

Regional District of Alberni-Clayoquot

BYLAW NO. PS1008

A bylaw respecting the enforcement of bylaw notices.

WHEREAS the *Local Government Bylaw Notice Enforcement Act* grants the District the authority to create this Bylaw;

NOW THEREFORE the Board of the Regional District of Alberni-Clayoquot, in open meeting assembled, enacts as follows:

1. CITATION:

This Bylaw may be cited as "Bylaw Notice Enforcement Bylaw, 2020, Bylaw No. PS1008".

2. DEFINITIONS:

"Act" means the *Local Government Bylaw Notice Enforcement Act*;

"Adjudicator" means a person appointed as an adjudicator under section 15 of the *Act*. .

"Bylaw Enforcement Officer" means a person designated as such under this Bylaw.

"Disputant" means a person to whom a bylaw notice has been issued, and who has filed a notice of dispute or otherwise requested an adjudication of that bylaw notice.

"District" means the Regional District of Alberni-Clayoquot;

"Registry" means the Regional District of Alberni-Clayoquot Bylaw Notice Dispute Adjudication Registry established pursuant to Part 6 of this Bylaw.

"Screening Officer" means a person appointed to that position under this Bylaw.

3. BYLAW CONTRAVENTIONS:

The bylaw contraventions designated in Schedule "A" may be dealt with by bylaw notice.

4. OFFENCE AND PENALTY:

The penalty for a contravention referred to in Section 3 of this Bylaw is:

- 1) Subject to subsection 2 and 3, is the Penalty amount set out in column A1 of Schedule "A", as attached to and forming part of this Bylaw.
- 2) If received by the Registry within 14 days of the person receiving or being presumed to have received the notice, is the Early Payment Discount Penalty set out in column A2 of Schedule "A", as attached to and forming part of this Bylaw.

- 3) If paid more than 28 days after the person received or is presumed to have received the bylaw notice, is subject to a late payment surcharge set out in column A3 of Schedule "A", as attached to and forming part of this Bylaw.

5. PERIOD FOR PAYING OR DISPUTING A BYLAW NOTICE:

- 1) A person who receives a bylaw notice must, within 14 calendar days after the date on which the person received or is presumed to have received the bylaw notice:
 - a. pay the penalty associated with that bylaw notice; or
 - b. request dispute adjudication by completing the form on the reverse side of the notice.
- 2) A person may pay the indicated penalty more than 14 days after the date on which the person received or is presumed to have received the bylaw notice, subject to the applicable surcharge for late payment in accordance with Section 4, but no person may dispute the bylaw offence more than 14 days after the date on which the person received or is presumed to have received the bylaw notice.
- 3) Where a person was not served personally with a bylaw notice and advises the District, in accordance with the requirements of Section 25 of the *Act*, that a copy of the original bylaw notice was not received, the time limits for responding to a bylaw notice under this Bylaw do not begin to run until a copy of the bylaw notice is re-delivered in accordance with the *Act*.

6. BYLAW NOTICE DISPUTE ADJUDICATION REGISTRY:

- 1) The Registry is established as a bylaw notice dispute adjudication system in accordance with the *Act* to resolve disputes in relation to bylaw notices.
- 2) The civic address of the Registry is 3008 5th Avenue, Port Alberni, British Columbia, V9Y 2E3 or any other address which may be designated by schedule to this Bylaw.
- 3) The District is authorized to enter into, and the CAO is authorized by the Board to execute the Bylaw Dispute Adjudication Agreement attached to and forming part of this Bylaw as Schedule "B" in accordance with the authority set out in Section 2(4) of the *Local Government Bylaw Notice Enforcement Act*.
- 4) Once the Nanaimo Bylaw Dispute Adjudication Registry Agreement, or any other Bylaw Dispute Adjudication Registry Agreement, is adopted by the District and entered into with the provider of that Dispute Adjudication Registry, that Dispute Adjudication Registry becomes the Registry for the purposes of this Bylaw
- 5) Every person who is unsuccessful in a dispute adjudication in relation to a bylaw offence notice under the dispute adjudication system established under this Bylaw, must pay to the District an additional administration fee of \$25 for the purpose of the District recovering the costs of the adjudication system.

7. SCREENING OFFICERS:

- 1) The position of Screening Officer is hereby established.

- 2) The following positions are designated as a Screening Officer:
 - a. Bylaw Enforcement Officer;
 - b. General Manager of Planning and Development;
 - c. Planner;
 - d. Chief Administrative Officer; and
 - e. General Manager of Administrative Services.

- 3) No person may act as a Screening Officer in respect of a bylaw notice if that person:
 - a. has issued or signed the bylaw notice;
 - b. is a complainant in respect of the bylaw notice;
 - c. is or is reasonably likely to become a witness in respect of that bylaw notice;
 - d. has provided evidence, including documentary evidence, in respect of that bylaw notice.

8. POWERS, DUTIES AND FUNCTIONS OF SCREENING OFFICERS

- 1) The powers, duties and functions of screening officers are as set out in the *Act*, and include the following powers:
 - a. When requested by the person to whom a bylaw notice is issued, the Screening Officer may communicate to that person, or the person's agent, information regarding:
 - i. the nature of the contravention;
 - ii. the provision of the bylaw contravened;
 - iii. the facts on which the contravention allegation is based;
 - iv. the penalty for a contravention, including the fees payable, any potential increased or discounted fees based on early or late payment;
 - v. the opportunity to enter into a compliance agreement, if applicable;
 - vi. the opportunity and process to dispute the bylaw notice and proceed to the bylaw notice dispute adjudication system.

 - b. To communicate with and access any or all of the following for the purposes of performing their functions under this Bylaw or the *Act*:
 - i. the person to whom a bylaw notice is issued or their representative;
 - ii. the officer issuing the notice;
 - iii. the complainant or their representative;
 - iv. District staff and records regarding the disputant's history of bylaw compliance.

 - c. To cancel bylaw offence notices in accordance with the *Act* or District policies and guidelines.

9. BYLAW ENFORCEMENT OFFICERS

- 1) Persons acting as any of the following are hereby designated as Bylaw Enforcement Officers for the purposes of this Bylaw and the *Act*:
 - a. Special constables, officers, members or constables of:
 - i. the provincial police force as defined in Section 1 of the *Police Act*, or
 - ii. a municipal police force;

- b. Members of the Royal Canadian Mounted Police;
- c. Bylaw enforcement officers, building inspectors, BC Conservation Officers, or other persons acting in another capacity on behalf of the District for the purposes of enforcement of one or more of its bylaws.

10. FORM OF BYLAW NOTICE

- 1) The District may from time to time provide for the form or forms of the bylaw notice, provided the bylaw notice complies with section 4 of the Act.

11. EFFECTIVE DATE

- 1) This Bylaw shall take effect August 1, 2020.

12. SEVERABILITY

- 1) If any section or lesser portion of this Bylaw is held to be invalid by a Court, such invalidity shall not affect the remaining portions of the Bylaw.

SCHEDULES

Schedule "A" – Designated Bylaw Contraventions and Penalties

Schedule "B" – Nanaimo Bylaw Notice Dispute Adjudication Registry Agreement

Read a first time on the 10th day of June, 2020.

Read a second time on the 10th day of June, 2020.

Read a third time on the 10th day of June, 2020.

Adopted on the 10th day of June, 2020.



Douglas Holmes, BBA, CPA, CA
Chief Administrative Officer



John Jack
Chairperson of the Regional Board

SCHEDULE "A" OF BYLAW PS1008

DESIGNATED CONTRAVENTIONS AND PENALTIES

The penalties in column A2 below include a twenty five percent (25%) discount for early payment in accordance with Section 5(2) of this Bylaw.

The penalties shown in column A3 below include a twenty five percent (25%) surcharge for late payment in accordance with Section 5(3) of this Bylaw.

Bylaw	Section	Description	A1 Penalty	A2 Early Payment Penalty Discount	A3 Late Payment Penalty
Bylaw No. 15, 1971 – Alberni- Clayoquot Zoning Bylaw	7.5	Enforcement	\$200.00	\$150.00	\$250.00

SCHEDULE "B" OF BYLAW PS1008

NANAIMO BYLAW NOTICE DISPUTE ADJUDICATION

REGISTRY AGREEMENT

This Agreement dated _____ day of _____, 2020 (the "Agreement").

BETWEEN:

CITY OF NANAIMO, 455 Wallace Street, Nanaimo, BC V9R 5J6 ("Nanaimo")

AND:

CITY OF DUNCAN, 200 Craig Street, Duncan, BC V9L 1W3 ("Duncan")

AND:

CITY OF PARKSVILLE, Box 1390, 100 Jensen Avenue East, Parksville, BC V9P 2H3 ("Parksville")

AND:

DISTRICT OF TOFINO, PO Box 9, 121 – 3rd Street, Tofino, BC V0R 2Z0 ("Tofino")

AND:

THE CORPORATION OF THE DISTRICT OF NORTH COWICHAN, 7030 Trans Canada Highway, Box 278, Duncan, BC V9L 3X4 ("North Cowichan")

AND:

THE VILLAGE OF PORT CLEMENTS, PO Box 198, 36 Cedar Avenue West, Port Clements, BC V0T 1R0 ("Port Clements")

AND:

THE REGIONAL DISTRICT OF NANAIMO, 6300 Hammond Bay Road, Nanaimo, BC V9T 6N2 ("Regional District of Nanaimo")

AND:

THE REGIONAL DISTRICT OF ALBERNI-CLAYOQUOT, 3008 Fifth Avenue, Port Alberni, BC V9Y 2E3
("ACRD")

AND:

ADDITIONAL LOCAL GOVERNMENTS (to be included in Schedule A, without further modification of this Agreement)

(the "Parties")

WHEREAS:

1. The *Local Government Bylaw Notice Enforcement Act* (the "Act") provides that a local government may, by bylaw, deal with a bylaw contravention by Bylaw Notice in accordance with the Act;
2. The Act also provides that two or more local governments may enter into an agreement adopted, by bylaw, by each local government that is party to it;
3. The Parties wish to:
 - (a) Share the costs of a bylaw notice Dispute Adjudication Registry System ("DARS"); and
 - (b) Enter an agreement to establish DARS, and to provide for the sharing of costs.

NOW THEREFORE in consideration of the mutual promises contained herein, the Parties agree as follows:

INTRODUCTORY PROVISIONS

1. Definitions

1.1 In this Agreement, the following definitions apply:

"Act"	Means the <i>Local Government Bylaw Enforcement Act</i> .
"Adjudication Fee"	Means the sum of \$25.00 payable to the applicable Party should the disputant be unsuccessful in the dispute adjudication.
"Agreement"	Means this Agreement.
"Authorizing Bylaw"	Means a bylaw adopted by each Party for the purposes of section 2 of the Act (application of the Act).
"Bylaw Adjudication Clerk"	Means a person who facilitates a hearing and assists the adjudicator.
"Bylaw Notice"	Has the same meaning as in the Act.
"Consult"	Means to contact the Screening Officer via telephone, email, regular mail, or in-person for the purpose of obtaining information.
"Disputant"	Has the same meaning as in the Regulation.

“Dispute Adjudication Registry System” or “DARS”	Means a system established in accordance with the <i>Act</i> that provides for the hearing and determination of disputes in respect of whether: a) a contravention in a Bylaw Notice occurred as alleged; or b) the terms and conditions of a compliance agreement were observed or performed.
“Host Municipality”	Means the City of Nanaimo.
“Parties”	Means all of Nanaimo, Duncan, Parksville, Tofino, North Cowichan, Port Clements, Regional District of Nanaimo, ACRD or any additional local governments that may be added later in Schedule A
“Party”	Means any one of Nanaimo, Duncan, Parksville, Tofino, North Cowichan, Port Clements, Regional District of Nanaimo, ACRD or any additional local governments that may be added later in Schedule A
“Regulation”	Means the Bylaw Notice Enforcement Regulation.
“Roster Organization”	Has the same meaning as the Regulation.
“Screening Officer”	Has the same meaning as in the <i>Act</i> .
“Terms”	Means the terms of this Agreement as set out herein.

2. Establishment of DARS

2.1 Subject to the *Act* and to the adoption of the Authorizing Bylaws, the Parties agree that DARS is hereby established.

ADJUDICATION

3. Screening Officer

3.1 The Parties agree that where a Screening Officer position has been established by a Party in accordance with the *Act*, a Bylaw Notice must be reviewed by that Screening Officer in that local government before a dispute adjudication may be scheduled. If a Disputant Consults a Screening Officer of the Host Municipality, a fee will be assessed under Schedule B.

4. Dispute Adjudication Registry System

4.1 The Parties agree that a DARS will be established as a function to manage disputes heard by an adjudicator who is selected by a Roster Organization in accordance with the Regulation.

4.2 The Parties agree that Nanaimo will enter into a contract with a designated Roster Organization for the purpose of providing dispute adjudication services to DARS.

DARS OPERATIONS

5. Location

5.1 DARS will be located in the Service and Resource Center, City of Nanaimo, 411 Dunsmuir Street, Nanaimo, BC V9R 5J6

6. Services Provided

6.1 Nanaimo will provide all administrative services required by DARS, including:

- (a) providing the venue and facilities to hear dispute adjudications in accordance with the Act;
- (b) submitting requests to the Roster Organization for the assignment of an adjudicator;
- (c) providing a Bylaw Adjudication Clerk on each hearing date to facilitate and support the hearing and the adjudicator;
- (d) providing venue security;
- (e) providing for the collection of Adjudication Fees and any penalties payable to a Party for a bylaw contravention;
- (f) obtaining legal advice and services to ensure this DARS is operating pursuant to the Act.
- (g) Issuing cheques to the applicable Party for penalty amounts collected with the Bylaw Notice number(s); and
- (h) Issuing invoices to the applicable Party in accordance with Schedule B.

6.2 Despite section 6.1 (e), the collection of penalties will be the responsibility of the applicable Party if not collected by DARS immediately following the adjudication.

7. Payments and Disbursements

7.1 The Parties agree to pay the City of Nanaimo proportionate costs of the fees charged by the Roster Organization. Amounts owing are to be calculated based on the Fee Schedule at Schedule B and in accordance with the Municipality Rate Schedule at Schedule C.

7.2 Nanaimo will issue an invoice to the applicable Party within 30 days of the service being rendered. Amounts owing are due and payable within 30 days of receipt of the invoice.

7.3 For certainty, the Parties agree that hearing costs relating to witnesses, screening officers, bylaw enforcement officers or prosecuting lawyers will be borne by the Party that issued the Bylaw Notice and not by DARS.

GENERAL PROVISIONS

8. Amendments

8.1 The Parties may, in good faith, negotiate amendments to this Agreement upon request of any Party. All amendments will be in writing, approved by a two-thirds majority of the Parties by response letter only and listed as an itemized Amendment at Schedule D.

9. Dispute Resolution

9.1 If a dispute arises under this Agreement and is not resolved by the Parties within 60 days, it will be settled by final and binding arbitration conducted under the *Commercial Arbitration Act of British Columbia*.

10. Term

10.1 This Agreement comes into effect upon adoption of the authorizing bylaws and continues in effect until December 31, 2025. With the consent of a two-thirds majority of the Parties, the effect of this agreement can be extended until a new agreement is in place or until December 31st, 2026, whichever comes first. Any Party may withdraw from this Agreement upon 30 days' written notice to the other Parties.

11. Execution of Agreement

11.1 This Agreement may be executed in counterparts through original copies, facsimile copies, or by email PDF copies. Each counterpart will be deemed to be an original that, together with the other counterparts, constitutes one agreement having the same effect as if the Parties had signed the same document.

IN WITNESS WHEREOF all Parties have executed this Agreement on the date first above written.

THE CITY OF Nanaimo

THE CITY OF Duncan

Mayor

Mayor

Corporate Officer

Corporate Officer

THE CITY OF Parksville

Mayor

Corporate Officer

**THE CORPORATION OF THE
DISTRICT OF North Cowichan**

Mayor

Corporate Officer

**THE REGIONAL DISTRICT OF
Nanaimo**

Chair

Corporate Officer

THE DISTRICT OF Tofino

Mayor

Corporate Officer

THE VILLAGE OF Port Clements

Mayor

Corporate Officer

**THE REGIONAL DISTRICT OF
Alberni-Clayoquot**

Chair

Corporate Officer

SCHEDULE A (ADDITIONAL LOCAL GOVERNMENTS)

The following local governments have been added as parties to this Agreement as additional local governments:

Local Government	Date Joined	Fee Level
Regional District of Alberni-Clayoquot		Level 2

SCHEDULE B (FEES)

DARS will operate under the following cost recovery fees:

SUBJECT	FEE
Hearing	\$25.00 per bylaw notice dispute resulting in a hearing
Screening Officer from Host Municipality	\$25.00 per bylaw notice Consult if Disputant contacts Screening Officer from Host Municipality
Adjudicator Cost	Apportioned amongst attending Parties at scheduled hearing proportionate to use as determined by the Screening Officer
Security	\$25.00 per bylaw notice hearing per attending Party
Maintenance and Hospitality	\$15.00 per bylaw notice hearing per attending Party
½ Day Hearings	\$400.00 charged in addition to Adjudicator Cost where a single dispute on a bylaw notice hearing ranges between 1-3 hours
Full Day Hearings	\$800.00 charged in addition to Adjudicator Cost where a single dispute on a bylaw notice hearing exceeds 3 hours
Annual Membership Fee—Fee Level 1	\$100.00
Annual Membership Fee—Fee Level 2	\$200.00
Annual Membership Fee—Fee Level 3	\$300.00

SCHEDULE C (MUNICIPALITY RATES)

This is the rate schedule for the following parties:

LEVEL	MUNICIPALITIES
Level 1	Village of Port Clements
Level 2	City of Duncan City of Parksville District of Tofino City of Port Alberni Regional District of Alberni Clayoquot
Level 3	Corporation of the District of North Cowichan City of Nanaimo Regional District of Nanaimo