

District of Metchosin Bylaw Enforcement Review

Comments from the Association for the Protection of Rural Metchosin

February 1, 2021

The Association for the Protection of Rural Metchosin (APRM) is providing the following comments on the Bylaw Enforcement Policy Review (the Review) released by the District of Metchosin on January 15, 2021. Our comments are found below in three sections: 1) general comments on bylaw enforcement in the District and, 2) specific comments on the Draft Bylaw Policy Review; 3) questions/issues for consideration in a forthcoming workshop.

We note the Review does not contain any examples of bylaw enforcement situations that have occurred in the District. In the absence of such examples the APRM is relying upon our members' experiences to inform our comments.

1.0 General comments on bylaw enforcement in the District

Goals of Bylaw Enforcement

The APRM believes it's important to keep the overall goals of bylaw enforcement at the centre of an assessment of the effectiveness of District processes. We take the goals of the District's bylaws and their enforcement to include, but not be limited to, the following:

- Well-planned development
- Health and safety of residents
- Protection of the environment
- Protection of residents' sense of well-being and the peaceful enjoyment of their property

The Review falls short of a full assessment of the District's situation

While the Review outlines the District's current administrative approach to handling bylaw complaints and makes some recommendations for improvements, there are a number of important areas the Review fails to consider. For example:

- Where has the District's approach succeeded and where has it failed?
- What successes have been achieved in seeking compliance?
- What is the level of confidence with the process in the community? What are the common complaints that residents have with the current bylaw enforcement system? (i.e. the amount of time it takes to report out to the public)
- Other than the *Ticket Information Authorization Bylaw* are there bylaws that should be reviewed and updated?

The District should refocus on an overall "bylaw management" approach

We ask the District to focus on a comprehensive "bylaw management" approach, rather than simply "bylaw enforcement." We believe that a 'top to bottom' approach to bylaw administration will yield the best results for the community, in terms of community confidence, overall

administrative effectiveness, costs and cost recovery and compliance. For example, a more comprehensive approach would take into account the issuance of permits, the collection of fees and revenues (say, from dumping) as well as enforcement.

The issue of collecting revenues as outlined in bylaws is important, particularly in the case of soil deposits. We have seen cases where revenues have not been collected because the individual did not take out a permit or an exemption was granted to an individual under dubious circumstances (i.e. a claim that dumping was being undertaken for agricultural purposes, when no such operation exists on the land in question). This has led some to ask whether revenue collection is discretionary. We note that on-going soil deposits in certain areas (e.g. Neild and Lindholm Roads) can be a source of excessive wear (potentially leading to more costs) on District roads, particularly on the edges.

Complaint-Based Model – more communication and assurance needed

The District's Review provides a rationale for the continuation of a complaints-based model for bylaw enforcement in Metchosin. We appreciate the clarity on situations where a complaints-based approach will be exclusively used (zoning, unsightly premise, noise) and where staff may respond to infractions they observe, including issues relating to the *Tree Management Bylaw*, *Soil Removal and Deposit Bylaw*, *Protection and Management of Rain Water Bylaw* (p.16).

Regarding staff involvement in identifying bylaw infractions, we asked the District to clarify with staff that they can, and should, report bylaw issues they observe in the normal course of their work. We ask whether staff are supported, enabled and encouraged to report bylaw violations, particularly more senior District officials such as the Fire Chief and Building Inspector?

There are obvious limitations around a complaint-based system as there are higher expectations on individual residents to be knowledgeable and to actually take steps to report bylaw matters. For some residents this may be highly challenging when there are disputes between neighbours, or cases where intimidation by one neighbour to another is occurring or possible. In some cases, the very act of triggering a visit by a bylaw officer from a complaint will reveal identities and increase risks to those making complaints.

Further, a complaint-based model will have challenges in achieving consistency of approach, and thus, of building public confidence. For example, a bylaw infraction may be reported and addressed in one area of Metchosin, yet the same infraction may continue in another area.

In cases where a bylaw infraction may have impacted public assets (e.g. roads or trails), we believe that this should **lead to an immediate investigation**, whether reported by the public or observed by staff. We note that such situations, while perhaps not bylaw infractions *per se*, have occurred on several of our trails (Blaney, Sweet Chestnut), most recently with the impairment of the statutory right of way on the lower portion of Sea Bluff Trail.

The District should undertake further public communication on what the complaint-based system involves. This may include more information on the District's website, an article or advertising in the *Metchosin Muse*.

Further recommendations are outlined in Section 2.0 of this letter.

CRD bylaw enforcement vs. using a District-based resource

An APRM member observed that relying on a complaints-based system is simply a "cheap way" of administering bylaws, as it relies heavily on residents as the reporting mechanism. Metchosin has advanced as a municipal body, and the manner and method of how it enforces bylaws should advance as well.

We recommend that the District assess whether contracted bylaw enforcement services through the CRD are delivering value. It's notable that of the local governments in the CRD, only Metchosin and Highlands receive their bylaw enforcement services from the CRD (does not include the electoral areas). Value should be assessed from several criteria:

- Financial
- Procedural: is the CRD service effective in terms of timely response and addressing the actual infraction.
- Community values: do residents have confidence in the CRD's services? Do residents feel their concerns are being heard and actioned effectively?

Key questions that may also be assessed when considering bylaw enforcement resourcing:

- What would be the cost of hiring an individual as a bylaw enforcement officer in Metchosin?
- Can this role be paired with another existing role in the District?
- What might the benefits be to the community of having a Metchosin-based bylaw officer?

Use fines as an effective enforcement tool

We support the District reviewing its *Ticket Information Authorization Bylaw*, the bylaw that sets the fines for infractions. We would encourage the review to take place with a simple principle – that bylaw fines are set at a level so that the financial penalty will serve as a deterrent, particularly for repeat offenders and issues where there are public safety / environmental risks.

We believe that fines must actively be used where there is clear harm to the environment or public safety issues exists. Such risks may be known and obvious, such as fires, or not yet known such as where violations may impact aquifers or surface water over the long-term. In addition, we ask that the District explore how property remediation considerations can be used to address environmental harm from bylaw infractions.

Fines as a bylaw enforcement tool have not been used effectively in recent years in Metchosin. For example, the fines indicated for the garbage fires at the Sooke Road property in 2016-2017 were specified as \$100 per offence – remarkably, there is no record that these fines were ever

collected. Such amounts will not have any deterrent impact, especially when matched against the costs savings of landfilling large amounts of garbage.

The District's fine revenue and contracted services cost from 2015 to 2019 is as follows:

Year	Bylaw fine revenue	Contracted Services Cost
2019	\$70	\$26,997
2018	\$200	\$15,120
2017	\$300	\$14,760
2016	\$100	\$14,040
2015	\$1,492	\$14,742
Totals	\$2,162	\$85,659

The contracted service costs do not include staff time or legal costs to manage bylaw matters.

Re-assess the District's use of Voluntary Compliance

The District's use of voluntary compliance as an enforcement tool must be further assessed and specific criteria applied to its use. While voluntary compliance may be appropriate to use in minor offences, we are aware it has been used for more serious issues:

- In 2012, a property owner was investigated for cutting hundreds of trees on his property without the proper permit. A small fine and voluntary action was instituted by the District. However, this property later became the scene of serious bylaw violations several years later.
- In 2016, a massive garbage fire occurred on a Sooke Road property. There is no evidence that any fines were levied. Two more large garbage fires occurred on this property. We understand that no fines were levied, but an arrangement was made to remove the garbage from the property and that the owner agreed to have no further garbage fires.

The use of voluntary compliance in these cases harmed the District's interests in terms of revenue recovery (fire department response, bylaw officer time), safety (i.e. fires) and environmental protection (burning garbage, loss of trees).

We believe that voluntary compliance should NOT be considered in cases where:

- The property owner is a repeat offender.
- The property owner should have clearly known the act was a bylaw offense (i.e. burning huge piles of garbage).
- There exists the potential of financial gain from the infraction (i.e. burning garbage rather than taking it to an approved landfill; selling trees illegally logged).
- There is risk of environmental damage and public safety concerns (especially with unpermitted structures on the Provincial foreshore).

Where voluntary compliance is used, written agreements should be used to document the steps that a violator is required to take. In cases where there is serious environmental impacts or public safety risks, remediation costs should be built into such agreements.

More on this issue is outlined in Section 2.0.

Unsightly premises are not just about appearances

Metchosin's *Unsightly Premises Bylaw* appears to be used infrequently. This is concerning as unsightly premises can be the visible sign of deeper environmental issues. This is especially true with the appearance of "unused or stripped automobiles, trucks, trailers, boats, vessels, machinery, mechanical or metal parts not stored in a manner that denotes value."

The following situations currently exist in Metchosin:

- Dozens of unused vehicles parked on Agricultural Reserve Land near the village centre.
- An abandoned auto repair shop, where old parts and vehicles are located around an increasingly derelict building.
- A property where dumping infractions have been noted which also contains multiple tractor trailer units, derelict vehicles, and scattered garbage.
- In a number of cases, residents have piled materials on the public rights of way. These pose visual issues, but also obstruct access and in one case are creating challenges to the development of the community's roadside trail network.

The District has long known of these sites, yet no action appears to have been taken to address the situation.

Dumping continues to concern residents

Throughout the spring and summer of 2020, the APRM received numerous calls from residents concerned with dump truck traffic in their local areas. We expect these concerns to resume once soil deposits are allowed under permit from May 1 – October 31. While the APRM's direction to its members is to call the District for information on locations and permit volumes, our members tell us they suspect permitted deposit levels are being exceeded. Concerns over dumping seriously undermine public confidence in the District's ability to manage the requirements of the soil deposit bylaw, and the District's overall commitment to effective bylaw enforcement.

Specific to the issue of soil deposit permits, the APRM recommends that the **District post on its website all of the soil deposit permits it issues during the course of the year**. In addition, we are aware of at least one other municipality (Surrey) where landowners are required to "clearly and visibly" display their soil deposit permits at the main access point of the lot for the duration of the permit term.¹ **We recommend that such a requirement be introduced in Metchosin**. These steps will allow residents to see what permits have been authorized in their local areas and the amounts indicated in the permits.

¹ City of Surrey - [Surrey Soil Conservation and Protection By-Law, 2007](#) (section 21)

2.0 Input on the Draft Bylaw Enforcement Policy

The APRM supports the adoption of a new Enforcement Policy (the “proposed Policy”) to replace PR-100.20 (the “current Policy”). However, we have a number of comments on the new Policy in its current draft form.

Purpose and Background:

We would request that the document open with a statement about “trust” and the importance of “public confidence” in the system. The District should then specify how the District’s bylaw enforcement process strives to achieve both trust and confidence.

We would suggest that the commentary on underlying neighbour conflicts as drivers for complaints be removed or re-written. We also request a statement acknowledging that some bylaws contain fees and that the due and proper collection of such fees is a priority for the District.

Confidentiality and privacy

We ask that there be further clarification around confidentiality in the proposed Policy, possibly adding this as a stand-alone section. We see section 2 of the current Policy as being a clear statement of privacy / confidentiality provisions.

“B. Investigations and Enforcement of Potential Contraventions”

In terms of information gathering from residents, we ask you to clarify that staff will notify residents if they need additional information to open a file and begin an investigation. Section 1.0 of the current Policy may be incorporated into this section to clarify.

We ask that you further clarify what will be, or may be, involved in an “investigation” of a possible bylaw infraction. The policy should provide context and targets for completing an investigation. We would expect an investigation would include personal observations by the enforcement officer witnessing alleged recurring offences, site visits, interviews of witnesses and participants to the alleged offence, and contracting with professionals where their expertise is required to complete an investigation.

The Policy should indicate that residents will be informed by Staff on the status of their complaints, and how those complaints were adjudicated. We suggest that section 4.0 of the current Policy be incorporated to clarify.

We also suggest that a mechanism be developed to report out to Council and the community on investigations or enforcement actions that have a wider community interest. These would relate to health and safety of residents and protection of the environment.

“C. Enforcement Authority”

We ask that you take into account our comments about Voluntary Compliance.

“D. Selecting Means of Enforcement”

Related to this section, we ask that the District take into account our comments about Voluntary Compliance, perhaps specifying situations where Voluntary Compliance will NOT be used.

“E. Roles and Responsibilities”

Under 2 a) of this section, it's noted that the CAO is responsible for “sub-delegating enforcement responsibilities to Staff/CRD Bylaw Enforcement.” We are unclear on what's meant by “sub-delegating.”

“F. Inquiries and Concerns”

We would request information be added to this section relating to residents who have concerns with the bylaw enforcement process. The content here may include information about filing concerns with the Ombudsperson's office.

3.0 Considerations for the Bylaw Enforcement Workshop

We recommend that the following matters and / or questions be included the future workshop on bylaw enforcement:

- What are residents' actual experience with the complaint-based model?
- What are residents' experiences with the protection of confidentiality?
- When should voluntary compliance be used in bylaw enforcement? Where has it worked? Where has it failed?
- With concerns about illegal dumping in Metchosin, what can the District do to give residents' confidence that the provisions of the Soil Deposit bylaw are being adhered to?
- Should the District hire its own bylaw enforcement officer?
- What are the bylaws that should be reviewed and updated, particularly those that are important to protecting rural values?
- What are the appropriate levels of fines that would serve to deter bylaw violations and prevent repeat violations? Are there fines that should be significantly increased for certain infractions, particularly those that cause harm/risks to public health and safety and/or the environment?
- Should the District focus on certain issues of public concern from time to time: dumping concerns in the spring? Illegal suites or structures during a certain year?
- How can employees be better supported and enabled in reporting bylaw infractions?
- How can the District better deal with unsightly premises?