

TO: Committee of the Whole **MEETING:** February 12, 2019
FROM: Tom Armet
 Manager, Building & Bylaw Services **FILE:** 3900-20-1786
SUBJECT: Regional District of Nanaimo Bylaw Notice Bylaw No. 1786, 2019

RECOMMENDATIONS

1. That “Regional District of Nanaimo Bylaw Notice Bylaw No. 1786, 2019” be introduced and read three times.
2. That “Regional District of Nanaimo Bylaw Notice Bylaw No. 1786, 2019” be adopted.

SUMMARY

In July 2018, the Regional District of Nanaimo (RDN) Board endorsed the Bylaw Dispute Adjudication System as an alternative to the Municipal Ticket (MTI) System for the ticketing of bylaw contraventions, currently used by the RDN. 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 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. The proposed Bylaw Notice Bylaw will replace the MTI Bylaw as a necessary step in the implementation of the Bylaw Dispute Adjudication System.

BACKGROUND

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. Currently, more than 80 jurisdictions in BC are using the system.

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.

Bylaw 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.

At its regular meeting held July 24, 2018, the Board passed the following motions:

That the Board endorse a Bylaw Dispute Adjudication System.

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.

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.

Staff applied to the Province through the Court Services Branch requesting application of the *Local Government Bylaw Notice Enforcement Act* to the Regional District of Nanaimo. On October 22, 2018, the Province granted approval by way of Order-in-Council No. 568.

Bylaw No. 1786 (Attachment 1) has been prepared for the Board's consideration.

ALTERNATIVES

1. To adopt "Regional District of Nanaimo Bylaw Notice Bylaw No. 1786, 2019"
2. Provide alternate direction to staff.

FINANCIAL IMPLICATIONS

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 total 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 Notice dispute adjudication with neighboring jurisdictions. Staff confirmed that the RDN can use the Nanaimo’s DARS 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 will only pay proportionate costs of the fees related to adjudications. The Act also allows for a \$25 surcharge to be applied to all Bylaw Notices upheld by the adjudicator to help offset the costs associated to the process.

Bylaw Notices and the Bylaw Dispute Adjudication System create 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 and the use of Bylaw Notices 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.



Tom Armet
tarmet@rdn.bc.ca
January 30, 2019

Reviewed by:

- G. Garbutt, General Manager, Strategic & Community Development
- P. Carlyle, Chief Administrative Officer

Attachment:

Proposed Regional District of Nanaimo Bylaw Notice Bylaw No. 1786, 2019