

CORPORATION OF THE TOWNSHIP OF GILLIES
MUNICIPAL LAW ENFORCEMENT POLICY

Date of Adoption: May 27, 2013
By-law No.: 2013/724
Reviewed: March 26th, 2018

1.0 PURPOSE

This policy provides the procedures governing the handling of complaints of Municipal Law contraventions within Gillies, and facilitates their thorough, prompt and courteous receipt, processing, investigation and resolution.

2.0 SCOPE

This policy governs the actions of Complainants, members of Council, the Clerk, and Municipal By-Law Enforcement Officers with respect to municipal law enforcement in Gillies. This policy excludes enforcement of the Dog Control By-law as that by-law contains its own enforcement procedures.

3.0 RESPONSIBILITY

The Clerk and all MBLEOs are responsible for applying this policy objectively, promptly and consistently to all Formal Complaints. At any stage of the enforcement process, if, in the opinion of the Clerk and/or the MBLEO, the matter is of significant consequence, it may be brought before Council for direction to follow procedures alternate to those set out in this Policy.

4.0 DEFINITIONS AND INTERPRETATION

4.1 **Definitions:** The terms listed in this Section 4.1 are intended to have the meanings ascribed to them when used in this policy with their initial letters capitalized.

- a) "Clerk" means the person who fulfills the role of municipal clerk (as set out in the *Municipal Act, 2001*) for the Township.
- b) "Complainant" means a person who reports an alleged infraction of Municipal Law to the Township.
- c) "Council" means the elected municipal council of the Township.
- d) "Formal Complaint" means a complaint received by the Clerk which meets the requirements of Section 5.4(a) of this Policy.

- e) “Gillies” means the geographic area under the jurisdiction of the Township.
- f) “MBLEO” means a person appointed by the Township for the purposes of Municipal Law enforcement. The term includes the Chief Building Official, a building inspector, members of the Volunteer Fire Department, and other duly appointed municipal law enforcement officers.
- g) “Municipal Law” means by-laws passed by the Township or provincial statutes which the Township is mandated to enforce.
- h) “Policy” means this policy document as adopted by Council.
- i) “Township” means The Corporation of the Township of Gillies.

4.2 **References to Legislation**: Where provincial statutes are referenced in this policy, their titles appear in italic font. Where the name of a statute includes a year, the reference is to the Statutes of Ontario for that year. Where the name of the statute does not include a year, the reference is to the Revised Statutes of Ontario, 1990. In all cases, the reference includes the legislation, all regulations passed under the legislation, and all amendments to the legislation and regulations, including successor statutes.

4.3 **“Includes”**: The term “includes” does not limit in any way the words or phrases that precede or follow it. This rule applies to any tense of the word such as “including” and “included”.

4.4 **Plurals**: Words in this Policy that appear in the singular may be interpreted as plural, and vice-versa, as the context requires.

5.0 POLICY STATEMENT

5.1 **Complaint-driven Enforcement**: The Township of Gillies relies primarily on citizen complaints as a means of initiating the enforcement of Municipal Law.

5.2 **Enforcement Goal**: The Township’s goal is to facilitate peaceable living amongst its inhabitants, and to foster and encourage voluntary compliance with Municipal Law wherever possible. Resort to court processes will be undertaken only where necessary and only if other avenues to achieve compliance have failed.

This Policy is established to balance accountability and confidentiality among the various parties to Municipal Law enforcement, in order to encourage only valid complaints and to reduce the opportunities for intimidation and neighborhood conflict.

5.3 **Resources:** Upon receipt of a Formal Complaint, the Township will initiate an investigation in accordance with this policy. In considering whether a remedy is necessary, the Township will consider such matters as the scale, number and duration of the infractions, the current, short and long-term impacts caused by the infraction, the potential for precedents and the resources available to resolve the matter. The Township may not necessarily seek a legal or administrative remedy for all alleged infractions.

5.4 **Citizen Initiated Complaints:**

- a) The Township will only respond to Formal Complaints received from a Complainant who uses the form prescribed by the Clerk for that purpose, and provides his or her full name, address and telephone number. Anonymous complaints will not be investigated.
- b) Formal Complaints will not be investigated if they are determined to have been made in bad faith. The Township will not participate where Municipal Law is being used as an instrument of abuse of process.
- c) The identity of Complainants is protected under the *Municipal Freedom of Information and Protection of Privacy Act*. Personal information provided by a Complainant will remain in the strictest of confidence and will not be revealed to anyone unless so ordered by a court or other tribunal or body of competent jurisdiction. (See Section 8.0 of this Policy – “Personal Privacy and Personal Information.”)

5.5 **Township Initiated Investigations:**

- a) The Clerk, may undertake an office investigation on his/her own initiative if he or she has personally observed a possible Municipal Law violation involving the public interest or an immediate threat to health and/or safety, however, the Clerk is not to undertake any field investigation unless otherwise permitted by Council.
- b) Council may direct or an MBLEO to conduct an investigation where a matter has been identified and is it is considered to be in the public interest or is an immediate threat to health and/or safety.
- c) Individual members of Council wishing to make a complaint of an alleged Municipal Law infraction shall submit a Formal Complaint.

5.6 **General:**

- a) Council members are encouraged to direct residents with issues regarding Municipal Law enforcement to the Clerk.

- b) Any failure to comply with any provision of this Policy shall not vitiate any proceeding or any step, document or order in a proceeding otherwise in accordance with any Municipal Law.

6.0 PROCEDURE

6.1 Receipt, Confirmation and Tracking of Complaint

- a) All complaints must be submitted to the Clerk in writing in the format prescribed by the Clerk for that purpose. The Complainant is to describe the matter in his or her own words, detailing the “who”, “what”, “why”, “when” and “where” of the situation. The completed and signed form shall be submitted to the Clerk at the Municipal Office. Where possible, it should be submitted by the Complainant in person, however, mailed complaints will be received if they are properly signed. The Clerk may assist a Complainant submitting information over the telephone, however, all Formal Complaint forms must be signed by the Complainant before the complaint can be investigated.
- b) The Clerk shall use the Municipal Law Infraction Complaint Investigation Form (in a form prescribed by the Clerk for that purpose) to record the complaint and subsequent investigation and action taken.
- c) Upon receipt of a Formal Complaint, the Clerk will conduct a preliminary review to verify information and research any supporting documentation which may be available in the Township’s records.
- d) The Clerk may contact the Complainant for further details or to confirm or clarify information provided within the Formal Complaint, when necessary.

6.2 Notice

- a) Upon receipt of a Formal Complaint regarding an alleged “first time” offender, the Clerk shall provide the alleged offender with written notice, in the form of a letter sent by regular mail, that the Formal Complaint has been received. This notice will detail the nature of the alleged infraction and request that the alleged offender contact the Clerk to discuss the matter. Where appropriate, the letter will advise the alleged offender that a site visit will be required for the investigative process.
- b) Where the Formal Complaint alleges that a person is repeating an alleged offence, the notice in Section 6.2(a) may be sent, but need not be sent.
- c) Where a person receiving notice sent under 6.2(a) acknowledges to the Clerk that the infraction occurred and provides a plausible explanation for the infraction (including lack of knowledge of the existence of the Municipal Law), together with a promise to rectify the matter and not to re-offend, the Clerk may close the

complaint file as resolved. The promise not to re-offend must be recorded in writing.

- d) Where a person receiving notice sent under 6.2(a) denies that the alleged offence occurred, further investigation will be required as set out in Section 6.3.

6.3 **Investigation**

- a) If a property inspection is required, it may be undertaken by an appropriate investigator, dependent upon available time and resources. The investigator shall attend the site to witness and record the activity to determine if a Municipal Law contravention exists.
- b) Externally contracted investigators will not attend to inspect property unless called to do so by the Clerk. Residents have no authority to engage the services of an externally contracted investigator.
- c) If the inspection reveals circumstances which lead to some doubt as to whether or not a Municipal Law contravention has occurred or is continuing, the Clerk may, dependent upon available resources, seek the advice of lawyers or other appropriate advisors.
- d) The Clerk may notify any internal departments and outside agencies that may have jurisdiction or may be required to assist with or rectify the situation, including: the Fire Department, the Roads Department, the Ministry of Natural Resources, the Ministry of Environment, the Thunder Bay District Health Unit or the Lakehead Region Conservation Authority.
- e) If the investigation leads to a conclusion that no contravention of any Municipal Law has occurred, the Clerk will advise all involved parties, enter the complaint finalized date on the Municipal Law Infraction Complaint Investigation Form and close the complaint file.
- f) If the investigation leads to a conclusion that Municipal Law has been contravened, the procedures in Section 6.4 will be undertaken.

6.4 **Enforcement – Written Warning**

- a) The procedures in this Section 6.4 apply where the alleged infraction is a first offence for the alleged offender. Where the alleged infraction is a repeat offence (whether or not a formal conviction was registered in the past), enforcement may follow this Section 6.4 or may follow Section 6.5 alone. Section 6.5 may also be followed without first undertaking the procedures in Section 6.4 where there are circumstances which warrant harsher action.

- b) The Clerk shall provide the alleged offender with notice in writing that the investigation is concluded and that an infraction of Municipal Law has been observed, and shall provide the alleged offender with a time limit within which the infraction must be ceased. The notice must specify with reasonable particularity the offence observed and the action required to comply with the Municipal Law.
- c) The time limit in 6.4(a) will vary depending on particular circumstances, including: the nature of the offence, the weather, and the length of time reasonably required to bring property or other circumstances into compliance with the Municipal Law.
- d) The Clerk is authorized to extend the time period originally stipulated in a notice sent under Section 6.4(a) in circumstances where the alleged offender is co-operative.
- e) After the time limit for voluntary compliance has expired, either
 - i. the Clerk shall follow-up with the violator or Complainant to determine if compliance has been accomplished; or
 - ii. the property shall be re-inspected to determine if compliance has been accomplished.
- f) Upon confirming that the warning has been complied with, the Clerk will enter the complaint finalized date on the Municipal Law Infraction Complaint Investigation Form and in the complaints log, and close the file.
- g) If the compliance with Municipal Law has not been achieved, the procedures in Section 6.6 may, dependent on resource availability, be undertaken.

6.6 **Enforcement – Legal Action**

- a) For Municipal Laws where set fines have been established for violations, an MBLEO may immediately issue an offence notice to the offender. The offender may pay the fine stipulated in the offence notice or may plead “not guilty” and the matter will be prosecuted in Provincial Offences Court in Thunder Bay.
- b) For Municipal Laws where no set fines have been established, an MBLEO may attend before a Justice of the Peace to initiate legal action through the laying of an “Information” under Part III of the *Provincial Offences Act*.
- c) For matters where the alleged offender has been previously convicted in court of the same offence, depending on resource availability, the Township may choose to pursue an injunction against the alleged offender, and may choose to pursue damages in the same action.
- h) The Clerk shall bring all recommendations for legal action to Council for direction to proceed.

- i) One of the considerations for the Clerk, the MBLEO and Council when contemplating legal action, is the participation in the case of the original Complainant. That person's testimony may be required to secure a conviction – and that person may not be willing to testify. In circumstances where that occurs, the case shall not proceed to court and the Clerk's file shall be closed.

7.0 LEVEL OF INVOLVEMENT

- a) The Township has limited resources to pursue Municipal Law infractions. As set out in Section 5.3(b), the Township cannot waste its resources on complaints undertaken in bad faith. Bad faith can be broadly defined, but includes situations where multiple complaints are received from a single person at one time, or where a single person continuously submits a variety of complaints on an ongoing basis. It also includes complaints made by persons with ulterior motives, including vexing or annoying the alleged offender. Where two households repeatedly complain against the actions of each other, bad faith is also inferred.
- b) The Clerk is given the discretion to decide on an appropriate level of response to complaints where bad faith is suspected. The level of response by the Township may include a decision to act on some or all of the complaints, to not act on some or all of the complaints, or to assign priority to some or all of the complaints. In making a decision on the appropriate level of response to such complaints, the Clerk will have regard to the following criteria:
 - health and/or safety concerns;
 - available resources;
 - potential impacts on the Complainant;
 - whether the alleged violation is flagrant and/or obvious to the neighbourhood;
 - impact on the immediate neighbourhood;
 - alternate remedies, such as formal mediation;
 - the number of prior unfounded complaints;
 - apparent attempts by those involved to purposely aggravate the situation;
 - coordinating involvement with other relevant agencies; and
 - direction from Council.
- c) If a Complainant disagrees with the Clerk's decision regarding the level of involvement the Township will engage with respect to a complaint, the issue will be reviewed by Council upon written request from the Complainant. Council will conduct a review at the next regular Council meeting, and reserves the right to request further information from the Complainant and the Clerk or MBLEO prior to considering the reversal or amendment of any decision made by the Clerk.

8.0 PERSONAL INFORMATION AND PRIVACY

- a) As a matter of practice, and subject to the requirements of the *Municipal Freedom of Information and Protection of Privacy Act*, the identity of the Complainant and the Formal Complaint document shall not be disclosed to the alleged offender or to any other member of the public without the Complainant's consent.
- b) Any response from the alleged offender shall also be kept confidential unless the matter proceeds to legal action. In that case, anything provided in response to a Formal Complaint may be used as evidence in court proceedings.
- c) Any formal requests for personal information will be refused under Section 14 of the *Municipal Freedom of Information and Protection of Privacy Act*, unless consent is obtained from the person who supplied the information. The Township is, however, subject to orders issued by the Information and Privacy Commissioner under the *Act* and will not necessarily appeal an order for disclosure.

9.0 REPORTING

The Clerk shall keep the Complainant informed of the progress of the complaint as may be appropriate in all circumstances.

The Clerk will provide quarterly confidential reports to Council regarding Municipal Law enforcement activities. If an issue requires Council's immediate attention or direction, the Clerk shall provide a confidential report at the next available Council meeting.

10.0 EFFECTIVE DATE OF POLICY

This policy shall take effect on the date of passage of the by-law approving it.

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