



CORPORATION OF THE TOWNSHIP OF ESQUIMALT

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Legislation Text

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REQUEST FOR DIRECTION

DATE: January 3, 2020

Report No. DEV-20-003

TO: Laurie Hurst, Chief Administrative Officer

FROM: Bill Brown, Director of Development Services

SUBJECT:

Planning tools for completed and in progress work

ESSENTIAL QUESTION:

Does Council wish staff to provide any additional details about the planning tools discussed below or research other tools to regulate activities?

RECOMMENDATION:

That the COTW receive Staff Report No. DEV-20-003 for information.

BACKGROUND:

From time to time Council receives requests from residents to control or regulate certain activities that are, or potentially may, create a nuisance. Council has, at its disposal, a wide range of tools to regulate these types of activities. Planning tools often overlap with other tools including business licences, and some of the tools are the subject of a significant body of case law (e.g. discrimination of dwelling occupants based on familial relationships). This report provides an overview of the tools at Council's disposal for dealing with various planning nuisance issues and under no circumstances is any of the content in this report to be interpreted or construed as legal advice to Council. If Council wishes to explore the legal side of any of the tools outlined below, it should instruct staff to obtain such advice for Council's consideration.

This report addresses four common questions that have been raised by either residents or Council related to the regulation of certain activities that are, or potentially may, create nuisances.

ISSUES:

- 1) **Can the municipality control the number or residents who occupy a dwelling through its zoning powers?**

One of those tools at Council's disposal is the Zoning Bylaw. The powers associated with the Zoning Bylaw are set out in Section 479 of the Local Government Act which states that:

- 479** (1) *“A local government may, by bylaw, do one or more of the following:*
- (a) divide the whole or part of the municipality or regional district into zones, name each zone and establish the boundaries of the zones;*
 - (b) limit the vertical extent of a zone and provide other zones above or below it;*
 - (c) regulate the following within a zone:*
 - (i) the use of land, buildings and other structures;*
 - (ii) the density of the use of land, buildings and other structures;*
 - (iii) the siting, size and dimensions of*
 - (A) buildings and other structures, and*
 - (B) uses that are permitted on the land;*
 - (iv) the location of uses on the land and within buildings and other structures”;*

While the Zoning Bylaw is a powerful tool for regulating land use and development, it has limitations when it comes to regulating other activities that are associated with land use such as the number of people who can live in a dwelling unit. The Zoning Provisions set out in Section 479 of the Local Government Act does not provide a specific tool to control the number of residents who occupy a dwelling. However, the Canadian Mortgage and Housing Corporation [CMHC] publishes the National Housing Occupancy Standards which are in place to ensure that:

“Suitable housing has enough bedrooms for the size and make-up of resident households, according to National Occupancy Standard (NOS) requirements. Enough bedrooms based on NOS requirements means one bedroom for:

- each cohabiting adult couple;*
- unattached household member 18 years of age and over;*
- same-sex pair of children under age 18; and*
- additional boy or girl in the family, unless there are two opposite sex children under 5 years of age, in which case they are expected to share a bedroom.*

A household of one individual can occupy a bachelor unit (i.e. a unit with no bedroom).”

These standards are generally used by organizations, such as the Capital Region Housing Corporation [CRHC], that receive funding from the federal or provincial government to provide housing. They are not generally used by local governments to control the number of occupants in a dwelling unit.

Likewise, the British Columbia Building Code generally does not control the number of occupants in Part 9 buildings which are buildings of 3 storey or less in building height, having a building area not exceeding 600 m², and used for major occupancies classified as:

- a) Group C, residential occupancies;
- b) Group D, business and personal services occupancies;
- c) Group E, mercantile occupancies; or
- d) Group F, Divisions 2 and 3, medium- and low-hazard industrial occupancies.

If there are public health issues that arise due to the number of occupants of a dwelling, the Vancouver Island Health Authority [VIHA] *may* have some powers to deal with the situation. In this case the Township would contact VIHA for assistance. The Township has neither the authority nor the staff expertise to regulate public health issues.

In summary, Zoning Bylaws are not typically used to control the number of people who occupy a dwelling. Furthermore, staff has little evidence that this is a serious issue in terms of negative impacts on neighbourhoods in Esquimalt. When there are nuisances, the Township has at its disposal a range of other tools such as ticketing under other bylaws to deal with issues such as noise and unsightly premises. There is a dearth of empirical evidence to justify the Township trying to control the number of occupants in a dwelling unit. The administrative burden would far outweigh the benefits. Furthermore, in a housing crisis, it is questionable whether it is in the best public interest to restrict the number of occupants in a dwelling through the use of zoning tools.

2) Can Council control occupants of dwellings based on familial relationships?

There is concern among some residents that households consisting of unrelated people create more issues in a neighbourhood including noise, traffic and crime, than households of people related through marriage or blood. Staff are not aware of any evidence to substantiate this concern in Esquimalt. However, the Zoning Bylaw does address this issue. It defines Family as:

“Family” - means one or more persons related by blood, marriage, common law, adoption, or foster parenthood; or not more than four (4) unrelated persons sharing one Dwelling Unit but excludes residents of a Recovery Home.

This definition informs a multitude of other definitions in the Zoning Bylaw including the definition of “Dwelling Unit” which is defined as follows:

“Dwelling Unit” means one or more habitable rooms used for the residential accommodation of one Family when such rooms contain or provide for the installation of only one (1) set of cooking facilities and one or more sets of sanitary facilities (emphasis added).

Therefore, the Township’s Zoning Bylaw does limit the number of unrelated people who can live together in a dwelling unit. It should be noted that there is debate amongst planners and lawyers as to whether Zoning Bylaws should, discriminate based on familial relationships, particularly when there are issues related to housing affordability, cost of post secondary education, and climate change. It should be noted that in the past eight years, Development Services staff have never checked on the family status of occupants in a dwelling unit. Given the fact that this has not been an issue, that there is considerable debate about whether or not zoning bylaws should discriminate based on familial relationships, and that there is a current housing crises in the region, Council may wish to discuss whether the definitions in the Zoning Bylaw related to this issue should be amended by removing references to familial relationships.

3) Can a Zoning Bylaw or Official Community Plan compel a municipality to require owners of Single Family Dwelling Units and Secondary Suites that are rented to obtain a business licence?

Council can amend its Business Licence Bylaw to require owners of Single Family Dwellings and Secondary Suites that are rented, to obtain a business licence or other type of permit as long as it is consistent with the Official Community Plan. The Official Community Plan does not have to specifically require that owners of Single Family Dwellings or Secondary Suites obtain a business licence. Business licences have two main functions in relation to land use. The first is to make sure that the proposed business is permitted under the zoning bylaw and the second is to ensure that it

meets the requirements of the parking bylaw. In the case of a both a Single Family Dwelling and a Secondary Suite, these two criteria are adjudicated at the building permit stage. There is no need to require a business licence to ensure compliance with the Zoning Bylaw for Single Family Dwelling Units or Secondary Suites.

4) Can Council compel the owner of land to demolish a nuisance building?

From time to time Council has inquired about their authority to have derelict buildings demolished. The tools available to Council depend upon the specific situation. When the property is the subject of a rezoning, Council may have the power to require the demolition of a building prior to the adoption of a rezoning bylaw. This is not always practical. For example, in the case of the Legion Property (622 Admirals Road), the Legion building continued to function as an important part of the community's fabric long after the rezoning was approved. In other cases, the financial institutions may require that the buildings be maintained as collateral. In any event, legal advice should be obtained before making the demolition of a building the condition of the adoption of a rezoning bylaw in order to avoid using rezoning powers for non-planning purposes.

In situations where rezoning is not a consideration, Council can invoke Section 72 in conjunction with Section 74 of the Community Charter. Section 72 states in part that:

- 72** (1) *"A council may impose remedial action requirements in relation to*
 (a) matters or things referred to in section 73 [hazardous conditions],
 (b) matters or things referred to in section 74 [declared nuisances], or
 (c) circumstances referred to in section 75 [harm to drainage or dike].
(2) *In the case of matters or things referred to in section 73 or 74, a remedial action requirement*
 (a) may be imposed on one or more of
 (i) the owner or lessee of the matter or thing, and
 (ii) the owner or occupier of the land on which it is located, and
 (b) may require the person to
 (i) remove or demolish the matter or thing,
 (ii) fill it in, cover it over or alter it,
 (iii) bring it up to a standard specified by bylaw, or
 (iv) otherwise deal with it in accordance with the directions of council or a person authorized by council."

Section 74 states in part that:

- 74** (1) *"A council may declare that any of the following is a nuisance and may impose a remedial action requirement in relation to the declared nuisance:*
 (a) a building or other structure, an erection of any kind, or a similar matter or thing;
 (b) a natural or artificial opening in the ground, or a similar matter or thing;
 (c) a drain, ditch, watercourse, pond, surface water, or a similar matter or thing;
 (d) a matter or thing that is in or about any matter or thing referred to in paragraphs (a) to (c).
(2) *Subsection (1) also applies in relation to a thing that council considers is so dilapidated or unclean as to be offensive to the community."*

There are notification requirements set out in Section 77 of the Community Charter.

This tool is available to Council in those situations where they determine by resolution that a building is a nuisance or “so dilapidated or unclean as to be offensive to the community”. Once again, seeking legal advice before enacting such a resolution is advisable - at least for the first few resolutions.

ALTERNATIVES:

Council has requested that staff provide them with an overview of the tools at their disposal to deal with a number of planning issues related to nuisances or potential nuisances that have been raised by members of the community as well as Council itself. Council has the following alternatives for responding to the information in the report:

1. That the COTW receive Staff Report No. DEV-20-003 for information.
2. That the COTW receive Staff Report No. DEV-20-003 for information, provide any additional direction to staff as the COTW considers advisable, and direct staff to prepare a report for Council’s consideration.
3. That the COTW provide alternative direction to staff.