

**Ministry of Agriculture
BRIEFING NOTE FOR MINISTER FOR DECISION**

Ref: 179498

Date: March 7, 2014

Issue: The City of Abbotsford (the City) has requested Minister's approval of Bylaw No. 2210-2013 "Audible Bird Scare Device Bylaw, 2013" plus two other bylaws required for its implementation.

Background:

The City of Abbotsford is a regulated local government under section 918 of the *Local Government Act* (LGA). As a result, it can pass farm bylaws under section 917 and farm bylaws requiring the Minister's approval.

On September 10, 2012, the City established a Select Committee of Council to study the issue of propane cannon use and to develop a Farm Bylaw for Abbotsford City Council's (Council) consideration. The Farm Bylaw Select Committee (the Committee) was chaired by the Mayor and included two Councilors, two representatives from the community, two blueberry farmers and a representative of the Abbotsford Chamber of Commerce. A Ministry of Agriculture (AGRI) staff person was an ex-officio, non-voting member of the Committee. The Committee provided opportunities for stakeholders and the public to present and comment on the first draft of the bylaw.

On March 1, 2013, the City's Agricultural Advisory Committee (AAC) considered the proposed bylaw and recommended that a less restrictive bylaw that would only incorporate AGRI guidelines along with the proposed fine structure and registration fees be adopted.

The Committee finalized their proposed bylaws for consideration by Abbotsford City Council and are cited as:

Bylaw No. 2210-2013 "Audible Bird Scare Device Bylaw, 2013" regulating the use of Audible Bird Scare Devices (ABSDs)

Bylaw No. 2211-2013 "Bylaw Notice Enforcement Bylaw, 2007" adding penalties for contraventions of Bylaw No. 2210-2013 including \$200, \$300, and \$500 for the first, second, and third offence respectively.

Bylaw No. 2212-2013 "Municipal Ticket Information Bylaw, 2007" adding fines for contravention of Bylaw No. 2210-2013 including \$400, \$600, and \$1000 for the first, second, and third offence respectively.

Bylaw No.'s 2210, 2211 and 2212 (Attachments "A", "B" and "C" respectively) were given first and second reading by Council on May 6, 2013. The bylaw development process is described in Abbotsford City Staff Report No. EDP052-2013 (Attachment "D"). A two hour public hearing on the bylaw was held on June 10, 2013 with an estimated attendance of 150 people. There were three items of correspondence received including the letter from AGRI staff indicating that the proposed bylaw was much more restrictive than the Minister's Bylaw Standards. The Abbotsford Chamber of Commerce raised concerns about the process used to create the proposed bylaws. There were many speakers including the President of the Abbotsford Chamber of Commerce who repeated the concerns regarding the bylaws. The majority, (22 of the 30), of which many were growers, were opposed to the bylaw. Eight speakers spoke in favour of the bylaws.

At the July 8, 2013 Regular meeting of Council, Council referred the initial version of Bylaw No. 2210 to staff for amendments based on the provincial model bylaw, and further discussion and consultation with AGRI staff.

At the August 26, 2013 meeting, Council considered the amended Bylaw No. 2210 and voted not to pass third reading. Council then voted to pass third reading of the initial version of Bylaw No. 2210 that was defeated during the July 8, 2013 meeting. It was a split vote by Council with the Mayor breaking the tie.

**CONFIDENTIAL
ADVICE TO MINISTER**

**Ministry of Agriculture
BRIEFING NOTE FOR MINISTER FOR DECISION**

Subsequently, the bylaws were submitted to AGRI for approval.

Discussion:

A key recommendation in the 2009 and 2011 BC Farm Industry Review Board (BCFIRB) reports on the use of propane cannons is that local governments have the tools to address propane cannon use and should be encouraged to use them. In the spring of 2011, the Minister's Office directed AGRI staff to post clear instructions on the AGRI website to local governments on their options for propane cannon regulation and a letter was sent to local governments encouraging them to contact AGRI staff if they had any questions. The local governments were encouraged to develop Farm Bylaws (under section 917 of the LGA) which provide more regulatory powers, subject to Ministerial approval, and must be followed for farmers to be protected under the *Farm Practices Protection (Right to Farm) Act*. AGRI also posted a model Farm Bylaw to address ABSD. Local governments were discouraged from varying significantly from the model Farm Bylaw unless they had exhausted all other tools to address the issue. These include attempting to use the model Farm Bylaw, addressing starling population control, and adopting the Minister's Bylaw Standards on "Edge Planning" and "Residential Uses in the ALR". Both Bylaw Standards take a shared responsibility approach between farm and residential development to address the farm practice conflict around propane cannon use.

To this point, the City has not adopted Minister's Bylaw Standards on ABSD's, "Edge Planning" or "Residential Uses in the ALR". The City has expressed financial support for a starling trapping program led by others; however, nothing has been established to date.

The City's Farm Bylaw Select Committee was criticized by the blueberry grower members as being biased and both grower members subsequently resigned from the Committee. The bylaw developed by the Committee was much more restrictive than the Minister's Bylaw Standard and contains provisions that would significantly reduce the efficacy of a propane cannon and greatly reduce the area where they can be used effectively prohibiting the use of propane cannons on most blueberry farms in Abbotsford.

The ABSD Bylaw is consistent with the Minister's Bylaw Standard on ABSD for requiring a Bird Predation Management Plan, registering the ABSD with the City, and density of ABSDs. The major inconsistencies are reducing the time of use, firing frequency, separation distance and inclusion of a provision preventing use of ABSD in the future if they don't register the first year the bylaw is adopted. While AGRI does not have standards for fines or tickets, these tools are important for obtaining compliance in some cases. The City's bylaw also extends the separation distance to include not only dwelling units, but also to "a building or enclosure that normally houses Livestock; or a Dog Kennel". A detailed analysis of the inconsistencies is attached.

The requirement for registration of ABSD is an optional element of the Minister's Bylaw Standard. The Grower Liaison Officer program of the BC Blueberry Council (BCBC) serves as the first responder to noise complaints regarding ABSDs used by blueberry growers. This program effectively identifies farms where neighbours have noise complaints which could make the registration of ABSDs by the local government redundant, however, it is a method of ensuring local government bylaw enforcement knows where the ABSDs are located and how many devices are registered in the community.

Posting a sign along the main road access to the site where propane cannons are registered will provide neighbours with the ability to identify whether the farm is authorized to use a propane cannon. The sign will include contact numbers for bylaw enforcement and the BCBC Grower Liaison Officer as well.

Bylaw No. 2210 provides for the \$50 annual registration fee plus \$25 for each ABSD. Bylaw No.'s 2211 and 2212 provides for escalating penalties for Bylaw No. 22105 violations. These penalties appear to be reasonable.

**CONFIDENTIAL
ADVICE TO MINISTER**

**Ministry of Agriculture
BRIEFING NOTE FOR MINISTER FOR DECISION**

Generally the increased setback of a propane cannon to a neighbouring resident potentially doubles the number of blueberry farms which would not be able to use a propane cannon at all (22 per cent to 46 per cent). It will have the added effect of reducing the number of cannons on those lots which can still achieve the required setbacks. The requirement to setback 300 m from a livestock enclosure on the neighbouring property could effectively make the 300 m setback to the property line of the blueberry lot where livestock enclosure abuts the property line. In this instance, only 16 of the 540 lots (3 per cent) would be able to meet this requirement. This requirement was added at the request of horse owners but was extended to all types of livestock. Dairy producers and mink farmers have used propane cannons in close proximity to their barns to control starlings as well. Except for the horse industry, no other commodity groups have indicated any concerns with the use of propane cannons.

The Township of Langley (the Township) adopted a Minister approved bylaw in June of 2013 in time for the blueberry growing season. The Township had 13 farms (of over 100 blueberry farms) register the use of a propane cannon. They also received 13 written complaints for bylaw contraventions with no fines issued. This would seem to suggest that there are not many situations where farmers are using propane cannons that result in complaints. When a ABSD complaint was made in 2013, the Township was able to resolve it based on a warning rather than issuing a fine.

The blueberry industry, City of Abbotsford AAC and Abbotsford Chamber of Commerce are all opposed to Bylaw No. 2210. The horse industry is supportive of Bylaw No. 2210.

Options:

Option 1. Approve the bylaws.

Pros

- Noise complaints will be reduced.

Cons

- The majority of blueberry farmers will lose access to ABSDs to protect their crops.
- On parcels where farmers can use ABSDs, their use will be greatly reduced in firing frequency, areas where they can be used on the farm, and time of use.
- Future farmers will not have any access to ABSD.
- The restrictions are structured to obtain prohibition in most cases and are not based on a response to complaints of nuisance.
- Industry will suffer greater losses due to bird predation, increased costs and be less competitive internationally.

Option 2. Do not approve the bylaws.

Pros

- Enables farmers to continue to use ABSD to protect their crops, subject to following the Ministry's "Wildlife Damage Control Guidelines" or Model Noise Bylaw.
- Supports the BCFIRB reports on the propane cannon use. Could indicate that the Minister would reconsider if the City exhausted all other options before requesting substantially greater restrictions on ABSD in a farm bylaw.

Cons

- The City may not issue tickets or fines to support ABSD regulation, leaving the issue to the industry and BCFIRB for enforcement.

**CONFIDENTIAL
ADVICE TO MINISTER**

**Ministry of Agriculture
BRIEFING NOTE FOR MINISTER FOR DECISION**

Recommendation: Option 2.

Approved / Not Approved



Norm Letnick, Minister

June 11, 2014

Date Signed

Contact: Bert van Dalfsen, Manager, Strengthening Farming Program, IASB, 604 556-3109.

DIR GT

ADM GP

DM DS

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CITY OF ABBOTSFORD

AUDIBLE BIRD SCARE DEVICE BYLAW, 2013

Bylaw No. 2210-2013

WHEREAS The *Local Government Act*, Section 918 and *Right to Farm Regulation* authorize the City to make bylaws under Section 917 in relation to farm areas with the approval of the Minister of Agriculture;

AND WHEREAS Council is concerned about adverse effects from the unregulated use of Audible Bird Scare Devices on other farming operations and on human health;

AND WHEREAS Council considers that regulation is desirable to ensure the use of Audible Bird Scare Devices is respectful of others in the vicinity and preferably used as a last resort, after other methods of discouraging birds from eating farm produce have been exhausted;

NOW THEREFORE, the Council of the City of Abbotsford, in open meeting assembled, ENACTS AS FOLLOWS:

1. CITATION

Bylaw No. 2210-2013 may be cited as "Audible Bird Scare Device Bylaw, 2013".

2. INTERPRETATION

- (a) Schedule "A" contains definitions of terms used in this Bylaw.
- (b) Except as otherwise defined in this Bylaw, words and phrases in this Bylaw are to be construed in accordance with their meanings under the *Local Government Act*, *Farm Practices Protection (Right to Farm) Act*, the *Interpretation Act of British Columbia* and the Guide for Bylaw Development in Farming Areas, BC Ministry of Agriculture, May 2011.
- (c) A reference to any statute, regulation or Bylaw refers to that enactment as it may be amended or replaced from time to time.
- (d) Words in the singular include the plural and gender specific terms include both genders and include corporations.
- (e) The headings in this Bylaw are for convenience only and must not be construed as defining or in any way limiting the scope or intent of this Bylaw.
- (f) If any part of this Bylaw is held to be invalid by a court of competent jurisdiction, the invalid part is severed and the remainder continues to be valid.

3. AUDIBLE BIRD SCARE DEVICES

- (a) A person must not use a Category A Device (Propane-Fired Cannon/Orchard Pistols) or Category B Device (Sound System) ABSD except for farm crop protection as part of a farm operation, and only in accordance with this Bylaw.

CITY OF ABBOTSFORD

AUDIBLE BIRD SCARE DEVICE BYLAW, 2013

Bylaw No. 2210-2013

Page 2

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- (b) An ABSD in either Category A Device (Propane-Fired Cannon/Orchard Pistols) or Category B Device (Sound System) may only be used when all of the following conditions are met:
- (i) the ABSD is used as part of a Bird Predation Management Plan;
 - (ii) birds were observed preying on farm crops and their impact on farm crops are described in a Bird Predation Management Plan;
 - (iii) a current Bird Predation Management Plan is completed, signed, and submitted to the City;
 - (iv) the ABSD is registered with the City;
 - (v) an annual registration fee of \$50 per farm operation and \$25 per ABSD is paid to the City;
 - (vi) the farmer maintains a continuing, current log of bird predation management, and provides a copy to the City's Bylaw Enforcement Officer upon request;
 - (vii) a sign is posted on, or adjacent to, the main entrance of the farm operating the device, which is:
 - A. legibly marked with:
 - i. the registration number of each ABSD; and
 - ii. a telephone number, to be provided by the City for the purpose of making complaints about ABSDs or reporting violations;
 - B. a minimum size of 0.6 metres x 0.6 metres (two feet by two feet);
 - C. facing the highway, so as to be clearly viewable by the public; and
 - D. meets the requirements set out in Schedule "B", attached to and forming part of this Bylaw;
 - (viii) the ABSD is relocated every four days;
 - (ix) the ABSD is pointed away from adjacent dwelling units; and
 - (x) a maximum of one device is used on a ratio of one ABSD per two hectares of cropland.

CITY OF ABBOTSFORD

AUDIBLE BIRD SCARE DEVICE BYLAW, 2013

Bylaw No. 2210-2013

Page 3

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- (c) In addition to Subsection 3 (b), the following conditions apply to the use of any Category A Device (Propane-Fired Cannon/Orchard Pistols):
- (i) the ABSD must only be operated from 7:00 a.m. to noon and 3 p.m. to 7:00 p.m. or sunrise to noon and 3 p.m. to sunset, whichever is of lesser duration;
 - (ii) the ABSD must be limited to a maximum firing frequency of:
 - A. 4 shots per hour for single-shot devices; and
 - B. 3 activations per hour for multi-shot devices.

multiple shots from a ABSD are considered as one activation if they all occur in less than a 30-second period;
 - (iii) the ABSD must be located a minimum of 300 metres from:
 - A. all adjacent Dwelling Units, except when written permission is given by the residents of any dwelling within the setbacks;
 - B. a building or enclosure that normally houses Livestock; or
 - C. a Dog Kennel.
 - (iv) the ABSD must be registered with the City during the first year of the adoption of this Bylaw; and
 - (v) in the case of orchard pistols, projectiles must remain within the setback limits outlined in Subsection (c)(iii), and projectiles must be fully contained within the property boundaries where the ABSD is situated.
- (d) In addition to Subsection 3 (b), the following conditions apply to the use of any Category B Device (Sound System):
- (i) the ABSD must only be operated from 7:00 a.m. to 7:00 p.m. or sunrise to sunset, whichever is of lesser duration;
 - (ii) The ABSD must be located a minimum of 200 metres from:
 - A. all adjacent Dwelling Units, except when written permission is given by the residents of any dwelling within the setbacks;
 - B. a building or enclosure that normally houses Livestock; or
 - C. a Dog Kennel.

CITY OF ABBOTSFORD

AUDIBLE BIRD SCARE DEVICE BYLAW, 2013

Bylaw No. 2210-2013

Page 4

4. ENFORCEMENT AND PENALTY

- (a) This Bylaw may be enforced by Bylaw Enforcement Officers employed by the City.
- (b) Every person who:
 - (i) contravenes or violates any provision of this Bylaw;
 - (ii) causes, permits, suffers or allows any act or thing to be done in contravention or in violation of any provision of this Bylaw; or
 - (iii) who neglects to do or refrains from doing anything required to be done by any provision of this Bylaw,

commits an offence and, where the offence is a continuing one, each day the offence continues shall be a separate offence.

- (c) Upon being convicted of an offence under this Bylaw, a person shall be liable to pay a fine of up to \$10,000 together with the costs of such prosecution.

5. EFFECTIVE DATE AND REVIEW

- (a) This Bylaw comes into force on the day it is adopted.
- (b) This Bylaw will be reviewed by Council within one year of the date it is enacted, and thereafter once annually.

READ A FIRST TIME this	6 th day of	May, 2013
READ A SECOND TIME this	6 th day of	May, 2013
PUBLIC HEARING held this	10 th day of	June, 2013
READ A THIRD TIME this	26 th day of	August, 2013
APPROVED by the Minister of Agriculture	day of	, 2014
ADOPTED this	day of	, 2014

I hereby certify this to be
a true copy of the original
bylaw


Katie Karn
Deputy City Clerk

R. Bruce Banman
Mayor

William Flitton
Corporate Officer

CITY OF ABBOTSFORD

AUDIBLE BIRD SCARE DEVICE BYLAW, 2013

Bylaw No. 2210-2013

Page 5

SCHEDULE "A"

DEFINITIONS

In this Bylaw, unless the context otherwise requires:

"Audible Bird Scare Device" or *ABSD* means a device used to control or reduce the impact of wildlife on crops or livestock feed; and may include propane-fueled cannons or exploders, electronic warblers, bird distress call recorders, motorcycles, and firearms with various cracker or whistler shells.

"Bird Predation Management Plan" means a plan to control or reduce bird predation on farm crops, prepared by a farmer intending to use an *ABSD* as part of a farm operation, that is consistent with guidelines published by the government; and that includes evidence as to the impact of bird predation on the farm operation, what other measures were taken, and why the farmer considers the proposed *ABSD* to be necessary.

"Category A Device (Propane-Fired Cannon/Orchard Pistols)" means an Audible Bird Scare Device that creates an impulse sound from impacts or explosions, such as propane-fueled exploders or cannons, shell launchers and orchard pistols.

"Category B Device (Sound System)" means an Audible Bird Scare Device that generates sounds to scare or disturb birds such as birdcalls or other sounds broadcast through loud speakers.

"City" means the City of Abbotsford.

"Dog Kennel" means "Dog Kennel" as defined in the City's Dog Licence Bylaw.

"Dwelling Unit" means "Dwelling Unit" as defined in the City's Zoning Bylaw.

"Livestock" means cattle, horses, sheep, goats, swine, poultry, llamas, alpacas, exotic animals and rabbits, or other animal raised as part of a farm operation.

SCHEDULE "B"

1. SAMPLE SIGN

**AUDIBLE BIRD SCARE
DEVICE IN USE**

Registration #: XXXX-XXXX
For use at: Property Address

Device to follow the regulations set out in the Abbotsford Audible Bird Scare Device Bylaw, 2013, Bylaw No. 2210-2013. If you believe that this device is in contravention of the bylaw, please contact:
City of Abbotsford Bylaw Enforcement: 604-864-5512

CITY OF ABBOTSFORD

BYLAW NOTICE ENFORCEMENT BYLAW, 2007, AMENDMENT BYLAW NO. 22

Bylaw No. 2211-2013

The Council of the City of Abbotsford, in open meeting assembled, ENACTS AS FOLLOWS:

1. CITATION

Bylaw No. 2211-2013 may be cited as "Bylaw Notice Enforcement Bylaw, 2007, Amendment Bylaw No. 22".

2. AMENDMENTS

Bylaw No. 1703-2007, cited as "Bylaw Notice Enforcement Bylaw, 2007", as amended, is further amended by adding new Schedule "B", Section 1. Audible Bird Scare Device Bylaw, 2009, Bylaw No. 2210-2013, and renumbering all subsequent sections.

READ A FIRST TIME this	6 th day of	May, 2013
READ A SECOND TIME this	6 th day of	May, 2013
PUBLIC HEARING held this	10 th day of	June, 2013
READ A THIRD TIME this	26 th day of	August, 2013
APPROVED by the Minister of Agriculture	day of	, 2014
ADOPTED this	day of	, 2014

I hereby certify this to be
a true copy of the original
bylaw


Katie Karn
Deputy City Clerk

R. Bruce Banman
Mayor

William Flitton
Corporate Officer

CITY OF ABBOTSFORD

BYLAW NOTICE ENFORCEMENT BYLAW, 2007, AMENDMENT BYLAW NO. 22

Bylaw No. 2211-2013

Page 2 of 3

SCHEDULE "B"

1. Audible Bird Scare Device Bylaw, 2013 Bylaw No. 2210-2013

Bylaw Section	Description	(A1) Penalty	(A2) Discounted Penalty (within 14 days)	(A3) Late Penalty (after 28 days)
Audible Bird Scare Device Bylaw, Bylaw No. 2210-2013				
3 (a)	Unauthorized use of ABSD - 1 st Offence	200	-	250
3 (a)	Unauthorized use of ABSD - 2 nd Offence	300	-	400
3 (a)	Unauthorized use of ABSD - 3 rd Offence and Each Subsequent Offence	500	-	600
3 (b) (i)	Fail to register device	200	-	250
3 (b) (i) (A)	Fail to submit Bird Predation Management Plan	200	-	250
3 (b) (i) (B)	Fail to pay a registration fee	200	-	250
3 (b) (ii)	Fail to display a sign	200	-	250
3 (b) (iii) & 3 (c) (i)	Use outside of hours- 1 st Offence	200	-	250
3 (b) (iii) & 3 (c) (i)	Use outside of hours- 2 nd Offence	300	-	400
3 (b) (iii) & 3 (c) (i)	Use outside of hours- 3 rd Offence and Each Subsequent Offence	500	-	600
3 (b) (iv)	Fail to re-locate device - 1 st Offence	200	-	250
3 (b) (iv)	Fail to re-locate device - 2 nd Offence	300	-	400
3 (b) (iv)	Fail to re-locate device - 3 rd Offence and Each Subsequent Offence	500	-	600
3 (b) (v)	Exceed number of allowable devices – 1 st Offence	200	-	250
3 (b) (v)	Exceed number of allowable devices – 2 nd Offence	300	-	400
3 (b) (v)	Exceed number of allowable devices- 3 rd Offence and Each Subsequent Offence	500	-	600
3 (c) (ii)	Exceed firing frequency - 1 st Offence	200	-	250
3 (c) (ii)	Exceed firing frequency - 2 nd Offence	300	-	400
3 (c) (ii)	Exceed firing frequency - 3 rd Offence and Each Subsequent Offence	500	-	600
3 (c) (iii) & 3 (d)	Infringe on setback from dwelling unit/building/enclosure - 1 st Offence	200	-	250
3 (c) (iii) & 3 (d)	Infringe on setback from dwelling unit/building/enclosure - 2 nd Offence	300	-	400
3 (c) (iii) & 3 (d)	Infringe on setback from dwelling unit/building/enclosure - 3 rd Offence and Each Subsequent Offence	500	-	600
3 (c) (iv)	Fail to notify Livestock or Dog Kennel Owner	200	-	250
Bylaw	Description	(A1) Penalty	(A2) Discounted	(A3) Late

CITY OF ABBOTSFORD

BYLAW NOTICE ENFORCEMENT BYLAW, 2007, AMENDMENT BYLAW NO. 22

Bylaw No. 2211-2013

Page 3 of 3

SCHEDULE "B"

Section			Penalty (within 14 days)	Penalty (after 28 days)
3 (c) (v)	Point device towards dwelling unit – 1 st Offence	200	-	250
3 (c) (v)	Point device towards dwelling unit – 2 nd Offence	300	-	400
3 (c) (v)	Point device towards dwelling unit – 3 rd Offence and Each Subsequent Offence	500	-	600
3 (e)	Shell launcher within restricted area – 1 st Offence	200		250
3 (e)	Shell launcher within restricted area – 2 nd Offence	300		400
3 (e)	Shell launcher within restricted area – 3 rd Offence and Each Subsequent Offence	500		600
4	No Bird Predation Management Plan	200		250

CITY OF ABBOTSFORD

MUNICIPAL TICKET INFORMATION BYLAW, 2007, AMENDMENT BYLAW NO. 22

Bylaw No. 2212-2013

The Council of the City of Abbotsford, in open meeting assembled, ENACTS AS FOLLOWS:

1. CITATION

Bylaw No. 2212-2013 may be cited as "Municipal Ticket Information Bylaw, 2007, Amendment Bylaw No. 22".

2. AMENDMENTS

Bylaw No. 1675-2007, cited as "Municipal Ticket Information Bylaw, 2007", as amended, is further amended by adding new Schedule "B", Section 1. Audible Bird Scare Device Bylaw, 2013, Bylaw No. 2210-2013, and renumbering all subsequent sections.

READ A FIRST TIME this	6 th day of	May, 2013
READ A SECOND TIME this	6 th day of	May, 2013
PUBLIC HEARING held this	10 th day of	June, 2013
READ A THIRD TIME this	26 th day of	August, 2013
APPROVED by the Minister of Agriculture	day of	, 2014
ADOPTED this	day of	, 2014

I hereby certify this to be
a true copy of the original
bylaw


Katie Karn
Deputy City Clerk

R. Bruce Banman
Mayor

William Flitton
Corporate Officer

CITY OF ABBOTSFORD

MUNICIPAL TICKET INFORMATION BYLAW, 2007, AMENDMENT BYLAW NO. 22

Bylaw No. 2212-2013

Page 2

SCHEDULE "B"

1. Audible Bird Scare Device Bylaw, 2013, Bylaw No. 2210-2013

(1) Bylaw Section	(2) Description	(3) Fine (\$)
Audible Bird Scare Device Bylaw, Bylaw No. 2210-2013		
3 (a)	Unauthorized use of ABSD - 1 st Offence	400
3 (a)	Unauthorized use of ABSD - 2 nd Offence	600
3 (a)	Unauthorized use of ABSD - 3 rd Offence and Each Subsequent Offence	1000
3 (b) (i)	Fail to register device	400
3 (b) (i) (A)	Fail to submit Bird Predation Management Plan	400
3 (b) (i) (B)	Fail to pay a registration fee	400
3 (b) (ii)	Fail to display a sign	400
3 (b) (iii) & 3 (c) (i)	Use outside of hours- 1 st Offence	400
3 (b) (iii) & 3 (c) (i)	Use outside of hours- 2 nd Offence	600
3 (b) (iii) & 3 (c) (i)	Use outside of hours- 3 rd Offence and Each Subsequent Offence	1000
3 (b) (iv)	Fail to re-locate device - 1 st Offence	400
3 (b) (iv)	Fail to re-locate device - 2 nd Offence	600
3 (b) (iv)	Fail to re-locate device - 3 rd Offence and Each Subsequent Offence	1000
3 (b) (v)	Exceed number of allowable devices – 1 st Offence	400
3 (b) (v)	Exceed number of allowable devices – 2 nd Offence	600
3 (b) (v)	Exceed number of allowable devices- 3 rd Offence and Each Subsequent Offence	1000
3 (c) (ii)	Exceed firing frequency - 1 st Offence	400
3 (c) (ii)	Exceed firing frequency - 2 nd Offence	600
3 (c) (ii)	Exceed firing frequency - 3 rd Offence and Each Subsequent Offence	1000
3 (c) (iii) & 3 (d)	Infringe on setback from dwelling unit/building/enclosure - 1 st Offence	400
3 (c) (iii) & 3 (d)	Infringe on setback from dwelling unit/building/enclosure - 2 nd Offence	600
3 (c) (iii) & 3 (d)	Infringe on setback from dwelling unit/building/enclosure - 3 rd Offence and Each Subsequent Offence	1000
3 (c) (iv)	Fail to notify Livestock or Dog Kennel Owner	400
3 (c) (v)	Point device towards dwelling unit – 1 st Offence	400
3 (c) (v)	Point device towards dwelling unit – 2 nd Offence	600
3 (c) (v)	Point device towards dwelling unit – 3 rd Offence and Each Subsequent Offence	1000

CITY OF ABBOTSFORD

MUNICIPAL TICKET INFORMATION BYLAW, 2007, AMENDMENT BYLAW NO. 22

Bylaw No. 2212-2013

Page 3

SCHEDULE "B"

(1) Bylaw Section	(2) Description	(3) Fine (\$)
3 (e)	Shell launcher within restricted area – 1 st Offence	400
3 (e)	Shell launcher within restricted area – 2 nd Offence	600
3 (e)	Shell launcher within restricted area – 3 rd Offence and Each Subsequent Offence	1000
4	No Bird Predation Management Plan	400



COUNCIL REPORT

Report No. EDP052-2013
March 28, 2013
File No: 3900-02

Executive Committee

To: Mayor and Council
From: Gordon Ferguson, Manager, Bylaw Enforcement
Subject: Proposed Regulation of Audible Bird Scare Devices (e.g. Propane Cannons)

RECOMMENDATIONS

1. THAT Report No. EDP052-2013, dated March 28, 2013, from the Manager, Bylaw Enforcement, regarding the proposed regulation of audible bird scare devices (e.g. propane cannons), be received;
2. THAT Bylaw No. 2210-2013, "Audible Bird Scare Device Bylaw, 2013" be given first and second readings at the next Regular meeting of Council and advance to Public Hearing;
3. THAT Bylaw No. 2211-2013, "Bylaw Notice Enforcement Bylaw, 2007, Amendment No. 22", be given first and second readings at the next Regular Meeting of Council and advance to Public Hearing;
4. THAT Bylaw No. 2212-2013, "Municipal Ticket Information Bylaw, 2007, Amendment No. 22", be given first and second readings at the next Regular Meeting of Council and advance to Public Hearing;
5. THAT the Mayor open negotiations with the BC Blueberry Council, the Ministry of Agriculture, the Fraser Valley Regional District and the Township of Langley, to start a starling management program, as quickly as possible, and that the City be prepared to fund up to \$30,000 annually, provided the other agencies participate on an equitable basis; and
6. THAT the Mayor and Corporate Officer be authorized to execute all documents related to this matter.

BACKGROUND

Farmers use audible bird scare devices (ABSDs), including devices known as propane cannons, to protect their crops from bird predation, primarily by starlings. Residents complain about noise created by these devices.

The *Provincial Farm Practices Protection (Right to Farm) Act (FPPA)* provides farmers with protection from nuisance, and regulation by local government bylaw, when normal farm practices are followed. The use of ABSDs is considered a normal farm practice when guidelines established by the Ministry of Agriculture (the Ministry) and the Farm Industry Review Board (FIRB) are followed (Attachment "A")¹. The guidelines address such things as hours of use, proximity to dwellings and frequency of discharge. It

¹ The Ministry guidelines, along with other useful information is available online at www.agf.gov.bc.ca/resmgmt/sf/farmpp/bird_devices.htm

categorizes devices that create an impulse sound, such as propane cannons, as Category "A" devices and stationary devices which generate sounds as Category "B" devices. The use of shell launchers or "orchard pistols" is expected to follow Category "A" guidelines except for the limitation on number of devices per hectare, firing frequency and mid-day break. Currently, the B.C. Blueberry Council's (BCBC, also known as BC Blueberry Growers Association) Liaison Officer works with farmers to resolve complaints; however, he has no legislated authority to take enforcement action.

In 2009, the BC Farm Industry Review Board (BCFIRB) studied the use of ABSDs and released a report that included 17 recommendations (Attachment "B") aimed at the Ministry of Agriculture, local governments and the agricultural industry. On April 12, 2010, Council considered the FIRB recommendations and, generally, resolved to support the work of the B.C. Blueberry Council's Liaison Officer and to participate in a starling management program, led by others (Attachments "C" and "D").

Under Section 917 of the Local Government Act, a local government may make a bylaw in relation to a farm operation, commonly referred to as a "farm bylaw" as a form of land use under the Right to Farm Act; however, it must be approved by the Minister of Agriculture. Farm bylaws override the protection from nuisance, and regulation by local government bylaw that the FPPA provides when normal farm practices are followed.

On September 10, 2012, in response to complaints from the public regarding noise created by ABSDs, Council resolved to establish a select committee, tasked with developing a farm bylaw governing the use of ABSDs and that discussions be held with the Fraser Valley Regional District, the Minister of Agriculture and the industry represented by the BC Blueberry Council, to develop a firm plan of action to deal with the infestation of starlings. A committee named the Farm Bylaw Select Committee (the Committee) was subsequently established made up of the Mayor, two Councillors and five citizens (Attachment "E").

The Bylaw Notice Enforcement Bylaw and the Municipal Ticket Information Bylaw authorize the City to enforce its regulatory bylaw by means of a ticket. These ticket bylaws must be kept up to date with the City's regulatory bylaws, as any changes are made to the regulatory bylaws or when any errors or omissions are identified.

ANALYSIS

The Committee met on several occasions through the months of November and December of 2012. During this time, the Committee reviewed the Ministry guidelines and three bylaws currently in place in British Columbia that regulate ABSDs (i.e. Delta², Pitt Meadows and Surrey). The Committee heard from:

- a representative of the BC Farm Industry Review Board;
- a representative of the Ministry of Agriculture;
- members of the public, including a presentation on noise effects by Dr. T. Loewen.

By January 4, 2013, a "first draft" bylaw was created along with recommended ticket fines. The bylaw was distributed to stakeholders, advertised in the local newspaper and

² only the Delta bylaw was approved by the Ministry

posted on the City's website. The Committee received input between January 4, 2013 and February 8, 2013. Response from government and industry stakeholders included:

- the Ministry of Agriculture; (Attachment "F");
- the Farm Industry Review Board, (Attachment "G");
- the Chamber of Commerce (Attachment "H");
- the BC Blueberry Council (Attachment "I");
- the Horse Council British Columbia (Attachment "J").

Responses from the Ministry, BCFIRB, the Chamber of Commerce and BCBC could be summarized as support for a bylaw implementing the Ministry guidelines but not a more restrictive bylaw such as the one proposed. BCFIRB and the Ministry have pointed out that a more restrictive bylaw could be supported but not until the City has done everything to mitigate the problem, such as implementing:

- a starling management program; and
- planning initiatives such as edge planning.

The Horse Council supported the proposed bylaw and requested that the separation distance between ABSDs and dwellings also apply to buildings and pens where livestock is kept. In addition, the City received 51 submissions from the general public. Forty-five of the submissions were in support of the bylaw and six were not. On January 9, 2013, legal counsel for the BC Blueberry Council wrote to the Ministry of Agriculture expressing concerns regarding the proposed bylaw and requesting that the Committee be abolished, citing a bias against the use of ABSDs. On January 30, 2013, the FVRD supported, in principle, collaboration on a bylaw regulating ABSDs.

On February 15, 2013, after considering all submissions, the Committee made further revisions to the bylaw which included:

- removing a proposed noise level limit, (ie. a decibel reading);
- removing a proposed prohibition on weekend and statutory holiday use; and
- including a separation distance between devices and buildings and enclosures that house livestock (meaning cattle, horses, sheep, goats, swine and rabbits).

On March 1, 2013, the City's Agricultural Advisory Committee (AAC) considered the bylaw and recommended that only a bylaw incorporating the Ministry guidelines, along with the proposed fine structure and registration fees be adopted. On March 15, 2013, the Committee considered the AAC's recommendations and changed the bylaw by removing the requirement for the name of the operator to be displayed on a sign at the farm operation. The City Solicitor reviewed the bylaw, from a legal perspective, and made necessary changes without affecting the general intent and content of the bylaw. On April 12, 2013, the Committee reviewed the revised bylaw and a draft of this report. The Committee recommended that the bylaw be further changed by adding a fee of \$25 per ABSD (in addition to a farm registration fee of \$50) and changing the definition of livestock to include poultry, llamas, alpacas, exotic animals and other animals as determined by the Manager, Bylaw Enforcement and that the Mayor open negotiations with stakeholders to implement a starling management program (Recommendation 5 of this report).

The final versions of the bylaws are cited as: Bylaw No. 2210-2013, "Audible Bird Scare Device Bylaw, 2013 (Attachment "K"); Bylaw No. 2211-2013, "Bylaw Notice Enforcement

Bylaw, 2007, Amendment No. 22" (Attachment "L"); and, Bylaw No. 2212-2013, "Municipal Ticket Information Bylaw, 2007, Amendment No. 22" (Attachment "M"). The penalty for most offences is \$250, while the penalty for using outside of permitted hours, exceeding firing frequency and infringing on setback requirements is \$500.

Key issues in Bylaw No. 2210-2013, "Audible Bird Scare Device Bylaw, 2013" are identified, and compared with the current Ministry guidelines, in the following table.

Comparison Table	
Proposed Bylaw No. 2210-2013	Ministry Guidelines
propane cannons and orchard pistols are treated in the same way	the guidelines are less onerous for orchard pistols (e.g. allowed during the mid-day break)
separation distance between dwellings and propane cannons/orchard pistols is 300m ³	separation distance between dwellings and propane cannons/orchard pistols is 200 m;
separation distance between dwellings and sound systems is 200 m	separation distance between dwellings and sound systems is 100 m
separation distance to buildings and enclosures where livestock and other animals are kept ⁴	no such requirement.
start time of 7:00 am and stop time of 7:00 pm	start time of 6:30 am and stop time of 8:00pm
single shot devices must not fire more than four shots per hour (one shot per 15 minutes)	single shot ABSDs must not fire more than 12 shots per hour (one shot per five minutes)
multi-shot devices must not fire more than 3 activations per hour	multi-shot devices must not fire more than 11 activations per hour
propane cannons and orchard pistols are "grandfathered" to farms registering devices within the first year of bylaw adoption (i.e. new farms are not allowed to use these devices)	no such limitation.
\$50 registration fee per farm operation and \$25 per device	no such requirement.
a sign must be posted at farm operations using an ABSD	no such requirement.

According to the Ministry, there are 546 agricultural lots, in Abbotsford, with blueberries. Taking into account the proximity of dwellings, a 200 m separation distance prevents use of an ABSD on 122 lots and a 300 m separation prevents use on 254 lots. It is not known how many of these lots make up a farm operation, or how many farm operations currently use ABSDs.

³ The Ministry indicated that a 300m restriction would eliminate use of ABSDs on 46% of agricultural lots

⁴ The Committee's recommendation to include other animals at the discretion of the Manager of Bylaw Enforcement was not included on advice of the City Solicitor for being too vague and uncertain

Business Case for Bylaw Enforcement and Administration

Enforcing and administering the proposed bylaw will be new work for staff. It is difficult to predict the actual cost of required resources, due to a number of variables. For example, the number of farm operations using ABSDs and, the total number of ABSDs, is not known. BCBC reported that it handles approximately 40 to 70 complaints per year. However, the number of complaints from residents may increase because of an expectation that the City should be enforcing its bylaw. In addition, the adoption of a City bylaw may diminish the involvement of the BCBC Liaison Officer. Last year, Bylaw Enforcement staff assisted the BCBC Liaison Officer with one complaint file which consumed approximately seven hours of time. Some of the expected challenges are:

- locating the origin of noise from an ABSD;
- locating nearby houses and buildings that contain livestock;
- measuring the distance between ABSDs and houses or buildings that contain livestock;
- a possible language barrier;
- staff is not trained in interpreting or assessing bird management plans;
- dealing with complaints at night.

For purposes of developing a simple business case, the following assumptions are made:

- a minimum of 70 complaint files will be handled each year;
- estimate 20 Bylaw Offence Notices at \$250 each and 10 at \$500 each, annually (total \$10,000);
- estimate 100 farm operations using ABSDs, at \$50 registration fee each, equals \$5,000 plus 200 registered ABSDs at \$25 each equals \$5,000 (total \$10,000);
- start-up costs involved to make necessary software changes, develop forms and brochures, etc of \$5,000;
- 0.10 FTE of a Bylaw Clerk to take complaints, handle inquiries and process registrations (equates to approximately \$5,100);
- a Bylaw Enforcement Officer will spend an average of five hours, on each complaint case (annually equates to 0.20 FTE or \$13,700);
- Bylaw Enforcement Officers will not be called out on overtime, for night complaints;

Summary of Estimated Revenue and Costs

		First Year
Revenue	Fines	\$10,000
	Registration Fees	\$10,000
	Total	\$20,000
Costs	Start-up	\$5,000
	Bylaw Clerk	\$5,100
	Bylaw Officer	\$13,700
	Total	\$23,800
Net Cost		(\$3,800)

Not included is overhead or legal expenses, should injunctive proceedings be necessary. These costs may be incremental to the current Bylaw Enforcement budget or may come at the expense of other Bylaw Enforcement initiatives.

Starling Management

According to the FIRB report, starlings are a non-native bird species first introduced to North America from Europe in the 1890's and observed in British Columbia since at least 1945. They are regarded as a highly invasive species that can displace native bird populations in areas where they are established and cause extensive damage to feed lots, fruit orchards, vineyards and berry production. Some berry producers in the Lower Mainland have reported losses ranging from 20% to 40%. In addition, starlings may also consume feed and spread disease at dairy farms and other livestock operations. Locally, starling management programs are in place in the Okanagan Valley and Whatcom County, in the U.S. Under these programs, birds are trapped in key locations such as feedlots and dairy operations. Captured starlings are humanely euthanized while non-target species are released.

In the Okanagan Valley, the BC Grapegrowers' Association (BCGA) administers a starling management program which is carried out by independent trapping contractors. The program began in 2003. Since then, over 500,000 starlings were trapped while in 2012, approximately 77,000 starlings were trapped. The annual cost of the program is approximately \$105,000. Three regional districts, (Central Okanagan, North Okanagan and Okanagan-Similkameen) each contribute up to \$25,000. The BC Fruit Growers Association, Okanagan Kootenay Cherry Growers' Association and the Okanagan Tree Fruit Cooperative each contribute \$5,000. In addition, the BCGA matches the total contribution of the tree fruit industry by asking grape growers in the trapping area to donate \$10 per acre towards the program. In 2012, the BCGA raised approximately \$22,000.

In Whatcom County, Farm Friends, a non-profit farm lobby group, administers a starling management program which is carried out by the Wildlife Services branch of the US Department of Agriculture at a subsidized cost. The program began in 1997. Since 1997, approximately 575,000 starlings were trapped. In 2012, approximately 25,000 starlings were trapped. The annual cost of the program is approximately \$24,000 to \$30,000 with Whatcom County providing between \$10,000 and \$15,000 and farmers providing approximately \$14,000 to \$15,000.

In the Lower Mainland, there is currently no starling management program; however, in 2010 a report was prepared for the BC Blueberry Council by Douglas B. Ransome (Attachment "N") which assessed the feasibility of such a program. Some of the conclusions of the report were that:

- a trapping program would likely be unsuccessful at long-term reduction of starlings; and
- intensive summer trapping of juvenile birds should be effective in reducing crop damage.

Mr. Ransome's report did not address the cost of a trapping program and no known government funding is currently available. Those administering current programs believe that it is a worthwhile effort and a necessary component to resolving the noise problem from extensive use of ABSDs. A trapping program in the Lower Mainland could extend

from Delta, in the west, to Chilliwack, in the east, south of the Fraser River. Industry stakeholders could include the BC Blueberry Council, the BC Ag Council and BC Dairy Association.

RELEVANCE TO STRATEGIC DIRECTIONS

One of the City's six Strategic Goals is to attain a safe, healthy and inclusive community.

FINANCIAL PLAN IMPLICATION

It is estimated that, in the first year, there will be a net cost of approximately \$3,800; however, there are many unknown variables. As stated previously, these costs may be incremental to the current Bylaw Enforcement budget or may come at the expense of other Bylaw Enforcement initiatives.

According to 2006 Census information, the population of the three Okanagan regional districts mentioned above, including member municipalities, was 305,421. Given a total financial contribution of \$75,000 towards their starling management program, this could be equated to a local government per capita contribution of approximately \$0.25. An Abbotsford contribution towards a Lower Mainland starling management program, calculated on this basis, would be approximately \$31,000.

COMMUNICATION PLAN

If Council gives two readings to the proposed bylaws, they will proceed to a Public Hearing in accordance with the Ministry's Guide to Bylaw Development in Farming Areas. After the Public Hearing, Council will consider giving third reading to the bylaws which will then be sent, along with a cover letter, and minutes of the Public Hearing, to the Minister of Agriculture.

CONCLUSION

The Farm Bylaw Select Committee guided the creation of a bylaw to regulate the use of audible bird scare devices which, if approved by the Minister of Agriculture, could be adopted as a "farm bylaw". The necessary bylaws to impose ticket penalties were also created. It is recommended that Council give two readings to the bylaws and that they proceed to a Public Hearing.

There is, currently, no starling management program in the Lower Mainland although programs in Whatcom County and the Okanagan Valley have been in place for 10 to 12 years. Reducing the number of juvenile starlings, could reduce crop damage and, correspondingly, the need to use audible bird scare devices. The Committee recommended that negotiations commence, to implement a starling management program, as quickly as possible.

Gordon Ferguson
Manager, Bylaw Enforcement

Jay Teichroeb
General Manager, Economic Development
and Planning Services

Attachment “E”

Comparison Table for restrictions on ABSD's

Proposed Bylaw No. 2210	AGRI Model Noise Bylaw	Impact
Propane cannons and orchard pistols are 'grandfathered' to farms registering devices within the first year of bylaw adoption (i.e. new farms are not allowed to use these devices)	No such limitation	Significant – new farms are not allowed to use ABSD.
Separation distance to buildings and enclosures where livestock and other animals are kept	No such requirement	May limit use of propane cannons to 16 (3%) existing blueberry farms. Also requires separation to livestock without evidence of an impact to most species.
Propane cannons and orchard pistols treated the same way	Two restrictions that apply to cannons do not apply to orchard pistols: mid-day break (noon – 3pm) and firing frequency restrictions.	Removes a tool to reinforce the cannon's effectiveness and protect crop during mid-day break in cannon firing.
Separation distance between dwellings and propane cannons/orchard pistols is 300 m	Separation distance is 200 m	Doubles the number of existing blueberry farms in Abbotsford that cannot use devices
Separation distance between dwellings and Category B devices is 200 m	Separation distance is 100 m	Cannon alternatives have significantly increased restrictions.
Single shot cannons must not fire more than four shots per hour (one shot per 15 minutes)	Fire once per 5 minutes	3 fold decrease in firing frequency
Multi-shot cannons must not fire more than 3 activations per hour	Multi-shot cannons must not fire more than 11 activations per hour.	For commonly used cannon model it is a 4 fold decrease in firing frequency.
Start time of 7:00 am and stop time of 7:00 pm	Start time of 6:30 am and stop time of 8:00 pm	Loss of protection for half hour in the morning is during a prime bird feeding time
\$50 registration fee per farm operation and \$25 per device	Fees are optional	Creates a formal registry – low impact
A sign must be posted at farm operations using an ABSD	Optional	Creates a system to indicate registered users – low impact