



## Committee of the Whole Report For the Meeting of July 20, 2023

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**To:** Council **Date:** July 20, 2023  
**From:** Shannon Perkins, Director of Bylaw & Licencing Services  
**Subject:** Ticket Bylaw and Bylaw Adjudication Notice Bylaw / Amendments

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### RECOMMENDATION

1. That Council direct staff to bring forward amendments to the *Ticket Bylaw* to bring it up to date; and
2. That Council direct staff to bring forward amendments to the *Bylaw Notice Adjudication Bylaw* to:
  - a. Include offences listed in the *Ticket Bylaw*; and
  - b. Enable screening officers to enter into compliance agreements.

### EXECUTIVE SUMMARY

There are two City of Victoria bylaws which regulate the way bylaw violation fines are managed, the *Bylaw Notice Adjudication Bylaw* and the *Ticket Bylaw*. Currently, the City of Victoria only uses bylaw notices for parking violations; all other bylaw violation fines are issued by means of a municipal ticket information (ticket). Updating the *Ticket Bylaw* to ensure it correctly reflects the current state of affairs supports sound Bylaw enforcement. Amending the *Bylaw Adjudication Notice Bylaw* to include all bylaw violation fines, not just parking offences, expands enforcement options, creates administrative and investigative efficiencies.

### PURPOSE

The purpose of this report is to present information in support of a recommendation to amend the *Ticket Bylaw* to make it current, and to amend the *Bylaw Notice Adjudication Bylaw* to include the offences listed in the *Ticket Bylaw*.

### BACKGROUND

There are two City of Victoria bylaws which regulate the way bylaw violation fines are managed, the *Bylaw Notice Adjudication Bylaw* and the *Ticket Bylaw*.

Historically, the *Bylaw Notice Adjudication Bylaw* was primarily used to issue bylaw notices (more commonly referred to as parking tickets) for violations of the *Streets and Traffic Bylaw*. The *Local Government Bylaw Notice Enforcement Act* allows bylaw notices to be affixed to a vehicle or mailed which is the regular method of issuing parking tickets.

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Recently, three new bylaws were added to the *Bylaw Notice Adjudication Bylaw* in anticipation of an expanded use of bylaw notices to issue fines. These bylaws are the *EV Charging Fees Bylaw*, *The Patio Regulation Bylaw* and the *Demolition Waste and Deconstruction Bylaw*.

Delivery and adjudication requirements for bylaw notices under *The Local Government Bylaw Notice Enforcement Act* are less expensive and time consuming than for tickets under the *Community Charter*.

The proposal to include all offences under the *Ticket Bylaw* as contraventions under the *Bylaw Notice Adjudication Bylaw* triggered a review of the *Ticket Bylaw*. The review showed that several of the Schedules to the *Ticket Bylaw* are not up to date.

For example, while Schedule A refers to the *Sanitary Sewer and Stormwater Bylaw*, a schedule of offences for that bylaw has not yet been added to the *Ticket Bylaw*. Schedule A also contains some incorrect, outdated, or missing item number references, designations, and bylaw names. Further, the *Ticket Bylaw* includes schedules of offences for two repealed bylaws, while another schedule of offences has been repealed prematurely. Schedules of offences for some other bylaws do not reflect all amendments to those bylaws: there are a few outdated section references, some offences that should be included have been excluded, and some offences for repealed provisions are still included.

The items to be addressed by the proposed amendments to the *Ticket Bylaw* appear to be inadvertent errors or slips that have occurred over time.

## ISSUES & ANALYSIS

When a bylaw violation is identified, a bylaw officer will correspond with the responsible person/corporation to obtain voluntary compliance. If compliance is not achieved, further investigation and potentially enforcement action may occur. Because most bylaws are not included/listed in schedule A of the *Bylaw Notice Adjudication Bylaw*, tickets under the *Ticket Bylaw*, rather than bylaw notices, must be utilized to issue fines. Utilizing tickets, rather than bylaw notices, results in significantly more time and cost for City staff, Court staff, witnesses and those persons/corporations receiving the tickets due to provincially legislated service, administrative and adjudication requirements.

### Personal Service Inefficiencies

*The Local Government Bylaw Notice Enforcement Act* allows bylaw notices to be affixed to vehicles or mailed, whereas the *Community Charter* requires tickets to be personally served. Successful service of a ticket poses a variety of challenges such as:

- Out-of-town property owners cannot easily be served,
- Avoidance of service, and
- Serving a ticket can only be done by bylaw officer and could involve multiple attempts.

If the responsible person/corporation is out-of-town, the legal process is more time consuming and complicated. The ability to issue a bylaw notice by mail would significantly improve efficiencies related to enforcement and compliance.

## Dispute Process

*The Community Charter* requires ticket disputes to be heard in a Provincial Court. This requires extensive administrative communication between City and Court staff to enable a hearing to take place. Bylaw Officers are required to prepare and disclose an evidence package, participate in a pre-trial hearing, and then attend court. In addition, municipal tickets are commonly low priority on the court agenda, rescheduled and postponed, requiring an officer, witnesses, and the disputant to spend multiple days to be present for one short matter.

In contrast, *The Local Government Bylaw Notice Enforcement Act* allows municipalities to establish an adjudication system to handle bylaw notice disputes. Disputes are reviewed by authorized City staff (designated screeners) prior to being sent forward to adjudication. Screeners are authorized to cancel notices, confirm notices, and refer to adjudication or enter into compliance agreements which can result in reduced fines and/or conditions. The screening process can facilitate communication between City staff and the person/corporation who may have formerly been unwilling to connect. In contrast to court adjudication of a ticket, the City has the ability to schedule firm dates for a bylaw notice adjudication, and to schedule multiple adjudications involving the same City staff person for the same day.

The *Local Government Bylaw Dispute Adjudication System Toolkit* [Building Strong Relations: Elected-Staff Resource Kit \(lgma.ca\)](#) states the following:

*The goal of the new adjudication model is to create simple, fair, and cost-effective systems for dealing with minor bylaw infractions. This is achieved by:*

- *eliminating the requirement for personal service*
- *establishing a dedicated forum for resolving local bylaw enforcement disputes*
- *using a dispute resolution-based approach to obtaining independently adjudicated decisions*
- *avoiding the unnecessary attendance of witnesses*
- *avoiding the need to hire legal counsel*
- *promoting a timely resolution of bylaw enforcement disputes.*

## Bylaw Investigation & Officer Resources

There is currently a backlog of bylaw investigations; files are taking a significant time to resolve, are more complex and there are more instances of defiance in favour of profit – in some cases, bylaw violation fines simply become the cost of doing business, particularly as it pertains to Short Term Rentals and violations associated to construction sites. Staff capacity is stretched due to competing priorities relating to parks and public space sheltering complaints and other complaints.

The ability for Bylaw Officers to issue bylaw notices rather than just tickets, provides flexibility, creates efficiencies, and is anticipated to reduce the amount of time to bring a matter into compliance. Creating efficiencies in relation to minor bylaw infractions frees up staff time to pursue more onerous fines under the Offence Act in relation to major bylaw infractions. The recipient of the bylaw notice would have the ability to rapidly address the issue and request a review. This opens an opportunity for dialogue with people who had previously ignored correspondence requests. For example, on average, only 30% of short-term rental correspondence generates a response from an owner/operator. The ability to issue a bylaw notice can result in process driven dialogue with the City due to the ability to issue fines through the mail rather than just personal service.

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## Cost of Administration

The *Local Government Bylaw Dispute Adjudication System Toolkit* provided the Pilot Costing Model for North Shore municipalities (Districts of West and North Vancouver and the City of North Vancouver). The summary of total costs per dispute circa 2004-2005 was roughly \$64.56; taking inflation rates into account, that translates to approximately \$96.53 per dispute in 2023. Based on the number of tickets issued in 2022 and 2023 by Bylaw and Licencing Services, it is anticipated that a maximum of approximately 1400 bylaw notices could be issued instead of tickets in 2024. If using the dispute rate of 1.8% (North Shore pilot data from *Local Government Bylaw Dispute Adjudication System Toolkit*) there would be roughly 25 adjudications costing in total approximately \$2,432.56.

The ability to issue a bylaw notice will allow the City to reach out of town owners and will also provide an extra graduated enforcement step to bring operators into compliance. This model has proven effective with the *Local Government Bylaw Dispute Adjudication System Toolkit* pilot communities, not only for issuance and compliance of regulations but has also demonstrated a significant reduction in time from ticket issuance to ticket disposition. The desired and anticipated outcome is a higher rate of compliance and licencing.

The *Local Government Bylaw Notice Enforcement Act* currently allows for maximum fine amounts of up to \$500. Most City of Victoria bylaw offences are \$500 or less; those offences with higher fine amounts will be reduced to the maximum allowable fine amount of \$500 under the *Local Government Bylaw Notice Enforcement Act*. Those bylaws with higher fine amounts include:

- Abandoned Properties Bylaw
- Blasting (Construction) Operations Bylaw
- Building and Plumbing Bylaw
- Dance (All-Night Events) Bylaw
- Dance (Club) Bylaw
- Escort and Dating Service Bylaw
- Pesticide Use Reduction Bylaw
- Property Maintenance Bylaw
- Sanitary Sewer and Stormwater Utilities Bylaw
- Tree Preservation Bylaw
- Tree Protection Bylaw

The City retains the ability to pursue more onerous fines and non-monetary remedies under the *Offence Act* in relation to serious bylaw infractions, even if the Bylaw has been designated under the *Local Government Bylaw Notice Enforcement Act*. Maximum fines under the *Offence Act* can range from \$2,000 per day per offence to \$50,000 per day per offence, depending on the wording of the relevant bylaw.

## Ticket Bylaw Amendments

The proposed amendments will update the *Ticket Bylaw* to reflect the current state of the City bylaws and enforcement. For example, they will enable the City to issue municipal tickets for contraventions of the *Sanitary Sewer and Stormwater Utilities Bylaw*, which replaced the *Storm Water Bylaw*. No changes to the fines previously established for similar contraventions under the old *Storm Water Bylaw* are proposed. The proposed amendments will also re-instate offences for the *Sidewalk Cafes Bylaw*, as that bylaw applies to some sidewalk cafes until December 2023, and associated tickets may be issued up until the end of June 2024. The amendments will remove

offences which no longer have any meaning as the corresponding bylaws or provisions have been repealed. Schedule A will be updated for accuracy. The Bylaw will be updated throughout to reflect current bylaw names.

Overall, the proposed amendments will support effectiveness and clarity in Victoria's bylaw enforcement regime by improving accuracy.

### **Impacts to Financial Plan**

As discussed, the cost of issuing, reviewing, and disputing a bylaw notice would be much less than that of tickets. For example, there are currently 500+ short-term rental files under investigation. Most of these files are for properties which are eligible for business licences but are operated by out-of-town owners.

Specifically, there is potential for an increase in short term rental licence fees. For example, there are currently over 100 unlicensed short term rental units which are eligible but have not applied for their \$1500/annual non-principal resident operator licence. Revenue from short term rental licensing is used to fund the compliance program that regulates the short-term rental market in Victoria.

### **OPTIONS & IMPACTS**

Option 1 - That Council amend the *Ticket Bylaw* to bring it up to date; and amend the *Bylaw Notice Adjudication Bylaw* to include offences listed in the *Ticket Bylaw*; and enable screening officers to enter into compliance agreements.

The proposed amendments to the *Bylaw Notice Adjudication Bylaw* would allow bylaw notices to be sent by mail rather than the time-consuming personal service that is currently required for tickets. The ability to mail bylaw notices to out of town owners (investment properties) who are non-responsive to compliance requests would provide a relatively simple method of bringing operators into compliance. Disputed offence notices are subject to a review or screening process prior to adjudication which provides an opportunity for dialogue and potential resolution. Service and administration of bylaw notices can be carried out by non-appointed bylaw staff thereby allowing bylaw officers to concentrate on more complex investigative matters.

The proposed amendments to the *Ticket Bylaw* will reflect the current state of the City bylaws it enforces and support effectiveness and clarity in Victoria's bylaw enforcement regime by improving accuracy.

Option 2 – Do not amend the *Bylaw Notice Adjudication Bylaw* or *Ticket Bylaw*.

If bylaw notices cannot be accessed for the purpose of enforcing all City regulations, the process to bring unlawful operators into compliance will remain cumbersome, time consuming and expensive resulting in more costly court processes and increased time to bring matters into compliance. A likely secondary effect is that eligible operators may simply chose to remain unlicensed until formal consequences occur, using cost benefit analysis to inform their decision.

## CONCLUSIONS

The goal of the recommended *Ticket Bylaw* and *Bylaw Notice Adjudication Bylaw* amendments is to create a simple, fair, and cost-effective system for dealing with bylaw infractions. The adjudication model eliminates the requirement for personal service; establishes a dedicated forum for resolving local bylaw enforcement disputes; uses a dispute resolution-based approach to obtaining independently adjudicated decisions; avoids the unnecessary attendance of witnesses; avoids the need to hire legal counsel; and promotes the timely resolution of bylaw enforcement disputes.

Respectfully submitted,

Shannon Perkins  
Director, Bylaw and Licencing Services

**Report accepted and recommended by the City Manager**