
Request for Decision



To: Peter de Verteuil, CAO **File No:**
Meeting Date: February 19, 2018 **Submission Date:** February 15, 2018
From: Michelle Geneau, Manager of Planning
Reviewed By:
Subject: Zoning Bylaw No. 3166, 2017

RECOMMENDATION:

1. **That Council give second reading to “Zoning Bylaw No. 3166, 2017”, as amended, as attached to the February 19, 2018 staff report.**
And That Council set a Public Hearing date for March 19, 2018 for “Zoning Bylaw No. 3166, 2017” and direct staff to advertise for the Public Hearing in accordance with Part 14 of the Local Government Act.
2. **That Council direct staff to develop a non-enforcement policy for extreme weather events and other emergencies that may require special temporary emergency shelters.**

BACKGROUND:

On February 5, 2018, the Committee of the Whole passed the following motion:

That the Committee of the Whole approve the proposed changes to the Zoning Bylaw, as described in the February 5, 2018 report by the Manager of Planning.

And That the Committee of the Whole recommend to Council that staff be directed to hold a Public Hearing for Zoning Bylaw No. 3166, 2017, on March 19, 2018 and to advertise for the Public Hearing in accordance with Part 14 of the *Local Government Act*.

The attached bylaw (Appendix A) contains the changes discussed in the February 5 staff report (Appendix B). Changes to the bylaw are highlighted in yellow in the Appendix A and include:

1. **Automotive Sales**
 - a. Addition of a site specific automotive sales use for 439 and 461 Trans Canada Highway (the location of the existing car dealerships); and
 - b. Addition of a site specific regulation to allow redevelopment of the existing car dealership buildings in their existing location, in the case of total destruction.
2. **Motorcycle Repair and Sales**
 - a. Addition of a site specific motorcycle repair and sales use for 277 Government Street (the location of an existing motorcycle repair business); and
 - b. Addition of a definition of “motorcycle repair and sales”, and revision to the definition of “automotive sales” to include “motorcycle repair and sales”.
3. **Residential Non-conformance**

Addition of a regulation to permit single unit or two unit dwellings in multi-unit residential zones to be rebuilt in the case of damage to more than 75% of their value, provided that the floor area or number of dwelling units is not increased.

4. Minimum Floor Area Ratio

Reductions to the Minimum Floor Area Ratio requirements in the Medium Density Residential, High Density Residential, Downtown Comprehensive, Neighbourhood Commercial and Highway Corridor Commercial Zones.

5. Community Care

- a. Revision to the Community Care use in Section 3.1 Uses Permitted in All Zones, to add “facility for no more than 10 persons”
- b. Additions of Community Care Facility use to the Medium Density Residential, High Density Residential, Downtown Comprehensive Commercial (above the ground floor), Neighbourhood Commercial (above the ground floor) and Community Service Zones.

At the January 16, 2018 Special Council Meeting, the following motions were passed by Council:

That the Mayor and staff immediately advise the Cowichan Valley School District that Council is strongly opposed to the former Charles Hoey School being used as an Extreme Weather Shelter; and that Council believes any shelter should not be placed in a residential area without prior consultation with the neighbourhood.

And That the Mayor and staff immediately advise North Cowichan Council that Duncan Council is strongly opposed to the former Charles Hoey School being used as an Extreme Weather Shelter; and respectfully request that North Cowichan Council make their funding contingent on the Extreme Weather Shelter not being placed in a residential area without prior consultation with the neighbourhood.

That Council confirm that the definition of Personal Care Facility does not include the use of an Emergency Shelter.

And That Council direct staff to review the zoning for the site, and other P1 sites in the city to ensure the new zoning bylaw will not permit homeless or emergency shelters if they are in residential zones.

And That Council request that the Cowichan Housing Coalition meet as soon as possible with the Warmland Shelter to come up with solutions to shelter women where they can feel safe and secure.

And That Council appoint Mayor Kent as Council liaison to the Coalition.

For the motions related to zoning, the following changes to the new Zoning Bylaw are proposed:

(numbering continued from above)

6. Emergency and Residential Shelters

- a. Addition of definitions of “Emergency Shelter” and “Residential Shelter”;
- b. Addition of “Residential Shelter” to Section 3.1 Uses Permitted in All Zones; and
- c. Addition of “Emergency Shelter” to Section 3.2 Uses Prohibited in All Zones.

The proposed definitions are included in the Analysis section of this report.

In a separate staff report also on the February 19 Council Agenda, is proposed Official Community Plan Amendment Bylaw No. 3178, 2018, which also recommends the use of Temporary Use Permits as a tool to permit Emergency Shelters in the City. Temporary Use Permits require public consultation prior to Council authorization. The proposed changes related to shelters have undergone legal review.

In addition to the recommended changes to the new Zoning Bylaw, staff recommend that a bylaw non-enforcement policy be developed to ensure that in emergency situations, such as extreme weather events or other emergencies (e.g. fires), community use buildings could accommodate temporary shelters.

7. Large Site Coverage Strata Unit Setbacks - Non-conformance

Addition of a regulation in the Downtown Comprehensive Zone to permit reconstruction of multi-unit strata buildings to the existing setbacks, in the case of damage to the extent of 75% or more of its value above foundations.

Since the February 5th staff report was drafted, a property owner contacted staff regarding a perceived impact of the increased setbacks downtown on buildings that have been constructed utilizing nearly the entire property, more particularly in the case of a strata building, and the impacts on insurance and strata ownership.

ANALYSIS:

The changes noted in items 1 through 5 in the Background section of this report are described in detail in the February 5 staff report in Appendix B. Since the February 5 Committee of the Whole Meeting, the wording in the proposed regulation for non-conforming single unit or two unit dwellings was updated following legal review:

A single unit or two unit dwelling to which this section applies may be rebuilt for a residential use if it is damaged to the extent of 75% or more of its value above the foundation, despite any rule in the Local Government Act that would limit the use of the building if rebuilt, provided that its floor area is not increased and the number of dwelling units in the building is not increased.

Shelter Use

Following the January 16 Special Council motion, staff reviewed options for defining shelter uses and for regulating the location of shelters in relation to residential areas.

The existing Zoning Bylaw lacks clear terminology and uses related to shelter uses. Potentially, the “transition home” use in the existing bylaw could permit a shelter up to ten beds. With the review of definitions and regulations in other bylaws, the following definitions were developed:

“Emergency Shelter” means the use of a building for the purpose of a temporary residence providing emergency and support services, and includes extreme weather response shelters.

“Residential shelter” means a single unit dwelling used for the purpose of a temporary residence providing emergency and support services for no more than 10 persons, but does not include the use of land for halfway house use in conjunction with the administration of justice for the purpose of shelter and support of persons serving or on from any part of a sentence imposed by a court;

The “residential shelter” definition will accommodate the existing transitional home located in the City.

Due to the small geographic size of Duncan, and since there are residential throughout the City including mixed use development in commercial areas, it would be difficult to develop regulate the location of shelters based on the distance to residential uses. Therefore, it is recommended to prohibit “emergency shelters” in all zones, and consider the authorization of them on a case to case basis, with Temporary Use Permits (TUP). A TUP does not require as long of a process as rezoning, but requires a Public Hearing. At the time of the TUP renewal, Council can consider if the permit should be renewed, cancelled, or made permanent through a site specific zoning amendment.

Large Site Coverage Strata Unit Setbacks - Non-conformance

Due to the above noted concern, regarding the perceived impact of increased setbacks on buildings that have been constructed utilizing nearly the entire property, and the impacts on insurance and strata ownership, the following exemption has been developed in consultation with the property owner, insurer, and the City’s lawyer:

A multi-unit dwelling strata development with more than 74% parcel coverage, to which this section applies,

may be rebuilt in its existing location if it is damaged to the extent of 75% or more of its value above the foundation, provided that its floor area is not increased and the number of dwelling units in the building is not increased.

The apparent insurance issue is with respect to a concern about not having the space to accommodate moving the building back without high costs for redesigning the building, and the perceived strata issues that would result from possibly smaller units. Therefore, if a building doesn't utilize the majority of the lot, and doesn't involve multiple owners, the impacts of modifying the building to accommodate the new setback would be less of an issue.

The new setbacks in the Downtown Comprehensive Zone also do not preclude an owner from applying for a Development Variance Permit, to locate the building closer to the street, or utilize the underground within the setback, but a Variance would be subject to Council approval. Currently there are 0 m setbacks in the downtown, and the new bylaw will have front and exterior side setbacks between 1 m and 2.5 m, depending on the location. An applicant would need to make a case for why a new development should be located closer to the street than the new setback requirements.

IMPLICATIONS:

- Financial:** Costs for advertising the Public Hearing will be attributed to the Development Services budget.
- Policy/Legislation:** Advertisement for the Public Hearing will be in accordance with the *Local Government Act*.
- Strategic Priority:** Relates to Strategic Priority 2.3 "Comprehensive review of the Zoning Bylaw".
- Sustainability:** The Zoning Bylaw re-write relates to several Desired Outcomes of the Integrated Community Sustainability Strategy, including Building and Sites outcomes "Duncan provides a diverse and flexible housing stock that meets all income and age requirements, ensuring a diverse community" and "Green building and housing design is prevalent throughout the City."
- Communication:** Communication of the Public Hearing will be required. The updated draft bylaw, staff reports, and Council Minutes will be posted on the City's website.
- Staffing Implications:** Development Services staff time was applied to making the proposed changes to the bylaw. Additional staff time will be required if Council recommends further changes

ALTERNATIVE OPTIONS

1. **That Council recommend additional or alternative changes to Zoning Bylaw No. 3166, 2017.**

APPENDICES:

- Appendix A: Zoning Bylaw No. 3166, 2017
- Appendix B: 2018-02-05 RFD
- Appendix C: Minimum FAR Review