

REPORT

DATE:October 4, 2001

TO:Planning, Environment and Community Relations Committee

FROM:Director of Planning and Development

RE:Bylaw Enforcement - Policy Direction

FILE NO:

1.BACKGROUND:

Currently, the District practice is **to begin enforcement action when a complaint is** received. The Bylaw Enforcement Officer responds to complaints by contacting the individual causing the complaint and discusses the problem behavior with them. Frequently a change in behaviour is achieved without proceeding to any form of legal action, quite often even if there is no bylaw infraction.

Staff has been carrying out bylaw enforcement under an administrative policy of seeking compliance with bylaws rather than an aggressive control approach. This has lead to question about if it is appropriate to shift to a legalistic control approach and at what point to initiate a more legally oriented procedure.

In cases where there is a bylaw infraction, a judgment call has to be made if the matter should be pursued. Some of the considerations that staff takes into account doing this are:

Is this a neighborhood dispute, rather than a nuisance?

What is the level of nuisance - minimal or obvious?

How many people are affected?

Is there a hardship involved?

This report has been prepared to provide Council with policy advice about bylaw enforcement, and seek formal endorsement of a set of criteria for initiating bylaw enforcement action.

2.ALTERNATIVES:

There are a various options available to Council. These vary from initiating immediate enforcement action on all complaints/incidents to requesting direction from Council each time enforcement issues arise.

The approach being proposed is for Council to adopt a set of criteria for when enforcement action will be commenced

3. FINANCIAL IMPLICATIONS:

The policy direction being discussed in this report should have no impact upon cost for bylaw enforcement.

4. **POLICY IMPLICATIONS**

The proposed policy will formalize the bylaw enforcement procedures followed by staff. One of the potential results of the new policy approach may be reduced time spent in the field by the Bylaw Enforcement Officer on what are disputes between neighbours.

4. **DISCUSSION:**

The Tuwanek dispute that has captured Council's attention is a difficult case that would not make good policy.

Current practice of the Bylaw Enforcement Officer is to request that complaints be submitted in writing, nonetheless verbal complaints are also accepted. Requesting complaints be provided in writing helps confirm the importance of the matter to a complainant. Some communities (such as Esquimalt) require complaints be endorsed and submitted by two or more neighbors. This is done to reduce misuse of the bylaw enforcement process by neighbors in a dispute. Staff recommends that Council consider revising the criteria for starting an investigation for some types of complaints, e.g. illegal business or residential occupancy.

As explained in the Background section of this report, the District Bylaw Enforcement Officer's role includes making judgment calls if he considers a complaint valid. That decision is based on results of his investigation; determining if there is a bylaw violation, if there is sufficient information to proceed to enforcement and if the activity has an impact and is a nuisance.

What is proposed is for Council to adopt the recommended criteria as District policy. Publicizing the criteria used for judging merits of complaints will show how the District determines if it will pursue a bylaw enforcement action.

Criteria proposed for judging 'interference' are based on the common law principle of 'quiet enjoyment' of property. A comparison is the approach taken by the Zoning Bylaw, regulating land uses through zones permitting levels of increasing intensity and potentially higher impact activities, e.g. C-1, C-2, and C-3.

There are three standard tests used for judging if an activity affects use of neighboring properties. The tests are:

1. The activity can be heard. Often this test is further refined by setting a decibel level for acceptable level of noise during the day and another for night hours.

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Another factor is whether or not the use violates the provisions of the District's Noise Bylaw.

2. The activity or building is visible. This includes problems ranging from parking a vehicle up to unsightly premises. Defining what is unsightly is usually a very conservative definition of litter, vehicles, and or waste. It is a qualitative judgment that is often challenged.
3. Is there an odor, noxious fumes or dust emanating from the property? This criterion is relatively easy to judge. For example, a home based auto paint shop would have odor, fumes and possibly dust.

An example of the application of the criteria to an unauthorized suite in a residence or use of a house for short-term rental would be to determine if there has been a problem (noise, visibility, or odor/dust) and base legal action upon that evidence.

In summary, what is proposed is for Council to adopt a policy ratifying the administrative practice of judging validity of complaints upon whether or not there is evidence that the activity or use has an impact on use of neighboring properties.

5. **RECOMMENDATIONS:**

THAT Council adopts a policy that:

1. **After preliminary investigation, the Bylaw Enforcement Officer may request that a written complaint be submitted.**
2. **Preliminary investigation will occur to determine if the activity or structure being complained about can be**
 - **heard, or**
 - **is visible, or**
 - **creates noxious fumes, an odor dust or nuisance outside the property, or**
 - **is a use or activity in violation of District bylaws.**
3. **If the preliminary investigation determines there is basis for enforcement action, the normal bylaw enforcement procedure will be followed. If the investigation finds there is no basis for enforcement, the complainant will be informed their complaint does not meet the criteria setout above.**