

3. **COVENANT MODIFICATIONS AND DISCHARGES**

Report of the Director of Planning dated September 23, 2024.

To give three readings to “Land Use and Development Application Fee Bylaw, 2006, Amendment Bylaw, 2024, No. 10017” and “Land Use and Development Procedures Bylaw, 2020, Amendment Bylaw, 2024, No. 10018” to establish a Covenant Modification or Discharge process and fee.

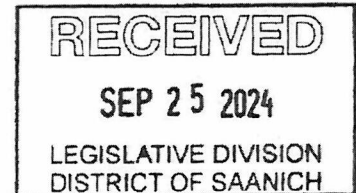


The Corporation of the District of Saanich

C-October-7-2024

Report

To: Mayor and Council
From: Lindsay Chase, Director of Planning
Date: September 23, 2024
Subject: Process Changes - Covenant Modifications and Discharges
File: File: 2860-02 • Development Process Implementation – Bylaw Update



RECOMMENDATION

1. That Council approve an amendment to the Land Use and Development Application Fee Bylaw to include a "Covenant Modification or Discharge" fee.
2. That Council approve an amendment to the Land Use and Development Procedures Bylaw to establish the process for "Covenant Modification or Discharge" requests.

PURPOSE

The purpose of this Report is to seek direction from Council regarding an amendment to the Land use and Development Application Fee Bylaw to implement a fee charged by the District of Saanich and to the Land Use and Development Procedures Bylaw to establish a process for receiving and reviewing requests for modifications or discharges to covenants registered on Title.

DISCUSSION

Background

In 2021, Council endorsed the Development Process Review Report prepared by KPMG LLP. The Report provided recommendations to improve the District of Saanich's application review process to improve its efficiency; to improve clarity, consistency, and application quality; and to enhance coordination and collaboration among departments. The Report also recommends that the application fee structure be updated to incentivize application quality and reduce stagnant applications.

Following up on the recommendations from the KPMG Report, the District of Saanich is in the early stages of designing improvements to the development application process. Staff recognize the opportunity to formalize and ultimately digitize the process to modify or discharge covenants with the intent of providing better service to the public as well as streamlining how staff and departments can manage their workload and files.

Current Process

At present, there is no formal process or fees in place when an applicant requests a modification or discharge to a covenant. Staff review the requests on a case-by-case basis and may request additional information based on the scenario as there is no formal process that guides the applicant in what is required for their submission. This often leads to significant back and forth communications, increased timelines, and frustration for landowners and staff alike.

Most covenant modification or discharge requests are initiated by an email from the applicant to the Subdivision Coordinator, the Senior Subdivision Technician, and/or the generic Planning or Parks email. Submissions are reviewed by the Subdivision Coordinator or the Senior Subdivision Technician with the Director of Planning, Director of Parks, Recreation & Community Services, or their delegate (as appropriate). Depending on the request, referrals may be sent to other Saanich Departments for comments. The initial review will determine the next step. In some cases, modifications or discharges require a Council decision. This requires a Staff Report.

While the current process is familiar to staff, there are no set criteria as to the submission requirements, nor is there a dedicated internal file created. Not having a file created means there is limited ability to find historical records and decisions, cross reference files or develop key performance indicators for reporting purposes. This makes it difficult to track the files or to initiate a consistent file management process. In addition, under the current process there is no fee for this process, which often takes a significant amount of staff time to research, review and adjudicate the request to provide recommendations. As a result, requests to modify or discharge covenants can lead to longer timelines, additional workload for staff, and cost to the District of Saanich.

The current volume for requests for departments are approximately:

Parks – 15 – 20 Permissions per year

Planning – 10 – 15 Amendments/Discharges per year

Proposed Process

Staff are proposing to implement a digital application and review process for all new covenant modifications or discharges that is supported by establishing a fee for this service.

The benefits of the proposed process are that applicants could digitally apply for any covenant modifications or discharges. This would provide an updated technological solution to improve our current customer service experience, more process automation through our application database, department collaboration throughout the referral process, and a paperless system being adopted.

Digitization of this process would support a central point of contact for application submissions, improved reporting metrics on process workflow, electronic document management, and ensure a cost recovery on staff time. This represents continuous improvement and provides much more effective and efficient services.

Covenant Requests

There are four types of covenant requests received by staff for review and approval:

Permissions

- Written permission to prune tree in covenant area
- Written permission to install a walkway or undertake work in a covenant area

Variation

- Permission to construct in covenant area where area remains protected and low-impact techniques are used
- Changes to approved colours identified in Building Scheme
- Changes to location of a door or window

Modification

- Alternate solution being requested to existing covenant based on project requirements
- Changes to secured Building Plans or Building Schemes
- Changes to building materials (e.g. permeable driveway to concrete driveway)

Discharge

- Item being protected is no longer present (e.g. tree has died or been removed)
- Outdated covenant restrictions
- Covenants for payments once payments received

Each request is reviewed on a case-by-case basis to determine which process path and approval is required.

Permissions and Variation to Covenants

The proposed process will not impact permissions and/or variations to covenants. Covenants include terms and conditions that state whether something can or cannot be done, and whether or not written permission or consent is required from the District of Saanich.

An example of a condition is in a Natural State Covenant where language is included to state that a tree cannot be pruned without approval from the District of Saanich. In this example, approval is required as a condition of the covenant, but it is not a modification to the covenant. In these cases the Director of Planning, the Director of Parks, Recreation & Community Services or their delegate can sign off.

The proposed process will not change how requests are managed, and no fees will be charged. The only minor change that will occur will be creating a digital process with improved record management.

Proposed Fee

Currently, the District of Saanich does not have fees set to modify or discharge a covenant. The average cost for modifying or discharging covenants varies greatly from municipality to municipality and is dependent on a range of factors specific to different municipalities.

To support this improved process, and to recover some of the administrative costs of modifying or discharging covenants, staff are proposing that the Land Use and Development Application Fee Bylaw be amended to include a fee of \$1000 plus legal fees for modifying or discharging covenants. This would cover the staff time required to process these application types and would result in taxpayers no longer subsidizing costs associated with this work.

Table 1 – Proposed Fees for Covenant Modifications or Discharges

Type	Fee	Criteria	Approver
Permissions	No Charge	Facilitating compliance with Covenant.	Delegated Authority
Variation	No Charge	Applicant is requesting a variation to any restriction contained in the Covenant whilst maintaining the intent of the Covenant requirements	Delegated Authority
Modification	\$1000 + Legal Fees	Applicant is requesting an modification to a covenant where the scope of the request exceeds the a permission or variation.	Delegated Authority or Council
Discharge	\$1000 + Legal Fees	Applicant is requesting full discharge and removal from Title of a Covenant.	Delegated Authority or Council

Statutory Authority

Section 194(1)(a) of the Community Charter allows Council to, by bylaw, impose a fee payable in respect of a service offered by the municipality. "Service" is defined broadly in the Community Charter as: "[...] an activity, work or facility undertaken or provided by or on behalf of the municipality". This provision, coupled with the definition of "service", supports the imposition of fees for covenant modification applications. The District of Saanich currently relies on this statutory power to collect fees as set out in the Land Use and Development Application Fee Bylaw.

ALTERNATIVES

1. That Council reject the recommendations as outlined in the Staff Report.

Should Council not support the recommendation provided, the process to modify or discharge covenants would remain as it currently is. This would mean that no fees would be collected and staff would still be processing covenant modifications or discharges with no defined process, tracking or reporting abilities, or fee structure. This would be a status-quo option and would not assist in improving efficiencies or timelines associated with these types of requests.

2. That Council provide alternate direction to staff.

FINANCIAL IMPLICATIONS

The proposal has no cost implications related to the District of Saanich Financial Plan. The bylaw amendments seek to implement a fee for a service that, if approved, will see cost recovery revenues added to department budgets, where previously the service was provided to applicants at no cost.

STRATEGIC PLAN IMPLICATIONS

The proposed amendment and policy creation is supported through the goals identified through Organizational Excellence initiatives such as:

- 6.3.1 Review and improve the development application process based on recommendations in the KPMG report.

PLANNING IMPLICATIONS

Policy

The following Saanich Planning Policies are most applicable to the subject proposal:

KPMG Development Process Review (2021) - Recommendations

1. "Continue to update key policies to provide greater clarity and to reflect the evolution of planning practices and priorities, and to resolve any conflicting policies".
12. "Continue to explore opportunities for further staff delegation to streamline the application review process and reduce review and approval timelines".

CONCLUSION

Following up on the recommendations from the KPMG Report, the District of Saanich is in the early stages of digitizing many of our application processes. While these processes are in the preliminary stages of being reviewed, staff recognize an opportunity to formalize and digitize the process to modify or discharge covenants, in advance of implementing fully digitized application processes, with the intent of providing better service to applicants as well as streamlining how staff and departments are able to manage their workload, and improved file management.

Prepared by:



Jon Poole

Development Planning Process Manager

Approved by:



Suzanne Samborski

Director of Parks, Recreation & Community Services

Approved by:



Lindsay Chase

Director of Planning

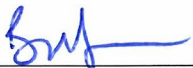
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Attachments: Land Use and Development Application Fee Bylaw Amendment, 2024, No. 10017
Land Use and Development Procedures Bylaw Amendment, 2023, No. 10018

cc: Legal Services Division

ADMINISTRATOR'S COMMENTS:

I endorse the recommendation from the Director of Parks, Recreation & Community Services and the Director of Planning.



Brent Reems, Chief Administrative Officer

THE CORPORATION OF THE DISTRICT OF SAANICH

BYLAW NO. 10017

TO AMEND BYLAW NO. 8798,
BEING THE "LAND USE AND DEVELOPMENT APPLICATION FEE BYLAW, 2006"

The Municipal Council of The Corporation of the District of Saanich enacts as follows:

- 1) Bylaw No. 8798, being the "Land Use and Development Application Fee Bylaw" is hereby amended as follows:

- a) By deleting section 1 and replacing it with the following:

Submission of Application

All applications for Rezoning; Temporary Use Permits; Land Use Contract Amendments; Development Permits or Development Permit Amendments; Development Variance Permits; Subdivision; Liquor Primary License Referrals, Agricultural Land Reserve Exclusion applications and modifications or discharges to a covenant registered on title to lands to the benefit of the District of Saanich, shall be submitted to the Director of Planning. Applications to the Board of Variance shall be submitted to the Corporate Officer

- b) By adding the following immediately after section 2.(k):

(l) **\$1000.00** where the application is for the modification or discharge of a covenant registered on title to land to the benefit of the District of Saanich.

- 2) This Bylaw may be cited for all purposes as the "**LAND USE AND DEVELOPMENT APPLICATION FEE BYLAW, 2006, AMENDMENT BYLAW, 2024, NO. 10017**".

Read a first time this day of , 2024.

Public Hearing held at the Municipal Hall on the day of , 2024.

Read a second time this day of , 2024.

Read a third time this day of , 2024.

Adopted by Council, signed by the Mayor and Corporate Officer and sealed with the Seal of the Corporation on the

Corporate Officer

Mayor

THE CORPORATION OF THE DISTRICT OF SAANICH

BYLAW NO. 10018

**TO AMEND BYLAW NO. 9650,
BEING THE "LAND USE AND DEVELOPMENT PROCEDURES BYLAW, 2020"**

The Municipal Council of The Corporation of the District of Saanich enacts as follows:

- 1) Bylaw No. 9650, being the "Land Use and Development Procedures Bylaw" is hereby amended as follows:
 - a) By adding the following immediately after section 2(b):
 - (c) An application to modify or discharge a covenant registered on title to lands to the benefit of the District of Saanich.
 - b) By adding the following immediately after section 7 and sections and section references are renumbered accordingly:
 8. The application for a covenant modification or discharge under section 2(c) will be referred to Council, the approving officer, building inspector or the delegated authority for consideration, as required.

- 2) This Bylaw may be cited for all purposes as the "**LAND USE AND DEVELOPMENT PROCEDURES BYLAW, 2020, AMENDMENT BYLAW, 2024, NO. 10018**".

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