

Gabriola Island Local Trust Committee Bylaw Compliance & Enforcement Policy

Bylaw Compliance & Enforcement Policy No. 1, effective November 7, 2024.

Version No. 1

Purpose

To establish policies and procedures for bylaw compliance and enforcement in the Gabriola Island Local Trust Area in accordance with the adopted Trust Council Policies contained in Policy 5.5.1., and that are within the authority of the Local Trust Committee to enforce, and that will ensure polices and procedures are efficient, transparent, reasonable, and consistent with local community standards.

PART A

1.0 Application

This policy will apply to the Gabriola Island Local Trust Area and the enforcement of all applicable regulatory bylaws.

2.0 Definitions & Abbreviations

BEN – bylaw enforcement notice

LUB – Land Use Bylaw

LTC – Local Trust Committee

Minor structure – any structure that does not require a building permit, and that is not located in a development permit area or located within any other environmentally sensitive area

Respondent – a property owner whose property is subject to a bylaw enforcement complaint

Health & Safety concerns – fire, unsafe construction, hazards relating to steep slopes or cliffs, dumping of sewage

Vexatious - complaints that are made in bad faith or for retaliatory purposes or that are considered frivolous, may be considered vexatious; or repeated complaints that form a part of a pattern of conduct by the complainant that amounts to an abuse of the complaint process

3.0 References

Gabriola Island Land Use Bylaw No. 177

Mudge Island Land Use Bylaw No. 228

Gabriola Island Local Trust Committee Bylaw Enforcement Notification Bylaw No. 263

4.0 Priorities

- 4.1** Enforcement on short-term vacation rentals is a priority and proactive enforcement is authorized.
- 4.2** Enforcement on non-compliant dwellings will be deferred unless there are contraventions in development permit areas; or other environmentally sensitive areas; or there are concerns about health and safety; or the lack of an approved septic system; or if it is determined that there is contamination of wells or other drinking sources.
- 4.3** Enforcement on limited public markets will be deferred when they are operated indoors contrary to section B.6.2 of the LUB. Operators will be provided with information regarding the applicable land use regulations.

5.0 Inspection

- 5.1** At the start of any investigation, Bylaw Enforcement Officers will determine if entry to the property is necessary to investigate the alleged contravention or if the investigation can be conducted from a public road or other lands.
- 5.2** Bylaw Enforcement Officers will give 30 days notice for inspection of any property unless there is consent for a site inspection at less than 30 days.
- 5.3** Investigations into health and safety issues and matters that may cause adverse environmental impact and result in irreversible damage are a priority and may be investigated without notice pursuant to section A.3.2.1 of the LUB.
- 5.4** If a Respondent has indicated that they will work towards compliance, and have agreed on a time to comply, a site inspection is only required to confirm compliance.
- 5.5** Site inspections will be limited to the use or structure subject to complaint unless there is work observed in development permit areas, or other environmentally sensitive areas, or there are concerns regarding health and safety.
- 5.6** If a Respondent provides photographic evidence, a survey, or a professional report that confirms compliance, or other reliable evidence, a site inspection is not mandatory.

6.0 Enforcement Procedures

- 6.1** If a bylaw contravention is confirmed, and there is no agreement on a deadline for compliance, there will be notice in writing, and Respondents will be given a minimum of 90 days to comply. Notice may also be given that enforcement action will be escalated if there is no compliance at the deadline, and this may include the use of the BEN system or a request for legal action.
- 6.2** Bylaw Enforcement Officers can use their discretion to consider any reasonable request for time to comply from Respondents, but the term cannot be for more than one year.
- 6.3** If there are contraventions in environmentally sensitive areas, or development permit areas, or if there is a risk to health and safety, there will be a demand for the Respondent to cease the use or activity immediately.
- 6.4** Respondents will be given a Bylaw Warning Notice with a minimum of 45 days to comply before a Bylaw Violation Notice is issued, unless there are health and safety concerns, or contraventions in environmentally sensitive areas.

6.5 Bylaw Violation Notices will not be issued more than once per week unless authorized by the Manager of Bylaw Compliance and Enforcement.

7.0 Closing Files

- 7.1** If the identity of a complainant cannot be confirmed during the course of an investigation, or if a complainant uses a false name, the file will be closed.
- 7.2** If the contravention is for a minor structure that has only received one written complaint, the file can be closed.
- 7.3** If it is unreasonable for a Respondent to comply, whether due to specific circumstances or finances, Bylaw Enforcement Officers or the Manager of Bylaw Compliance and Enforcement, can use their discretion to close the file.
- 7.4** If a contravention has been identified that is subject to deferred enforcement by the LTC, the file can be closed unless there are contraventions that exist in environmentally sensitive areas or there are concerns about health and safety.
- 7.5** If it is determined during an investigation that the complaint was frivolous, repeat, or vexatious in nature, the Manager of Bylaw Compliance and Enforcement can use their discretion to close the file unless there is work on a development permit area, or work in an environmentally sensitive area, or there are health and safety concerns.
- 7.6** The LTC will be notified when any file is closed.

8.0 Vexatious Complaints

- 8.1** If a decision is made to not act upon a complaint that is considered frivolous, repeat, or vexatious, the complainant will be advised of the decision, the reason for it, and may be advised of the circumstances under which it may be reconsidered.

9.0 Communications

- 9.1** When a file is opened and an investigation commenced, Respondents will be advised of the Trust Council Policy that authorized the opening of the file and that an investigation has commenced.
- 9.2** Respondents will receive as much information about complaints against their properties as possible without revealing the identity of the complainant.
- 9.3** The Manager of Bylaw Compliance and Enforcement will communicate with Trustees or the LTC if there are questions or concerns regarding individual files.
- 9.4** The Manager of Bylaw Compliance and Enforcement will arrange public information and education sessions regarding bylaw enforcement when appropriate and time permitting.
- 9.5** Bylaw staff will be available during regular LTC meeting public comment sessions to answer questions regarding bylaw enforcement.

10.0 Reporting

- 10.1** The LTC will receive regular reporting on bylaw compliance and enforcement files.
- 10.2** The Manager of Compliance and Enforcement will report to the LTC any concerns, trends, or issues with enforcement that they believe the LTC needs to be aware of.
- 10.3** The Manager of Compliance and Enforcement will maintain the Gabriola Island Bylaw Enforcement Policy and will report to the LTC if amendments are recommended or required.

PART B

MUDGE ISLAND

All policies in Part A will apply to compliance and enforcement of the Mudge Island Land Use Bylaw with the following exceptions:

1.1 Priorities

- 1.1.1** Enforcement of the Mudge Island Land Use Bylaw No. 228 will be deferred until a full review of policies and procedures for compliance and enforcement is complete and adopted, and a targeted review of Land Use Bylaw No. 228 is undertaken by the Gabriola Local Trust Committee; with the exception of enforcement of derelict trailers and vehicles, health and safety concerns, interference with archeological heritage sites, or possible environmental damage that are a significant concern, and these would be brought to the Local Trust Committee for review.
- 1.1.2** Enforcement will not proceed for siting contraventions involving structures that predate 2008. Property owners will be able to repair and maintain these structures as long as they did not expand the contravention.
- 1.1.3** Enforcement will not proceed regarding otherwise lawful accessory uses, buildings and structures on a parcel where no principal use exists if the adjacent parcel has a permitted principal use and both parcels are held under common ownership.

1.2 Inspection and Enforcement Procedures:

- 1.2.1** Subject to section 1.1.1, enforcement will proceed only if there are written complaints received from two property owners residing on separate parcels located in the immediate neighbourhood; and where the contraventions are causing a nuisance or an adverse effect in the neighbourhood.
- 1.2.2** Enforcement on contraventions that are in environmentally sensitive areas, concern issues of health and safety, or interfere with archeological heritage sites, will proceed if there is a written complaint from any person.
- 1.2.3** There will be 30 days notice for site inspections unless there is consent for an earlier date, or there are concerns about contraventions in environmentally sensitive areas, and issues of health and safety.
- 1.2.4** For confirmed contraventions, a minimum of 180 days will be given to comply unless there are immediate concerns regarding health and safety or possible environmental damage.

PART C

Bylaw Enforcement Notice Bylaw Screening Officer's Powers and Duties Policy

Appointment of Screening Officers

Pursuant to section 7.2 of the Gabriola Island Local Trust Committee Bylaw Enforcement Notification Bylaw No. 263, 2011, (the Bylaw) the persons holding the following positions are appointed as screening officers:

- 1) Regional Planning Manager;
- 2) Manager of Compliance and Enforcement; and
- 3) Bylaw Compliance and Enforcement Assistant.

Screening Officer Powers and Duties

The powers and duties of the screening officer are contained in section 7.3 of the Bylaw. It is the direction of the Gabriola Island Local Trust Committee (LTC) that these powers and duties are only exercised in respect to each of the above positions as follows:

- 1) Regional Planning Manager. In respect to Bylaw Violation Notices issued by the Manager of Compliance and Enforcement, only the Regional Planning Manager, acting as Screening Officer, may exercise all of the powers and duties in Section 7.3 of the Bylaw;
- 2) Manager of Compliance and Enforcement. In respect to Bylaw Violation Notices issued by Bylaw Compliance and Enforcement Officers, only the Manager of Compliance and Enforcement, acting as Screening Officer, may exercise all of the powers and duties in Section 7.3 of the Bylaw;
- 3) Bylaw Compliance and Enforcement Assistant. In respect to Bylaw Violation Notices issued by the Manager of Compliance and Enforcement, and Bylaw Compliance and Enforcement Officers, the Bylaw Compliance and Enforcement Assistant, acting as Screening Officer, may exercise only those powers and duties in Section 7.3(1) and 7.3(2) of the Bylaw.

Authorized Reasons to Cancel Bylaw Violation Notices

The Screening Officer may cancel a Bylaw Violation Notice if satisfied that one or more of the following reasons exist:

1. The contravention did not occur as alleged.
2. The contravention no longer exists.
3. The Bylaw Violation Notice was issued to the wrong person.
4. The Bylaw Violation Notice was not completed properly.
5. The issuance of the Bylaw Violation Notice did not adhere to established Trust Council or LTC policies.
6. It is unreasonable for the person to pay the penalty.
7. An exception specified in the bylaw or related enactment or LTC Standing Resolution exists.

8. A permit exists or has been obtained that authorises the alleged contravention.
9. There is poor likelihood of success at adjudication for the Local Trust Committee the following reasons:
 - a. The evidence is inadequate to show a contravention;
 - b. Incorrect information was relied upon in issuing the Bylaw Violation Notice;
 - c. The disputant intends to challenge the bylaw with a legal argument that is ill suited to the adjudication process or the legal arguments are too complicated to be decided by an adjudicator.
10. It is not in the public interest to proceed to adjudication for one of the following reasons:
 - a. The bylaw has changed since the Bylaw Violation Notice was issued and now authorizes the contravention;
 - b. An LTC resolution has deferred enforcement on the specific contravention;
 - c. The LTC has closed the file;
 - d. The offence occurred because of a circumstance that made it unreasonable for the person to comply with the bylaw.