

## Enforcement at a Standstill<sup>(1)</sup>

Beth called our office with a complaint about her local government. She told us that her neighbours operated an incinerator in their backyard, which caused large amounts of noxious smoke to drift across her property. Beth had complained to the city repeatedly about the smoke, but no investigation or enforcement resulted.

According to Beth, the city told her that the relevant sections of its air quality bylaw were not enforceable and that it had no plans to amend the bylaw. Beth thought it was unfair that the city had not taken enforcement action against her neighbours for operating their incinerator in a way that negatively affected the use and enjoyment of her property.

We investigated whether the city followed a reasonable process investigating Beth's complaints about the incinerator and the smoke drifting across her property. We also investigated whether the city followed a reasonable process to inform her of the steps it planned to take to change its bylaw.

In our investigation, we learned that the city had been aware of Beth's and other residents' concerns about air quality for many years. However, **city staff had been uncertain whether the city's existing air quality protection bylaw was enforceable**. In addition, several years previously, the city's bylaw enforcement officer had investigated Beth's concerns and concluded that no enforcement action was required.

**In response to our investigation, the city obtained information that confirmed its existing bylaw was enforceable.** We then consulted with the city to determine whether it would consider taking several steps to address Beth's concerns.

The city agreed:

- to investigate any new complaints about burning to determine whether the activity contravened the bylaw
- as part of its investigation(s), to obtain statements from Beth and other residents, as required, about the impact of the smoke on their quality of life to determine whether the burning activity contravened the bylaw
- to consider amending some parts of the bylaw in accordance with the legal advice it received with a view to making enforcement action easier in the future
- to write to Beth to explain the approach it intended to take in the future to address her concerns, and to provide written reasons why no enforcement action was appropriate if it concluded none was required at the end of its investigation(s)

In our view, the steps the city agreed to take responded to Beth's concerns.

The above example emphasizes the importance of local governments understanding whether and how their bylaws can be enforced.

In some cases, enforceability is a legal question that council needs to consider before implementing a new bylaw. In other cases, it may arise as staff attempt to respond to complaints. In these instances, local governments that have a process for dealing with questions about a bylaw's enforceability when they arise are in a good position to take remedial action in a timely manner.

In Beth's case above, it was several years before the question of the bylaw's enforceability was finally resolved. A more proactive process would allow staff who have identified a concern about enforceability to communicate the necessary information to council. Council can then take steps to either amend or repeal the bylaw, or to address any other issues preventing enforcement.

(1) Extract of pages 10-11 of <https://bcombudsperson.ca/assets/media/Special-Report-No-36-Bylaw-Enforcement-Best-Practices-Guide-for-Local-Governments.pdf>