

5.5.i. Policy & Procedure

BYLAW ENFORCEMENT

Trust Council: March 11, 1995

Amended: December, 1995; June 6, 1997; June 6, 1998;

June 13, 2003; December 5, 2003; December 10, 2004

June 17, 2005, and March 10, 2006

A: PURPOSE:

1. The purpose of bylaw enforcement is to achieve compliance with land use regulation. Complaints normally arise where a land use does not comply with a Local Trust Committee bylaw or development permit provision, and is adversely affecting the environment, the character of a development or a neighbourhood.

B: REFERENCES:

1. Policy Manual: Bylaw Investigations Guide (5.5.i.) Note that the Bylaw Investigations Guide has been superseded by this policy.

C: POLICY:

1. Bylaw compliance is sought, in the first instance, by the Bylaw Enforcement Officer through an attempt to achieve voluntary compliance. Persons who are being investigated are required to cease the activity and are given the opportunity to achieve compliance before further legal action is taken to the limits noted below.
2. A Regional Planning Manager or designate planner may meet with a violator to review the nature of the violation and to advise options on how to achieve compliance with the bylaw.
3. Compliance may be encouraged through the use of a municipal ticket information or bylaw notice system upon adoption of an implementing bylaw by the Local Trust Committee.
4. Legal proceedings may be initiated immediately where the violator, after notice, does not cease the activity or the construction that is the subject of the violation, subject to prior approval under Procedure D.5.
5. Legal proceedings may be initiated if a violator fails to take first action (e.g.. concrete action such as an application, notice of eviction for tenants of unlawful buildings, building permit application to another agency) to achieve compliance within 90 days of the first warning correspondence, subject to prior approval under Procedure D.5.
6. Bylaw investigation is normally undertaken in response to written complaints of a violation by any person. On receipt of a written complaint, a letter acknowledging receipt

of the complaint and an explanation of the course of investigative action to be taken will be provided to the complainant.

7. A Bylaw Enforcement Officer may commence an investigation without written complaint where:
 - a) bylaw violations are observed by the Bylaw Enforcement Officer, the consequences of which may threaten or damage natural ecosystems as referenced in the Islands Trust Policy Statement Part III, Section 3.3.1.
 - b) bylaw violations are observed by the Bylaw Enforcement Officer as part of a building permit process or other permitting process administered by a local government or the Islands Trust.
 - c) a referral is received from a permitting agency that identifies land use bylaw violations associated with the permit request.
 - d) advertisements for uses believed to be illegal have been observed.
8. Bylaw investigation is the administrative responsibility of the Islands Trust Bylaw Enforcement Officer(s). The Local Trust Committee or local trustees are not to be involved in the investigation of a complaint or the preparation of the Bylaw Enforcement Officer's reports. However, a local trustee may file a bylaw violation complaint. Local Trust Committees will be advised when a complaint is received and will be kept informed about the status of an investigation at the Committee's request.
9. Where attempts to achieve voluntary compliance fail, and where legal proceedings are proposed, and upon approval by the Local Trust Committee and upon approval by the Executive Committee in relation to financial implications, the Director of Local Planning Services will instruct legal counsel to commence bylaw enforcement proceedings.

D: PROCEDURE:

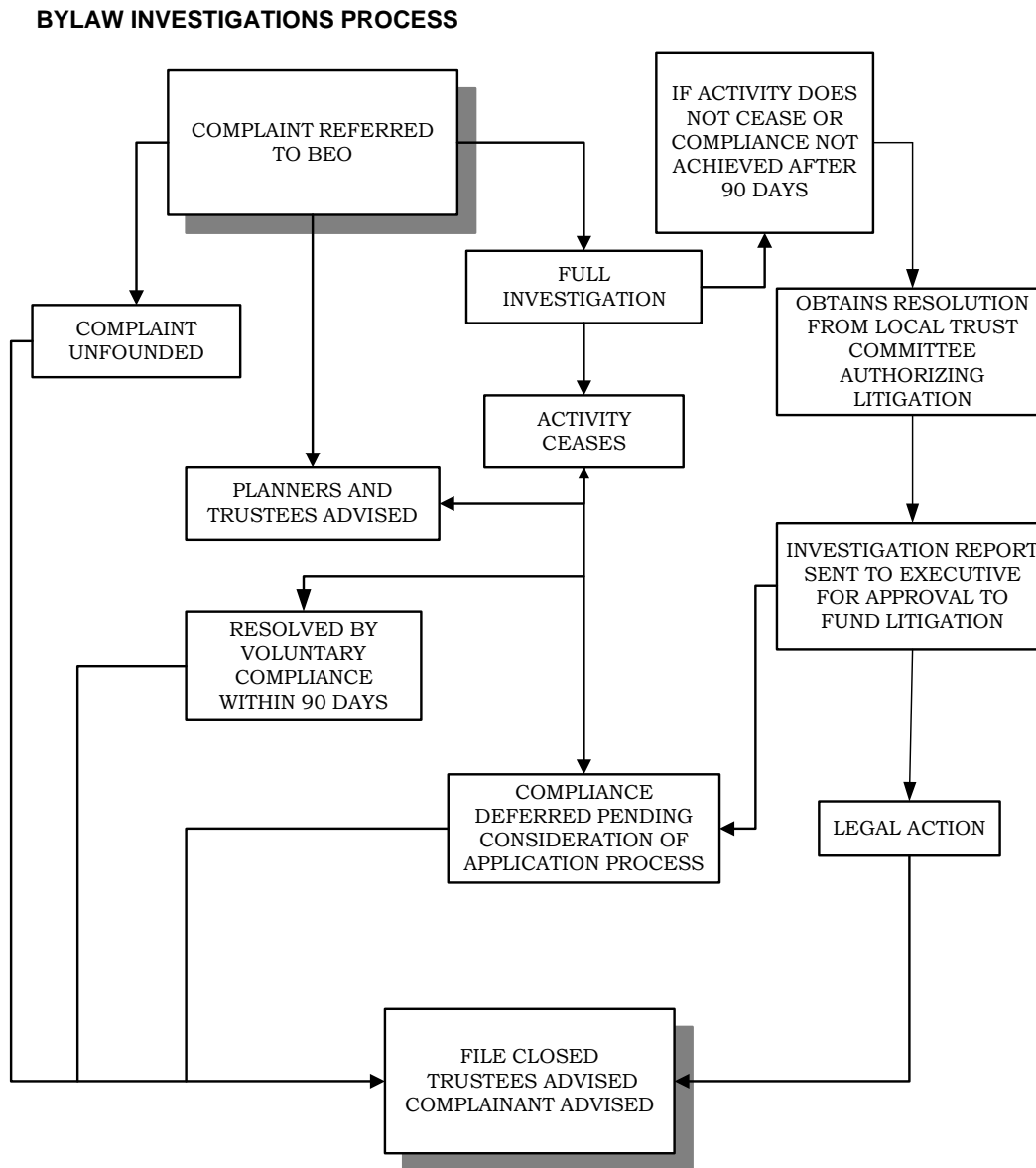
1. All written complaints directed to the Bylaw Enforcement Officer and all proactive investigations undertaken by a Bylaw Enforcement Officer are logged, recorded, and acknowledged. The Bylaw Enforcement Officer will advise the Local Trust Committee when a bylaw infraction has been confirmed and a new file has been opened. Every effort will be made to ensure confidentiality to the complainant; however, confidentiality can not be guaranteed should litigation proceed against the violator or where a request for information is received under the *Freedom of Information and Protection of Privacy Act*.
2. Written complaints about advertisers that advertise uses contrary to the provisions of a bylaw will result in a letter to the advertiser advising that bylaw enforcement may proceed where an actual violation is confirmed.
3. A preliminary review of the complaint is undertaken to ensure that the complaint is well-founded. For proactive investigations, the Bylaw Enforcement Officer will assess conformity or non-conformity. A Bylaw Enforcement Officer will use his or her best judgement to interpret conformity or non-conformity and this may include consulting with planners or seeking legal advice when necessary. When assessing conformity, a Bylaw Enforcement Officer should consider all other regulations in the bylaw which may

influence interpretation of the regulation being evaluated as well as the Official Community Plan which expresses the intent of the Local Trust Committee.

- 3.1. If no violation exists, the complainant is so advised and a record of the enquiry filed.
 - 3.2. If a violation exists, the property owner will be asked to cease activity or construction immediately, a full investigation will be undertaken and the Regional Planning Manager and local trustees will be notified.
4. The Bylaw Enforcement Officer will attempt to achieve voluntary compliance with the alleged violator, inform the violator of time limits for voluntary compliance, and report successful results to the Regional Planning Manager and the Local Trust Committee. Where a Municipal Ticket Information or bylaw notice scheme has been adopted, the Bylaw Enforcement Officer may use this tool (described below) to encourage voluntary compliance.
5. Where unlawful activity has not ceased or where compliance is not achieved:
- 5.1. The Bylaw Enforcement Officer, following consultation with the Regional Planning Manager, will prepare a report indicating whether or not legal proceedings should be initiated and in particular whether the proceedings should involve prosecution under the *Offence Act*; an application for a Provincial Court compliance order under s.267.1 of the *Local Government Act*; or an application for a Supreme Court injunction. If legal proceedings are recommended, the Bylaw Enforcement Officer's report will include an estimate of projected timelines associated with the proposed course of action. The Bylaw Enforcement Officer's report will indicate whether or not a plan for public communication about the action is proposed. The report will also identify options to the recommended course of actions and the implications of those options.
 - 5.2. The Bylaw Enforcement Officer will forward the report to the Local Trust Committee for consideration and approval, by resolution, of the recommended enforcement approach.
 - 5.3. The Director of Local Planning Services will present the report to the Executive Committee for approval, by resolution, of funding for the enforcement action.. The report will include an estimate for the cost of legal services if legal proceedings are being recommended, and a request for funding support.
6. The Executive Committee will decide whether or not to approve funding for legal action, or recommend other actions, and will advise the Local Trust Committee of its decision. Where the Executive Committee does not approve funding for legal action, it will provide reasons for its decision and will recommend other options to the Local Trust Committee.

7. Upon Executive Committee approval, the Bylaw Enforcement Officer will initiate legal proceedings through legal counsel.
8. The Bylaw Enforcement Officer will advise the Local Trust Committee as soon as possible after the court documents have been filed with the court registry.
9. At the end of the proceedings the Bylaw Enforcement Officer will advise the complainant, the Local Trust Committee and the Regional Planning Manager of the outcome, and close the file. The Local Trust Committee can request interim updates regarding the progress of the proceedings.

9. BYLAW INVESTIGATIONS PROCESS



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10. PRIORITY OF INVESTIGATION:

The workload for bylaw investigations will be categorized and prioritized as follows:

- 10.1. Health and Safety Complaints (i.e. water, sewer) Upon receipt of these complaints, the complainant will be advised to contact responsible agency staff directly or the Bylaw Enforcement Officer will contact agency staff when a Trustee is complainant.
- 10.2. Matters within Islands Trust jurisdiction having an adverse environmental impact, usually matters which if not prevented in a timely fashion could result in irreversible impact.
- 10.3. Routine matters including No Permits (i.e. SUP, DP, TUP) and Violations of Zoning and Regulations.
- 10.4. Within category 10.3. above, priority is determined on the basis of the date received and the efficiency to be gained through investigating a number of complaints during one island visit.

11. ADDITIONAL TOOLS FOR ACHIEVING VOLUNTARY COMPLIANCE:

Under the *Community Charter* and the *Local Government Bylaw Notice Enforcement Act*, certain bylaws may be enforced by means of a municipal ticket information or bylaw notice. Siting and use permit requirements and development permit requirements cannot be enforced by means of municipal ticket informations or bylaw notices. The Local Trust Committee may authorize the establishment of a municipal ticket information system through adoption of the sample bylaw attached.

_____ LOCAL TRUST COMMITTEE
BYLAW NO.

February 2, 1995 - MODEL BYLAW

A Bylaw to Establish a Municipal Ticket Information System

WHEREAS the *Islands Trust Act* authorizes the Trust Committee, by bylaw, to:

- A. designate those bylaws which may be enforced by means of a ticket;
- B. designate as bylaw enforcement officers those persons who come within a class prescribed by regulation for that purpose;
- C. designate an offence against a Trust Committee bylaw by means of any word or expression on a ticket; and
- D. set a fine, not exceeding an amount prescribed by regulation, for contravention of a designated bylaw.

NOW THEREFORE, the _____ Local Trust Committee being the Trust Committee having jurisdiction on and in respect to the _____ Island Local Trust Area in the Province of British Columbia, pursuant to the *Islands Trust Act*, in open meeting assembled enacts as follows:

- 1. The bylaws listed in column 1 of Schedule "A" of this bylaw may be enforced by means of a ticket in the form prescribed by the regulations adopted pursuant to the *Community Charter*.
- 2. The persons who act in the positions listed in Column 2 of Schedule "A" to this bylaw are designated bylaw enforcement officers for the purpose of enforcing the bylaws listed in Column 1 of Schedule "A" opposite the respective positions.
- 3. The words or expressions set forth in Column 1 of Schedule "B" of this bylaw designate the offence committed under the bylaw section number appearing in Column 2 of Schedule "B" opposite the respective words or expressions.
- 4. The amounts appearing in Column 3 of Schedule "B" of this bylaw are the fines for contravention of the bylaw offences set out in Column 1 of Schedule "B" of this bylaw.

This bylaw may be cited as " _____ Island Local Trust Committee Ticket Information Bylaw No. _____, 200__.

READ A FIRST TIME this _____ day of _____, 200__ .

READ A SECOND TIME this _____ day of _____, 200__ .

READ A THIRD TIME this _____ day of _____, 200__ .

APPROVED by the EXECUTIVE COMMITTEE this _____ day of _____, 200__.

ADOPTED this _____ day of _____, 200__.

Chairperson

Secretary

_____ LOCAL TRUST COMMITTEE
BYLAW NO.

SCHEDULE "A"

DESIGNATED BYLAWS

DESIGNATED BYLAW
ENFORCEMENT OFFICERS

SCHEDULE "B"

OFFENCE DESCRIPTION ISLAND BYLAW FINE AMOUNT NO. & SECTION