



City of Richmond

Report to Committee

To: Community Safety Committee

Date: February 24, 2023

From: Mark Corrado
Director, Community Bylaws and Licencing

File: 12-8375-01/2023-Vol
01

Re: Peace Officer Feasibility

Staff Recommendation

That the staff report titled "Peace Officer Feasibility", dated, February 24, 2023, from the Director, Community Bylaws and Licencing be received for information.

Mark Corrado
Director, Community Bylaws and Licencing
(604-204-8673)

REPORT CONCURRENCE		
ROUTED TO:	CONCURRENCE	CONCURRENCE OF GENERAL MANAGER
Law	<input checked="" type="checkbox"/>	
SENIOR STAFF REPORT REVIEW	INITIALS: 	APPROVED BY CAO

Staff Report

Origin

At the Regular Council Meeting held on November 28, 2022, Council made the following referral:

That staff examine and report back on the feasibility and implications of transitioning bylaw enforcement officers to peace officer status, including outlining the difference between bylaw enforcement and peace officers duties.

This report supports Council's Strategic Plan 2018-2022 Strategy #1 A Safe and Resilient City:

Enhance and protect the safety and well-being of Richmond.

1.1 Enhance safety services and strategies to meet community needs.

Analysis

Bylaw Enforcement Officers are assigned their powers, duties and functions via the *Community Charter*, which empowers Council with the ability, by Bylaw, to establish these positions. The appointment status for Bylaw Enforcement Officers was altered on October 10, 2017, when Council adopted the following resolution:

That all appointments by Council of bylaw enforcement officers pursuant to the Police Act be rescinded.¹

Since October 2017, pursuant to Bylaw Enforcement Officer Bylaw No. 9742 (Bylaw 9742), the following powers and duties are assigned to Bylaw Enforcement Officers:

- (a) enforcement of the City's bylaws within the boundaries of the City;
- (b) entry onto or into private premises to verify compliance with the Council's regulations, prohibitions or requirements, including City bylaws, pursuant to Section 16 of the *Community Charter*;
- (c) assist in the prosecution of bylaw contraventions, including appearances in court to provide evidence;
- (d) for certainty, issuance of tickets pursuant to Section 264(1)(b) of the *Community Charter* and subject to the City's Municipal Ticket Information Authorization Bylaw No. 7321;
- (e) for certainty, issuance of bylaw offence notices, subject to the City's Notice of Bylaw Violation Dispute Adjudication Bylaw No. 8122;
- (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

¹https://www.richmond.ca/__shared/assets/_8_Omnibus_Bylaw_Definition_Housekeeping_Amendments_CNCL_10101748457.pdf

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.

Importantly, Bylaw 9742 does not assign Bylaw Enforcement Officers the ability to serve court summons in respect of an alleged offence under a bylaw of the City, pursuant to Section 28 of the *BC Offence Act*. Since 2017, the issuance of a court summons has been conducted by a third party process server on behalf of the City.

There are two ways Bylaw Enforcement Officers may be appointed in BC: (1) under the *BC Police Act*; or (2) under the *Community Charter*. This report provides a comparison of these two legislative appointment methods and the distinctions made in legislation regarding the powers, duties and functions of Special Municipal Constables.

Appointment of Bylaw Enforcement Officers under the BC Police Act

Under Section 36 of the *Police Act*, Bylaw Enforcement Officers can be appointed by either (a) a municipal police board or (b) a municipal Council, if the jurisdiction is policed by the RCMP via a Municipal Police Unit Agreement.

Pursuant to the *Police Act*, each Bylaw Enforcement Officer must be individually appointed and swear an oath under the *Police Act*. As part of their appointment, the municipal Council or police board typically stipulate further what specific duties, functions and powers a Bylaw Enforcement Officer may possess. Prior to October 2017, Bylaw Enforcement Officers in Richmond were:

- individually appointed;
- given duties that were specified in the appointment;
- sworn under the *Police Act*;
- given the ability to enter on or into private property under Section 16 of the *Community Charter*;
- allowed to serve court summons; and
- able to issue tickets and notices if authorized under the Municipal Ticket Information and Notice of Bylaw Violation Bylaws.

Appointment of Bylaw Enforcement Officers under the Community Charter (Status Quo)

Currently, the City's Bylaw Enforcement Officers are appointed by Council under Bylaw 9742 and a City employment letter is sufficient to enact the appointment.

Bylaw Enforcement Officers have all of the above powers, duties and functions of their antecedents who were sworn under the *Police Act* with one key exception. Bylaw 9742 does not grant Bylaw Enforcement Officers the power to serve court summons, which are a necessary procedural step in a long form prosecution for a Bylaw violation in Provincial Court. Currently, the City contracts out the service of summons to a third party agency.

Peace Officer Definition

Council does not have the power under either the *Community Charter* or the *Police Act* to confer Peace Officer status. Furthermore, the *Police Act* does not empower Bylaw Enforcement Officers with the ability to enforce the *Criminal Code*. The term Peace Officer is not defined under the *Police Act*, the *Community Charter* or the *Offence Act*. Instead, in Part 1 definitions, the *Police Act* defines “officer” (i.e. peace officer) as a “provincial constable, special provincial constable, designated constable, municipal constable, special municipal constable, auxiliary constable or enforcement officer² [appointed by the Minister] but not a member of the RCMP”. Bylaw Enforcement Officers are omitted from the definition and, therefore, it cannot be inferred they are Peace Officers under the *Police Act*.

Under Section 35 of the *Police Act*, in non-RCMP municipalities, the Police Board has the authority to appoint Special Municipal Constables who can support municipal police departments in the enforcement of the criminal code as well as municipal bylaws. Special Municipal Constables can, as directed by the Police Board, have the same powers, duties and immunities as Municipal Constables or Police Officers. In some cities this includes the ability to serve court summons; canvass neighbourhoods for evidence; secure police perimeters; tag and transport evidence; and provide support and security at major events.

In the City of Vancouver, Special Municipal Constables have three major job functions: jail guards, traffic authority and community safety personnel. The City of Delta also has Special Municipal Constables and defines the role as Community Safety Officers. Critically, these Special Municipal Constables are not appointed under section 36 of the *Police Act* and are therefore not employed as Bylaw Enforcement Officers. Moreover, RCMP policed jurisdictions do not have a municipal Police Board and do not have authority to appoint Special Municipal Constables.

Most importantly, the *Police Act* makes a distinction between the powers and duties of Special Municipal Constables and Bylaw Enforcement Officers. Bylaw Enforcement Officers do have some degree of protection under other legislation. The courts have established that properly appointed Bylaw Enforcement Officers acting in the course of their duties may be recognized as “peace officers”, for the purposes of criminal prosecution, if they are obstructed in the course of their duties.³ However, while “peace officer” is a defined term in the *Criminal Code* and the *Interpretation Act (British Columbia)*, neither definition references Bylaw Enforcement Officers.

Critically, in RCMP policed jurisdictions, if Bylaw Enforcement Officers are appointed under the *Police Act*, they are then required to conduct their duties under the direction of the Officer-In-Charge of the local RCMP Detachment and are not accountable to the Local government Council. Appointment under the *Police Act* is not recommended given that the City would lose a

² Enforcement Officer is defined under section 18.1.11 of the *Police Act* “Subject to the approval of the minister, the designated board may appoint one or more of the entity's employees as enforcement officers to enforce those enactments, or parts of enactments, of British Columbia or Canada that the minister prescribes as the enactments to be enforced by the designated law enforcement unit.”

³https://www.younganderson.ca/images/seminar_blogs/Appointment_and_Powers_of_Bylaw_Enforcement_Officer-s-DH.pdf

key oversight power in regards to frontline Bylaw Enforcement Officers who are charged with upholding the City's Bylaws.

Financial Impact

None.

Conclusion

As outlined in this report there are two methods of appointment of Bylaw Enforcement Officers: (1) under the BC *Police Act*; and (2) under the *Community Charter*. It is not recommended that the appointment be made under the *Police Act* as the City would lose significant oversight over the enforcement of its Bylaws.



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