

Date

The following was adopted as Policy by **Resolution No. 21.02.027** at the **Regular Council Meeting** held **February 16, 2021**.

This policy was amended as follows:

Amendment Date	Resolution No.	Summary of Amendment
July 20, 2021	21.07.169	Add section 10.4: Criteria for Determining Nuisance

PURPOSE

The purpose of this policy is to:

- A. establish the model of enforcement of District of Lake Country (the “District”) bylaws,
- B. set criteria and procedures specific to individual contraventions,
- C. set criteria and priorities specific to receiving, investigating and enforcing all bylaw complaints and contraventions,

in order to ensure a fair and consistent approach to bylaw enforcement procedures.

POLICY

1. ADMINISTRATION

- 1.1 Bylaw Enforcement Officers and Building Officials, including their delegates, are generally responsible for administering this policy.

2. GOALS

- 2.1 The primary objective of enforcing District bylaws shall be to obtain voluntary compliance through education, information and effective enforcement based on consistency, education and fairness.
- 2.2 Enforcement of District bylaws is discretionary and not mandatory. The District has no duty to initiate or undertake enforcement action on any bylaw contravention within the municipality. Conversely, this policy in no way fetters the District’s right to enforce any or all bylaw contraventions.
- 2.3 The District does not have the resources to proactively monitor all areas of the municipality or to ensure all bylaws are complied with at all times. Enforcement of bylaw contraventions is primarily initiated on a complaint basis, except as contained here.

3. COMPLAINTS

- 3.1 A complaint regarding the contravention of a bylaw can be submitted by phone, fax, email, direct social media message or letter. Verbal complaints may be submitted although a written complaint is preferred and may be requested.
- 3.2 In order for a complaint to be considered valid, it must contain:
- (a) the name and address of the complainant
 - (b) contact information of the complainant such as phone number or email address
 - (c) a description of the alleged contravention, and
 - (d) the address or location of where the contravention is or has taken place
- 3.3 Complaints that do not include the above information may not be acted upon.
- 3.4 Anonymous complaints will not be accepted, recorded, responded to or acted upon unless they are considered an issue of health or safety.
- 3.5 Vexatious or repeat complaints will be investigated to determine their validity and will not be acted upon unless the complaint is valid or contains new information or a new issue.
- 3.6 Staff will respond to all complaints as follows:
- (a) acknowledge receipt of the complaint,
 - (b) provide updates if requested where applicable,
 - (c) upon closing of the investigation, provide the complainant a summary of the investigation including decisions and references to legislation or policies.
- 3.7 Responses are subject to confidentiality and will not disclose any information about the complainant. Verbal responses are acceptable where matters are routine or uncomplicated and the conversation is documented for the file.

4. CONFIDENTIALITY

- 4.1 Identities of complainants and personal information are protected under the *Freedom of Information and Protection of Privacy Act* and shall not be disclosed unless required by law.

5. DISCRETION

- 5.1 Staff will exercise discretion on a case-by-case basis when evaluating contraventions and determining the best method to gain compliance or if enforcement action is appropriate.
- 5.2 Staff will take reasonable steps to investigate contraventions in accordance with District policy.

6. PRIORITY

- 6.1 Response to complaints will generally be determined by order received and then by the following, in order:
- 1. health or safety risks to people, environment or municipal property or infrastructure
 - 2. high priority
 - 3. low priority

4. vexatious or repeat complaints which means a complaint made for retaliatory or bad faith purposes, or a complaint that forms part of a pattern of conduct that amounts to abuse of the process.

6.2 When assessing the priority of a contravention to determine high or low priority, staff shall use one or more of, but not limited to, the following criteria:

- (a) potential risk to health and safety
- (b) magnitude, nature, and duration of the contravention
- (c) history of non-compliance on the property or alleged offender
- (d) potential impact on the community, environment, or structure
- (e) legal precedents and statutory timeframes
- (f) resources available to resolve or remediate the violation
- (g) potential costs and liability associated with enforcement action
- (h) likelihood of achieving desired results
- (i) reasonable use of District resources

7. ENFORCEMENT

7.1 Education, information and warnings may not be appropriate in all situations. Immediate enforcement including issuing a penalty or stop work order may occur where a contravention:

- (a) is a health or safety risk to people, environment, municipal property or infrastructure,
- (b) is an emergency,
- (c) may result in liability to the District,
- (d) is during or following a public education campaign,
- (e) is part of an authorized or prioritized enforcement issue,
- (f) the offender should be aware, or reasonably ought to know, the conduct is a contravention,
- (g) is not practical or possible to achieve voluntary compliance,
- (h) is parking or a similar traffic infraction, or
- (i) is a building contravention at the discretion of a Building Official.

8. INVESTIGATION

8.1 Investigations are primarily initiated on a complaint basis, except where:

- (a) staff, acting in their regular course of duties such as a Bylaw Enforcement Officer or Building Official initiate an investigation,
- (b) a contravention is observed, identified or reported by staff, police or another agency, acting in their regular course of duties (e.g. roads employee observes contravention while performing regular job duties),
- (c) an enforcement program is authorized by Council or the Chief Administrative Officer.

8.2 Staff will maintain written records of all investigations.

8.3 Pursuant to section 16 of the *Community Charter*, officers or employees of the municipality or by other persons authorized by the Council, may enter on property without consent of the owner or occupier for the purposes of bylaw enforcement.

8.4 Generally, the process for investigating and enforcing bylaw contraventions will be:

- (a) a complaint is received, or a violation is observed
- (b) review details including applicable bylaw and property file
- (c) determine jurisdiction (provincial, federal etc.)
- (d) establish priority of complaint
- (e) contact the complainant if possible, practical or relevant
- (f) investigate complaint including site visit
- (g) communicate contravention to offender, if possible, practical or relevant
- (h) provide information and education on bylaws and how compliance can be achieved, if applicable
- (i) provide a reasonable timeframe to achieve compliance
- (j) advise that non-compliance may result in a penalty, advise of penalty amount
- (k) if, after providing a reasonable timeframe no effort has been made, determine next steps including, but not limited to, issuing a penalty
- (l) with continued non-compliance and no efforts towards compliance consider other alternatives including, but not limited to:
 - (i) increase frequency of penalties
 - (ii) issue Municipal Ticket Information
 - (iii) stop work order
 - (iv) no occupancy notice
 - (v) notice on title
 - (vi) consider closing the investigation pursuant to the procedures and priorities contained herein.

8.5 Further enforcement of bylaw contraventions including remedies pursuant to the *Community Charter*, shall be approved by Council resolution.

9. CLOSING AN INVESTIGATION

9.1 In accordance with the procedures and priorities contained herein, the Chief Building Official or the Bylaw Enforcement Officer may close an investigation at any time by taking one of the following actions:

- (a) no action required
- (b) referral to another agency or government
- (c) formal warning
- (d) voluntary compliance tools or actions such as education or written request to remedy contravention

10. SPECIFIC ISSUES

10.1 Unauthorized Suite

- (a) Upon receipt of a valid complaint of an unauthorized suite the Bylaw Officer or Building Official will make contact with the property owner and request an inspection. Upon confirmation of an unauthorized suite, the property owner will be requested to either decommission the suite or obtain a permit to authorize the suite.

10.2 Expired Building Permit

- (a) Each permit issued in accordance with the *Building Regulation Bylaw* has an expiry date and upon expiry, all works shall cease and construction shall be removed unless a new application or an extension is made within the allotted time. A Building Official may assess expired building permits including missing documentation, inspections or other information in order to determine the likelihood of satisfactorily achieving completion. Following an assessment, the Building Official may confirm expiry of the permit without further enforcement or forward the expired permit file to the Chief Building Official in an attempt to obtain compliance. The Chief Building Official will consider the information as a valid complaint and begin an investigation.

10.3 Occupancy Without Approval

- (a) As per the *Building Regulation Bylaw* a person must not occupy or permit the occupancy of any building or structure without approval. Upon receipt of a valid complaint, the Chief Building Official will contact the property owner and request an inspection. Upon conformation of unapproved occupancy, the Chief Building Inspector may consider enforcement action in accordance with this policy.

10.4 Criteria for Determining Nuisance

- (a) When determining if something is a nuisance, all facts and surrounding circumstances must be taken into consideration, including, but not limited to, the following:
 - (i) The nature and characteristics of the location or neighbourhood
 - (ii) The severity of the harm and intensity of the nuisance.
 - (iii) The sensitivity of the complainant, if abnormally sensitive, the nuisance does not exist.
 - (iv) Risk associated with removing, or not removing a nuisance.
 - (v) The historic use of a property.
 - (vi) The frequency, duration and timeframe of the occurrence.
 - (vii) The harm caused vs any social benefit.
 - (viii) Would another like-minded, reasonable person, tolerate the nuisance

11. ROLES AND RESPONSIBILITIES

11.1 Members of Council will not be involved in day-to-day bylaw enforcement matters. By resolution, Council may direct staff to investigate or enforce specific complaints or general topics. Individual members of Council may submit complaints.

11.2 Where, by resolution, Council directs staff to undertake and prioritize a specific enforcement program, the following criteria shall be considered:

- (a) required staff time
- (b) community education
- (c) associated costs.

11.3 Staff are not required or encouraged to report bylaw contraventions observed unless it is during regular work hours, within that employee's scope of duty and where the violation poses a risk to public health and safety or the environment.

- 11.4 Staff in various departments will generally be requested to review and make recommendations on contraventions in their area of responsibility and expertise.
- 11.5 Where a contravention has occurred contrary to the building regulation bylaw, the Building Inspector will proceed with the investigation and the enforcement action as appropriate.
- 11.6 Staff appointed to the position of Director for the District, may:
- (a) set and authorize extensions to timelines set for compliance, and
 - (b) restrict contact with a person making vexatious or repeated complaints.

12. SAFETY

- 12.1 While investigating or encouraging compliance with District Bylaws or other enactments, staff safety is paramount. Staff members may cease investigations and immediately remove themselves from the situation if being verbally or physically threatened. The Department Manager or Director may direct that no further action be carried out until a statement has been completed and assessed and appropriate security measures have been taken to safeguard staff.

Original signed by James Baker
Mayor

Original signed by Reyna Seabrook
Corporate Officer

July 20, 2021 amendment signed:

Original signed by James Baker
Mayor

Original signed by Reyna Seabrook
Corporate Officer