

- update the bylaw to reflect the four cycles of building code changes
- update, remove or provide administrative requirements as needed for clarity, to address voids or remove unneeded or outdated regulation
- consolidate separate building and plumbing bylaws into a single bylaw
- define Inspection Process for both complex and standard building projects.

BACKGROUND

The current Building Bylaw was last updated in 1993. Since that time a number of significant changes in the municipal building context have occurred including four cycles of plumbing and building code updates, along with changes to the Local Government Act and Community Charter.

Further, the fundamental sections of the new Building Act came into force as of September 18, 2015. While additional provisions of the Act continue to be phased in to allow municipalities to adjust to the change, the current provisions of the Act nullify a number of items within the current bylaw that are under the regulatory authority of the building code.

Since the City's last update of the bylaw, BC's leaky condo crisis in the 1990s and early 2000s prompted initiatives by the Municipal Insurance Association (MIA) to mitigate liability risk for municipalities in their building regulation activities. These initiatives included the development of a model building bylaw in 2002 that aims to guide individual cities in developing new bylaw provisions that support liability risk mitigation.

While the City joined the MIA in 2008, Victoria has yet to adopt the key principles recommended in the MIA's model bylaw and remains one of the few municipalities in BC which have not done so. The model bylaw leverages Part 290 of the Local Government Act to separate construction that includes certified professionals (Complex Buildings or Part 3 Buildings) from buildings that do not have professionals support (Standard Buildings or Part 9 Buildings). The Local Government Act permits a municipality to rely on professional assurances to ensure conformance with building codes in those complex projects have professional involvement. Below is an excerpt from the Local Government Act that outlines limitation on municipal liability regarding building plan approval:

"Limitation on municipal liability regarding building plan approval

290 (1) If a municipality issues a building permit for a development that does not comply with the Provincial building regulations or another applicable enactment respecting safety, the municipality must not be held liable, directly or vicariously, for any damage, loss or expense caused or contributed to by an error, omission or other neglect in relation to its approval of the plans submitted with the application for the building permit if

(a) a person representing himself or herself as a professional engineer or architect registered as such under Provincial legislation certified, as or on behalf of the applicant for the permit, that the plans or the aspects of the plans to which the non-compliance relates complied with the then current Provincial building regulations or other applicable enactment to which the non-compliance relates, and

(b) the municipality, in issuing the building permit, indicated in writing to the applicant for the permit that it relied on the certification referred to in paragraph (a)."

In addition, building design, management and construction practices here in Victoria have changed significantly in the past two decades as the City has grown and densified. Construction projects have increased in size and complexity, and as such, the City's permitting processes and regulatory framework now require greater flexibility to administer these more complicated projects.

Managing limited staff resources effectively and influencing good behaviour from those using the permitting system is a goal of the new bylaw. This will be accomplished through provisions that focus inspections on those areas having the highest potential for issues or risk and by incentivizing actions by applicants to better utilize City resources (i.e. such as adding fees for multiple inspections or permit reviews)

Further, at this time the City's Building and Plumbing bylaws are separate pieces of legislation; however, as the plumbing code is part of the building code and both are regulated through the Building Act, there exists efficiencies and consistency benefits from the consolidation of the bylaws. There is also potential to increase flexibility and support better utilization of staff resources through this change

On August 25, 2016 Council passed a motion directing staff to undertake a review of current fees associated with development and building approvals and to engage the Urban Development Institute and the Victoria Residential Builders Association as part of this review; staff are including an update to the building and plumbing permit fees associated with this update.

Table 1: Fee Revenue and Expenditures for Development Services Functions - 2012 to 2016 (In Millions)

	2012	2013	2014	2015	2016
Expenditures	\$3.215	\$3.319	\$3.378	\$3.376	\$3.539
Revenues	\$2.458	\$2.633	\$2.864	\$3.243	\$4.046

As noted in the previous staff report (Appendix A), and summarized in the table above, existing fees do not cover City costs associated with development applications. Over the past five-year period, costs have exceeded revenues from development applications and permits by a total of approximately \$1.5 million.

At the same time, staff and Council have made strong commitments to increasing levels of service. The proposed bylaw updates aim to keep rates as low as possible to support ongoing development and renewal of the City's building stock while minimizing, to the extent possible, inputs to support these functions from general tax revenue. The approach also supports graduation of the overall fee structure to generate a larger share of total revenue later in the development process when applicants have greater surety of timing and some entitlements are already in place.

Based on this approach, the proposed bylaw recommends the increase in permit fee rates from 1.25% of construction costs to 1.4%. Based on analysis undertaken by staff, this would see the fees collected within an average year to match accumulated costs. In years of higher construction volume, such as observed in 2016, it is proposed that surplus funds be directed to a reserve account to cover administration costs in years of lower construction activity. This approach would support more consistent financial and staffing planning for these departments going forward.

ISSUES & ANALYSIS

Key considerations in preparation of the Building and Plumbing Bylaw are as follows:

- limit exposure to liability risks by incorporating core provisions of the model bylaw put forth by the Municipal Insurance Act
- become compliant with the Building Act and consistent with other applicable legislation
- promote efficient and normalized use of the City's permitting and inspection services
- define the inspection process for both complex and standard building projects

- consolidate the Building and Plumbing bylaws to support flexibility in application and staff resourcing
- update fee schedules to support cost-recovery for development approval and permitting functions.

In addition to the considerations identified, it is important to note that the development of the bylaw also aims to support the following objectives:

- support opportunities for a higher-level of code conformance
- support corporate strategic objectives
- simplify processes and limit bureaucracy.

Limiting Exposure to Liability Risks

The MIA's model bylaw builds on the Local Government Act and its provision for a municipality to be reliant on professionals when they are involved in a construction project. A key principle in the MIA bylaw is the clarification of the role of municipal staff in determining that due regard has been given to health, safety, accessibility and protection of property by the owner, design professionals and constructors during the period of design and construction of buildings and structures. Victoria's proposed Building Bylaw includes a provision that the role of the building official in the case of complex buildings is to:

- monitor design of professional submissions for completeness
- monitor the professional's supervisory activity of the construction
- monitor the activity of the construction contractors.

Where the monitoring indicates that professional oversight is not occurring, construction is deviating from approved plans or the inspector becomes aware that deficiencies exist, the building official may bring this to the attention of the professional for attention and action.

The BC Building Code sets out the role of owners and design professionals in the development of complex buildings and requires the owners to retain architects and professional engineers throughout the project development. The role of professionals is described in the Code as the designer and supervisor of the construction as it is they that provide assurance that the work meets the minimum standards of the Code.

These relationships are well-established and incorporated into the bylaws of many municipalities such as Port Coquitlam, Maple Ridge, Kelowna, Quesnel, Nanaimo, Surrey and District of North Vancouver. As such, staff are recommending a similar definition of roles where professional oversight is a part of an application to support limiting of liability for the City and to support more streamlined compliance processes where applicable.

Compliance with the Building Act

The BC Building Act came into effect in Spring of 2015 with the intent to promote consistency, competency and innovation province-wide. The current building bylaw needs minimal revision to be compliant with the Act, but revision is required nonetheless.

The main areas of the bylaw affected by the Building Act are the requirements for Canopies (Part 7) and Pre-1950 Buildings (Part 10). These items are regulated by the building code and do not require specific attention in the Building Bylaw. The regulations imposed on these items will remain the same except that now those regulations will come from the source which is the Building Code.

Terms defined in the Building Code are no longer redefined in the bylaw where it is unnecessary to do so. The bylaw was written to remove redundant content that repeats the Building Code to the extent possible. Continual referral to source documents lessens the need for maintenance to the bylaw in the future.

Permit Partial Scopes of Progress and Partial Scopes of Occupancy

The size and complexity of buildings is ever increasing and methods employed to construct them are evolving. Project managers of these larger, complex buildings are often ready to begin work on foundations while the details of unit layouts or mechanical systems may not follow for months. Likewise, in the construction of new complex buildings, developers are often ready to begin occupying a portion of a building while the remainder is still under construction. The Building Code recognizes this practice and provides accommodation to allow for these partial scopes of progress and it is proposed that this accommodation be reflected in the City's bylaw.

The proposed bylaw allows inspectors to issue a permit or occupancy in full or in part. This allows building officials to work with developers with discretionary tools. The provisions proposed decreases redundancy in paperwork and record keeping without imposing requirement for redundant submissions onto applicants. This translates into efficiencies in both time and process for all involved, which is particularly important where staff resources are considered.

Better Definition of Inspection Processes

As stated previously, the existing bylaw requires Inspections staff to inspect up to seven separate times throughout the progress of new construction. Some inspections provide a lower level of value than others. As construction technology advances, the focus of inspection resources should shift towards new areas carrying a higher risk of failure. A risk-based approach makes better use of City staffing resources while addressing issues by trend. By focusing inspection requirements to address known areas of concern, much greater value can be derived from the inspection process. In more complex buildings where professionals are involved, the updated bylaw proposes a balanced approach whereby the City will rely on professionals for technical oversight and ultimate responsibility of a project in order to reduce exposure to liability risks while the City monitors this professional oversight to ensure work is not deviating from approved parameters.

Consolidate Building and Plumbing Bylaws.

Introduction of the Building Act and undertaking the Development and Permit Fee Review have given cause to also review the existing Plumbing Bylaw and provide a strong rationale for consolidation of these two bylaws into a single piece of legislation. As the Plumbing Code is part of the Building Code, regulation of both under a common bylaw is intuitive and provides for efficiency gains in administration.

That said, there are a number of requirements within the City's current Plumbing Bylaw that would more appropriately belong in City engineering standards. Requirements for connection to City infrastructure and requirements for dealing with surface drainage, which are currently regulated through the Plumbing Bylaw, should more appropriately exist with groups tasked with maintaining and operating those systems. As such, staff are recommending updates to relevant Engineering bylaws to include these items prior to adoption of the new consolidated Building Bylaw.

Promote Efficient and Normalized Use of the City Permitting and Inspection Services

The City's existing bylaws have few tools within them to support or influence efficient use of the permitting and inspections services offered by the City.

The proposed bylaw addresses these gaps through a set of additional charges for unreasonable additional work items such as applications that are revised after issuance, inspection requests in excess of two per required inspection, and for permits that are applied for after work has commenced without a permit. The fees associated with each are not overly punitive as they are intended to incent good behaviors rather than penalize bad behaviors.

The Bylaw also contains a requirement for informational placards to be posted at all construction sites. As building permits are not public files, there is no opportunity for neighbours to have access to proposed plans, project timelines and conformance with other provincial standards. In addition to providing the site contact, the placards would also contain general information and contact information for organizations such as WorkSafe BC or City web resources.

The general interest and concerns of neighbours generates draws on staff time providing basic project information to those people when this info could be provided more directly on site.

OPTIONS & IMPACTS

2015 – 2018 Strategic Plan

Objective 1: Innovate and Lead:

Create an efficient and purposeful permitting and inspection process.

Objective 3: Strive for Excellence in Planning and Land Use:

Reduced processing times for permit applications through improved process.

Objective 5: Create Prosperity through Economic Development:

Simplify permitting process reducing hurdle for businesses and developers to open businesses and create jobs.

IMPACTS TO FINANCIAL PLAN

Over the 2011 to 2016 period, costs have exceeded revenues from development applications and permits by a total of approximately \$1.15 million.

At the same time, staff and Council have made strong commitments to increasing levels of service. The proposed updates aim to keep rates as low as possible to support ongoing development and renewal of the City's building stock while minimizing, to the extent possible, inputs to support these functions from general tax revenue. The approach also supports graduation of the overall fee structure to generate a larger share of total revenue later in the development process when applicants have greater surety of timing and some entitlements are already in place.

Based on this approach, the proposed bylaw recommends the increase in permit fee rates from 1.25% of construction costs to 1.4%. This is in addition to changes to fee schedules for Development Services considered separately by Council as part of the update to the Land Use Procedures Bylaw.

Based on analysis undertaken by staff, this would see the fees collected within an average year to match accumulated costs. In years of higher construction volume, such as those observed in 2016, it is proposed that surplus funds be directed to a reserve account to cover administration costs in years of lower construction activity. This would support more consistent financial and staffing planning for these departments going forward.

CONCLUSIONS

The consolidated Building and Plumbing bylaw is an effective tool to administer all types of construction. It reduces exposure to liability risks, addresses 20 years' worth of legislative and code changes, provides better tools for the City to administer construction efficiently, and streamlines a number of items related to upkeep of bylaws and processes for customers.

Respectfully submitted,

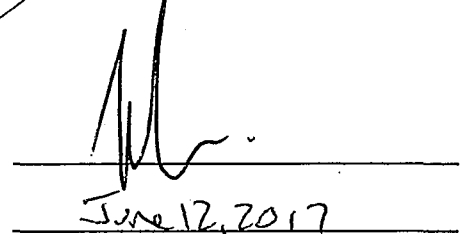


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Report accepted and recommended by the City Manager:



Date:

June 12, 2017

List of Attachments

- Appendix A: Fee Review Report
- Appendix B: MIA – Model Bylaw Project
- Appendix C: BC Building Act
- Appendix D: Proposed Consolidate Building and Plumbing Bylaw
- Appendix E: Existing Building Bylaw
- Appendix F: Existing Plumbing Bylaw
- Appendix G: Existing Plumbing Fee Bylaw