



The Corporation of the City of Courtenay

Staff Report

To: Council
From: Manager of Bylaw Services
Subject: Bylaw Dispute Adjudication System (BDAS)

File No.:
Date: February 14, 2024

PURPOSE:

To seek Council approval of a new Bylaw Dispute Adjudication System (BDAS).

BACKGROUND:

The City of Courtenay currently utilizes the Municipal Tick Information (MTI) system for issuing tickets related to contraventions of regulatory bylaws, with varying fine amounts. Under the MTI system, tickets must be personally served and disputed tickets can only be resolved within Provincial Court. In the case of the City of Courtenay, this means a Bylaw Enforcement Officer (BEO) has to arrange for a court date, manage disputants, witness, evidence, legal documents and argue the case before the courts for all infractions potentially ranging from off leash dogs to unsightly premises.

Provincial courts are typically busy, and are often deprioritized by the Provincial Court when other more pressing matters arise. Reluctance on individuals to provide evidence on fear of reprisals, frequent delays, add to costs as well as time commitments to those participating in the process make this an untenable system.

City Council identified the implementation of the new bylaw adjudication program as a Council Strategic Priority, for transition and implementation in 2024 and 2025.

In 2023, Council adopted a new Bylaw Policy and Bylaw Compliance Strategy. Although bylaw tickets are a necessary part of the compliance continuum, the primary objective of the City's bylaw compliance approach is to seek voluntary compliance through awareness, and education as outlined in the Bylaw Compliance Strategy's CARE approach.



<p>Communicate: Proactively interact with community members to keep them informed and educate them about bylaws and regulations.</p>	<p>Advise: Offer clear and concise guidance that will assist in understanding compliance requirements to ensure the community is well-informed about what aligns with the regulations.</p>	<p>Reinforce: Provide essential information about best practices and regulations through good neighbour guides and other educational forums.</p>	<p>Enforce: Deploy various enforcement strategies when non-compliance is detected to assure adherence to standards and encourage positive Adjustments.</p>
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DISCUSSION:

The proposed comprehensive Bylaw Dispute Adjudication System offers a modernized and efficient approach to bylaw enforcement, aligning with the City of Courtenay's commitment to delivering effective, efficient, and economically viable services. The implementation of BDAS will contribute to a more streamlined, accessible, and cost-effective resolution of bylaw contraventions, benefiting both the City and its residents.

The BDAS aligns with the newly adopted City of Courtenay’s Bylaw Policy and Strategic Plan for Bylaw Compliance, with the following highlights:

Engagement with Curiosity: Upon submission of a ticket dispute, the dispute will first be considered by a Screening Officer, who will upon consideration of the circumstances either dismiss the ticket or forward it on for consideration by the Adjudicator. In considering ticket disputes, the Screening Officer will be able to consider the personal circumstances of the individual that led to the issuing of the ticket.

Commensurate Intervention: Just as enforcement activities are to be proportional to the infraction, the process of disputing a bylaw ticket should also be commensurate to the severity of the infraction. Bylaw violations that are routine such as over stay parking, littering, off leash dogs, noise etc. would be more appropriately considered under the BDAS system, whereas larger more impactful contraventions such as those that adversely affect the environment remain suitable to address through the court system.

Trauma Informed Practice: Transitioning infraction disputes away from the Provincial Court system is in line with the City’s commitment to the development of trauma-informed policies and procedures. Rather than attending court to dispute a bylaw ticket, residents will have the option of participating in a dispute process outside of the court system, administered by a 3rd party adjudicator approved by the Province of BC. The historical requirement to dispute tickets through a court process may have presented a barrier for some individuals for which court processes trigger a trauma response.

The overall aim is to provide a mechanism for addressing contraventions of the City Municipal Bylaws through the issuance of Adjudication Notices. The focus is on community education, then voluntary compliance followed by a compliance-focused approach and if necessary a court process. The various departments will get the opportunity to identify the Bylaw contraventions for inclusion under the BDAS. The maximum allowable contravention fine under the BDAS is \$500.00, anything above \$500.00 will follow the MTI process.

Operational Overview of Bylaw Dispute Adjudication System (BDAS)

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.

Under BDAS, Bylaw Notices can be issued without the need for personal service. Notices can be hand-delivered, left on a vehicle, or mailed. If hand-delivered, the contravention is presumed received. Allowances are made in case the recipient claims not to have received it. This is in contrast to the City's current MTI process, which requires personal service and can be problematic if the individual cannot be located.

Once the Bylaw Notice is received or presumed received, the recipient has a fixed period of 14 days to respond. Options include payment of the contravention or notifying the City of Courtenay of the intent to dispute the allegation.

Screening Officers

Local government has the ability to establish/appoint Screening Officer positions to review issued bylaw notices.

In order to reduce the number of disputed notices forwarded to adjudication, the City has the option of establishing Screening Officer positions. A Screening Officer does not need to be a BEO but should have some familiarity with the bylaws and be available to respond to the bylaw notice recipients in a timely manner, such as supervisors or managers. The Screening Officer reviews issued bylaw notices and has the authority to cancel a notice if they believe the allegation did not occur or if required information is missing. They can also enter into compliance agreements for cases where the goal is achieving compliance rather than fines. The agreement may include acknowledgement of the contravention and set out remedies or conditions to be fulfilled within a designated period. Successful compliance may result in a reduction or waiver of the fine.

If the disputant disagrees with the screening officer's decision or wishes to dispute the allegation further, they must confirm this and indicate their preferred method of participation in the adjudication hearing (in person, in writing, or by telephone). The disputant is then advised of the date and time of the adjudication, which can be conducted through platforms like MS Teams or Zoom.

Adjudication

Adjudicators under this system are chosen on a rotating basis from a list established by the Ministry of the Attorney General. Although the adjudicator is paid by the City of Courtenay, having them selected by the Province, gives transparency to the process.

At the adjudication hearing, the adjudicator hears from both the disputant and the investigating BEO, considering available evidence, to decide whether they are satisfied that the contravention occurred as alleged. The adjudicator's role is strictly to confirm or cancel the bylaw notice; they do not have the authority to reduce or waive fines, nor the jurisdiction to deal with challenges to the bylaw or other legal issues.

Unlike the criminal scale of "beyond a reasonable doubt" used in Provincial Court for MTIs, the standard of proof under the BDAS adjudication system is based on a "balance of probabilities" (civil scale). This simplifies the adjudication process and provides a more accessible means of resolving disputes.

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 district by regulation. Local governments and other bodies may make a request to the Ministry of the 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 BDAS supports the City'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. Upon approval of the BDAS, the City will seek to efficiently administer the adjudication process through collaboration with other local governments.

Interdepartmental Involvement

To implement the BDAS system, bylaw staff will work closely with all City Departments on the delivery and administration of the bylaw enforcement notices. Each department will benefit as enforcement will become more efficient and less expensive, and will ultimately provide a higher level of service to Courtenay residents. 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.

All City departments would be involved in bylaw reviews and updates to determine which infractions would transition from the MTI process to the BDAS process.

POLICY ANALYSIS:

The proposed system is in alignment with the City's Bylaw Policy and Bylaw Compliance Strategy and is in accordance with Section 2 of the Local Government Act Bylaw Enforcement Act, allowing local governments to enforce bylaws through a notice system.

FINANCIAL IMPLICATIONS:

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. There is a fee of \$500.00 per day plus expenses for an adjudicator regardless the number of adjudication hearings scheduled for the day. 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 Comox Valley Regional District and the Town of Comox has received

approval to issue bylaw enforcement notices and the Village of Cumberland are in the early stages of the process as well.

While the City of Courtenay will be responsible for the operating costs associated with BDAS, the potential cost savings from not pursuing legal proceedings in Provincial Court and the ability to share adjudication costs with other municipalities make this system economically viable.

STRATEGIC PRIORITIES REFERENCE:

This initiative addresses the following strategic priorities:

- Streets and Transportation - Implement new bylaw adjudication program

PUBLIC ENGAGEMENT:

Bylaw Adjudication and ticket dispute processes will be communicated via the City's website, social media channels, and a printed and online process brochure.

OPTIONS:

1. THAT Council direct staff to proceed with the preparation of all bylaws, policies, procedures, and agreements necessary to create a Bylaw Adjudication Program; and,
2. THAT staff be authorized to work with the Province of BC as needed to gain provincial approval for the City of Courtenay to use the Bylaw Adjudication System as outlined in the Local Government Bylaw Notice Enforcement Act.
3. THAT Council provide alternative direction to staff.

ATTACHMENTS:

1. Attachments: Appendix A – Bylaw Offence Notice Flow Chart

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BYLAW TICKET PROCESS AT A GLANCE

