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REPORT TO ELECTORAL AREAS COMMITTEE MEETING OF WEDNESDAY, JULY 12, 2023

SUBJECT Enforcement Practices for Alternative Forms of Housing (Updated)

ISSUE SUMMARY

An updated review of the existing practice of enforcement for recreational vehicles, travel trailers, and alternative forms of housing.

BACKGROUND

At the May 11, 2022, Electoral Areas Committee meeting the following Motion was carried:

That staff investigate the possibility of a non-enforcement policy for trailers, yurts, and other forms of housing for the electoral areas.

Further to this, on January 17, 2023, the Southern Gulf Islands (SGI) Community Economic Sustainability Commission (CESC) passed a resolution as follows:

Requesting that the Capital Regional District (CRD) hold off any existing and future expulsion action against owners or tenants of tiny homes, trailers and other nonconforming dwellings unless life safety is compromised, and to take steps towards allowing them.

On February 8, 2023, the Electoral Areas Committee reviewed a staff report titled "Enforcement Practices for Alternative Forms of Housing". The Committee referred the report to staff for further review. Staff were asked to investigate the allowance of recreational vehicles with respect to the electoral area Land Use Bylaws and to further review and consider options for buildings for temporary use. This report has been revised to reflect the additional requests.

Where a dwelling is used for human habitation in a non-temporary way, Bylaw No. 3741, "Building Regulation Bylaw No. 5, 2010" (Building Regulation Bylaw), and the BC Building Code (Code) would consider it a "building". The Code applies to "any structure used or intended for supporting or sheltering any use or occupancy".

All buildings occupied for residential use must receive occupancy approval. Buildings that can be considered for residential occupancy include site-built buildings constructed in compliance with Part 9 or Part 4 of the Building Code; factory-built buildings certified as being in conformance with CSA A277; and factory built mobile homes constructed in conformance with CSA Z240 (not Z240RV).

"Tiny homes", yurts and similar forms of housing are subject to the Building Code, but due to their small size and unconventional construction, it can be difficult to comply. They are often built or installed without permits and approvals. A regional district does not have the regulatory tools to create its own set of standards for such construction. BC Housing and other organizations are in the process of advocating for a change to National Building Codes, the first step in modifying provincial codes, for exclusive requirements and relaxations relating to tiny home construction.

RVs

Relating to recreational vehicles (RVs), trailers, and “park model” trailers, different standards apply. Most RVs and travel trailers are factory built and certified to standards CSA Z240RV or RVIAS NFPA 1192 as temporary living quarters for recreation, camping or seasonal use and are not certified for permanent residential use. Although RVs and travel trailers are constructed with limited safety features, they do not have the same level of health, fire and life safety features as Building Code compliant dwelling units.

CRD undertook an external legal review which confirmed certified RV’s would not be considered “buildings” unless altered or installed in a manner that suggests permanent or long term residency (additions, renovations, foundation, or non-temporary service connections).

The use of a recreational vehicle on a lot is primarily a land use matter and is not a subject of review through the building permit process. Applicable Land Use Bylaws permit the occupancy of RVs and trailers under varying circumstances and for varying lengths of time. See Appendix A for a list of these requirements.

Inquiries or complaints regarding occupied certified recreational vehicles installed in a temporary nature will be referred to the local land use authority for review.

Tiny Homes

Legal review confirmed that “tiny homes”, are to be considered “buildings” and are subject to a building permit and building code review due to their non-transient and non-temporary nature. “Tiny home” is a term that is often applied to small homes, with or without wheels.

Small site-built homes can be constructed to be fully compliant with all aspects of the Code or as compliant factory-built buildings complying with the CSA Z240 mobile home or the CSA A277 factory-built building standards.

A small home on wheels that is constructed and certified to an RV standard would be viewed as an RV; a small home on wheels that is not built to a standard but insured as a trailer and used in a transient manner off-site as a travel trailer would likely be considered the same way, though it is more likely the larger and more complex the construction and the more immovable it is, the more likely it would be viewed by regulatory authorities as a “building”.

Small homes constructed without compliance to any standard, or homes constructed to an RV standard but that are practically immobile, require building permits and must meet building code requirements. All must meet land use requirements.

Temporary building approvals

Pursuant to the Building Code, the Building Inspection Department considers requests and applications for temporary buildings. The Building Code permits exemption of certain “temporary” buildings from the Code, where satisfied the use and construction is “temporary”. Examples of “temporary” include construction offices; seasonal storage buildings; special events facilities; emergency facilities; and similar structures. Traditionally various jurisdictions have used this section for non-residential occupancies, or if for residential occupancies, for a very short term, typically in an emergency, with mitigative measures (no smoking, no cooking facilities, no open flame, washroom facilities on site, exterior elements must meet Code requirements, etc.).

External legal review confirms that temporary approval of a building may be considered if the use, nature, and manner of construction supports the fact that it is intended to have a transient nature

and character and if it has a temporal limitation. The building authority must also consider at minimum, structural adequacy, fire safety and occupant health safety. The applicant must also receive land use approval.

The issue of residential use of temporary buildings was explored. Legal review does not recommend approval of “temporary” residential buildings, as health and safety risks are considered too high. Requirements within the building code for residential occupancies are more restrictive with respect to fire protection and occupant safety than some other occupancies. Further, the requirement for structural adequacy, fire safety, and occupant safety also makes the approvals process cumbersome and it would be easier for residential construction to design a small dwelling to Code in first instance.

Enforcement Philosophy

Current enforcement action is generally in response to written complaints or observations of health, safety, or environmental risks by Building Inspectors in their normal course of duty. Stop Work Notices and Do Not Occupy Notices are often issued and further action, such as registration of a bylaw contravention notice on the land title under s.57 of the *Community Charter*, may follow for continued non-compliance.

Enforcement action for occupied RVs and trailers has been mostly limited to investigating after receiving written complaints or after observing structural alterations or additions. Applicable Land Use Bylaws in the Electoral Areas permit the occupancy of RVs and trailers under varying circumstances and for varying lengths of time. For this reason, enforcement action against RVs and trailers has been less frequent than for other types of buildings or structures and enforcement beyond that of a recommended Notice on Title has been very limited. Complaints relating to unaltered RV's will be considered a land use matter and referred to the local land use authority.

ALTERNATIVES

Alternative 1

The Electoral Areas Committee recommends to the Capital Regional District (CRD) Board:

1. That the existing practice of CRD Building Regulation Bylaw and BC Building Code enforcement be continued, primarily responding to complaints and observations by Inspectors during their normal course of duty of safety, health, and environmental concerns and issuing Stop Work Notices and Do No Occupy Notices when warranted for non-compliant dwelling units;
2. Occupancy of recreational vehicles, without alterations for permanent or long term use, will be considered a land use matter and referred to the local land use authority;
and
3. That the CRD advocate to the Province for a review of inclusion of alternative forms of housing within the BC Building Code.

Alternative 2

That the Enforcement Practices for Alternative Forms of Housing report be referred back to staff for further review based on Electoral Areas Committee direction.

IMPLICATIONS

Service Delivery

It is not recommended to withhold bylaw enforcement in cases of occupied site built alternative forms of housing, as this may result in an assumption of acceptance of such structures and uses. An increased amount of potentially unsafe dwellings will likely be constructed and occupied. Even a temporary relaxation of enforcement will make control of such buildings and structures in the future extremely difficult and add to enforcement and compliance costs of the Electoral Areas. Ensuring complaints regarding unaltered recreational vehicles as residential dwellings will be referred to the local land use authority will alleviate the confusion for complainants and CRD staff.

Regulatory Impacts

CRD is without the regulatory tools to permit construction and residential occupation of those structures that do not comply with the Code or other occupancy-capable mobile home standards. Currently the Province of Nova Scotia has provisions for “Tiny House” construction within the 2020 Nova Scotia Building Code Regulations. The BC Building Code, however, does not include such provisions. The 2018 International Residential Code (IRC) has conditions that pertain to the construction of small dwellings or “tiny houses”. The IRC is looked to by the United States and other jurisdictions as an example of what is possible to establish minimum standards of health, safety, and welfare. The IRC sets out minimum floor sizes, including for clearances for loft beds, with minimum access and egress, as well as door and hallway heights. Advocacy from the CRD to the Province may include reference to the IRC requirements.

Legal Impacts

Once a building regulation bylaw exists, subject to core policy decisions, CRD owes a duty to inspect and enforce as appropriate where it learns structures are non-compliant with the Building Bylaw and the Code. The extent of that duty and the standard of care of a building official varies based on the circumstances, taking into consideration risk, magnitude of harm, and public utility of conduct. A failure to inspect that results in loss or damage to others may attract liability in negligence, depending on certain factors.

As such, CRD’s typical response to non-compliance is to register a s.57 *Community Charter* notice on title, which identifies that the use, occupation, or construction is deficient with a bylaw, the Building Code, or other law. Once registered, the CRD may exempt itself from a current or future duty of care in negligence that could arise relating to the deficiency under s.57(8) of the *Community Charter*. A notice on title is an enforcement mechanism meant to alert future purchasers of the property of the unlawful use or construction on the property.

In rare cases, CRD may take remedial action – that is, get an order to remove, demolish, bring up to a standard or take such other step as ordered by the Board – for occupation of a building or hazardous construction, per section 72 of the *Community Charter*. A decision to take remedial action is a decision of the Board, and the Board can consider appropriate accommodations or factors at that time.

CONCLUSION

Non-compliant structures used for residential accommodation subject to the Building Code and CRD Building Bylaw are enforced against on a complaints and inspections basis, typically by way of a s.57 Notice on Title, and in some cases, a s.72 *Community Charter* remedial action order. The primary form of regulation of such uses is under a Land Use Bylaw. Recreational Vehicles are typically not considered buildings and are addressed by the local land use authority.

While organizations are advocating for changes to the National Building Code to permit tiny home

construction, CRD is without the ability to set out its own non-Building Code-defined construction standards for such use. CRD may wish to advocate to the Province for a review of future Code provisions for smaller alternative housing types.

RECOMMENDATION

The Electoral Areas Committee recommends to the Capital Regional District (CRD) Board:

1. That the existing practice of CRD Building Regulation Bylaw and BC Building Code enforcement be continued, primarily responding to complaints and observations by Inspectors during their normal course of duty of safety, health, and environmental concerns and issuing Stop Work Notices and Do No Occupy Notices when warranted for non-compliant dwelling units;
2. Occupancy of recreational vehicles, without alterations for permanent or long term use, will be considered a land use matter and referred to the local land use authority;
and
3. That the CRD advocate to the Province for a review of inclusion of alternative forms of housing within the BC Building Code.

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ATTACHMENTS

Appendix A: Zoning for Recreational Vehicles