



THE CORPORATION OF THE TOWN OF COBOURG

BY-LAW NUMBER XX-2022

BEING A BY-LAW TO ESTABLISH A TRANSPARENT, CONSISTENT, FAIR, UNBIASED, AND EFFECTIVE PROCESS FOR THE ENFORCEMENT AND PROSECUTION OF ALLEGED CONTRAVENTIONS OF MUNICIPAL STANDARDS.

WHEREAS Under the *Municipal Act, 2001*, municipalities may specify when a contravention of a by-law is an offence, establish a system of fines for offences under by-laws, establish systems of administrative penalties and exercise other enforcement powers.

AND WHEREAS The Town of Cobourg administers, enforces and prosecutes alleged contraventions of its by-laws and other applicable provincial legislation within its mandate.

AND WHEREAS The goal of the Town's enforcement activities is compliance with standards established by the Town's by-laws and applicable provincial legislation employing the most efficient and effective means.

AND WHEREAS Prosecutors have the responsibility to ensure that every prosecution is carried out in a manner that is fair, dispassionate and moderate, consistent with the public interest, and that shows no signs of partisanship. As a fundamental principle, prosecutors must carry out their responsibilities independent of any partisan political influences.

AND WHEREAS The Transfer Agreement between the Province of Ontario and the Town respecting courts administration, court support, prosecutions and appeals under the *Provincial Offences Act* and the *Contraventions Act* (Canada) requires the Town to ensure that prosecutions are conducted in a manner consistent with various principles including prosecutorial independence.

AND WHEREAS Council considers it appropriate to ensure the proper administration of justice, to respect the roles of Council members, complainants, investigators and prosecutors in the administration, investigation, enforcement and prosecution of alleged contraventions of municipal by-laws and other applicable provincial legislation, and to ensure that such investigations, enforcement proceedings and prosecutions occur in a fair and unbiased way, free from any improper influence or interference.

NOW THEREFORE, THE CORPORATION OF THE TOWN OF COBOURG BY ITS COUNCIL ENACTS AS FOLLOWS:

SHORT TITLE

1. This By-Law may be referred to as the "Enforcement By-law".

INTERPRETATION

2. Unless otherwise stated:
 - a) a reference to any statute or regulation refers to a statute or regulation of Ontario as it may be amended or replaced from time to time;
 - b) a reference to a by-law refers to a by-law of the Town as it may be amended or replaced from time to time; and
 - c) a reference to a section, paragraph, clause, or schedule is a reference to this By-law's section, paragraph, clause, or schedule.
3. The headings in this By-law are for convenience only and do not form part of this By-law
4. If any part of this By-law is determined to be invalid by a court of competent jurisdiction, the invalid part is severed and the remainder continues to be valid.
5. Nothing in this By-law limits the Town's right to enforce Municipal Standards by any legal means.
6. In this By-law:
 - a) "**By-law**" means this by-law and any schedule to this by-law as they may from time to time be amended.
 - b) "**CAO**" means the Town's Chief Administrative Officer.
 - c) "**Chief**" means, in relation to
 - i. enforcement under the **Fire Protection and Prevention Act, 1997**, the Town's Fire Chief or the Town's Chief Fire Prevention Officer; and
 - ii. enforcement under the **Building Code Act, 1992** as amended the Town's Chief Building Official; and

- iii. in relation to all other enforcement by or on behalf of the Town, the Town's Director of Legislative Services or the Town's Manager of Municipal Law Enforcement and Licensing Services.
- d) **"Council"** means the Town's Council
- e) **"Municipal Standard"** means a standard established by by-law of Council or by provincial legislation for which the by-law or legislation, as applicable, provides that contravention of the standard is an offence or otherwise provides for enforcement of the standard.
- f) **"Officer"** means
 - i. the Chief;
 - ii. each person from time to time appointed as a municipal law enforcement officer to enforce all or any of the Town's by-laws;
 - iii. each assistant to the Fire Marshal employed by the Town; and
 - iv. a police officer employed by Cobourg Police Service, the Ontario Provincial Police or the Royal Canadian Mounted Police.
- g) **"Prosecutor"** means each person from time to time performing the function of prosecuting an alleged contravention of a Municipal Standard, including before a court or tribunal.
- h) **"Town"** means The Corporation of the Town of Cobourg or the geographic area of the Town of Cobourg as the context requires.

ROLES

- 7. Members of the public and individual members of Council may:
 - a) make complaints to the Town regarding alleged contraventions of Municipal Standards; and
 - b) be summonsed to testify before a court or tribunal in the prosecution of an alleged contravention of a Municipal Standard.
- 8. Council may:
 - a) from time to time establish, amend and repeal Municipal Standards that are governed by by-law of Council;

- b) establish the budget for and policies related to the enforcement of Municipal Standards; and
- c) at meetings of Council ask questions of, and receive information from, a Chief on general questions relating to the enforcement of Municipal Standards.

9. Officers may, subject to the directions of the Chief, as applicable:

- a) receive complaints regarding alleged contraventions of Municipal Standards;
- b) screen complaints to determine if the subject matter of the allegation(s) falls within their jurisdiction;
- c) undertake investigations into alleged contraventions of Municipal Standards either in response to complaints or proactively;
- d) conclude investigations by making one of the following determinations:
 - i. there is insufficient evidence to proceed with enforcement in response to the complaint;
 - ii. the Municipal Standard the subject of the complaint has been brought into compliance
 - iii. the complaint is trivial, frivolous, vexatious or made in bad faith; or
 - iv. the matter the subject of the complaint should be enforced; and
- e) for such matters for which a determination has been made pursuant to paragraph d)iv), cause to be undertaken enforcement by such means as may result in compliance with the Municipal Standard as efficiently and effectively as possible including, as applicable, by:
 - i. request;
 - ii. administrative order;
 - iii. municipal remedial work;
 - iv. administrative penalty;
 - v. commencing a proceeding under Part I of the **Provincial Offences Act**;
 - vi. referral to the Town's Legal Services for prosecution under Part III of the **Provincial Offences Act**; and
 - vii. referral to the Town's Legal Services for applicable relief by way of action or application in the Superior Court of Justice.

10. Prosecutors may, subject to the Town's Solicitor's directions:

- a) screen referrals for prosecution to determine whether there is a reasonable prospect of conviction or whether the prosecution of the alleged contravention of the Municipal Standard is in the public interest;
- b) initiate prosecutions of alleged contraventions of Municipal Standards;
- c) attend and conduct motions, trials, appeals and hearings before courts or tribunals related to prosecutions of alleged contraventions of Municipal Standards;
- d) enter into resolution discussions, negotiations and agreements; and
- e) withdraw prosecutions where there is no longer a reasonable prospect of conviction, where it is in the public interest to do so or where a withdrawal furthers the administration of justice.

INVESTIGATIONS

- 11. All investigations and enforcement respecting alleged contraventions of Municipal Standards must be undertaken on a case-by-case basis, pursuant to any directions of the Chief, as applicable, with regard to the evidence, with a view to compliance with Municipal Standards by the most efficient and effective means and independently of political or other external influences.
- 12. Officers must act on complaints as quickly as reasonably possible and undertake their investigations diligently, fairly, and in a manner that is consistent with the public interest and any direction of the Chief, as applicable
- 13. Officers must not disclose any confidential information including personal information gained in the execution of their duties except as required for prosecution purposes or otherwise in accordance with law.
- 14. Officers must not accept a fee, gift, or personal benefit, except compensation authorized by law, which is connected directly or indirectly with the performance of their duties.
- 15. Each Officer must disclose to the Officer's Chief, as applicable, any attempt at improper influence or interference, financial, political or otherwise, respecting the Officer's performance of the Officer's duties.

16. Each Officer who is contacted by a member of Council with respect to an outstanding complaint or investigation matter, other than a complaint made by or against the Council member or in which the Council member is a witness, must immediately disclose such contact to the Officer's Chief, as applicable.
17. The Chief, as applicable, must disclose to the Town Solicitor the particulars of each disclosure provided to the Chief pursuant to sections 15 and 16. The Town Solicitor will consult with the CAO and may report the particulars to Council.
18. Each Officer must disclose any actual or reasonably perceived conflict of interest as soon as possible to the Officer's Chief, as applicable.
19. No action may be taken against an Officer, a Chief, or the Town Solicitor, as the case may be, who discloses or reports in good faith pursuant to sections 15, 16, 17 or 18.

PROSECUTIONS

20. Prosecutors must ensure that each prosecution is carried out in a manner that is fair, dispassionate and moderate, consistent with the public interest and independent of political or other external influences.
21. Prosecutors must not disclose information that is gained in the execution of the Prosecutor's office and is not available to the public, except in accordance with law. Prosecutors must not use such information to further or seek to further the Prosecutor's financial, political, or personal interest.
22. Prosecutors must not accept a fee, gift or personal benefit, except compensation authorized by law, which is connected directly or indirectly with the performance of the Prosecutor's duties.
23. Prosecutors must not act or be directly or indirectly involved as counsel or agent for any other person in respect of any offence charged against the other person under a Municipal Standard.
24. Prosecutors must disclose to the Town Solicitor any attempt at improper influence or interference, financial, political or otherwise, respecting the performance of the Prosecutor's duties
25. Prosecutors who are contacted by a member of Council with respect to a prosecution matter must immediately disclose such contact to the Town Solicitor.

26. Prosecutors must disclose to the Town Solicitor any actual or reasonably perceived conflict of interest as soon as possible.
27. The Town Solicitor will consult with the CAO and may report to Council the particulars of any disclosure made pursuant to sections 24, 25 or 26.
28. No action may be taken against a Prosecutor or the Town Solicitor, as the case may be, who discloses or reports in good faith pursuant to sections 24, 25, 26 or 27.
29. THAT this by-law shall come into full force and effect upon the date of its passing.

Read and passed in Open Council on this day of October, 2022.

MAYOR

MUNICIPAL CLERK