

NO: R011

COUNCIL DATE: January 17, 2022

REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **January 13, 2022**

FROM: **General Manager, Corporate Services
Acting General Manager,
Planning & Development**

FILE: **3760-01**

SUBJECT: **Proposed Changes to Unpermitted and Illegal Construction**

RECOMMENDATION

The Corporate Services Department and Planning & Development Department recommend that Council:

1. Receive this report for information;
2. Endorse the proposed changes to the City's current practice to responding to unpermitted and illegal construction, all as described in this report; and
3. Direct staff to bring forward the necessary by-law amendments to support this initiative.

INTENT

The purpose of this report is to obtain Council endorsement to amend the City's current practices and by-laws with respect to dealing with unpermitted and illegal construction with the proposed approach provided in this report.

BACKGROUND

This report follows the September 13, 2021 Council Notice of Motion, where Council had directed staff to "... report back regarding illegal and unauthorized construction, with a recommended course of action that includes enhanced enforcement, prosecution and public awareness that can be implemented to mitigate loss of life, destruction of property, and further compliance of the existing and new bylaws."

Unpermitted construction is defined as a structure or renovation where the property owner has not obtained the appropriate building permits from the City to ensure the work adheres to City zoning and building bylaws, in addition to meeting requirements of the BC Building Code but may otherwise be eligible for a permit.

Illegal construction is defined as a structure or renovation that would never meet any of the City bylaws or BC Building code requirements.

The issues surrounding unpermitted and illegal construction has been on the rise over the last several years. It is a situation not limited to Surrey. Many municipalities across Canada are experiencing an increase to unpermitted and/or illegal construction. According to Statistics Canada, the underground economy accounted for \$61.2 billion in economic activity in 2018. The most significant slice of Canada's underground economy in 2018 came from the residential construction industry at 26.2 percent or \$16 billion worth of activity.

The underground economy is defined as consisting of market-based economic activities, whether legal or illegal, that escape measurement because of their hidden, illegal or informal nature. In the case of residential construction, this takes the form of contractors, in some cases being paid cash, for performing both permitted and unpermitted construction and home renovations. In some cases the works are captured in contracts despite the fact they are non-permitted.

The rising cost and availability of real estate, combined with existing homeowners wishing to modify their homes to accommodate renters in secondary suites, and the time it may required to obtain some forms of permit from the City has exacerbated this problem. Since the beginning of 2018, the City has received an increase in the number of public complaints regarding perceived unpermitted and illegal construction.

The COVID-19 pandemic has likely further increased the number of complaints possibly due to discretionary funds available for renovation or additions, as well as neighbours staying home and witnessing trades performing work on neighbouring properties. Complaints are most commonly associated with residential unpermitted construction with varying degrees of severity; however, other issues include construction not following permit requirements, occupancy without final approval, and non-residential construction.

Current Process

Once a complaint is received by the City, a Building Official will attend the site to complete a field review. If the Building Official witnesses illegal or unpermitted works occurring or having occurred on the property, they will issue a Stop Work Order ordering the cessation of further construction.

Despite the City's current process to encourage adherence to building requirements and enforce efforts, the problem persists and is becoming more prevalent. Many property owners have brazenly ignored the City's enforcement actions by physically removing Stop Work Orders that have been posted on their property and/or paying the fines as a 'cost of doing business' considering the considerable future return on investment for the unpermitted construction. It is also common for trades staff to hide or quickly leave the site in an effort to avoid fines when a Bylaw Enforcement Officer arrives at the property. The City's current procedures to bring about compliance are onerous and time consuming, with long timelines for those brought through the court process.

The current consequences for performing unpermitted and illegal construction are not sufficient to deter or reduce the problem without significant amendments to the City's bylaws and internal processes.

Impacts to the Homeowner

Outside of potentially facing City fines for not obtaining a permit, homeowners run the risk of poor workmanship and faulty construction. Following the completion of an unpermitted construction and/or renovation project, insurers may refuse to pay for claims resulting from problems associated with work that was performed without a permit. If damages are the result of non-compliance with the BC Building code, there may be little compensation available to the owner if no permit was issued. The future sale of the home could also be jeopardized once it is revealed that unpermitted or illegal renovations were carried out.

To further exacerbate the issue, new owners may purposely avoid getting permits if they know non-permitted work was completed previously. In some cases this work must be removed to meet by-law and code requirements but in some cases the owners could move forward with appropriate permits to rectify the non-conforming issue.

More importantly, beyond the substantial financial risks that a homeowner may bear for unpermitted or illegal construction, carrying out such work could lead to significant risk to life and safety of occupants. Statistics reveal that the existence of safety hazards is six times more likely with and unpermitted and illegal work.

DISCUSSION

This Fall, an advisory team comprised of staff members from Bylaw Services, Legal Services, Information Technology, and Building Divisions (the “Advisory Team”) was convened to review and make recommendations on the best course of action to reduce unpermitted and illegal construction.

The Advisory Team identified the following key challenges with the current process and policies relating to managing unpermitted and illegal construction in Surrey:

- Balancing the volume of complaints and mitigation without negatively impacting service to those following permitting practices;
- Current fines have not significantly compelled property owners to leverage the permitting process, and in many cases, the fines are considered the cost of business in comparison to the anticipated rental income opportunity;
- Building Enforcement Notices (tickets/fines) are not tied to property, and therefore can be ignored until further enforcement action is taken;
- Many current bylaws associated with zoning and building enforcement require updating and enhancements; and
- Increasing fines will likely result in more disputed tickets.

This report focuses on a proposed approach that will effectively address the above challenges, the impact of which will be a reduction in unpermitted and illegal construction throughout the City.

Accordingly, the Advisory Team has developed a strategy that focuses on three key areas:

1. Bylaw amendments and Public Education;
2. Creation of an Unpermitted and Illegal Construction Enforcement Team and Process Improvements; and
3. Building Adjudication Process.

1. Bylaw Amendments and Public Education

The City's current bylaws and associated fines and processes pertaining to curtailing illegal and unpermitted construction require updating and do not sufficiently deter property owners from engaging in this activity. Staff have determined that certain bylaw amendments and a number of new bylaws are required to significantly deter illegal and/or unpermitted construction.

The proposed changes to the City's current bylaws fall into the following categories:

- Amendments to existing bylaws - Proposed increase in fines for existing bylaws, including the ability to issue fines daily; and
- Introduction of new bylaws and administration fees - Proposed new bylaws and associated fines and administration fees.

A description of the nature of the proposed changes is reflected in Table 1 below.

Table 1. Proposed Bylaw Amendments

Category	Description of Proposed Changes
1. Amendments to existing bylaws - fine increases for existing bylaws	<ul style="list-style-type: none">• Double current \$500 fine to \$1000 -maximum permitted (e.g., ignoring Stop Work Order, preventing an inspection, construction without a permit, occupancy without a permit)• Ability to issue multiple tickets for same offence on separate days
2. Introduction of new bylaws and administration fees	<ul style="list-style-type: none">• Introduction of a new bylaw and associated fines for when a Stop Work Order is not displayed on the property• Introduction of a new bylaw to allow for the daily issuance of fines to a property owner that ignores a no occupancy notice• The ability for the City to recover fees from a property owner for staff time relating to repeat visits to the property

Both the new and revised bylaw amendments will broaden the tools available for enforcement action, and at the same time, increase public awareness of the City's intent to take immediate action to eliminate illegal construction occurring in Surrey.

In addition to the above, staff have identified that an update to the educational materials on City's website is required to streamline the complaint process and facilitate awareness of the building code, permitting processes, and related bylaw updates.

In addition, online tools will be provided to customers, including website lookup of property information to determine permitting status. This approach is used in other municipalities within the region and will help to reduce inquiries of unpermitted construction.

Upon approval of this Corporate Report, a subsequent report containing the noted proposed new bylaws and bylaw amendments will be presented to Council for approval.

2. Unpermitted and Illegal Construction Enforcement Team and Process Improvements

To ensure that matters relating to unpermitted and illegal construction are effectively and efficiently addressed, with no impacts to existing services, it is recommended that a dedicated cross-departmental Unpermitted and Illegal Construction Enforcement Team (“UIET”) be established. The UIET will be comprised of the following staff:

- Bylaw officer;
- Building official;
- Staff lawyer; and
- Legal assistant and/or clerk.

For this purpose, existing staff will be seconded to the UIET initially. Accordingly, it is not expected that the City’s internal costs associated with addressing unpermitted and illegal construction will increase. However, over a period of time, the effectiveness of the UIET will be assessed to determine if additional resources may be required.

The UIET will be responsible for the following:

- Addressing Stop Work Orders at properties identified as priorities;
- Facilitating all incoming complaints, ensuring a coordinated response;
- Fine tuning the City’s new approach to dealing with unpermitted and illegal construction and aligning efforts across the organisation;
- Centralizing the intake of public complaints related to building construction across the City. The current process involves two departments with different systems for tracking and is inefficient;
- Measuring the impact of the UIET’s efforts to reduce unpermitted and illegal construction and implement and recommend improvements as may be required;
- Revising internal forms to streamline onerous paperwork required to request charges against illegal construction property owners; and
- Improving staff education on tools, bylaws, and relevant information pertaining to building construction to ensure cross-departmental alignment.

It is proposed that the UIET will commence operation in early 2022, following approval of the amended and new bylaws as described in this report. The UIET’s immediate focus will be to address reported unpermitted and illegal construction that is currently underway, including certain completed (known) illegal structures

3. Building Adjudication Process

It is anticipated that, from the onset, a significant number of fines will be issued by the UIET for violations of the City’s bylaws. In order to effectively address inevitable disputes to fines by the public, it is proposed that the City expand its existing adjudication process to facilitate any such disputes. Currently, the City’s adjudication process is limited to facilitating parking tickets. The additional building adjudication process will leverage a Provincially appointed judge to review disputed tickets once per month at Surrey City Hall and determine whether the offence occurred or not. This process has proven to be an effective measure in efficiently dealing with parking violations without involving the Courts (which is typically a long process). It will further support the message that the City is serious about enforcing the City’s zoning and building requirements.

Legal Services Review

Legal Services has reviewed this report and has no concerns.

SUSTAINABILITY CONSIDERATIONS

This initiative supports the City's Sustainability Charter 2.0. In particular, reducing unpermitted and illegal construction in Surrey supports the Sustainability Charter 2.0 themes of Public Safety and Built Environment and Neighbourhoods. Specifically, this initiative supports the following Desired Outcomes ("DO"):

- Community Safety and Emergency Services DO1: Residents are safe and have a strong sense of security in all neighbourhoods and throughout the city; and
- Buildings and Sites DO15: All new buildings, public places and outdoor spaces are welcoming, safe and universally accessible.

CONCLUSION

In response to ongoing illegal and unpermitted construction in Surrey, an Advisory Team was developed to research best practices for intervention of this issue, as well as the City's current challenges and opportunities for growth in this realm. Based on this research, the Advisory Team has recommended the creation of a new UIET to tackle unpermitted construction in Surrey in a focused manner. The initial focus of UIET will be to prioritize illegal construction that is currently underway, including certain completed (known) illegal structures.

Additional recommendations of the Advisory Team include several new as well as amendments to existing bylaws to provide increased enforcement opportunities to reduce illegal construction. A subsequent Corporate Report detailing the proposed new and amendments to existing bylaws will be presented to Council at another Council date. Staff believe that these new focused efforts will increase public confidence that the City is committed to reducing illegal construction activity in Surrey and will provide positive outcomes in the community.

Rob Costanzo
General Manager,
Corporate Services

Ron Gill
Acting General Manager,
Planning & Development

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