

STAFF REPORT

TO: Committee of the Whole

MEETING: July 10, 2018

FROM: Tom Armet
Manager, Building & Bylaw Services

FILE:

SUBJECT: Bylaw Dispute Adjudication System

RECOMMENDATIONS

1. That the Board endorse a Bylaw Dispute Adjudication System.
2. That the Board direct the preparation of bylaws, policies and agreements for the implementation of the Bylaw Dispute Adjudication System provided for in the *Local Government Bylaw Notice Enforcement Act*, for the Board's approval.
3. That the Board direct staff to work with Court Services Branch, Ministry of Attorney General to request the Lieutenant Governor in Council of the Province of British Columbia enact a Regulation under Section 29 of the *Local Government Bylaw Notice Enforcement Act*, applying the Act to the Regional District of Nanaimo.

SUMMARY

A Bylaw Dispute Adjudication System is an alternative to the Municipal Ticket (MTI) System for the ticketing of bylaw contraventions, currently used by the Regional District of Nanaimo. Although the two systems can be used together by local government, the Bylaw Dispute Adjudication System was created to provide local governments with the ability to make enforcement of bylaw matters more efficient and less expensive for both the members of the public and the local government. The current MTI system used by the RDN does not support effective and cost efficient compliance or represent best practices in bylaw enforcement. This report provides an outline on the Bylaw Dispute Adjudication System and the benefits of adopting the System.

BACKGROUND

The RDN currently utilizes the Municipal Ticket Information (MTI) system for issuing tickets related to contraventions of regulatory bylaws, with fine amounts ranging from \$50 to \$1,000. Under the MTI system, tickets must be personally served and disputed tickets can only be dealt with in Provincial Court. In the case of the RDN, this means that legal counsel is employed to apply for a hearing date in Provincial Court; liaise with the disputant; direct the collection of evidence from the bylaw enforcement officer and witnesses; serve legal documents and argue the case in Provincial Court before a Judge or Judicial Justice of the Peace.

Local Government bylaw matters are not a priority for the Provincial Court system and are regularly delayed for more serious matters resulting in added costs and inconvenience to witnesses and staff. These delays can be considerable. Bylaw complainants are often reluctant

to give evidence in court for a number of reasons such as lost time from work or fear of retribution. The member of the public who has been ticketed is also inconvenienced. The prosecution of a MTI, whether successful or not, can cost the RDN \$2000 to \$6500 or more in legal fees, depending on the complexity of the file.

Although ticketing for bylaw violations is a tool that is proven to enhance compliance with local government regulations, the current MTI system used by the RDN does not support effective and cost efficient compliance or represent best practices in bylaw enforcement. The requirement for personal service of tickets, the high cost of court prosecutions and the difficulty in collecting fines owing are detriments to the continued use of the MTI System as an enforcement tool.

Bylaw Adjudication System:

In 2003, the Province adopted the *Local Government Bylaw Notice Enforcement Act*, creating a framework for a streamlined non-judicial system for local governments to deal with bylaw ticket disputes. The Act was developed to create a simple, fair and cost-effective system for dealing with minor bylaw infractions through:

- The creation of a Bylaw Notice and an enforcement dispute forum dedicated to resolving local bylaw matters;
- Reduction to the cost and complexity of decision making in that forum;
- Avoidance of unnecessary attendance of witnesses and the involvement of legal counsel;
- Reduction in the length of time required to resolve bylaw ticket disputes;
- Elimination of the requirement for personal service of tickets.

The *Local Government Bylaw Notice Enforcement Act*, and the authority it provides to establish an adjudication system, applies to both municipalities and regional districts by regulation. Local governments and other bodies may make a request to the Ministry of Attorney General to be added, by regulation, to a list of bodies to which the Act applies. Currently, more than 80 jurisdictions in B.C. are using the system. Local governments may join together to administer a Bylaw Dispute Adjudication System jointly to cover a broader geographic area more cost-effectively.

Local governments participating in the Bylaw Dispute Adjudication System must pay its costs. At the same time, the Bylaw Dispute Adjudication System improves local government bylaw contravention enforcement by providing a more accessible venue for determining simple bylaw contraventions. It also reduces the demands on the court system, is less expensive to administer than the court process, and better balances between the amount of the penalty imposed (at a maximum set by regulation, currently at \$500) and the cost of pursuing the bylaw contravention in court. However, the system would not replace the ability of the RDN to pursue more serious matters through injunctive relief or higher fines from the courts where deemed appropriate by the Board.

Notices issued under this system do not require personal service. By way of contrast, the current MTI requires personal service on an individual, which can be difficult to achieve if the person cannot be located. Under the *Local Government Bylaw Notice Enforcement Act*, a Bylaw Notice may be delivered in a variety of fashions including leaving it on a car (parking offences)

or mailing it to the person responsible for the contravention. Unless the Bylaw Notice is delivered in person, it is presumed to have been received, and allowances are made in the event that the person claims not to have received it. This step is a considerable saving of time and effort and reduces delays in the enforcement of bylaw contraventions. Once the Bylaw Notice is received or presumed to be received, it becomes legally effective and the recipient has a fixed period of time in which to take action on it. The person may pay the fine amount or notify the local government that he or she wishes to dispute the allegation. In the event the person does neither, the amount of the Notice will be due and owing.

Screening Officers:

In order to reduce the number of disputed Notices forwarded to adjudication, a local government has the option of establishing one or more screening officers. A screening officer does not need to be a bylaw enforcement officer but should have some familiarity with the bylaws and be available to respond to Bylaw Notice recipients in a timely manner, such as supervisors and managers.

The screening officer has the authority to cancel a Bylaw Notice if he or she believes that the allegation did not occur, or that the required information is missing from the Notice. A screening officer may also be permitted to cancel a Bylaw Notice in other circumstances set out by a local government. A screening officer may conduct the review based on discussion or correspondence with the disputant, and will typically explain the process and potential consequences of dispute adjudication.

For infractions where compliance is the goal, a local government may also authorize a screening officer to enter into a compliance agreement with a person who has received a Bylaw Notice. A compliance agreement will include acknowledgement of the bylaw contravention and may set out remedies or conditions on actions to be taken within a designated period of time, and reduce or waive the fine at the conclusion of that period.

If the screening officer determines that cancellation or a compliance agreement are not possible and the person still wishes to dispute the allegation, the disputant must confirm this and indicate whether he or she plans to appear at the adjudication hearing in person, in writing or by telephone. The disputant is then advised of the date and time of the adjudication.

Adjudication:

Adjudicators under this system are chosen on a rotating basis from a list established by the Ministry of Attorney General. Although the adjudicator is paid by the local government, having them selected by the Province and not the local government, gives credibility to the system that the person making decisions on Bylaw Notices is not appointed or employed by the local government.

At the adjudication hearing, an adjudicator hears from both the disputant and the local government to decide whether he or she is satisfied that the contravention occurred as alleged. When considering the matter, the adjudicator can review documents submitted by either party or hear from the parties or witnesses over the telephone. The function of the adjudicator is strictly to confirm or cancel the Bylaw Notice. The adjudicator has no discretion to reduce or waive the fine amount or jurisdiction to deal with challenges to the bylaw or other legal issues.

The standard of proof for the prosecution of MTIs in Provincial Court follows the criminal scale of beyond a reasonable doubt, whereas the standard of proof under the adjudication system is based on a balance of probabilities (civil scale).

ALTERNATIVES

1. Direct staff to proceed with the preparation of draft bylaws, policies and agreements and to work with the Province to approve the use of the Bylaw Dispute Adjudication System for the Regional District of Nanaimo.
2. Receive the Bylaw Dispute Adjudication System report and take no further action.

FINANCIAL IMPLICATIONS

As outlined above, the cost of prosecuting a disputed MTI in Provincial Court can reach several thousand dollars and is only done in those instances where it serves the public interest to do so and there are limited options available to the RDN to resolve an issue. In the past 3 years the RDN has incurred approximately \$6,500 in legal fees for MTI dispute trials that resulted in fines of less than \$1,000. There is no recourse for recovery of those legal costs in Provincial Court. The high cost of dealing with disputed tickets in court is a disincentive to using MTIs, which reduces the effectiveness of the enforcement of RDN bylaws.

Under the *Local Government Bylaw Notice Enforcement Act*, local governments are responsible for the costs of setting up and administering the Bylaw Dispute Adjudication System within their jurisdictions. The Act also specifies that local governments may join together to administer a Bylaw Dispute Adjudication System jointly to cover a broader geographic area more cost-effectively.

The City of Nanaimo created a Dispute Adjudication Registry System (DARS) and is the “host municipality” for this area, sharing the costs of bylaw adjudication with Duncan, Parksville, Tofino, District of North Cowichan and Port Clements. Staff has confirmed that the RDN can be a party to Nanaimo’s DARS Agreement with an annual fee of up to \$300 per year. By moving to the Bylaw Dispute Adjudication System, the RDN will not have any set up costs associated with the program and would only pay proportionate costs of the fees related to the adjudication. The Act also allows for a \$25 surcharge to be applied to all tickets upheld by the adjudicator to help offset the costs associated to the process.

The Bylaw Dispute Adjudication System creates efficiencies that will save time and money regardless of the number of tickets that are disputed. The primary savings would be realized in not requiring legal council to handle court prosecutions and by eliminating the necessity for staff to expend considerable time attempting to effect personal service of tickets.

STRATEGIC PLAN IMPLICATIONS

The introduction of a Bylaw Dispute Adjudication System supports the Board's focus on the delivery of efficient, effective and economically viable services as well as the opportunity to partner with other local governments in the delivery of services.



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2018.06.22

Reviewed by:

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