

District of Barriere

# REPORT TO COUNCIL

## Request for Decision

<b>Date:</b> September 9, 2024	<b>File:</b> 530.20/Rpts
<b>To:</b> Council	<b>From:</b> Chief Administrative Officer
<b>Re: Bylaw Enforcement Policy No. 52BE</b>	
<b>Recommendation:</b> <b>THAT Council instructs Staff to present Policy No. 52BE for adoption at the September 23, 2024, Regular Meeting of Council.</b>	

### Purpose

For Council to review the proposed Bylaw Enforcement Policy which is intended to provide guidelines for how the District of Barriere will provide bylaw enforcement services to the community.

### Background

The District provides Bylaw Enforcement services through the Corporate Services department to ensure that the public generally complies with its bylaws in relation to, for example water utility regulations, noise, or unsightly premises.

At present, the District has no Policy that governs how Staff respond to complaints, however, general guidelines around bylaw enforcement are posted on the Districts website under the heading "Bylaw Enforcement", which includes a Frequently Asked Question accordion menu.

In reviewing bylaws and policies in conjunction with the proposed Abandoned Property and Shelters Policy No. 51BE to address concerns regarding challenges with the transient population, it is also recommended to codify current practices of the District in regard to bylaw enforcement to reduce the potential liabilities of the District and set clear guidelines for Staff.

Bylaw Enforcement Policy No. 52BE (see attached), is presented to Council for introduction and discussion with the intent that any changes (if required) would be forwarded to the next Regular Meeting of Council for adoption.

Administration and enforcement of bylaws can be time consuming, expensive, and controversial. Administration in small communities such as Barriere can present some unique challenges where enforcement action may be necessary against friends, neighbours, and relatives. Additionally, at times, administration and enforcement action can lead to allegations of conflict of interest or unfairness.

A clearly articulated enforcement policy can alleviate some of the afore mentioned concerns, provide some consistency to enforcement, and provide a measure of control over enforcement costs, while still providing flexibility for bylaw enforcement officers where appropriate. The attached draft bylaw enforcement policy fulfills these parameters.

As outlined in the attached draft policy, the District's approach to bylaw enforcement is to encourage voluntary compliance and follow up with enforcement action where necessary. This approach allows for the directing of limited resources to those areas where Council deems that proactive enforcement action is necessary such as where there are safety concerns or where there is a potential for increased financial liability.

Proactive enforcement of Building and Fire Inspections are examples of enforcement driven by safety concerns while proactive enforcement of lawn sprinkling is an example of enforcement driven by environmental and financial concerns.

Strategic enforcement action is taken where voluntary compliance action is unsuccessful or is ineffective. An added benefit of strategic enforcement action is that it maintains the credibility of the enforcement regime for the District's bylaws while encouraging voluntary compliance.

## Policy Highlights

Definitions – The definition section outlines common terminology used throughout the Policy and includes for example definitions for Bylaw Enforcement Officer, Peace Officer, and what constitutes a Valid Complaint, which is for example defined as:

- g. means a complaint about a potential *Bylaw* contravention that contains the following information:
  - i. the complainant's name, address, and telephone number;
  - ii. the location and general nature of the potential bylaw contravention, such as the 'who', 'what', 'where,' and 'when' of the issue;
  - iii. the complainant's desired resolution;
  - iv. any previous attempts by the complainant to resolve the issue; and
  - v. is not made anonymously or as a *Retaliatory or Mischievous Complaint*.

Guiding Principles – This section outlines overall principles that District Staff would be using in terms of Bylaw Enforcement. It has been a standard to “educate” first for example before utilizing other methods such as “enforcement” through ticketing to achieve reasonable compliance. This section also includes provisions so that Council could add additional guidance to Staff through adding Appendices regarding specific types of municipal regulations as they arise in the future.

Guidelines – The Guidelines section addresses how general bylaw enforcement complaints are anticipated to be handled by Staff and specifically outlines the **Complaint** process, anticipated **Investigation** procedures, **Enforcement** steps that may be taken, **Confidentiality** expectations, and how to handle potential **Nuisance, Injury, Harm, or Damage** situations.

The Complaints section (Section a)) lays out some basic parameters by whom a Complaint can be made and how it must be received.

The Investigation section (Section b)) provides some discretion to the Bylaw Enforcement Officer regarding when a complaint may not be investigated (Section b) ii.):

- do not qualify as a *Valid Complaint* under this Policy;
- are not made by a person who is directly affected by the alleged *Bylaw* violation; or,
- are primarily related to a dispute between two private parties, including situations where complaints are based on matters such as fences between privately-owned properties.

As part of the Investigation process, Staff would utilize the following priorities ranked in order when considering investigations (Section b) iii.):

- High Priority- issues which affect the health, safety, and security of the public or a property.
- Medium - issues that affect the surrounding properties.
- Low - issues that are general nuisances or minor infractions that do not affect the health, safety, and security of the surrounding properties.

If Enforcement is required (Section c)), the following options are available to Staff and Council:

- An Order to Comply;
- A Municipal Ticket or Bylaw Offence Notice, including under section 264 of the *Community Charter*, and/or Bylaw Notice Enforcement Act;
- Injunctions or Court Orders, including prosecutions under the Offence Act, and any other remedies as set out in sections 260 and 274 of the *Community Charter*;
- Remedial action, with the costs of the remedial action to be at the expense of the person in contravention of the *Bylaw*, as set out in section 17 of the *Community Charter*;
- Other remedies available under the relevant legislation and at common law.

Generally, Staff would only pursue low-cost enforcement options (ticketing, etc.) as part of their day-to-day operations. Only specific enforcement matters that may require potential court injunctions or remedial actions are brought to Council for discussion in-camera.

The Confidentiality section (Section d)) advises on the endeavored confidentiality expectations, while the Nuisance / Injury / Harm / Damage section (Section e)) includes some additional expectations when it comes to dealing with members of the transient population or occurring from vandalism and the expectation that any parties that cause damages etc. would be held accountable for those.

## **Summary**

The draft Bylaw Enforcement Policy No. 52BE is presented here for discussion with this request that Council forward the policy to the Regular Meeting of Council on September 23, 2024, for adoption.

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## **Benefits or Impact**

### **General**

The bylaw enforcement policy will provide a mechanism for the consistent enforcement of the District's bylaws.

### **Finances**

Voluntary compliance followed by strategic enforcement is cost-effective since it reduces the demand for limited District enforcement resources.

### **Strategic Impact**

Good enforcement practices can promote community harmony thereby improving community livability. This policy provides opportunities for bylaw enforcement officers to be ambassadors for the District where appropriate.

## Risk Assessment

Compliance: Community Charter, Police Act, Offence Act, Bylaw Notice Enforcement Act.

Risk Impact: Medium if no Policy is implemented as enforcement options are not codified. Some risk will always remain even if a policy is in place, but it will be considerably lower.

Internal Control Process: Staff would follow standard procedures for implementing policies.

## Next Steps / Communication

- The presentation of this policy provides opportunity for feedback by Council and the public to potentially modify the enforcement policy before adoption
  - Staff would present the Policy for adoption at the next meeting of Council
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## **Attachments**

- Draft Bylaw Enforcement Policy No. 52BE

## **Recommendation**

**THAT Council instructs Staff to present Policy No. 52BE for adoption at the September 23, 2024, Regular Meeting of Council.**

## **Alternative Options**

1. Council could choose not to establish a policy at this time; this is not recommended as it would retain an increased risk level to the organization.
2. Council could choose to modify the proposed policy.

Prepared by:  
D. Drexler, Chief Administrative Officer



# DISTRICT OF BARRIERE COUNCIL POLICY MANUAL

Approval Date: N/A  
Amended Date: N/A

**NO: BE52**  
**SECTION: Bylaw Enforcement**  
**SUBJECT: Bylaw Enforcement**

## Purpose

The purpose of this policy is to provide guidance to staff for the receipt of complaints, the fair and efficient prioritization of complaints, and for the initiation of investigation and enforcement proceedings related to bylaw contraventions in the District of Barriere (the “District”).

## Scope

This Policy applies to staff engaged in bylaw enforcement activities on behalf of the District and/or persons who act in the job positions or titles listed as Enforcement in the District’s bylaws, as amended or replaced from time to time.

## Definitions

In this policy,

- a. **Bylaw** means a bylaw adopted by the District of Barriere.
- b. **Bylaw Enforcement Officer** means a person or persons appointed from time to time by resolution of the District’s Council pursuant to Section 36 of the *Police Act*, the purpose of which is to enforce regulatory bylaws of the municipality as outlined in the Officers and Delegation of Authority Bylaw No. 201 as amended or replaced from time to time.
- c. **Community Charter** means the *Community Charter* [SBC 2003] Chapter 26 as amended or replaced from time to time.
- d. **Police Act** means the *Police Act* [RSBC 1996] Chapter 367 as amended or replaced from time to time.
- e. **Peace Officer** shall have the same meaning as in the Interpretation Act, including staff appointed by Council as a *Bylaw Enforcement Officer* to enforce and administer this Policy, any member of the Royal Canadian Mounted Police, Fire Chief or Deputy, Inspector or any other delegated staff/representative of the District.
- f. **Staff** means the Chief Administrative Officer, or their designate.

- g. **Valid Complaint** means a complaint about a potential *Bylaw* contravention that contains the following information:
- i. the complainant's name, address, and telephone number;
  - ii. the location and general nature of the potential bylaw contravention, such as the 'who', 'what', 'where,' and 'when' of the issue;
  - iii. the complainant's desired resolution;
  - iv. any previous attempts by the complainant to resolve the issue; and
  - v. is not made anonymously or as a *Retaliatory or Mischievous Complaint*.
- h. **Retaliatory or Mischievous Complaint** means a complaint that was not made in good faith, including where, in the opinion of a *Bylaw Enforcement Officer*, the complaint was made for vindictive or bad faith purposes; forms part of a pattern of conduct by the complainant that amounts to an inappropriate use of the complaint process; or does otherwise not qualify as a *Valid Complaint*.

### **Guiding Principles**

The primary goals of bylaw enforcement for the District are to ensure public safety and to maintain community harmony.

The District promotes an enforcement philosophy that seeks voluntary *Bylaw* compliance in respect of most private property matters. Education is usually the first step and offenders are usually provided with time to comply with the *Bylaw*. Enforcement in the form of ticketing is generally seen as a tool to be used only where cooperation and compliance cannot reasonably be achieved or in a situation of repeat offences.

The District's approach to bylaw enforcement is primarily complaint-based. The District has no duty to take enforcement action for each *Bylaw* contravention that may occur. The District does not have the resources to proactively monitor all areas of the District to confirm compliance with all potentially applicable *Bylaws*. The District will use discretion, on a case-by-case basis, to evaluate *Bylaw* contraventions and take reasonable steps to investigate contraventions in accordance with the guidelines in this Policy.

Council may provide additional policy guidance or direction on municipal regulations or enforcement issues.

Supplemental guidance specific to individual *Bylaws* may be attached as appendices to this Policy and shall be interpreted as a part of the overall Policy.

### **Guidelines**

The following guidelines will be considered in the District's bylaw enforcement activities, including those alternate guidelines identified for enforcement of specific *Bylaws*, as indicated by an appendix attached to and forming part of this Policy. An example is included within this Policy to show the typical actions taken to achieve *Bylaw* compliance.

### a) Complaints

- i. Individual complaints about a *Bylaw* contravention may be received by the District in person, by phone, in writing, or via email.
- ii. The District may be the complainant, only under circumstances where a lack of compliance represents substantial harm to the District's interest or poses a community safety issue.
- iii. It is the responsibility of a person making a complaint to ensure their complaint meets the criteria for a *Valid Complaint* under this Policy.
- iv. The District will record *Valid Complaints* for the purposes of tracking, follow-up, and statistical analysis of *Bylaw* contraventions.
- v. All *Valid Complaints* will be reviewed and responded to by the District in a timely manner, in accordance with the guidelines in this Policy.
- vi. *Retaliatory or Mischievous Complaints* will not be acted upon.
- vii. Anonymous complaints may only be acted upon if public safety is at risk.

### b) Investigations

- i. Investigations regarding a potential *Bylaw* contravention may be initiated after the District has received a *Valid Complaint*, or by a *Bylaw Enforcement Officer* who, acting in the regular course of their duties, learns a contravention of a *Bylaw* may be taking place.
- ii. The investigation of an alleged *Bylaw* contravention is at the discretion of the District. Complaints may not be investigated or otherwise acted on if, in the opinion of a *Bylaw Enforcement Officer*, they:
  - do not qualify as a *Valid Complaint* under this Policy;
  - are not made by a person who is directly affected by the alleged *Bylaw* violation; or,
  - are primarily related to a dispute between two private parties, including situations where complaints are based on matters such as fences between privately-owned properties.
- iii. Complaints will be investigated in consideration of the following priorities, which appear in ranked order:
  - High Priority- issues which affect the health, safety, and security of the public or a property.
  - Medium - issues that affect the surrounding properties.
  - Low - issues that are general nuisances or minor infractions that do not affect the health, safety, and security of the surrounding properties.
- iv. The District will maintain a record of inspections and investigations undertaken.

- v. The District is not required to proactively provide follow-up information to complainants. *Staff* may respond to specific requests for information, subject to confidentiality requirements.

### c) Enforcement

- i. *Bylaw* enforcement is at the discretion of *Staff*. In determining whether to commence *Bylaw* enforcement proceedings, the District may consider one or more of the following criteria:
  - The scale, nature, extent, and severity of the *Bylaw* contravention;
  - The amount of time that has elapsed since the contravention occurred;
  - The impact of the contravention on public safety or health;
  - The resources available to resolve the matter; or,
  - Whether or not enforcement may be a deterrent against future *Bylaw* contraventions.
- ii. A primary objective in enforcing *Bylaws* is to obtain voluntary compliance. The District may encourage voluntary compliance through direct education to a person(s) accused of non-compliance, public education about the District's *Bylaws* on the District's website and social media sites, as well as the local newspapers.
- iii. Enforcement proceedings will generally commence when voluntary compliance to correct any *Bylaw* infractions is not achieved. The enforcement proceedings that the District may rely on include, but are not limited to:
  - An Order to Comply;
  - A Municipal Ticket or Bylaw Offence Notice, including under section 264 of the *Community Charter*;
  - Injunctions or Court Orders, including prosecutions under the Offence Act, and any other remedies as set out in sections 260 and 274 of the *Community Charter*;
  - Remedial action, with the costs of the remedial action to be at the expense of the person in contravention of the *Bylaw*, as set out in section 17 of the *Community Charter*;
  - Other remedies available under the relevant legislation and at common law.
- iv. The District is committed to the safety of its *Bylaw Enforcement Officers* and staff. Where *Bylaw Enforcement Officers* or staff have concern for their safety in the performance of their bylaw enforcement duties, they may be accompanied by the Royal Canadian Mounted Police (RCMP).
- v. Any verbal, written or perceived threat of violence towards an Enforcement Officer or the District during the course of an investigation by either the accused or the complainant, will be reported to the CAO and the RCMP.



- vi. Some *Bylaw* enforcement matters occurring outside regular business hours may be referred to the RCMP. Regular business hours are generally Monday to Friday, 8:30 AM to 4:30 PM.
- vii. Complaints regarding the Building Bylaw are referred to the Building Inspector or Building Official, who is appointed as a District *Bylaw Enforcement Officer* to enforce those *Bylaws*.
- viii. Where applicable, the District may refer complaints to an authority that has jurisdiction over an issue. For example, *Valid Complaints* regarding animal cruelty may be referred to the Society for the Prevention of Cruelty to Animals (SPCA).
- ix. The District is authorized to enter property in accordance with section 16 of the *Community Charter*.

#### **d) Confidentiality**

- i. Confidentiality is necessary to ensure complainants are not exposed to retaliation or other adverse actions as a result of the complaint, and to maintain effective investigation techniques. The identity of the complainant and any identifying information will not be disclosed to the alleged offender or any member of the public, except as authorized or required by law. Likewise, the details of the District's investigation will not be disclosed to the complainant.
- ii. The District is committed to its privacy and confidentiality obligations under the *Freedom of Information and Protection of Privacy Act*.
- iii. The District will make best efforts to inform the complainant if the identity of the complainant is to be disclosed as part of a bylaw enforcement proceeding. Situations in which complainant information or information about an individual's alleged bylaw contraventions may be disclosed include where the information is:
  - Required by Court order, warrant, or other similar judicial or quasi-judicial process;
  - Required under the Freedom of Information and Protection of Privacy Act;
  - Required as part of the disclosure process in the event of a prosecution or civil proceedings; and,
  - Disclosed with the consent of the person to whom the personal information pertains.

#### **e) Nuisance / Injury / Harm / Damage**

- i. In the process of investigating a nuisance or disturbance, *Staff* and/or a *Bylaw Enforcement Officer* may compel a person to cease the disturbance or nuisance activity, and which may include ordering the person to leave the

area, issuing fines and/or obtaining additional assistance from the RCMP or other jurisdictional bodies applicable to effect compliance.

- ii. Any injury, harm, or damage to a person or thing will be documented for follow-up, as deemed appropriate by the District, to hold the accused party accountable for damages, etc.

### **Resolutions and Amendments**

MMM DD, YYYY – Council Policy No. BE52 Established

Appendix A – General Bylaw Enforcement Example Flow Chart

