

Report to Council



Date: December 7, 2020
To: Council
From: City Manager
Subject: Southern Interior Bylaw Adjudication Report to Council 2020
Department: Bylaw Services

Recommendation:

THAT Council receives, for information, the Report of the Bylaw Services Manager dated December 7, 2020 with respect to the Bylaw Adjudication System Update;

AND THAT Council approves the renewal of the Southern Interior Bylaw Notice Dispute Registry Agreement;

AND FURTHER THAT the Mayor and City Clerk be authorized to execute the renewal of the Southern Interior Bylaw Notice Dispute Registry Agreement.

Purpose:

To provide Council with an update on the Bylaw Adjudication System and to make minor amendment to the establishment bylaw; and to renew the Southern Interior Bylaw Notice Dispute Adjudication Registry Agreement.

Background:

In October 2003, the Province of British Columbia enacted legislation providing an alternative approach for processing and resolving minor bylaw infractions, the *Local Government Bylaw Notice Enforcement Act*.

Prior to the *Local Government Bylaw Notice Enforcement Act* (the Act), there were three main strategies used by local governments to deal with a problem:

1. Seek voluntary compliance;
2. Issue a traffic "offence notice" for various offences seeking voluntary payment of a prescribed fine; or
3. Initiate formal court proceedings by issuing a Municipal Ticket Information (MTI) or swearing an Information and issuing a Summons.

Over the past fifteen years, there have been various calls for bylaw reform with respect to enforcement and prosecution. Calls for reform have come from the Union of British Columbia Municipalities (UBCM),

the Hughes Commission on Access to Justice and the Chief Judges' Task Group on Sitting Justices of the Peace. In response to these calls, the Province enacted the *Local Government Bylaw Notice Enforcement Act*.

Under the Act, local governments may establish a local government bylaw dispute adjudication system, more simply known as an adjudication system, which replaces the Provincial Court as the venue for resolving disputes of minor municipal bylaw breaches.

An initiative, led by the City of Kelowna, involving nine Okanagan local governments resulted in the Southern Interior Bylaw Notice Dispute Registry being established in January 2011.

Prior to this anyone wishing to dispute a minor bylaw violation such as a parking ticket was required to appear in BC Provincial Court which was an expensive and time-consuming process for the disputant, the Provincial Court System and the local municipality.

Staff investigated partnerships with other local Okanagan Governments with the intent of delivering a simple, fair and cost-effective method of enforcement of minor Bylaw infractions. A five-year cost sharing agreement was entered into with the following local governments:

City of Kelowna, City of West Kelowna, City of Vernon, City of Penticton, District of Peachland, District of Lake Country, District of Coldstream, District of Summerland, Regional District of Okanagan Similkameen, Central Okanagan Regional District, Town of Oliver, and Town of Enderby. In addition, the Regional District of North Okanagan has made application to the province and await approval.

By implementing a joint adjudication system, the local governments involved created the mechanism where all minor bylaw matters could be resolved through a streamlined process. The new system saves taxpayer dollars and allows provincial and local government resources to be used more efficiently and effectively. As well, individuals challenging tickets issued for minor infractions have had their dispute heard in a timelier manner than going through the court system.

The current agreement expires on December 31st, 2020 and is need of renewal.

SOUTHERN INTERIOR BYLAW NOTICE ADJUDICATION

The system is authorized by the Province to operate as a dispute resolution forum for handling minor bylaw offence ticket disputes. While there is one combined system for all of the participating local governments, each maintains their own bylaws, penalties and policies with respect to compliance with the bylaws. The Bylaw Notice Dispute Adjudication System allows municipalities to deal with bylaw ticket disputes for minor infractions at the local level more effectively than through the Provincial Court system and offers a more streamlined process for paying and collecting fines.

A person who receives a bylaw offence notice will have the opportunity to dispute violations out of court via a provincially appointed adjudicator who will hear all disputes. (Typically, adjudicators are retired former Provincial Court Judges, Magistrates or Justices' of the Peace). The adjudication calendar and bookings for all coordinated municipalities are managed by City of Kelowna Bylaw Coordinator. Adjudication sessions have been scheduled monthly since mid-2011, including two annually in both Penticton and Vernon and the balance in Kelowna.

Screening Officer

Another benefit of the system is the ability to designate City staff as "Screening Officers." Screening officers act as "gatekeepers" to the adjudication system by reviewing all disputed Bylaw Notices prior to adjudication. This review, between the screening officer and disputant, creates a number of efficiencies for the system. The screening process results in a number of disputed Bylaw Notices avoiding adjudication, again resulting in cost and time savings. The screening officer has the authority to cancel a Bylaw Notice if upon review if there is an error of law or inefficient evidence to proceed. The local government may also permit the screening officer to cancel a Bylaw Notice in other circumstances set out in policy by the local government. The screening process is also educational. Screening officers have the ability explain the bylaw more clearly, review the evidence and allow the disputant to be more informed. In many cases, they realize their error and withdraw their notice to dispute.

Compliance Agreements

Additionally, a Screening Officer may enter into a compliance agreement for certain types of charges, with a person who has received a Bylaw Notice. A compliance agreement will include acknowledgement of the contravention of the bylaw and will typically set out remedies or requirements, to be performed within a designated period of time and reduce or waive the fine at the conclusion of that period.

Staff have experienced increased success over the past 8 years, resolving many infractions including some City land use and zoning files with the use of compliance agreements. This has been a successful tool in bringing many properties into full compliance in a timelier manner, which in the past would have resulted in outstanding fine amounts being left unpaid or required costly court proceedings.

Appeals

The decision of the adjudicator is final, and the Act does not allow for appeals. If a failed disputant or the local government feels that the adjudicator exceeded his or her authority, or made an error at law, the person or local government may seek relief in the Supreme Court of British Columbia under the Judicial Review Procedure Act.

Conclusion:

Staff seeks to have Council renew the Southern Interior Bylaw Notice Dispute Registry Agreement for another four (4) years.

Internal Circulation:

Director Community Safety

Legal/Statutory Authority:

Legal/Statutory Procedural Requirements:

Existing Policy:

Financial/Budgetary Considerations:

External Agency/Public Comments:

Communications Comments:

Considerations not applicable to this report:

Submitted by:

D. Gazley, Bylaw Services Manager

Approved for inclusion:



D. Caul

cc:

Parking Services