

REQUEST FOR DECISION

DATE: November 6, 2015

Report No. DEV-15-062

TO: Laurie Hurst, Chief Administrative Officer

FROM: Karen Hay, Planner

SUBJECT:

Interim Amendment to Zoning Bylaw 1992, No. 2050 – Amendment Bylaw No. 2861

RECOMMENDATION:

That Council resolves that AMENDMENT BYLAW NO. 2861 attached as Appendix 'A' to Staff Report DEV-15-062, which would amend Zoning Bylaw, 1992, No. 2050, by replacing text and figures as detailed in the content of the amending bylaw be considered for **first and second reading**; and

That Council authorizes the Corporate Officer to schedule a Public Hearing for Zoning Amendment Bylaw No. 2861, and advertise for same in the local newspaper.

RELEVANT POLICY:

Official Community Plan Bylaw, 2006, No. 2646

Zoning Bylaw, 1992, No 2050

Development Approval Procedures Bylaw, 2003, No. 2562

Advisory Planning Commission Bylaw, 2012, No. 2792

STRATEGIC RELEVANCE:

Council's Strategic Priorities 2015-2019: Ensure the Township's processes for business and development are clear and predictable.

BACKGROUND:

Appendix A: Amendment Bylaw No. 2861 – Amendment to Zoning Bylaw, 1992, No. 2050

Purpose:

Esquimalt's Zoning Bylaw, 1992, No. 2050 was adopted on April 5, 1993. In the past twenty-two years there have been substantial changes in staff, provincial legislation, and local development culture. There are challenges to interpreting the language, and lack of language contained within the current Zoning Bylaw. With Council just beginning an Official Community Plan review, it will be another two - three years before a new zoning bylaw can be envisioned.

This interim amendment bylaw is intended to provide clarification for Council, staff, residents and developers. It is largely based on staff interpretations of the intent of the language contained within the current bylaw over the last twenty years. Where there are gaps in the current legislation staff have attempted to provide reasonable requirements. Only upon undertaking this amendment process has staff recognized the extent that interpretation, in lieu of written regulation, has become the norm over the years.

A substantial amount of time has been spent drafting the new Definitions and it is the opinion of staff that they now provide the required clarity for interpreting the General Regulations, and should reduce the number of development variance applications that are currently being considered.

Summary of changes to the General Regulations:

1. Commercial vehicle repair: New language provides improved clarity; prohibiting commercial vehicle repair on residential property, whether it occurs within a building or in a yard; further clarifies the scope of commercial vehicle repair; and clearly states that all types of vehicle and appliance repair cannot be a 'Home Occupation'.
2. Permitted Uses on land: An additional regulation has been added which would allow the use of land in all zones as a temporary 'laydown site', for short periods of time [up to 60 days], for uses directly related to a public highway construction or a public infrastructure project. It also allows land within any zone within the municipality to be used for a Park.
3. Home Occupations: An updated regulation is provided which would allow two businesses per dwelling unit instead of the current one. This change reflects the current employment culture in Canada, where many more people are now private contractors, work from home, often almost exclusively on a computer, with no impact on their neighbours. It supports small business. The use 'Home Occupation' would also be added to several residential zones where it was inadvertently omitted in the past.
4. Calculation of Floor Area and Floor Area Ratio: This section has been substantially rewritten to fill in the blanks where staff has relied on past interpretation. It provides

clarity on what portions of buildings and structures are counted when calculating a parcel's floor area ratio.

5. Height Calculations: This section has been substantially rewritten to provide greater certainty on how the height of buildings and structures are calculated. It also more clearly outlines which features may exceed the Zoning Bylaw's prescribed heights, and provides limits on the heights of those features.
6. Siting Exemptions: This section regulates the features of a building that may protrude into required setbacks. The rewrite provides greater clarity for large bay windows that have become popular on new buildings, and sometimes include interior features such as cabinets and countertops but no floor area. There are also added regulations dealing with below ground stairwells and window wells that are an integral part of a building. The 0.9 metre exemption is based on BC Building Code requirements for satisfactory egress from a building.

An additional section has been added which would respond to the increasing number of 'Accessibility Ramps' that are being added to buildings, and the challenge of locating them, while respecting the setbacks. This change should make Esquimalt more accessible, and age friendly.

7. Special Siting Requirements (heat pumps): The regulation is being completely removed due to recent advice that a heat pump is an integral part of a building's mechanical system and as such should not be regulated by zoning. This change should have the positive result of making Esquimalt a more energy efficient community, and would support a new BC wide 'Oil to Heat Pump Incentive Program' being promoted by the Capital Regional District [CRD]. New technology has made modern heat pumps far quieter than their predecessors.
8. Fences: The current regulation for fences on top of a retaining wall has caused considerable confusion over the years and only allows for very short fences on some taller retaining walls; which could pose a safety hazard. New regulations have been written to allow more clarity for retaining walls, providing a maximum height that would not be impacted by the fence height requirements that exist in the individual zones. A diagram has been added to assist with interpretation.

Greater clarity is also provided for fencing located along the access strip portion of a panhandle lot.

9. Screening and Landscaping: A very small change was made to add 'Landscaping' to the regulations in this section since there was no reference to landscaping, except in the heading.
10. Visibility at Intersections: The language in this section, as it exists, has proven to be confusing, unenforceable and does not respond to the inherent width variations of existing streets. New language and distances are offered, which would provide for

improved areas of visibility around intersection corners, and diagrams are provided to assist with interpretation.

11. Wrecked Vehicles / Derelict Vehicles: Language has been aligned with the current regulations in the Maintenance of Property and Nuisance Regulation Bylaw, 2014, No. 2826. Land use regulations must reside within the Zoning Bylaw.
12. Major Road Setback / Marine Setback: The 'Major Road Setback' requirement has proven to be undesirable and has caused additional variances. The municipality no longer has plans to add additional driving lanes to either Esquimalt Road or Admirals Road. If land is required at specific locations in the future, then it could be obtained through negotiation or expropriation.

A new 'Marine Setback' regulation has been written, to better achieve the new Provincial requirements for damage mitigation resulting from tsunami, coastal flooding, king tide, storm surge and sea level rise.

13. Boarding: Regulations have been rewritten providing for greater clarity and enforceability; clarifying that 'Boarding' is a rental use, rather than simply attempting to regulate people. The new regulation would allow 'Boarding' as an accessory use in all zones where single family residential and two family residential uses are permitted; which would also include the majority of the comprehensive development districts.
14. Urban Hens: 'Urban Hens' have been identified as a type of 'urban agricultural land use' within Esquimalt, therefore; Urban Hen regulations must remain in the Zoning Bylaw. Zoning regulations have been rewritten to align with regulations that exist in the new Animal Management Bylaw, 2015, No. 2841. The other regulations that govern the siting of structures which house animals, and that currently reside in Bylaw No. 2841, would also be added to the Zoning Bylaw.
15. Secondary Suites: The regulations have been rewritten for greater clarity, eliminating regulations that were found to be unmanageable to implement (the 'suite registry'), and unenforceable ('owner occupancy'). Secondary suites are an important form of housing within Esquimalt, providing affordable housing for many, additional income for home owners ('mortgage helpers'), and have proven to have minimal impact on neighbours when well built and maintained.

Staff believe there is still a concern that single family dwellings with suites should have restricted commercial opportunity. Therefore, the new regulations have been written to restrict the rental of either the suite or the principal dwelling unit at any time, not allowing a secondary suite where a community care facility [daycare] is operating, and continuing to limit the type of Home Occupation that may exist in a suite to ones that do not generate more than one client at any time. Though the Community Charter does consider operating a secondary suite as a business, and income generated from a suite is taxable under the Income Tax Act, the primary function of secondary suites is to provide increased housing within the community.

16. Unit Size: Staff is recommending the removal of the minimum 'Unit Size' regulations from the 'Multiple Family Residential' zones, as it has been shown that the market will dictate unit sizes. Single people are now quite willing to live in well-designed small units.

17: General housekeeping:

- 'Assembly Use' has been added as a permitted use in the Public/Institutional [P-1] zone and the Parks and Open Space [P-2] zone; as this use is allied with several of the other permitted uses in these zones. Currently, 'Assembly Use' is only a permitted use in the Core Commercial [C-3] and Town Centre [TC] zones;
- Two zoning districts that have no associated parcels would be deleted; and
- The names of Provincial Acts would be updated.

Advisory Planning Commission:

The Advisory Planning Commission members considered the proposed amendments at their meeting held on October 21, 2015 and were supportive of the proposed changes.

The APC recommended that Amending Bylaw No. 2861, which would amend Zoning Bylaw, 1992, No. 2050 by replacing text and figures as detailed in the content of the amending bylaw, be forwarded to Council with a **recommendation of approval**.

ISSUES:

1. Rationale for Selected Option

The proposed changes support Council's strategic priority to ensure the Township's processes for business and development are clear and predictable. The Advisory Planning Commission members considered the amendments at their meeting held on October 21, 2015 and were supportive of the proposed changes.

2. Organizational Implications

The proposed amendments will make the Zoning Bylaw much easier to interpret thereby saving staff a significant amount of time. In addition, there will be fewer development variance permit applications allowing staff more time to work on other types of applications and speed up processing times.

3. Financial Implications

There are no extraordinary financial implications.

4. Sustainability & Environmental Implications

Removing the overly restrictive regulations around heat pumps should help make Esquimalt a more energy efficient community. The Marine Setback regulations are designed to make Esquimalt more resilient to the consequences of climate change.

5. Communication & Engagement

A statutory public hearing will be required. Notice of the public hearing would be placed in two editions of the Victoria News.

ALTERNATIVES:

1. That Council resolves that AMENDMENT BYLAW NO. 2861 attached as Appendix 'A' to Staff Report DEV-15-062, which would amend Zoning Bylaw, 1992, No. 2050, by replacing text and figures as detailed in the content of the amending bylaw be considered for **first and second reading**; and

That Council authorizes the Corporate Officer to schedule a Public Hearing for Zoning Amendment Bylaw No. 2861, and advertise for same in the local newspaper.

2. That Council request further clarification from staff.