



## COUNCIL REPORT

To: Mayor and Council

Date: June 13, 2023

From: Paul Gipps, CAO

File No: P 23-05

Subject: **Additional Construction Requirements for Construction Sites**

Report Prepared by: Jeremy Frick, Building and Licensing Manager

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**RECOMMENDATION** to Consider and Resolve:

**THAT** Council gives first, second, and third reading to the City of West Kelowna Building Regulation Bylaw Amendment No. 0086.07, 2023; and

**THAT** Council gives first, second, and third reading to the City of West Kelowna Fees and Charges Amendment Bylaw No. 0028.75, 2023; and

**THAT** Council gives first, second, and third reading to the City of West Kelowna Good Neighbour Amendment Bylaw No. 0151.03, 2023; and

**THAT** Council gives first, second, and third reading to the City of West Kelowna Ticket Information Utilization Amendment Bylaw No. 0095.49, 2023; and

**THAT** Council gives first, second, and third reading to the City of West Kelowna Ticket Information Utilization Amendment Bylaw No. 0095.50, 2023; and

**THAT** Council gives first, second, and third reading to the City of West Kelowna Bylaw Enforcement Notice Bylaw Amendment Bylaw No. 0093.51, 2023; and

**THAT** Council gives first, second, and third reading to the City of West Kelowna Bylaw Enforcement Notice Bylaw Amendment Bylaw No. 0093.52, 2023.

### **STRATEGIC AREA(S) OF FOCUS**

**Strengthen Our Community** – We will provide opportunities for the residents of West Kelowna to build connections, celebrate successes, embrace the community's strengths and diversity, address shared needs, and contribute to shaping the community's future.

**Foster Safety and Well-Being** – We will pursue through direct action, advocacy, and collaboration with local and regional service providers, investments in community health,

needs-based housing, emergency preparedness, policing, and other services that foster safety and well-being in West Kelowna.

## **BACKGROUND**

In response to neighbourhood concerns, September 6, 2022 Council gave direction to staff to develop bylaw amendments that identify when a neighbourhood becomes mostly occupied, there are additional development requirements such as:

1. Reasonable timeframes for development to begin and be completed,
2. Reasonable standards for the control of dust and debris,
3. Reasonable times for construction noise to begin and end, and
4. Reasonable guidelines for the parking or storage of equipment, vehicles, and materials.
5. Create more penalties for enforcement.

These items are generally regulated under the following City of West Kelowna bylaws:

- Building Regulation Bylaw B0086
- Good Neighbour Bylaw B0151
- Fees and Charges Bylaw B0028
- Ticket Information Utilization Bylaw B0095
- Bylaw Notice Enforcement Bylaw B0093

## **DISCUSSION**

To address Council's direction, the proposed changes include amendments to the following bylaws:

- Building Regulation Bylaw B0086
- Good Neighbour Bylaw B0151
- Fees and Charges Bylaw B0028
- Ticket Information Utilization Bylaw B0095
- Bylaw Notice Enforcement Bylaw B0093

Furthermore, the report will address additional ancillary amendments which are unrelated to Council's direction motion but represent changes that would bring the City's processes more in line with neighbouring jurisdictions. As well as, addressing issues that have arisen because of rising public awareness of radon risks, recent building code amendments and sections of the bylaws that have a history of being problematic.

## **1. Reasonable Timeframes for Development to Begin and Be Completed**

### **Building Regulation Bylaw No. 0086 – Proposed Amendments**

#### **Building Permit Expiration**

The current bylaw allows an indefinite period of validity, providing the builder continues to “work” on the project consistently, however that can allow some projects to go on for many years potentially impacting the surrounding properties.

The City’s experience shows a firm time frame for permit validity allows for construction on the majority of projects to be completed within a two-year process. There are projects that would naturally extend beyond this period and a provision within the proposed amendment has been made to allow for permit extension. Permits that take more than 2 years would be able to receive an extension if needed and specific conditions can be applied to minimize the impacts to the neighbourhood, such as screening.

Permit extension is not meant to be automatic after two years has elapsed. The request for extension must be made in writing, and the Building Inspector can set conditions on the extension to contain the impacts of problematic sites on neighbouring properties for the extended amount of time it is taking to complete a project.

Proposed amendments:

8.3 A permit shall be considered expired if:

8.3.1 The construction on a project authorized by the permit is not started within 6 (six) months from the date of issuance of the permit, ~~or~~,

8.3.2 The work, once started, is suspended, or discontinued for a period of one year; ~~or~~,

8.3.3 A period of two years has lapsed since the permit issuance date.

8.3.4 Notwithstanding subsection 8.3.3, a building permit may be extended, at the discretion and conditions of the building inspector, for up to one year when application for permit extension is made within one month of the expiration of the original permit and the fees outlined in the Fees and Charges Bylaw.

8.3.5 The building inspector may require the temporary screening outlined in section 8.4 as a condition for permit extension.

8.4 Where a building permit has been extended, expired, or cancelled with construction incomplete, the building inspector may require that temporary solid screening be installed around the property in part or in whole in conformance with the following:

8.4.1 temporary continuous solid screen at least 2.0m (6.6 ft) in height, measured from grade to the top of the solid screen and include an access gate acceptable to the Fire Department and all materials used for construction of the solid screen shall not consist of untreated plywood, corrugated metal or chain link fencing, except for chain link fencing that contain slat inserts to create a visual barrier,

8.4.2 temporary screening must be installed so as not to obstruct traffic sight lines, and

8.4.3 temporary screening must be added, removed and or adjusted in whole or in part at the written order of the Building Inspector.

### Occupancy Permits

The current language around occupancy is weak and once a conditional occupancy is granted there are no firm timeframes for completion. The change will allow the granting of provisional (temporary) occupancy with completion, dates that are proposed by the client, that give a sunset date to all provisional occupancies. As well, the City does not currently issue “occupancy permits” nor is there a process in the bylaw to grant occupancy permits, therefore, this amendment is also for the general housekeeping of the bylaw.

Proposed amendments:

7.10 No owner, agent or tenant shall allow use of a project or portion of a project for which a permit is required under this bylaw, without first obtaining an occupancy permit.:

7.10.1 a passed occupancy inspection with no deficiencies, or,

7.10.2 written permission from the building inspector for provisional use or occupancy of the project or portion of the project for which the permit is issued.

## **2. Reasonable Standards for the Control of Dust and Debris**

### **Good Neighbour Bylaw No. 0151 – Proposed Amendments**

The Good Neighbour Bylaw No. 0151 contains regulations regarding:

- Blasting,
- Street Nuisances,
- Noise,
- Property Maintenance,
- Repeat Nuisance Calls for Service, and
- Compliance Orders.

### Control of Dust

The proposed new sections would require individuals carrying on any of the activities noted above to apply water or other dust suppressant to prevent the emission of dust so as not to disturb the peace, rest, enjoyment, comfort, or convenience of the public or to foul or contaminate the atmosphere.

Proposed amendments:

Dust Control

**8.7 Regulations**

Every person shall supply water or other dust suppressant to prevent the emission of dust that is liable to disturb the peace, rest, enjoyment, comfort, or convenience of individuals or the public or to foul or contaminate the atmosphere, including but not limited to:

- (a) carrying out construction works, excavation, repair, demolition, or any activity ancillary thereto; or
- (b) depositing, stockpiling, disturbing, or removing soil.

**8.8** The City may issue a Notice in writing to an individual(s) not in compliance with Section 8.7 requiring the person to comply with Section 8.7.

Compliance Orders

The proposed new Section 10.3.(d).(iv) Compliance Orders will contain language that authorizes the City to issue a Notice requiring compliance with the Bylaw within 24 hours, or the City may enter onto the property and bring about such compliance at the cost of the owner or other responsible person.

Proposed amendments:

10.3: (d)

- i) noncompliance with this Bylaw must be remedied within 14 days of the date of delivery of the Notice, or
- ii) in the case of snow, ice or rubbish on a sidewalk or footpath, within 24 hours from the time the snow, ice, or rubbish is deposited thereon, or
- iii) if a property has a history of non-compliance, a Bylaw Officer may issue an Order to remedy the non-compliance within 48 hours of the date of delivery of the Notice, or
- iv) in the case of dust, within 24 hours of the date of delivery of the Notice.

Control of Debris

The Good Neighbour Bylaw No. 0151 allows for an order to be issued to remove unsightly accumulation of materials and rubbish from the real property that are not within normal construction standards. Additionally, the Building Regulation Bylaw No. 0086 has requirements for keeping sites tidy and providing adequate containment for the collection of construction waste materials.

**3. Reasonable Times for Construction Noise**

The Good Neighbour Bylaw B0151 has restrictions on start and end times for construction that are consistent and, in most cases, more restrictive than our surrounding jurisdictions.

Authority Having Jurisdiction	Construction Times
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City of West Kelowna (Bylaw 86)	7am to 8pm any day (bylaw 151)
City of Kelowna (Bylaw 7245)	7am to 10pm any day (bylaw 6647)
City of Penticton (Bylaw 2021-21)	7am to 10pm any day (bylaw 2012-5030)
District of Peachland (Bylaw 2273)	7am to 9pm Monday – Friday (bylaw 2178) 10am to 9pm Saturday (bylaw 2178) 10am to 6pm Sunday (bylaw 2178)
District of Summerland (Bylaw 2013-017)	7am to 9pm any day (bylaw 2021-023)
Regional District of Central Okanagan (Bylaw 835)	7am to 10pm any day (bylaw 403)

#### **4. Reasonable Guidelines for the Parking or Storage of Equipment, Vehicles and Materials**

The Traffic Bylaw No. 00092 contains regulations for on street parking which govern acceptable standards for on street parking within the City. On site parking requirements are outlined in Zoning Bylaw No. 0265.

The Building Regulation Bylaw No. 0086 requires that every permit holder will be responsible for keeping the site in a clean and tidy condition and will be required to provide adequate containment, relative to the size of the project for which the permit was issued, for the collection of construction waste materials.

These existing bylaw requirements combined with the adjustments to fines and stop work orders (see 5. Create More Penalties for Enforcement) should provide appropriate measures to ensure compliance.

#### **5. Create More Penalties for Enforcement**

##### **Building Regulation Bylaw No. 0086 – Proposed Amendments**

Ancillary amendments included in this report update existing fees and penalties to harmonize with other City bylaws and create a larger deterrent for bylaw contravention.

##### **Stop Work Oder**

Rather than restricting the issuing of “Stop Work Orders” for building and zoning bylaw offenses, this amendment will allow the inspector to halt projects for an offense against any City bylaw as it relates to the building permit.

17.1.4 issue a stop work order where a project or a portion of a project is proceeding in contravention of this bylaw or ~~the District's zoning bylaw~~ **other City bylaws**;

## **PROPOSED ANCILLARY AMENDMENTS**

These amendments are proposed to address additional items that would bring the City's processes more in line with neighbouring jurisdictions and to address issues that have arisen because of rising public awareness of radon risks, recent building code amendments and sections of the bylaws that have a history of being problematic.

### **Building Regulation Bylaw No. 0086 – Proposed Ancillary Amendments**

#### **Building Permit Application Expiry**

The City often receives applications that take more than 6 months to get to the issuance stage, this amendment allows the building inspector to use discretion when expiring a permit application.

Proposed amendments:

9.2 A permit application ~~shall expire 6 (six) months after the application date if the permit has not been issued. The materials in support of such application may be destroyed by the District where the applicant has failed to retrieve them within 2 (two) years of the date of application.~~ **may, at the discretion of the building inspector, expire 6 (six) months after the application date if the permit has not been issued.**

#### **Completion of Exterior Finishing**

It is intended that, with the changes to Section 8 Building Permit Expiration, exterior finish will be considered when granting an extension and could be added as a condition by the Building Inspector when an extension is requested.

Delete section 10.9 entirely

~~10.9—Except where prior arrangements have been made by the owner due to the size of the project, the exterior finish of a project shall be completed within 24 (twenty-four) months from the date of issuance of the permit for the project.~~

#### **Soil Gas Control (Radon) Inspection**

The existence of Radon gas has increasingly gained public awareness as well as the science behind the risks. The Okanagan is a well-known location where radon occurs, and the building code provides mandatory requirements for the mitigation system. The system is a simple rough-in while the building is being constructed but can be very costly to install as a renovation. The quality of the installation is key to the system functioning properly and by doing the inspection we can ensure some consistency in the industry and a functional installation. By implementing this new to West Kelowna inspection, we will also be more in-line with neighbouring jurisdictions' inspection process.

## New Subclause

19.7.4 Soil Gas Control (Radon) – after placement of the depressurization pipe, clean granular fill and the air/vapour barrier but prior to pouring the concrete slab or otherwise concealing work;

## Energy Conservation

The provincial government has released amendments to the BC Building Code taking effect as of May 1, 2023, that mean that all new construction will be required to meet Step 3 of the building code energy conservation requirements. To meet Step 3, it is necessary for our clients to engage a licensed energy advisor as part of the design and construction process and while this was expected for the construction of new buildings, it could be quite onerous for those undertaking minor renovations and additions to their buildings.

The province has retained certain Subsections of the code that allow owners to design prescriptively rather than engaging an energy advisor. The requirements to design prescriptively are conservative in nature and are meant to offset the missing energy advisor but allow small projects to proceed with little complexity.

However, to allow the prescriptive design method, each jurisdiction must adopt through a bylaw those code requirements.

Proposed amendment:

## **20** ENERGY CONSERVATION AND REDUCTION OF GREENHOUSE GAS EMISSIONS

**20.1** Pursuant to the Building Act Regulation, BC, Reg. 131/2016 2.10 Ministerial Order M40, Subsection 2.2.(4) buildings can be constructed in conformance with Subsections 9.36.2. to 9.36.4. of Division B of the BC Building Code.

## Penalties

The amendment is meant to harmonize with the penalty language already contained in other City bylaws.

## **2021** PENALTIES

~~Any person who breaches any provision of this bylaw commits an offence and is liable, upon prosecution, to the penalties provided under the Offence Act.~~

21.1 Any person who violates any provision of this Bylaw, or who causes, suffers, or permits any act or thing to be done in contravention of this Bylaw, or who refuses, omits or neglects to fulfill, observe, carry out or perform any duty or obligation imposed by this bylaw, shall be liable on summary conviction to a fine not exceeding Fifty Thousand Dollars (\$50,000.00).

21.2 For the purposes of enforcement under this bylaw, each day the offense continues may be considered a separate punishable offense.

## Bylaw Numbering

Renumber all bylaw sections as required.

## **Fees and Charges Bylaw B0028 – Proposed Ancillary Amendments**

### Permit Extension Fee

Add fee as follows to Schedule 2, (2) Permit Fees, Additional Building Permit Fees

Extend an existing building permit	10% of the original building permit fee, but in no case less than \$150
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### Fees and Charges Bylaw No. 0028

- Change all reference from District of West Kelowna to City of West Kelowna

## **Ticket Information Utilization Bylaw No. 0095 – Proposed Ancillary Amendments**

The changes to Building Bylaw No. 86 and the Good Neighbour Bylaw No. 0151 require amendments to the Ticket Information Utilization Bylaw No. 0095 to add a ticketing ability for new offences and increase the current level of deterrent and ability to incentivize repeat offenders.

### Schedule 1

	<u>Section</u>	<u>Fine</u>
Unlawful construction	7.1	1000
<del>Fail to obtain occupancy permit</del>	<del>7.10</del>	<del>1000</del>
Failure to obtain permission to occupy	7.10.1	1000
Failure to obtain permission to occupy	7.10.2	1000
Failure to follow building inspector order	8.3.5	1000
Failure to install screening	8.4	1000
<del>Fail to finish exterior of project</del>	<del>10.9</del>	<del>100</del>

### Schedule 4

Cause a nuisance	6.1(a)	500
Permit nuisance from property	6.1(b)	500
Unsightly property	8.1(c)	400 500
Obstruct a fire hydrant	8.3(f)	250

## Bylaw Numbering

Renumber all bylaw sections as required.

### **Bylaw Enforcement Bylaw No. 0093 – Proposed Ancillary Amendments**

The changes to the Building Bylaw No. 86 and Good Neighbour Bylaw No. 0151 require amendments to the Bylaw Notice Enforcement Bylaw No. 0093 to add a ticketing ability for new offences and increase the current level of deterrent and ability to incentivize repeat offenders.

#### **Schedule 1**

	<u>Section</u>	<u>Fine</u>
Unlawful construction	7.1	500
<del>Fail to obtain occupancy permit</del>	<del>7.10</del>	<del>500</del>
Failure to obtain permission to occupy	7.10.1	500
Failure to obtain permission to occupy	7.10.2	500
Failure to follow building inspector order	8.3.5	500
Failure to install screening	8.4	500
<del>Fail to finish exterior of project</del>	<del>10.9</del>	<del>100</del>

#### **Schedule 4**

Cause a nuisance	6.1(a)	500
Permit nuisance from property	6.1(b)	500
Unightly property	8.1(c)	<del>400</del> 500
Obstruct a fire hydrant	8.3(f)	250

#### **Bylaw Numbering**

Renumber all bylaw sections as required.

### **Good Neighbour Bylaw No. 0151 – Proposed Ancillary Amendments**

#### **Nuisance Activity**

The Good Neighbour Bylaw currently does not have a general offence clause for causing a nuisance. This is an important factor in the City's ability to issue the \$500.00 Repeat Nuisance Calls for Service Fee. Current bylaw language only allows for the issuance of the Repeat Nuisance Calls for Service Fee for offences specified in the Bylaw. Typically, that has been unsightly premises and excessive noise.

The recommended Bylaw amendment is designed to include all nuisance activity, not just noise or unsightliness.

The Good Neighbour Bylaw defines "Nuisance" as follows:

“Means anything that annoys, gives trouble, or that is offensive, irritating or a pest to anyone residing within the City.”

The Bylaw Department has had to deal with complaints that meet the definition of nuisance activity, but there has not been a section in the Bylaw that enabled any formal enforcement.

## 6 ~~Street Nuisances~~ Nuisance Activity

6.1 No person shall:

- (a) Cause any nuisance within the City, or
- (b) Permit any real property to be used so as to cause a nuisance.

### Private Property Maintenance

It is proposed to remove the word “noxious” from noxious weeds in Section 8.1(d) as weeds is a defined term in the Bylaw and it includes noxious weeds, therefore “noxious” is a redundant word and creates an exclusion of all other weeds which was never intended.

- 8.1. Regulations(d) the accumulation of dead landscaping, vegetation, ~~noxious~~ weeds or other growths to occur or to remain on the real property; or

### Fire Hydrant Maintenance

The City of West Kelowna Fire Rescue Establishment and Operations Bylaw No. 2010, 0114, Section 31 Fire Hydrants, specifies a requirement for the maintenance of hydrants that are installed on private property only. The requirement is to maintain a clear and unobstructed area having a radius of (1) meter around each fire hydrant or standpipe.

The Good Neighbour Bylaw Section 8.3 already imposes a maintenance requirement on property owners to ensure that boulevards, sidewalks, and lanes adjacent to their real property are kept to reasonable standards of maintenance regarding things like weeds, rubbish, discarded materials, and hazardous objects.

It is proposed to add another subsection to Section 8.3 further requiring property owners who have a public fire hydrant adjacent their property, to maintain a clear and unobstructed area having a radius of (1) meter around the hydrant as well as from the hydrant to the roadway, which includes snow and ice.

Proposed amendment:

### Boulevard & Laneway Maintenance

#### 8.3 Regulations

Every owner or occupier of real property shall maintain the sidewalk, boulevard, and land adjacent to their real property and in particular shall:

- (a) remove accumulations of filth, leaves, rubbish, discarded material, hazardous objects and materials which obstruct a drainage facility;
- (b) in keeping with the reasonable standard of maintenance in the area, keep grassed areas trimmed and free of all weeds;
- (c) keep in good repair and up to City standards, all driveway crossings;

- (d) trim and maintain all plantings;
- (e) remove all filth, leaves, rubbish, discarded materials, hazardous objects and materials from all boulevards and sidewalks.
- (f) maintain a clear and unobstructed area, including snow and ice, having a radius of 1 (one) meter around a fire hydrant, as well as a clear 1 (one) meter width from the front of the hydrant to the nearest roadway.

### Enforcement and Penalty

It is proposed to remove the current enforcement and penalty language in Section 11.2 and replace it with the new language reflecting the 2020 change to the Community Charter (s. 263) that increased the maximum penalty permitted for bylaw offences prosecuted under the Offence Act from \$10,000 to \$50,000.

Proposed amendment:

~~11.2 Every person who contravenes or violates any provision of this Bylaw, or who suffers or permits any act or thing to be done in contravention or in violation of any provision of this Bylaw, or who neglects to do or refrains from doing anything required to be done by any provision of this Bylaw, commits an offence and, upon conviction, shall be liable to a fine or penalty not less than \$100.00 and not exceeding \$10,000.~~

11.2 Any person(s) who violate any provision of this Bylaw, or who causes, suffers, or permits any act or thing to be done in contravention of this Bylaw, or who refuses, omits or neglects to fulfill, observe, carry out or perform any duty or obligation imposed by this Bylaw, shall be liable on summary conviction to a fine not exceeding fifty thousand dollars (\$50,000.00).

### Bylaw Numbering

Renumber all bylaw sections as required.

### **FINANCIAL IMPLICATIONS**

The long-term cost implications on almost all the amendments will be a minor reduction or no change.

The addition of a new inspection increases the time spent reviewing individual projects and while anticipated to have no near-term cost increase as we will be able to absorb the additional inspection with current staffing levels, long term may, speculatively, result in a minor increase.

## COUNCIL REPORT / RESOLUTION HISTORY

Date	Report Topic / Resolution	Resolution No.
September 6, 2022	<p><u>It was moved and seconded</u> Resolution No. C245/22 Whereas the City of West Kelowna has a building permitting system for the purpose of managing development in the City; and Whereas building permits are required to start development and follow good building practices; and Whereas development should be done in a manner that is considerate to the neighbourhood it is located in. Therefore, I ask Council to direct staff to develop bylaw amendments that identify when a neighbourhood becomes mostly occupied, there are additional development requirements such as:</p> <ul style="list-style-type: none"><li>• Reasonable timeframes for the development to begin and be completed;</li><li>• Reasonable standards for the control of dust and debris;</li><li>• Reasonable times for construction noise to begin and abated; and</li><li>• Reasonable guidelines for the parking or storage of equipment, vehicles, and materials.</li><li>• Create more penalties for enforcement.</li></ul> <p><u>CARRIED UNANIMOUSLY</u></p>	C245/22

## CONCLUSION

By adopting the amendments of this bylaw, it is anticipated that the result will be a more streamlined process for building permit completion, a safer environment for citizens and the ability to more efficiently deal with citizen concerns around lengthy building processes that impacts surrounding residents.

**Alternate Recommendation:**

**THAT** Council postpone consideration of first, second, and third reading to the City of West Kelowna Building Regulation Bylaw Amendment No. 0086.07, 2023; and

**THAT** Council postpone consideration of first, second, and third reading to the Fees and Charges Amendment Bylaw No. 0028.75, 2023; and

**THAT** Council postpone consideration of first, second, and third reading to the City of West Kelowna Good Neighbour Amending Bylaw No. 0151.03,2023; and

**THAT** Council postpone consideration of first, second and third reading of Bylaw Enforcement Notice Bylaw Amending Bylaw No. 0093.51, 2023; and

**THAT** Council postpone consideration of first, second, and third reading to the Bylaw Enforcement Notice Bylaw Amendment Bylaw No. 0093.52, 2023; and

**THAT** Council postpone consideration of first, second and third reading of City of West Kelowna Ticket Information Utilization Amending Bylaw No. 0095.49, 2023; and

**THAT** Council postpone consideration of first, second, and third reading to the City of West Kelowna Ticket Information Utilization Amendment Bylaw No. 0095.50, 2023.

Should Council wish to postpone consideration of readings, it is requested Council provide further direction.

**REVIEWED BY**

Brent Magnan, Director of Development Approvals

Corinne Boback, Legislative Services Manager / Corporate Officer

**APPROVED FOR THE AGENDA BY**

Paul Gipps, CAO

Powerpoint: Yes  No

Attachments:

1. Building Regulation Bylaw Amendment No. 0086.07
2. Fees and Charges Amendment Bylaw No. 0028.75
3. Good Neighbour Amendment Bylaw No. 0151.03
4. Ticket Information Utilization Amendment Bylaw No. 0095.49
5. Ticket Information Utilization Amendment Bylaw No. 0095.50
6. Bylaw Enforcement Notice Bylaw Amendment Bylaw No. 0093.51
7. Bylaw Enforcement Notice Bylaw Amendment Bylaw No. 0093.52