

TO: CITY MANAGER

1997 JUNE 18

FROM: DIRECTOR PLANNING AND BUILDING

OUR FILE: 01.250

SUBJECT: UPDATE - UBCM RESOLUTIONS

PURPOSE: To present for Council's consideration resolutions for submission to the 1997 UBCM Convention resolution process, and to provide an update of active resolutions previously submitted by the City of Burnaby.

RECOMMENDATIONS:

1. **THAT** Council approve the submission of the resolutions contained in Section 2.0 of this report to the 1997 UBCM Convention.
2. **THAT** a copy of this report be forwarded to the UBCM, Suite 15, 10551 Shellbridge Way, Richmond, B.C., V6X 2W9.

REPORT

1.0 INTRODUCTION

Each year, resolutions are considered for submission to the UBCM Convention to request amendments to the Municipal Act, Provincial legislation or other legislation and policies.

This report presents resolutions for consideration at the 1997 UBCM Convention, and updates the status of those resolutions previously adopted by Council and the UBCM which are still active, but not yet the subject of Provincial legislation.

2.0 RESOLUTIONS FOR THE 1997 UBCM CONVENTION

2.1 Flashing Light School Zone Signs

At its 1996 June 4 meeting, the Traffic and Transportation Committee - Traffic Safety Division requested that staff prepare a resolution for submission to the UBCM supporting a change to the Motor Vehicle Act to allow for the use of flashing light school zone signs, such as those in use in Blaine, Washington.

As such, the following resolution is proposed for submission to the 1997 UBCM Convention:

***WHEREAS** child pedestrian safety at schools is a primary safety concern for the community and notwithstanding existing regulation and enforcement, driver behaviour, in particular speeding through designated 30 km/h school zones, remains a problem;*

***AND WHEREAS** Burnaby Councillors have witnessed the effectiveness of non-traditional devices deployed in the United States and recognize the need for Province-wide standards of traffic signing and regulation;*

***THEREFORE BE IT RESOLVED** that the Province of B.C. give consideration to the adoption of, as a Province-wide standard, a school speed zone sign stating '30 KM/h Speed Zone When Lights Flashing' mounted under dual flashing amber lights. The activation of the lights would be the responsibility of each school protected by this signing."*

2.2 Age of Consent for Sexual Activity

The following resolution on the age of consent for sexual activity was submitted by Burnaby to the Federation of Canadian Municipalities in 1997 February for consideration at its 1997 June convention. To further focus attention on this matter, it is proposed that this resolution also be submitted to the UBCM resolution process to request that the Province also urge the Federal Government to amend the Criminal Code to raise the age of consent from 14 to at least 16 years of age. The Provincial Ombudsman and the offices of the UBCM have indicated support for this municipal-provincial effort to further this issue.

As such, the following resolution is proposed for submission to the 1997 UBCM Convention:

***WHEREAS** a recent national consultation process on child and youth prostitution has provided estimates that the number of children involved in prostitution in Canada is 40,000 and the average age of entry into prostitution is 14 years;*

***WHEREAS**, under the Criminal Code of Canada,*

- ▶ *it is currently not a criminal offence for an adult to engage in sexual activity with a young person aged 14 years or older if the young person consents to the sexual activity*
- ▶ *there are conditions that apply to the young person's consent, such as that the adult cannot be in a position of trust or authority over the young person for the consent to be valid, and consent cannot be given for money, food, drugs or other consideration*

- ▶ *a young person is defined as a person 14 years of age or more but under the age of 18*
- ▶ *there are no conditions under which a youth aged 13 years or less can consent to sexual activity with an adult, with such activity rendering the adult liable to a charge of sexual assault*
- ▶ *an adult who engages in sexual activity with a young person for money or other consideration is deemed to have committed an indictable offence and is liable to imprisonment for a term not exceeding five years under Section 212(4)*
- ▶ *prosecutions under Section 212(4) require the Crown to prove that an adult attempted to engage in sexual activity with a person under 18 years of age for money or other consideration, resulting in the requirement that the young person testify against the adult;*

WHEREAS raising the age of consent from 14 years could assist in the prosecution of adults who buy sex from young people because the adult could be charged with sexual assault and it would not be necessary to prove that there was a negotiation for money or other consideration;

THEREFORE BE IT RESOLVED that the Federal Government be urged to amend the Criminal Code of Canada to raise the age of consent for sexual activity between a young person and an adult from 14 years to at least 16 years of age.

2.3 Liability for local governments

Local government provides plan review and inspection services to achieve a satisfactory general level of compliance with a variety of bylaws, including building, electrical, zoning and plumbing and gas. While local government plan review and inspection services identify many potential safety hazards which must be corrected in the interest of public health and safety, overall safety standards may be compromised if owner/professionals come to rely on local government checks and inspections. As such, there is no alternative to involvement and commitment by the owner and the professional consultants.

The services provided by local government direct attention to areas where the expertise and experience of building officials suggests there may be higher than normal or acceptable risk. This is a cost effective form of control which has contributed to the relatively high level of safety in the built environment. It covers many more aspects of design and construction activity than structural design.

At the Council Meeting of 1997 January 13, the Director Planning and Building submitted a report regarding the status of initiatives to reduce the City's potential exposure to construction related liability claims. This report was prepared at the request of Council as a result of a claim pertaining to the failure of a post tension structure to perform as designed. While the City maintained its position of assuming no responsibility for either the structural design or inspection of structural elements, it was named as a co-defendant in the suit.

The report identified a number of areas of concern and concluded that the City should continue to utilize the options provided in the Municipal Act to reduce the potential exposure to liability claims. The report also noted that some of the concerns identified regarding joint and several liability, accountability commensurate with responsibility, qualifications, education, warranty and insurance, remain outstanding and require a concerted effort to bring them to a successful conclusion.

The following resolutions which reiterate these outstanding concerns are proposed for submission to the 1997 UBCM convention:

(i) *Designation of Liability*

WHEREAS local government is the only participant in the building safety system which may be considered an independent third party having the protection of the public with respect to health and life safety as its sole interest;

AND WHEREAS it is desirable to maintain and enhance these local government services;

THEREFORE BE IT RESOLVED that the Province of B.C. put legislative changes in place, where required, to ensure that local governments checking plans or conducting inspections on behalf of the community do not assume liability for individual owners and contractors as a result of these procedures and;

(ii) *Amendment to Sections 734 and 755.4 of Municipal Act to include Inspection Services*

WHEREAS the adoption of Bill 71 and subsequent amendments to Section 755.4 of the Municipal Act provided local governments an opportunity to reduce liability resulting from Plan Checking;

AND WHEREAS this did not address the corresponding and equally important liability which accrues from inspections:

THEREFORE BE IT RESOLVED that Sections 734 and 755.4 of the Municipal Act be expanded to include inspections and;

(iii) Time Period Limits for Liability

WHEREAS there is a prevailing misconception that there exists a warranty of construction by local governments without regard to the date of the construction, involvement of design professionals or compliance of the owner and contractor with the standards set out in the B.C. Building Code and City bylaws;

AND WHEREAS the law regarding joint and several liability further magnifies the transfer of negligence from individuals responsible for standards compliance to the Government agency;

AND WHEREAS claims against local governments for building claims more than ten years following the date of issuance of the building permit, are difficult to defend due to a lack of records and/or witnesses;

THEREFORE BE IT RESOLVED that the Province of B.C. put legislative changes in place such that the liability of a local government arising out of its building regulation services would be limited to a reasonable period of time following the provision of those services and that the ultimate limitation period would be reduced from 30 years to 10 years from the date that the service is rendered and;

(iv) Several Liability and Insurance Requirements

WHEREAS many design professionals in the Province do not carry liability insurance and many developers incorporate small companies to shelter them from claims or simply have no assets to compensate the parties they injure;

AND WHEREAS in joint and several actions, each defendant is jointly named and liability may be apportioned by the Courts as a percentage, based on the determined level of involvement or responsibility;

AND WHEREAS where a defendant is found by the Courts to be liable to any degree (i.e. 1%), and the remaining defendants jointly named are not able to provide compensation as apportioned by the Court, the remaining defendant may be responsible for the entire amount;

AND WHEREAS local governments are an easy target through their building regulation function to acquire the funds necessary to pay injured parties;

THEREFORE BE IT RESOLVED that the Province of B.C. put legislative changes in place such that where the owner/builder of a property has failed to meet the B.C. Building Code Standards and is in breach of the City bylaws, liability of the parties should be several - not joint and several and;

BE IT FURTHER RESOLVED that the Province of B.C. put legislative changes in place such that design professionals in British Columbia be required to maintain insurance adequate to the risk involved and;

(v) **Advancement of Building Industry Education & Certification Standards**

WHEREAS the inferior quality of materials used by some builders, their lack of experience, their attempts at shortcuts and cost savings and their poor budget skills can lead to an inferior product;

AND WHEREAS the unrealistic expectation that local government inspectors can discover all defects and provide an unlimited warranty that no defects hidden or otherwise are present, results in the Regulatory Authority becoming an insurer of the work and the product it regulates;

AND WHEREAS more time and effort is spent on projects involving the less qualified and the less experienced builders which increases the probability that the inspector will not find all of the faults;

THEREFORE BE IT RESOLVED that the Province of B.C. put legislative changes in place such that local government would not be liable for claims involving the use of sub-standard building products unless they have actual knowledge of a defect in the product and have been advised by the agency which monitors and tests products for Standards compliance and;

BE IT FURTHER RESOLVED that the Province of B.C. put legislative changes in place which will provide for the advancement of education and certification standards throughout the building industry.

3.0 STATUS OF ACTIVE PAST RESOLUTIONS

The following updates the status of those resolutions previously adopted by Council and the UBCM which are still active but not yet the subject of Provincial legislation.

1995 Resolutions

3.1 (B10) Authority to Designate Buildings as Unsafe for Occupancy

This resolution requested that the Province enable municipalities, through the building inspector, to evacuate a building or portion of a building which the inspector considers to present and imminent or serious danger to life or property.

This resolution was endorsed by the UBCM and forwarded to the Provincial Government for comment. The Province has indicated that the resolution is unclear as to the particular circumstances which would warrant giving powers to the building inspector to order and enforce an evacuation of a building because of imminent and serious danger to life or property. As such, City staff will contact the Ministry of Municipal Affairs directly to clarify the information provided in the resolution to assist in its further consideration by the Ministry.

3.2 (B52) Mitigation Measures - Provincial Highway Improvements in Urban Areas

This resolution requested the Province to amend the legislation and guidelines governing the development of the Provincial highway system in the Lower Mainland to allow for Provincial funding of special off-road mitigation measures considered necessary in urban areas.

This resolution was endorsed by the UBCM Executive in 1995, and forwarded to the Provincial Government for comment. The Provincial response to this 1995 resolution is to not recommend broad application of noise attenuation measures. However, the Ministry will pursue the requirements to make municipalities aware of the Noise Attenuation Policy and to enter into memoranda of understandings on setback of residences from established arterial expressways and freeways in the Lower Mainland.

1994 Resolutions

3.3 (B25) Age Classification and Restriction of Video Games

This resolution requested the classification and regulation of video games based on violence, hatred or sexual exploitation. This resolution was endorsed at the 1994 UBCM Convention and was forwarded to the Provincial Government for consideration.

In response to this resolution, the Provincial Government has worked with the video game industry, and others, to implement a game rating system to provide consumers with information on the age suitability of games, as an alternative to government regulation of the industry. The Attorney General has indicated, however, that this Ministry would be prepared to re-examine the merits of amending legislation should self-regulation by the industry fail.

Given that the simple provision of information on the age suitability of games does not preclude access by young people to those games, staff would, based on the resolution endorsed at the 1994 UBCM Convention, staff intend to write to the UBCM to again request that the Attorney General be urged to re-enter discussions on the administrative and legislative changes proposed and endorsed in the 1994 resolution.

1993 Resolutions

3.4 (B29) Crossbows

This resolution was endorsed at the 1993 UBCM Convention and referred to the Federation of Canadian Municipalities, where it was endorsed at their September Board meeting. The Minister of Justice and Attorney General of Canada, The Honourable Allan Rock, on 1994 January 20, provided a response to the FCM in response to the resolution.

The Minister advised that while it may not be practical to use the existing Criminal Code authority to declare crossbows to be a "restricted weapons", he is examining this and other options with the hope of being able to respond to public concerns in the near future. The UBCM will apprise staff of any further responses from the Minister.

3.5 (C38) Recyclable Materials

This resolution requested the Federal and Provincial/Territorial governments to enact legislation requiring suitable percentages of recyclable materials in new products manufactured of paper, glass, plastic, metals and other recyclable materials in new products reclaimed from the waste stream. A similar resolution was adopted by the Federation of Canadian Municipalities in 1990.

This subject continues to be dealt with by the UBCM Environment Committee as part of its ongoing work program related to environmental issues.

3.6 (C50) Excessive Packaging

This resolution requested that the Provincial Government enact policies and/or legislation to require manufacturers and distributors of goods and materials to reduce the amount of packaging used for their products. It further requested that the Province also enact policies/legislation whereby all public agencies and corporations give preference to suppliers of goods and materials that employ reduced methods of packaging. The UBCM has been advised by the Provincial Government that it is considering the establishment of a stakeholders committee to look at how a product and packaging stewardship program could be implemented.

In a somewhat related matter, the provincial government recently announced a new deposit-refund system for beverage containers. The new system will apply to all ready to drink beverages, except milk and milk substitutes and beverages in containers larger than 5 litres. The new system will focus on the creation of a network of privately operated and managed depots in communities across the Province. The UBCM's Environment Committee has indicated its support for the new program and its willingness to work with government and industry in the implementation of the new depot collection system.

1992 Resolutions

3.7 (B8) Disabled Parking Enforcement

This resolution was submitted in response to concerns regarding the enforcement of illegal parking in disabled parking areas.

In 1996, Bill 10 Motor Vehicle Amendment Act contained legislative changes that offered some assistance in addressing this issue. In addition, the establishment of a Memorandum of Understanding (MOU) on accessibility last year has generated further discussions between the MOU Coordinator, communities and provincial staff on enforcement issues now facing local governments. City staff will continue to monitor progress on this issue to identify the appropriate role for the City in the enforcement of illegal parking in disabled parking areas.

3.8 (B50) Community Care Facilities/Group Homes

This resolution requested that the Province, notwithstanding the provisions of the Community Care Facilities Act, consult with local government regarding plans to establish group homes and other community based residential facilities. As well, it was requested that the Province develop a data base on all licensed residential care facilities and other residential institutional uses throughout the Province.

Through the establishment of an Inter-ministerial Committee on special needs housing, the Province has been making a greater effort to consult with local government officials on the planning of group homes and special needs housing. In early 1997, the Province established Regional Inter-Ministry Committees on Special Needs Housing (R.I.M.C.'s) in Vancouver and in Penticton. The R.I.M.C.'s are intended to function on a one year pilot basis with representation from various provincial ministries and municipal governments. They will focus on a range of issues relating to the planning and delivery of special needs housing services. As local governments are 'at the table', the R.I.M.C. model could prove to be an effective means to address the concern put forward in the 1992 UBCM resolution on community care facilities and group homes.

Other Active Resolutions

3.9 (1991-B58) Purchase of Factory Designed Alternate Fuel Vehicles

This resolution was based on the fact that in British Columbia, factory designed vehicles that utilize alternate fuels are not commercially available and therefore costly retrofits are required. It was proposed that the Province establish a Province wide purchasing pool for these vehicles to urge the automobile industry to produce factory alternate fuel vehicles for the B.C. market.

In 1995 November, the Provincial Government released a policy paper entitled 'Green House Action Plan' that contains a proposal for the promotion and demonstration of fuel efficient and alternative fuelled vehicles. To further assist with this proposal, the Provincial Government has also established vehicle purchase guidelines for vehicle fleets.

3.10 (1990-B53) Development Cost Charges for Social Amenities

This resolution requested an amendment to Section 985 of the Municipal Act to authorize municipalities to collect development cost charges for child care facilities and other social facilities and amenities as deemed necessary by the Municipality. Similar resolutions were also passed in 1991 and 1994.

The Ministry of Municipal Affairs has begun a comprehensive review of the system of development financing in B.C. In addition, the Development Finance Review Committee was formed to examine a variety of issues primarily related to DCC's. As a member of the Review Committee, the UBCM has asked that a number of DCC-related issues form part of the review, including the longstanding request to broaden the purposes for which DCC's may be collected.

3.11 Provision of Compensation to Municipalities for Street Closures

Endorsed by the UBCM in 1979 and 1983, this issue was brought up for consideration in 1987 at the Premier's Conference on decentralization. The Land Title Amendment Act 1993, eliminates the entitlement of landowners, other than the original subdivider, to annex adjacent dedicated roads without compensation. In such a case, the purchaser must pay market value. A proposal to assign municipalities title to municipal roads and allow road abandonments at the discretion of Municipal Councils remains in the hands of the Ministry of Municipal Affairs. The Ministry of Municipal Affairs has indicated that they are still looking at legislative changes regarding this issue.

3.12 All-Terrain Vehicles Act

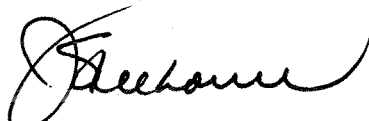
First introduced by Burnaby, a renewed request from Tumbler Ridge was endorsed at the 1993 UBCM Convention calling for the Provincial and Federal governments to take action to control the misuse and improve safety, consider licensing and the establishment of operation and training and safety programs for operators of ATVs and snowmobiles.

The Province has indicated that the current Motor Vehicle (All Terrain) Act applies only to snowmobiles and not other all-terrain vehicles. While no decisions have been made in regard to possible expansion of the regulations pursuant to the Motor Vehicle (All-Terrain) Act, the Province has indicated that it will give further consideration to the request of the UBCM in regards to this matter.

3.13 Strata Plans for New and Unoccupied Buildings

This resolution was first sponsored by Burnaby in 1983 and again in 1987 to ensure that municipal bylaws are not made ineffective by excluding municipal approval of strata applications for new and unoccupied buildings.

The Ministry of Finance and Corporate Relations circulated in 1994 April a discussion draft of the proposed new Condominium Act. A review of the draft reveals that provision has not been made for municipal approval of strata applications for new and unoccupied buildings. Subsequently, staff submitted a letter to the Ministry of Finance and Corporate Relations requesting inclusion of this item within the Condominium Act revisions. The UBCM has been advised that the consultation is still ongoing with respect to the Condominium Act revisions, and that nothing is expected to come forward this year.



D.G. Stenson, Director
PLANNING AND BUILDING



- cc: City Manager
- Director Engineering
- Director Finance
- City Solicitor
- Chief Building Inspector

