

Memo



Date: April 28, 2010
File: 0910-01
To: City Manager
From: Director of Corporate Services
Subject: Bylaw Adjudication Registry Agreement

Recommendation:

THAT Council authorize the Mayor and City Clerk to execute the Southern Interior Bylaw Notice Dispute Adjudication Registry Agreement.

Purpose:

In September of 2009 Council adopted the following resolutions;

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 City of Kelowna has taken a leadership role in bringing forward the Bylaw Adjudication System under the Local Government *Bylaw Notice Enforcement Act* forward. Council's support has led to the Southern Interior Bylaw Adjudication Partnership growing to nine partners.

The partnership includes the Cities of Kelowna, Vernon and Penticton, the Districts of West Kelowna, Lake Country, Peachland and Summerland, the Town of Oliver and the Regional District of Okanagan Similkameen.

Consistent with the legislation, the partnering communities are required to establish a Bylaw Adjudication Registry. The City of Kelowna will host the registry and perform the necessary functions to ensure that dispute hearings are scheduled and enacted in accordance with the procedures.

The agreement, amongst the partners, outlines roles and responsibilities of the screening officers, the registry administration including financial processes and reporting as well as records retention.

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Financial/Budgetary Considerations:

The total budget for the Bylaw Adjudication Registry will be shared proportionately by population amongst the partners. The City of Kelowna's share of the costs for 2011 is estimated at \$21,750 which is anticipated to be recovered by additional fine revenues.

Internal Circulation:

City Clerks

Legal/statutory Procedural Requirements:

Community Charter, Local Government *Bylaw Notice Enforcement Act*

Considerations not applicable to this report:

Existing Policy:

Financial/Budgetary Considerations:

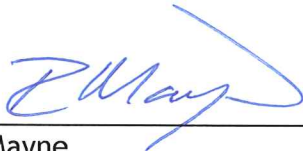
Personnel Implications:

External Agency/Public Comments:

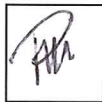
Communications Considerations:

Alternate Recommendation:

Submitted by:



R. Mayne
Director, Corporate Services



Approved for inclusion: P. Macklem, General Manager, Corporate Sustainability

cc: S. Fleming, City Clerk
K. Grayston, Director Financial Services

SOUTHERN INTERIOR BYLAW NOTICE DISPUTE ADJUDICATION

REGISTRY AGREEMENT

This Agreement, dated ____ day of _____, 2010

BETWEEN:

CITY OF KELOWNA, 1435 Water Street, Kelowna, British Columbia V1Y 1J4

("Kelowna")

AND:

CITY OF PENTICTON, 171 Main Street, Penticton, British Columbia V2A 5A9

("Penticton")

AND:

CITY OF VERNON, 3400 30th Street, Vernon, British Columbia V1T 5E6

("Vernon")

AND:

DISTRICT OF WEST KELOWNA, 2760 Cameron Road, West Kelowna, British Columbia

V1Z 2T6

("West Kelowna")

AND:

DISTRICT OF LAKE COUNTRY, 10150 Bottom Wood Lake Road, Lake Country, British

Columbia V4V 2M1

("Lake Country")

AND:

DISTRICT OF SUMMERLAND, 13211 Henry Avenue, Summerland, British Columbia V0H 1Z0

("Summerland")

AND:

DISTRICT OF PEACHLAND, 5806 Beach Avenue, Peachland, British Columbia V0H 1X7

("Peachland")

AND:

REGIONAL DISTRICT OF OKANAGAN SIMILKAMEEN, 101 Martin Street, Penticton, British Columbia V2A 5J9

("RDOS")

AND:

TOWN OF OLIVER, 35016 97th Street, Oliver, British Columbia V0H 1T0

("Oliver")

WHEREAS:

- A. The *Local Government Bylaw Enforcement Act* permits local governments to create a bylaw designating certain bylaw contraventions that can be enforced by way of bylaw notice as an alternative to traditional bylaw enforcement mechanisms;
- B. The Act also permits two or more local governments to enter into an agreement, adopted by a bylaw of each local government that is party to it, to provide for the joint administration of a local government bylaw notice dispute adjudication system;
- C. Kelowna, Penticton, Vernon, West Kelowna, Lake Country, Summerland, Peachland, RDOS, and Oliver wish to:

- a. share the costs and administration of such a system; and
- b. enter such an agreement to establish such a system, to be called the Southern Interior Bylaw Notice Dispute Adjudication Registry, and to provide for the joint administration of the Registry.

NOW THEREFORE in consideration of the mutual promises contained herein, the Parties agree as follows:

PART I – INTRODUCTORY PROVISIONS

Definitions

1. In this Agreement, the following definitions apply:
 - a. “**Act**” means the Local Government Bylaw Notice Enforcement Act;
 - b. “**Adjudication**” the process where the disputant and the local government are provided opportunity to present evidence to the adjudicator who will decide whether he or she is satisfied that the contravention occurred as alleged;
 - c. “**Adjudication Fee**” means the sum of \$25.00 payable to each Party for each adjudication scheduled to be conducted by the Registry;
 - d. “**Agreement**” means this Agreement;
 - e. “**Authorizing Bylaws**” means the bylaws adopted by the Councils/Boards of each of the Parties authorizing this Agreement;
 - f. “**By Law Enforcement Officer**” means a person in a class prescribed under section 273 (c) of the *Community Charter* who is designated by a local government as a bylaw enforcement officer;

- g. “**Committee**” means the Southern Interior Bylaw Notice Dispute Adjudication Registry’s Administrative Committee;
- h. “**Contribution Adjustment Amount**” means, for each Party, the amount calculated in accordance with Section 22 herein in any year of the Term;
- i. “**Contributing Parties**” means all of Penticton, Vernon, West Kelowna, Lake Country, Summerland, Peachland, RDOS, and Oliver, except Kelowna;
- j. “**Parties**” means all of Kelowna, Penticton, Vernon, West Kelowna, Lake Country, Summerland, Peachland, RDOS, and Oliver;
- k. “**Party**” means any one of Kelowna, Penticton, Vernon, West Kelowna, Lake Country, Summerland, Peachland, RDOS, and Oliver;
- l. “**Registry**” means the Southern Interior Bylaw Notice Dispute Adjudication Registry established by this Agreement;
- m. “**Revenues**” means any revenue actually received or estimated to be received, as the case may be, by the Registry, excluding Initial Contributions, Contribution Amounts, or Contribution Adjustment Amounts;
- n. “**Terms**” means the term of this Agreement as set out herein;

Establishment of the Registry

- 2. Subject to the Act and to the adoption of the Authorizing Bylaws, the Parties agree that the Registry is hereby established.

PART II – ADMINISTRATION

3. The Parties agree to establish the Committee to implement and administer the Registry.
4. The Parties agree that authority of the Committee will include but not be limited to:
 - a. preparing operational budgets; and
 - b. setting policy as authorized under this Agreement and the Act.

Representation

5. Each of the Parties will appoint one representative to serve on the Committee. The Parties agree that representatives will be paid employees of their respective local governments and will not be remunerated by the Registry.

PART III – ADJUDICATION

Screening Officers

6. The Parties agree that screening of notices prior to proceeding to adjudication will be established as a function of each Party. Screening officers will be appointed by the individual Party administrative committee.

Bylaw Notice Dispute Adjudication Registry

7. The Parties agree that a dispute adjudication system will be established as a function of the Registry, and that disputes will be heard by a bylaw notice dispute adjudicator in the circumstances prescribed in the Act and Authorizing Bylaws.

8. The Parties agree that the Committee will select a roster of adjudicators who may hear and determine disputes from the provincial roster of adjudicators to be established by the Attorney General of the Province of British Columbia.
9. Adjudicators will be assigned to individual disputes in the manner prescribed by any applicable regulation and policy established by the Committee.

PART IV - OPERATIONS

Location

10. The location of the Registry will be the municipal offices of the City of Kelowna, 1435 Water Street, Kelowna, British Columbia V1Y 1J4.

Administrative Services

11. Kelowna will provide and supervise all administrative services required by the Registry, subject to the following:
 - i. the collection of any fees, fines or penalties levied against an unsuccessful party in the dispute adjudication process will be the responsibility of the relevant municipality if not collected by the Registry immediately following the adjudication; and
 - ii. any penalty arising directly out of the bylaw notice itself may be paid to the relevant Party or to the Registry,

and any amounts collected by or paid to the Registry pursuant to 11.i and 11.ii will be credited to the relevant Party's Contribution Adjustment Amount.

Financial Reporting

12. Kelowna will ensure that its Director of Financial Services or the designate will conduct and oversee the financial reporting and record keeping of the Registry based on normal procedure, subject to the requirements outlined herein.

PART V – FINANCIAL PLANNING

Start-up Costs

13. Each Party will be responsible for its own start-up costs.

Budget Year

14. The budget year of the Registry is the calendar year.

Operating Budget

15. The Parties agree that, no later than September 30th of each year, the Committee will prepare a draft operating budget for the following budget year, setting out in detail the operational funds required by the Registry for the carrying out of its mandate and responsibilities, including
 - a. the estimated operational expenditures for
 - i. office and administration including financial reporting and administrative services;
 - ii. Registry administration travel costs;
 - iii. bylaw dispute adjudicators; and

- iv. other functions of the Registry;
- b. the anticipated revenues (if any) of the Registry;
- c. the difference between estimated revenues and operational expenditures for the Registry; and
- d. the Contribution Amount required from each of the Parties.

Budget Submissions

- 16. The Committee will prepare the operating budget in a manner satisfactory to, and in such detail as requested by, the Directors of Finance of each of the Parties, and submit the draft operating budget to the Directors of Finance of each of the Parties each year where required.

Budget Approval and Adjustments

- 17. The Parties will consider and approve, or recommend amendments to, the Registry's operating budget.
- 18. The Parties agree that all recommendations by them for adjustments to the Registry's draft operating budget will
 - a. be reasonable and made in good faith; and
 - b. ensure that a reasonable level of service quality can be maintained by the Registry.

Use of Funds

19. The Committee and Kelowna may make only those expenditures during the budget year for the purposes and up to the amounts authorized in the approved operating budget. The Registry (or the Committee or Kelowna on behalf of the Registry) will not incur any other indebtedness or liability, or make any further expenditure, except that:
- a. Kelowna may make a further reasonable expenditure or contract a further indebtedness or liability that it deems necessary or prudent, subject to a \$1,000 limit; and
 - b. the Committee may
 - i. make a further reasonable expenditure or contract a further indebtedness or liability that it deems necessary or prudent, subject to a \$5,000 limit;
 - ii. re-allocate funds within categories of the operating budget as reasonably required; and
 - iii. make a further expenditure or contract a further indebtedness or liability without limitation if approved in advance by all Parties.

PART VI – COST ALLOCATION

Funding Contributions and Adjustments

20. The Parties agree that costs relating to legal counsel, witnesses, screening officers and bylaw enforcement officers as they pertain to the dispute adjudication process, and to the activities of the Registry more generally, will be borne by the relevant Party which issued

the bylaw notice in question and will not be borne by the Registry or by Kelowna on behalf of the Registry.

21. The Parties will, upon approval of the Registry's operating budget by each of the Parties, pay to Kelowna their respective Contribution Amounts for the upcoming budget year no later than March 31st of that budget year.
22. Kelowna will, as soon following the end of a budget year as practicable; calculate the amount of each Party's Contribution Adjustment Amount by
 - a. determining each Party's pro-rated proportion of the amount by which Actual Expenditures exceed Budget Expenditures for the relevant year, where the proportion is calculated on the basis of each Party's population for the budget year in relation to the population of each of the other Parties except the calculation for RDOS will exclude incorporated areas; and
 - b. deducting, if applicable, the aggregate of fines and administrative fees collected by Kelowna on behalf of each Party for the relevant year.
23. Each of the Contributing Parties will, within 30 days of receipt of notice of its respective Contribution Adjustment Amount, pay (if required) to Kelowna the Contribution Adjustment Amount.
24. Kelowna will pay (if required) any Contribution Adjustment Amount owing to the Contributing Parties, as appropriate, within 30 days of preparation of a statement outlining the Contribution Adjustment Amounts of each Party or may, at the election of Kelowna each year except the final year, credit the amount owing to the Contribution Amount required from each Party for the following year.

25. Each Party will pay to Kelowna within thirty days following each of March 31, June 30, October 31 and December 31 of each year of the Term, the Adjudication Fee for each adjudication scheduled in respect of that Party in the previous quarter.

Maintenance of Records

26. The Director of Financial Services of Kelowna will
- a. exercise the duties and powers of the officer responsible for financial administration as provided in the Community Charter, in maintaining the financial records for the Registry on behalf of the Parties;
 - b. ensure that accounting and payroll records of the Registry are properly prepared and maintained, such records to include payroll, accounts payable, cash receipts and disbursements, accounts receivable, general ledger, subsidiary cost ledger, financial statements and reports and supporting documents to the foregoing;
 - c. provide, when possible, any additional financial systems that have been requested by the Committee;
 - d. direct employees and officers of the Registry to the extent necessary to ensure that the systems and procedures established for financial controls are in effect and are in accordance with the Community Charter.

Examination of Records

27. The Director of Finance of any of the Contributing Parties may, acting reasonably with regard to minimizing the administrative burden on the Kelowna, and no more frequently than once in each year of the Term, conduct audits or examinations to obtain information or determine that adequate financial controls are being maintained for the Registry. Kelowna will cooperate with any reasonable request by any of the Contributing Parties or

the Contributing Parties' Director of Finance for access to financial records, user statistics and other information of the Registry.

PART VII – GENERAL PROVISIONS

Insurance

28. Kelowna will ensure that the Registry and its activities are covered under Kelowna's general liability policy, and will provide copies of all relevant insurance policies and changes thereto to the Directors of Finance of the Contributing Parties upon request.

Amendments

29. The Parties will, in good faith, negotiate any proposed amendment to this Agreement upon request of any Party, all amendments to be in writing and executed by the Parties.

Dispute Resolution

30. The Parties will submit any dispute arising out of the interpretation or application of this Agreement:

- a. first, to the Committee to resolve the dispute;
- b. second, if the Committee is unable to resolve the dispute within 60 days, to the Chief Administrative Officers of the Parties; and
- c. third, if the Chief Administrative Officers are unable to resolve the dispute within 60 days, to the Inspector of Municipalities, or at the election of the Parties, to a commercial arbitrator appointed by agreement or, failing agreement, appointed pursuant to the *Commercial Arbitration Act*, for final determination, and the

determination of the Inspector or arbitrator as applicable will be final and binding upon the Parties.

Term

31. This Agreement comes into effect on _____ and continues in effect until December 31, 2015. Any Party may withdraw from this Agreement upon six months' written notice to the other Parties.

IN WITNESS WHEREOF all Parties have executed this Agreement on the date first above written.

THE CORPORATION SEAL of THE)
CORPORATION OF THE **CITY OF**)
KELOWNA was hereunto affixed)

in the presence of:)

_____))

Mayor)

)

_____))

City Clerk)

C/S

THE CORPORATION SEAL of THE)
CORPORATION OF THE **CITY OF**)
PENTICTON was hereunto affixed)

in the presence of:)

_____))

Mayor)

)

_____))

City Clerk)

C/S

THE CORPORATION SEAL of THE)
CORPORATION OF THE **CITY OF**)
VERNON was hereunto affixed)
in the presence of:)

C/S

_____)
Mayor)

_____)
City Clerk)

THE CORPORATION SEAL of THE)
CORPORATION OF **THE DISTRICT**)
OF WEST KELOWNA was hereunto)
affixed in the presence of:)

C/S

_____)
Mayor)

_____)
City Clerk)

THE CORPORATION SEAL of THE)
CORPORATION OF THE **DISTRICT**)
OF LAKE COUNTRY was hereunto)
affixed in the presence of:)

C/S

_____)
Mayor)

_____)
City Clerk)

THE CORPORATION SEAL of THE)
CORPORATION OF **THE DISTRICT**)
OF SUMMERLAND was hereunto)
affixed in the presence of:)

C/S

_____)
Mayor)

_____)
City Clerk)

THE CORPORATION SEAL of THE)
CORPORATION OF THE **DISTRICT**)
OF PEACHLAND was hereunto)
affixed in the presence of:)

C/S

_____))
Mayor)

_____))
City Clerk)

THE CORPORATION SEAL of THE)
CORPORATION OF THE **REGIONAL**)
DISTRICT OF OKANAGAN)
SIMILKAMEEN was hereunto affixed)
in the presence of:)

C/S

_____))
Mayor)

_____))
City Clerk)

THE CORPORATION SEAL of THE)
CORPORATION OF THE **TOWNSHIP**)
OF OLIVER was hereunto affixed in the)
presence of:)

C/S

_____)
Mayor)

_____)
City Clerk)