



Planning and Land Use Standing Committee Report

Date: Nov. 8, 2013 **From:** Robert Woodland, Director,
Legislative & Regulatory Services
Subject: Work without permit – 1128 Empress Ave. / Bylaw File #1010

Executive Summary

The purpose of this report is to recommend the filing of a notice on title in respect to work that has been done without permit to expand the livable space of this rental duplex by converting the basement into a suite, making a rental triplex. The owner has indicated that they will not seek building, plumbing, or electrical permits to return the property to an approved configuration and are aware the city may place a Notice on Title.

Recommendation

The Building Inspector recommends:

1. That the Committee direct the Corporate Administrator to file a notice in the Land Title Office in relation to the property located at 1128 Empress Ave., legally described as **The Southerly 65 Feet of Lot 6, Section 3, Victoria, Plan 1036**, indicating that a resolution relating to this property has been made under the authority delegated pursuant to Section 57(3) of the *Community Charter* and the provisions of the *Property Maintenance Delegation Bylaw*, and advise that further information regarding this resolution may be inspected at the Legislative & Regulatory Services Department in Victoria City Hall.

Respectfully submitted,

Earl Garner
Senior Bylaw Officer
Bylaw & Licensing Services

Mark Hayden
Manager
Bylaw & Licensing Services

Robert Woodland
Director
Legislative & Regulatory Services

List of Attachments

Appendix A – Two (2) exterior photographs of the subject property taken Feb. 10, 2008
One exterior photograph of the subject property taken Sep. 26, 2013

Purpose

The purpose of this report is to advise the Planning and Land Use Standing Committee about the illegal occupancy and unpermitted work at 1128 Empress Ave., and to recommend to the Committee that under Section 57(3) of the *Community Charter* and the provisions of the *Property Maintenance Delegation Bylaw*, that a notice be filed in the Land Title Office in respect to this property to warn prospective purchasers and lenders of bylaw violations in respect to the work that has been done without permit to expand the livable space of this rental duplex by converting the basement to a finished suite.

Background

Section 57 of the *Community Charter* allows the City to file notice on title of any property where the Building Inspector:

- a) observes a contravention of a municipal bylaw, provincial building regulation, or another enactment that relates to the construction or safety of buildings or other structures; or
- b) discovers that something was done without a permit or inspection.

Before notice may be filed on title under Sec. 57 of the *Community Charter*, Council must give the Building Inspector and the property owner an opportunity to be heard.

For the purpose of filing notices under Sec. 57(1)(b) of the *Community Charter*, the Manager of Bylaw & Licensing Services is a Building Inspector under the *Building Bylaw*.

Under the provisions of the *Property Maintenance Delegation Bylaw*, Council has delegated the authority to hold hearings and make decisions under Sec. 57 of the *Community Charter* to the Planning & Land Use Standing Committee.

Section 2.2(1) of the *Building Bylaw* states that a person must not:

- a) construct; or
- b) change the occupancy of a building unless the building's owner has obtained a building permit from the Building Inspector.

The *Building Bylaw* defines "occupancy" as the use or intended use of a building or part of a building for the shelter or support of persons, animals or property, according to the occupancy classifications for buildings set out in the *Building Code*.

Issues and Analysis

The property at 1128 Empress Ave. is located in the Fernwood neighbourhood in an R-2, Two Family Dwelling District. The approved use of the property per the approved building plans is a Duplex. The property was inspected originally October 2nd, 2008 and again on September 26th, 2013. Upon inspection it was discovered that there was an additional suite located in the basement of this dwelling, and it was also revealed that a substantial amount of work had been completed without permit.

Options and Impacts

The filing of a notice on land title is part of a graduated enforcement strategy intended to bring a property into compliance with the applicable bylaws and regulations. A notice on title provides incentive to the property owner to resolve the outstanding issues as it serves to warn lenders or prospective purchasers that work has been done without a permit. Filing a notice on title under Sec. 57 of the *Community Charter* is therefore intended to ensure that a potential purchaser is aware of bylaw violations in respect to the work that has been done without permit to expand the livable space of this rental duplex by converting the basement to a finished suite. The notice can be easily removed once the property has been brought into compliance.

Official Community Plan Consistency Statement

The enforcement action recommended in this report is being sought in order to ensure that improvements on property and property use are compliant with provisions of the Zoning Regulation Bylaw and Building Bylaw as appropriate. This in turn helps to ensure congruency with the OCP.

Financial and Staff Capacity Assessment

Staff have spent approximately 5 hours working on this file in order to obtain compliance. Filing of a Notice on Title (as recommended) will cost the City \$47.50.

Public Engagement and Consultation

Committee consideration of this matter requires a public hearing at which time the affected property owner may make direct representations to the Committee in respect of the recommendation or a related issue. Other members of the public who have a direct interest in this matter may also provide input to the Committee, at the discretion of the Committee.

Conclusion

The registered owner has stated they will not make application for permits at this time to bring the property into compliance as per the registered legal use of Duplex. This Officer has determined that the appropriate course of action at this time is to proceed with filing a notice on title. Doing so will ensure that full disclosure is made to prospective purchasers and/or lenders in the event that this property be listed for sale prior to the outstanding issues being satisfactorily resolved.

Recommendation

The Building Inspector recommends:

1. That the Committee direct the Corporate Administrator to file a notice in the Land Title Office in relation to the property located at 1128 Emress Ave., legally described as **The Southerly 65 Feet of Lot 6, Section 3, Victoria, Plan 1036**, indicating that a resolution relating to this property has been made under the authority delegated pursuant to Section 57(3) of the *Community Charter* and the provisions of the *Property Maintenance Delegation Bylaw*, and advise that further information regarding this resolution may be inspected at the Legislative & Regulatory Services Department in Victoria City Hall.



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