

of The Corporation of the City of Oshawa

Being a by-law to establish a transparent, consistent, fair, unbiased, and effective process for the enforcement and prosecution of alleged contraventions of municipal standards.

Whereas

1. Under the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended (the “Act”), municipalities can specify when a contravention of a by-law is an offence, establish a system of fines for offences under by-laws, establish systems of administrative penalties and exercise other enforcement powers.
2. The City of Oshawa administers, enforces, and prosecutes alleged contraventions of its by-laws and other applicable provincial legislation within its mandate.
3. The goal of the City’s enforcement activities is compliance with standards established by the City’s by-laws and applicable provincial legislation employing the most efficient and effective means.
4. Prosecutors have the responsibility to ensure that every prosecution is carried out in a manner that is fair, dispassionate and moderate, consistent with the public interest, and that shows no signs of partisanship. As a fundamental principle, prosecutors must carry out their responsibilities independent of any partisan political influences.
5. Council considers it appropriate to ensure the proper administration of justice, to respect the roles of Council members, complainants, staff investigators and prosecutors in the administration, enforcement and prosecution of alleged contraventions of municipal by-laws and other applicable provincial legislation, and to ensure that such investigations and prosecutions occur in a fair and unbiased way, free from any improper influence or interference.

Now therefore the Council of The Corporation of the City of Oshawa enacts as follows:

Interpretation

1. In this By-law:
 - 1.1. “By-law” means this by-law and any schedule to this by-law as they may from time to time be amended;
 - 1.2. “City” means The Corporation of the City of Oshawa;
 - 1.3. “Council” means the City’s Council;
 - 1.4. “Director” means
 - (a) in relation to enforcement under the *Fire Protection and Prevention Act, 1997*, SO 1997, c 4, as amended, the City’s Fire Chief or the City’s Chief Fire Prevention Officer;
 - (b) in relation to enforcement under the *Building Code Act, 1992*, SO 1992, c 23, as amended, the City’s Chief Building Official; and
 - (c) in relation to all other enforcement by or on behalf of the City, the City’s Director, Municipal Law Enforcement and Licensing Services or the City’s Manager, Municipal Law Enforcement Services;
 - 1.5. “Municipal Standard” means a standard established by by-law of Council or by provincial legislation for which the by-law or legislation, as applicable, provides that contravention of the standard is an offence or otherwise provides for enforcement of the standard;

- 1.6. “Officer” means each of
- (a) the Director;
 - (b) a person appointed by or under the authority of a City by-law to enforce a Municipal Standard; and
 - (c) a police officer employed by a municipal police force, by the Ontario Provincial Police or by the Royal Canadian Mounted Police;
- 1.7. “Prosecutor” means a person from time to time performing the function of prosecuting an alleged contravention of a Municipal Standard, including before a court or tribunal.

Roles

2. Members of the public and individual members of Council may:
- 2.1. make complaints to the City regarding alleged contraventions of Municipal Standards; and
 - 2.2. be summonsed to testify before a court or tribunal in the prosecution of an alleged contravention of a Municipal Standard.
3. Council may:
- 3.1. from time to time establish, amend and repeal Municipal Standards that are governed by by-law of Council;
 - 3.2. establish the budget for and policies related to the enforcement of Municipal Standards; and
 - 3.3. at meetings of Council or of one its Standing Committees, ask questions of, and receive information from, the Director on general questions relating to the enforcement of Municipal Standards.
4. Officers may, subject to the Director’s directions:
- 4.1. receive complaints regarding alleged contraventions of Municipal Standards;
 - 4.2. screen complaints to determine if the subject matter of the allegation(s) falls within their jurisdiction;
 - 4.3. undertake investigations into alleged contraventions of Municipal Standards either in response to complaints or proactively;
 - 4.4. conclude investigations by making one of the following determinations:
 - (a) there is insufficient evidence to proceed with enforcement in response to the complaint;
 - (b) the Municipal Standard the subject of the complaint has been brought into compliance;
 - (c) the complaint is trivial, frivolous, vexatious or made in bad faith; or
 - (d) the matter the subject of the complaint should be enforced; and
 - 4.5. for such matters for which a determination has been made pursuant to paragraph 4.4(d), cause to be undertaken enforcement by such means as may result in compliance with the Municipal Standard as efficiently and effectively as possible including, as applicable, by:
 - (a) request;
 - (b) administrative order;
 - (c) municipal remedial work;

- (d) administrative penalty;
- (e) commencing a proceeding under Parts I or II of the *Provincial Offences Act*;
- (f) referral to Legal Services for prosecution under Part III of the *Provincial Offences Act*; and
- (g) referral to Legal Services for applicable relief by way of action or application in the Superior Court of Justice.

5. Prosecutors may, subject to the City Solicitor's directions:

- 5.1. screen referrals for prosecution to determine whether there is a reasonable prospect of conviction or whether the prosecution of the alleged contravention of the Municipal Standard is in the public interest;
- 5.2. initiate prosecutions of alleged contraventions of Municipal Standards;
- 5.3. attend and conduct motions, trials, appeals and hearings before courts or tribunals related to prosecutions of alleged contraventions of Municipal Standards;
- 5.4. enter into resolution discussions, negotiations and agreements; and
- 5.5. withdraw prosecutions where there is no longer a reasonable prospect of conviction, where it is in the public interest to do so or where a withdrawal furthers the administration of justice.

Investigations

- 6. All investigations and enforcement respecting alleged contraventions of Municipal Standards shall be undertaken on a case-by-case basis, pursuant to any directions of the Director, with regard to the evidence, with a view to compliance with Municipal Standards by the most efficient and effective means and independently of political or other external influences.
- 7. Officers will act on complaints as quickly as reasonably possible and undertake their investigations diligently, fairly, and in a manner that is consistent with the public interest and any direction of the Director.
- 8. Officers shall not disclose any confidential information including personal information gained in the execution of their duties except as required for prosecution purposes or otherwise in accordance with law.
- 9. Officers shall not accept a fee, gift, or personal benefit, except compensation authorized by law, which is connected directly or indirectly with the performance of his or her duties.
- 10. Each Officer shall disclose to the Officer's Director any attempt at improper influence or interference, financial, political or otherwise, respecting the Officer's performance of his or her duties.
- 11. Each Officer who is contacted by a member of Council with respect to an outstanding complaint or investigation matter, other than a complaint made by or against the Council member or in which the Council member is a witness, shall immediately disclose such contact to the Officer's Director.
- 12. Each Director shall disclose to the City Solicitor the particulars of each report provided to the Director pursuant to sections 10 and 11. The City Solicitor may report the particulars to Council.
- 13. Each Officer shall disclose any actual or reasonably perceived conflict of interest as soon as possible to the Officer's Director.
- 14. No action shall be taken against an Officer, Director or the City Solicitor, as the case may be, who discloses or reports in good faith pursuant to sections 10, 11, 12 or 13.

Prosecutions

15. Prosecutors shall ensure that each prosecution is carried out in a manner that is fair, dispassionate and moderate, consistent with the public interest and independent of political or other external influences.
16. Prosecutors shall not disclose information that is gained in the execution of his or her office and is not available to the public, except in accordance with law. Prosecutors shall not use such information to further or seek to further his or her financial, political, or personal interest.
17. Prosecutors shall not accept a fee, gift or personal benefit, except compensation authorized by law, which is connected directly or indirectly with the performance of his or her duties.
18. Prosecutors shall not act or be directly or indirectly involved as counsel or agent for any other person in respect of any offence charged against the other person under a Municipal Standard.
19. Prosecutors shall disclose to the City Solicitor any attempt at improper influence or interference, financial, political or otherwise, respecting the Prosecutor's performance of his or her duties.
20. Prosecutors who are contacted by a member of Council with respect to a prosecution matter shall immediately disclose such contact to the City Solicitor.
21. Prosecutors shall disclose to the City Solicitor any actual or reasonably perceived conflict of interest as soon as possible.
22. The City Solicitor may report to Council the particulars of any disclosure made pursuant to sections 19, 20 or 21.
23. No action shall be taken against a Prosecutor or the City Solicitor, as the case may be, who discloses or reports in good faith pursuant to sections 19, 20, 21 or 22.

General

24. The Director shall report periodically through the applicable Standing Committee of Council respecting the efficiency and effectiveness of enforcement activities for which the Director is responsible.
25. Nothing in this By-law limits the City's right to enforce its by-laws by any and all legal means.
26. The short title of this By-law is the "Enforcement By-law".

By-law passed this twenty-third day of June, 2014.

Mayor

City Clerk