



COUNCIL REPORT
Office of the Chief Administrative Officer
For the May 14, 2019 Meeting

DATE: May 2, 2019

TO: Mayor and Council

FROM: Jim Zaffino, Chief Administrative Officer

RE: Regulation to discharging firearms and use of bows and arrows bylaw within West Kelowna boundaries.

RECOMMENDED MOTION:

THAT Council direct staff to add to the 2020 Strategic Priorities for discussion, a bylaw to restrict the discharging of firearms and the use of bows and arrows within the boundaries of West Kelowna.

RATIONALE:

The 2019 Strategic Priorities, both Council's and Operational are finalized, and work towards their completion is underway. Capacity will not allow an addition to the priorities without having an already chosen priority eliminated. To prepare an effective bylaw that will meet the needs of our community, public consultation will be required, and this will take time. In addition, the *Wildlife Act*, as stated on page 2 section 2 of this report has the controls that regulates shooting within a populated area.

LEGISLATIVE REQUIREMENTS:

Municipalities are provided authority under section 8(5) of the *Community Charter* to regulate and prohibit in relation to the discharge of firearms. Municipalities are also provided authority under section 8(3)e of the *Community Charter* to regulate, prohibit and impose requirements in relation to bows and arrows, knives and other weapons. In addition, Municipalities are provided authority under section 154 of the *Community Charter* to delegate it's authority in relations to the issuance of permits under a bylaw.

BACKGROUND:

In researching other municipalities bylaws regarding control over fire arms and bows and arrows the following has been found:

All the major cities within the Okanagan have a gun and bows and arrows bylaw that control their discharging within the City boundaries, not just on public property. The purpose of this report is to determine if Council wishes to supplement 0184, 2015 and create a new bylaw which would prohibit the use of the firearms and bows and arrows within all the boundaries of the City.

The bylaw would include a mechanism to designated (as recognized by the BC Assessment Authority) farmers to apply for a specific permit that would allow them to discharge firearms on a

specific day. Currently BC Assessment recognized that there are 164 farms within the boundaries of West Kelowna. With the number of farms within our boundary and the issues that can occur with the discharging of firearms, the bylaw should require public consultation.

The 2019 Strategic Priorities have been adopted by Council and staff is in the process of working on them. If Council wishes to proceed with this bylaw, Council has two options, either add to next year's strategic priorities, or include it to the 2019 priorities and delete a current priority.

Current Enforcement Options in regards to discharge of firearms within the City boundaries.

1) City of West Kelowna Parks & Public Space Bylaw No. 0184

City of West Kelowna bylaw 0184.2015 section 3.5(a) under nuisances and dangers, states, "*No person may carry or discharge firearms, air guns, air rifles, air pistols, spring guns, bows or other weapons in a Park or Public Space*".

While this bylaw restricts the carrying and discharging of firearms and use of bows and arrows on public property, the use of firearms and bow and arrows used on private property is not restricted.

Note: Public space is defined in the bylaw as real property owned or leased by the City. The definition excludes private property.

Enforcement challenges:

Provincial legislation, **Community Charter Bylaw Enforcement Ticket Regulation** and the **Bylaw Notice Enforcement Regulation** prohibit local government from issuing tickets for firearms offences. The Bylaw does not include a section that prohibits the discharge of a firearm on private property.

2) Province of British Columbia *Wildlife Act*

- Section 32: A person who discharges a firearm in a no shooting area commits an offence.
- The Wildlife Act is enforceable by the RCMP who may issue a \$345.00 provincial ticket for this offence.

Wildlife Act Closed Areas Regulation Schedule 3 describes the provincial **No Shooting or Hunting Areas**.

Schedule 3 Section 19 contains specific prohibition language for shooting or hunting within the entire Province as follows:

That Portion of British Columbia within 100m of

- (a) A church, school building, school yard and playground,
- (b) A dwelling house,
- (c) A farm or ranch building that is occupied by persons or domestic animals,
and
- (d) A regional district park in Management Units 1-1 to 1-15 and 2-1 to 2-19.

Enforcement challenges:

The *Wildlife Act* is not enforceable by the City Bylaw Enforcement Officers, but is enforceable by a conservation officer.

3) *Criminal Code* of Canada firearm and bows and arrow laws controlled by the Federal Government

The Criminal Code is a Federal statute that contains numerous offences in relation to firearms. This statute is only enforceable by the RCMP. There is no provision in this statute for the issuance of tickets. All offences would require summons to Provincial Court.

At the federal level, firearms are regulated primarily by the *Firearms Act* and by Part III of the *Criminal Code*. The *Firearms Act* and its supporting regulations set out the rules for possessing a firearm. The *Criminal Code* and its supporting regulations identify the various firearms, weapons and devices regulated by the *Firearms Act*.

Both the *Criminal Code* and the *Firearms Act* contain offences and penalties for illegal possession or misuse of a firearm. For example, a person who has failed to register a restricted or prohibited firearm or who has used a firearm to commit a crime could be charged under the *Criminal Code*.

Provinces, territories or municipalities may have additional laws and regulations that apply in their jurisdiction. For example, provinces are responsible for regulating hunting. They may put restrictions on where hunting can take place and on the caliber or gauge of firearms that may be used for hunting particular game.

Crossbows that can be aimed and fired with one hand and crossbows with an overall length of 500 mm or less are prohibited. You cannot lawfully possess or acquire a prohibited crossbow.

You do not need a valid licence or registration certificate to possess any other type of bow, including a crossbow that is longer than 500 mm and that requires the use of both hands. Criminal Code provisions making it an offence to acquire a crossbow without a valid licence were never brought into force.

Consideration for adopting of a bylaw regulating the discharging firearms and use of bows

Enforcement challenges - Firearms

Community Charter Section 8(5) provides the authority for the local government to regulate and prohibit the discharging of firearms.

The adoption of a bylaw regulating the discharging firearms and use of bows would provide the City to ability to restrict/prohibit the discharge of firearms on private property. The Bylaw would include some exceptions in regard to the Right to Farm legislation including the ability of framers to deal with problem wildlife. The City Bylaw could not supersede the *Wildlife Act* restrictions/prohibitions.

However, Provincial legislation, ***Community Charter Bylaw Enforcement Ticket Regulation*** and the ***Bylaw Notice Enforcement Regulation*** prohibit local government from issuing tickets for firearms offences.

The City's only option for enforcement would be to proceed with an *Offence Act* prosecution. This process would require a Bylaw Enforcement Officer to prepare and swear an Information in front of a Justice who would then authorize a Summons to be served on the accused compelling their appearance at the Kelowna Bylaw Court. Upon conviction, the accused would be liable to a penalty not exceeding the maximum penalty indicated in the Bylaw. The maximum penalty cannot exceed \$10,000.

Enquires conducted with neighbouring municipalities in regards to how they enforce their bylaw revealed that firearms discharge matters are invariably referred to the RCMP for their follow up and potential enforcement action.

What enforcement ability would the City gain with the adoption of a Bylaw

- The ability for Bylaw Officers to issue tickets for offences committed with bow & arrow on private property
- The ability for Bylaw Officers to prosecute firearms offences, albeit it through a long for information
- The ability to add other building types or locations where the discharge of a firearm would not be permitted in addition to those already listed in Schedule 3 Section 19 of the *Wildlife Act*.
- The ability to increase the minimum distance for permitted discharge from the above noted locations or buildings. E.g. from 100m as designated in the *Wildlife Act* to a distance of 150m.

Enforcement Consequences of the City not adopting a Bylaw

- The RCMP would continue to investigate complaints of the discharge of firearms and have the ability to take enforcement action either by issuing a Provincial ticket for the offences listed in the *Wildlife Act*, including the aforementioned Schedule 3 Section 19 or elevating the enforcement action to a Criminal Code violation investigation.

ALTERNATE RECOMMENDED MOTIONS:

THAT Council direct staff to add the discharging of firearms and the use of bows and arrows bylaw within the boundaries of West Kelowna to this year's priorities, and:

THAT staff be directed to bring back a list of priorities and Council may consider to delete from the 2019 priorities so that there would be time to complete the new bylaw in 2019.

OR

THAT Council direct staff to not pursue a discharging of firearms and use of bows and arrows bylaw.

Respectfully submitted,



Jim Zaffino
Chief Administrative Officer



Mike Cain
Senior Bylaw Enforcement Officer

Power Point - No "X"