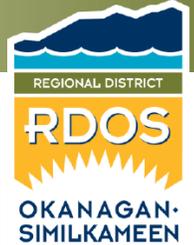


ADMINISTRATIVE REPORT



TO: Planning & Development Committee
FROM: B. Newell, Chief Administrative Officer
DATE: March 2, 2023
RE: Development Permits – Ticketing of Infractions

Administrative Recommendation:

THAT the Electoral Area official community plan bylaws and bylaw enforcement notice bylaw, be amended to allow for the ticketing of development permit infractions.

Purpose:

The purpose of this report is to present options regarding the enforcement of contraventions of an issued development permit (DP).

Background:

At its meeting of June 18, 2020, the Corporate Services Committee resolved to “instruct staff to bring forward options for bylaw amendments to allow for the ticketing of development permit infractions rather than pursue legislative changes through a resolution to UBCM.”

Legislative Overview:

Under Section 471 of the *Local Government Act*, an official community plan (OCP) is described as a “statement of objectives and policies to guide decisions on planning and land use management ...”

An OCP is not itself a bylaw, even though Section 472 of the Act allows a local government to adopt an OCP *by bylaw*.

This is an important distinction as Section 415 of the *Local Government Act* allows a local government to deal with the contravention of a bylaw by adopting a separate bylaw in accordance with the *Local Government Bylaw Notice Enforcement Act*.

In response, the Regional District Board has previously adopted the Bylaw Notice Enforcement Bylaw No. 2507, 2010, and uses this bylaw to apply fines to bylaw contraventions involving, amongst other things, animals (dogs), noise, zoning, building, open air burning and untidy & unsightly premises.

At its meeting of June 6, 2019, the Board amended Bylaw No. 2507, 2010, to allow for enforcement in situations where development has occurred on lands designated as a development permit (DP) area but a permit has not been issued by the Regional District.

This amendment was not, however, extended to issued permits as the DP area designations that have been adopted by the Board — a list that includes environmentally sensitive, watercourse, protection of farming, hillside and “form & character” — reside within the various Electoral Area official community plans.

Consequently, an offence against a development permit is an offence against an OCP and can only be pursued through civil proceedings in B.C. Supreme Court, which is costly, administratively onerous and time consuming.

Union of British Columbia Municipalities (UBCM) Consideration:

On three (3) separate occasions this issue of DP enforcement has been brought before the Annual Convention of the UBCM: “Development Permit Areas: Enforcement” (2003), “Enforcement of Development Permits” (2011), and “Development Permit Area Requirements: (2019)”.

The 2019 Resolution, which was endorsed by the Convention, requested “the provincial government improve enforceability of development permit area requirements by enabling local governments to enforce violations by way of prosecution, ticket or bylaw notices.

In response, the province advised that it considers local governments to already have the ability to enforce development permit violations through ticketing “where the development permit requirements are established in a regulatory manner in the bylaw. For example, some local governments have included development permit rules in the matters that can be enforced under their Municipal Ticket Information bylaws ...”

Analysis:

While the Province has previously stated that it believes local governments already have the necessary authority under the *Local Government Act* to ticket development permit infractions, Administration is aware of the legal doubts that exist regarding the authority to enforce DP contraventions using bylaw notices or municipal tickets.

Nevertheless, and in recognition of the Province’s position and that legislative changes are not forthcoming, should the Board wish to authorize enforcement of DP area contraventions by bylaw notice or ticketing, amendments to the Electoral Area official community plans and Bylaw Notice Enforcement (BNE) Bylaw are required.

With regard to the OCPs, this would include the introduction of a new “Development Permit Offences” category under the Development Permit Areas section of each Plan that reads as follows:

- .1 *No person shall commence any development on lands within any development permit area without obtaining a valid development permit.*
- .2 *The development of land in contravention of the terms or conditions of a development permit that has been issued under Section 489 of the Local Government Act is prohibited.*

With regard to the BNE Bylaw, it is proposed that the penalty be the same as that established for failing to obtain a DP, which is \$500, and that early payment of a penalty be \$450, late payment of a penalty be \$550 and that a Compliance Agreement be available.

Of concern, if the Regional District were to be challenged over a bylaw notice penalty, it is possible that the contravention *may* not be enforceable.

Alternatives:

1. Status quo.

The option to not amend the OCP and BNE bylaws is available to the Board, with enforcement pursued as it historically has been; through voluntary compliance and, if that fails, civil proceedings in B.C. Supreme Court.

While the limitations of this approach are well know, namely the cost, administrative burden and lengthy delays in achieving voluntary compliance or pursuing action through the court system, it would not put the Regional District in the potential position of having to defend a legal challenge to the issuance of an offence against a development permit.

Respectfully submitted:



C. Garrish, Planning Manager

Attachments: No. 1 - Draft OCP & BNE Bylaw Amendments

Attachment No. 1 - Draft OCP & BNE Bylaw Amendments

Draft Official Community Plan (OCP) Bylaw Amendments

1. The Electoral Area “X” Official Community Plan Bylaw No. XXXX, 20XX, is amended by:
 - i) adding a new Section XX.X (Development Permit Offences) under Section XX.0 (Development Permit Areas) to read as follows and renumbering all subsequent sub-sections:

XX.X Development Permit Offences

- .1 No person shall commence any development on lands within any development permit area without obtaining a valid development permit.
- .2 The development of land in contravention of the terms or conditions of a development permit that has been issued under Section 489 of the *Local Government Act* is prohibited.

Draft Bylaw Notice Enforcement Bylaw Amendments

1. The “Regional District of Okanagan-Similkameen Bylaw Notice Enforcement Bylaw No. 2507, 2010” is amended by:
 - i) replacing Appendix 8(a) to Schedule A (Penalties for Bylaw Contravention Offences) in its entirety with the following:

**Appendix 8(a) to Schedule A
Electoral Area “X” Official Community Plan Bylaw No. XXXX, 20XX**

| Column 1 Offence | Column 2 Section | Column 3 Penalty | Column 4 Early Payment | Column 5 Late Payment | Column 6 Compliance Agreement Available <small>Maximum 50% reduction in Penalty Amount when Compliance Agreement shown as YES</small> |
|--|---------------------|---------------------|------------------------------|-----------------------------|---|
| Failure to obtain a Development Permit | XX.X.X | \$500.00 | \$450.00 | \$550.00 | Yes |
| Failure to comply with a condition of a Development Permit | XX.X.X | \$500.00 | \$450.00 | \$550.00 | Yes |