



# CORPORATION OF THE TOWNSHIP OF ESQUIMALT

Municipal Hall  
1229 Esquimalt Road  
Esquimalt, B.C. V9A 3P1

## Legislation Details (With Text)

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**On agenda:** 1/7/2019      **Final action:**

**Title:** Public Hearing for Bylaw 2938, to amend Zoning Bylaw, 1992, No. 2050, Staff Report DEV-19-002

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Appendix A Bylaw 2938 - Zoning Bylaw, 1992, No. 2050 Amendment, 2. Appendix B Draft Section 219 Covenant for Daycare at 846 Phoenix, 3. Appendix C Mail Notice and Notification published in the Victoria News

Date	Ver.	Action By	Action	Result
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## REQUEST FOR DECISION

**DATE:** December 31, 2018      Report No. DEV-19-002

**TO:** Laurie Hurst, Chief Administrative Officer

**FROM:** Bill Brown, Director of Development Services

**SUBJECT:**

Public Hearing for Zoning Bylaw, 1992, No. 2050, Amendment Bylaw No. 2938

**RECOMMENDATION:**

That Council, upon considering the representations made to it at the public hearing, resolves that Zoning Bylaw, 1992, No. 2050, Amendment Bylaw No. 2938, attached as Appendix "A" to Staff Report DEV-19-002 be considered for third reading; and

That, as the registered owner of 846 Phoenix Street wishes to assure Council that the uses and development of the day care will be restricted to a maximum of 29 children, the registered owner has voluntarily agreed to register a Section 219 Covenant (Appendix "B") on the title of 846 Phoenix Street and legally described as Lot 16, Section 10, Esquimalt District, Plan 3060 [PID 001-543-547] in favour of the Township of Esquimalt;

That Council direct staff and legal counsel for the Township to coordinate with the property owner to ensure a Section 219 Covenant addressing the aforementioned issue is registered against the property title, in priority to all financial encumbrances, prior to returning Zoning Bylaw, 1992, No. 2050, Amendment Bylaw No. 2938 to Council for consideration of adoption; and

That Council authorize the Mayor and Chief Administrative Officer to execute any legal documents associated with the registration of the Section 219 covenant on the land title for Lot 16, Section 10, Esquimalt District, Plan 3060.

### **RELEVANT POLICY:**

Official Community Plan Bylaw, 2018, No. 2922  
Zoning Bylaw, 1992, No. 2050

### **STRATEGIC RELEVANCE:**

Strategic Priority: Encourage a resilient and diverse economic environment.

Strategic Goal: Ensure processes for business and development are clear and consistent.

Strategic Action: Review Township policies and bylaws to ensure efficient processes; amend and update as necessary.

### **BACKGROUND:**

Appendices:

Appendix A - Zoning Bylaw, 1992, 2050, Amendment Bylaw No. 2938

Appendix B - Draft Section 219 Covenant

Appendix C - Mail Notice and Notification published in the Victoria News

Staff have identified a number of amendments to the Zoning Bylaw that are required in order to improve internal consistency, fill in regulatory gaps, and respond to direction from Council. The proposed amendments are as follows:

- 1) The definition of "Access Route" needs to be amended because it will be exempted from the definition of "Parcel". In addition, the proposed amendment would clarify that an "Access Route" is not a "Highway" as defined in the Zoning Bylaw.
- 2) The definition of "Landscaping" includes "pergolas, arbours, and trellis". These could fall under the definition of an "Accessory Building", however, in the context of the Zoning Bylaw, they are not considered "Accessory Buildings". Therefore, for clarity, it is necessary to exempt "Landscaping" from the definition of "Accessory Building".
- 3) The definition of "Balcony" needs to be amended to replace the word "railing" with "Guard" which includes railings.
- 4) With the proposed amendments to the Marine Navigation [M-4] zone which refer to "vessels", it is necessary to add a definition of "Vessel" and because the Zoning Bylaw also uses the word "boat" it is necessary to add a definition of "Boat".
- 5) The definition of "Fence" is amended to clarify that a "hedge" is not a fence.
- 6) The definition of "Floor Area" is amended to simplify the interpretation of the definition.
- 7) The phrase "and Storeys" is removed from the definition of "Floor Area Ratio" in order to simplify interpretation.
- 8) The definition of "Grade" is amended to respond to the increasingly more complex planar geometry of contemporary building design.
- 9) The definition of "Landscaping" is amended by adding a reference to children's play structures less than 4.0 square meters in area and where the height to the mid-point of the roof is less than 1.8 metres above existing ground. Currently, the Zoning Bylaw does not address children's play structures which makes it difficult to know how to deal with them when interpreting the Zoning Bylaw. In addition, "parking areas" are added to the exclusion clause.
- 10) The definition of "Lot Coverage" is amended in order to exempt that portion of exterior stairs

up to 0.4 metres above the existing ground and building structures such as eaves, canopies, and gutters that extend no more than 0.60 metres from the building's exterior wall. These amendments increase internal consistency and in the case of eaves and gutters, reflect existing practice.

- 11) The definition of "Lot Line, Front" is amended in order to clarify the interpretation of "Lot Line, Front" on panhandle lots.
- 12) The definition of "Dwelling - Two Family" is amended by adding "(also "Two Family Residential")" after "Dwelling - Two Family".
- 13) The definition of "Parcel" is amended by excluding "Access Route" as a "Parcel". This avoids problems associated with minimum parcel size regulations in various zones.
- 14) The definition of "Retaining Wall" is amended to clarify that a "Retaining Wall" does not form part of the building. This avoids issues such as building setbacks for retaining walls that are connected to buildings.
- 15) As noted earlier, a definition of "Vessel" has been added as a result of amendments to the Zoning Bylaw associated with regulating "Vessels" in the Gorge. This is the same definition as the one used by the City of Victoria in their Zoning Bylaw that survived a legal challenge.
- 16) Section 14 - Calculation of Floor Area and Floor Area Ratio has been reorganized to make it easier to interpret. The reorganization includes exempting "stairs and stairwells" from the calculation of "Floor Area" in all buildings, not just Multiple Family Dwellings and Mixed Commercial/Residential Buildings. The amendments also clarify that areas open to below are not included in the calculation of "Floor Area". This section is further amended by clarifying that bike storage within a dwelling unit in Multiple Family and Mixed Use Buildings is not exempt from the Floor Area calculation.
- 17) Section 15 (2) is amended by adding "or equal to" in reference to roof pitches. This more accurately reflects the intent of the regulation.
- 18) Section 15 (4) is amended by replacing the reference to "stairway" to "stairwell" to more accurately reflect the structure.
- 19) Section 16 (1) is amended by adding an exemption for "that portion of exterior stairs less than 0.4 metres vertical distance above the existing ground at any point." This reflects other amendments related to exterior stairs less than 0.4 metres vertical distance above the existing ground.
- 20) Section 16 (2) is amended by adding the word "existing" before "ground" to reflect similar changes throughout the rest of the Zoning Bylaw. Previously a variety of adjectives were used to describe "ground". "Existing" has been chosen as the adjective that most accurately describes the majority of situations in Esquimalt.
- 21) Section 22 is amended by changing all references to "ground" to "existing ground". In addition, Section 22 (2) is amended by clarifying that the 1:2 ratio is based on the retaining wall with the greater height.
- 22) Section 30.6 (5) is amended by deleting the requirement that only one of the units can be rented (as per earlier Council direction) and replacing it with a regulation exempting Secondary Suites from requiring a parking space as per a long standing Council direction.
- 23) Section 34 being the Single Family Residential [RS-1] zone is amended by adding as a permitted use "Group Children's Day Care Centre, located on Lot 16, Section 10, Esquimalt District, Plan 3060 [PID 001-543-547] [846 Phoenix Street]". The Day Care has operated in this location for many years; however, it is not a permitted use. This amendment would rectify the situation. In addition, this section is also amended by limiting the Floor Area Ratio dedicated to the Day Care Centre to 0.50 and requiring no on-site parking.
- 24) Sections 38 (8.1) [Building Massing for the Two Family Residential [RD-1] Zone]; 39 (7.1) [Building Massing for the Two Family Small Lot Residential [RD-2] Zone] and 40 (8.1) [Building

Massing for Two Family/Single Family Residential [RD-3] Zone] are amended by deleting the existing wording which states:

*The second storey of any Two Family Dwelling shall be a maximum of 75% of the total floor area of the ground floor, including an attached garage.*

and replacing it with the following:

- (1) *Second and Third Storey Setback: The front face of the second and third storey (s) shall be set back a minimum of 1.5 metres from the front face of the First Storey of the Principal Building.*
- (2) *Design Guideline: Articulation of building elements is encouraged to add visual interest and reduce apparent building height and volume.*

This amendment more accurately reflects the intension of this section which is to prevent massive flat front elevations on Two-Unit Dwellings. Under the existing regulations, much of the 75 percent reduction in second floor mass was being taken off the back of the building and thus not achieving its purpose. In addition, illustrations are added to help designers understand the objective.

- 25) Sections 38 (9) (c) [Garage Setback for the Two Family Residential [RD-1] Zone]; 39 (8) (c) [Garage Setback for the Two Family Small Lot Residential [RD-2] Zone]; and 40 (9) (c) [Garage Setback for Two Family/Single Family Residential [RD-3] Zone] are deleted and replaced with the following:

*Detached Garages and that portion of a Principal Building used as a Garage shall be set back a minimum of 1.5 metres from the front face of the Principal Building.*

The proposed amendment more accurately reflects the intent of the regulation by referring to the Principal Building rather than the Dwelling Unit.

- 26) Section 48.1 (6) (Off Street Parking for the Town Centre (TC)) is amended by stating that up to 100% of the required parking may be located on adjacent parcels. This will be the case when the new Esquimalt Town Square project is completed.
- 27) Sections 47 (1) Neighbourhood Commercial (C-2); 48 (1) Core Commercial (C-3); and 48.2 Core Commercial Liquor (C-3A) are amended by adding the following permitted uses to the existing list of permitted uses:

- Art Gallery
- Arts and Craft Studios excluding Wood and Metal working
- Arts and Wellness Teaching Centre
- Catering Service
- Charitable Organization Office
- Counselling Services
- Commercial Instruction and Education
- Educational Institution
- Fitness Centre
- Laboratory and Clinic
- Printing Establishment, Printing and Publishing
- Research Establishment
- Veterinary Clinic, Veterinary Services

These additional permitted uses reflect the list of permitted uses allowed in the Esquimalt Town Square zoning and help promote a vibrant commercial sector.

- 28) Section 53 (1) is amended by adding the following uses to the list of permitted uses:

- Arts and Wellness Teaching Centre
- Catering Service
- Charitable Organization Office

These uses reflect existing uses or uses that may wish to locate in the industrial area.

29) Section 63 (2) is amended in order to regulate vessels in the marine waters surrounding Esquimalt including the Gorge Waterway. The proposed amendment largely follows the City of Victoria's provisions in their Zoning Bylaw which successfully survived a legal challenge. Specifically, Section 63 (2) is deleted and replaced with the following:

**(2) Prohibited Uses**

- (a) The anchoring or mooring of vessels for a continuous period exceeding 48 hours.
- (b) The anchoring or mooring of vessels for more than 72 hours within a 30-day period.
- (c) Anchoring buoys.

30) Section 99 (1) being the list of permitted uses in the Esquimalt Town Centre Zone (Comprehensive Development District No. 99) is amended by adding the following two permitted uses:

- Arts and Wellness Teaching Centre
- Charitable Organization Office

The proposed amendments were presented to the Advisory Planning Commission at their June 19, 2018 meeting. The Commission recommended that the amendments be forwarded to Council with a recommendation for approval.

**ISSUES:**

1. Rationale for Selected Option:

The proposed amendments to the Zoning Bylaw are based on one or more of the following rationale:

- 1) Instructions from Council.
- 2) Fix internal inconsistencies.
- 3) Improve interpretation.
- 4) Reflect existing practices.

2. Organizational Implications

The proposed amendments will help improve the efficiency of the interpretation and implementation of the Zoning Bylaw.

3. Financial Implications

There are no significant financial implications.

4. Sustainability & Environmental Implications

There are no significant sustainability and environmental implications.

5. Communication & Engagement

Statutory notices were published in the Victoria News on Friday, December 28, 2018 and Wednesday, January 2, 2019 (Appendix "C"). In addition, a rezoning sign has been erected at the day care site and public hearing notices were mailed to all owners and occupiers of property within

100 metres of the site (Appendix "C").

**ALTERNATIVES:**

1. That Council, upon considering the representations made to it at the public hearing, resolves that Zoning Bylaw, 1992, No. 2050, Amendment Bylaw No. 2938, attached as Appendix "A" to Staff Report DEV-19-002 be considered for third reading; and

That, as the registered owner of 846 Phoenix Street wishes to assure Council that the uses and development of the day care will be restricted to a maximum of 29 children, the registered owner has voluntarily agreed to register a Section 219 Covenant (Appendix "B") on the title of 846 Phoenix Street and legally described as Lot 16, Section 10, Esquimalt District, Plan 3060 [PID 001-543-547]; in favour of the Township of Esquimalt;

That Council direct staff and legal counsel for the Township to coordinate with the property owner to ensure a Section 219 Covenant addressing the aforementioned issue is registered against the property title, in priority to all financial encumbrances, prior to returning Zoning Bylaw, 1992, No. 2050, Amendment Bylaw No. 2938 to Council for consideration of adoption; and

That Council authorize the Mayor and Chief Administrative Officer to execute any legal documents associated with the registration of the Section 219 covenant on the land title for Lot 16, Section 10, Esquimalt District, Plan 3060.

2. That Council grant third reading to Amendment Bylaw No. 2938 with amendments that do not alter use or density.
3. That Council request that staff return with additional information.