

RE: PROPOSED AMENDMENT TO SECTION 7.5 OF THE ZONING BY-LAW
(ITEM 12, REPORT NO. 67, 1979 OCTOBER 19)

RECOMMENDATION:

1. THAT this report be received for information purposes.

REPORT

Mr. Derek R. Corrigan appeared at the Public Hearing on 1979 November 20 to advance arguments in opposition to a proposal to amend Section 7.5 of By-Law No. 4742, Burnaby Zoning By-Law 1965, which reads as follows:

"It shall be unlawful for any person to prevent, obstruct, or hinder any official authorized by subsection (1) in the performance of any duty or authority therein granted to him/her."

Section 234 of the Municipal Act provides that:

"Whenever a Council has authority to direct, by by-law or otherwise, that any matter or thing be done by any person, or that regulations be observed, the Council may, in the same or some other by-law, authorize appointed officers to enter, at all reasonable times, upon any property subject to the regulations of the Council, in order to ascertain whether such regulations or directions are being obeyed."

The purpose of the proposed amendment is to make this section of the Act effective.

The Legislature, in accordance with its adoption of Section 234 of the Municipal Act, has empowered Council by by-law to authorize appointed officers to enter at all reasonable times upon any property subject to municipal regulations, for the purpose of ascertaining if the regulations are being obeyed. Without this authority, which has been in the Municipal Act for many years, it would be virtually impossible to enforce not only those sections of the Zoning By-Law that regulate housing occupancy standards, but other sections of this by-law and other by-laws as well. In short, the overall effect of this authority is to empower Council to perform certain acts which protect the health, welfare and safety of the inhabitants of the municipality, e.g., by requiring landlords to maintain premises in a habitable condition and in a manner that does not allow buildings such as hotels and apartments to become fire-traps, by requiring the operators of restaurants to prepare and serve food from kitchen facilities that are clean and sanitary, etc.

Of considerable importance is the fact that the proposed amendment does not give any municipal official the right without the consent of the occupier to enter anyone's home. If entry is refused, the municipality must seek an injunction in the Supreme Court in order to obtain entry. The proposed amendment simply makes it an offence to refuse entry - an offence which must be proved beyond a reasonable doubt in the provincial court before any conviction can be made.

The proposed amendment is merely a means of enforcing Section 234 of the Municipal Act and Section 7.5 of the zoning by-law. Section 233 of the Act already provides that:

"Where in any by-law of a municipality any lawful regulation or requirement is required to be observed within the municipality, although persons are not specially enjoined to do or refrain from doing or forbidden to do any specific act, matter, or thing within the municipality, the breach of any such regulation or requirement by any person liable or responsible is an offence, punishable in the same manner as if the by-law had expressly enjoined or forbidden the persons to do or refrain from doing any act provided for by such regulation or requirement."

Section 218(1) of the Act provides that:

"The Council, in addition to the powers specifically allotted to it, shall have power to do all such things as are incidental or conducive to the exercise of the allotted powers."

That it should be an offence to refuse entry to officials is not unusual and such provisions can be found in many Acts of the Legislature. Section 12(4) of the Gas Act provides that:

"Any person who denies admittance to an Inspector or Local Inspector seeking to enter premises under subsection (1) and who has properly identified himself, and any person who obstructs or interferes in any way with an Inspector or Local Inspector in the performance of his duties, or obstructs or interferes with an employee of a gas company in the performance of duties under subsection (2), is liable to a fine of not more than one hundred dollars."

Section 42 of the Fire Services Act provides that:

"A person who

- (a) obstructs the Fire Commissioner or a Local Assistant or other person in the execution of his duties under this Act; or
- (b) refuses or neglects to admit to any buildings or premises for any purpose of this Act the Fire Commissioner or a Local Assistant or other person who by or under the authority of this Act is entitled to enter into or upon the same; or
- (c) violates any provision of this Act or regulations for which violation no other penalty is provided

is guilty of an offence and liable, on summary conviction, to the penalties provided under the Summary Convictions Act."

Section 7 of the Health Act provides that:

"Upon the Lieutenant-Governor in Council making and issuing orders and regulations under the last preceding section, the keeper of any building, tenement, erection, or other place within the purview of such regulations, and every other person having or acting in the care or management thereof, shall at all times, when required by any officer or appointee of the Ministry of Health or Local Board, give him free access to such tenement, building, erection, or other place, or any part thereof, and any such keeper or person who refuses such access shall be liable, on summary conviction, to a penalty not exceeding twenty-five dollars."

Incidentally, it should also be pointed out that any attempt to relate the amendment to the Criminal Code would be inappropriate because the type of offence that the amendment would bring into existence is not within the scope and content of the Criminal Code.

With respect to the Summary Convictions Act, no relationship exists between the amendment and Section 14 of the Summary Convictions Act which reads as follows:

Search Warrants

"Information
for search
warrants

14. (1) A Justice who is satisfied by information upon oath in Form 1 that there is reasonable ground to believe that there is in a building, receptacle, or place
- (a) anything upon or in respect of which an offence punishable on summary conviction under this Act has been or is suspected to have been committed; or
 - (b) anything that there is reasonable ground to believe will afford evidence as to the commission of any such offence
- may at any time issue a warrant under his hand authorizing a person named therein or a peace officer to search the building, receptacle, or place for any such thing, and to seize and carry it before the Justice who issued the warrant or some other Justice for the same territorial division, to be by him dealt with according to law."

It is apparent that Section 14 of the Summary Convictions Act does not apply to the case in point because an inspection would have to be made in any event for "reasonable ground" to be established. In other words, strict compliance by the Housing Inspection with only Section 14 would create a conflicting inconsistency: evidence must be produced and presented to a magistrate for a search warrant but such evidence could not be obtained without premises being inspected first. An inspection in such instances would be necessary because a housing inspector's belief that a contravention exists is hardly sufficient to persuade an official of the court to issue a search warrant.

Attached for Council's information is a statement from the Chief Building Inspector and the Municipal Housing Inspector which explains the general procedure which is followed when the latter approaches an occupant for permission to inspect a dwelling.

In summary, the proposed amendment is equivalent in effect to other types of existing authority which permits officials to inspect premises for the purpose of protecting the health, welfare and safety of inhabitants. The only effective way of confirming the existence of contravening conditions is by way of inspections, and if this cannot be done, enforcement is virtually impossible. As pointed out in the report, the proposed amendment does not give officials the right to enter into a home without the consent of the occupant, and should entry be refused, it would be necessary for an injunction to be obtained. The amendment establishes refusal of entry to be an offence which must be proved in court before a conviction can be made. It is felt, therefore, that the amendment is reasonable, and that there are sufficient safeguards to prevent any misuse of such authority.

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1979 Nov. 22

Subject: Residential Occupancy Standards

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The following approach is made by the Burnaby Housing Inspector to each householder in a survey area.

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When a person comes to the door, Mr. P. Eastman, Burnaby Housing Inspector opens the conversation with words to the following effect:

"Hello. My name is Pat Eastman. I am a Housing Inspector for the Municipality of Burnaby. We are conducting a survey in the area to establish the number of families in each building in the area. The survey is being conducted under the authority of the Burnaby Zoning By-Law."

1. Are you one of the owners of this building? Answer, Yes. May I come in and talk to you for a few minutes? Answer, Yes. Identification of the Housing Inspector is established by presenting the person with a business card, or if requested, official identification.
2. Same question as (1). Answer, No, we rent the premises. Same procedure.
3. Same question as (1). Answer, No, I am just visiting (or the door is answered by a child). Same explanation followed by a question, Is the owner at home? Answer, Yes. Could I please speak to him (her)?
4. Same explanation and identification with owner.
5. Answer, No, owner is not home. Would you please give him this notice and ask him to phone me?

If the time is not convenient to the owner, usually another time is arranged to return and inspect.

An outright refusal by the owner or tenant is very exceptional. However, if this happens, a letter is sent to the owner to explain the situation and request a time when the building may be inspected. The main problem would be when both parents are working and usually arrangement can be made for later.

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2.

The very few refusals* to date have come from owners of side-by-side duplexes which have obviously been converted to three- or four-plexes.

There have only been three or four outright refusals and one later changed his mind without further approach by myself.

To date no inspections have been conducted without the owner or tenant giving permission. The foregoing procedure has worked exceptionally well in excess of 1700 calls over period close to two years.

PE:lm

Pat Eastman
Pat Eastman,
Burnaby Housing Inspector

M. Jones

*The adamant refusal of one individual in South Burnaby to permit inspection of his building forced us to seek a solution. He is a builder and owns two side-by-side duplexes, plus a single-family dwelling in the same area. When he refused to permit inspection of his buildings, we referred the matter to the Provincial Prosecutor and were advised that although there is authority in Zoning By-Law No. 4742, Section 7.5, to inspect, the by-law does not make it an offence to prevent or refuse to permit inspection of a building.