



## Policies & Procedures Manual

### Policy No.1-2016 (BP-Bylaw Notice Dispute Adjudication Screening Officers)

#### SLRD Screening Officer Policy

### Purpose

The intent of this policy is to govern the discretionary decision-making of Screening Officers under the *Local Government Bylaw Notice Enforcement Act* (the “Act”), the *Bylaw Notice Enforcement Regulation* (the “Regulation”), and Squamish-Lillooet Regional District Bylaw Notice Enforcement Bylaw No. 1447-2016 (“Bylaw No.1447-2016”) with respect to:

- (a) cancelling a disputed bylaw notice;
- (b) confirming a disputed bylaw notice;
- (c) entering into a compliance agreement with a bylaw notice disputant; and
- (d) setting aside a bylaw notice debt.

### Background

Under the *Act* and *Bylaw No. 1447-2016*, Screening Officers are required to review each disputed bylaw notice before it can be referred to an adjudicator. Upon completing the review, the Screening Officer has four options as noted above in (a) through (d).

### Policy

1. After reviewing a disputed bylaw notice, the Screening Officer may cancel the bylaw notice if, in the opinion of the Screening Officer:
  - (a) the bylaw notice does not comply with the requirements of section 4 of the *Act*:
    - (i) sufficient particulars to enable recipient to identify bylaw and contravention alleged;

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- (ii) amount of penalty, discount, surcharge and consequences of failing to respond;
- (iii) methods of paying the penalty;
- (iv) how to dispute the allegation in the bylaw notice; and
- (v) any additional information required under the regulations (presently none).

- (b) the bylaw notice does not comply with section 5 of the *Act* in that it was issued more than 6 months after the contravention is alleged to have occurred;
- (c) the contravention did not occur as alleged;
- (d) a jurisdictional issue arises that cannot be addressed by an adjudicator per section 16 of the *Act* (i.e. matter involves Charter of Rights and Freedoms, constitutional validity question or remedy, determination of aboriginal or treaty rights or claims, or a challenge to the validity of the bylaw alleged to have been contravened) [Note: matter *can* still be adjudicated per s.13 of the *Regulation*];
- (e) the identity of the person or company cannot be established;
- (f) there is an exception in the bylaw or a related enactment;
- (g) the bylaw being enforced does not specifically apply;
- (h) the bylaw has changed since the bylaw notice was issued and the circumstances would no longer give rise to a contravention;
- (i) the disputant exercised due diligence (e.g.: compliance thwarted by hidden or missing signage, or by mechanical or technical difficulties beyond the disputant's control);
- (j) there is a compelling defence of necessity (e.g.: medical emergency);

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- (k) multiple bylaw notices have been issued for the same infraction;
- (l) there is a poor likelihood of success before an adjudicator due to:
  - (i) inadequate evidence;
  - (ii) incorrect information relied upon by the bylaw enforcement officer;
  - (iii) the bylaw provision is ambiguous or otherwise poorly worded;
- (m) it is not in the public interest to proceed to adjudication for one of the following reasons:
  - (i) the disputant was permitted or entitled to take the action but the issuing bylaw officer was unaware of this permit or entitlement;
  - (ii) the disputant was complying with a Provincial or Federal enactment requiring the impugned action to be taken;
  - (iii) the disputant has a compelling case for undue hardship (e.g.: undergoing a personal tragedy at the time of the contravention);
  - (iv) the disputant is a tourist or visitor to the SLRD, provided that they have not previously been issued a bylaw notice;
  - (v) the matter involves public health or safety requiring a penalty or other remedy beyond the jurisdiction of the *Act* or Bylaw No. 1447-2016; or
  - (vi) the matter is of sufficient importance that the SLRD wishes to pursue avenues of bylaw enforcement other than under the *Act* or Bylaw No. 1447-2016.

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2. Subject to section 3, a Screening Officer will confirm a bylaw notice where, in the opinion of the Screening Officer, none of the grounds for cancellation in section 1 are applicable.
3. Where permitted under Bylaw No. 1447-2016, a Screening Officer may enter into a compliance agreement if the Screening Officer determines that:
  - (a) the circumstances favour a compliance agreement as the best means of ensuring future compliant behaviour through terms and conditions that the Screening Officer considers necessary or advisable;
  - (b) the bylaw notice contravener will likely fulfill the terms and conditions under the compliance agreement based on the contravener's willingness:
    - (i) to accept liability for the contravention as alleged in the bylaw notice; and
    - (ii) to comply with the terms and conditions of the compliance agreement;
  - (c) the contravener has not previously committed the same contravention within the last 12 months; and
  - (d) the contravener has not, within the past 36 months, breached or otherwise failed to perform the terms and conditions of a compliance agreement with the SLRD.
4. Where a compliance agreement is permitted under Bylaw No. 1447-2016, it shall specifically contain an agreement to pay the applicable reduced penalty amount stipulated in Column A5 of Schedule "A" as a term and condition of the compliance agreement.
5. Subject to the agreement of the contravener and the Screening Officer, on behalf of the SLRD, a compliance agreement may be amended, provided that:
  - (a) the amendment is in writing;
  - (b) the amendment cannot amend the reduced payment amount;

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- (c) the contravener is not, at the time, in breach of a term of the compliance agreement;
- (d) the compliance agreement has not been rescinded; and
- (e) the compliance agreement has not expired.

6. Where a contravener breaches or otherwise fails to perform a term or condition of a compliance agreement, the Screening Officer will either:

- (a) provide the contravener with an opportunity to immediately correct the breach or failure to perform and put the compliance agreement back in good standing; or
- (b) immediately rescind the compliance agreement and provide the contravener with notice of the rescission, including:
  - (i) the information that the contravener may, within 14 days of receiving notification of the rescission, require the Screening Officer to submit for dispute adjudication the issue of whether the contravener observed or performed the terms and conditions of the compliance agreement; and
  - (ii) the consequences of failing to respond to the rescission notice.

7. In considering between the options set out in subsections 6 (a) and (b) above, the Screening Officer will consider:

- (a) the seriousness of the breach;
- (b) the seriousness of the consequences of the breach;
- (c) the contravener's explanation for the breach;
- (d) whether the contravener exercised due diligence to avoid the breach;

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- (e) whether the breach is capable of being immediately corrected;
- (f) whether the contravener has previously been in breach of the compliance agreement; and
- (g) whether the reduced penalty has been paid

8. If an application to set aside a bylaw notice debt is made pursuant to section 5 of the *Regulation* by a person named in a bylaw notice who owes a debt to the SLRD

- (a) in respect of a failure to dispute a compliance agreement rescission within the prescribed time or a failure to appear at a scheduled hearing, or
- (b) in respect of a failure to dispute a bylaw notice under section 25(2) of the *Act* [*original bylaw notice not received*] within the time permitted,

the Screening Officer will review the application and, if satisfied on a balance of probabilities that the failure to dispute or appear, as the case may be, was not the person's fault, the screening officer must cancel the debt and

- (c) in respect of subsection 8(a) above, refer the dispute to adjudication, or
- (d) in respect of subsection 8(b) above, restart the SLRD's 21 day response period under section 10 of Bylaw No. 1447-2016.

9. In reviewing an application under section 5 of the *Regulation*, the Screening Officer will consider all available information and will question the applicant thoroughly with respect to the evidence put forward in support of the application, as well as question any third parties who may have relevant evidence to consider.

10. An application to set aside a debt owing in respect of a failure to dispute a compliance agreement rescission cannot be considered by the Screening Officer who entered into the compliance agreement.

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11. If a debt is cancelled under section 8 of this Policy, in relation to which a Certificate of Amounts Owing has been filed in the Provincial Court, the Screening Officer will withdraw the Certificate from the Court.

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