

DATE: July 5, 2019

FILE: 0540-20/Sewage

TO: Chair and Directors
Committee of the Whole

FROM: Russell Dyson
Chief Administrative Officer

Supported by Russell Dyson
Chief Administrative Officer

R. Dyson

RE: Electoral Area B Participation on Sewage Commission

Purpose

To provide information regarding the participation of the Director for Electoral Area B (Lazo North) on the Comox Valley Sewage Commission.

Recommendation from the Chief Administrative Officer:

1. THAT the matter of Electoral Area B participation on the Sewage Commission be referred to the Sewage Commission for further consideration of the requested amendment to Bylaw No. 650;

AND FURTHER THAT the Board advise the Sewage Commission of its desire to act on such recommendation or through subsequent consideration as part the Utilities Governance Study.

Executive Summary

- On June 25, 2019, the Comox Valley Regional District (CVRD) Board received a delegation from Jenny Steel of the Curtis Road Residents Association requesting an amendment to Bylaw No. 650 being “Sewage Commission Bylaw, 1983” to afford the Electoral Area B Director membership on the Sewage Commission and voting rights respecting decisions concerning the selection and procurement of operating equipment. This was identified by the delegation as an interim measure pending the results of the CVRD’s ongoing Utilities Governance Study.
- Bylaw No. 2541 being “Comox Valley Sewerage Service Establishment Bylaw No. 2541, 2003” and Bylaw No. 650 being “Sewage Commission Bylaw, 1983” together establish the service, delegate the administration and operation of the sewage interception, treatment and disposal function to the Sewage Commission and specifies the Commission’s membership and voting entitlements.
- Membership and voting entitlements respecting regional district services are most commonly based on service participation and population/contribution levels but provincial legislation does not preclude customized governance arrangements for operating services.
- The Sewage Commission has the independent authority to enact policy inviting time-limited and/or topic-specific participation from interested parties in a non-voting/observer capacity, however, appointments that are intended to be ongoing lasting arrangements should be done through an amendment to Bylaw No. 650.
- Only the CVRD Board has the legislative power to adopt, amend and repeal bylaws, however, the *Local Government Act* restricts the voting on such matters to the service participants when it respects the administration and operation of a service.

- As Bylaw No. 650 concerns the administration of the sewage interception, treatment and disposal service, only the directors for the service participants, that being the City of Courtenay and Town of Comox may vote, using their assigned weighted votes, on all resolutions and every reading respecting the adoption, amendment or repeal of Bylaw No. 650.
- Qualifying any voting or non-voting appointment to certain topics is not recommended as the interpretation of such arrangements is foreseen to be a challenge and could be interpreted in differing ways; this could lead to disputes.

Prepared by:

Concurrence:

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 Services

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Stakeholder Distribution (Upon Agenda Publication)

Sewage Commission	✓
Curtis Road Residents Association	✓

Background/Current Situation

At the June 25, 2019 regular meeting, the Comox Valley Regional District (CVRD) Board received a delegation from Jenny Steel of the Curtis Road Residents Association requesting an amendment to Bylaw No. 650 being “Sewage Commission Bylaw, 1983” to afford the Electoral Area B Director membership on the Sewage Commission and voting rights respecting decisions concerning the selection and procurement of operating equipment. This was identified by the delegation as an interim measure pending the results of the CVRD’s ongoing Utilities Governance Study.

The request of the delegation follows consideration by the Sewage Commission of similar requests and informational reports pertaining to this matter which were received at their April 16, May 14 and June 11, 2019 meetings. It is noted that at the June 11, 2019 meeting of the Sewage Commission, the following motion was defeated by the members:

“THAT the Sewage Commission permit the Director for Electoral Area B to participate as a non-voting member on all matters related to odour issues from the Comox Valley Water Pollution Control Centre and sewage infrastructure located in Area B until such time as this topic is considered through the Utilities Governance Study.”

In 2018, the Comox Valley Regional District (CVRD) developed a report on Utilities Governance for the Comox Valley Water Committee and the Sewage Commission. The report included options that could improve or address concerns identified during the research that was undertaken to develop the report. Such concerns included political interference, who is at the table, voting/voice in decisions, technical expertise and oversight, accountability, trust and confidence. Recommendations concerning the request to include the Director for Electoral Area B on the Sewage Commission is expected later in 2019 through a follow up report on the Utilities Governance Study.

Sewage Commission Bylaw No. 650 (Appendix A) establishes the Sewage Commission and provides for, amongst other matters, its membership, voting entitlements and the authorities delegated to it by the Comox Valley Regional District (CVRD) Board for the administration and operation of the

service. Bylaw No. 2541 (Appendix B) is the service establishment bylaw and describes the service, its boundaries, participants, cost recovery methods and maximum property tax requisition.

While membership and voting entitlements respecting regional district services are most commonly based on service participation and population/contribution levels, provincial legislation does not preclude customized governance arrangements for operating such services. In fact, the *Local Government Act* specifically enables such arrangements for bodies established for the administration and operation of services. This is reflected in the current makeup of both the Comox Valley Sports Centre Commission and the Sewage Commission in which in addition to the formal participating areas, School District No. 71 and the Department of National Defense are respectively provided membership and voting rights based on their current and past contributions to those services.

The CVRD's governance framework utilizes committees and commissions as dedicated forums for the consideration of policy issues and service-related decisions. In certain instances, the board has lawfully fettered their discretion to another body, such as the Sewage Commission, to generally administer and operate a service. While the CVRD Board ultimately maintains the legislative authority concerning bylaws, it consistently relies on its committees and commissions for recommendations to guide its decisions and actions concerning bylaws and other matters outside of their authority.

Respecting the request of the Curtis Road Residents Association, adding the Electoral Area B Director as a voting member of the Sewage Commission may only be achieved through an amendment to Bylaw No. 650 or through an amendment to Bylaw No. 2541 and then a subsequent amendment to Bylaw No. 650. This latter option is noted as only being applicable through a formal extension of the service area to include Electoral Area B or portions thereof. As the provision of wastewater conveyance and treatment services within Electoral Area B has not been requested or contemplated this would necessitate significant engagement within the community and a detailed analysis if it were to be pursued.

While qualifying a potential appointment to only those decisions concerning the selection and procurement of operating equipment is technically feasible, staff would not recommend this as the interpretation of such arrangements is foreseen to be a challenge that could lead to future disputes. For instance, the Sewage Commission considers the annual operating and capital budgets as part of a consolidated financial plan which includes allocations respecting wages and salaries, user rates and procurement of operating and capital equipment. This and other similar decisions would be problematic to distinguish the voting rights as they include matters within and outside of the requested scope. Further, including a time limit in respect the appointment is also feasible but not recommended given the process required to amend the bylaw and the view that governance structures should be flexible but stable arrangements.

Given the above considerations, if a voting entitlement is considered, staff are suggesting that the voting entitlement not be qualified by any specific topics or timeframe.

It is noted that while the CVRD Board has the authority concerning Bylaw No. 650, the Sewage Commission may enact policy inviting time-limited and/or topic-specific participation from interested parties in a non-voting/observer capacity, however, appointments that are intended to be ongoing lasting arrangements should be done through an amendment to Bylaw No. 650.

Policy Analysis

The *Local Government Act*, Part 6, Division 3 (Voting and Voting Rights) provides for special voting rules for regional districts to reflect voting entitlement and vote weighting concerning all resolutions and bylaws.

The legislation generally provides that on all resolutions and every reading and the adoption, amendment or repeal of all bylaws respecting the administration and operation of a service, each director who is present and who represents a participating area for the service is entitled to vote, and subject to the establishing bylaw for the service, has the specific of number of votes assigned to that director based on the population of the jurisdiction the director represents. As Bylaw No. 650 is not the service establishment bylaw and concerns the administration of the sewage interception, treatment and disposal service, only the directors for the service participants, that being the City of Courtenay and Town of Comox may vote, using their assigned weighted votes, on all resolutions and every reading respecting the adoption, amendment or repeal of Bylaw No. 650.

Options

Options available to the board are as follows:

1. Refer the matter back to the Sewage Commission for further consideration of a potential recommendation concerning an amendment to Bylaw No. 650;
2. Direct staff to bring forward an amendment to Bylaw No. 650 to add the Electoral Area B Director as a voting or non-voting member;
3. Provide no direction at this time and await further information concerning this matter as part of the Utilities Governance Study;
4. Direct staff to provide additional information concerning this topic. This direction would need clear instruction from the committee to focus the additional research.

Option 1 is recommended.

Financial Factors

In accordance with Bylaw No. 236 being “Comox Valley Regional District Remuneration and Expenses Bylaw 2012” directors are provided with remuneration and expense reimbursement for meeting attendance. In the case of the Sewage Commission, \$75 is paid for each meeting attended by appointed members.

If the Electoral Area B Director were to be appointed as either a voting or non-voting member through an amendment to Bylaw No. 650, the director would be entitled to such meeting remuneration with the funds being provided from the Comox Valley Sewage System, Function 335-336. Staff have estimated that the annual remuneration and expenses at approximately \$1000.

Legal Factors

None.

Regional Growth Strategy Implications

While the CVRD Regional Growth Strategy (RGS) does not have a specific policy area associated with governance of the Sewage Commission, it does consider the important connection between sewer infrastructure and the local environment and land use planning within the Comox Valley.

Intergovernmental Factors

CVRD staff are working with municipal staff to determine recommendations that are to be presented later this summer regarding the Utilities Governance Study. These recommendations will include consideration of the interests of Electoral Area B and other jurisdictions.

Interdepartmental Involvement

This report has been developed by the Corporate Services branch.

Citizen/Public Relations

Although the current governance structure provides no formal representation on the commission, engagement with the Sewage Commission by local residents and the elected area representative is generally facilitated through direct staff engagement, delegations to commission meetings and correspondence. In addition, the Sewage Commission has engaged in dialogue in the recent past through public meetings, open houses and workshops where the attendance and participation of Electoral Area B residents has been specifically invited. Membership has also been provided on the current Liquid Waste Management Plan Public Advisory Committee for Area B residents and the Electoral Area B Director.

Attachments: Appendix A - “Bylaw No. 650 being “Sewage Commission Bylaw, 1983”
Appendix B – “Bylaw No. 2541 being “Comox Valley Sewerage Service
Establishment Bylaw No. 2541, 2003”



Comox Valley Sewage
Commission Bylaw

The following is a consolidated copy of the Comox Valley sewage commission bylaw and includes the following bylaws:

Bylaw No.	Bylaw Name	Adopted	Purpose
650	Sewage Commission Bylaw, 1983	December 14, 1982	A bylaw to establish a sewage commission

This bylaw may not be complete due to pending updates or revisions and therefore is provided for reference purposes only. THIS BYLAW SHOULD NOT BE USED FOR ANY LEGAL PURPOSES. Please contact the corporate legislative officer at the Comox Valley Regional District to view the complete bylaw when required.

COMOX VALLEY REGIONAL DISTRICT
BYLAW NO. 650

A bylaw to establish a sewage commission

WHEREAS, on the 11th day of January, 1979, the Regional District of Comox-Strathcona was granted supplementary Letters Patent for Sewage Interception, Treatment and Disposal ;

AND WHEREAS, the Corporation of the City of Courtenay and the Town of Comox are participating member municipalities pursuant to the function of Sewage Interception, Treatment and Disposal;

AND WHEREAS, the Regional District of Comox-Strathcona has secured all permits, authorities and necessary financing in the name of the Regional District of Comox-Strathcona to allow the construction of Sewage Interception, Treatment and Disposal facilities;

AND WHEREAS, it is deemed appropriate to create a Sewage Commission to oversee the operation and maintenance of the Sewage Interception, Treatment and Disposal facilities;

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

1. There shall be and is hereby established, a Sewage Commission hereinafter referred to as the Commission.
2. The number of voting members comprising the Commission shall total seven (7) appointed as follows:
 - (a) three (3) members of the Municipal Council of the Corporation of the City of Courtenay, appointed by the said Council, one of whom shall represent the said Council on the Board of Directors of the Regional District of Comox-Strathcona ;
 - (b) three (3) members of the Municipal Council of the Town of Comox appointed by the said Council, one of whom shall represent the said Council on the Board of Directors of the Regional District of Comox-Strathcona;
 - (c) one (1) member appointed by the Department of National Defence (DND).
3. The Commission shall from its members, at the first meeting and thereafter at the first meeting of each year, elect a Chairman who shall hold office until his successor has been elected.
4. Upon the death or resignation of the Chairman, the Commission shall elect a successor to complete the term.
5. The Commission shall adopt its own rules of procedure not inconsistent with this by-law.
6.
 - (a) A quorum is a majority of the members of the Commission.
 - (b) A decision of the Commission shall be made by a majority of the members present at the meeting.
 - (c) The Chairman or any two members may call a meeting of the Commission upon giving at least seven (7) days notice to each member.
 - (d) Notice may be waived by consent of a majority of all the members.

7. The Senior Administrative Officer of the Regional District of Comox-Strathcona, or his deputy, shall be the Secretary of the Commission.
8. The Manager of the Sewage Interception, Treatment and Disposal facilities shall be appointed by the Regional District of Comox-Strathcona in accordance with the Waste Management Act.
9. With respect to the operation and maintenance of the Sewage Interception, Treatment and Disposal facilities, the following administrative powers are delegated to the Commission:
 - (a) determining the amount of manpower employed for the Sewage Interception, Treatment and Disposal facilities;
 - (b) determining rates to be charged for handling septic tank effluent in conjunction with Sewage Interception, Treatment and Disposal facilities;
 - (c) determining rates to be charged for any compost material produced by the Sewage Interception, Treatment and Disposal facilities;
 - (d) selection and procurement of operating and maintenance equipment used in conjunction with Sewage Interception, Treatment and Disposal facilities;
 - (e) administration of the "Sewer Regulation By-law", including penalties and offences.
10. Notwithstanding the provisions of the Municipal Act or Division XXXV of the Letters Patent of the Regional District of Comox-Strathcona, any proposal for the expansion of facilities and/or use of facilities related to Sewage Interception, Treatment and Disposal for any purpose whatsoever, shall be considered by the Commission and the Regional District Board shall be advised of those considerations.
11. Notwithstanding the provisions of the Municipal Act, the Commission may from time to time, recommend to the Regional Board of the Regional District of Comox-Strathcona, by-laws and amendments thereto for the disposition of any debt retirement funds which may be available to the function of Sewage Interception, Treatment and Disposal.
12.
 - (a) At its first meeting of each year, the Commission shall prepare and adopt an estimate of expense of the Commission for that year, which estimate shall be submitted to the Board of the Regional District of Comox-Strathcona for consideration and inclusion in the annual budget of the Regional District of Comox-Strathcona.
 - (b) The Commission shall not incur any expense in excess of the amount appropriated therefore by the Regional District Board.
13. This by-law is effective January 1, 1983.
14. This by-law may be cited for all purposes as "Sewage Commission By-law, 1983."



**COMOX VALLEY SEWAGE
SERVICE ESTABLISHMENT
BYLAW**

The following is a consolidated copy of the Comox Valley sewage service establishment bylaw and includes the following bylaws:

Bylaw No.	Bylaw Name	Adopted	Purpose
2541	Comox Valley Sewage Service Establishment Bylaw No. 2541, 2003	May 26, 2003	A bylaw to convert the function of sewage interception, treatment and disposal to a service
408	Comox Valley Sewage Service Establishment Bylaw No. 2541, 2003, Amendment No. 1	May 31, 2016	To amend the service establishing bylaw for the Comox Valley sewage service to enable the provision of sewer services to K'ómoks First Nation Indian Reserve No. 1 and 2 and to HMCS Quadra

This bylaw may not be complete due to pending updates or revisions and therefore is provided for reference purposes only. THIS BYLAW SHOULD NOT BE USED FOR ANY LEGAL PURPOSES. Please contact the corporate legislative officer at the Comox Valley Regional District to view the complete bylaw when required.

COMOX VALLEY REGIONAL DISTRICT

BYLAW NO. 2541

A Bylaw to Convert the Function of Sewage Interception, Treatment and Disposal to a Service

WHEREAS by Supplementary Letters Patent (Division XXXV) dated the 11th day of January, 1979, the Regional District was given the power to establish the function of acquiring, construction, equipping, upgrading and maintaining sewage interception, treatment and disposal facilities within the City of Courtenay and the Town of Comox;

AND WHEREAS by an amendment to the Supplementary Letters Patent dated January 14, 1982, defined areas of Electoral Areas 'A', 'B' and 'C' were included within the sewage interception, treatment and disposal function for the purpose of permitting the Board impose development cost charges within those defined areas;

AND WHEREAS the Regional Board has never adopted a bylaw defining any areas of Electoral Areas 'A', 'B' or 'C' for the purpose of participation in this service;

AND WHEREAS the Regional Board has, by resolution passed the 29th day of January, 2002, agreed to accept septage generated from within Electoral Areas 'A' 'B', 'C' and 'K';

AND WHEREAS the Regional Board wishes to convert the supplementary Letters Patent to a Service under Section 774(3) of the Local Government Act and to amend the Service to include provisions for cost-sharing between the Participating Areas;

AND WHEREAS Councils of the Town of Comox and the Corporation of the City of Courtenay have consented to the adoption of this Bylaw;

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

1. Service

- a) The function of sewage interception, treatment and disposal established by Supplementary Letters Patent dated the 11th day of January, 1979 (Division XXXV – Sewage Interception, Treatment and Disposal) as amended by Supplementary Letters Patent dated the 14th day of January 1982 is converted to a service to include septage disposal and biosolids composting facilities and shall be known as the "Comox Valley Sewerage Service" (the "Service").
- b) The service includes the supply of sewage interception, treatment and disposal by way of agreement between the regional district or a participating area and a third party. Any such agreements between a participating area and a third party must be approved by the regional district.

2. Boundaries

The boundaries of the Service Area shall be coterminous with the boundaries of the Town of Comox and the Corporation of the City of Courtenay.

3. Participating Areas

The participating areas for the service are the Town of Comox and the City of Courtenay.

4. Cost Recovery

- a) property value taxes imposed in accordance with Division 4.3 of Part 24 of the Local Government Act;
- b) fees and charges imposed under section 797.2 of the Local Government Act;

- c) revenues raised by other means authorized by the Local Government Act or another Act; and
- d) revenues received by way of agreement, enterprise, gift, grant or otherwise.

5. Maximum Requisition

In accordance with section 800.1(1)(e) of the Local Government Act, the maximum amount that may be requisitioned annually for the cost of the Service is the amount that may be raised by a property value tax rate of Three Dollars (\$3.00) per one thousand (\$1,000) dollars applied to the net taxable value of lands and improvements for general purposes.

6. Apportionment

The costs of the Service shall be apportioned between the Participating Areas on the basis of the metered volume of sewage flows from each municipality relative to the total volume of combined sewage flows at the Comox Valley Water Pollution Control Centre during the previous calendar year.

7. Repeal

Bylaw No. 666 being "Sewage Interception, Treatment and Disposal Cost Apportionment Bylaw 1983" is hereby repealed.

8. Citation

This Bylaw may be cited for all purposes as "Comox Valley Sewerage Service Establishment Bylaw No. 2541, 2003".