



# CITY PROCEDURE

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**SECTION: By-law Enforcement**

**NO: #**

**REFERENCE: Progressive Enforcement**

**Updated: April 7, 2022**

**History: New**

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**TITLE: Progressive Enforcement Procedure**

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## **1. 0 Principles**

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The City of Dryden is committed to the health, safety and well-being of our employees and the citizens that it serves. The City of Dryden will ensure that all appropriate safeguards are enacted to protect our employees by supporting compliance-based enforcement of municipal by-laws.

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## **2. 0 Purpose**

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The purpose of this policy is to provide guidance to staff, elected officials and the public regarding by-law enforcement policies and procedures in the receipt of complaints and the initiation of investigations and enforcement proceedings related to regulatory by-laws in the City of Dryden. Council has the sole discretion of deciding which by-laws to enact and enforce.

The Building and Planning Department provides both proactive and reactive levels of by-law enforcement services to the residents of the City of Dryden. Primarily, reactive enforcement entails responding to written complaints as they are submitted by members of the public. Proactive enforcement involves staff taking the initiative for issues involving the health and safety of the residents and visitors of the City of Dryden or other by-law contraventions that are deemed detrimental to the overall safety or well-being of the community.

By-laws have a profound and direct impact on the quality of life, health and safety and the reputation of our community. This enforcement procedure will ensure a thorough, prompt, and courteous receipt, processing, investigation, and resolution of complaints.

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## 3.0 Procedure

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To minimize risk to employees, the following procedure will provide guidelines for by-law enforcement that include a range of options to achieve compliance with progressive escalation when required.

Enforcement action should be undertaken, starting with public education on by-law requirements to encourage voluntary compliance, progressing to warnings and finally to the pursuit of various penalties if the violation continues. (i.e., orders, administrative penalties, fines or charges and physical enforcement actions)

### 3.1 Guiding Principles

#### a) Voluntary Compliance

The first step of progressive enforcement is voluntary compliance, which involves education and outreach to ensure that residents and businesses are aware of by-laws that apply to them and why they apply. This includes the intent and purpose of by-laws to contribute to quality of life and health/wellness of the community and to be responsive to the community's needs and concerns such as public safety, nuisance, and consumer protection. Education and outreach also involve explaining how compliance can be achieved. It is essential to begin compliance efforts with education and/or outreach since it is often the most successful means of ensuring long-term compliance and is generally less time-consuming and resource-intensive than responding to or investigating.

#### b) Complaint and risk-based investigations.

Even with a strong voluntary compliance program in place, violations will occur and will require Municipal Law Enforcement Officers (MLEO) to respond and conduct investigations based on complaint and risk assessment. It is important that all investigations be conducted with the notion that evidence collected will need to be presented in court. Investigative procedures should be followed, evidence gathered in accordance with legislation, and the integrity of the investigation always maintained.

Critical aspects of the investigation considered by a MLEO are Who, What, Where, When, Why and How and are detailed as follows:

#### Who?

- Who was involved? (Resident, tenant, other person in authority)
- Confirmation of property ownership (title search if necessary)
- Verification of corporation or business name if applicable

What?

- What was observed? Note deficiencies.
- What action was taken?
- What statements were made? Admission statements should be noted verbatim
- What questions were asked by the officer in order to prompt these responses?
- What further action will be taken?

Where?

- Where was the offence committed? (Address, location information)
- Where was the violation observed?
- Where can the defendant be served with a summons?

When?

- When was the complaint if any received?
- When did the officer attend the property?
- When did the inspection commence?
- When was each violation observed?

How?

- How was the violation committed?
- How was the violation discovered?

Why?

- Why do the observations recorded by the officer confirm that an offence was committed? (Implies knowledge of essential elements)

c) Reasonable, Transparent and Proportionate

The foundation of the investigative process is based on reasonable, transparent, and proportionate enforcement. MLEO's involved in any investigation must ensure that their actions and reactions are reasonable and based on legal authority. MLEO's must clearly understand applicable regulations and possible outcomes should evidence prove a violation has occurred. Finally, MLEO's must ensure that enforcement measures are proportionate with the alleged violation.

### 3.2 Responding to Non-Compliance

The first step in enforcement is determining the relative significance of each violation. When non-compliance with a by-law is identified, the most appropriate response to obtain compliance must be determined. In making this determination the following factors are considered.

- a) Life Safety  
This takes into consideration the seriousness of the violation or potential non-compliance, such as the potential safety impact on residents, whether it be physical or by some other means.
- b) History  
The compliance history of the alleged violator is considered with respect to the existence of previous instances of non-compliance and the seriousness of past non-compliance. The consideration includes instances of non-compliance corrected before and after enforcement or court proceedings.
- c) Intent  
Officers must consider the intent of violators to commit a violation, such as evidence that demonstrates a violator knowingly contravened regulation.

The goal is to achieve consistency and predictability in responses to non-compliance. Similar situations or incidents of non-compliance, regardless of where they occurred, will be considered when determining the appropriate enforcement action.

### 3.3 Prioritizing Violations

The following criteria will be used by MLEO's to identify and classify significant violations to help establish priorities for enforcement efforts.

- a) High Priority Investigations (Life Safety)  
High Priority investigations are those that pose an immediate and substantial life safety risk. In most cases an officer must respond immediately, call in staff or other resources to deal with the concerns until the life safety issue has been mitigated. Once life safety concerns are dealt with, further concerns may be responded to as required. High priority investigations can include, but are not limited to unsafe building, unsafe living conditions, unsafe tree, unsecure pool, and nuisance (if life safety can be affected)
- b) Medium Priority Investigations (Nuisance)  
Medium Priority Investigations are those that pose moderate, indirect, or cumulative negative impact on residents, visitors, neighborhoods, and businesses. There may be intent and history, but there are not immediate life safety concerns. Response as needed, conduct investigation once complaint is received or violation observed. Medium priority investigations can include, but are not limited to excessive noise, vermin or insects, stagnant/pooling water, graffiti, outdoor accumulations and overgrown shrubs/trees from private property onto sidewalk.
- c) Low Priority Investigations/Violations (Regulatory)  
Low Priority Investigations are those that pose a minor threat to residents, visitors or businesses or are purely regulatory in nature. In these situations, there may be no intent, history or life safety concerns and can include parking violations, poop and scoop, mobile sign violations or idling vehicles.

### 3.4 Complainant Communications

Complainant communications are important to the success of every investigation and to improving community relations. To ensure positive relations are maintained and appropriate information is provided to the community, MLEO's shall be responsible for adhering to the requirements of the complaint process.

All names of persons making complaints are kept confidential to protect privacy. It is strongly recommended that the name and phone number of the person making the complaint be provided as legal action may not be taken where complaints are made anonymously. An inspection of the property will be made to determine compliance with the By-law and only those items covered under the By-law will be considered. Follow-up action is at the discretion of the MLEO. Legal enforcement action, if proceeded with, takes time following the initial request for voluntary compliance of the property owner and may require involvement of the person making the complaint. Any follow-up contact with the complainant is at the discretion of the MLEO and confidentiality will be maintained.

### 3.5 Method of Making a Complaint

All by-law complaints from the public, staff and members of Council must be in writing and provided by mail, email or in person. Anonymous complaints will not be accepted. The complaint form is a standardized form that contains particulars of the alleged violation and must be signed by the complainant.

Except for City staff, all complainants must live or own property in the City of Dryden.

These complaint forms are available online on the City's website or can be picked up at City Hall, 30 Van Horne Avenue.

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

Complaints are to be acted upon as quickly and responsibly as possible keeping in mind that currently an MLEO only conducts business during a normal business day unless an emergency. Complaints are required in writing to alleviate frivolous or vexatious complaints and must be complete with a signature to protect the city from being accused of discriminating against a citizen. Personal information including the complainants name shall be kept confidential, however, if the matter goes to court, the complainant could be called to testify and give evidence to substantiate the City's position.

Staff will acknowledge the receipt of the complaint to the complainant with a brief overview of the next steps. Further communication is at the discretion of the MLEO. The length of time to resolve a complaint is not pre-determined., Some will not result in a violation or may be determined to be a civil matter and not within the City's authority.

If an MLEO observes a by-law contravention during their patrol service that poses a Health and Safety risk to either themselves or to the public, they must act upon it. In this case, the Officer shall follow regular complaint procedures.

### 3.7 Frivolous and/or Vexatious Complaints

In situations whereby multiple meritless complaints are received from a single person at one time, where a single person continuously submits a variety of complaints on an ongoing basis, or where a single complaint appears to be based on vendetta or retribution, the MLEO has the discretion to decide on an appropriate level of response.

In making this decision the following criteria will be considered:

- Does the complaint deal with safety concerns?
- Does the department have available resources to respond to the concerns?
- What are the potential impacts of not responding?
- What are the potential impacts on the neighborhood?
- Does the complaint appear to be frivolous and vexatious?

The resulting level of response by staff may include acting on some or all the complaints, not acting on the complaints, or responding to some or all the complaints as resources to do so are available.

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## 4.0 **Definitions**

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*Business Day* mean a day in which normal business operations are conducted and is generally considered to be between the hours of 8:30 a.m. to 4:30 p.m. Monday through Friday. A business day excludes weekends, public holidays, and office closures.

*Discretion* means the freedom to decide what should be done in a particular situation given all the available information.

*Frivolous Complaint* means a complaint that is reasonable perceived by City staff to be

- (a) without reasonable or probable cause
- (b) without merit or substance or,
- (c) trivial

*Municipal Law Enforcement Officer (MLEO)* (Officer) includes a Provincial Offences Officer or an employee, agent appointed by the Council of the Corporation of the City of Dryden to enforce the municipal by-laws of the City.

*Patrol Service* means periodic or routine patrols through all or parts of the City to seek out violations. Patrol levels of service are a low priority.

*Proactive Enforcement* means a violation observed during course of duties where a MLEO will take necessary steps to correct the violation. Proactive levels of service are medium priority.

*Reactive Enforcement* means a MLEO will initiate an investigation upon notification of a valid complaint. Reactive level of service can be of medium or high priority.

*City By-law* means a by-law enacted by the City of Dryden.

*Vexatious Complaint* means a complaint that is frivolous, and which is pursued in a manner that is reasonably perceived by City staff to be

- (a) Malicious
- (b) Intended to embarrass or harass the recipient or,
- (c) Intended to be a nuisance or bad faith purpose.

*Valid Complaint* means a complaint that describes the location and general nature of a potential by-law contravention which includes the complainants name, address and email address or telephone number and which is not a vexatious complaint.