

DATE: March 24, 2021

FILE: 4020-01

TO: Chair and Directors
Electoral Areas Services Committee

FROM: Russell Dyson
Chief Administrative Officer

Supported by Russell Dyson
Chief Administrative Officer

R. Dyson

RE: Bylaw Dispute Adjudication System

Purpose

To introduce a Bylaw Dispute Adjudication System (BDAS) as an alternative to the current Municipal Ticket Information (MTI) System for the ticketing of bylaw contraventions.

Recommendation from the Chief Administrative Officer:

THAT the Board endorse a Bylaw Dispute Adjudication System and 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*;

AND THAT the Board direct staff to work with the Court Services Branch of the Ministry of Attorney General to request the Lieutenant Governor in Council of the Province of British Columbia to enact a regulation under Section 29 of the *Local Government Bylaw Notice Enforcement Act* (Act), to apply the Act to the Comox Valley Regional District.

Executive Summary

The BDAS is an alternative to the MTI System for the ticketing of bylaw contraventions, currently used by the Comox Valley Regional District (CVRD). Although the two systems can be used together by local governments, the BDAS 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 CVRD does not support effective and cost efficient compliance or represent best practices in bylaw enforcement. This report provides an outline on the BDAS and the benefits of adopting the system.

Prepared by:

M. Dinesen

Michael Dinesen
Bylaw Compliance Officer

Concurrence:

A. Yasinski

Amanda Yasinski
Manager of Bylaw
Compliance

Concurrence:

A. Mullaly

Alana Mullaly
General Manager of
Planning and Development

Background/Current Situation

The CVRD currently utilizes the MTI system for issuing tickets related to contraventions of regulatory bylaws, with fine amounts ranging from \$100 to \$1000. Under the MTI system, tickets must be personally served and disputed tickets can only be resolved within Provincial Court. In the case of the CVRD, 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.

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; and
- The elimination of the requirement for personal service of tickets.

The Act, and the authority it provides to establish an adjudication system, applies to both municipalities and regional districts by regulation. Currently, more than 125 jurisdictions in BC are using BDAS including the Town of Comox.

Each local government participating in BDAS must pay its own costs. At the same time, BDAS 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. However, BDAS would not replace the ability of the CVRD 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. The current MTI requires personal service on an individual, which can be difficult to achieve if the person cannot be located. Under the 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 savings 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 (14 days). 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 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.

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 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. 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, 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 A).

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. 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 CVRD;
2. Receive the Bylaw Dispute Adjudication System report and take no further action.

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 CVRD 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 CVRD bylaws.

Under the *Local Government Bylaw Notice Enforcement Act*, local governments are responsible for the costs of setting up and administering the BDAS within their jurisdiction (an annual fee of up to \$300 per year). The Act specifies that local governments may join together to administer a BDAS jointly to cover a broader geographic area more cost-effectively. 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 Town of Comox has recently received approval to issue bylaw enforcement notices and the City of Courtenay and Village of Cumberland are in the early stages of the process as well. The possibility exists for combining adjudication costs with these municipalities.

BDAS 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 counsel to handle court prosecutions and by eliminating the necessity for staff to expend considerable time attempting to effect personal service of tickets and attend Provincial Court.

Legal Factors

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.

Intergovernmental Factors

Bylaw staff work closely with the RCMP and other local government bylaw staff. The introduction of a BDAS 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.

Interdepartmental Involvement

To implement the adjudication system, bylaw staff will work closely with CVRD parks, fire, water, Comox Strathcona waste management (CSWM) and building staff on the delivery and administration of the bylaw enforcement notices. Each department will benefit as enforcement will become more efficient and less expensive. 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. Bylaws would be required to be amended for use in ticketing for parks, water, building, planning, animal control and CSWM.

Citizen/Public Relations

A communication plan will be 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.

Attachments: Appendix A – Bylaw Offence Notice Flow Chart

Appendix A

