

# Municipality of North Cowichan

## Committee of the Whole

### AGENDA

Tuesday, August 11, 2020, 6:00 p.m.  
Electronically

Pages

#### 1. CALL TO ORDER

This meeting, though electronic, is open to the public and all representations to Council form part of the public record. At this time, due to the COVID-19 Pandemic, public access to Council Chambers is not permitted, however, this meeting may be viewed on the District's lived stream webcast at [www.northcowichan.ca/agendas](http://www.northcowichan.ca/agendas).

#### 2. APPROVAL OF AGENDA

Recommendation:

That the agenda be adopted as circulated [or as amended].

#### 3. ADOPTION OF MINUTES

3 - 4

Recommendation:

That the minutes of the Committee of the Whole meeting held July 28, 2020 be adopted, as circulated.

#### 4. PUBLIC INPUT

The Chair to acknowledge receipt of submissions circulated to the Committee of the Whole, prior to the meeting, to [Agenda@northcowichan.ca](mailto:Agenda@northcowichan.ca) and state the agenda item the public input is in relation to on this agenda.

#### 5. BUSINESS

##### 5.1 RCMP Service Levels Review Workshop

Purpose: To identify objectives and outcomes for the RCMP service review in order to identify the scope of work to be undertaken by a consultant.

##### 5.2 Proposed Respectful Spaces Bylaw

5 - 50

Purpose: To provide a technical briefing and review of the key components of the draft Respectful Spaces Bylaw.

Recommendation:

That the Committee of the Whole supports in-principal the scope, incident response, offence and penalty provisions, and appeal process of the draft Respectful Spaces Bylaw as presented; and directs staff to bring forward the Respectful Spaces Bylaw to the August 19, 2020 regular meeting of Council for consideration of first three readings.

Purpose: To review options for resuming services at Fuller Lake Arena.

Recommendation:

That the Committee of the Whole recommends to Council to direct staff to proceed with the re-opening of the Fuller Lake Arena under its COVID-19 Restoration of Programs & Services Plan, specifically;

- To allow for a phased-in resumption of services effective September 8, 2020, and
- To support the COVID-19 restrictions outlined for facility usage

**6. NEW BUSINESS**

**7. QUESTION PERIOD**

A 10-minute recess to be provided to give the public an opportunity to submit their questions by email to [QP@northcowichan.ca](mailto:QP@northcowichan.ca) regarding the business discussed at this meeting. Questions will be read out in the order they are received.

**8. ADJOURNMENT**

Recommendation:

That the meeting be adjourned at \_\_\_\_ a.m./p.m.

# **Municipality of North Cowichan Committee of the Whole MINUTES**

**July 28, 2020, 6:00 p.m.  
Electronically**

Members Present	Councillor Christopher Justice, Chair Mayor Al Siebring Councillor Rob Douglas Councillor Tek Manhas Councillor Rosalie Sawrie Councillor Debra Toporowski
Members Absent	Councillor Kate Marsh
Staff Present	Ted Swabey, Chief Administrative Officer (CAO) Sarah Nixon, Deputy Chief Administrative Officer (D/CAO) Mark Frame, General Manager, Financial and Protective Services Megan Jordan, Acting, Manager, Communications and Public Engagement Michelle Martineau, Corporate Officer Chris Bear, RCMP Inspector

## **1. CALL TO ORDER**

There being a quorum present, Councillor Justice called the meeting to order at 6:00 p.m.

## **2. APPROVAL OF AGENDA**

IT WAS MOVED AND SECONDED:

That the Committee of the Whole agenda be adopted as presented.

**CARRIED**

## **3. ADOPTION OF MINUTES**

IT WAS MOVED AND SECONDED:

That the minutes of the Committee of the Whole meeting held July 7, 2020 be adopted, as circulated.

**CARRIED**

## **4. CLOSED SESSION**

IT WAS MOVED AND SECONDED:

That the July 28, 2020 Committee of the Whole meeting be closed to the public at 6:01 p.m. to the public on the basis of sections 90(1)(f) law enforcement, which Council considers that disclosure could reasonably be expected to harm the conduct of an investigation under or enforcement of an enactment, and 90(1)(m) a matter that, under another enactment, that being section 16(1)(b) of the *Freedom of Information and Protection of Privacy Act*, is such that the public may be excluded from this meeting.

**CARRIED**

**5. ADJOURNMENT**

Councillor Justice adjourned the meeting at 8:09 p.m.

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Certified by Corporate Officer

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Signed by Mayor

# Report

Date	August 11, 2020	File:
To	Committee of the Whole	
From	George Farkas, A/Director, Human Resources and Corporate Planning	Endorsed:
Subject	Proposed Respectful Spaces Bylaw	

## Purpose:

To provide a technical briefing and review of the key components of the draft Respectful Spaces Bylaw.

## Background

The Municipality is committed to providing an inclusive environment in which all individuals are treated with mutual respect and dignity, and as such all persons (including Council, employees, and members of the public) have the right to expect an environment that is free of harassment, bullying, intimidation, violence and discrimination.

Although the Municipality has a number of policies which set out certain behavioural expectations of both Council and staff, these policies do not currently address incidents involving inappropriate behaviour committed by members of the public towards North Cowichan Council/staff, nor do they provide any formalized mechanism for enforcement of those policies. In addition, our current policies do not address incidents involving inappropriate behaviours of Municipal staff towards members of the public.

## Discussion

The Municipality has a legal duty under the *Workers Compensation Act* to identify, investigate and eliminate/mitigate workplace hazards, which include bullying and harassment. As well, North Cowichan has a legal obligation under the *Criminal Code* to take reasonable steps to ensure the safety of both workers and the public.

Under our current policy framework, several gaps have been identified which could expose the Municipality to increased liability for not adequately safeguarding both its employees and the general public against inappropriate behaviours. As well, because there are no formalized mechanisms in place to deal with inappropriate behaviours committed by or against members of the public, staff lacks the requisite authority to address these inappropriate behaviours in a manner that is consistent across our various worksites and also assures procedural fairness is applied to all concerned parties.

The intent of the proposed Respectful Spaces Bylaw is to address situations of inappropriate behaviours (behaviours by the public towards staff/Council; behaviours by Council/staff towards the public) that include a detailed complaint process, procedures for enforcement, consequences of breach (including suspensions and/or monetary fines) and an appeal process.

The benefits of establishing the Bylaw include:

- Creating formal protections enshrined in the Bylaw that protect staff from workplace violence/bullying and harassment by the public in shared or common spaces or when staff enter private spaces and vice versa.
- Creating a unified patron/user code of conduct which will allow for simplification of how public transgressions will be dealt with across all areas.
- Outlining a process that upholds the principles of procedural fairness for the investigation of allegations of patrons toward staff, other members of the public, or staff misconduct against patrons.
- Creating an administrative mechanism to deal with complaints without relying on elected officials to carry out enforcement.

## Implications

It is anticipated that the following additional steps will need to be undertaken as part of implementing a Respectful Spaces Bylaw

- Bylaws for repeal or amendment to be identified by staff and considered by the Regulatory Review Standing Committee;
- Establish information sharing agreements with other jurisdictions;
- Establish and install signage in each facility/location that establishes a uniform set of expectations;
- Incorporate Bylaw expectations in contract language and in volunteer agreements;
- Establish a Safe Work Plan program and support resources for employees who experience inappropriate behaviour; and,
- Conduct annual risk management reviews to ensure the Municipality has appropriate safety and security measures in place.

It is anticipated that these additional measures would be undertaken within the municipality's existing budget.

## Recommendation

That the Committee of the Whole supports in-principal the scope, incident response, offence and penalty provisions, and appeal process of the draft Respectful Spaces Bylaw as presented; and directs staff to bring forward the Respectful Spaces Bylaw to the August 19, 2020 regular meeting of Council for consideration of first three readings.

Attachment(s):

- Presentation
- DRAFT Respectful Spaces Bylaw

# Respectful Spaces Bylaw

*Committee of the Whole Meeting  
August 11, 2020*

# Employer Obligations - Legislation

- North Cowichan has a legal duty under the *Workers Compensation Act* to identify, investigate, and eliminate or mitigate workplace hazards, which include bullying and harassment.
- North Cowichan has a legal requirement under the *Criminal Code* to take reasonable steps to ensure the safety of workers and the public.



# Current Practice in Municipality - Policies

## **COUNCIL POLICIES**

- Standards of Conduct
  - *Guides Council and Mayor behaviours*
  - *Includes process for addressing breaches*
  - *An alleged breach of the policy may be submitted by a Council or Committee Member or Staff*
  - *Gap: does not contain an administrative mechanism to address complaints from public*
- Public Input and Meeting Conduct Policy
  - *Public input session guidelines, question period guidelines and general meeting conduct rules*
  - *Gap: no administrative mechanism to deal with complaints without relying on elected officials to carry out enforcement*

# Current Practice in Municipality - Policies

## ***NORTH COWICHAN EMPLOYEE POLICIES***

- Respectful Workplace Policy
  - *Applies to interactions between staff*
- Staff Standards of Conduct
  - *Sets out general standards of conduct expected of every North Cowichan employee as a condition of employment*

*Gap: does not contain an administrative mechanism to address complaints from public*

# Current Practice in Municipality – Relevant Bylaws

## ***Parks and Public Places Regulation Bylaw (Bylaw 3626)***

- Persons may not act in a disorderly, dangerous or offensive manner
- Director may post rules of behaviour and conduct in a visible location in a park or recreation facility, and may establish mechanisms to enforce such rules
  - *Inappropriate Guest behaviour Policies and Procedures*
  - *Cowichan Aquatic Centre and Fuller Lake Recreation Centre has a Code of Conduct*
- Person who violates a provision of this Bylaw is guilty of an offence and liable on conviction to a fine not exceeding \$1,000, plus the cost of prosecution

*Gaps: The bylaw also doesn't address enforcement or the current administrative practice of imposing suspensions*

# Benefits of Establishing a Bylaw

- Creates formal protections enshrined in Bylaw that protect staff from workplace violence/bullying and harassment by the public in shared or common spaces or when staff enter private spaces and vice versa.
- Creates unified patron/user code of conduct which will allow for simplification of how public transgressions will be dealt with across all areas.
- Outlines a process that upholds the principles of procedural fairness for the investigation of allegations of patrons toward staff, other members of the public, or staff misconduct against patrons.
- Creates an administrative mechanism to deal with complaints without relying on elected officials to carry out enforcement.

# Bylaw

# Purpose of Bylaw

- The Municipality is committed to providing an inclusive environment in which all individuals are treated with mutual respect and dignity.
- Everyone has the right to an environment that is free of harassment, bullying, intimidation, violence and discrimination.

# Scope

- Applies to **Incidents** and **Inappropriate Behaviour** from :
  - Interactions that are originated by members of the public.
  - Interactions that are originated by employees of the municipality involving the public

# Inappropriate Behaviour and Incidents

“Inappropriate Behaviour” means behaviour that obstructs or interferes with the lawful free use and enjoyment of Municipal Facilities or participation in Municipal services, programs or events, or that compromises the safety and well-being of others, including Municipal Staff, volunteers and members of the public. For the purposes of this Bylaw, Inappropriate Behaviour includes:

- Vandalism,
- Violence,
- Harassment,
- Possession of weapons,
- Theft of property, and
- Contravention of Codes of Conduct or posted rules.



# Inappropriate Behaviour and Incidents – cont'd

- Inappropriate Behaviour does not include decisions made by bylaw enforcement staff made in the course of their duties.

“Incident” means any occurrence involving one or more individuals engaging in Inappropriate Behaviour.

# Scope: Programs and Services

- Applies to all Municipal owned and leased facilities, services, programs or North Cowichan events.
- Examples: bylaw enforcement; front counter services; building inspections; volunteer events; recreational facilities and trails; Council meetings, etc.
- Exceptions:
  - *RCMP*

# Scope: Individuals

Applies to:

- *Municipal employees*
- *Contractors*
- *Volunteers*
- *Appointed representatives (Committees of Council)*
- *Mayor and Council members*

For incidents originated by or to the **public**.

***Does not apply to:***

- *RCMP detachment and staff*

# ***Incidents that Originate from Members of the Public***

# Incident Procedures

- All Municipal Staff are required to exercise their power and authority under the Bylaw fairly and equitably and in accordance with the *Human Rights Code*, the *Charter of Rights and Freedoms*, and all other applicable enactments.
- Consistent set of procedures set out in bylaw to ensure procedural fairness

# Incident Procedures

## **Responding to Incident and Incident Report:**

- Municipal Staff are not expected to jeopardize their safety or that of others in responding to an Incident. Enforcement falls under the BC *Trespass Act*, via RCMP.
- Municipal Staff will attempt to explain to the person that their behaviour is unacceptable and ask that the behaviour cease.

# Incident Procedures

## **Responding to Incident and Incident Report – cont'd:**

- Depending on the severity of the Inappropriate Behaviour, Municipal Staff may require the person to leave the Municipal Facility immediately and issue a temporary suspension of up to ten days.
- As soon as is reasonably possible following the Incident, Municipal Staff will complete an Incident Report.

# Incident Procedures - cont'd

## **Incident Review and Investigation:**

- When a Manager receives an Incident Report, they will consult with the Director, Human Resources. All incidents will be reviewed and investigated.
- After considering the Incident Report and other available information, the Director, Human Resources and Manager will jointly take such action as they consider appropriate in the circumstances, which may include determining that the Incident:
  - did not constitute a violation of this Bylaw and take no further action;
  - constituted a violation of this Bylaw but decide that no further action is required in the circumstances;
  - constituted a violation of this Bylaw and take further action, including:
    - *issuing a written warning letter or letter of expectation;*
    - *requiring that the person meet with the Manager or the Director, including that the person not enter or use any Municipal Facility until they meet with the Manager or Director; and*
    - *recommending that the Manager of Fire and Bylaw Services impose a Suspension.*



# Incident Procedures - cont'd

## Suspensions

- The Director, Human Resources and the Manager will make recommendations to the Manager, Fire and Bylaw Services regarding the proposed scope and duration of the Suspension and any terms and conditions.
- Manager, Fire and Bylaw Services will review the information and take such action as he/she considers appropriate considering the Guidelines set out in the Bylaw, including establishing the scope and duration of the Suspension and any terms and conditions.
- If a Suspension is issued, the Manager, Fire and Bylaw Services or the Municipality's legal counsel will notify the person in writing of the terms of the Suspension and of their right to appeal under this Bylaw.

# Incident Procedures - cont'd

## **Suspensions – cont'd**

- A confidential memorandum regarding the Suspension will be sent from the Director, Human Resources to Municipal Staff for whom the information is necessary for the performance of their duties.
- The Municipality will also enter into information sharing agreements with other jurisdictions to alert other agencies to temporary suspensions and issued suspensions.

# Penalties

- The Manager of Fire and Bylaw Services would be authorized to issue a Suspension to any person who is not in compliance with the Bylaw for a period of 18 months.
- The Bylaw would also create the authority to issue fines of up to \$1,000 for continued infractions or for incidents where it would not be possible to issue suspensions (e.g., inappropriate behaviour in the public but while performing work duties).
- A person subject to suspension would not access, enter or use **any** Municipal Facility included in the Suspension, subject to the terms and conditions of the suspension.

# Appeals Process

- A person subject to a Suspension may within 10 business days of receiving notice of the Suspension, request a review of the decision by the Chief Administrative Officer (or designate).
- In exercising their discretion, the Chief Administrative Officer would consider the factors set out in the Bylaw
- Appeal hearings would be held by the Chief Administrative Officer in accordance with the Bylaw
- The decision of the Chief Administrative Officer with regards to a Suspension is final.

# Probationary Period and Subsequent Suspensions

- Once a Suspension has been completed, regardless of the duration, the person subject to the Suspension will be subject to a six-month probationary period with the following conditions:
  - *If an Incident occurs during the probationary period, the Manager of Fire and Bylaw Services will impose a Subsequent Suspension of equal or greater duration than the initial Suspension (of up to two years)*
  - *Subsequent Suspensions are to be issued in writing by the Manager of Fire and Bylaw Services or legal counsel*
  - *Subsequent Suspensions not subject to appeal*

***Interactions Originating from Municipal  
Employees, Contractors, Appointed  
Representatives (e.g. Commission Members) in  
their dealings with the public***

# Responding to Incidents

- A formal complaint will be put forward in writing by the Complainant to the Director, Human Resources. If the complaint is made to the Supervisor or Manager, the Supervisor/Manager will advise Human Resources immediately.
- Complaints about Inappropriate Behavior by the Mayor or Council members are reviewed under review process outlined under Council Standards of Conduct Policy.
- Once a formal written complaint of Inappropriate Behaviour is made, Human Resources will commence an investigation if deemed appropriate.
- Formal investigations may include the engagement of an external investigator.

# Responding to Incidents – cont'd

- All persons interviewed by the investigator may be accompanied by a representative (Union representative/Human Resources).
- At the conclusion of the investigation, the investigator will document his/her findings and any recommendations for the resolution of the Inappropriate Behaviour.
- Findings will be presented to the Employer, typically the senior staff member of the work area and/or senior staff member of Human Resources, who will then prepare an Employer-Decision report ("Employer Decision") of the complaint, confirming what actions will be undertaken.



# Responding to Incidents – cont'd

- A copy of the Employer Decision will be provided to the respondent on a confidential basis. Information collected and retained during the course of an investigation process is treated as confidential and will not be disclosed to the Complainant or witnesses except as otherwise may be required by legislation or bylaw.
- The Complainant will be notified that a formal investigation has been concluded.

# Appeal Procedures

- Unionized employees have the right to dispute the Employer Decision report under the provisions of the appropriate collective agreement under the grievance process; and
- Non-unionized employees have the right to appeal the Employer Decision report to the Chief Administrative Officer (or designate) within fifteen (15) days of the Decision. In such circumstances, the Chief Administrative Officer would review the appeal and issue a decision.

# Consequences of Inappropriate behaviour

- The severity and duration of the Inappropriate Behaviour will be considered in determining appropriate corrective action, up to and including dismissal for just cause.

# False or Malicious Complaints

- If a complaint is found to be filed for malicious or vexatious purposes, the Complainant may be viewed as engaging in Inappropriate Behaviour under the Bylaw.

# Next Steps

- Establish Bylaw and repeal any redundant bylaws
  - *Bylaws for repeal to be considered by the Regulatory Review Standing Committee*



The Corporation of the District of North Cowichan

**DRAFT Respectful Spaces Bylaw, 20##**

Bylaw ####

*Contents*

- 1 Citation
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- 4 Interpretation
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- 10 Offence and Penalty

Schedules

Appendix A – Incident Procedures: Incidents Originating from the Public

Appendix A.1 – Incident Procedures: Incidents Originating from Municipal Staff

Appendix B – Inappropriate Behaviour Enforcement Guidelines

Appendix C – Appeal Procedure

WHEREAS the District of North Cowichan wishes to provide an inclusive environment in which all individuals have the right to be free of harassment, bullying, intimidation, violence, and discrimination, and where they are treated with mutual respect and dignity;

NOW THEREFORE the Council of The Corporation of the District of North Cowichan, in open meeting assembled, enacts as follows:

**Citation**

- 1 This Bylaw may be cited as "Respectful Spaces Bylaw No. ####, 20##".

**Severability**

- 2 If any provision of this Bylaw is, for any reason, found invalid by a court of competent jurisdiction, the provision must be severed and the remainder of the Bylaw left valid and enforceable.

## Definitions

3 In this Bylaw:

**“Charter of Rights and Freedoms”** means the *Canadian Charter of Rights and Freedoms*, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11;

**“Chief Administrative Officer”** means the municipal officer appointed by Council under section 147 [Chief administrative officer] of the *Community Charter*;

**“Code of Conduct”** means a document posted in a Municipal Facility that outlines the roles, rights and responsibilities of Municipal Staff and patrons;

**“Council”** means the Council of The Corporation of the District of North Cowichan;

**“Director”** means the director of the department of the Municipality involved in the Incident;

**“Harassment”** means conduct, actions or behaviour that a person knew or reasonably ought to have known would cause another person to be humiliated or intimidated or would be objectionable and unwelcome;

**“Human Rights Code”** means the *Human Rights Code*, RSBC 1996 c. 210;

**“Inappropriate Behaviour”** means behaviour that obstructs or interferes with the lawful free use and enjoyment of Municipal Facilities or participation in Municipal services, programs or events, or that compromises the safety and well-being of others, including Municipal Staff, volunteers and members of the public. For the purposes of this Bylaw, Inappropriate Behaviour includes:

- Vandalism,
- Violence,
- Harassment,
- possession of weapons,
- theft of property, and
- contravention of Codes of Conduct or posted rules;

Inappropriate Behaviour does not include decisions made by Bylaw enforcement staff made in the course of their duties.

**“Incident”** means any occurrence involving one or more individuals engaging in Inappropriate Behaviour;

**“Manager”** means a person employed by the Municipality as the manager in the relevant department of the Municipality involved in the Incident;

**“Municipality”** means The Corporation of the District of North Cowichan;

**“Municipal Facility”** means facilities owned, leased, rented, allocated, programmed, operated or managed by the Municipality, intended for public or Municipal Staff use.

This includes, but is not limited to parks and trails, recreation facilities, staff offices and workspaces, meeting rooms, community meeting spaces, Municipal Hall, and spaces where Municipal Services are provided, but does not include facilities or portions thereof that are occupied by the RCMP or police department;

**“Municipal Services”** means all services provided by the Municipality. This includes but is not limited to Council meetings, bylaw enforcement, building inspections, front counter services, and volunteer events, but does not include RCMP and other police services and Municipal Staff employed for the purpose of supporting RCMP and other police services;

**“Municipal Staff”** means a person employed by the Municipality and includes volunteers and contractors authorized to act on behalf of the Municipality, appointed representatives (committees appointed by Council), and the Mayor and Council members;

**“Supervisor”** means the person employed by the Municipality as a supervisor in the relevant department of the Municipality involved in the Incident;

**“Suspension”** means the prohibition of an individual from entering all or specified Municipal Facilities for a specified duration of time;

**“Vandalism”** means the malicious, wilful or deliberate destruction, damaging or defacing of Municipal Facilities or other Municipal-owned property, including equipment, vehicles, materials and furniture; and

**“Violence”** includes:

- the use of profane, obscene, abusive or discriminatory language;
- threats or attempts to intimidate;
- throwing articles or objects in a deliberate or aggressive manner that may endanger or cause injury or damage to any persons or property;
- physically aggressive or threatening behaviour; and
- attempts to goad or incite violence.

## **Interpretation**

- 4** In this Bylaw, a reference to the Chief Administrative Officer, Director, Manager, and Supervisor includes a reference to the person appointed as deputy or appointed to act in the place of that person from time to time.

## **Scope**

- 5** (1) This Bylaw applies to all persons, including members of the public and Municipal Staff. This Bylaw also applies within Municipal Facilities and any space in which Municipal Services are provided and where Municipal programs or events are being held. Allegations of Inappropriate Behaviour originating from Mayor and Council shall be dealt in accordance with the Council Standards of Conduct Policy.



- (2) This Bylaw applies to Incidents that either originate from the public or from Municipal Staff in their dealings with the public.
- (3) This Bylaw does not apply to RCMP detachment or staff, including Municipal staff employed for the purpose of supporting RCMP and other police services.
- (4) This Bylaw does not apply to Incidents between Municipal Staff.

### **Respectful Behaviour**

- 6**
- (1) All persons using Municipal Facilities have a duty to:
    - a. Treat others with respect, courtesy, fairness, and equality;
    - b. Use Municipal Facilities and equipment in a safe and respectful manner; and
    - c. Comply with all posted policies and rules regarding the use of Municipal Facilities and equipment.
  - (2) A person must not commit or engage in Inappropriate Behaviour in a Municipal Facility.

### **Responding to Incidents**

- 7**
- (1) When a member of the public witnesses an Incident and wish to bring the Incident to the attention of the Municipality, they must follow the procedures set out in Appendix A of this Bylaw.
  - (2) When Municipal Staff witness or receive a report regarding Inappropriate Behaviour originating from a member(s) of the public, they must follow the procedures set out in Appendix A of this Bylaw.
  - (3) When a member of the public witnesses or is subject to Inappropriate Behaviour originating from Municipal Staff and wishes to make a complaint, they must follow the procedures set out in Appendix A.1.
  - (4) The Manager of Fire and Bylaw Services is authorized to issue a Suspension to any person who is not in compliance with this Bylaw for a period of up to eighteen (18) months or issue a fine of up to \$1000 per Incident, or issue both a suspension and fine. In exercising their discretion under this section, the Manager of Fire and Bylaw Services must consider the factors set out in Appendix B of this Bylaw.
  - (5) A person that is subject to a Suspension under this Bylaw must not access, enter or use any Municipal Facility included in the Suspension, subject to the terms and conditions of the Suspension.
  - (6) All Municipal Staff will exercise their power and authority under this Bylaw fairly and equitably and in accordance with the *Human Rights Code*, the *Charter of Rights and Freedoms*, and all other applicable enactments.

## **Appeal Process**

- 8** (1) A person subject to a Suspension under this Bylaw may request a review of the decision by the Chief Administrative Officer. Requests for review of a Suspension must be made in writing and must be delivered to the office of the Chief Administrative Officer within 10 business days of the date the notice of Suspension was issued.
- (2) In exercising their discretion under this section, the Chief Administrative Officer must consider the factors set out in Appendix B of this Bylaw.
- (3) Appeal hearings will be held by the Chief Administrative Officer in accordance with Appendix C of this Bylaw.
- (4) The decision of the Chief Administrative Officer with regards to a Suspension is final.

## **Probationary Period and Subsequent Suspensions**

- 9** (1) Once a Suspension has been completed, regardless of the duration, the person subject to the Suspension will be subject to a six-month probationary period with the following conditions:
- a. If an Incident occurs during the probationary period, the Manager of Fire and Bylaw Compliance will impose a subsequent Suspension of equal or greater duration than the initial Suspension.
  - b. A subsequent Suspension issued under this section may be for a duration of up to three years.
  - c. A subsequent Suspension under this section must be issued by the Manager of Fire and Bylaw Compliance or the Municipality's Legal Counsel in writing.
  - d. Notwithstanding section 8 (1) of this Bylaw, a person subject to a subsequent Suspension under this section is not entitled to appeal that Suspension, regardless of whether the person requested an appeal of the initial Suspension.

## **Offence and Penalty**

- 10** (1) Every person who violates a provision of this Bylaw or who neglects to or refrains from doing anything required to be done by a provision of this Bylaw is guilty of an offence and is liable to the penalties imposed under this Bylaw, and is guilty of a separate offence each day that a violation continues to exist.
- (2) Every person who commits an offence is liable on summary conviction to a fine or imprisonment, or to both a fine and imprisonment, not exceeding the maximum allowed by the *Offence Act*.

**SCHEDULES**

- 11** The following schedules are attached hereto and form part of this Bylaw:
- Appendix A – Incident Procedure – Incidents Originating from the Public
  - Appendix A.1 – Incident Procedure – Incidents Originating from Municipal Staff
  - Appendix B – Inappropriate Behaviour Enforcement Guidelines
  - Appendix C – Appeal Procedure

\_\_\_\_\_  
READ a first time on  
READ a second time on  
READ a third time on  
APPROVED by  
ADOPTED on

\_\_\_\_\_  
CORPORATE OFFICER

\_\_\_\_\_  
PRESIDING MEMBER

## **Appendix A – Incident Procedures**

### **Incidents Originating from the Public**

1. This procedure is to be followed by members of the public who observe an Incident or by Municipal staff when Municipal Staff observe an Incident, have reason to believe that an Incident has occurred in a Municipal Facility, or receive a complaint of an Incident by a member or members of the public.
2. The Municipality's primary concern is the safety of members of the public and Municipal Staff. If at any time Municipal Staff feel that the safety of any person is at risk, they will request police assistance. Municipal Staff are not expected to jeopardize their safety or that of others in responding to an Incident.
3. Municipal Staff are expected to act in accordance with this Bylaw fairly and equitably and in accordance with the *Human Rights Code*, the *Charter of Rights and Freedoms*, and all other applicable enactments.
4. Where possible, Municipal Staff will attempt to explain to the person or persons engaging in the Inappropriate Behaviour that their behaviour is unacceptable and ask that the behaviour cease. Municipal Staff may also attempt to de-escalate the situation, where appropriate.
5. If the Inappropriate Behaviour continues, and depending on the severity of the Inappropriate Behaviour, Municipal Staff may require the person to leave the Municipal Facility immediately and the Supervisor may issue the person a temporary suspension of up to 10 days. If the person refuses to leave the Municipal Facility, Municipal Staff may request police assistance.
6. If the Incident involves alleged Inappropriate Behaviour by a minor, Municipal Staff will make reasonable attempts to notify the parents or guardian of the minor as soon as reasonably possible following the Incident.
7. As soon as is reasonably possible following the Incident, Municipal Staff will complete an Incident Report detailing the Incident and including the names and contact information of the person(s) who engaged in the Inappropriate Behaviour and any witnesses, and any written statement provided by the witness. Municipal Staff will submit the completed Incident Report to their Supervisor who will provide a copy to their Manager and to the Director of Human Resources.
8. If the complainant of Inappropriate Behaviour is a member of the public, the complainant must contact a Manager and explain details of the Incident in as much detail as possible. The details should include, but are not limited to the time and

location of the Incident. The complainant must also provide as many details of the Inappropriate Behaviour as well as sufficient details for the Municipality to identify the individual(s) engaged in the Inappropriate Behaviour.

9. All Incidents will be reviewed and investigated. When a Manager receives an Incident Report, they will consult with the Director of Human Resources. If the Director of Human Resources is aware of previous Incidents involving the individual, the Director of Human Resources may consult with the Municipal Staff who reported or were involved in the previous Incidents. After considering the Incident Report and other available information as well as the Guidelines set out in Appendix B, the Director of Human Resources and Manager will jointly take such action as they consider appropriate in the circumstances, which may include:
  - a. determining that the Incident did not constitute a violation of this Bylaw and take no further action;
  - b. determining that the Incident constituted a violation of this Bylaw but decide that no further action is required in the circumstances;
  - c. determining that the Incident constituted a violation of this Bylaw and take further action, including:
    - i. issuing a written warning letter or letter of expectation;
    - ii. requiring that the person meet with the Manager or the Director, including that the person not enter or use any Municipal Facility until they meet with the Manager or Director; and
    - iii. recommending that the Manager of Fire and Bylaw Services impose a Suspension.
10. If the Director of Human Resources and Manager believe that a Suspension is appropriate, they will compile and forward all information gathered during their investigation to the Manager of Fire and Bylaw Services. The Director of Human Resources will make recommendations to the Manager of Fire and Bylaw Services regarding the proposed scope and duration of the Suspension and any terms and conditions.
11. The Manager of Fire and Bylaw Services will review the information and take such action as they consider appropriate after considering the factors set out in Appendix B. The Manager of Fire and Bylaw Services may refuse to impose a Suspension or, if a Suspension is imposed, establish the scope and duration of the Suspension and any terms and conditions.
12. If a Suspension is issued, the Manager of Fire and Bylaw Services or the Municipality's legal counsel must notify the person in writing of the terms of the Suspension and of their right to appeal under this Bylaw.

13. Once an investigation is completed, the complainant must be notified that a formal investigation has been carried out.
14. If a Suspension is issued, a confidential memorandum regarding the Suspension would also be sent from the Director of Human Resources and to Municipal Staff for whom the information is necessary for the performance of their duties. Further confidential memoranda may be issued to notify Municipal Staff of changes to or extensions of the Suspension and upon completion of the Suspension.
15. Except where prohibited by law, the Director of Human Resources may, pursuant to any information sharing agreements between the Municipality and other local governments, public bodies, RCMP and police, share the confidential memorandum and any information involved in the investigation.
16. The Manager of Fire and Bylaw Services may extend the duration of a Suspension where the person breaches the terms of the Suspension or where there are further Incidents involving the person.

## **Appendix A.1 – Incident Procedures**

### **Incidents Originating from Municipal Staff**

1. For the purposes of this Appendix:  
    **“Committee”** means the employer of the Respondent, the direct supervisor of the Respondent, and the Director of Human Resources or their designate;  
    **“Employer Decision Report”** means a report prepared by the Committee outlining the complaint, the Committee’s findings and decision, and further actions to be taken; and,  
    **“Respondent”** means the member of Municipal Staff who is subject of the complaint.
2. Inappropriate Behaviour (as defined in this Bylaw) originating from Mayor or Council shall be deemed to be a contravention of Section 2 of the Council Standards of Conduct Policy. Complaints that are raised by members of the public about Inappropriate Behavior originating from Mayor or Council members must be brought forward by the Director of Human Resources. and the complaint must be reviewed in accordance with section 10 of the Council Standards of Conduct Policy.
3. If a member of the public believes that they have been subject to Inappropriate Behaviour originating from Municipal Staff other than the Mayor or Council members, they will follow the process set out below.
4. A complaint must be made in writing and delivered to the Director of Human Resources. Once a formal written complaint of Inappropriate Behavior is made, the Director of Human Resources must review the complaint and decide whether it is appropriate to commence an investigation. Formal Investigations may include the engagement of an external investigator.
5. If a member of the public makes a verbal complaint to a Supervisor or Manager, the Supervisor/Manager must inform the complainant to make a written complaint to be delivered to the Director of Human Resources. The Supervisor/Manager must advise the Department of Human Resources immediately of any verbal complaint.
6. All persons interviewed by the investigator may be accompanied by a representative (union representative/representative from the Municipality’s human resources department) should they wish to be accompanied. At the conclusion of the investigation, the investigator must document their findings and any recommendations for the resolution of the Inappropriate Behaviour. Findings must be presented to the Committee. The Committee will review the findings and decide based on the factors set out in Appendix B whether the findings indicate that the Respondent engaged in Inappropriate Behaviour. The Committee must then prepare an Employer Decision Report. The severity and duration of the Inappropriate Behaviour will be considered in

determining appropriate corrective action, up to and including dismissal for just cause.

7. A copy of the Employer Decision Report must be provided to the Respondent on a confidential basis. Information collected and retained during the course of the investigation process is confidential and must not be disclosed to a complainant or witnesses except as otherwise may be required by law.
8. Once an investigation is completed, the complainant must be notified that a formal investigation has been carried out.
9. Unionized employees may dispute the Employer Decision Report under the provisions of the appropriate collective agreement under the grievance process.
10. Non-unionized employees may appeal the Employer Decision Report within fifteen (15) days of the Decision to the Chief Administrative Officer. The Chief Administrative Officer (or designate) must review the appeal, determine whether the decision of the Committee to make a finding of Inappropriate Behaviour was reasonable (taking into consideration the factors in Appendix B), and issue a decision. The Decision of the Chief Administrative Officer (or designate) on the appeal is final.
11. If a complaint is found to be filed for malicious or vexatious purposes, the Director of HR may determine that the person making the complaint has engaged in Inappropriate Behaviour under the Bylaw. Complaints filed for malicious or vexatious purposes may include, but are not limited to, complaints regarding decisions of Bylaw enforcement staff which the complainant seeks to overturn.



## **Appendix B – Inappropriate Behaviours Enforcement Guidelines**

In determining the appropriate measures to deal with a contravention of this Bylaw, Municipal Staff will consider the following factors:

1. the nature and severity of the Inappropriate Behaviour;
2. whether the Inappropriate Behaviour was a single or repeated act;
3. whether the person was told that the behaviour was inappropriate and nonetheless continued the conduct;
4. the impact of the Inappropriate Behaviour on members of the public and Municipal Staff;
5. the person's acknowledgement of wrongdoing; and
6. the person's history of other contraventions.

## **Appendix C – Appeal Procedure**

1. Requests for review of a Suspension under this Bylaw must be made in writing and must be delivered to the office of the Chief Administrative Officer within 10 business days.
2. Within 10 business days of receiving a request for review under section 8(1) of this Bylaw, the Chief Administrative Officer will notify the person subject to the Suspension of the date for their hearing.
3. The person appointed as North Cowichan's Privacy Officer will provide the person subject to the Suspension with copies of all materials that will be considered by the Chief Administrative Officer a minimum of 10 business days prior to the hearing. The materials will be redacted as necessary to comply with the *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c. 165 and any other applicable enactments.
4. The person subject to the Suspension may attend the hearing and may be accompanied by a representative of their choice, including legal counsel.
5. The Director will attend the hearing on behalf of Municipal Staff.
6. The Chief Administrative Officer may request the attendance of any other person at the hearing, including a member of Municipal Staff or Municipal legal counsel.
7. At the hearing, the person subject to the Suspension will have 10 minutes to address the Chief Administrative Officer. This time may be extended if deemed necessary by the Chief Administrative Officer due to the complexity of the issues or the severity of the allegations.
8. The Chief Administrative Officer will notify the person subject to the Suspension of their decision in writing within 10 business days of the hearing.
9. The decision of the Chief Administrative Officer with regards to a Suspension is final.
10. The Chief Administrative Officer will notify Mayor and Council of appealed Suspensions.

# Report

Date	August 11, 2020	File:
To	Council	
From	Jason Blood, Manager, Recreation	Endorsed:
Subject	Covid-19 Re-opening plan for Fuller Lake Arena	

## Purpose

To review options for resuming services at Fuller Lake Arena.

## Background

Council was advised that North Cowichan recreation centres were closed to the public, effective on March 16, 2020 at 4:30 pm, at the March 18, 2020 Regular Council Meeting. Since the closure, staff have been able to complete regular annual maintenance tasks, such as ice removal, mechanical servicing, minor building repairs, and the 2020 LED lighting replacement capital project. The Fuller Lake Arena facility was used to support the COVID-19 Vulnerable Populations Cowichan Task Force by providing a physical space and shower access to the residents of the temporary outdoor housing site.

On May 19, 2020, the provincial government (the "Province") enacted Phase 2 of BC's Restart Plan (the "Plan"), which allowed many essential industries to reopen while implementing extra safety precautions and physical distancing measures. Following that announcement, the BC Recreation & Parks Association ("BCRPA") released industry specific guidelines to carefully allow for certain select outdoor recreation programs to occur under Phase 2. Effective June 2020, three members of staff were deployed to the Fuller Lake site to support the Park Ambassador Program and to plan and deliver outdoor camp and fitness programs. These programs have taken place at 12 different outdoor locations, including Fuller Lake Arena.

On June 24, 2020, the Province enacted Phase 3 of the Plan, and under the approval of the Ministry of Health, the BCRPA released additional industry specific guidelines to allow for a return of indoor recreation programs and services. In addition, viaSport released "Return to Sport" guidelines to be used by Provincial Sport Organizations ("PSO") for their specific Local Sport Organizations ("LSO").

Staff have been working collaboratively with our regional recreation partners (Cowichan Valley Regional District, City of Duncan, and Town of Ladysmith) to develop a regional approach to resumption of recreation services and the re-opening of public facilities.

The Cowichan Valley Regional District (CVRD) recently announced the re-openings of the following arenas;

- Cowichan Lake Sports Arena – effective August 4, 2020
- Cowichan Community Centre – effective August 10, 2020
- Kerry Park Recreation Centre – effective August 17, 2020

## Discussion

The recommended option is consistent with the Plan's guidelines for Phase 3, with the work of sport and recreation governance bodies, and aligns with actions being taken at other facilities in the region.

Staff believe that the re-opening of the Fuller Lake Arena presents a low risk to the public and staff health and safety due to the comprehensive guidelines established for recreation facility operators and sports organizations. Included are safe resumption guidelines, disinfection protocols, and Ministerial Order M183 that protects amateur sport organizations, their employees and volunteers from liability in relation to COVID-19.

North Cowichan's LSO's, such as Cowichan Valley Minor Hockey Association (CVMHA), have prepared plans for their use of Fuller Lake Arena, along with the other CVRD owned arena facilities in the Cowichan Valley. In conjunction with the CVRD, utilizing a provincial template (provided through the BCRPA) and guidelines, staff have developed an internal COVID-19 Restoration Plan for the re-opening of the Fuller Lake Arena.

Under the Plan's Stage 3 conditions, LSO's must meet both their respective PSO's and municipal Site Safety Plan guidelines. The guidelines put in place a number of restrictions and requirements when using facilities, including:

- No inter-association games or tournaments
- No sharing of equipment between participants
- Participant skill development focus instead of game play
- Health Screening and COVID-19 education of all participants, coaches, staff, and volunteers
  - o Everyone who enters building must answer COVID-19 screening questions and will not be able to enter if any conditions are present
  - o Each team or group will need a "host" to make sure your group enters building properly and follows arrows to maintain physically distancing.
- Increased hygiene measures and education
  - o Separate entrances and exits to be utilized to reduce touch points and physical distancing concerns
  - o There will be 30-minutes between different groups to allow for staff to sanitize high touch areas
  - o There will be COVID-19 informational signage, traffic flow markers, and amenity closed signage in place prior to participation
- Dressing Rooms and Stands will remain closed to limit attendance numbers to less than 50
  - o Users are expected to come dressed and only have skates to put on when they arrive
- User group capacity limits
  - o Maximum of 20 participants on the ice at a time including coaches
  - o 1 parent per child can enter building and watch but no siblings or extra family members

Staff are also anticipating the resumptions of certain services in October (pending future Provincial direction), including:

- Resumption of Municipally operated learn to skate lessons under modified conditions
- Partial resumption of public skating sessions under attendance restrictions
- Resumption of adult drop-in hockey user groups under attendance / play restrictions

Staff have met with both the CVMHA and the Fuller Lake Skating Club (FLSC) regarding fall bookings and reviewed their Return to Sport plans. These groups are working towards a resumption of their respective programs effective September 8, 2020. This would necessitate staff beginning the ice making process as of August 24, 2020 to support the resumption of these sporting services.

## Options

### **Option 1: Proceed with Fuller Lake Arena Re-Opening Plans**

(This is the staff recommended option)

RECOMMENDED MOTION: That Council directs staff to proceed with the re-opening of the Fuller Lake Arena under its COVID-19 Restoration of Programs & Services Plan, specifically;

- To allow for a phased-in resumption of services effective September 8, 2020
- To support the COVID-19 restrictions outlined for facility usage

### **Option 2: Do not proceed with Fuller Lake Re-Opening Plans**

(This option does not align with regional partners in service delivery)

OPTION 2 MOTION: That Council directs staff to not re-open Fuller Lake Arena to any user groups and/or the public.

### **Option 3: Proceed with Fuller Lake Re-Opening Plans but limited to Cowichan Valley Minor Hockey Association (CVMHA) and Fuller Lake Skating Club (FLSC) User Groups**

(This option limits the numbers of people accessing the facility; does not support any access to adult user groups, or drop-in access / learn to skate programs for the general public; and does not fully align with regional partners)

OPTION 3 MOTION: That Council directs staff to proceed with the re-opening of Fuller Lake Arena under its Covid-19 Restoration Plan but limits the re-opening specifically to the CVMHA and FLSC user Groups.

## Implications

The recommended option is within the approved budget. It is anticipated that the minor drop in forecast revenue due to reduced registered program offerings can be offset by reduced operational expenditures.

For the upcoming season, the CVMHA and FLSC have requested 50 hours per week of ice rental bookings, which is consistent with their last three seasons and will not negatively impact their 2020-2021 development plans.

The anticipated ice schedule offers the same number of available rental hours per week to adult user groups (14-hours), and the proposed October start date to these bookings is consistent with the last three ice seasons.

The anticipated schedule, which has reduced service levels (less hours of public drop-in and program access), will result in a reduction of staffing levels needed to support these services.

### **Recommendation**

That the Committee of the Whole recommends to Council to direct staff to proceed with the re-opening of the Fuller Lake Arena under its COVID-19 Restoration of Programs & Services Plan, specifically;

- To allow for a phased-in resumption of services effective September 8, 2020, and
- To support the COVID-19 restrictions outlined for facility usage