

Report

Date January 17, 2024

File:

Subject Bylaw Enforcement Officer Bylaw No. 3948, 2024, for first three readings

PURPOSE

To formally establish the bylaw enforcement officer position by a way other than under the *Police Act* to ensure that Bylaw Compliance Officers are accountable to Council rather than the officer in charge of the local RCMP detachment.

BACKGROUND

Historically, bylaw enforcement officers in North Cowichan have been appointed by Chief Administrative Officer (CAO) under section 36 of the *Police Act*. When a bylaw enforcement officer is appointed under that Act, they are accountable to the chief constable or the officer in charge (OIC) of the local detachment.

To allow North Cowichan bylaw enforcement officers to report to Council rather than the RCMP OIC, Council must establish the position by bylaw.

DISCUSSION

A bylaw enforcement officer position may be established in one of two ways:

- (1) By appointment under section 36 of the *Police Act*; or
- (2) By establishing the position and assigning the powers, duties, and functions to the position by bylaw.

When a bylaw enforcement officer is appointed under the *Police Act*, that bylaw enforcement officer is accountable to the OIC of the local RCMP detachment. Therefore, the bylaw enforcement officer position must be established by bylaw for the bylaw enforcement officer to be accountable to Council. However, the appointment of individual bylaw enforcement officers can be delegated, which has been delegated to the CAO under section 9(6) of the Delegation of Authority Bylaw (Attachment 3).

Legislated Bylaw Enforcement Officer Powers

Bylaw enforcement officers are deemed to be a "peace officer" when serving a municipal ticket as per section 28 of the *Offence Act*.

Common Law (Case Law) Bylaw Enforcement Officer Powers

Section 29 of the *Interpretation Act* and section 2 of the *Criminal Code* define "peace officer" to include a police officer, police constable, bailiff, constable, or **other person employed for the preservation and maintenance of the public peace**". Given these definitions, several court cases have considered the role that bylaw enforcement officers have in preserving and maintaining public peace.

Section 117.07(a) of the *Criminal Code* provides an exemption for peace officers to carry prohibited weapons, which includes oleoresin capsicum spray (commonly known as pepper spray) and batons, in the course of or for the purpose of their duties, where an unavoidable need for self-defence arises or no RCMP officers are immediately available to assist (see section 9(h) in Bylaw Enforcement Officer Bylaw No. 3948, 2024).

A peace officer has the power to arrest a person without a warrant under the *Trespass Act*, the *Hotel Keepers Act*, and the *Safe Streets Act*. Therefore, a bylaw enforcement officer may arrest a person if that person obstructs the bylaw enforcement officer in seeking to serve a ticket. However, instead of arresting the person, the bylaw enforcement officer could simply detain the person pending the arrival of an RCMP officer who would effect the arrest.

BC Provincial Court decisions have indicated that the court considers bylaw enforcement officers acting in the course of their duties to be employed for the preservation and maintenance of public peace and are therefore considered to be peace officers who can exercise the power to charge persons from executing their duties and to utilize the *Criminal Code* powers to arrest, detain, use force, and demand identification in the course of carrying out their duties. However, the higher courts have taken a more restrained approach, that bylaw enforcement officers are peace officers only when it is necessary for the performance of their duties of bylaw enforcement.

Bylaw Enforcement Officer Bylaw No. 3948, 2024

Bylaw Enforcement Officer Bylaw No. 3948, 2024 proposes to:

- (1) establish all of the positions for who may issue tickets or bylaw notices for non-compliance with Municipal bylaws under sections 4 to 9;
- (2) assign the powers, duties, and functions of bylaw enforcement officers under section 10;
- (3) include a charge/offence section so that any person interfering with a bylaw enforcement officer may be fined using a Municipal Ticket or Bylaw Notice, or prosecuted under the *Offence Act*;
- (4) establish the maximum penalty amount for an offence in a prosecution under the *Offence Act*. If convicted the provincial court judge will set the penalty amount, at what they feel is appropriate, up to the maximum allowed under the bylaw; and
- (5) prescribe the oath/affirmation that each bylaw enforcement officer must complete as the Policy Oath/Solemn Affirmation Regulation no longer applies as bylaw enforcement officers will no longer be appointed under section 36 of the *Police Act*.

Although a provision is not required in the bylaw to provide bylaw enforcement officers with the authority to enter into and inspect private property as that right has been granted by section 16 of the *Community Charter* for employees and officers, it does not include others such as contractors (e.g., Animal Control Officers), therefore, that provision has been included under subsection 10(d) should an Animal Control Officer ever need to enter a private property when dealing with aggressive or dangerous dogs. The property owner or tenant has the right to demand identification from the bylaw enforcement officer; require the officer give a valid reason for the inspection; and may refuse entry if the time of the inspection is inconvenient, as the search/inspection may only take place during reasonable hours.

In addition to this new bylaw, staff are proposing several amendments to existing bylaws, such as establishing fines for interfering with a bylaw enforcement officer while performing their duties and updating how bylaw enforcement officers are appointed.

- *Business Licence Amendment Bylaw No. 3949, 2024*

Business Licence Amendment Bylaw No. 3949, 2024, proposes to update the Business Licence Bylaw by replacing Business Licence Officer with Business Licence Inspector throughout the bylaw and to remove the “or Council” in section 7.1 as Council has delegated that authority to the Manager of Bylaw and Business Licensing Services.

Once a delegation has been made, Council cannot overturn the decision of the delegated body. However, Council may establish the right to have decisions by a delegate reconsidered by Council, which Council has done under section 7 of the Delegation of Authority Bylaw.

- *Delegation of Authority Amendment Bylaw No. 3950, 2024*

Delegation of Authority Amendment Bylaw No. 3950, 2024, proposes to update the Delegation of Authority Bylaw by removing the reference to section 36 of the *Police Act* for appointing bylaw enforcement officers.

- *Municipal Fine Amendment Bylaw No. 3951, 2024*

Community Charter Bylaw Enforcement Ticket Regulation 425/2003 was amended on December 7, 2023, by B.C. Reg. 425/2023 to establish maximum fine amount for a ticket (legally referred to as “by the laying of an information”) for a young person (a person who has reached 12 years of age but is less than 18 years of age) of up to \$1,000 and increased the maximum fine limit for an adult up to \$3,000.

Municipal Fine Amendment Bylaw No. 3951, 2024, proposes to:

- update the list of bylaw enforcement officers under section 4 of the Bylaw Offence Notice Enforcement Bylaw to include Building Inspectors, the Business Licence Inspector, and the Weed Control Officer;
- update the list of screening officers under section 6 of the Bylaw Offence Notice Enforcement Bylaw to replace the “Manager of Fire and Bylaw Services” with the “Director responsible for bylaw compliance”;
- establish a \$500 fine for bylaw notices under the Bylaw Offence Notice Enforcement Bylaw for anyone obstructing a bylaw enforcement officer from carrying out their duties;
- remove OCP Bylaw No. 3450 from Schedules 1 and 2 of the Municipal Ticket Information System Bylaw;
- update the list of Designated Bylaw Enforcement Officers in Schedule 1 of the Municipal Ticket Information System Bylaw;
- establish the maximum fines for a young person (\$1,000) and an adult (\$3,000) under the Municipal Ticket Information System Bylaw for anyone obstructing a bylaw enforcement officer from carrying out their duties; and
- establish a \$100 fine for bylaw notices under the Bylaw Offence Notice Enforcement Bylaw for anyone (unreasonably) obstructing the others from using a sidewalk or walkway (see Highway Use Amendment Bylaw No. 3936, 2023 for establishment of infraction).

OPTIONS

1. **(Recommended Option)** THAT Council give first, second, and third readings to:
 - (1) Bylaw Enforcement Officer Bylaw No. 3948, 2024;
 - (2) Business Licence Amendment Bylaw No. 3949, 2024;
 - (3) Delegation of Authority Amendment Bylaw No. 3950, 2024; and
 - (4) Municipal Fine Amendment Bylaw No. 3951, 2024.
 - *This option provides transparency to the public regarding Bylaw Compliance Officer accountability and the powers assigned to them while enforcing municipal bylaws, including use of force, entering private property, and detention.*

2. THAT Council refer the following bylaws to a Committee of the Whole meeting for further discussion and recommendation to Council on whether to give the bylaws first three readings:
 - (1) Bylaw Enforcement Officer Bylaw No. 3948, 2024;
 - (2) Business Licence Amendment Bylaw No. 3949, 2024;
 - (3) Delegation of Authority Amendment Bylaw No. 3950, 2024; and
 - (4) Municipal Fine Amendment Bylaw No. 3951, 2024.
 - *This option will enable Council to decide if they wish to limit any of the powers conferred on bylaw enforcements officers under common law.*

3. Maintain status quo.
 - *Under this option, all the bylaws would be abandoned.*

IMPLICATIONS

Bylaw Enforcement Officer Bylaw No. 3948

If Council decides that they do not wish to proceed with Bylaw Enforcement Officer Bylaw No. 3948, and maintain the status quo, as all Bylaw Compliance Officers (their title as noted under the CUPE Collective Agreement) have been appointed as bylaw enforcement officers under section 36 of the *Police Act* they would report directly to the RCMP, as required by law.

If Bylaw Enforcement Officer Bylaw No. 3948 is adopted, Council may continue to provide direction on specific type of bylaw enforcement issues and may direct bylaw enforcement officers to prioritize enforcement of certain bylaws, or to issue warnings rather than municipal tickets or bylaw notices for specific categories of violations. Within this framework, everyday enforcement decisions are delegated to staff. Everyday enforcement decisions are made by the individual bylaw enforcement officer using their discretion when responding to a complaint and enforcing municipal bylaws. Maintaining separation between Council and bylaw enforcement officers is essential to an administratively fair bylaw enforcement system. While Council sets policy and provides general direction on enforcement priorities, Council (as a whole or individual members) should not become directly involved in enforcement action by directing enforcement against specific residents, groups or businesses, or by directing that enforcement action does not occur in a particular circumstance, thereby fettering the bylaw enforcement officer from exercising their discretion.

Business Licence Amendment Bylaw No. 3949

Council must provide an opportunity for persons affected by Business Licence Amendment Bylaw No. 3949 to make representations to Council prior to adoption of the bylaw. Sections 59(2) and (3) of the *Community Charter* require that notice be given in accordance with section 94 and the Public Notice Bylaw before Council may consider adoption of Business Licence Amendment Bylaw No. 3949. If the bylaw receives first three readings, a notice will be posted to the website, notice board, and social media on or before January 19, 2024, and published to the local newspaper on January 25, 2024.

RECOMMENDATION

THAT Council give first, second, and third readings to:

- (1) Bylaw Enforcement Officer Bylaw No. 3948, 2024;
- (2) Business Licence Amendment Bylaw No. 3949, 2024;
- (3) Delegation of Authority Amendment Bylaw No. 3950, 2024; and
- (4) Municipal Fine Amendment Bylaw No. 3951, 2024.

Report prepared by:



Kim Ferris
Manager, Bylaw and Business Licensing Services

Approved to be forwarded to Council:



Ted Swabey
Chief Administrative Officer

Attachments:

- (1) Bylaw Enforcement Officer Bylaw No. 3948, 2024
- (2) Business Licence Amendment Bylaw No. 3949, 2024
- (3) Delegation of Authority Amendment Bylaw No. 3950, 2024
- (4) Municipal Fine Amendment Bylaw No. 3951, 2024
- (5) Excerpts from Provincial and Federal Legislation
- (6) The Appointment and Powers of a Bylaw Enforcement Officer (Young, Anderson)