

Memo



Date: September 9, 2009
File: 4000-01
To: City Manager
From: City Clerk
Subject: Bylaw Dispute Adjudication System
Prepared by: Licence and Bylaw Enforcement Supervisor

Recommendation:

THAT Council authorize staff to apply to the Province for inclusion on their list of municipalities authorized to operate under Local Government Bylaw Notice Enforcement Act;

AND THAT Council authorize staff to further investigate partnerships with other Okanagan Local Governments to facilitate implementation of the Bylaw Dispute Adjudication System;

AND FURTHER THAT Council authorize staff to develop, create and implement the necessary Bylaws required to proceed with the provisions of the Bylaw Dispute Adjudication System resulting in a simple, fair and cost effective method of dealing with minor Bylaw infractions.

Background:

The current process for dealing with minor Bylaw offences was developed in 1988 and implemented in 1989 as a pilot project in Kelowna and Prince George, by the creation of the Municipal Ticket Information and the Bylaw Court judicial process ruled over by designated sitting Justices of the Peace. The process consists of the issuance of Bylaw Violation Notice or the issuing of a Municipal Ticket Information (MTI) or Longform Information (Summons and Information Form 2) or the Court process of an injunction (interim or interlocutory). These processes have become time consuming, expensive and cumbersome when trying to obtain Court time to hear these offences. The proposed Bylaw Dispute Adjudication system replaces the Provincial Court for resolving disputes pertaining to minor municipal bylaw breaches.

Introduced first in 2003, the proposed system was enacted by the Province of British Columbia with the adoption of the "Local Government Bylaw Notice Enforcement Act". This provided Local Governments in British Columbia the authority to enact an alternative to current enforcement processes governed under the Community Charter and the Offence Act.

The use of the Bylaw Dispute Adjudication process continues to expand throughout the province and currently includes 25 municipalities using this system. The City of Kelowna has been observing the results of the mechanism in other centres which have shown favourable results. We have also conducted preliminary discussions with municipalities in the Central and Southern Okanagan to determine their interest of implementing or adopting this system in a joint venture. The primary objective of this system and the proposed multi-jurisdictional approach is to create a simple, fair and cost effective method of enforcement of minor Bylaw infractions.

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The Adjudication Model as legislated / implemented will:

1. Incorporate the Bylaw Violation Notice into an official legislated ticket.
2. Eliminate the requirement for personal service of tickets.
3. Establish a dedicated forum for resolving Bylaw disputes.
4. Uses a dispute resolution approach to obtain independently adjudicated decision without the need for a Court appearance.
5. Avoid the unnecessary attendance of witnesses.
6. Reduce the need to hire Legal Counsel for representation.
7. Promote the timely resolution of Bylaw disputes of a minor nature where the expertise of a Provincial Court or Judicial Justice of the Peace is not needed.

The Adjudication System when implemented for the City of Kelowna is expected to:

1. Increase compliance with all of the City of Kelowna Bylaws.
2. Increase the amount of time Bylaw officers are in the field.
3. Reduce the amount of outstanding fines owing to the City.
4. Provide citizens with an expedient and fair way to dispute tickets.

Benefits of the Adjudication System over our current process are:

1. Ease of document service.
2. Simplified dispute procedure in front of a provincially appointed Adjudicator in Council Chambers rather than in front of a Provincial Court Judge or Judicial Justice of the Peace at a courthouse.
3. Relaxed burden of proof in a dispute; (balance of probabilities vs beyond a reasonable doubt).
4. All unpaid tickets can be submitted to collections agency.
5. Increase in compliance to all Bylaws due to increased fine enforcement and collections.
6. City may charge a "Dispute Fee" to cover costs of Hearing. The fee is refunded if accused is found not guilty and will help eliminate frivolous disputes.
7. Eliminates the need for witnesses or issuing officer to attend the Hearing as it allows for evidence to be heard in person, via agent, in writing, by fax transmission or email, video conference, audio conference or other electronic means.
8. Permits the City to add late charges to a fine amount if not paid within a specified time period.
9. Allows the City to appoint a screening officer to enter into "Compliance Agreements" with accused that will waive the fine amount if the violation is corrected within a specified time period.

Financial/Budgetary Considerations:

Based on the experience of other Local Governments, it is anticipated that on-going administrative costs for the entire program will be roughly \$50,000. Kelowna's share of those costs would be approximately \$25,650 (based on its proportionate share of anticipated operating expenditures). Based on the results found in other jurisdiction that have implemented this system, additional costs will be offset by increased fine revenue collection. The 2010 Financial Plan will be prepared to include the additional costs and increased revenues.

External Agency/Public Comments:

Upon Council's authorization, City staff will continue to move forward with the Bylaw Dispute Adjudication System as outlined in this report and, pursue with the Province, Kelowna's inclusion of the municipalities in which this Act applies. Our continued review of the Adjudication System will be based on a cost sharing agreement between the following local governments: Penticton, Lake Country, West Kelowna, Summerland, Peachland, and District of Southern Okanagan.

Internal Circulation:

City Clerks Office, City Solicitor


Legal/Statutory Authority:
Community Charter, Local Government Bylaw Notice Enforcement Act

Considerations not applicable to this report:
Existing Policy:
Personnel Implications:
Technical Requirements:
Legal/statutory Procedural Requirements:
Communications Considerations:
Alternate Recommendation:

Submitted by:



S. Fleming, City Clerk

Approved for inclusion:  Rob Mayne, Director of Corporate Services

