



STAFF REPORT TO COMMITTEE

DATE OF REPORT January 9, 2024
MEETING TYPE & DATE Electoral Area Services Committee of February 7, 2024
FROM: Inspections and Enforcement Division
Land Use Services Department
SUBJECT: Bylaw Dispute Adjudication System
FILE: 3900-30 4544

PURPOSE/INTRODUCTION

The purpose of this report is to introduce the Bylaw Dispute Adjudication System (BDAS) as an alternative to the current Municipal Ticket Information (MTI) system for the ticketing of bylaw contraventions by means of a Bylaw Offence Notice (BON).

RECOMMENDED RESOLUTION

That it be recommended to the Board:

1. That staff prepare 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.
2. That staff work with the Justice 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*, to apply the *Act* to the Cowichan Valley Regional District.

BACKGROUND

In 2003, the Province adopted the *Local Government Bylaw Notice Enforcement Act*, providing an alternative approach for processing and resolving minor bylaw infractions.

Under the *Act*, a local government 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. Local governments must then establish a bylaw dispute adjudication system via enacting a Bylaw Offence Notice Enforcement Bylaw. The system was created to provide local governments with the ability to make enforcement of bylaw matters more efficient and less expensive for both members of the public and the local government. To establish a BDAS, a local government must pass a bylaw that designates which bylaw contraventions may be dealt with; establishes the amount of the penalty; establishes the period for paying or disputing a bylaw notice and whether or not early payment discounts and/or late payment surcharges will apply; and establishes a bylaw notice dispute adjudication system to resolve disputes in relation to bylaw notices.

The process begins with the issuance of a BON whereas the person has the option to either pay the Notice or dispute it. If a dispute is not filed within 14 calendar days upon receipt of the BON the Notice is in effect, undisputable and the fine is owing. If disputed, the Notice is assigned to a Screening Officer who will contact the person to review the details of the dispute. The Screening

Officer will either confirm or cancel the Notice based on the Bylaw Offence Notice screening policy. The Screening Officer is established to reduce the number of disputed Notices forwarded to adjudication. If the Screening Officer determines that the Notice will be upheld, the disputant will be offered the choice of:

- Paying the full amount of the fine and not eligible for the discounted amount.
- Potentially entering into a compliance agreement, which establishes terms and conditions for compliance, including time periods for payment of penalties and plans to cease or remedy the bylaw contravention(s) that resulted in the issuance of a BON. As a term of the agreement, the Screening Officer may authorize a reduction of the prescribed penalty by 50%.
- Requesting a bylaw adjudication hearing.

If an adjudication hearing is requested, a dispute coordinator will contact the disputant to set a date, time and location of a hearing. At the hearing, an independent adjudicator will determine if the bylaw offence occurred or not. Adjudicators are chosen from a list established by the Ministry of Attorney General independent from local government and that provides credibility to the system in respect that the adjudicator making the decisions regarding the dispute on the Notice is not appointed or employed by the local government. If the adjudicator determines the offence occurred, the full fine amount plus an additional \$25 adjudication fee will be added.

Currently, there are 117 local governments within BC participating in the BDAS, this list includes the City of Duncan (2006), the Municipality of North Cowichan (2017) and the Regional District of Nanaimo (2018).

The Cowichan Valley Regional District (CVRD) Bylaw Enforcement Service Review Report dated June 2022, suggested the CVRD should consider establishing a BDAS and make use of BONs. The report cited the ease of ticket issuance, compatibility with the existing voluntary compliance ethos and ease and cost-effectiveness of prosecution.

ANALYSIS

The CVRD currently uses the MTI system for issuing tickets for contraventions of regulatory bylaws, CVRD MTI fines range from \$100 up to \$1,000. Under the MTI system, tickets must be served personally and disputed tickets must be heard in a Provincial Court. Initiating formal court proceedings can be costly and time consuming. Generally, Officers will act as the prosecution which entails preparing evidence for court; applying for a hearing date; liaising with the alleged offender and possibly the complainant; and serving legal documents and appearing before a Judge to present the case.

Two main features of the BDAS are a simple ticketing process for initiating enforcement and a locally managed venue for a non-judicial adjudicator to hear ticket disputes. Notices 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. A BON may be delivered by leaving it on a vehicle or mailing it to the person responsible for the contravention. The adjudication system essentially: simplifies the dispute process, is more convenient for disputants because attendance at an adjudication hearing is not mandatory, removes bylaw violations from the Provincial court system, reduces ticket dispute time, reduces the need to employ lawyers or enforcement Officers to take a case to court as it better balances the amount of the penalty imposed (maximum set by regulation \$500) to the cost of pursuing the bylaw contravention in court and so is a more cost-effective and efficient system. The implementation of a BDAS may also encourage voluntary compliance through Screening Officers who are empowered to create compliance agreements with reduced or cancelled fines and that it

may strengthen the focus of voluntary compliance by providing an option in cases where warnings are deemed insufficient to affect behavioral change.

Recommendation

Consistent with the CVRD Strategic Plan 2023-2026, staff recommend that the Board direct staff to consult with the Province of BC and prepare bylaws, policies and agreements to implement a BDAS.

FINANCIAL CONSIDERATIONS

Under the *Local Government Bylaw Notice Enforcement Act*, local governments are responsible for the costs associated with implementing and administering the BDAS within their jurisdiction.

The *Act* also specifies local governments may join together to administer a BDAS jointly to cover a broader geographic area. The *Act* allows for a \$25 surcharge to be applied to all Notices upheld by the adjudicator to help offset the costs associated with the process.

The City of Nanaimo has created a Dispute Adjudication Registry System (DARS) and is the “host” municipality for this area sharing costs with the City of Duncan, Municipality of North Cowichan, the City of Parksville, the Regional District of Nanaimo and other island local governments. Based on multiple, local government agreements with Nanaimo DARS, there is an Annual Membership Fee – Fee Level 3 of \$300 (based on a population level greater than 25 000); \$25 per bylaw notice dispute resulting in a hearing which, if the disputant is unsuccessful in adjudication, will be payable to the local government; and a percentage of the adjudicator’s costs based on a proportionate cost of time each local government which is currently based at \$585 per full day.

The BDAS creates efficiencies that will save time and money regardless of the number of Notices that are disputed. Primary savings are associated with staff time, and possibly acquiring legal counsel, associated with administering and prosecuting MTI’s in a Provincial court.

COMMUNICATION CONSIDERATIONS

A communication plan would need to be implemented to assist staff in communicating the execution of the adjudication system to the public. Within the plan, the bylaw enforcement website will need to be updated to capture and explain the implemented adjudication system, the associated processes and availability of the system as a means of dispute to inform all residents within the CVRD. Other media should be considered to be updated to further convey the implementation of the adjudication system to the public.

STRATEGIC/BUSINESS PLAN CONSIDERATIONS

CVRD Strategic Plan 2023 – 2026

Strategic Objective 6.10 – Implement the Local Government Bylaw Dispute Adjudication System

Organizational Values: Service Driven

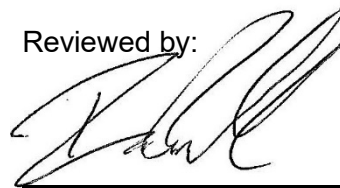
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- ☐ Community Services *(Cowichan Community Centre, Cowichan Lake Recreation, South Cowichan Recreation, Arts & Culture, Facilities & Transit)*
 - ☐ Corporate Services *(Finance, Human Resources, Information Technology, Legislative Services)*
 - ☐ Operations *(Utilities, Parks & Trails, Recycling & Waste Management)*
 - ☐ Land Use Services *(Community Planning, Strategic Initiatives, Development Services, Building Inspection & Bylaw Enforcement)*
 - ☐ Strategic Services *(Communications & Engagement, Economic Development, Emergency Management, Environmental Services)*

Prepared by:



Rob Harris
Manager

Reviewed by:



Ian MacDonald, RBO
Senior Manager



Ann Kjerulf, MCP, RPP, MCIP
General Manager

Reviewed for form and content and approved for submission to the Committee:

Resolution:

☒ Corporate Officer

Financial Considerations:

☒ Chief Financial Officer

ATTACHMENTS:

Attachment A – Flowchart: Bylaw Notice Enforcement and Adjudication Process