

 M O N C T O N	POLICY		Owner Department: By-Law Enforcement
	By-Law Enforcement Policy		
Effective Date: November 4, 2024	Last Reviewed Date: November 4, 2024	City Council Approval Dates:	
Approving Authority: Moncton City Council	Replaces No.: N/A		
1. Purpose Statement			

To articulate the general By-Law Enforcement process of the City, including priority setting for By-Law Enforcement matters, and to describe some of the key elements of the City’s enforcement process meant to ensure the fair and efficient treatment of By-Law Enforcement matters.

2. Application

This Policy applies to all employees and agents of the City duly appointed by Moncton City Council as By-Law Enforcement officers, Building Inspectors, Plumbing Inspectors or employees and agents who are engaged in By-Law Enforcement activities on behalf of the City.

3. Definitions

“Valid complaint” means a complaint that describes the location and general nature of a potential By-Law violation, which should include the address of the potential violation as well as the complainant’s name, and contact information, and which is not a vexatious complaint.

“Frivolous or Vexatious complaint” means a complaint or a request that is made for retaliatory or bad faith purposes, or otherwise forms part of a pattern of conduct by the complainant that amounts to an abuse of the complaint process.

4. Policy

A. GENERAL

1. The primary By-Law Enforcement goals of the City are to maintain a safe and viable community.
2. The City does not have the resources to proactively monitor all areas of the City and confirm compliance with all potentially applicable By-Laws. The City will use discretion on a case-by-case basis to evaluate violations and take reasonable steps to investigate violations in accordance with this Policy, and any Directives and Work instructions developed under this Policy.
3. Public property violations are generally enforced proactively, while private property violations are usually investigated in response to complaints.
4. The City promotes an enforcement philosophy that seeks voluntary compliance with City By-Laws in respect of most private property matters.
5. Issuance of administrative penalties is generally seen as a tool to be used only where cooperation and removal of the violation cannot reasonably be achieved.
6. Education is generally the first step and By-Law offenders are usually provided time to remove a violation. Enforcement based on education and warnings is not appropriate in all circumstances. More direct enforcement approaches¹, including the immediate issuance of administrative penalties, may occur in situations such as when:
 - i. the violation occurs on public property;
 - ii. there exists a safety or security risk or there is a risk to the environment, or to human health;
 - iii. enforcement follows a widespread public education campaign;
 - iv. Council has prioritized direct enforcement to address a specific issue or type of issue; or
 - v. where the By-Law offender knows or reasonably ought to know their conduct contravenes a By-Law.
7. Administration will therefore ensure that all employees and agents offering enforcement services on behalf of the City:
 - i. are aware of this Policy;
 - ii. receive appropriate training about this Policy; and
 - iii. are performing their job duties in compliance with this Policy.

Administration will provide general oversight of the City's By-Law Enforcement process and promote consistency and efficiency. Legal remedies may be sought in cases where administration deems it necessary.

B. ENFORCEMENT PROCESS

1. **Prioritization:** The City's response to valid complaints is generally prioritized as follows:

¹ The City routinely immediately issues administrative penalties for parking violations.

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- 1.1. **Priority #1: Safety** – the alleged By-Law violation may adversely impact the environment or public safety. These violations will be investigated and enforced **as soon as possible** given the availability of By-Law Enforcement Officers and other resources. Prior warnings or education to offenders may not be appropriate or practical.
- 1.2. **Priority #2: Significant negative impact to adjacent properties** – the alleged By-Law violation is significantly impacting adjacent properties in a negative manner but does not pose an immediate risk to the environment or public safety. Generally, enforcement efforts are directed at seeking voluntary compliance without the issuance of administrative penalties and administration will consider whether education is sufficient to prevent ongoing contraventions. Administration will often issue a warning and provide a short timeline for compliance before issuing administrative penalties. However, administration may engage in proactive (i.e. non-complaint based) investigations and/or proceed directly to issuing administrative penalties in response to repeat violations and offenders, or where the circumstances otherwise warrant.
- 1.3. **Priority #3: General nuisance** – the alleged By-Law violation may be a matter that is a general concern of residents. These violations tend to be cosmetic in nature and do not affect the environment or public safety. The City's investigation and enforcement of Priority #3 matters is initiated in response to complaints. By-Law Enforcement Officers will focus on education and will provide opportunities to bring the property or situation into compliance that are appropriate in the circumstances. If a confirmed violation is minor in nature and/or if it appears the complaint may be a vexatious complaint or is part of a larger neighbourhood conflict, administration may conclude it is not in the City's or community's best interest to pursue the matter.

2. Complaints

- 2.1. Complaints may be received in person at Moncton City Hall, by phone 506-853-3333, via email to info@moncton.ca, or online at moncton.ca. Complaints will be entered in the City's work management system for tracking, follow-up and statistical information.
- 2.2. While all complaints will be received and logged, not all complaints will be investigated.
- 2.3. Anonymous complaints will not be acted upon unless the alleged violation falls within the scope of Priority #1 or is something the City otherwise proactively enforces (e.g. parking, signs on public property).
- 2.4. Frivolous or vexatious complaints will not be acted on. They will be referred to the Chief Administrative Officer of the City, or their delegate, successor or designate, for a determination on the outcome and the complainant will be notified in writing on the reason for imposing the outcome.
- 2.5. Upon receipt of a valid complaint, By-Law Enforcement Officers will be assigned to investigate in accordance with the priorities described in this Policy.
- 2.6. Should a violation be confirmed, administration will exercise discretion to determine whether further enforcement, by appropriate compliance measures, is appropriate in accordance with

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the principles set out in this Policy.. Relevant considerations include, but are not limited to, the nature, number and duration of the violation(s); the current, short- and long-term impacts of the violation(s); the potential for precedent; and the resources available to resolve the matter. By-Law Enforcement Officers with questions about the appropriate use of discretion should discuss with their supervisors.

- 2.7. By-Law Enforcement resources are prioritized to ensure the timely receipt and investigation of complaints. Administration will not proactively provide follow-up information to complainants, other than what is automatically generated when a complainant provides their email address as contact information. Complainants, otherwise, must request follow-ups explicitly. Administration will respond to specific requests for information (subject to confidentiality requirements) as time permits.
- 2.8. It is recommended that elected Officials not become personally involved in specific active By-Law Enforcement files and matters. Where an Elected Official is contacted with respect to a complaint or is contacted with respect to an active By-Law Enforcement file and matter, the Elected Official should advise the complainant to contact administration directly. See 2.1 of this Policy for appropriate channels to report a complaint to administration.

3. Confidentiality

- 3.1. Confidentiality is necessary to ensure complainants are not exposed to retaliation or other adverse actions as a result of the complaint, and to maintain effective investigation techniques.
- 3.2. The identity of the complainant and any identifying information will not be disclosed to the alleged offender, elected officials, or any member of the public, except as required by law. Likewise, the investigation details and enforcement steps will not be disclosed.
- 3.3. Situations in which complainant information or offender enforcement history may be disclosed include:
 - 3.3.1. if required by Court order, warrant or other similar judicial or quasi-judicial process;
 - 3.3.2. if required under the *Right to Information and Protection of Privacy Act*;
 - 3.3.3. if required as part of the disclosure process in the event of a prosecution or civil proceedings; and
 - 3.3.4. if the person to whom the personal information pertains consents to the disclosure.
- 3.4. If a complainant is the only witness to an alleged infraction and the complainant's information is necessary to proceed with enforcement, the complainant will be advised of the extent to which his or her identity needs to be disclosed and the reasons the disclosure is necessary. Except in situations of significant risk to the environment or human safety, the complainant will be provided the option of consenting to the disclosure or withdrawing the complaint.

5. Administration and Contact

By-Law Enforcement

655 Main St., Moncton, NB E1C 1E8

Telephone: 506.389.5928

Email: info.enforcement@moncton.ca

This Policy shall be reviewed as required in response to changes in City of Moncton corporate goals and administrative practices, applicable legal principles, and available technology.