

DATE: November 25, 2021

FILE: 4020-20

TO: Chair and Directors
Comox Strathcona Waste Management Board

Supported by James Warren
Deputy Chief Administrative
Officer

FROM: James Warren
Deputy Chief Administrative Officer

J. Warren

RE: Bylaw Dispute Adjudication System

Purpose

To introduce a Bylaw Dispute Adjudication System (adjudication system) as an alternative for the ticketing of bylaw contraventions, and the required draft ticketing bylaw.

Recommendation from the Deputy Chief Administrative Officer:

THAT the board give first, second, and third reading to Bylaw No. 687 being “Comox Strathcona Waste Management Bylaw Adjudication Ticketing Bylaw No. 687, 2021” attached as Appendix A to the staff report dated November 10, 2021

Executive Summary

The adjudication system is an alternative to the Municipal Ticketing Information System (MTI) for the ticketing of bylaw contraventions, currently used by Comox Strathcona Waste Management (CSWM). The adjudication system allows the enforcement of bylaw matters, to be more efficient and less expensive for both the members of the public and the local government. The current MTI system does not support effective and cost efficient compliance or represent best practices in bylaw enforcement.

At the October 26, 2021 Comox Valley Regional District (CVRD) Board meeting, the CVRD’s adjudication ticketing bylaw received final approval. This was following previous staff reports, presented to the Electoral Areas Services Committee with recommendations that the board endorse the adjudication system, and direct the preparation of bylaws, policies and agreements for the implementation of the adjudication system provided for in the *Local Government Bylaw Notice Enforcement Act*. The CVRD will be able to utilize the adjudication system through their ticketing bylaw, commencing December 1, 2021.

- On July 14, 2021 the CVRD received approval from the Attorney General’s office to join the adjudication program.
- The required CSWM ticketing bylaw is attached as Appendix A for consideration.

With recent implementation of the adjudication system by the CVRD it is now recommended that the CSWM board now also endorse this same method of more efficient bylaw enforcement and ticketing.

Prepared by:

Concurrence:

Concurrence:

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 Services

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Background/Current Situation

In 2003, the Province adopted the *Local Government Bylaw Notice Enforcement Act* (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; and
- The elimination of the requirement for personal service of tickets.

Each local government participating in an adjudication system must pay its own costs. At the same time, the adjudication system improves local government bylaw contravention enforcement by providing a more accessible venue for determining simple bylaw contraventions. It also reduces the demand on the court system, is less expensive to administer than the court process and is a better balance between the amount of the penalty imposed (at a maximum set by regulation, currently \$500) and the cost of pursuing the bylaw contravention in court.

The adjudication system is an alternative to the MTI System for the ticketing of bylaw contraventions, currently used by CSWM. Although the two systems can be used together by local governments, and would not replace the ability of the CSWM to pursue more serious matters through injunctive relief or higher fines from the courts where deemed appropriate by the Board.

Under the MTI system, tickets must be personally served and disputed tickets can only be resolved within Provincial Court. In the case of the CSWM, this means bylaw staff must apply for a hearing date in Provincial Court; liaise with the disputant, direct the collection of evidence from bylaw staff 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. Bylaw complainants are often reluctant to give evidence in court for reasons such as lost time from work or fear of retribution. Although ticketing for bylaw infractions is a tool that is proven to enhance compliance with local government regulations, the requirement for personal service of tickets, the high cost of court prosecutions and the difficulty in collecting fines owing are detriments to the use of the MTI system.

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 they believe that the allegation did not occur or that required information is missing from the notice. A screening officer may also be permitted to cancel a bylaw notice based on discussion or correspondence with the disputant and will typically explain the process and potential consequences of dispute adjudication. Additionally, a local government may also authorize a screening officer to enter into a compliance agreement with a person who has received a bylaw notice based on set conditions.

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 they plan 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. At the adjudication hearing, the adjudicator hears from both the disputant and the local government to decide whether they are 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). The attached flow chart details the bylaw offence notice process (Appendix B).

Policy Analysis

Section 415 of the Local Government Act, RSBC 2015, c. 1, regional districts may enforce a bylaw by bylaw notice and establish a system for so doing in accordance with the Local Government Bylaw Notice Enforcement Act, SBC 2003, c. 60.

Options

1. Provide first and second and third readings;
2. Receive the Bylaw Dispute Adjudication System report and take no further action.

This report supports option 1.

Financial Factors

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 local governments to resolve an issue. 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 deterrent to using MTIs, which reduces the effectiveness of the enforcement of CSWM bylaws.

Under the *Act*, local governments are responsible for the costs of setting up and administering the Adjudication System within their jurisdiction. 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.

Legal Factors

The *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.

Intergovernmental Factors

Bylaw Compliance staff work closely with the RCMP and other local government bylaw staff. The introduction of an adjudication system supports both the CSWM and CVRD 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.

Interdepartmental Involvement

Bylaw Compliance staff has been working closely with CVRD parks, fire, water, CSWM and building staff on the implementation of the bylaw enforcement notices, and set fine amounts. Each department will benefit as enforcement will become more efficient and less expensive. Training and information sessions for each CVRD department that has the ability to ticket through the system. The training will be done in house by bylaw staff.

Citizen/Public Relations

A communication plan has been implemented to assist staff in communicating the execution of the adjudication system. The communication plan will include a website page that depicts the changes, the process and the availability of the system to the public as a means of dispute, as well as the use of social media and a press release. An easy to follow step by step online brochure detailing the new system could be developed similar to ones currently used by other local governments.

Attachments: Appendix A – Draft Bylaw Adjudication Ticketing Bylaw No. 687
Appendix B – Bylaw Offence Notice Flow Chart

COMOX VALLEY REGIONAL DISTRICT

BYLAW NO. 687

A bylaw to allow ticketing through the Bylaw Adjudication Ticketing System

WHEREAS by section 415 of the *Local Government Act*, RSBC 2015, c. 1, regional districts may enforce a bylaw by bylaw notice and establish a system for so doing in accordance with the *Local Government Bylaw Notice Enforcement Act*, SBC 2003, c. 60;

AND WHEREAS by section 1 of the *Local Government Bylaw Notice Enforcement Act*, a regional district may designate as a “Bylaw Enforcement Officer” any person belonging to a class prescribed under section 273(c) of the *Community Charter*;

NOW THEREFORE, the Board of the Comox Valley Regional District in open meeting assembled enacts as follows:

Title

1. This Bylaw No. 687 may be cited as the “Comox Strathcona Waste Management Bylaw Adjudication Ticketing Bylaw No. 687, 2021”.

Interpretation

2. In this bylaw unless the context otherwise requires:

“Act” means *Local Government Bylaw Notice Enforcement Act*, SBC 2003, c. 60.

“Adjudicator” means a person designated under section 14 of the Act and under this Bylaw.

“Bylaw Enforcement Officer” or “Bylaw Officer” means a person designated as such under this bylaw.

“Board” means the Comox Strathcona Waste Management Board.

“Comox Strathcona waste management” means the Comox Strathcona waste management (CSWM) service as delivered and operated by the Comox Valley Regional District (CVRD) and includes the municipal and participating electoral areas as defined under the CSWM service establishment bylaw.

“Disputant” means a person against whom a bylaw notice has been issued, and who has filed a notice of dispute or otherwise requested an adjudication of that bylaw notice.

“Registry” means the Comox Valley Regional District Bylaw Notice Adjudication Registry established pursuant to this bylaw.

“Regional District” means the Comox Valley Regional District

“Screening Officer” means a person appointed to that position under this bylaw.

Application

3. The restrictions and regulations in this bylaw are applicable in each municipality and electoral area within the CSWM service.

Relevant Bylaws

4. The relevant ticketing bylaws that may be enforced by means of a bylaw notice are provided in Schedules 2 and 3 of this bylaw.

Responsibility

5. The designated bylaw compliance officers, for the purposes of the ticketing bylaw as outlined in Schedule 1 of this bylaw, are designated as “Bylaw Enforcement Officers” pursuant to section 1 of the Act for the purpose of enforcing the bylaws listed in Schedule 1 opposite the respective job positions.

Relevant Offences

6. The relevant bylaw offences and bylaw sections are provided in Columns A and B of Schedules 2 and 3 of this bylaw.

Inspection and Entry

7. A bylaw compliance officer is hereby authorized to enter, at all reasonable times, on any property subject to the regulations or direction of the Board, to ascertain whether the regulations or directions of this bylaw are being observed.

Enforcement

8. The enforcement of the provisions within this bylaw occurs in accordance with the Comox Valley Regional District enforcement policy. The bylaws that may be enforced by means of a bylaw notice are listed in Schedule 1 Column A of this bylaw.

Penalty

9. (a) The relevant bylaw fine amounts for the corresponding offences are provided in column C and D of Schedules 2 and 3 of this bylaw.

(b) Any fines recovered under this bylaw are to be paid to the account of the service in respect of which the offence was committed.

(c) Any penalty under Section 9(a) of this Bylaw:
 - i. will be discounted by 25% if that discounted amount is paid in full within 14 calendar days of the bylaw notice being served in accordance with the Act; and
 - ii. will be increased by 25%, or to \$500.00 if the 25% increase would otherwise cause the penalty to exceed \$500.00, if the full amount of the penalty is not paid within the time specified by this bylaw.
 - (d) A person who receives a bylaw notice must, within 14 calendar days:
 - i. pay the penalty associated with the bylaw notice in accordance with that bylaw notice; or
 - ii. request an adjudication of that bylaw notice in accordance with the instructions on that bylaw notice.
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(e) Where a person does not receive notice of a bylaw notice and notifies the Comox Valley Regional District in accordance with section 25 of the Act, the time periods imposed by sections 9(c) and (d) of this bylaw do not begin to run until a copy of the bylaw notice is re-delivered to the person in accordance with the Act.

Registry

10. (a) In accordance with the Act, the Comox Valley Regional District establishes an adjudication system and registry for the purpose of resolving disputes concerning bylaw notices.
- (b) The address of the Registry is 770 Harmston Avenue, Courtenay, British Columbia, or any other address which may be designated by schedule to this bylaw.
- (c) The Registry may set its own rules of procedure in respect of the receipt and processing of bylaw notice disputes, provided those rules do not conflict with the Act.
- (d) A person who disputes a bylaw notice and does not succeed in that dispute must pay the Comox Valley Regional District \$25.00 to recover part of the costs of administering the Registry.
- (e) The Comox Valley Regional District is authorized to enter into, and the Corporate Officer is authorized to execute, the CVRD Bylaw Dispute Adjudication Registry Agreement in accordance with the authority of section 2(4) of the Act.
- (f) Once the CVRD Bylaw Dispute Adjudication Registry Agreement, or any other Bylaw Dispute Adjudication Registry Agreement, is adopted by the Comox Valley Regional District and entered into with the provider of that Dispute Adjudication Registry, that Dispute Adjudication Registry becomes the Registry for the purposes of this Bylaw.

Screening Officer

11. (a) The position of Screening Officer is hereby established.
- (b) The following positions are designated as a Screening Officer:
- i. General Manager, Corporate Services
 - ii. General Manager, Planning and Development Services
 - iii. Manager, Bylaw Services
 - iv. Manager, Planning Services
 - v. Manager, Building Services

Powers, Duties, Functions of Screening Officers

12. The powers, obligations, duties, and functions of Screening Officers include but are not limited to the powers, obligations, duties, and functions under the Act, and also include the following:
- (a) No person may act as a Screening Officer in respect of a bylaw notice if that person:
- i. has issued or signed the bylaw notice;
 - ii. is a complainant in respect of the bylaw notice;
 - iii. is or is reasonably likely to become a witness in respect of that bylaw notice;
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iv. has provided evidence, including documentary evidence, in respect of that bylaw notice.

(b) When requested by the person against whom a contravention is alleged, the Screening Officer must communicate to that person, or that person’s agent, sufficient information regarding:

- i. the nature of the contravention;
- ii. the section of the bylaw contravened;
- iii. the facts underlying the allegation of the contravention;
- iv. the penalty for a contravention, including the fees payable, any potential increased or discounted fees based on early or late payment;
- v. the opportunity to enter into a compliance agreement;
- vi. the opportunity and process to dispute the bylaw notice and proceed to the bylaw notice dispute adjudication system.

(c) To perform the Screening Officer’s powers, obligations, duties, and functions under this bylaw or the Act, a Screening Officer may communicate with:

- i. the Disputant, Disputant’s representative, or a director or officer of the Disputant if the Disputant is a corporation or organization;
- ii. the person who issued the bylaw notice;
- iii. the complainant or complainant’s representative;
- iv. any Comox Valley Regional District staff concerning the contravention alleged, or any other contravention associated with the Disputant.

(d) A Screening Officer may cancel a bylaw notice in accordance with the Act, or in accordance with the process established by the Comox Valley Regional District.

(e) A Screening Officer may prepare and enter into a compliance agreement under the Act with a Disputant, and the Screening Officer may, as part of that process, establish terms and conditions for compliance which the Screening Officer considers necessary or advisable, including time periods for payment of penalties, or to cease or remedy contraventions of any bylaw, including the contravention which gave rise to the Bylaw Notice.

(f) As part of any compliance agreement, a Screening Officer may authorize a reduction of the penalty amount by 50 per cent, which reduction takes effect by the Screening Officer requiring as a term of the compliance agreement a payment of 50 per cent of the penalty which would otherwise be payable had the compliance agreement not been made. If the compliance agreement is rescinded, any payment of this reduced amount will be allocated to the credit of the penalty otherwise owing.

(g) The maximum duration of any compliance agreement is one year.

Schedules

13. For the purposes of this bylaw, Schedules 1 – 3 are attached to and form part of this bylaw.

Forms

14. The Comox Valley Regional District may prescribe forms for the bylaw notice, forms to request an adjudication, or other forms in furtherance of this bylaw, provided the form complies with the Act.

Severability

15. If any provision of this bylaw is held to be invalid by a court of competent jurisdiction, the provision may be severed from the bylaw and such invalidity shall not affect the validity of the remaining portions of this bylaw.
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Schedule 1

Schedule	Column A Bylaw No. / Name	Column B - Designated Bylaw Compliance Officers	Jurisdiction
2	“Comox Strathcona Waste Management Facilities Scavenging and Trespassing Bylaw No. 396, 2015”	Bylaw officer (Comox Valley Regional District, Strathcona Regional District, City of Campbell River , City of Courtenay, Town of Comox, Village of Cumberland, Village of Sayward, Village of Zeballos, Village of Gold River, Village of Tahsis), peace officer	Comox Valley Regional Districts’ Electoral Area ‘A’ (Baynes Sound – Denman / Hornby Islands), Electoral Area ‘B’ (Lazo North) and Electoral Area ‘C’ (Puntledge – Black Creek); Strathcona Regional Districts’ Electoral Area ‘A’ (Kyuquot / Nootka – Sayward), Electoral Area ‘B’ (Cortes Island), Electoral Area ‘C’ (Discovery Inlets – Mainland Inlets) and Electoral Area ‘D’ (Oyster Bay – Buttle Lake), City of Campbell River, City of Courtenay, Town of Comox, Village of Cumberland, Village of Sayward, Village of Zeballos, Village of Gold River, Village of Tahsis
3	Bylaw No. 470 being “Comox Strathcona Waste Management Illegal Dumping Regulation Bylaw No. 270, 2017”	Bylaw officer (Comox Valley Regional District, Strathcona Regional District, City of Campbell River , City of Courtenay, Town of Comox, Village of Cumberland, Village of Sayward, Village of Zeballos, Village of Gold River, Village of Tahsis), peace officer	Comox Valley Regional Districts’ Electoral Area ‘A’ (Baynes Sound – Denman / Hornby Islands), Electoral Area ‘B’ (Lazo North) and Electoral Area ‘C’ (Puntledge – Black Creek); Strathcona Regional Districts’ Electoral Area ‘A’ (Kyuquot / Nootka – Sayward), Electoral Area ‘B’ (Cortes Island), Electoral Area ‘C’ (Discovery Inlets – Mainland Inlets) and Electoral Area ‘D’ (Oyster Bay – Buttle Lake), City of Campbell River, City of Courtenay, Town of Comox, Village of Cumberland, Village of Sayward, Village of Zeballos, Village of Gold River, Village of Tahsis

Schedule 2**Bylaw No. 396 – 'Comox Strathcona Waste Management Facilities Scavenging and Trespassing Bylaw No. 396, 2015'**

Column A Offence	Column B Bylaw section no.	Column C Reduced Fine Amount if Paid Within 14 Days	Column D Amount of Fine
Removing municipal solid waste from designated facility	4(1)	\$375.00	\$500.00
Trespass upon designated facility	4(2)	\$375.00	\$500.00
Depositing items contrary to CSWM regulations & posted signage	4(3)	\$375.00	\$500.00

Schedule 3**Bylaw No. 470 – 'Comox Strathcona Waste Management Illegal Dumping Regulation Bylaw No. 470, 2017'**

Column A Offence	Column B Bylaw Section No.	Column C Reduced Fine Amount if Paid Within 14 Days	Column D Amount of Fine
Deposit, discard or abandon any garbage, waste, organics, recyclable material, large items, or prohibited material within the boundaries of the Comox Strathcona Waste Management Service area	3(1)	\$375.00	\$500.00
Fail to manage any garbage, waste, organics, recyclable material, large items or prohibited material that is generated from the owner's property	3(2)	\$375.00	\$500.00

New Bylaw Dispute Adjudication System

STEP 1

Pay or Dispute a Bylaw Notice



- Upon receipt pay Notice or dispute within 14 days to the CVRD
- Dispute by filling out form on back of Notice
- Deliver to CVRD office or bylawenforcement@comoxvalleyrd.ca

STEP 2

Dispute Process

- If disputed, a screening officer will contact you to review details
- Screening officer will either confirm or cancel the Notice
- If Notice is upheld you are offered a choice:
 - Pay full amount of fine (not eligible to discounted amount)
 - Enter into compliance agreement (when applicable)
 - Request bylaw dispute adjudication hearing



STEP 3

Adjudication Hearing

- A dispute coordinator will contact you with date, time and location of hearing (either in person, phone/video, or in writing)
- An independent adjudicator will determine if the bylaw offence occurred or not
- Offence did not occur, the Notice will be cancelled
- Offence occurred, the Notice will stand and a \$25 adjudication fee along with full fine amount will be required

