

# THE TOWNSHIP OF AUGUSTA

## POLICY

<b>Policy:</b>	<b>By-Law Infractions and Enforcement Policy</b>	Date issued:	September 9, 2024
Coverage:	All Township Employees	Revised:	

### 1. INTRODUCTION

The purpose of this policy is to provide guidance to staff, and the public regarding a transparent, consistent, fair, unbiased, and effective process for enforcement and prosecution of relevant By-Laws of the Township of Augusta. This document identifies a range of options to achieve compliance with Township By-Laws, which will be adhered to by the Township's By-Law Enforcement Officers.

The goal of By-Law enforcement is to achieve compliance through information, education and voluntary compliance. If this is not achievable, officers will take appropriate action such as the issuance of "Orders to Comply", or the laying of charges under the Provincial Offences Act ("POA"), as appropriate. In certain circumstances, it will also be appropriate to enter onto private property and take action to remedy, remove or resolve non-compliance situations at the property owner's expense, in all instances pursuant to law. Officers are encouraged to be compliance-focused and to consider the most innovative, efficient and effective method of achieving compliance.

A compliance-focused approach enables all citizens to better understand and comply with the rules, and to better pursue their social, economic and recreational activities in a safe, productive and responsible manner. This policy applies to all enforcement actions taken by officers, or any other staff involved in By-Law enforcement activities. Each officer plays an important role in promoting compliance with the laws that protect the public interest.

The By-Law Infractions and Enforcement Policy operates collectively with existing policies and procedures that continue to support regulatory compliance and officer enforcement practices; and embraces a customer service and problem-solving principle for resolving the issues to ensure customer satisfaction.

## THE TOWNSHIP OF AUGUSTA

### 2. DEFINITIONS

“Alleged offender” means a person who is alleged to have committed a contravention of a By-Law within the Township.

“Complainant” means a person who requests service due to an alleged offence to a By-Law.

“Council” means the Council of the Corporation of the Township of Augusta.

“Manager” means the Manager of By-Law Enforcement or designate.

“Officer” shall mean the By-Law Enforcement Officer or Canine Control Officer for the Township of Augusta as appointed by Council, Police Officer, any other person or company directed by the Clerk to enforce parts of this By-Law, and all other Enforcement Officers as may be appointed by the Province of Ontario.

“Request” means a request for service for a By-Law Enforcement Officer to investigate where the complainant has supplied all the information required.

“Staff” includes all employees, members of Council, dependent contractors and volunteers of the Township of Augusta and, for purposes of certainty, extends to employees, dependent contractors and volunteers engaged to support Members' offices.

“Township” shall mean the Corporation of the Township of Augusta.

### 3. PROGRESSIVE ENFORCEMENT

Progressive enforcement action is undertaken on an escalating continuum, starting with public education on By-Law requirements to encourage voluntary compliance, progressing to warnings, and finally with notices/orders and/or commencing legal action. Officers must ensure that their actions and reactions are reasonable and based on legal authority, and that the measures taken are proportionate with the alleged violation. The goal is to achieve consistency in responses to non-compliance, and predictability when determining the appropriate enforcement action.

The foundation of a progressive investigative process is based on the following guiding principles:

#### a. Complainant Communication

Requests for service are the mechanism by which the community can inform officers as to the potential existence of non-compliance with a By-Law. To ensure positive relations are maintained and appropriate information is provided to the community, requests for service can be written or submitted by email. Verbal face to face or telephone method of communication will be accepted either through staff directly inputting into the Township Resident Relations software or when a Township By-Law Request for Service Submission Form has been completed by staff or the complainant. Anonymous requests for service are only accepted on matters of imminent life safety or those that pose a significant threat to the natural environment.

## THE TOWNSHIP OF AUGUSTA

In all cases, a complainant must be prepared to stand as a witness should enforcement action proceed to court.

### b. Voluntary Compliance

While most residents comply with the Township's By-Laws, some may be unaware of a given By-Law, have difficulty understanding regulations, be in error taking the steps to achieve compliance, or simply lack the necessary resources.

Pursuant to s. 81 of the POA, ignorance of the law is not an excuse for non-compliance with Township of Augusta By-Laws or Provincial Regulatory Regimes. Although "intent" is not a required element in the Prosecution of Regulatory By-Laws, it speaks to the penalty when a progressive enforcement process demonstrates that the alleged offender knowingly contravened the By-Law and did not avail themselves of the opportunities presented by the officers.

### c. After initial complainant communication, the goal is voluntary compliance which requires education to ensure that the alleged offender and the public is aware of the Township's By-Laws that apply to them. This includes understanding the intent and purpose of the By-Laws.

It is imperative that the officers exhaust all methods available to personally contact the offender (in-person, door tag, telephone, email, written correspondence, otherwise). Engaging in dialogue provides the opportunity to inform and educate the alleged offender about their obligations and the requirements under the Township's By-Laws; and to establish a reasonable enforcement plan for voluntary compliance where appropriate.

A compliance-focused approach focuses on the objectives of regulatory law and policy and then considers the safest, most efficient and most effective method of achieving compliance. This leads to an approach based on education and assistance/guidance to gain compliance, rather than solely focusing on the issuance of charges and similar enforcement action.

### d. Investigation

Even with a strong voluntary compliance program in place, requests for service may occur that will require officers to respond and conduct investigations based on risk assessment.

A risk-based focus identifies potential hazards, undesirable events, and repeat offenders and uses an understanding of the likelihood and consequences of the undesirable events (health/life safety issues) to determine the steps needed to reduce the risk. When combined with a compliance-based focus, this approach can help achieve maximum compliance effectively and efficiently.

It is important that all investigations be conducted with the notion that evidence collected may need to be presented in court or records released

## **THE TOWNSHIP OF AUGUSTA**

under the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*. Investigative procedures are followed by officers, with evidence gathered in accordance with professional law enforcement standards, and the integrity of every investigation always maintained

### **e. Reasonable, Transparent and Proportionate Enforcement and Compliance**

In determining the relative significance of each contravention, the officers must clearly understand the applicable regulations and possible outcomes should evidence prove a violation has occurred. When non-compliance has been identified, Township Officers will be guided by the following three principles in determining what will constitute an appropriate response:

- I.** Health/Life Safety/Harm to Property – this considers the seriousness of the contravention, such as the health or life safety impact on residents, or potential damage to property
- II.** History – the compliance history of the property or individual is considered with respect to previous investigations and/or violations for the same issue, and/or the seriousness of previous non-compliance.
- III.** Intent – the alleged offender is a repeat offender, or the evidence demonstrates that the individual knowingly contravened the By-Law or was willfully ignorant or indifferent towards compliance

## **4. LEVELS OF SERVICE**

### **I. Reactive Service**

Reactive Service is the dominant form of By-Law Enforcement in the Township. Reactive enforcement requires complainant communications to be filed by members of the public with staff. This is also necessary because of human resources and financial constraints on the municipality.

### **II. Proactive Service**

Proactive Service occurs when officers conduct routine patrols. Enforcement activities in this category would occur because of multiple concerns brought forth by the public in the same area.

### **III. Legislative Enforcement Service**

Legislative Enforcement Service occurs where the Township has a statutory obligation to inspect, investigate and potentially enforce legislative requirements. An example would be, but is not limited to, the Dog Owners' Liability Act, R.S.O. 1990, c. D.16, and pursuant to the legislative regimes, staff perform duties and tasks required by the enabling legislation. Legislative enforcement typically has its own specific rules, such as guidelines on time of entry, purpose of inspection, special powers to compel co-operation and other factors.

## **THE TOWNSHIP OF AUGUSTA**

### **5. PRIORITIZING REQUESTS FOR SERVICE**

Requests for service will be identified, classified and prioritized. Any allegation or situation that is a matter of imminent life safety or those that pose a significant threat to the natural environment will be given priority.

### **6. SERVICE PRINCIPALS: ACHIEVING COMPLIANCE**

Compliance is dependent upon the specific circumstances of any investigation:

- I. For situations where there is no previous history of non-compliance, officers will consider providing compliance assistance (education and negotiation) as well as progressive compliance and enforcement action where appropriate to seek voluntary compliance.
- II. For situations where there is repeated history of non-compliance, consider using progressive compliance and enforcement actions.
- III. For situations where the matter is of imminent life safety or those that pose a significant threat to the natural environment, any appropriate action which remedies the threat is acceptable.

### **7. ESCALATED ENFORCEMENT OPTIONS**

The goal of an officer is to achieve compliance through information, education and voluntary compliance. If this is not achievable then the officer may take further enforcement action. Depending on the provisions contained within a By-Law or statute, and at the discretion of the officer, escalated enforcement options may include issuance of a municipal order, laying a Part I certificate of offence (ticket), the laying of a Provincial Part III Information, or a combination of the foregoing.

The Township of Augusta has no obligation to take enforcement action with respect to every contravention of every By-Law that may be occurring within its jurisdiction, allowing discretion guided by this policy. Requests which have been reviewed by the Manager and have been identified as retaliatory, vexatious or are insignificant in nature will not be acted upon, unless it is a matter of imminent life safety or those that pose a significant threat to the natural environment.

### **8. UTILIZATION OF PROVINCIAL OFFENSES ACT CHARGES**

When a given situation requires enforcement action, it is the discretion of the officer to determine which specific actions will be taken and in which forum enforcement action, if any, shall be laid. Options for the officers include a

- I. Part I prescribes proceedings commenced by way of a certificate of offence. It is often referred to as a “ticketing” process and it is used for less serious offences,
- II. Part II sets out the procedure for commencing a parking infraction proceeding. It is very similar to Part I process, except that Part II applies

## **THE TOWNSHIP OF AUGUSTA**

exclusively to parking offences which are primarily created by municipal By-Laws.

- III. Part III is for offences that must be brought before a justice for resolution; they cannot be resolved through the payment of a set fine. This could result in Court Orders and or fines up to a maximum of \$100,000.

### **9. EXCEPTION TO ENFORCEMENT PHILOSOPHY: PARKING TICKETS**

Enforcement of parking is conducted both on a proactive and request basis. At the discretion of the officers, either a warning or a Part II certificate of offence (ticket) should be issued for confirmed parking infractions.

### **10. PART III ENFORCEMENT**

In rare cases it will be appropriate to proceed with enforcement activity by way of Part III, wherein a court order, mandatory order or injunction from the Superior Court of Justice is necessary to address complicated, ongoing or intractable problems. Where Part III action is considered, the Township Solicitor will determine whether and how to proceed and will assume carriage of the file unless they declare a conflict on the matter.

### **11. EXTERNAL INFLUENCE AND INTERFERENCE**

No staff shall attempt directly or indirectly to influence any officer or staff working within the By-Law Enforcement Department in the administration of their duties. This policy is not intended to prevent or limit the ability of staff or any other person to request information about the By-Law Enforcement Department or its policies or procedures. If staff attempts to apply undue influence upon an active investigation, officers will first explain the problem to staff and CAO. If this behavior persists, the officer will bring the matter to the attention of the Provincial Ombudsman.

### **12. PRIVACY AND CONFIDENTIALITY**

Subject to *MFIPPA*, the identity of the complainant, any personal information they provide, and the request itself, shall not be disclosed to the alleged offender or any member of the public unless required by court proceedings. The response of the alleged offender shall not be disclosed to the complainant, whether it is in writing or made orally.

The complainant, when appropriate, necessary or requested, may be given a basic update on the case, but only if the confidentiality of all parties can be maintained.

## **THE TOWNSHIP OF AUGUSTA**

### **13. POLICY REVIEW**

This policy will be reviewed at least once every Council term for necessary changes. The Chief Administrative Officer or Manager may bring forward revisions to this policy on an as needed basis.