

found that the resident deliberately set himself up to challenge the city and that he had baited staff with his extreme and self-interested interpretations of city bylaws.²¹

This case shows that as long as actions are authorized and appropriate, it is not unreasonable for local governments to persist with enforcement even in the face of refusal or hostility from a resident.

In another case, a resident alleged in court that bylaw enforcement officers were excessively persistent, as well as “arrogant, hostile, and inappropriate” when inspecting her secondary suite. The court noted that this behaviour, for which there was no evidence, was likely a consequence of the defendant’s refusal to grant the bylaw officers access to the suite as they were legally entitled to have. This refusal, the court noted, provided a justifiable reason for the city’s persistence in enforcement.²²

These cases demonstrate the importance of distinguishing between enforcement actions that are necessary and reasonable (but a resident may vehemently disagree with) and those that are clearly beyond the authority of local government enforcement staff. Persisting in multiple attempts to enforce is not unreasonable if such action is both authorized and necessary.

Individuals who contact our office with a complaint rarely assert that a bylaw enforcement officer abused his or her power. More frequently, individuals complain that they were treated poorly by local government staff. Individuals may be angry, frustrated or rude when dealing with local government staff. Fairness is not just about the process followed in making decisions – it also involves communicating about the process and resulting decisions in an appropriate and respectful way.

Treating people well in an enforcement context can help resolve conflicts, encourage voluntary compliance and shape positive public perceptions of a local government. Written standards of conduct are a useful tool to outline the professionalism that local governments expect of their bylaw enforcement staff. For example, one local government’s website describes professional conduct expectations for bylaw enforcement staff, emphasizing accountability, impartiality, integrity, protection, respectfulness and service.²³ Such standards can also prevent bylaw enforcement officers from inadvertently acting outside the scope of their authority.

Best Practice: Standards of Conduct

Council and senior local government officials establish and make public standards of conduct for bylaw enforcement staff.

The Role of Council in the Enforcement Process

When we spoke with bylaw enforcement staff, managers and chief administrative officers as we were developing this guide, we heard concerns about council members becoming personally involved in bylaw enforcement investigations on behalf of residents, and directing bylaw enforcement staff to take a specific course of action.

As discussed in previous sections, council establishes overall priorities for enforcement, enacts bylaws, and adopts bylaw enforcement policies and standards of conduct for bylaw enforcement staff. Council may also provide direction on

²¹ *Prince George (City) v. Reimer*, 2010 BCSC 118.

²² *Burnaby (City) v. Oh*, [2010] B.C.J. No. 2857.

²³ Town of Creston, “Bylaw Compliance” <<http://www.creston.ca/2169/Bylaw-Compliance>>.

specific types of bylaw enforcement issues. For example, council may direct its enforcement staff to prioritize enforcement of certain bylaws, or to issue warnings rather than tickets for specific categories of violations.

Within this framework, everyday enforcement decisions are delegated to staff. Defining and maintaining separation between council and front-line enforcement staff is essential to an administratively fair bylaw enforcement system. It is important for council members to be aware of how their own actions can affect the fairness of an enforcement process. This means that while council sets policy and provides general direction on enforcement priorities, its individual members should not become directly involved in enforcement action by directing enforcement against specific residents, groups or businesses, or by directing that enforcement action not occur in a particular circumstance. Rather, individual enforcement decisions should be made by delegated bylaw enforcement staff or contractors.²⁴

It can be difficult for council members to remain a step removed from the day-to-day enforcement process when they are a main point of contact for members of the public who have complaints or who have been the subject of enforcement. It is understandable that council members want to be responsive to the concerns of those who elected them. In such situations, it is certainly appropriate for a member of council to seek assurance that bylaw enforcement staff have fairly responded to a person's concerns.

However, even if motivated by good intentions, council members should not advocate either publicly or privately for a particular result in a specific case. Doing so can create the appearance of bias, particularly if council later hears an appeal on the same matter after bylaw enforcement action is taken. Moreover, any action by a council member that is motivated by favouritism or personal animosity toward an individual may be perceived as an improper use of discretion.²⁵ Each member of council should strive to remain uninvolved in a specific bylaw enforcement decision unless and until the matter is put on the agenda for the entire council to consider.

Best Practices: The Role of Council

Council and senior local government officials develop a written policy to clearly define the separate roles of bylaw enforcement staff, council as a whole and individual members of council.

Local government policy clearly articulates that council members are not to be involved in day-to-day bylaw enforcement decisions.

²⁴ The City of Toronto Ombudsman has investigated concerns about elected local government officials interfering with the work of local government staff. In one investigation, the Ombudsman found that the Mayor's office was improperly directing security staff at city hall and was not following its own policy: Office of the Ombudsman, *Ombudsman Report: An Investigation into Toronto City Hall Security*, April 2015 <<http://ombudstoronto.ca/ombudsman-report-investigation-toronto-city-hall-security>>. In another investigation, the Ombudsman found that the Mayor's office directly influenced the public appointment process that resulted in inadequate vetting: Office of the Ombudsman, *An Investigation into the Administration of the Public Appointments Policy*, 25 September 2012 <<http://ombudstoronto.ca/sites/default/files/Final%20Report%20September%2025%20Post.pdf>>.

²⁵ Office of the Ombudsperson, *Code of Administrative Justice 2003*, Public Report No. 42, British Columbia Legislative Assembly, March 2003, 15 <<https://www.bcombudsperson.ca/sites/default/files/Public%20Report%20No%20-%2042%20Code%20of%20Administrative%20Justice.pdf>>.