

THE CITY OF BURNABY

HOUSING COMMITTEE

HIS WORSHIP, THE MAYOR
AND COUNCILLORS

RE: SECTION 750.1 OF THE "MUNICIPAL ACT" -
FILING A NOTICE IN THE LAND TITLE OFFICE
WITH RESPECT TO A PROPERTY OBSERVED TO
BE IN CONTRAVENTION OF MUNICIPAL BYLAWS

RECOMMENDATION:

1. THAT Council authorize staff to continue using Section 750.1 of the Municipal Act where appropriate.

R E P O R T

"1.0 SUMMARY

In March of 1989, Council approved the use of Section 750.1 of the Municipal Act which allows staff to file a notice of building, electrical and plumbing bylaw contraventions in the Land Title Office against title to the offending property. This procedure has now been implemented several times and has proved to be an effective tool in encouraging bylaw compliance and protecting potential third party purchasers. It also may reduce Burnaby's potential liability to third parties with respect to known bylaw contraventions. Staff supports the continued use of Section 750.1 where considered appropriate.

2.0 BACKGROUND

At the regular Council Meeting held on 1989 March 06, Council received a report from the Housing Committee (attachment 1) and adopted the following recommendations:

1. "THAT Council provide authority for staff to proceed with the filing of contraventions of bylaws in the Land Title Office under the guidelines of Section 750.1 of the Municipal Act.
2. THAT staff monitor the use of Section 750.1 of the Municipal Act for a period of one year at which time an update report be provided."

This report stated in part:

"The purpose in requesting the filing of a notice of contravention of bylaws against title in the Land Title Office is to encourage compliance by a property owner and to reduce municipal liability resulting from non compliance for whatever reason.

INTERNAL DISTRIBUTION:

- : AGENDA - 1992 SEPTEMBER 28
: COPY - CITY MANAGER
- DIRECTOR ADMIN. & COMM. SERV.
- DIRECTOR ENGINEERING
- DIRECTOR PLANNING AND BUILDING
- CHIEF BUILDING INSPECTOR
- CITY SOLICITOR

SECTION 750.1 OF MUNICIPAL ACT
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The Building Inspection Division has in mind situations wherein enforcement through court action cannot be justified for practical or economic reasons, or when prior knowledge would protect an unwitting purchaser. The filing on title is not, however, considered an alternative to legal action where issues of life safety are involved but rather a supplementary enforcement tool."

Within the twelve month period following the adoption of this report, no contraventions were filed in the Land Title Office, thereby making it inappropriate to submit an update. However, Council approved the filing of one contravention in October of 1990, and three on subsequent occasions.

This report summarizes staff's experience in using this procedure as a means to encourage compliance with the Corporation's bylaws.

3.0 APPLICATION OF SECTION 750.1

Since the adoption of the above report, Council has, by resolution, authorized the filing of a Section 750.1 notice in four instances. In each instance, alterations to dwellings were made that did not comply with Burnaby's Building, Electrical and Plumbing Bylaws, yet did not involve issues of life safety. The owners of these properties refused to remedy the objections and three of them had placed their properties up for sale.

The filing of a Section 750.1 notice alerts prospective purchasers of the bylaw contraventions and encourages the owners to remedy the objections in order to enhance the marketability of their properties. One of the three properties continues to be for sale, several months after the contraventions were registered. Another was eventually sold, and the new owners have obtained a building permit to construct a new dwelling on the property. The existing house has now been demolished and the Municipal Clerk will be notified to file a cancellation notice.

For the third property listed for sale, the nature of the bylaw violations has warranted further legal action which Council has already authorized. The filing of a notice has served as an interim protective measure and a supplement to legal action.

In the fourth instance (the property registered in 1990 and the only one not put up for sale), the resources needed to resolve the matter through court action is unjustified, particularly in view of the volume of work presently before the provincial courts. No further action is contemplated.

During this current review, the Legal Department has advised that Section 750.1 may prove to be an effective means of limiting Burnaby's exposure to civil liability. The Courts are imposing liability on municipalities which fail to take any steps to enforce bylaw compliance in cases of known contraventions. A Section 750.1 filing allows Burnaby to take some action to enforce the bylaws without having to resort to prosecution or civil court proceedings. In the meantime, staff continue to negotiate with owners to gain compliance.

Finally, Section 750.1 requires a specific resolution of Council in respect of each filing and gives the owners the right to apply to Council to have the notice canceled.

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4.0 CONCLUSION

The Building Department has a successful record of obtaining compliance with the Corporation's Zoning, Building, Plumbing and Electrical bylaws. Through extensive negotiations, voluntary compliance is normally achieved. Of the large number of files dealt with each year (approximately 400) only a very small number require further legal action (less than 1%).

In those instances where all normal means of obtaining compliance with building regulation bylaws have failed, and where life safety is not an issue, the filing of a Section 750.1 notice is a useful and practical step toward achieving compliance and protecting the Municipality's liability."

Respectfully submitted,

Councillor L.A. Rankin
Chairman

Councillor C. Redman
Member

Councillor J. Young
Member

REPORT
Regular Council Meeting
1989 March 06

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THE CORPORATION OF THE DISTRICT OF
RECEIVED
HOUSING COMMITTEE

FEB 28 1989
Building Inspection Division
Planning & Building Ins. Dept.
Register No.
Attachments:

ES, HIS WORSHIP, THE MAYOR
AND ALDERMEN:

REPORT OF THE HOUSING COMMITTEE
RE: SECTION 750.1 - MUNICIPAL ACT OF B.C.

Recommendations:

1. THAT Council provide authority for staff to proceed with the filing of contraventions of bylaws in the Land Title Office under the guidelines of Section 750.1 of the Municipal Act.
2. THAT staff monitor the use of Section 750.1 of the Municipal Act for a period of one year at which time an update report be provided.

R E P O R T

The Housing Committee, at its meeting held 1989 February 14 received Item 3, Municipal Manager's Report No. 7, 1989 January 13 (Attached) which was referred to the Committee by Council for review and development of a policy relative to the use of Section 750.1 of the Municipal Act.

Further, the Housing Committee received a report dated 1989 February 03 from the Director Planning and Building Inspection regarding Section 750.1 of the Municipal Act which was provided to assist the Committee in understanding the intent behind the request for Council's authority to apply Section 750.1.

The report states in part:

"The purpose in requesting the filing of a notice of contravention of bylaws against title in the Land Title Office is to encourage compliance by a property owner and to reduce municipal liability resulting from non compliance for whatever reason.

The Building Inspection Division has in mind situations wherein enforcement through court action cannot be justified for practical or economic reasons, or when prior knowledge would protect an unwitting purchaser. The filing on title is not, however, considered an alternative to legal action where issues of life safety are involved but rather a supplementary enforcement tool.

Section 750.1 is under consideration for use in two instances currently on file:

- INTERNAL DISTRIBUTION:
- AGENDA 1989 MARCH 06
 - COPY - MUNICIPAL MANAGER
 - DIRECTOR ADMINISTRATIVE AND COMMUNITY SERVICES
 - DIRECTOR PLANNING AND BUILDING INSPECTION
 - CHIEF BUILDING INSPECTOR
 - MUNICIPAL SOLICITOR

REPORT
Regular Council Meeting
1989 March 06

1. The continuity of a fire separation required between the retail occupancy at the ground level of an existing two storey commercial building and the office space on the upper floor has been eroded through time. Deficiencies result from the installation of return air grills in the suspended ceiling without fire dampers, the addition of light fixtures without enclosures and the failure of tradesmen to replace the specified and mandatory hold-down clips on the ceiling tile.

The deficiencies have been outstanding for some considerable time and the owner is at odds with the tenants as to the responsibility for correction of the problem since it seems to have been initiated in the past with previous tenants. Attempts by the Building Inspection Division to have the matter resolved have generated numerous promises but no positive results.

2.

The non resident owners of a single family dwelling have resisted orders to increase the clearance of an overhead electrical service to meet electrical regulations and to correct other minor electrical deficiencies. The matter has remained unresolved for many months with the expenditure of many hours of staff time.

In both instances, the time and energy needed to resolve the matter through court action is somewhat unjustified, particularly in view of the volume of work presently before our Legal Department and before the provincial courts.

The registration of a notice on title would clearly define a contravention of bylaws and record the owner's non compliance in the event of fire damage to the premises or injury to tenants or the public."

Staff concluded by advising it is not intended that the process would be directed to the owners of illegal suites, although the Act would seem to provide for its application in any instance relating to the safety of buildings or structures.

Based on the Housing Committee's review of this subject, it was agreed that Council be requested to authorize staff to proceed with the registration of notices on title in the Land Title Office if non compliance to a bylaw is evident and further, that this process be monitored for a period of one year.

Respectfully submitted,

Alderman F.G. Randall
Chairman

Alderman R.G. Begin
Member

Alderman L.A. Rankin
Member

ITEM	3
MANAGER'S REPORT NO.	7
COUNCIL MEETING	09/01/23

RE: MUNICIPAL ACT, SECTION 750.1

MUNICIPAL MANAGER'S RECOMMENDATION:

- 1. THAT the recommendation of the Dir for Planning & Building Inspection be adopted.

* * * * *

TO: Municipal Manager 1989 January 11

FROM: Director Planning & Building Inspection

SUBJECT: MUNICIPAL ACT, SECTION 750.1

PURPOSE: To advise Council of the contents and proposed application of Section 750.1 of t Municipal Act

RECOMMENDATION:

- 1. THAT Council provide authority for staff to proceed with the filing of contraventions of bylaws in the Land Title Office under the guidelines of Section 750.1 of the Municipal Act and as specifically noted in this report.

REPORT

Section 750.1 (see attachment) provides for the filing of notices in the Land Title Office pursuant to a resolution of Council, upon recommendation of the building inspector, where contraventions of a building code or other similar regulations have been discovered. Filing of notices should have the effect of making potential purchasers aware of the contraventions so that they can take appropriate steps.

Subsection (1) sets out two conditions under which the building inspector can recommend that a notice be filed. The first is a contravention of a bylaw or regulation under Part 21, Division 5 (Building Regulations) of the Municipal Act which renders a structure unsafe or unusable. The second is where work is undertaken without a required permit or inspection contrary to a bylaw or regulation.

Subsection (2) sets out the procedure for filing the notice and contains several checks and balances designed to protect the property owner affected.

ATTACHMENT 1

Planning & Building Inspection Department
Re: Municipal Act, Section 750.1
1989 January 11

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ITEM

MANAGER'S REPORT NO.

3

COUNCIL MEETING

7

09/01/23

When the Building Inspection Division has made every reasonable attempt to have an owner correct bylaw or code contraventions without success, and if it is believed that application of Section 750.1 would be appropriate in the specific case, then the owner would be notified of our intention to seek a Section 750.1 resolution unless the owner brings the property into compliance. If compliance is not achieved, the Director of Planning and Building Inspection would notify the Municipal Clerk who will then notify the owner of the date the matter will be dealt with by Council. On this date, Council will be asked to consider a Manager's Report which will have as one of its recommendations a resolution which directs the Municipal Clerk to file a notice in accordance with Subsection (2). The owner has an opportunity to speak on his own behalf when Council reviews the staff recommendation to file a notice. It should be noted that in accordance with Subsection (2), Council must hear both the building inspector and the owner. The Municipal Solicitor advises that the owner should be heard if present at the Council meeting, even if he has not requested the opportunity to speak to Council through the delegation process. If Council decides to confirm the building inspector's recommendation, a resolution to that effect must be adopted. The resolution would direct the clerk to file a notice in the Land Title Office.

Subsections (3) through (9) and (11) set out the procedures for implementation, including the filing and discharging of notices. It may be noted that Section 750.1 (6) permits an owner to subsequently apply to Council to cancel the notice filed in the Land Title Office.

Subsection (10) states that neither the building inspector nor the municipality is liable for action or inaction that might otherwise be construed as a breach of duty under this Section.

SUMMARY:

The Municipal Solicitor concurs that this will be an effective tool for the Building Inspection Division, both in encouraging compliance by the property owner and to some degree in reducing municipal liability. Prior to Section 750.1 being proclaimed into law in 1987 May, the municipality would have had no choice but to proceed with court action against any owner who showed little interest in bringing his premises into compliance. The alternative of being able to register a building infraction against the title of the property is welcome, and will be utilized.



A. L. F
DIRECTOR
ANNING &
BUILDING INSPECTION

AJ
AJE/Jcc
Attach.

cc: Chief Building Inspector
Municipal Solicitor
Municipal Clerk

ATTACHMENT 1

SECTION 750.1 OF THE MUNICIPAL ACT

750.1 (1) Where, during the course of carrying out his duties, a building inspector

- (a) observes a condition, with respect to land or a building or structure, that he considers
 - (i) results from the contravention of, or is in contravention of a bylaw or regulation under Division (5) of Part 21 or under any other enactment relating to the construction or safety of buildings or structures, and
 - (ii) as a result of that condition, a building or structure is unsafe or is unlikely to be usable for its expected purpose during its normal lifetime, or
- (b) discovers that anything was done with respect to a building or structure or the construction thereof, that required a permit or an inspection under a bylaw, regulation or enactment referred to in paragraph (a) (i), and that the permit was not obtained or the inspection not satisfactorily completed, the inspector may, in addition to any other action that he is authorized or permitted to take, recommend to council that a resolution under subsection (2) be considered by the council.

(2) A recommendation under subsection (1) shall be given to the clerk of the municipality in writing, and the clerk shall, after notifying the registered owner of the land with respect to which the recommendation relates, place the matter before council which may, after hearing the building inspector and the owner, confirm the recommendations of the building inspector and pass a resolution directing the clerk to file a notice in the land title office stating that

- (a) a resolution relating to that land has been made under this section, and
- (b) further information respecting it may be inspected at the offices of the municipality

and the clerk shall ensure that all records are available for that purpose.

(3) Where the registrar of land titles receives a notice under subsection (2), he shall, on payment of the prescribed fee, make a note of the filing against the title to the land that is affected by the notice.

(4) The clerk shall, on receiving a report from a building inspector that the condition that gave rise to the filing of the notice under subsection (2) has been rectified, file a cancellation notice, and the registrar shall, on receiving the notice, cancel the note against the title to which it is related.

(5) In the event of any omission, mistake or misfeasance by the registrar or his employees in relation to the making of a note of the filing under subsection (3) after the notice is received by the land title office,

- (a) the registrar is not liable nor is the Crown liable vicariously, and
- (b) the assurance fund or the Attorney General as a nominal defendant is not liable under Part 20 of the *Land Title Act*.

(6) An owner of land with respect to which a notice has been filed under this section, may apply to the council for a resolution that the note be cancelled, and the council may, after hearing the applicant, pass a resolution directing the clerk to file a cancellation notice.

(7) Where a resolution has been passed under subsection (6), the clerk shall file a cancellation notice in the land title office and the registrar shall, on receiving the notice, cancel the note against the title to which it is related.

(8) Where the council does not pass a resolution under subsection (6), the owner may apply to the Supreme Court and notify the municipality to attend before the court to show cause why the note should not be cancelled, and the court may, after reviewing any evidence that the owner and the municipality may adduce, make an order directing the registrar to cancel the note made under subsection (3), and the registrar shall, on receiving the order, cancel the note accordingly.

(9) The note of a filing of a notice under this section is extinguished when a new title to the land issues in consequence of the deposit of a plan of subdivision or a strata plan.

(10) Neither the building inspector nor the municipality is liable for damage of any kind for the doing of anything, or the failure to do anything, under this section that would have, but for this subsection, constituted a breach of duty to any person.

(11) This section applies to a regional district as though the board was the council and the secretary was the clerk.