
Request for Decision



To: Council

File No:

Meeting Date: April 15th, 2019

Submission Date: April 1st, 2019

From: Danica Rice, Manager of Planning

Subject: OCP Amendment Bylaw No. 3193, 2019.

RECOMMENDATION:

That Council give first and second readings to “Official Community Plan Amendment Bylaw No. 3193, 2019” - a bylaw to modify Temporary Use Permit time length from up to 2 years to up to 3 years.

And That Council set a Public Hearing date of May 6th, 2019 for Bylaw No. 3193.

Purpose

The intent of proposed *Official Community Plan Amendment Bylaw No. 3193, 2019* is to amend the period of time that a Temporary Use Permit (TUP) may be issued for, while bringing it into consistency with the *Local Government Act*.

Presently, the City of Duncan *Official Community Plan Bylaw No. 2030 (OCP)* limits TUPs to a 2 year term, although they may be renewed once for a total of 4 years. After 4 years, the applicant is required a) to cease and desist or b) have secured a rezoning of the property with a Zoning Bylaw Amendment, securing the proposed use and or location of the use for the longer term.

This amendment seeks to increase the initial timeframe from 2 years to 3 years with the option to reapply for a second term of 3 years, ultimately permitting the TUP for a total of up to 6 years. The proposed timeframe brings the OCP into consistency with the *Local Government Act* as outlined in Attachment 1.

Analysis

It is recommended that Council continue to employ TUPs as a tool to authorize and consult the public in consideration of otherwise unpermitted uses and or location of uses within the City of Duncan. The use of TUPs permits the opportunity for the City to test the impacts of a specific use as a pilot study prior to either approving or denying a full rezoning application. The process is generally less expensive, poses less risk to the municipality and can be a timelier process than a rezoning if passed by Council resolution. Local governments can impose conditions on the issuance of TUPs, including requirements for security, and can revoke TUPs upon default.

Notification

Local governments are required to provide public notice prior to the issuance of a TUP, and can often expect to receive useful feedback from neighbours as a result. However, a public hearing is not required if it is in an area identified in the OCP, in accordance with section 493(1)(b) of the *Local Government Act*. The City’s practice is to provide an opportunity for public comment on a TUP application and shall be noted on the agenda of the TUP being considered.

As outlined in Section 921 of the Local Government Act, a local government may issue Temporary Use Permits, permitting the use of land or structures that is otherwise prohibited under the City’s Zoning Bylaw. Temporary use permits may be issued for **a period of up to TWO years and may, upon application, be renewed once for up to a further TWO years.**

The City’s OCP policy for TUPs is as follows:

6.4 TEMPORARY USE PERMIT POLICIES

As outlined in Section 921 of the Local Government Act, a local government may issue Temporary Use Permits, permitting the use of land or structures that is otherwise prohibited under the City’s Zoning Bylaw. Temporary use permits may be issued **for a period of up to TWO years and may, upon application, be renewed once for up to a further TWO years.**

6.4.1 Issue temporary use permits within commercial areas if Council is satisfied that:

- the temporary use is on a trial/ interim basis or a seasonal or occasional use, and where the use does not qualify as a home based business;
- the temporary use does not adversely affect adjacent or surrounding properties in terms of pollution, odour, noise, light, traffic generation, parking or loading; and,
- Issuance of the permit will not establish a competitive advantage to the detriment of businesses operating in locations where the use is permitted.

6.4.2 Issue Temporary Use Permits for emergency shelters, as defined in the Zoning Bylaw, provided that Council is satisfied that:

- the applicant has undertaken public consultation in accordance with Section 11.1 of the OCP; and
- the applicant has provided detailed implementation information, including a description of measures that will mitigate any negative impacts that operation of the emergency shelter may have on the surrounding commercial and residential neighbourhoods (e.g. hours of operation, cleanup plans for the

The proposed amendment will revise Section 6.4 Temporary Use Permits as outlined below and as shown in Attachment 2 in order to increase the allowable time frame to be up to 3 years.

As outlined in Section 921 of the Local Government Act, a local government may issue Temporary Use Permits, permitting the use of land or structures that is otherwise prohibited under the City’s Zoning Bylaw. Temporary use permits may be issued **for a period of up to THREE years and may, upon application, be renewed once for up to a further THREE years.**

IMPLICATIONS:

- Financial:** By amending the OCP, the City will be able to provide a longer trial period to a range of businesses within the City. The fee for a TUP application is \$2000.00
- Policy/Legislation:** Official Community Plan, Bylaw No. 2030.
- Strategic Priority:** On-going amendments to the Zoning Bylaw and Official Community Plan requiring public consultation through public hearing, as per the Local Government Act.
- Sustainability:** Not Applicable.
- Communication:** An OCP amendment requires notification in the newspaper and a public hearing in accordance with the Local Government Act.

Staffing Implications: The OCP Consolidation Bylaw will require a minor amendment.

ALTERNATE RECOMMENDATION:

That Council recommend changes to Official Community Plan Amendment Bylaw No. 3193, 2019 prior to giving first and second readings.

Appendices:

Attachment 1: Temporary Use Permits – Local Government Act

Attachment 2: Proposed Bylaw No. 3193

Attachment 1: Temporary Use Permits – Local Government Act

Division 8 – Temporary Use Permits

Designation of temporary use permit areas

- 492** For the purposes of section 493, an official community plan or a zoning bylaw may
- (a) designate areas where temporary uses may be allowed, and
 - (b) specify general conditions regarding the issue of temporary use permits in those areas.

Temporary use permits for designated areas and other areas

- 493** (1) On application by an owner of land, a local government may issue a temporary use permit as follows:
- (a) by resolution, in relation to land within an area designated under section 492;
 - (b) by bylaw, in relation to land within an area outside a municipality, if there is no official community plan in effect for the area.
- (2) A temporary use permit may do one or more of the following:
- (a) allow a use not permitted by a zoning bylaw;
 - (b) specify conditions under which the temporary use may be carried on;
 - (c) allow and regulate the construction of buildings or structures in respect of the use for which the permit is issued.
- (3) If a local government delegates the power to issue a temporary use permit under this section, the owner of land that is subject to the decision of the delegate is entitled to have the local government reconsider the matter.

Public notice and hearing requirements

- 494** (1) If a local government proposes to pass a resolution under section 493 (1) (a), it must give notice in accordance with subsections (2) to (4) of this section.
- (2) The notice must state
- (a) in general terms, the purpose of the proposed permit,
 - (b) the land or lands that are the subject of the proposed permit,
 - (c) the place where and the times and dates when copies of the proposed permit may be inspected, and
 - (d) the place where and the time and date when the resolution will be considered.
- (3) The notice must be published in a newspaper at least 3 days and not more than 14 days before the adoption of the resolution to issue the permit.
- (4) Section 466 (4) to (8) [*specific requirements in relation to notice of public hearing*] applies to the notice as if the resolution were a bylaw.
- (5) If a local government proposes to adopt a bylaw under section 493 (1) (b), the following sections apply:
- (a) section 464 [*requirement for public hearing*];
 - (b) section 465 [*public hearing procedures*];
 - (c) section 466 [*notice of public hearing*];
 - (d) section 469 [*delegating the holding of public hearings*];
 - (e) section 470 [*procedure after public hearing*].

Permit conditions: undertakings respecting land

- 495** (1) As a condition of issuing a temporary use permit, a local government may require the owner of the land to give an undertaking to
- (a) demolish or remove a building or other structure, and
 - (b) restore land described in the permit to a condition specified in the permit by a date specified in the permit.
- (2) An undertaking under subsection (1) must be attached to and forms part of the permit.
- (3) If the owner of the land fails to comply with all of the undertakings given under subsection (1), the local government may enter on the land and carry out the demolition, removal or restoration at the expense of the owner.

Permit conditions: additional security requirements

- 496** (1) In addition to any security required under section 502, a local government may require, as a condition of issuing a temporary use permit, that the owner of the land give to the local government security to guarantee the performance of the terms of the permit.
- (2) If there is a requirement for security under subsection (1), the permit may provide for
- (a) the form of the security, and
 - (b) the means for determining
 - (i) when there is default under the permit, and
 - (ii) the amount of the security that forfeits to the local government in the event of default.

Term of permit and renewal of permit

- 497** (1) The owner of land in respect of which a temporary use permit has been issued has the right to put the land to the use described in the permit until the earlier of the following:
- (a) the date that the permit expires;
 - (b) 3 years after the permit was issued.
- (2) A person to whom a temporary use permit has been issued may apply to have the permit renewed, subject to the restriction that a temporary use permit may be renewed only once.
- (3) Subsection (1) and sections 495 [*permit conditions: undertaking respecting land*] and 496 [*permit conditions: additional security requirements*] apply in relation to a renewal under subsection (2).