

DATE: June 27, 2018

FILE: 4020-01

TO: Chair and Directors
Electoral Areas Services Committee

FROM: Russell Dyson
Chief Administrative Officer

Supported by Russell Dyson
Chief Administrative Officer

R. Dyson

RE: Unsightly Premises and Nuisance Bylaw Review

Purpose

The purpose of this report is to provide the Electoral Areas Services Committee (EASC) with information on improvements with respect to odour issues in the Unsightly Premises and Nuisances Bylaw, being the “Electoral Areas Unsightly Premises and Nuisances Regulations Bylaw No. 377, 2015”.

Recommendation from the Chief Administrative Officer:

THAT the proposed changes to Bylaw No. 377 being the “Electoral Areas Unsightly Premises and Nuisances Regulation Bylaw No. 377, 2015” as noted in the staff report dated June, 27 2018 be approved to clearly address nuisance odours and increase fines for ticketable offences.

Executive Summary

- The federal government is in the process of passing legislation to legalize non-medical cannabis through the *Cannabis Act* and has advised this will be in place October 17, 2018.
- In anticipation of the pending legalization of non-medical cannabis, the province has implemented a regulatory framework that establishes jurisdiction over distribution, sales, consumption, possession, and personal cultivation.
- A full legal review of the existing Unsightly Premises and Nuisances Bylaw was undertaken to ensure the bylaw had the ability to address odour complaints related to medical and non-medical cannabis.
- The primary updates proposed for the Comox Valley Regional District (CVRD) Unsightly Premises and Nuisances Bylaw are:
 - Further clarity of the requirement for an owner or occupier of real property, to mitigate any fouling or contaminating of the atmosphere.
 - The definition of ‘nuisance’ has been elaborated to specifically include odour that can be detected from within another parcel.
 - To increase the minimum fine amount from \$500 to \$1000 for each separate offence.

Prepared by:

Concurrence:

A. Yasinski

J. Warren

Amanda Yasinski
Manager of Bylaw Compliance

James Warren
General Manager of
Corporate Services

Background/Current Situation

To be proactive as legislation changes, Bylaw Compliance staff has been active in keeping up to date on any legislation and framework as it is implemented through the province in preparation for the legalization of non-medical cannabis federally through the *Cannabis Act*. To prepare the CVRD for the legalization of non-medical cannabis, bylaw staff has reviewed where the responsibility for both local government and the province will lie when legalization has been implemented. Staff has determined that nuisance type complaints such as odour from the personal cultivation of non-medical cannabis will be within the jurisdiction of local governments to manage.

Bylaw Compliance staff does expect to receive complaints on the odour from personal consumption of cannabis in CVRD regional parks and would refer to the *BC Tobacco and Vapour Control Act* which will be updated to include and prohibit the smoking and vaping of cannabis as well as tobacco in public places and is enforced by the Royal Canadian Mounted Police (RCMP).

In April 2018 the Bylaw Compliance Department had initiated a full legal review of the existing Unsightly Premises and Nuisance Bylaw, specifically asking that legal counsel address odour in general through the bylaw, with specific application to medical and non-medical cannabis. The legal review and recommendations on the bylaw came back and addressed several items that should be amended to reinforce the validity of the existing bylaw, primarily;

- Further clarity of the requirement for an owner or occupier of real property, to mitigate any fouling or contaminating of the atmosphere.
- The definition of ‘nuisance’ has been elaborated to specifically include odour that can be detected from within another parcel.
- To increase the minimum fine amount from \$500 to \$1000 for each separate offence.

The complete proposed changes to the bylaw have been added to this report as Appendix A.

Once the *Cannabis Act* has been passed, bylaw staff will continue to work with the RCMP on information sharing of suspected illegal grow-ops and personal use cultivation over the prescribed amount of four plants per residence. In addition, staff will take measures to familiarize themselves with the procedures of the provincial Liquor Control and Licencing Branch (LCLB) who will be responsible for licencing and enforcement of distribution and retail sales of non-medical cannabis.

Should Bylaw No. 377 be amended to incorporate these changes, an accompanying amendment to the Municipal Ticket Information (MTI) Bylaw will be presented.

Policy Analysis

The CVRD has the authority to regulate unsightly premises and nuisances in accordance with section 325 of the *Local Government Act*.

Options

1. To implement the changes as outlined;
2. To not change the existing Unsightly Premises and Nuisances Bylaw.

Financial Factors

There are no financial factors associated with this report. The Unsightly Premises and Nuisances Bylaw amendments were prepared in house by staff, following a legal review by local government solicitors. There are no further associated costs at this time.

Legal Factors

The content of the proposed amendments have been reviewed by legal counsel, with the specific application of medical and non-medical cannabis and associated odour.

Regional Growth Strategy Implications

The Unsightly Premises and Nuisances Bylaw review helps ensure that the bylaw, procedures and objectives are in line with the Regional Growth Strategy (RGS). Specifically the policy in the RGS that identifies public health and safety is supported by this review.

Goal 7: Public Health and Safety – Support a high quality of life through the protection and enhancement of community health, safety and well-being.

Intergovernmental Factor

Bylaw staff will continue to work closely with the RCMP on reporting and sharing information on any suspected ‘illegal’ growing of cannabis. A new element to the enforcement of cannabis will be the LCLB, bylaw staff will adapt our procedures to include the LCLB on any enforcement files that are related to sale or distribution of non-medical cannabis.

Interdepartmental Involvement

Through identified need, an inter-departmental working group of staff in Planning and Development, Bylaw Compliance, Community Services, Human Resources and Communications has been established to assess options for the CVRD and to provide recommendations moving forward once the *Cannabis Act* and provincial legislation are in place. This working group will also be working through a communication plan to keep the public informed of any policies and changes in regards to cannabis and the CVRD.

Citizen/Public Relations

There has been increased public concern over the pending legalization of non-medical cannabis and how the CVRD will be addressing and dealing with nuisance-type complaints associated with odour from both production facilities and personal cultivation of non-medical cannabis.

Attachments: Appendix A – “Proposed changes to Bylaw No. 377 being the “Electoral Areas Unsightly Premises and Nuisances Regulations Bylaw No. 377, 2015”

Appendix A



UNSIGHTLY PREMISES AND NUISANCES REGULATION BYLAW

The following is a consolidated copy of the Electoral Areas Unsightly Premises and Nuisances Regulation Bylaw No. 377, 2015 and includes the following bylaws:

Bylaw No.	Bylaw Name	Adopted	Purpose
377	Electoral Areas Unsightly Premises and Nuisances Regulation Bylaw No. 377, 2015.	July 28, 2015	To regulate and prohibit unsightly premises and nuisances.
<u>***</u>	<u>Electoral Areas Unsightly Premises and Nuisances Regulation Bylaw No. 377, Amendment Bylaw No. 1</u>	<u>**** **, 2018</u>	<u>To update Electoral Areas Unsightly Premises and Nuisances Regulation Bylaw No. 377</u>

This bylaw may not be complete due to pending updates or revisions and therefore is provided for reference purposes only. Titles and whereas clauses may be different than in original bylaws to make this consolidated version more clear and identify historical changes and conditions. THIS BYLAW SHOULD NOT BE USED FOR ANY LEGAL PURPOSES. Please contact the corporate legislative officer at the Comox Valley Regional District to view the complete bylaw when required.

Appendix A

COMOX VALLEY REGIONAL DISTRICT

BYLAW NO. 377

A bylaw to regulate and prohibit unsightly premises and nuisances

WHEREAS the Comox Valley Regional District has the authority to regulate unsightly premises and nuisances in accordance with section ~~725 and 797.1~~325 of the *Local Government Act* ~~and by supplementary letters patent dated September 28, 1978;~~

~~AND WHEREAS~~ Bylaw No. 2051 being “Unsightly Premises Extended Service Establishment Bylaw 2051, 1998” adopted on the 29th day of June, 1998, converted the function of regulating nuisances and unsightly premises to an extended service of the Comox Valley Regional District;

AND WHEREAS pursuant to section ~~725(1)~~325(a), (b), (c) ~~and~~, (d) and (g) of the *Local Government Act* the Comox Valley Regional District wishes to enact a bylaw to regulate, prohibit or require the following:

- prevent, abate and prohibit nuisances, and provide for the recovery of the cost of abatement of nuisances from the person causing the nuisance or other persons described in the bylaw;
- prohibit persons from causing or permitting water, rubbish, or noxious, offensive or unwholesome matter to collect or accumulate around their premises, or from depositing or throwing bottles, broken glass or other rubbish in any open space;
- prohibit persons from placing graffiti in public places;
- prohibit the owners or occupiers of real property from allowing their property to become or remain unsightly; ~~and~~
- require the owners or occupiers of real property, or their agents, to remove from it any accumulations of filth, discarded material or rubbish; and

~~AND WHEREAS~~ the Comox Valley Regional District deems it desirable to establish regulations that may be imposed to require the clean-up and restoration of property in the Comox Valley Regional District Electoral Areas ‘A’ (Baynes Sound – Denman/Hornby Islands), ‘B’ (Lazo North) and ‘C’ (Puntledge – Black Creek);

require the owners or occupiers of real property, or their agents, to eliminate or reduce the fouling or contaminating of the atmosphere through the emission of smoke, dust, gas, sparks, ash, soot, cinders, fumes or other effluvia

NOW THEREFORE, the board of the Comox Valley Regional District in an open meeting enacts as follows:

Definitions

1. In this bylaw,

“**board**” means the board of directors of the Comox Valley Regional District.

“**bylaw compliance officer**” means a person appointed by the board or the chief administrative officer of the CVRD to enforce the bylaws.

“**graffiti**” includes any unauthorized inscription, writing, slogans, designs, drawings or paintings howsoever made, on any sidewalk, wall, building, fence, sign or any other structure or surface.

Appendix A

“**nuisance**” means a condition or situation on a [property parcel of land](#) that interferes with another [property parcel](#) owner [or occupier](#)’s use or enjoyment of real property including but not limited to the following:

- (a) excessive or obtrusive light emanating from a [property parcel](#) that shines, glares, [or](#) reflects into [a neighbouring property parcel](#);
- (b) emission of smoke, dust, gas, sparks, ash, soot, cinders, fumes or other effluvia; [or](#)
- (c) [graffiti](#); [or](#)
- ~~(d)~~ [odour emanating from a parcel that can be detected from within another parcel.](#)

“**real property**” means land other than a highway, together with all improvements which have been so affixed to the land as to make them in law a part of the land and includes land without improvements.

“**CVRD**” means the Comox Valley Regional District.

“**rubbish**” includes any and all manner of garbage or scrap salvage; discarded or disused materials or filth; noxious, offensive or unwholesome matter; unlicensed, unused or stripped automobiles, trucks, trailers, boats, vessels, machinery; scrap or unused mechanical or metal parts; or bottles and glass; placed or located on real property for temporary or permanent storage or use.

“**unsightly**” means a real property having one or more of the following characteristics:

- (a) the accumulation of rubbish; or
- (b) dilapidated or collapsed structures or conditions of ~~serious~~ disrepair or deterioration.

Jurisdiction

2. This bylaw applies ~~to Electoral Areas ‘A’ (Baynes Sound – Denman/Hornby Islands), ‘B’ (Lazo North) and ‘C’ (Puntledge – Black Creek)~~ [within the participating areas of the Unsightly Premises Extended Service Area of the Comox Valley Regional District as established by bylaw.](#)

Prohibitions – nuisances

3.
 - (1) No person being the owner or occupier of real property shall cause or permit such property [or any activity on the property](#) to become a nuisance that disturbs or tends to disturb the peace, rest, enjoyment, comfort, or convenience of two or more residents in the surrounding neighbourhood or vicinity.
 - (2) No person shall permit, allow or place graffiti.
 - (3) A person causing a nuisance under section 3(1) shall be responsible for the recovery of the cost of abatement of such nuisance.

Prohibitions – unsightly property

4.
 - (1) No owner or occupier of real property shall allow his or her property to become or remain unsightly.
 - (2) An owner or occupier of real property shall remove from his or her property any accumulation of unsightly material which shall include dilapidated or collapsed structures in serious disrepair or deterioration.

Appendix A

Prohibitions – litter

5. No person shall litter, place or deposit rubbish in any public property or outdoors on private property.

Authority to enter upon property

6. A bylaw compliance officer is authorized to enter at all reasonable times onto real property to inspect and determine whether the regulations, prohibitions and regulations of this bylaw are being met.

Enforcement

7.
 - (1) The enforcement of this bylaw will be in accordance with the Comox Valley Regional District's enforcement policy.
 - (2) If an owner or occupier of real property is not compliant with this bylaw, the board may notify and require that same person to comply with this bylaw within a specific period of time.
 - (3) If a person fails to take the required action under section 7(2) of this bylaw, the Comox Valley Regional District or its agents may enter onto the property at all reasonable times and fulfill the requirement of the bylaw at the expense of the property owner or occupier.
 - (4) Those expenses incurred under section 7(3) of this bylaw may be recovered from that property owner as a debt and collected as taxes.

Penalty

8.
 - (1) Any person who contravenes a provision of this bylaw, or who allows any act or thing to be done in contravention of this bylaw, or who refuses, omits, or neglects to fulfill, observe, carry out or perform any duty or obligation imposed in this bylaw is guilty of an offence and:
 - (a) on summary conviction is liable to a fine of not less than ~~\$500~~5000 and not more than ~~\$2,000~~10,000; or
 - (b) on conviction of a ticket offence under the Comox Valley Regional District municipal ticket information bylaw.
 - (2) If an offence is a continuing offence, each day that the offence is continued constitutes a separate and distinct offence.

Severability

9. If any provision of this bylaw is held to be invalid by a court, the provision may be severed from this bylaw and such invalidity shall not affect the validity of the remaining portions of this bylaw.

Repeal

10. Bylaw No. 101 being "Electoral Areas Unsightly Premises Regulations Bylaw No. 101, 2010" and all amendments thereto are hereby repealed upon the adoption of this bylaw.

Citation

This Bylaw No. 377 may be cited as the "Electoral Areas Unsightly Premises and Nuisances Regulation Bylaw No. 377, 2015."