



TO: MUNICIPAL MANAGER  
1990 NOVEMBER 20

FROM: ACTING CHIEF PUBLIC HEALTH INSPECTOR

SUBJECT: INVESTIGATION OF COMPLAINTS AND ENFORCEMENT OF THE  
BURNABY UNSIGHTLY PREMISES BYLAW 1969

PURPOSE: TO ADVISE COUNCIL OF OUR PRESENT PROCEDURES FOR INVESTIGATING  
COMPLAINTS OF UNSIGHTLY PREMISES AND TO RECOMMEND CHANGES TO MORE  
EFFICIENTLY DEAL WITH THESE COMPLAINTS.

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RECOMMENDATION:

1. THAT the present procedures for investigation of complaints and enforcement of the Unsightly Premises Bylaw 1969 be continued with the exception of the time limit given for compliance before court action is initiated being significantly reduced to a 14-day first notice and 7-day final notice period from the present 30-day first notice and 10-day final notice period.

REPORT

SUMMARY:

Staff have reviewed our present practice of investigating complaints and enforcement under authority of the Burnaby Unsightly Premises Bylaw and have concluded that the present procedures are appropriate. However, it is recommended that the time given for property owners or occupants to comply with the bylaw be substantially reduced. This may facilitate earlier resolution of many complaints.

1.0 BACKGROUND:

At the regular Council Meeting held 1990 October 22, Council adopted the following Motion:

"THAT Municipal staff be requested to re-examine the process for initiating investigations into unsightly premises and prepare a report for Council recommending a more efficient means of handling these problems."

2.0 PRESENT PROCEDURES:

Complaints of unsightly premises are received in this Division by telephone, letter or referral from another Municipal Department. Each complaint is normally investigated, including a site inspection, within two working days of receipt of the complaint. Any property where there is a visible accumulation of discarded material, rubbish, wrecked or dismantled vehicles, scrap wood or metal, old appliances or similar material is considered to be in contravention of the bylaw and the owner and/or occupant is normally given thirty days written notice to bring the property into compliance by removing the offending material. Failure to comply results in a final 10-day notice being issued, usually hand delivered to the owner and/or occupant. The time limits may be adjusted, longer or shorter, for exceptional circumstances.

If the property is vacant and the offending material is obviously discarded or of no value and has not been removed by the prescribed time limit, then municipal workmen remove and dispose of the material with all costs incurred charged to the owner. If the property is occupied then a report is immediately sent to the Provincial Crown Counsel office requesting that court charges be prepared. The Crown Counsel office usually takes approximately two weeks to prepare the charge and the offender's first court appearance is usually four weeks after the charge is sworn. Upon first appearance, if the offender pleads guilty he is sentenced immediately (usually a fine of approximately one hundred and fifty dollars on a first offence). If the person charged pleads not guilty a trial is set, usually for approximately one to two months later.

If a person has been found guilty under the Unsightly Premises Bylaw and neglects or refuses to remove the offending material then this Department would apply, through the Municipal Solicitor's office, for a Supreme Court Order that enjoins the offender from further contraventions of the bylaw. This step is rarely necessary and on the two occasions that it has been used in recent years, has been successful.

In recent years, this Division has received approximately two hundred complaints a year concerning unsightly premises. Approximately ten to fifteen per year are submitted to the Crown Counsel's office for court charges to be prepared.

### 3.0 REMOVAL OF MATERIAL BY THE MUNICIPALITY:

The Unsightly Premises Bylaw does provide the authority for municipal workman to enter private property and remove "filth, discarded material, or rubbish of any kind". Specifically, Section 3 of the bylaw states:

"Every owner or occupier of real property or the agent of such owner or occupier shall remove from the said real property any accumulation of filth, discarded materials, or rubbish of any kind and in default of such removal the municipality by its workmen and others may enter upon the said real property and effect such removal at the expense of the person so defaulting and the charges for so doing, if unpaid on the 31st day of December in any year, shall be added to and form part of the taxes payable in respect of that real property as taxes in arrears."

As stated previously, if the property is vacant and the owner has not removed the discarded material or rubbish, then municipal workmen will perform the necessary clean-up and charge the property owner with all costs.

Also, pursuant to the B.C. Health Act Sanitary Regulations any accumulation of garbage, filth, manure, or any other material which may be or may become a health hazard is removed by municipal workman following 48 hours notice to the owner or occupant. This measure is used frequently when an accumulation of garbage is left on properties (whether vacant or occupied).

This Department has not proceeded with clean-up of properties where the property is occupied, the occupant claims that the property is not unsightly and therefore is not in breach of the bylaw, and the material does not constitute a health hazard. The Municipal Solicitor and the Provincial Crown Counsel caution that the bylaw and the empowering section of the Municipal Act relating to unsightly premises allow for municipal workmen to enter private property and remove only "filth, discarded material, and rubbish". This does not mean that the storage of other types of material on property would not constitute a breach of the bylaw. For example, a collection of old appliances or dismantled automobiles in a residential area would normally be considered a clear breach of the bylaw. The owner/occupant would be directed to remove this material and would be charged if he failed to do so. But if the occupant maintains that they are not "discarded material" or not "rubbish" (i.e. of no value) then the municipality may be inviting a lawsuit for damages if it removed this

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material without the owner or occupant's consent. In addition, the prospect of having municipal workmen involved in potentially dangerous confrontations with individuals while removing their "valuables" must be considered.

A review of several other jurisdictions in the Lower Mainland revealed that generally the policy of removing material from occupied properties is similar to ours. An exception is the District of Surrey where they will hire a private contractor to remove material from a property considered in breach of their bylaw (wrecked or dismantled automobiles excepted) rather than proceed with court action. At times they have had to have the R.C.M.P. stand by to keep the peace while the clean-up was undertaken. The City of New Westminster will also remove material from occupied properties where the material is clearly considered rubbish (i.e. of no value). They have also, on several occasions, "re-arranged" material on a person's property to make it "less unsightly". The City of Vancouver does not remove any material from private property unless the material constitutes a health or safety hazard, and will instead proceed to immediate court action if the owner/occupant fails to comply within the given time period.

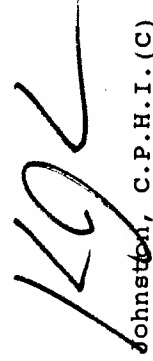
4.0 TIME GIVEN TO COMPLY:

A review of procedures in other jurisdictions has determined that the time given for compliance with unsightly or untidy premises bylaws is usually less than is allowed in Burnaby. While in Burnaby a period of one and one-half months would elapse (i.e. one month first notice; 14-day final notice) before court action would be undertaken, in other jurisdictions first and second (or final) notice would encompass three to four weeks total.

When information and a request for court charges are sent to the Provincial Crown Counsel office there is a delay of usually two weeks before the charges are approved, prepared, and sworn by the inspector. This delay does not seem unreasonable considering the workload of the Crown Counsel office and the nature of the charge.

5.0 RECOMMENDATION:

It is recommended that the present procedures for investigation of complaints and enforcement of the Unsightly Premises Bylaw 1969 be continued with the exception of the time limit given for compliance before court action is initiated being significantly reduced to a 14-day first notice and 7-day final notice period from the present 30-day first notice and 10-day final notice period.



K.C. Johnston, C.P.H.I.(C)  
ACTING CHIEF PUBLIC HEALTH INSPECTOR

VGE/KCJ/gl

cc: Medical Health Officer  
Director Administrative &  
Community Services  
Municipal Solicitor

