



**City of Kingston
Report to Council
Report Number 24-134**

To: Mayor and Members of Council
From: Paige Agnew, Commissioner, Growth & Development Services
Resource Staff: Andrew Reeson, Senior Legal Counsel
Date of Meeting: April 16, 2024
Subject: By-Law Enforcement Policy

Council Strategic Plan Alignment:

Theme: Council requests

Goal: See above

Executive Summary:

By-Law enforcement occupies an important and complex space in municipal government. Fair, reasonable and transparent enforcement can enhance public confidence in government and build community.

At its November 21, 2023, meeting, Council directed staff to prepare a by-law enforcement policy by Q2 2024 that formalizes the City's guidelines with respect to municipal by-law enforcement. Staff have prepared a policy and make this report in response to the direction.

The purpose of the new policy includes ensuring that the City's enforcement practices:

- (a) achieve compliance;
- (b) are fair, reasonable, and transparent;
- (c) are exercised in good faith; and
- (d) are free from bias, prejudice and political intervention.

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Recommendation:

This report is for information only.

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Authorizing Signatures:

ORIGINAL SIGNED BY COMMISSIONER

**Paige Agnew, Commissioner,
Growth & Development Services**

ORIGINAL SIGNED BY CHIEF

ADMINISTRATIVE OFFICER

**Lanie Hurdle, Chief
Administrative Officer**

Consultation with the following Members of the Corporate Management Team:

Jennifer Campbell, Commissioner, Community Services	Not required
Neil Carbone, Commissioner, Corporate Services	Not required
David Fell, President & CEO, Utilities Kingston	Not required
Peter Huigenbos, Commissioner, Major Projects & Strategic Initiatives	Not required
Brad Joyce, Commissioner, Infrastructure, Transportation & Emergency Services	Not required
Desirée Kennedy, Chief Financial Officer & City Treasurer	Not required

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Background

Staff make this report in response to Council's direction to staff, given at the November 21, 2023, meeting, [City of Kingston - City Council Minutes - Meeting 30-2023 - November 21, 2023](#) to prepare a by-law enforcement policy by Q2 2024 that formalizes the City's guidelines with respect to municipal by-law enforcement.

Analysis

By-Law enforcement occupies an important and complex space in municipal government. Fair, reasonable and transparent enforcement can enhance public confidence in government and build community.

The City is responsible for enforcing a number of City by-laws and provincial Acts. The City has a broad discretion in determining how it will enforce its by-laws, provided that it acts reasonably and in good faith.

The purpose of the City's new *By-Law Enforcement Policy*, attached to this report as schedule 1, includes ensuring that the City's enforcement practices:

- (a) achieve compliance;
- (b) are fair, reasonable, and transparent;
- (c) are exercised in good faith; and
- (d) are free from bias, prejudice and political intervention.

The *Policy* delegates authority to enforcement staff to make everyday enforcement decisions. The *Policy* requires separation between members of Council and front-line enforcement staff. This is essential to a fair enforcement system (and to maintaining the appearance of a fair enforcement system). The *Policy* requires that individual members of council not become directly involved in everyday enforcement decisions.

The policy is also intended to guide enforcement staff when exercising their discretion in a particular circumstance. This will improve fairness and consistency and protect against allegations of inconsistent, unfair or arbitrary decision-making. It will also help enforcement staff respond quickly and transparently when inevitably asked "why me?" when taking enforcement action against a person.

Given the breadth of different by-laws and Acts that the City enforces, the *Policy* gives a director whose department is responsible for enforcing a by-law or an Act the discretion to have the *Policy* apply or not apply to that enforcement. Similarly, the *Policy* recognizes that most of the City's by-laws are enforced through a reactive, complaint-responsive system, but also gives a director the discretion to require enforcement staff to perform inspection, patrol and other proactive actions to enforce a by-law or an Act.

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The *Policy* creates a process for making, receiving and recording complaints about a contravention. This is intended to assist enforcement staff to organize relevant information, ensure they have considered and responded to all complaints, and ultimately defend their enforcement decisions. This process is intended to work in concert with the City's *Vexatious Conduct Policy*.

The *Policy* gives enforcement staff the authority to be creative and to seek voluntary compliance through efforts like public education. However, it also gives staff the authority to take legal enforcement action, including requiring payment of an administrative penalty, commencing proceedings under the *Provincial Offences Act*, and commencing an application in court to restrain a contravention.

Indigenization, Inclusion, Diversity, Equity & Accessibility (IIDEA) Considerations

The *Policy* requires enforcement staff to make reasonable inquiries to determine if a person who is the subject of enforcement is a vulnerable person. If enforcement staff believe that a person who is the subject of enforcement is a vulnerable person, the *Policy* generally requires staff to have regard to a number of principles which recognize the unique circumstances of vulnerable people.

Financial Considerations

There are no financial considerations to the *Policy*. The purpose of enforcement is not to generate revenue. City staff must undertake enforcement using Council-approved budgets.

Contacts:

Andrew Reeson, Senior Legal Counsel, 613-546-4291 extension 1243

Other City of Kingston Staff Consulted:

Kyle Compeau, Manager, Enforcement

Exhibits Attached:

Exhibit A By-Law Enforcement Policy

<POLICY NUMBER> - BY-LAW ENFORCEMENT POLICY

Policy #	assigned by the communications officer (web developer).
Effective Date	the date the policy was or will be approved.
Status	DRAFT.
Final Approver	<i>Commissioner, Growth & Development.</i>

1 Interpretation

1.1 In this policy, unless the context requires otherwise:

"Act" means an Act for which the *City*, a *City* department or a *City employee* is responsible for enforcing and which is listed in Table 1 or Table 2;

"by-law" means a by-law passed by *council* and listed in Table 1 or Table 2;

"City" means The Corporation of the City of Kingston;

"City employee" means a person who performs work or supplies services directly to the *City* for monetary compensation under an employment contract and includes *officers* but does not include members of *council*;

"City Solicitor" means the Director of the Legal Services Department;

"CMT" means the *City's* Corporate Management Team;

"complainant" means a person who has made a complaint under section 4.1;

"council" means the council of the *City*;

"director" means the director of a *City* department whose responsibilities include enforcement;

"officer" includes a municipal law enforcement officer, a by-law enforcement officer, a *director* and any other officer, employee or agent of the *City* whose responsibilities include enforcement, but does not include the *City Solicitor* or a *prosecutor*;

"parent", when used in reference to a *young person*, includes any person who has lawful custody of, or a lawful right of access to, the *young person*;

"prosecutor" means, in respect of an enforcement proceeding, the person acting on behalf of the *City* in accordance with the transfer agreement between the *City* and the Attorney General;

“vulnerable person” means a person who, because of the person’s age, a disability or other circumstances, whether temporary or permanent, depends on others or is otherwise at a greater risk than the general population of being harmed or having been harmed by a person in a position of trust or authority; and

“young person” means a person who is or, in the absence of evidence to the contrary, appears to be twelve years of age or more, but under sixteen years of age.

1.2 In this policy:

- (a) “compliance” refers to compliance with an *Act* or a *by-law*;
- (b) “contravention” refers to contravention of an *Act* or a *by-law*;
- (c) “enforcement” refers to enforcement of an *Act* or a *by-law*;
- (d) “include”, “includes” and “including” indicate that the subsequent list is not exhaustive;
- (e) “may” indicates that there is an issue that must be considered or a discretion to be exercised, and that action may or may not be taken;
- (f) “must” indicates a mandatory direction made by the *City*; and
- (g) “must generally” indicates that the direction is not absolute and that the *officer may* depart from the direction if it is reasonable or necessary to do so.

1.3 A reference to any legislation, regulation, by-law, rule, policy or provision thereof includes a reference to any legislation, regulation, by-law, rule or provision thereof enacted in substitution thereof or amendment thereof.

1.4 A reference to legislation includes all of the regulations made thereunder.

1.5 A reference to the position or title of any *City employee* includes a reference to any position or title created in substitution thereof.

2 Purpose

2.1 The purpose of this policy is to:

- (a) affirm that enforcement is at the *City’s* discretion and is, at its core, a matter of policy;
- (b) achieve compliance by:
 - (i) promoting public education and voluntary compliance; and

- (ii) guiding *officers'* actions, including determination of the appropriate enforcement action to achieve compliance;
- (c) ensure that enforcement is fair and free from bias or prejudice; and
- (d) ensure that enforcement operates independently and free from political intervention.

3 Reactive Enforcement

3.1 For an *Act* or *by-law* listed in Table 1, an *officer* must generally only investigate and take enforcement action in response to a complaint or in response to a contravention that the *City* otherwise becomes aware of and that causes a risk to public health and safety.

4 Complaints

4.1 Any person may make a complaint respecting a contravention to a *City employee* by giving the *City employee*:

- (a) the person's name and contact information; and
- (b) a description of the contravention being complained of.

4.2 Subject to any restrictions imposed under the *Vexatious Conduct Policy*:

- (a) a *City employee* who receives a complaint under section 4.1 must, if the *City employee* is not the appropriate *officer*, refer the complaint to the appropriate *officer*
- (b) if an *officer* receives a complaint and is the appropriate *officer*, the *officer* must investigate the complaint.

4.3 An *officer* must document each complaint in a form approved by the *officer's director*.

4.4 The form referred to in section 4.3 must contain:

- (a) the *complainant's* name and contact information;
- (b) the date the *complainant* made the complaint;
- (c) a summary of the contravention being complained of; and
- (d) the investigation and enforcement actions taken by the *officer* in respect of the complaint.

5 Proactive Enforcement

- 5.1 For an *Act* or *by-law* listed in Table 2, an *officer* must perform the inspection, patrol and other proactive actions identified for that *Act* or *by-law* and take appropriate enforcement action in response to a contravention identified during such inspections, patrols or other proactive actions.
- 5.2 If a *director* considers it necessary to achieve the purposes of this policy, the *director* may amend Table 1 or Table 2 or both to:
- (a) include an *Act* or *by-law* in the application of this policy;
 - (b) remove an *Act* or *by-law* from the application of this policy;
 - (c) prescribe one or more inspection, patrol or other proactive enforcement actions for enforcing an *Act* or *by-law*; or
 - (d) de-prescribe one or more inspection, patrol or other proactive enforcement actions for enforcing an *Act* or *by-law*;
- provided that the *director's* department is responsible for enforcing that *Act* or *by-law*.
- 5.3 When exercising the power under section 5.2 to prescribe or de-prescribe an inspection, patrol or other proactive enforcement action, a *director* must:
- (a) ensure that the *director's* department has sufficient staff and budget to perform the inspection, patrol or other proactive action prescribed; and
 - (b) consider the following factors:
 - (i) the risk to public health and safety caused by contraventions;
 - (ii) whether there is a systemic contravention problem; and
 - (iii) the need to maintain public confidence in enforcement.
- 5.4 When exercising the power under section 5.2, a *director* may prescribe inspection, patrol or other proactive enforcement actions:
- (a) for a particular area of the City of Kingston;
 - (b) for a particular period of time;
 - (c) for a particular contravention or class of contraventions; or
 - (d) for any combination of the above.

6 Appropriate Enforcement Action

- 6.1 Subject to section 3.1, if an *officer* has reasonable grounds to believe that a person has contravened an *Act* or a *by-law*, the *officer* must generally take appropriate enforcement action to achieve compliance and accordingly:
- (a) the *officer* may give:
 - (i) education;
 - (ii) an oral warning;
 - (iii) a written notice of contravention; or
 - (b) if enforcement action under clause (a) is not appropriate, and if the *officer* has the authority to do so, the *officer* may:
 - (i) subject to part 7, require payment of an administrative penalty;
 - (ii) subject to part 8, commence proceedings under Parts I, II, III or IX of the *Provincial Offences Act*;
 - (iii) subject to part 9, require a person to do a thing;
 - (iv) subject to part 10, in default of a thing being done by the person required to do it, have the thing done at the person's expense;
 - (v) subject to part 11, refuse, suspend or amend a licence;
 - (vi) subject to part 12, request the *City Solicitor* to commence an application to the Ontario Superior Court of Justice to restrain the contravention; or
 - (c) the *officer* may take any combination of the actions set out in clauses (a) and (b) to achieve compliance.
- 6.2 When determining the appropriate enforcement action under section 6.1, an *officer* must consider:
- (a) the risk to public health and safety caused by the contravention;
 - (b) previous enforcement action taken;
 - (c) the personal circumstances of the person, including any exceptional circumstances which would make an enforcement action unduly oppressive, unlikely to promote compliance or otherwise not in the interests of justice;

- (d) the compliance history of the person;
- (e) whether the contravention is continuing;
- (f) whether the person made efforts to comply;
- (g) whether the person made efforts to prevent future contraventions;
- (h) whether the person acted with indifference or premeditation;
- (i) whether the contravention is part of a systemic problem;
- (j) the need to maintain public confidence in enforcement; and
- (k) any other relevant factors.

7 Require Payment of an Administrative Penalty

- 7.1 An *officer* must generally only require payment of an administrative penalty where the contravention is straightforward and a defence of due diligence or mistake of fact are either not available or unlikely to arise.

8 Commence Proceedings under the *Provincial Offences Act*

- 8.1 Subject to section 8.2, an *officer* must generally seek the advice of a *prosecutor* with respect to the prospect of conviction prior to commencing a proceeding under Part III of the *Provincial Offences Act*.
- 8.2 If an *officer* has reasonable grounds to believe that a person has contravened an *Act* or a *by-law* and the *officer* finds the person at or near the place where the offence was committed, the *officer* may commence a proceeding under Part III of the *Provincial Offences Act* by, before an information is laid, serving the person with a summons.
- 8.3 When determining whether to commence a proceeding under Parts I, II or III of the *Provincial Offences Act*, an *officer* may consider any service requirements or limitation periods set out in the *Provincial Offences Act*.

9 Require a Thing to be Done

- 9.1 If an *officer* requires a person to do a thing, the *officer* must consider the following factors when specifying the deadline by which the thing must be done:
- (a) the severity of the contravention;
 - (b) the risk to public health and safety caused by the contravention;

- (c) previous enforcement action taken to achieve compliance;
- (d) the personal circumstances of the person;
- (e) the time required to obtain required permits or authorizations;
- (f) the time required to have experts attend and prepare reports;
- (g) the time to do the work; and
- (h) any other relevant information provided by the person.

10 Have a Thing Done at the Person's Expense

- 10.1 An *officer* must obtain the approval of the *officer's director* before, in default of a thing being done by the person required to do it, having the thing done at the person's expense.
- 10.2 When considering whether to approve having a thing done at a person's expense, a *director* must consider:
- (a) the costs to the *City* of doing the thing;
 - (b) the likelihood that the *City* will recover some or all of the costs of doing the thing; and
 - (c) any other risks to the *City* of doing the thing.

11 Refuse, Suspend or Amend a Licence

- 11.1 If an *officer* has reasonable grounds to believe that a person has contravened a *by-law* and, under that or any other *by-law*, the person holds or is required to hold a licence, the *officer* must generally give notice of the contravention to the *City employee* with authority to refuse, suspend or amend that licence.

12 Applications to Restrain

- 12.1 An *officer* must obtain the approval of the *officer's director* before requesting the *City Solicitor* to commence an application to the Ontario Superior Court of Justice to restrain the contravention under the *Municipal Act*.
- 12.2 If the *City Solicitor* approves the request, the *City Solicitor* will conduct the application.

13 Duty to Report Threats

- 13.1 Any *officer* who, during enforcement, believes that a person's behaviour constitutes an immediate threat to any person's safety must, as soon as it is safe to do, report the threat to the Kingston Police by calling 9-1-1.
- 13.2 The *City* does not require, expect, encourage or condone any enforcement action by an *officer* which may, or which the *officer* reasonably believes may, unreasonably threaten the safety of any person.

14 Young Persons

- 14.1 When an *officer* believes that a person who is the subject of enforcement is a *young person*, the *officer* must:
- (a) as soon as practicable, give notice of the enforcement to a *parent* of the *young person*; and
 - (b) make reasonable efforts to take appropriate enforcement action that includes the participation of the *young person's parent* or *parents*.

15 Vulnerable Persons

- 15.1 An *officer*, during enforcement, must make reasonable inquiries to determine if the person who is the subject of enforcement is a *vulnerable person*.
- 15.2 When an *officer* believes that a person who is the subject of enforcement is a *vulnerable person*, the *officer* must generally have regard to the following principles:
- (a) race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status and disability may intersect and may impact how a *vulnerable person* experiences interactions with an *officer* or any other person in a position of trust or authority;
 - (b) access to safe, culturally-responsive and respectful support services better enables a *vulnerable person* to comply;
 - (c) interactions with a *vulnerable person* will be informed by the complexity of trauma and the risk of re-traumatization; and
 - (d) engagement with a *vulnerable person* will ensure that the views of the *vulnerable person* are considered in key decision-making in enforcement that affects them and that a *vulnerable person* has access to information and resources on their legal rights.

16 Conflicts of Interest

- 16.1 An officer, during enforcement, must:
- (a) make sufficient inquiries to determine if the *officer* may have a real or potential conflict of interest or if any circumstances exist that may give rise to a reasonable apprehension of bias; and
 - (b) without delay, disclose to the *officer's director* any such conflict of interest or circumstances.
- 16.2 For the purpose of section 16.1, an *officer* is deemed to have a conflict of interest with respect enforcement if:
- (a) the *officer* has a financial or personal interest in the outcome of the enforcement; or
 - (b) the *officer* has an existing or previous relationship with a person who is the subject of the enforcement.

17 Confidentiality

- 17.1 Subject to section 17.2, an *officer* must not use or disclose information collected during an investigation or related to an enforcement except for the purpose of the enforcement or as otherwise required by law.
- 17.2 An *officer* may disclose to a *complainant* the following information as it relates to the *complainant's* complaint:
- (a) the *City* has started an investigation;
 - (b) the *City's* investigation is complete;
 - (c) the *City* has taken enforcement action; and
 - (d) the *City's* enforcement is complete.

18 Code of Conduct

- 18.1 The Director of Licensing & By-Law Enforcement may establish a code of conduct for *officers*.
- 18.2 Every *officer* must comply with the code of conduct.

19 Political Interference

- 19.1 All *City employees* must take reasonable steps within their authority to ensure that enforcement operates independently and free from political intervention, including:
- (a) by not involving one or more individual members of *council* in an enforcement;
 - (b) by, when responding to a complaint made by a member of *council*, ensuring that the complaint is dealt with like any other complaint in accordance with this policy; and
 - (c) by, without delay, reporting any real or potential incident of political interference to the *City employee's director* and the *City Solicitor*.
- 19.2 An *officer* must not report to *council* on an enforcement except in accordance with a directive made by the *officer's director*.
- 19.3 For the purposes of section 19.1, political interference does not include a request for information about a department's enforcement practices, policies or procedures.

20 Administration

- 20.1 *CMT members, directors, managers and supervisors* must take reasonable steps within their authority to direct compliance with this policy.
- 20.2 If a *director* considers it necessary to achieve the purposes of this policy, the *director* may:
- (a) make directives in writing for investigation or enforcement procedures or protocols;
 - (b) make directives in writing clearly and specifically describing the circumstances in which staff will report to *council* on an enforcement; and
 - (c) prescribe forms of notices, reports or other documents to be given, made or maintained under this policy;
- for an *Act* or *by-law* which the *director's* department is responsible for enforcing.
- 20.3 An *officer* must comply with the directives, if any, made by the *officer's director* and use the forms, if any, prescribed by the *officer's director*.
- 20.4 A *City employee* who breaches this policy may be subject to discipline up to and including dismissal.

21 Application

21.1 This policy applies to all *City employees*.

22 Approval Authority

Role	Position	Date Approved
Quality Review		
Subject Matter Expert		
Legal Review		
Management Review	.	
Final Approval	

23 Revision History

Effective Date	Revision	Description of Change
Date of the change		describe the sections that have been changed, added or deleted

24 Tables

24.1 Tables 1 and 2 are attached to and form part of this policy.

TABLE 1 - REACTIVE ENFORCEMENT

By-Law Number	By-Law Short Title	Date Included
2021-166	<i>Animals By-Law</i>	April 16, 2024
2018-159	<i>Balloon Release By-Law</i>	April 16, 2024
2006-213	<i>Business Licence By-Law</i>	April 16, 2024
2023-214	<i>Community Standards By-Law</i>	April 16, 2024
2019-100	<i>Election Signs By-Law</i>	April 16, 2024
2020-68	<i>Emergency Orders By-Law</i>	April 16, 2024
2003-405	<i>Fence By-Law</i>	April 16, 2024
2009-170	<i>Firearms By-Law</i>	April 16, 2024
2023-38	<i>Heritage By-Law</i>	April 16, 2024
2004-52	<i>Noise By-Law</i>	April 16, 2024
2018-53	<i>Nuisance Parties By-Law</i>	April 16, 2024
2005-100	<i>Property Standards By-Law</i>	April 16, 2024
2021-10	<i>Short-Term Rental Licensing By-Law</i>	April 16, 2024
2009-140	<i>Sign By-Law</i>	April 16, 2024
2004-190	<i>Streets By-Law</i>	April 16, 2024
2022-6	<i>Transportation Network Company By-Law</i>	April 16, 2024
2018-15	<i>Tree By-Law</i>	April 16, 2024
2007-136	<i>Yards By-Law</i>	April 16, 2024

TABLE 2 - PROACTIVE ENFORCEMENT

By-Law Number	By-Law Short Title	Proactive Enforcement Actions	Date Prescribed