

**REPORT TO ELECTORAL AREAS COMMITTEE  
MEETING OF WEDNESDAY, FEBRUARY 8, 2023**

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**SUBJECT**     **Bylaw No. 4535, “Building Regulation Bylaw No. 5, 2010, Amendment Bylaw No. 4, 2023”**

**ISSUE SUMMARY**

Clarifying the authority of the Chief Building Official to develop and amend forms related to building permits from time to time, discretion to allow a permit where a violation exists, and revocation of permits and occupancy certificates.

**BACKGROUND**

*Form Modification*

Forms related to building permits need to be reviewed and updated to ensure the requirements are current with respect to legislative changes, to accurately reflect practices within the Building Inspection Division and to address changes in the industry. The forms contained in Bylaw No. 3741, “Building Regulation Bylaw No. 5, 2010”, adopted March 9, 2011, no longer reflect the standards and practices of the Building Inspection Division (the Division).

Revisions are proposed to allow Building Inspection to develop and amend forms from time to time. Bylaw No. 4535, “Building Regulation Bylaw No. 5, 2010, Amendment Bylaw No. 4, 2023”, permits the Chief Building Official the authority to create, modify or adopt for usage forms related to building permits.

This authority does not apply to modifying fees associated with permit application, which is the responsibility of the Board by bylaw. However, it will permit modifications to the layout and content of forms relevant to ensuring permit requirements and application instructions are kept up-to-date. Certificates of Occupancy and Building Permit formats continue to be set by Bylaw No. 4535.

*Discretion of Building Official to allow Permit where violation exists*

Bylaw No. 3741 has historically prohibited the issuance of any building permits to an owner of the same property where a “violation” – a breach of the building bylaw, an enactment, or a Notice on Title under the *Community Charter* – exists, meaning that the violation must be corrected before another permit can be issued, even for unrelated buildings or structures. It is assumed this was done to encourage compliance by owners. Building officials have exercised discretion to issue permits for other buildings or structures on the same property where a plan for correction of a violation is provided or where the violation is unrelated to the new work. However, this is not clearly set out in Bylaw No. 3741 and amendments are proposed to describe how discretion may be exercised.

Further, given fractional “ownership” situations on the Gulf Islands, it is possible that some shareholder or member “owners” may be ineligible for a building permit where another such “owner” has conducted unlawful work. This works as unfairness against individuals who have not committed a wrong, who potentially cannot obtain a permit, and may not have the ability to force a correction against another such “owner” absent legal action within their corporation or society. While this is an issue that really is for the separate land society or corporation to remedy, and is

a type of property ownership no individual should enter into without legal advice and full disclosure of membership or corporate rules, it is in the interest of the regional district that new construction be built to the Building Code and inspectors should have discretion to issue permits where appropriate. The ability of the Building Inspector to secure a s.219 *Land Title Act* covenant, which may include a release and indemnity in favour of the CRD for work where remedy is too costly or impossible, is included in the bylaw.

#### *Revocation of Permits and Occupancy Certificates*

Building Officials have historically taken the position that they can revoke building permits where they are issued based on false or incorrect information, or where they are issued in error. This has recently been codified in other jurisdiction's building bylaws. This change is recommended at the same time, to ensure it is clearly set out in the bylaw. This change should also apply to Conditional Certificates of Occupancy, as they are subject to the same concerns relating to breach of conditions, as well as Certificates of Occupancy where issued in error or on false or incorrect information.

### **ALTERNATIVES**

#### *Alternative 1*

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

- 1) That Bylaw No. 4535, "Building Regulation Bylaw No. 5, 2010, Amendment Bylaw No. 4, 2023", be introduced and read a first, second, and third time; and
- 2) That Bylaw No. 4535 be adopted.

#### *Alternative 2*

That the Bylaw No. 4535 – "Building Regulation Bylaw No. 5, 2010, Amendment Bylaw No. 4, 2023" report be referred back to staff for further information based on Electoral Areas Committee direction.

### **IMPLICATIONS**

#### *Service Delivery*

Current forms do not reflect the requirements of the Division. As a result, the process for obtaining a building permit is not being clearly communicated to applicants, owners, builders and other members of the public. This leads to submission of incomplete and inaccurate applications, time spent by Building Inspectors and Clerks explaining new or revised requirements and confusion and delays in the permitting process. The authority to revise and update forms will allow the Division to provide more effective service.

#### *Social and Environmental Impacts*

Addressing the ability to revoke permits or to issue permits where a "violation" exists will allow the public and professional builders to understand the expectations and processes of the regional district and its building officials. It will also allow, in appropriate circumstances, permits to be issued where otherwise they would not be available, and encourage new construction or renovation work to be consistent with the requirements of building legislation, rather than encouraging owners in the electoral areas to work outside the permit process, which leads to additional notices on title, remedial action claims, and enforcement action by the Building Division, incurring additional costs and expenses for the region.

*Administrative Impacts*

It is not anticipated that the requirement for the Building Division to update forms as appropriate will lead to additional administrative burden. Forms can be updated and stored publicly, as they are now; they can be updated as needed with appropriate archiving and document control for earlier versions of forms.

The clarifying of the ability of an individual with a property with a “violation” to submit a request for a permit, including any rectification plan, may lead to additional administrative burden to review these plans. However, this is a service Building Inspection has historically provided, absent specific language in the bylaw. Should it become labour intensive, an additional fee for such a plan review could be created by the Board.

**CONCLUSION**

Updating the forms contained in the Bylaw No. 3741 is necessary to address legislative changes and ensure the application process is clear and accurate with respect to Division practices. Additional modifications to the bylaw will also modernize it and codify the authority of the building officials during the permit process, currently exercised but not clearly documented.

**RECOMMENDATION**

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

- 1) That Bylaw No. 4535, “Building Regulation Bylaw No. 5, 2010, Amendment Bylaw No. 4, 2023”, be introduced and read a first, second, and third time; and
- 2) That Bylaw No. 4535 be adopted.

Submitted by:	Mike Taylor, RBO, Manager and Chief Building Inspector, Building Inspection
Concurrence:	Kevin Lorette, P. Eng., MBA, General Manager, Planning & Protective Services
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**ATTACHMENT**

Appendix A – Amendment Bylaw No. 4535, including appendices  
Appendix B – Unofficial Consolidation Bylaw No. 3741 (Redlined)