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Council Policy

BYLAW ENFORCEMENT

Approval Date: June, 26, 2023

Resolution No.: R165/23/06/26

Rescinded: N/A

Contact Department: Building Inspections and Bylaw Services

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 City of Grand Forks (the “City”).

Scope

This Policy applies to staff engaged in bylaw enforcement activities on behalf of the *City* and/or persons who act in the job positions or titles listed in Column 4 Schedule A of the *Municipal Ticket Information Bylaw* as amended or replaced from time to time.

Definition

- a. **“Bylaw”** means a bylaw adopted by the City of Grand Forks.
- b. **“Bylaw Enforcement Officer”** means a person or persons appointed as a Bylaw Enforcement Officer for the *City*, otherwise authorized or appointed under the *Offence Act*, the *Police Act*, or the *Community Charter*, and every *Peace Officer*.
- c. **“Chief Administrative Officer (CAO)”** means one employee of council as defined by City of Grand Forks Policy 115 as amended or replaced from time to time.
- d. **“Community Charter”** means the *Community Charter* [SBC 2003] Chapter 26 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 bylaw, and any member of the Royal Canadian Mounted Police.
- f. **“Police Act”** means the *Police Act* [RSBC 1996] Chapter 367 as amended or replaced from time to time.
- g. **“Staff”** means the *Chief Administrative Officer* or designate.
- h. **“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.
- i. **“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 in the *City* are to ensure public safety and to maintain community harmony.

The *City* 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 time to comply with the bylaw. Ticketing is generally seen as a tool to be used only where cooperation and compliance cannot reasonably be achieved.

The *City's* approach to bylaw enforcement is primarily complaint-based. The *City* has no duty to take enforcement action for each bylaw contravention that may occur. The *City* does not have the resources to proactively monitor all areas of the *City* to confirm compliance with all potentially applicable bylaws. The *City* 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 specific complaint 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 *City'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 *City* in person, by phone, in writing, or via email.
- ii. The *City* may be the complainant, under circumstances where a lack of compliance represents substantial harm to the *City's* interest.
- 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 *City* 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 *City* in a timely manner, in accordance with the guidelines in this Policy.
- vi. Retaliatory or mischievous complaints will not be acted upon

b) Investigations

- i. Investigations regarding a potential bylaw contravention may be initiated after the *City* 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 *City*. 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 *City* will maintain a record of inspections and investigations undertaken.
- v. The *City* 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 the Chief Administrative Officer or designate. In determining whether to commence bylaw enforcement proceedings, the *City* 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 *City* may encourage voluntary compliance through public education about the *City's* bylaws on the *City's* website and social media website 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 *City* 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 *City* 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. Bylaw enforcement matters occurring outside regular business hours may be referred to the RCMP. Regular business hours are generally Monday to Friday, 8:00 AM to 4:00 PM.
- vi. Complaints regarding the Building Bylaw or the Sign Bylaw are referred to the Building Inspector or Building Official, who is appointed as a *City Bylaw Enforcement Officer* to enforce those bylaws.
- vii. Complaints regarding the Electrical bylaw are referred to the CAO or designate.
- viii. Where applicable, the *City* may refer complaints to a contractor that is designated to enforce the *City's* bylaws. For example, valid complaints regarding animals may be referred to Society for the Prevention of Cruelty to Animals (SPCA) or to the Regional District of Kootenay Boundary (RDKB).
- ix. The *City* 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 *City's* investigation and enforcement steps will not be disclosed to the complainant.
- ii. The *City* is committed to its privacy and confidentiality obligations under the *Freedom of Information and Protection of Privacy Act*.

- iii. The *City* 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 RCMP 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 City, to hold accused party accountable for damages, etc.

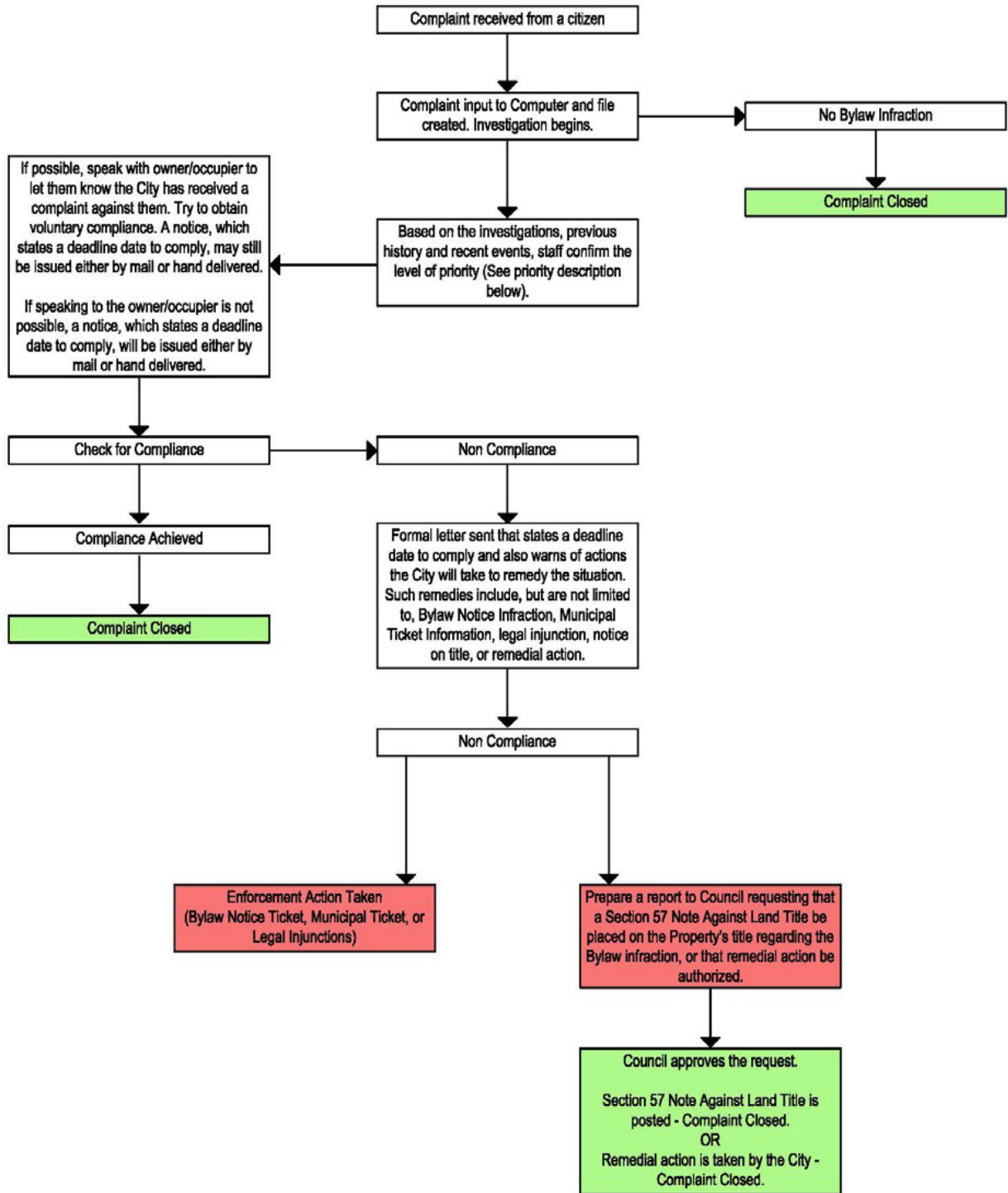
Resolutions and Amendments

August 17, 2020 – R191/20/08/17 – Rescinded Policies No. 401, 402, 403; and established a new Policy No. 401

June 26, 2023 - R165/23/06/26 – Amendment to Policy No. 401 to allow for inclusion of additional Appendixes; addition of definitions, guidelines and Appendix B to align with the Controlled Substance Use Bylaw No. 2098

Appendix A

Bylaw Enforcement Example



Appendix B

Supplemental Policy Direction Regarding Bylaw 2098 – *Controlled Substances Regulation Bylaw*

Definitions

This supplement inherits definitions from the *Controlled Substances Regulation Bylaw, No. 2098*.

Guiding Principles

This policy supplement includes specific guidance for handling complaints, investigations, and compliance and enforcement outcomes regarding *Controlled Substance* activity in *Prohibited Areas* and *Public Spaces* within the *City*, in accordance with the *Controlled Substances Use Bylaw, No. 2098*. This appendix to the policy recognizes that, despite the temporary decriminalization initiative which is an administrative decision to not charge and penalize persons for possession of less than 2.5 cumulative grams of *Controlled Substances*, the possession of any amount of *Controlled Substance* remains illegal in Canada, as does public intoxication.

The intent of the direction provided in this appendix is to address consumption, not possession, of *Controlled Substances* in defined *Prohibited Areas* and *Public Spaces*, utilizing the *City's* authority for managing nuisance and objectionable activity. The intent is not to blanket all public areas of the *City* with a prohibition of discreet consumption.

Guidelines

In addition to the general guidelines outlined in the main portion of this policy, the following supplemental guidelines will be considered in the *City's* bylaw enforcement activities with regards to the *Controlled Substances Regulation Bylaw, No. 2098*.

a) Complaints

- i. The *City* may be the complainant where a lack of compliance represents substantial harm to the *City's* interest or where the contravention relates to *Consumption* in a *Prohibited Area* as specified in Appendix A of the *Controlled Substances Use Bylaw, No. 2098*.

b) Enforcement

- i. Possession of a *Controlled Substance*
 - a. *Staff* or a *Bylaw Enforcement Officer* suspecting unlawful possession of 2.5 grams or more of *Controlled Substances* will refer the situation to RCMP as a *Criminal Code* matter.
 - b. *Staff* not seize, impound, or otherwise remove a *Controlled Substance* from a person.
 - c. *Staff* or a *Bylaw Enforcement Officer* may seize, impound, or otherwise remove a *Controlled Substance* found in a *Prohibited Area* or public space that is not in the possession of an individual. Any *Controlled Substance* seized or impounded may be referred to the RCMP and/or disposed of immediately.

- d. A *Bylaw Enforcement Officer* may seize, impound, or otherwise remove a *Controlled Substance* from a person under this bylaw, if deemed necessary and prudent to compel compliance and prevent the continuation of an offence.

Example: Person continues consume Controlled Substance in a Prohibited Area despite being advised to cease the activity.

- e. Any *Controlled Substance* seized or impounded from a person may be referred to the RCMP, or held for evidentiary purposes, or returned to an individual under the terms of the bylaw and/or at the discretion of the officer, or disposed of.

ii. Possession of Paraphernalia or *Hazardous Materials*

- a. *Staff* will not seize, impound or otherwise remove paraphernalia or *Hazardous Material* from a person.
- b. *Staff* or a *Bylaw Enforcement Officer* may seize, impound, or otherwise remove paraphernalia or *Hazardous Material* found in a prohibited area or public space that is not in the direction possession of an individual.
- c. Any paraphernalia or *Hazardous Material* seized or impounded from a prohibited area or public space will be immediately disposed of due to potential contamination.
- d. A *Bylaw Enforcement Officer* may seize, impound, or otherwise remove paraphernalia or *Hazardous Material* from a person under this bylaw, if deemed necessary and prudent to compel compliance and prevent the continuation of an offence.

Example: Person continues to use or display paraphernalia in a prohibited area despite being advised to cease the activity.

- e. Any paraphernalia or *Hazardous Material* seized or impounded may be referred to the RCMP, or held for evidentiary purposes, or returned to an individual under the terms of the bylaw and/or at the discretion of the officer, or disposed of.

iii. **Nuisance / Injury / Harm / Damage**

- a. Actions of an individual arising from the use or suspected use of *Controlled Substances* that involve a disturbance or nuisance to others, injury to others, or harm or damage to any person or thing may be investigated and actioned for compliance / enforcement.
- b. In the process of investigating a complaint of a disturbance or nuisance arising from use or suspected use of a *Controlled Substance*, *Staff* and/or a *Bylaw Enforcement Officer* may defer to the Guiding Principles contained within this Appendix with the understanding that the possession and use of a *Controlled Substance* remains illegal. As such, despite the decriminalization initiative, the tolerance for an illegal activity to occur will be the lesser consideration in light of community expectations for general public rights to access and safe and lawful use of *Public Spaces*, and most especially in the presence or proximity to minors.