, have they provided that notice?

If notice is given, is it in a form appropriate to the situation, does it provide reasonable time frames for compliance and does it describe potential consequences?

Is the proposed enforcement measure proportionate to the nature of the violation?

Would the circumstances of the individual make enforcement unjust in the circumstances?

Is the proposed enforcement measure consistent with policy and practice?

Has the decision-maker provided adequate and appropriate reasons for an enforcement decision?

Has the person affected by an enforcement decision been provided with adequate information about how to appeal or seek review of the decision?

5. Appeals of Enforcement Decisions

In accordance with principles of administrative fairness, a person should have an adequate opportunity to dispute a decision by an administrative body that affects his or her rights or interests.

In the bylaw enforcement context, a review or appeal process should allow a person who is the subject of enforcement measures to dispute the enforcement decision. A fair review or appeal process is especially important where there was no opportunity for a person to be heard before the enforcement decision was made.

Do regulatory bylaws state what decisions can be reviewed or appealed, who can review those decisions, what the review or appeal process is, and what the possible outcomes of a review or appeal are?

Does the local government policy describe how a review or appeal process will be conducted?

Do local government staff or adjudicators hearing appeals of bylaw enforcement decisions provide the person disputing the decision with a meaningful opportunity to be heard – one that is appropriate to the nature of the bylaw violation?

Are local government staff or adjudicators hearing appeals of bylaw enforcement decisions unbiased, and do they approach the appeal with an open mind?

Do local government staff or adjudicators hearing appeals of bylaw enforcement decisions provide adequate and appropriate reasons for their decisions?

Does the local government make information about reviews or appeals available publicly, such as on its website?





British Columbia Office of the Ombudsperson

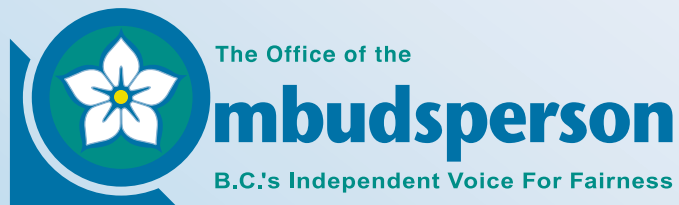
The following resources are available on our website,
<https://www.bcombudsperson.ca>:

1. *Open Meetings: Best Practices Guide for Local Governments* (2012).
2. *Code of Administrative Justice 2003*.
3. *Fairness in Local Government* (brochure).
4. *Developing an Internal Complaint Mechanism* (2001).

Other Resources

1. United Kingdom, Parliamentary and Health Service Ombudsman, *Principles of Good Administration*, revised 10 February 2009
<http://www.ombudsman.org.uk/__data/assets/pdf_file/0013/1039/0188-Principles-of-Good-Administration-bookletweb.pdf>.
2. Ombudsman of Western Australia, *Guidelines: Exercise of discretion in administrative decision-making*, revised October 2009.
<<http://www.ombudsman.wa.gov.au/Publications/Documents/guidelines/Exercise-of-discretion-in-admin-decision-making.pdf>>
3. City of Toronto, Office of the Ombudsman, *Defining Fairness*, October 2010.
<http://ombudstoronto.ca/sites/default/files/FairnessHandFINALWEB_0.pdf>





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