



City of Richmond

Report to Committee

To: General Purposes Committee

Date: September 11, 2018

From: Barbara Sage
City Solicitor

File: 12-8060-20-009718

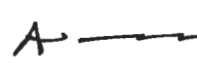
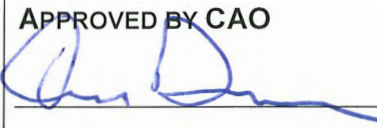
Re: Amendment to Bylaw Enforcement Officer Bylaw No. 9742

Staff Recommendation

1. That Bylaw Enforcement Officer Bylaw No. 9742, Amendment Bylaw No. 9846 be introduced and given first, second and third readings; and
2. That all previous bylaw prosecutions, including the swearing informations, by City staff be authorized by Council.



Barbara Sage
City Solicitor
(604-247-4693)

REPORT CONCURRENCE		
ROUTED TO:	CONCURRENCE	CONCURRENCE OF GENERAL MANAGER
Business Licences	<input checked="" type="checkbox"/>	
Community Bylaws	<input checked="" type="checkbox"/>	
Building Approvals	<input checked="" type="checkbox"/>	
REVIEWED BY STAFF REPORT / AGENDA REVIEW SUBCOMMITTEE	INITIALS: CS	APPROVED BY CAO 

Staff Report

Origin

In recent years, City of Richmond (the “City”) staff have been increasing the bylaw enforcement actions taken throughout the City as a result of community specific issues, reports from the public of bylaw violations, and Council direction. For greater clarity and certainty, staff believe that it would be prudent to, by bylaw, confirm the delegation to appropriate City personnel the authority to commence bylaw prosecutions, including those initiated by the swearing of long form prosecutions. Staff intend to continue to bring forward recommendations for the initiation of injunction actions to Council for review and approval.

This report supports Council’s 2014-2018 Term Goal #1 A Safe Community:

Maintain emphasis on community safety to ensure Richmond continues to be a safe community.

Analysis

Under the current provincial legislation¹, bylaws may be enforced by the City in a number of ways. The primary methods are as follows:

Municipal Ticket Informations (MTIs)

MTIs (or municipal tickets) for specific bylaw violations are completed and issued pursuant to the *Community Charter* and the City’s *MTI Authorization Bylaw No. 7321* and may be immediately served on the person or left at the person’s residence with someone who appears to be at least 16. MTIs impose fines set out in the City’s bylaw, up to a maximum of \$1,000 per violation, and may be disputed in, and enforced by, BC Provincial Court.

Notice of Bylaw Violations (BVNs)

A less formal alternative for bylaw enforcement, mostly used for simple matters like parking violations, are bylaw notices or ‘tickets’ given out under the administrative penalty system created by the City’s *Notice of Bylaw Violation Dispute Adjudication Bylaw No. 8122* and the *Local Government Bylaw Notice Enforcement Act*. They may be delivered in person or left on a vehicle. These bylaw notices/tickets can impose fines set out in the City’s bylaw, up to a maximum amount of \$500 per violation, and if disputed are dealt with through a specific dispute process that is much less formal than the courts, and is presided over by a 3rd party adjudicator.

Injunction

An injunction is a court order directing a person to do, or not to do, a specific act. There are two main types of injunctions, interim/interlocutory and permanent. Interim/interlocutory injunctions can be sought before the final determination by a court as to whether or not there is a bylaw offence. These temporary injunctions stay in place for a specific period of time, after which they expire. Permanent injunctions are made after the court has made their final determination as to the bylaw offence, and are a perpetual court order from the BC Supreme Court. The most recent example, in the City of Richmond context, is the injunction that was sought in order to compel “Weemedical” to cease operating.

¹ *Community Charter, Local Government Act, Offences Act, and Local Government Bylaw Notice Enforcement Act*

External counsel is required for these types of actions to prove the bylaw violation on the balance of probabilities in BC Supreme Court. Injunctions are used as a remedy where simply issuing tickets and fines will not result in the bylaw compliance, and thus the City wants to compel a person in breach of a bylaw to stop doing something, or to do something, under order of the court. Staff intend to continue to bring forward reports to Council for Council approval to commence such legal actions.

Long Form Prosecutions

Long form prosecutions under the *Offences Act* on behalf of the City are commenced in BC Provincial Court by swearing a long form information in front of a BC Provincial Court justice by a bylaw enforcement officer. The court then issues a summons which must be personally served on the alleged bylaw offender. External counsel is often retained for these files to assist staff, take conduct of the files, and make court appearances in BC Provincial Court to prosecute the bylaw offence. Long form prosecutions are used where the City is seeking fines in excess of the amounts permitted for the municipal tickets and bylaw violation notices, up to the maximum allowed, being \$10,000 per offence.²

The City's practice, with respect to long form prosecutions of bylaw offences in BC Provincial Court, is that the authority to commence such routine bylaw enforcement actions and to engage external legal counsel is part of the delegation of authority given to bylaw enforcement officers, the Manager of Community Bylaws and the City Solicitor by virtue of their positions at the City.

In consideration of the current extent of, and intention to increase, the number of bylaw prosecutions as a part of the City's on-going bylaw enforcement, for greater clarity and certainty surrounding the authority of bylaw enforcement officers to engage in such routine bylaw enforcement actions, staff recommend that *Bylaw Enforcement Officer Bylaw No. 9742* be amended (attachment 1) to confirm the following delegations of authority:

- i. delegation of Council's authority to pursue bylaw prosecutions in BC Provincial Court, including the swearing of long form informations, to staff; and
- ii. delegation of Council's authority to defend against or commence appeals of the results of bylaw prosecutions to staff.

Should the proposed amendments be approved, the amended bylaw will give greater clarity and certainty that bylaw enforcement officers have the delegated authority to swear long form informations and to engage external legal counsel, with the approval of the City Solicitor, General Manager of Community Safety or Chief Licence Inspector, to:

- a) prosecute a bylaw contravention;
- b) settle legal proceedings related to a bylaw contravention; and
- c) defend or commence appeals of bylaw prosecution proceedings,

² This maximum of \$10,000 per offence is stipulated by the *Offences Act* and incorporated into the City's Bylaws.


all with the approval of the City Solicitor, the Chief Licence Inspector, or the General Manager, Community Safety. In taking a conservative approach and to confirm Council's authorization of all past bylaw enforcement actions taken under the previous City practice, staff also recommend that Council, by resolution, retroactively authorize all bylaw prosecutions commenced by staff.

Financial Impact


None

Conclusion

The amendments in the proposed *Bylaw Enforcement Officer Bylaw No. 9742, Amendment Bylaw No. 9846* will confirm Council's delegation to staff the authority to commence and continue bylaw prosecutions, including the swearing of long form informations, aiding staff in the timely routine enforcement of the City's bylaws.



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Bylaw Enforcement Officer Bylaw No. 9742, Amendment Bylaw No. 9846

WHEREAS Council has, by bylaw, established the position of Bylaw Enforcement Officer, and assigned certain powers, duties, and functions to that position;

AND WHEREAS Council deems it appropriate to confirm that the powers, duties, and functions of a Bylaw Enforcement Officer include the authority to do all things necessary to commence and prosecute long-form bylaw enforcement proceedings;

NOW THEREFORE, the Council of the City of Richmond enacts as follows:

1.1 The Bylaw Enforcement Officer Bylaw No. 9742 is amended as follows:

- (a) by deleting the word "and" from the end of Section 1.2(d);
(b) by adding a semi-colon to the end of Section 1.2(e);
(c) by adding new Sections 1.2(f) and (g), as follows:
(f) for certainty, prosecution of bylaw contraventions under the Community Charter or the Offence Act in the Provincial Court of British Columbia by swearing an information and, with the approval of the City Solicitor, the General Manager of Community Safety, or the Chief License Inspector, retainer of legal counsel to prosecute the bylaw contravention and settlement of the proceedings; and
(g) for certainty, with the approval of the City Solicitor, the General Manager of Community Safety, or the Chief License Inspector, defense or commencement and prosecution of an appeal from a decision in a bylaw enforcement proceeding, including the retainer of legal counsel to defend or commence and prosecute the appeal and settlement of the appeal.

1.2 This Bylaw is cited as "Bylaw Enforcement Officer Bylaw No. 9742, Amendment Bylaw No. 9846".

FIRST READING

SECOND READING

THIRD READING

ADOPTED

Four horizontal lines for signatures corresponding to the reading stages.

CITY OF RICHMOND APPROVED for content by originating dept. [Signature] APPROVED for legality by Solicitor [Signature]

MAYOR

CORPORATE OFFICER