

BYLAW NO. 23/2013

BEING A BYLAW OF THE MUNICIPAL DISTRICT OF FOOTHILLS NO. 31, IN THE PROVINCE OF ALBERTA, TO SPECIFY THE POWERS AND DUTIES OF BYLAW ENFORCEMENT OFFICERS AND ESTABLISH DISCIPLINARY PROCEDURES APPLICABLE TO ITS BYLAW ENFORCEMENT OFFICERS

WHEREAS, pursuant to Sections 556 of the *Municipal Government Act*, R.S.A. 2000, c.M-26, as amended or repealed and replaced from time to time, every council must by bylaw specify the powers and duties of bylaw enforcement officers and establish disciplinary procedures applicable to its bylaw enforcement officers;

AND WHEREAS, Section 210 of the *Municipal Government Act*, provides that a council may, by bylaw, establish one or more positions to carry out the powers, duties and functions of a designated officer;

NOW THEREFORE, Council of the Municipal District of Foothills No. 31, in the Province of Alberta, in open meeting hereby enacts as follows:

Short Title

1. This bylaw may be cited as the "Bylaw Enforcement Officer Bylaw."

Definitions

2. In this Bylaw, unless the context otherwise requires:
 - (a) **"Bylaw"** means a bylaw passed by the Council of the Municipal District;
 - (b) **"Bylaw Enforcement Officer"** means a person who has been appointed pursuant to this Bylaw as a Bylaw Enforcement Officer ;
 - (c) **"Council"** means the council of the Municipal District;
 - (d) **"Municipal District"** means:
 - i. The Municipal District of Foothills No. 31, a municipal district duly established pursuant to the laws of the Province of Alberta; or
 - ii. The area within the legal boundaries of the Municipal District of Foothills No. 31;
 - (e) **"Municipal Manager"** means the person appointed as the chief administrative officer of the Municipal District or his/her delegate;
 - (f) **"Protective Services Coordinator"** means the person appointed as such within the Protective Services Department; and
 - (g) **"Senior Enforcement Officer"** means the person appointed as such within the Protective Services Department.

Appointment of Bylaw Enforcement Officers

3. Council may, from time to time, appoint one or more Bylaw Enforcement Officers by resolution.
4. A Bylaw Enforcement Officer shall, before starting his or her duties, take the official oath prescribed by the *Oaths of Office Act*, as provided in Schedule A.
5. A Bylaw Enforcement Officer is a designated officer of the Municipal District for the purpose of inspections pursuant to Section 542 of the *Municipal Government Act* and enforcement of Bylaws pursuant to Sections 545 and 546 of the *Municipal Government Act*.
6. The powers and duties of Bylaw Enforcement Officers shall include the following:
 - (a) Preserving and maintaining the public peace;

- (b) Enforcing all Bylaws within the Municipal District;
 - (c) Conducting routine patrols to ensure compliance with Bylaws;
 - (d) Reporting to and carrying out the directions of the Senior Enforcement Officer and/or the Protective Services Coordinator;
 - (e) Responding to and investigating complaints and alleged breaches of Bylaws;
 - (f) Issuing and serving orders, notices, tickets, summonses, subpoenas and laying information as required;
 - (g) Assisting in the prosecution of breaches of Bylaws including gathering evidence, ensuring the attendance of witnesses, attending court and providing evidence as required;
 - (h) Carrying upon his or her person at all such times as he or she is acting as a Bylaw Enforcement Officer evidence in writing of his or her appointment as a Bylaw Enforcement Officer and
 - (i) Performing all such other duties as may from time to time be assigned by the Senior Enforcement Officer and/or the Protective Services Coordinator.
7. Bylaw Enforcement Officers shall exercise their powers and duties in accordance with all applicable Municipal District policies and procedures established from time to time.
8. The authority of a Bylaw Enforcement Officer shall terminate when:
- (a) the person ceases to be an employee of the Municipal District, or
 - (b) the Council by resolution terminates the appointment of the Bylaw Enforcement Officer.
9. Upon termination, the Bylaw Enforcement Officer shall immediately return to the Protective Services Coordinator all uniforms, patrol cars, equipment, offence ticket books, appointment certificates and all other materials or equipment supplied to the Bylaw Enforcement Officer by the Municipal District.

Complaints

10. Complaints concerning the conduct of a Bylaw Enforcement Officer shall be handled pursuant to the procedure provided in Schedule "B".

Severability

11. Every provision of this Bylaw is independent of all other provisions. If any provision of this Bylaw is declared invalid for any reason by a Court of competent jurisdiction, all other provisions of this Bylaw shall remain valid and enforceable.

Repeal

12. Bylaw No. 87/99, the Bylaw Enforcement Officers Appointment Bylaw, as amended is repealed.

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Effective Date

13. This bylaw shall come into force when it has received third and final reading and has been signed by the Reeve and the Municipal Manager.

FIRST READING: April 24, 2013

Reeve

Municipal Manager

SECOND READING: April 24, 2013

Reeve

Municipal Manager

THIRD READING: April 24, 2013

Reeve

Municipal Manager

PASSED IN OPEN COUNCIL this 24th day of April, 2013.

SCHEDULE "A"

**Oath of Office
Municipal District of Foothills No. 31 Bylaw Enforcement Officers**

[If Swearing]

I, _____, swear that I will diligently, faithfully and to the best of my ability execute according to law the office of a Bylaw Enforcement Officer for the Municipal District of Foothills No. 31.

So help me God.

SWORN BEFORE ME at the _____ of)
)
 _____, in the Province of)
 Alberta, this _____ day of _____,)
 20____.)
) _____
 A Commissioner for Oaths) **Name:**
 in and for the Province of Alberta)

[If Affirming or Declaring]

I, _____, solemnly swear and truly declare and affirm that I will diligently, faithfully and to the best of my ability execute according to law the office of a Bylaw Enforcement Officer for the Municipal District of Foothills No. 31.

SWORN BEFORE ME at the _____ of)
)
 _____, in the Province of)
 Alberta, this _____ day of _____,)
 20____.)
) _____
 A Commissioner for Oaths) **Name:**
 in and for the Province of Alberta)

SCHEDULE "B"

Complaints, Investigations, Disciplinary Procedures And Appeals

Receipt of Complaint:

1. Complaints concerning the conduct of a Bylaw Enforcement Officer shall be directed in writing to the Senior Enforcement Officer at:

MD of Foothills Protective Services
309 Macleod Trail, Box 5605
High River, Alberta, T1V 1M7

and shall, at a minimum, include the following information:

- (a) the name and contact information of the complainant (phone #, address, email etc.); and
 - (b) details of the alleged misconduct of the Bylaw Enforcement Officer.
2. Complaints shall be reviewed and, subject to Sections 3 and 11, investigated by the Senior Enforcement Officer.
3. Verbal, anonymous or third party complaints shall not be accepted or investigated by the Senior Enforcement Officer.

Investigations:

4. Upon receipt of a complaint, the Senior Enforcement Officer shall:
 - (a) Within 30 calendar days, acknowledge in writing, receipt of the complaint to the complainant;
 - (b) Provide a copy of the written complaint to the Bylaw Enforcement Officer that is the subject of the complaint;
 - (c) Investigate the allegations made within the complaint by interviewing the complainant, any witnesses, the Bylaw Enforcement Officer(s) involved, if they so consent, and any other person who may have knowledge relevant to the occurrence; and
 - (d) Review any relevant documents or recordings in existence pertaining to the occurrence including, but not limited to:
 - i. Investigative files;
 - ii. Bylaw Enforcement Officer's notebooks;
 - iii. Court reports;
 - iv. Legal documents; and
 - v. In car or on person video / audio recordings.
 - (e) Notify the complainant and the Bylaw Enforcement Officer(s) involved as to the status of the investigation at least once every 45 calendar days.
5. The Bylaw Enforcement Officer shall be given the opportunity to make a full response to the allegations and to provide supporting evidence in writing to the Senior Enforcement Officer.
6. Upon concluding the investigation into the complaint against the Bylaw Enforcement Officer, the Senior Enforcement Officer shall dispose of a complaint by making one of the following decisions:
 - (a) The complaint is unfounded. This means that on the basis of a thorough investigation, the Senior Enforcement Officer has determined that the complaint has no merit or basis.

- (b) The complaint is unsubstantiated. This means that on the basis of a thorough investigation, the Senior Enforcement Officer has determined that there is insufficient evidence to determine the facts of the complaint and that it may or may not have occurred.
 - (c) The complaint is found to have merit, in whole or in part. This means that on the basis of a thorough investigation that:
 - i. "in whole" - the Senior Enforcement Officer has a reasonable belief that the Bylaw Enforcement Officer(s) involved engaged in misconduct in regards to the entirety of the complaint; or
 - ii. "in part" - the Senior Enforcement Officer has a reasonable belief that the Bylaw Enforcement Officer(s) involved engaged in misconduct in regards to a portion of the complaint, but not in its entirety.
7. In the event that a complaint is found to have merit in whole or in part, the Senior Enforcement Officer must take disciplinary action against the Bylaw Enforcement Officer(s) involved, in accordance with the Municipality's Progressive Discipline Procedure, as amended or repealed and replaced from time to time
 8. The Senior Enforcement Officer shall inform the Bylaw Enforcement Officer(s) involved in writing of his or her decision and, if applicable, the disciplinary action imposed. The Bylaw Enforcement Officer(s) involved shall be advised of the ability to appeal the decision to the Protective Services Coordinator.
 9. The Senior Enforcement Officer shall inform the complainant in writing of his or her decision and, if applicable, the disciplinary action to be taken. The complainant shall be advised of the ability to appeal to the decision to the Protective Services Coordinator.
 10. The written decision provided to both the complainant and the Bylaw Enforcement Officer(s) involved must contain the following closing paragraph which communicates the appeal process:

"Please be advised you have the right to appeal this decision to the Protective Services Coordinator of the Municipality. An appeal must be in writing and initiated within 30 calendar days of receipt of this decision, and any decision reached by the Protective Services Coordinator on appeal is final."

Investigation Not Required:

11. After receipt of a complaint pursuant to Section 1 of this Schedule, the Senior Enforcement Officer may refuse to investigate or discontinue the investigation if, in the Senior Enforcement Officer's opinion,
 - (a) the complaint is frivolous, vexatious or made in bad faith;
 - (b) the complaint is determined not to be a complaint regarding alleged misconduct by Bylaw Enforcement Officer but rather is a complaint regarding the interpretation or application of legislation, the outcome of an investigation, or the action taken as a result of an investigation by a Bylaw Enforcement Officer; or
 - (c) having regard to all of the circumstances, no investigation is necessary.
12. If the Senior Enforcement Officer refuses to investigate a complaint or discontinues the investigation of a complaint, the Senior Enforcement Officer shall notify the complainant in writing with supporting reasons for not investigating the complaint.
13. All complaints disposed of pursuant to Section 11 of this Schedule must be reported to the Protective Services Coordinator within seven (7) calendar days of the disposition decision.

Appeal from the Decision of the Senior Enforcement Officer

14. A complainant or the Bylaw Enforcement Officer(s) involved may appeal a decision of the Senior Enforcement Officer to the Protective Services Coordinator.
15. All appeals shall be made in writing and shall be submitted to the Protective Services Coordinator at:

MD of Foothills Protective Services
309 Macleod Trail, Box 5605
High River, Alberta, T1V 1M7

within thirty (30) calendar days of receipt of the written decision issued by the Senior Enforcement Officer.

16. Upon receipt of an appeal, the Protective Services Coordinator shall:
 - (a) Obtain a copy of the information in the possession of the Senior Enforcement Officer related to the complaint, including the written decision of the Senior Enforcement Officer;
 - (b) Provide the appellant with fourteen (14) calendar days in which to submit a written submission to the Protective Services Coordinator setting out the reasons for the appeal, including the basis of the appellant's reason for determining that the Senior Enforcement Officer erred in his or her decision,
 - (c) Provide a copy of the written reasons for the appeal prepared by the appellant to the respondent;
 - (d) Provide the respondent with fourteen (14) calendar days in which to submit a written submission to the Protective Services Coordinator in response to the appellant's submissions, a copy of which shall be provided by the Protective Services Coordinator to the appellant; and
 - (e) Determine, in his or her discretion, whether or not an oral hearing is required in the circumstances.
17. Where, in the Protective Services Coordinator's discretion, an oral hearing is required to determine the appeal, the following procedure shall be followed:
 - (a) Fourteen (14) calendar days' notice in writing of the hearing shall be given to the appellant and the respondent;
 - (b) At the hearing, the Protective Services Coordinator shall give the appellant or his or her representative an opportunity to make oral submissions;
 - (c) At the hearing, the Protective Services Coordinator shall give the respondent an opportunity to make oral submissions.
18. Following the conclusion of the oral hearing, or the Protective Services Coordinator's review of the written submissions if an oral hearing is not held, the Protective Services Coordinator shall either confirm, reverse or vary the decision of the Senior Enforcement Officer.
19. The decision of the Protective Services Coordinator shall be issued to the appellant and the respondent, in writing, together with the reasons for the decision within twenty one (21) calendar days of the conclusion of the hearing.
20. The decision of the Protective Services Coordinator is final and conclusive with no further right of appeal to the Court.