

## ADMINISTRATIVE REPORT



**TO:** Board of Directors

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

**DATE:** June 13, 2024

**RE:** Regulating the creation of new private utilities (X2023.011-ZONE)

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### **Administrative Recommendation:**

**THAT the following amendment bylaws to regulate the creation of new private utilities proceed to be read a first and second time and proceed to public hearing:**

- **Official Community Plan Amendment Bylaw No. 3045;**
- **Zoning Amendment Bylaw No. 3046;**
- **Subdivision and Development Servicing Bylaw No. 2900.01; and**
- **Development Procedures Amendment Bylaw No. 2500.34.**

**AND THAT the Board of Directors considers the process, as outlined in this report from the Chief Administrative Officer dated June 13, 2024, to be appropriate consultation for the purpose of Section 475 of the *Local Government Act*;**

**AND THAT, in accordance with Section 477 of the *Local Government Act*, the Board of Directors has considered Amendment Bylaw No. 3045, 2024, in conjunction with its Financial and applicable Waste Management Plans;**

**AND THAT the holding of a public hearing be scheduled for the Regional District Board meeting of July 4, 2024;**

**AND THAT staff give notice of the public hearing in accordance with the requirements of the *Local Government Act*.**

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### **Purpose:**

To seek direction related to proposed amendments contemplating 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.

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### 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.”

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.

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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.

The Committee also moved that the proposed amendment bylaws be postponed to allow time for the Advisory Planning Commissions (APCs) to review the matter before it is presented to the Board for first reading.

#### 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.

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 deferred making a decision to their June meetings and Administration is anticipating being able to provide a verbal update to the Board.

#### **Referrals:**

Pursuant to Section 476 of the *Local Government Act*, the Regional District must consult with the relevant School District when proposing to amend an OCP for an area that includes the whole or any part of that School District. In this instance, School District No. 53, 58 and 67 have been made aware of the proposed amendment bylaw.

Pursuant to Section 475 of the *Local Government Act*, the Regional District must consult with the Agricultural Land Commission (ALC) when proposing to amend an OCP which might affect agricultural land. Both the ALC and the Ministry of Agriculture have been made aware of the proposed amendment bylaws.

While the proposed amendments do not contemplate the regulation of utility systems owned and operated by irrigation or improvement districts, referrals were sent to these organizations at the request of the Regional District Board.

Administration also contacted staff at the Ministry of Environment and the Ministry of Municipal Affairs at the request of the Board to review the proposed amendment bylaws, however referral comments have not been provided.

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**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<sup>th</sup>), Penticton Western (January 24<sup>th</sup>), Summerland Review (January 25<sup>th</sup>), Keremeos Review (January 25<sup>th</sup>), Similkameen Spotlight (January 25<sup>th</sup>).

All comments received to date in relation to this application are included as a separate item on the Committee Agenda.

**Analysis:**

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.

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.

In recognition of this, Administration supports amendments to the Regional District's Development Procedures Bylaw to require applications proposing new private utility systems 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 Regional District's Subdivision and Development Servicing Bylaw, is in acceptable condition, and is adequate for the proposed development.

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## Alternatives

Representations have been received from applicants with in-stream development proposals opposing the proposed amendments.

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

Should the Board wish to not proceed with the proposed bylaw amendments, Administration recommends that the Board also remove policies discouraging private utility systems from its electoral area Official Community Plans.

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

For these reasons outlined above, Administration is recommending that the consultation undertaken be deemed sufficient and that the proposed bylaw amendments be directed to proceed to first reading.

## **Alternatives:**

1. That the proposed amendments be abandoned and policies discouraging private utilities be removed from the electoral area Official Community Plans.
2. Status quo.

**Respectfully submitted:**

Ben Kent

Ben Kent, Planner II

**Endorsed:**

CG

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"/>	Okanagan Nation Alliance
<input checked="" type="checkbox"/>	Ministry of Transportation and Infrastructure	<input checked="" type="checkbox"/>	Penticton Indian Band
<input type="checkbox"/>	Integrated Land Management Bureau	<input checked="" type="checkbox"/>	Osoyoos Indian Band
<input type="checkbox"/>	BC Parks	<input checked="" type="checkbox"/>	Upper Similkameen Indian Band
<input checked="" type="checkbox"/>	School District #53 (Areas A, B, C, D & G)	<input checked="" type="checkbox"/>	Lower Similkameen Indian Band
<input checked="" type="checkbox"/>	School District #58 (Area H)	<input type="checkbox"/>	Environment Canada
<input checked="" type="checkbox"/>	School District #67 (Areas D, E, F, I)	<input type="checkbox"/>	Fisheries and Oceans Canada
<input checked="" type="checkbox"/>	Keremeos Irrigation District	<input type="checkbox"/>	Canadian Wildlife Services
<input type="checkbox"/>	Central Okanagan Regional District	<input checked="" type="checkbox"/>	OK Falls Irrigation District
<input type="checkbox"/>	Thompson Nicola Regional District	<input checked="" type="checkbox"/>	Kaleden Irrigation District
<input checked="" type="checkbox"/>	Volunteer Fire Departments	<input checked="" type="checkbox"/>	Vaseux Lake Irrigation District
<input type="checkbox"/>	Fraser Valley Regional District	<input checked="" type="checkbox"/>	RDOS Irrigation Districts and improvement Districts
<input checked="" type="checkbox"/>	Apex Mountain Resort	<input type="checkbox"/>	Kootenay Boundary Regional District