

## ADMINISTRATIVE REPORT



**TO:** Planning & Development Committee

**FROM:** J. Zaffino, Chief Administrative Officer

**DATE:** August 15, 2024

**RE:** Regulating Private Utilities (X2023.011-ZONE)

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### **Administrative Recommendation:**

For information.

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### **Purpose:**

The purpose of this report is to provide an overview of proposed amendments to the Regional District's Official Community Plan (OCP), Zoning and Subdivision and Development Servicing bylaws related to the regulation of private water and sewer utilities.

### **Background:**

Under Section 3A-3 of the South Okanagan Sub-Regional Growth Strategy Bylaw No. 2770, 2017, the Regional District has committed to "encourage publically operated utilities and discourage the establishment of private utilities and services."

In support of this, various official community plans (OCP) include an objective to "discourage the development of private systems for the provision of water and sewer services" based on an understanding that essential services should be operated by a local government.

Despite these policy directions, under the Regional District's Subdivision Servicing Bylaw No. 2000, 2002, the definitions of "community sewer system" and "community water system" both make allowances for private utilities such as a strata corporation or an incorporated company.

### Statutory Authority:

Under Section 479 (Zoning bylaws) of the Local Government Act, a bylaw may make different provisions for, amongst other things, "different standards of works and services provided".

Under Section 306 (Special drainage and sewerage authority) of the Act, a regional district may, by bylaw, "regulate and prohibit the design and installation of drainage and sewerage works provided by persons other than the regional district ..."

Under Section 335(2) of the Act, a regional district may, by bylaw, "regulate and prohibit in relation to a regional district service other than a regulatory service."

### Other Considerations:

At its meeting of May 5, 2022, the Planning and Development (P&D) Committee of the Regional District Board resolved "that a review of Low Density Residential Zones and servicing requirements in Kaleden be considered for inclusion on the Regional District's 2023 Business Plan."

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The request for this project was prompted by community concern in Kaleden following the submission of four (4) subdivision applications that proposed to create individual “community sewer systems” to be owned and operated by the strata.

At present, the initiation of a Kaleden Zone Review is dependent upon the completion of other Board priority projects, such as the RGS Review, Electoral Area “E” OCP Review, ESDP Review, Subdivision Servicing Bylaw Review, Vacation Rental Review and Housing Options.

In August of 2023, the Okanagan Basin Water Board (OBWB) advised the Regional District that it was deemed to be in contravention of the “1.0 ha Policy” for reasons related to policies and regulations in its land use bylaws that speak to private utilities (see above). OBWB was subsequently requested to provide a formal statement on this and has recently provided the following:

*The current OBWB 1.0 Hectare policy does not address private utilities. This policy is under review and will address this issue in the near future. Most local government is the Okanagan define “Community Sewer” as those systems owned, operated and maintained by the local governments. We recommend that local governments do not authorize new private wastewater systems. If they are authorized, we recommend that the local government require security from the utility to ensure maintenance and replacement of the system to protect community water.*

#### Board Consideration:

On October 19, 2023, the Regional District’s Planning and Development Committee considered a discussion paper with options to regulate the creation of new private utility systems and moved to initiate the proposed amendments.

The discussion paper considered at this meeting proposed to notify the proposed amendments in the typical manner for an Official Community Plan amendment (i.e. agency referrals, notification on VoyentAlert and social media, creation of a project webpage, etc.) as well as:

- an additional public information meeting with local engineering firms; and
- direct written notification to subdivision applicants whose current proposal may be impacted by such a change.

On April 4, 2024 the Regional District’s Planning and Development Committee considered a discussion paper summarizing the consultation undertaken, along with copies of the draft bylaws, and public and agency representations received related to the proposed amendment bylaws.

At this meeting the Committee moved that the proposed amendment bylaws proceed at a forthcoming Board meeting following consideration by the Electoral Area Advisory Planning Commissions (APCs).

At its meeting of July 25, 2024, the Board resolved to defer consideration of first reading of Amendment Bylaw Nos. 3045, 3046, 2900.01 and 2500.34 and that these items be considered at a forthcoming meeting of the P&D Committee.

#### Advisory Planning Commissions

On May 13, 2024 a special ‘joint’ meeting of all the Regional District’s Electoral Area APCs was called to consider the proposed amendment bylaws.

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In response, the Electoral Area “C”, “F” and “I” APCs moved to recommend that the Regional District Board support the proposed amendment bylaws.

The Electoral Area “E” APC moved to recommend that the Regional District Board support the proposed amendments to the Official Community Plan, Zoning, and Subdivision and Development Servicing Bylaws.

The Electoral Area “E” APC also moved to recommend that the Regional District Board support the proposed amendments to the Development Procedures Bylaw, subject to the following conditions:

- That the RDOS hire independent engineers to assess plans and ensure compliance; and
- That applicants provide security sufficient to ensure compliance, maintenance and replacement costs.

The Electoral Area “D” and “H” APCs did not provide a motion on the proposed amendment bylaws and deferred making a decision to their next respective meetings.

On June 10, 2024 meetings of the Electoral Area “D” and “H” APCs were called to consider the proposed amendment bylaws.

The Electoral Area “D” APC considered the proposed amendments and moved to recommend that the Regional District Board support the proposed amendment bylaws.

The Electoral Area “H” APC did not make quorum and was unable to considered the proposed amendment bylaws or provide a recommendation.

**Public Process:**

On December 20, 2023, letters were mailed to six (6) property owners with in-stream proposals that *may* be affected by the proposed amendments.

On January 2, 2024, the holding of a Public Information Meeting (PIM) was notified via VoyentAlert, social media, and the project webpage.

On January 16, 2024, a Public Information Meeting (PIM) was held electronically via Webex and was attended by approximately 17 members of the public.

On January 24, 2024, a Public Information Meeting (PIM) with representatives of various local consulting engineering firms was held at 101 Martin Street, Penticton (RDOS Boardroom) and was attended by approximately 8 individuals.

Advertisements were placed in the following editions of local newspapers:

- Times Chronicle (January 25, 2024);
- Keremeos Review (January 25, 2024); and
- Penticton Western (January 24, 2024);
- Similkameen Spotlight (January 25, 2024).
- Summerland Review (January 25, 2024);

In accordance with statutory requirements, School District No. 53, 58 and 67, the Agricultural Land Commission (ALC), the Ministry of Agriculture and the Ministry of Transportation and Infrastructure (MoTI) have been made aware of the proposed amendment bylaws. A full list of agencies that have been notified is included at Attachment No. 1.

**Analysis:**

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It has been the Regional District's experience that "system owners often find that they no longer have the financial ability or technical expertise required to meet current regulations" and there have been prominent examples (e.g. Vintage Views Development Sewer System) where the Regional District has been requested to acquire these systems.

Further, it has been a long-standing policy direction of the Regional District Board that "essential services are best provided by government, where citizens can elect representatives interested in their well-being and will operate the service in the most effective and efficient manner possible."

For this reason, Administration considers there to be a strong argument for the Board to regulate, going forward, in favour of publicly operated utility systems versus those operated by business or strata corporations or other private water or sewer utilities.

It is envisioned that a prohibition on new private utilities will likely create pressure on the Regional District to support and immediately acquire such infrastructure when needed for development to proceed in certain zones.

#### Private Utility Variances

Under the *Local Government Act*, property owners are entitled to submit development variance permit applications requesting the Board to vary (amongst other things) zoning bylaw regulations or subdivision and development regulations, and the Board is obligated to consider every such application.

Accordingly, amendments to the RDOS Development Procedures Bylaw are proposed and would require applications proposing new private utility systems to be accompanied by a report from a qualified professional engineer.

In general terms, the engineer's report must certify that the system meets or is equivalent to the standards prescribed by the RDOS Subdivision Servicing Bylaw, is in acceptable condition, and is adequate for the proposed development.

#### Utility Acquisition Considerations

The Board may also wish to give consideration to amending its Water and Sewer Utility Acquisition Policy to include a reference to only acquiring utilities that have been designed to applicable RDOS regulations and, where RDOS regulations are silent, to good engineering practices.

Such systems should also be expected to be financially sustainable upon completion (i.e. viable and affordable for residents to be served by the system). Administration is aware that the Columbia Shuswap and Thompson Nicola Regional Districts employ thresholds to help determine the viability of a utility (e.g. it must serve a minimum of 50 or 100 units) and a similar approach could be applied in the RDOS.

#### Alternative:

Administration understands that the representations received in relation to the proposed amendments generally relate to perceived uncertainty associated with discretionary approvals (e.g. Development Variance Permit applications) and impacts to in-stream development proposals that may occur as a result.

In addition, it is understood that there are concerns in relation to the potential application of the proposed amendments to existing private systems. Under Section 528 of the *Local Government Act*,

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existing private systems would enjoy non-conforming use rights (e.g. “grandfathering”) as they would have been lawfully established prior to the proposed changes to the land use bylaws.

Accordingly, existing private systems would be able to continue operating and serving their current customer base (e.g. service area), however, any proposal to expand such systems in order to service additional properties would require Board approval (e.g. through the issuance of a DVP).

Should the Board wish to not proceed with the proposed bylaw amendments, Administration recommends that the Board initiate with the member municipalities an amendment to the RGS Bylaw to delete the policy discouraging private utility systems and that a similar amendment to the Electoral Area Official Community Plans be initiated.

Alternatively, the status quo is also an option, however this approach is not preferred as OCP policies discouraging private utilities will continue to have little effect without supportive regulations implemented in the Regional District’s land use bylaws.

Summary

Administration maintains its position that there is a strong argument for the Board to regulate in favour of publicly operated utility systems versus those operated by business or strata corporations or other private water or sewer utilities.

Moreover, the merits of this approach warrant it being applied regionally across all Electoral Areas of the Regional District.

**Respectfully submitted:**

Ben Kent  
Ben Kent, Planner II

**Endorsed:**

  
C. Garrish, Senior Manager of Planning

Attachments: No. 1 – Agency Referral List

Attachment No. 1 – Agency Referral List

Referrals have been sent to the following agencies, as highlighted with a , regarding Amendment Bylaw No. 3045, 2024, Amendment Bylaw No. 3046, Amendment Bylaw No. 2000.18 and Amendment Bylaw No. 2500.33:

<input checked="" type="checkbox"/>	Agricultural Land Commission (ALC)	<input checked="" type="checkbox"/>	Fortis
<input checked="" type="checkbox"/>	Interior Health Authority (IHA)	<input checked="" type="checkbox"/>	City of Penticton
<input checked="" type="checkbox"/>	Ministry of Agriculture	<input checked="" type="checkbox"/>	District of Summerland
<input type="checkbox"/>	Ministry of Energy, Mines & Petroleum Resources	<input checked="" type="checkbox"/>	Town of Oliver
<input type="checkbox"/>	Ministry of Municipal Affairs & Housing	<input checked="" type="checkbox"/>	Town of Osoyoos
<input type="checkbox"/>	Ministry of Lands, Water and Resource Stewardship	<input checked="" type="checkbox"/>	Town of Princeton
<input type="checkbox"/>	Ministry of Forest, Lands, Natural Resource Operations & Rural Development (Archaeology Branch)	<input checked="" type="checkbox"/>	Village of Keremeos
<input type="checkbox"/>	Ministry of Jobs, Trade & Technology	<input checked="" type="checkbox"/>	ONA / PIB / OIB / USIB / LSIB (via NationsConnect)
<input checked="" type="checkbox"/>	Ministry of Transportation and Infrastructure	<input type="checkbox"/>	Environment Canada
<input type="checkbox"/>	Integrated Land Management Bureau	<input type="checkbox"/>	Fisheries and Oceans Canada
<input type="checkbox"/>	BC Parks	<input type="checkbox"/>	Canadian Wildlife Services
<input checked="" type="checkbox"/>	School District #53 (Areas A, B, C, D & G)	<input checked="" type="checkbox"/>	OK Falls Irrigation District
<input checked="" type="checkbox"/>	School District #58 (Area H)	<input checked="" type="checkbox"/>	Kaleden Irrigation District
<input checked="" type="checkbox"/>	School District #67 (Areas D, E, F, I)	<input checked="" type="checkbox"/>	Vaseux Lake Irrigation District
<input checked="" type="checkbox"/>	Keremeos Irrigation District	<input checked="" type="checkbox"/>	RDOS Irrigation Districts and improvement Districts
<input type="checkbox"/>	Central Okanagan Regional District	<input type="checkbox"/>	Kootenay Boundary Regional District
<input type="checkbox"/>	Thompson Nicola Regional District	<input type="checkbox"/>	Fraser Valley Regional District
<input checked="" type="checkbox"/>	Volunteer Fire Departments	<input checked="" type="checkbox"/>	Apex Mountain Resort