
TO: Electoral Area Services Committee **MEETING:** March 12, 2019

FROM: Tom Armet
Manager, Building & Bylaw Services **FILE:**

SUBJECT: Bylaw Enforcement Overview

RECOMMENDATION

That staff be directed to undertake a review of regulatory services and procedures, and report back to the Board with recommendations to address gaps that may exist in bylaw enforcement in the Electoral Areas as well as cost recovery mechanisms.

SUMMARY

The role of bylaw enforcement is to identify, investigate, mediate and resolve bylaw violations and provide enforcement services to all departments and Electoral Areas within the Regional District of Nanaimo (RDN). The RDN also provides bylaw enforcement to the District of Lantzville by way of service agreement.

RDN Bylaw Officers respond to a wide array of complaints under 26 regulatory categories ranging from routine issues to lengthy and complex investigations and court preparation. The department caseload has steadily increased over the past several years. In 2018, there were 559 cases opened, which is consistent with the past three years and a 75% increase over 2014.

Changes in the composition of communities over time mean that bylaws and enforcement practices need to evolve as well to respond to changing community expectations and conflicts that arise between the different types of land uses and property standards. A brief overview of common regulatory bylaws is provided to illustrate the applicability of bylaws to the Electoral Areas, many of which were enacted the mid-1990s, reflecting community values and standards of the time.

In addition to common complaint types in areas without specific services, complaints in relation to matters outside the RDN's jurisdiction such as cannabis production, traffic, illegal dumping on crown lands and nuisance property abatement are on the rise. These type of complaints generally require some follow-up investigation to determine if the RDN has authority to act or participate in multi-agency approaches.

BACKGROUND

In 1992, the RDN hired two permanent full time bylaw officers to enforce its zoning bylaw and provide operational support to other departments. During the mid-1990s several services were established to regulate noise, property maintenance, outdoor burning and animal control. These regulatory bylaws were developed to reflect community standards of the day and for the most part, have remained unchanged in the past 25 years despite substantial population growth and

changing demographics and community standards. The volume of complaints, community expectations and complexity of investigations has increased significantly over time. The number of permanent full-time bylaw officers has not changed however, a full-time administrative support position was added in 2015 to augment the service delivery, manage files, complaints and information requests. In the latter part of 2018, a temporary bylaw officer was hired to provide capacity to meet the increased workload and service expectations including staff coverage, responding to complaints on the weekend through adjusted service hours.

The following table represents bylaw enforcement cases, including dog control cases for the past five years. A breakdown of the types of cases by Electoral Area is included in this report as attachment #1.

Electoral Area	2014	2015	2016	2017	2018
A	67	89	106	101	83
B	21	45	44	37	31
C	38	91	67	64	61
E	39	65	68	79	88
F	34	78	65	66	74
G	47	93	63	84	95
H	22	68	58	47	61
Lantzville	28	38	30	41	61
Other	23	15	3	4	5
Total	319	582	504	523	559
Dog Control	330	345	497	430	480
Grand Total	649	927	1001	953	1039

At its regular meeting held on February 26, 2019, the Board passed the following motion:

That staff be directed to include an analysis of cost recovery options and related penalties for bylaw infractions in the report being drafted by Building & Bylaw Services for the Board's consideration at a future meeting.

Staff undertook a preliminary review of cost recovery options and confirmed there are mechanisms available to the RDN, which are briefly discussed further in this report.

Overview of Common Regulatory Bylaws:

Animal Control

Animal control in the RDN is specific to the control and licensing of dogs in the Electoral Areas. As this function requires specialized training, equipment and facilities, the RDN contracts the regulatory enforcement to a private company, Coastal Animal Control Services (CACS). Animal control officers employed by CACS are appointed by the RDN Board as Bylaw Enforcement Officers for the purpose of enforcing RDN animal control bylaws.

There are three separate animal control services covering the seven electoral areas as follows:

Electoral Areas A, B, and C and Lantzville – full dog control bylaw however, the enforcement service level is limited to dangerous dog control and pick up of confined stray dogs for up to 18 hours per week. Historically, these Electoral Areas opted for a reduced service level to maintain a lower tax requisition for the service.

Electoral Areas E, G, and H – full dog control and licensing of dogs for up to 30 hours per week.
Electoral Area F – dangerous dog control for up to three hours per week.

Building Regulations

The RDN Building Bylaw provides authority to enforce the BC Building Code in all Electoral Areas. Prior to the expansion of the service in 2010, construction in Areas F, H and some portions of Areas A and C had no regulatory oversight. The current RDN Building Bylaw contains provisions to support the uniqueness of the Electoral Areas such as conditional occupancy for owner-builders, farm building exemptions and the use of site cut timber for residential construction. Bylaw officers conduct follow-up enforcement on non-compliant buildings.

Burning Regulations

Outdoor burning regulations are inconsistent throughout the RDN. The three outdoor burning bylaws are incongruous with Electoral Area boundaries, instead they are specific to three fire protection local service areas; French Creek, Parksville (local) and Extension. These bylaws prohibit clearing and construction waste fires, and limit garden refuse fires between April and October.

Typically, fire department personnel respond in the first instance to burning complaints within service areas and if necessary, refer any follow-up action such as official warnings or ticketing to bylaw enforcement staff. Open burning in all areas outside the three fire protection local service areas falls under the jurisdiction of the Province to enforce the provincial Open Burning Smoke Control Regulation (OBSCR).

Fireworks

Although the RDN does not regulate the sale or discharge of fireworks in the Electoral Areas, it is worth noting that the RDN receives numerous complaints about fireworks, particularly leading up to Halloween and other holidays. It should also be noted that the four RDN member municipalities regulate the sale and discharge of fireworks within their municipal boundaries.

The provincial *Fireworks Act* applies to “School District 68” (encompassing Electoral Areas A, B and C). The sale and discharge of fireworks in those areas is regulated at certain times however, enforcement of the regulations falls under the jurisdiction of the RCMP.

Noise Control

Six separate noise control bylaws apply to Electoral Areas A, B, C, Lantzville (former Area D bylaw), E and G. There are no noise control regulations in Areas F and H. Each noise bylaw has slight variations in prohibitions, specific to the area.

Parks Regulations

Parks regulations apply to all RDN regional and community parks as well as other properties within the parks land inventory. Many of the park regulations are dealt with by RDN Parks staff or contract operators. From time to time, issues requiring more complex investigational steps are referred to bylaw enforcement for follow-up action.

Property Maintenance/Nuisance Properties

The Unsightly Premises Bylaw applies to all electoral areas except Area F. Property maintenance and nuisance property complaints can be extremely challenging for staff to deal with and tend to have significant impacts on nearby properties and residents.

Zoning Regulations

Investigations related to the two RDN zoning bylaws represent approximately 25% of annual case load in six electoral areas. Zoning matters in Electoral Area B fall under the jurisdiction of the Islands Trust. The RDN enforces the District of Lantzville zoning bylaw under contract to the municipality.

Gaps in Regulatory Services:

Changes in the composition of communities over time mean that bylaws and enforcement practices need to evolve, as well to respond to conflicts that arise between the different types of land uses and community expectations. As previously noted, many of the RDNs regulatory bylaws were enacted in the mid-1990s, reflecting community values and standards of the time. For example, the RDN is not able to act on complaints received from residents of Electoral Areas where services such as nuisance properties, outdoor burning, dog control or noise have not been established.

The following table provides a “snapshot” of the common complaint types and the applicability of regulatory bylaws in the Electoral Areas:

Complaint Types	Area A	Area B	Area C	Area E	Area F	Area G	Area H
Animal Control	Partial dog control	Partial dog control	Partial dog control	Full dog control	Limited dog control	Full dog control	Full dog control
Building	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Burning	No	Gabriola Fire ID	Extension FP area only	No	No	Parksville & Fr. Creek FP areas	No
Fireworks	No	No	No	No	No	No	No
Noise	Yes	Yes	Yes	Yes	No	Yes	No
Property Maintenance	Yes	Yes	Yes	Yes	No	Yes	Yes
Zoning	Bylaw 500	Islands Trust	Bylaw 500	Bylaw 500	Bylaw 1285	Bylaw 500	Bylaw 500

In addition to common complaint types in areas without specific services, staff has noted an increase in “out of jurisdiction” complaints related to issues such as cannabis production, traffic, illegal dumping on crown lands, environmental contamination, habitat destruction, wildlife and

hunting/poaching and nuisance property abatement. These type of complaints generally require some follow-up investigation to determine if the RDN has authority to act or participate in a multi-agency approach.

Cost Recovery Options:

The RDN currently utilizes existing legislation to recover some of the costs associated to bylaw enforcement action. This includes ticketing, use of collections agencies and court awarded judgements in the RDNs favor. Cost recovery by these means is relatively small in comparison to the overall cost expended in most cases.

In response to the Board's direction, staff consulted with the RDN solicitor regarding options for cost recovery, particularly in relation to nuisance property abatement and confirmed there are mechanisms available to the RDN. The *Local Government Act* provides regional districts the authority to adopt bylaws to prevent, abate and prohibit a wide range of nuisances, as well as to recover costs of abating nuisances from the person(s) causing or allowing the nuisance. Cost recovery must have some realistic relationship to the cost the RDN actually incurs in providing a service. For instance, municipalities have the ability to charge owners of nuisance properties for the cost of police and fire response, staff time and public works. As the RDN does not pay for policing costs and largely relies on volunteer fire departments, these services do not "cost" the RDN anything (not directly), so they cannot be the subject of cost recovery. The RDN could charge for costs actually incurred such as third party contractor charges, staff time, vehicle and fuel costs that are directly related to a nuisance abatement.

Given the wide range of options available to local government, staff will undertake an analysis of bylaw enforcement cost recovery options and related penalties for bylaw infractions for the Board's consideration at a later date.

The Role of Elected Officials in the Enforcement Process:

In 2016, the B.C. Ombudsperson Office published its *"Bylaw Enforcement Best Practices Guide for Local Governments"*. The guide is designed to provide information and tools to promote fairness in the administration of local government bylaw enforcement.¹

The guide recognizes the challenges faced by elected officials to remain a step removed from the day-to-day enforcement process when they are often the main point of contact for members of the public who have complaints or who have been the subject of enforcement. In those situations it is appropriate to seek assurance that bylaw enforcement staff have fairly responded to a concern. However, it is important to be aware that maintaining separation between elected officials and front-line enforcement staff is essential to an administratively fair bylaw enforcement system. (see attachment #2 – excerpt from the guide).

ALTERNATIVES

1. Direct staff to undertake a review of regular bylaws and procedures to address gaps that may exist in bylaw enforcement services in the electoral areas.
2. Provide alternate direction to staff.

¹ <https://bcombudsperson.ca/documents/bylaw-enforcement-best-practices-guide-local-governments>

FINANCIAL IMPLICATIONS

The cost of bylaw enforcement in the Regional District of Nanaimo is apportioned and charged to the specific service areas in which the costs relate (i.e. noise, animal control, planning). Changes in service levels may have an impact on the tax requisition for the service. Should the Board endorse the staff recommendation, the financial implications of service level adjustments will be included in a future report for the Board's consideration.

STRATEGIC PLAN IMPLICATIONS

Reporting on bylaw enforcement activity and service gaps in the RDN enhances regional governance by providing Area Directors with information on key community issues and trends within each Electoral Area and the region overall.



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March 4, 2019

Reviewed by:

- G. Garbutt, General Manager, Strategic and Community Development and Acting Chief Administrative Officer

Attachments

1. Case breakdown by Electoral Area
2. Excerpt: *Bylaw Enforcement Best Practices Guide for Local Government*