

NO: **R032**

COUNCIL DATE: **FEBRUARY 24, 2014**

REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **February 20, 2014**

FROM: **City Solicitor**

FILE: **3900-20-12883**

SUBJECT: **Amendment to the Prohibition of Nuisances By-law, 1996, No. 12883**

RECOMMENDATION

The Legal Services Division recommends that Council:

1. Receive this report as information;
2. Approve amendments to the Prohibition of Nuisances By-law, 1996, No. 12883, as amended (the "Nuisances By-law"), as documented in Appendix "A" of this report;
3. Approve amendments to the Surrey Municipal Ticket Information Utilization By-law, 1994, No. 12508, as amended (the "MTI By-law"), as documented in Appendix "B" of this report, which if adopted will allow for enforcement of the Nuisances By-law through ticketing; and
4. Authorize the City Clerk to bring forward the related by-law amendments as described in this report for the required readings and adoption.

INTENT

The proposed amendments to the Nuisances By-law would allow for recovery of RCMP and staff costs from owners of properties where there have been repeated calls for service related to nuisances.

BACKGROUND

Section 8(3)(h) of the *Community Charter*, S.B.C. 2003, c. 26 (the "*Community Charter*"), permits Council to enact by-laws to regulate, prohibit and impose requirements in relation to the protection and enhancement of the well-being of its community insofar as they relate to matters referred to in Section 64 of the *Community Charter*. Section 64 provides the following:

64 The authority of a council under section 8 (3) (h) [*spheres of authority — nuisances disturbances and other objectionable situations*] may be exercised in relation to the following:

- (a) nuisances;
- (b) noise, vibration, odour, dust, illumination or any other matter that is liable to disturb the quiet, peace, rest, enjoyment, comfort or convenience of individuals or the public;
- (c) the emission of smoke, dust, gas, sparks, ash, soot, cinders, fumes or other effluvia that is liable to foul or contaminate the atmosphere;
- (d) refuse, garbage or other material that is noxious, offensive or unwholesome;
- (e) the use of waste disposal and recycling services;
- (f) the accumulation of water on property;
- (g) unsanitary conditions on property;
- (h) drains, cesspools, septic tanks and outhouses;
- (i) trees, weeds or other growths that council considers should be removed, cut down or trimmed;
- (j) the carrying on of a noxious or offensive business activity;
- (k) graffiti and unsightly conditions on property;
- (l) indecency and profane, blasphemous or grossly insulting language.

DISCUSSION

Staff from Surrey Fire Service, By-law Enforcement & Licensing, Engineering Department, and the RCMP are attending to an increasing number of calls for service related to nuisances. Many of these calls come from a small number of the same properties. Examples of such calls for service include those relating to properties that are unsightly and where drug trafficking is occurring, which result in negative impacts to the community and the enjoyment of the neighbourhood by the surrounding community.

The current Nuisances By-law does not provide a means to ticket those in violation of the Nuisances By-law nor does it allow for cost recovery of services provided by the RCMP and staff for repeated incidents. The proposed by-law amendments will address those properties that are the subject of repeated calls for service related to nuisances.

The Nuisances By-law currently allows for a \$10,000 fine plus the costs of prosecution for each violation under the By-law. Offences related to the Nuisances By-law must be enforced by means of long form charges through the Court, which is a fairly time-consuming and costly process. The amendments to the MTI By-law, if adopted, will provide staff with an additional tool and greater latitude in relation to enforcement actions associated with the Nuisances By-law. The option of proceeding with long form charges through the Courts will also remain an option where circumstances warrant such an approach. The proposed amendments will allow for a Municipal Ticket Information to be issued for each offence: \$250.00 per offence.

Repeated calls for service relating to nuisances will result in recovery of staff and RCMP costs associated with responding to such calls, including those costs related to equipment and vehicles. Where there have been more than three service calls related to nuisances at the same property within a twelve month period, the City may impose upon the owner of the property a fee for each future response to a service call. Prior to imposing the fee, staff will send to the property owner a notice advising of, among other things, the particulars of the nuisance, the deadline for compliance and the imposition of a fee for future responses.

The fee may be imposed within the 24 month period following the deadline for compliance as set out in the notice.

The definition of a nuisance has also been clarified to prohibit a person or property owner from unreasonably interfering with another person or property owner's use and enjoyment of their property or public area. This definition will help capture a broad spectrum of nuisances that may unreasonably affect the use and enjoyment of neighbouring community.

SUSTAINABILITY CONSIDERATIONS

The recommendation of this report, if adopted, will assist in achieving the objectives of the City's Sustainability Charter by using the City's resources more efficiently.

CONCLUSION

The Legal Services Division recommends that Council:

- Approve amendments to the Prohibition of Nuisances By-law, 1996, No. 12883, as amended (the "Nuisances By-law"), as documented in Appendix "A" of this report;
- Approve amendments to the Surrey Municipal Ticket Information Utilization By-law, 1994, No. 12508, as amended (the "MTI By-law"), as documented in Appendix "B" of this report, which if adopted will allow for enforcement of the Nuisances By-law through ticketing; and
- Authorize the City Clerk to bring forward the related by-law amendments as described in this report for the required readings and adoption.

CRAIG MacFARLANE
City Solicitor

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Appendix "A" – Proposed Amendments to the Nuisances By-law
Appendix "B" – Proposed Amendments to the MTI By-law

c.c. Manager, By-laws & Licensing Services

APPENDIX "A"

CITY OF SURREY

BY-LAW NO. ____

A By-law to amend the provisions of "Prohibition of Nuisances By-law, 1996, No. 12883",
as amended.

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The Council of the City of Surrey, in open meeting assembled, ENACTS AS FOLLOWS:

1. "Prohibition of Nuisances By-law, 1996, No. 12883", as amended, is
hereby further amended as follows:

a. Section 1 – Definitions be amended by adding the following
new definition of "CITY" before the definition of
"INSPECTOR":

(a) "CITY" means the City of Surrey.

b. Section 1 – Definitions be amended by deleting the existing
definition "INSPECTOR" in its entirety and adding the
following new definition of "INSPECTOR":

(b) "INSPECTOR" means a By-law Enforcement Officer,
a Senior By-law Enforcement Officer, the Manager, By-laws
& Licensing Services for the City, or designate and shall
include any members of the Surrey Fire Department or the
Royal Canadian Mounted Police.

c. Section 1 – Definitions be amended by adding the following
new definition of "NUISANCE ABATEMENT FEES " after
the definition of "INSPECTOR":

(c) "NUISANCE ABATEMENT FEES" includes the
nuisance service call response fee plus the administration

and overhead fee and any applicable taxes, as prescribed in Schedule "A" of this By-law.

- d. Section 1 - Definitions be amended by adding the following new definition of " NUISANCE SERVICE CALL RESPONSE " after the definition of "NUISANCE ABATEMENT FEES":

(d) "NUISANCE SERVICE CALL RESPONSE" means an inspector's response to or abatement of a prohibited nuisance, as defined in Section 2 of this By-law.

- e. Section 1 - Definitions be amended by deleting the existing definition of "OWNER" in its entirety and adding the following new definition of "OWNER":

(e) "OWNER" shall, in addition to any other meaning, include:

- (i) the registered owner of the land, premises or property;
- (ii) any person residing on or in land, premises or property;
- (iii) the person entitled to the possession of land, premises or property if there is no person residing on or in the land, premises or property; and
- (iv) a leaseholder;

and shall include the agent of any such person.

- f. Section 1 - Definitions be amended by renumbering the existing subsection (c) to (f).

- g. Section 1 - Definitions be amended by adding the following new definition of "PROPERTY" after the existing definition of "PERSON":

(g) "PROPERTY" means all real property, including but not limited to frontyards, sideyards, backyards, driveways, walkways, sidewalks and boulevards and shall include any building or structure located on such real property.

- h. By adding a new Section 2(f) immediately after the existing Section 2(e) as follows:
 - (f) Without limiting the generality of this Section 2, no person or owner shall cause or permit any act which unreasonably interferes with another person or owner's use and enjoyment of their property or of a public area.

- i. By deleting existing Section 5 in its entirety.

- j. By renumbering existing Sections 3 and 4 to Sections 4 and 5 respectively.

- k. By adding a new Section 3 immediately after the existing Section 2(f) as follows:
 - 3. Repeat Nuisance Service Calls:
 - (a) Where there are three (3) or more nuisance service call responses at the same property within a twelve (12) month period, the City may impose upon the owner of that property the nuisance abatement fees for each additional nuisance service call response within the twenty-four (24) month period following the date the nuisance must cease or non-compliance must be remedied as set out in the City's notice, issued pursuant to Sections 3(b) and (c) of this By-law;
 - (b) The City's notice referred to in Section 3(a) of this By-law shall state:
 - (i) the particulars of the nuisance;
 - (ii) that the nuisance must cease or non-compliance must be remedied within 30 days, or within the time prescribed in the City's notice;

- (iii) that if the owner fails to comply with the City's notice, the City will impose the nuisance abatement fees for each additional nuisance service call response at the same property within the twenty-four (24) month period following the date the nuisance must cease or non-compliance must be remedied as set out in the City's notice; and
 - (iv) that the imposition of the nuisance abatement fees are in addition to the City's right to seek other legal remedies or actions for abatement of the nuisance.
- (c) Service of the City's notice pursuant to Sections 3(a) and (b) of this By-law will be sufficient if the City's notice:
 - (i) in the case of service on an individual, is served personally or mailed by registered mail to an address of the owner;
 - (ii) in the case of service on a corporation, is served personally on a director, officer or manager of the corporation or by leaving it at or mailing it by registered mail to the registered office or other address of the corporation.
- (d) If any fees imposed pursuant to this By-law are unpaid as of December 31st in the year that they are imposed, they shall be added to and form part of the taxes payable on the property to which the fees apply as taxes in arrears.
- (e) Nuisance abatement fees may be imposed by the City even if no person has been charged with an offence relating to a nuisance, a person charged with an offence relating to a nuisance was acquitted of all charges before a court or the charges are withdrawn, stayed or otherwise do not proceed.
- (f) Nothing in Sections 3(a) to (e) of this By-law shall be construed to limit the City's other available remedies for violation of this or any other City by-law.

1. By renumbering existing Section 6 to Section 9.

- m. By adding a new Section 6 immediately after the new Section 5 as follows:
 - 6. Any person who violates any of the provisions of this By-law or who suffers or permits any act or thing to be done in contravention of or neglects to do or refrains from doing any act or thing required to be done pursuant to any provision of this By-law or any notice issued pursuant hereto, commits an offence and shall be liable to the penalties hereby imposed and each day that such violation is permitted to exist shall constitute a separate offence."

- n. By adding a new Section 7 immediately after the new Section 6 as follows:
 - 6. Any person who violates any of the provisions of this By-law shall, upon summary conviction thereof, be liable to a penalty of not less than \$100.00 and not more than \$10,000.00 plus the cost of the prosecution, or to a term of imprisonment not exceeding 30 days, or both.

- o. By adding a new Section 8 immediately after the new Section 7 as follows:
 - 8. If a portion of this By-law is found invalid by a court, it will be severed and the remainder of the By-law will remain in effect.

- p. By inserting a new Schedule "A" attached hereto.

2. This By-law may be cited for all purposes as the "Prohibition of Nuisances By-law, 1996, No. 12883, Amendment By-law 2014, No. _____".

PASSED FIRST READING on the ____ day of _____, 2014.

PASSED SECOND READING on the ____ day of _____, 2014.

PASSED THIRD READING on the ____ day of _____, 2014.

RECONSIDERED AND FINALLY ADOPTED, signed by the Mayor and Clerk, and sealed with the Corporate Seal on the ____ day of _____, 2014.

_____MAYOR

_____CLERK

SCHEDULE "A"

NUISANCE ABATEMENT FEES

1. Nuisance service call response fee.....\$682.00 per response
2. Administration and overhead fee\$364.00 per response

All fees are subject to applicable taxes.

APPENDIX "B"

CITY OF SURREY

BY-LAW NO. _____

A by-law to amend the provisions of "Surrey Municipal Ticket Information Utilization By-law, 1994, No. 12508", as amended.

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The Council of the City of Surrey, in open meeting assembled, ENACTS AS FOLLOWS:

1. "Surrey Municipal Ticket Information Utilization By-law, 1994, No. 12508", as amended, is hereby further amended as follows:
 - a) By deleting the words "Schedules 2 through 31" and replacing them with the words "Schedules 2 through 32" in Sections 3 and 4.
 - b) By inserting a new Section 31 in Schedule 1 as follows:

32. Prohibition of Nuisances By-law, 1996, No. 12883	- Manager, By-laws & Licensing Services - Senior By-law Enforcement Officer - By-law Enforcement Officer - Member of the Royal Canadian Mounted Police
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 - c) By inserting a new Schedule 32 attached hereto.
2. This By-law shall be cited for all purposes as "Surrey Municipal Ticket Information Utilization By-law, 1994, No. 12508, Amendment By-law, 2014, No. _____."

PASSED FIRST READING on the ____ day of _____, 2014.

PASSED SECOND READING on the ____ day of _____, 2014.

PASSED THIRD READING on the ____ day of _____, 2014.

RECONSIDERED AND FINALLY ADOPTED, signed by the Mayor and Clerk, and sealed with the Corporate Seal on the ____ day of _____, 2014.

_____MAYOR

_____CLERK

SCHEDULE 32 TO BY-LAW NO. 12508

PROHIBITION OF NUISANCES BY-LAW,
1996, No. 12883.

	<u>SECTION</u>	<u>FINE</u>
1. Cause/Permit Nuisance	2(a)	\$250.00
2. Foul Atmosphere	2(b)	\$250.00
3. Noxious Trade	2(c)	\$250.00
4. Cause/Permit Vice	2(d)	\$250.00
5. Deposit/Throw Items	2(e)	\$250.00
6. Interfere with Enjoyment of Property	2(f)	\$250.00