



## STAFF REPORT

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**DATE:** September 2, 2019

**FILE:** 0540-04 EASC

**TO:** Chair and Directors,  
Electoral Areas Services Committee

**FROM:** Dave Leitch  
Chief Administrative Officer

**RE:** DRAFT CORTES ISLAND UNSIGHTLY PREMISES BYLAW

### **PURPOSE**

To present a draft bylaw for Cortes Island to control unsightly premises.

### **POLICY ANALYSIS**

As part of the 2017-2018 consultations to update the Cortes Island zoning bylaw, staff determined that more than half of the Cortes residents that responded to a questionnaire supported the creation of a bylaw for Cortes Island that would regulate nuisances, including unsightly premises and emissions.

The 2002 Cortes Island Zoning Bylaw, Bylaw No. 2455, contains a provision that permits the Regional District to respond to complaints regarding unsightly premises and nuisances. To be in compliance with the *Local Government Act* and to modernize SRD bylaws, both a service establishment bylaw and a regulatory bylaw to control unsightly premises and nuisances are required.

On May 24, 2018 with SRD 410/18, the Board directed staff to establish an unsightly premises service and on June 6, 2018 with SRD 482/18 and 484/18 a service establishing bylaw received three readings. Consent on behalf of electors were obtained on June 20, 2018 and on July 16, 2018 the Inspector of Municipalities approved the bylaw.

### **EXECUTIVE SUMMARY**

Now that all the requirements of the *Local Government Act* have been taken to establish a service for the control of unsightly premises within Electoral Area B (Cortes Island) the proposed regulatory bylaw (attached) can be reviewed.

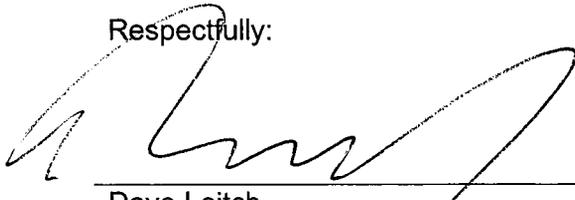
The courts have found that general statements regarding nuisances and annoyances, which are commonly found in zoning bylaws are too uncertain to be enforced. The intent of zoning bylaws is to regulate land use and should not be used in relation to the power to regulate or prohibit nuisances. Therefore, a stand-alone unsightly premise bylaw has been created with assistance and input from lawyers and is presented as a draft for discussion and to direct staff on any amendments needed.

The attached bylaw proposes to regulate unsightly premises. The bylaw is presented as a draft for discussion.

**RECOMMENDATIONS**

1. THAT the report from the Chief Administrative Officer be received.
2. THAT an amended unsightly premises regulatory bylaw reflecting the direction of the Committee how to improve the draft be prepared for consideration.

Respectfully:



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Dave Leitch  
Chief Administrative Officer

**BACKGROUND**

The 2002 Cortes Island Zoning Bylaw, Bylaw No. 2455, includes a provision to regulate nuisance which reads:

“Nothing shall be permitted in any zone which is or can become a nuisance to any person who believes their interest in property is affected, including the surrounding residents and general public, by reason of unsightliness, odour emission, dust, noise, vibration, smoke, or electrical interference, excluding agricultural uses provided the farm practice is conducted in accordance with normal farm practices as described in the *Farm Practices Protection (Right to Farm) Act*.”

To be in compliance with section 325 of the *Local Government Act* and to modernize SRD bylaws: it is recommended that through a bylaw amendment, the above section be deleted from the existing 2002 zoning bylaw. To follow through with this recommendation, both a service establishment bylaw and a regulatory bylaw to control unsightly premises are required. While the service establishing bylaw was awaiting approval from the Inspector of Municipalities, the associated regulatory bylaw was created and is attached to this report for the Committee’s review and comment.

As part of the review of the 2002 Cortes Island Zoning Bylaw, staff issued a questionnaire which asked residents whether they supported a nuisance bylaw for Cortes Island. Of the 131 residents who responded, 54 percent supported the creation of such a bylaw. Thirty-eight percent were opposed, and 8 percent did not know or had no opinion.

SRD staff also asked residents what should be included in a separate nuisance bylaw. Of those who supported a nuisance bylaw, 74 percent wanted to see emissions of smoke, dust, gas, sparks, ash, soot, cinders, fumes or other effluvia regulated. Seventy percent supported regulation of unsightly premises and accumulation of rubbish and 60 percent supported regulation of excessive or obtrusive light emanating from a property that shines, glares or reflects onto neighbouring property. There was less support for the regulation of electrical interference (45 percent) and graffiti (27 percent).

As a start, to follow up on the May 18, 2018 Board resolution (SRD 410/18), the proposed new bylaw to regulate unsightly premises was created. In adherence to the Ministry of Municipal Affairs’ advice, staff will next create separate establishment and regulatory bylaws to regulate emissions.

**ALTERNATIVES**

1. Direct staff which improvements to make prior to presenting an amended bylaw to EASC for further consideration.
2. Do not support an unsightly premises regulatory bylaw at this time.

In following through with what the majority of the respondents of an afore-mentioned questionnaire wanted, staff is recommending option 1.

**FINANCIAL IMPLICATIONS**

No significant additional costs are expected to be incurred by the SRD as result of the new regulatory bylaw.

Implementation of a new unsightly premises bylaw will require the services of SRD bylaw compliance officer, who attends to a variety of complaints received from electoral areas, B, C and D; including illegal dumping of solid waste and the mooring of vessels in places where it is not permitted. The bylaw compliance officer is handling a few files involving unsightly premise complaints. The number of complaints may increase as a result of the proposed new bylaw.

**LEGAL IMPLICATIONS**

The new bylaw brings SRD regulations with respect to unsightly premises into compliance with the provisions of the *Local Government Act*. Should the Board approve the future adoption of the proposed regulatory bylaw, it will require updating the associated Municipal Ticketing Bylaw and appropriate fines.

**INTERGOVERNMENTAL/REGIONAL IMPLICATIONS**

There are no intergovernmental or regional implications.

**INTERDEPARTMENTAL INVOLVEMENT/IMPLICATIONS**

Bylaw enforcement staff reviewed and provided input on the draft bylaw. If the draft bylaw proceeds to first, second and third readings, corporate legislative services staff will be required to seek its approval by the Inspector of Municipalities.

**CITIZEN/PUBLIC RELATIONS IMPLICATIONS**

As discussed above, Cortes Island residents had the opportunity to comment on a possible bylaw to regulate nuisances, including unsightly premises, as part of the Cortes Island zoning bylaw review. The biggest support for regulations expressed by those who commented was for emissions and unsightly premises. The proposed draft bylaw addresses unsightly premises.

***Prepared by:*** A. Nelson and R. Hansen, Senior Managers, Community Services



**BYLAW NO. \_\_\_\_**

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**A BYLAW TO REGULATE UNSIGHTLY PREMISES IN STRATHCONA REGIONAL DISTRICT  
ELECTORAL AREA B (CORTES ISLAND)**

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**WHEREAS** the Strathcona Regional District has the authority to regulate unsightly premises in accordance with section 325 of the *Local Government Act*, RSBC 2015, c. 1, and by supplementary letters patent dated September 28, 1987;

**AND WHEREAS** Bylaw No. 323 being *Cortes Island Unsightly Premises Establishment Bylaw 2018* establishes a service to control unsightly premises;

**AND WHEREAS** pursuant to section 325 of the *Local Government Act*, the Strathcona Regional District wishes to enact a bylaw to:

- prohibit persons from causing or permitting water, rubbish, or noxious, offensive or unwholesome matter to collect or accumulate around their premises, or from depositing or throwing bottles, broken glass or other rubbish in any open place;
- prohibit persons from placing graffiti on walls, fences or elsewhere on or adjacent to a public place;
- prevent and abate nuisances;
- prohibit the owners or occupiers of real property from allowing their property to become or remain unsightly; and
- require the owners or occupiers of real property, or their agents, to remove from it any accumulations of filth, discarded material or rubbish.

**AND WHEREAS** the Strathcona Regional District deems it desirable to establish regulations that may be imposed to require the clean-up and restoration of property in Electoral Area B of the Strathcona Regional District;

**NOW THEREFORE**, the Board of the Strathcona Regional District in an open meeting enacts as follows:

**Citation**

1. This Bylaw may be cited as Bylaw No. \_\_\_\_ "The Cortes Island Unsightly Premises Bylaw, 2019".

**Definitions**

2. In this bylaw:

**“Board”** means the board of directors of the Strathcona Regional District.

**“Bylaw Compliance Officer”** means a person appointed by the Board of the SRD to enforce the bylaws of the SRD and includes a Peace Officer.

**“Derelict Vehicle”** means a Vehicle which meets one or more of the following conditions:

- a. is fully or partly wrecked, disabled, damaged, dismantled, or substantially rusted;
- b. is incapable of moving or operating under its own power;
- c. does not have valid license plates attached;
- d. has not been insured as required under the *Motor Vehicle Act* for a minimum of 60 days within the previous 12-month period; or
- e. has not been licensed pursuant to the regulations of the *Motor Vehicle Act* for a minimum of 60 days within the previous 12-month period.

**“Local Government Act”** means *Local Government Act*, RSBC 2015, c. 1

**“Motor Vehicle Act”** means the *Motor Vehicle Act*, RSBC 1996, C. 318.

**“Offence Act”** means the *Offence Act*, RSBC 1996, c. 338.

**“Real Property”** means land other than a highway, together with all improvements which have been so affixed to the land as to make them in law a part of the land and includes land without improvements.

**“SRD”** means Strathcona Regional District.

**“Rubbish”** includes the following:

- a. garbage;
- b. scrap or salvage, whether stored for future resale or not;
- c. discarded or disused materials or filth;
- d. noxious, offensive or unwholesome matter;
- e. rusted, unlicensed, unused or stripped automobiles, trucks, trailers, boats, vessels, aircraft, and other transportation equipment and machinery, including parts thereof;
- f. scrap or unused mechanical or metal parts;
- g. bottles and broken glass;
- h. organic wastes such as food wastes, market wastes, and animal and human wastes;
- i. combustibles such as paper, cardboard, yard waste, plastics, and leather;
- j. bulky wastes such as dilapidated furniture and inoperative appliances.

**“Unsightly”** includes Real Property having one or more of the following:

- a. an accumulation of Rubbish on the exterior of the Real Property, unless contained within a waste receptacle or fully-enclosed structure;
- b. one or more structures which are dilapidated, collapsed, partially collapsed, in serious disrepair, incomplete, or which contain holes, breaks, or rot;
- c. more than two Derelict Vehicles not contained within a fully-enclosed structure;

- d. any other condition of unsightliness, including untidy condition or appearance, regardless of the appearance of other Real Property in the vicinity.

“**Vehicle**” has the same meaning as in the *Motor Vehicle Act*.

**Jurisdiction**

- 3. This bylaw applies to Electoral Area B (Cortes Island) of the Strathcona Regional District.

**Unightly Property**

- 4. No owner or occupier of Real Property shall allow that Real Property to become or remain Unightly.
- 5. No person, including no owner or occupier of Real Property, shall allow, park, place, store, or keep more than two Derelict Vehicles on Real Property and not contained within a fully-enclosed structure, unless expressly authorized by the SRD or as part of a lawful authorized use under the SRD’s zoning bylaw.
- 6. No person shall litter, place or deposit Rubbish anywhere on any public property or outdoors on private property, except within a waste receptacle.
- 7. No person shall place graffiti on any surface on, adjacent to, or visible from, a public place, other than on specifically-designated graffiti walls.

**Authority to Enter Upon Property**

- 8. A Bylaw Compliance Officer is authorized to enter at all reasonable times onto Real Property to inspect and determine whether all regulations, prohibitions and requirements of this bylaw are being met.

**Enforcement**

- 9. If Real Property, or its owner or occupier, is not compliant with this bylaw or has done something to contravene this bylaw, a Bylaw Compliance Officer may give written order to the owner or occupier requiring that person to take action to comply with this bylaw or bring the Real Property into compliance. An order under this section must:
  - a. be in writing;
  - b. identify the person alleged to be in default;
  - c. be served on the person alleged to be in default:
    - i. personally;
    - ii. if that person is an owner, by leaving the notice at, or sending the notice by registered mail to, either the person’s most recent address according to the SRD’s property tax records, or the address of the owner as listed on the title to the Real Property;
    - iii. if that owner or occupier is a corporation, in accordance with section 9 of the *Business Corporations Act*, SBC 2002, c. 57; or
    - iv. by posting a copy of the notice on or near the front entrance of the Real Property, and on the front of any principal structure on the Property.
  - d. be served on every registered owner of the Real Property, other than the person in default:
    - i. personally;

- ii. by leaving the notice at, or sending the notice by registered mail to, either the owner's most recent address according to the SRD's property tax records, or the address of the owner as listed on the title to the Real Property; or
    - iii. if the owner is a corporation, in accordance with section 9 of the *Business Corporations Act*, SBC 2002, c. 57.
  - e. specify the civic and legal address of the Real Property;
  - f. provide particulars of the condition or issue with the Real Property which contravenes this bylaw;
  - g. list the steps required by the SRD to remedy the contravention of this bylaw;
  - h. specify the period of time in which the required action must be completed, which period must not be less than 14 days from the date the notice is served on that person;
  - i. notify the recipient that if the order is not complied with by the specified date; the SRD may at all reasonable times and in a reasonable manner enter the Real Property and bring about such compliance at the cost of the defaulting person and any owner, including by engaging agents to undertake the work necessary;
  - j. advise that the costs of such action may include the costs actually incurred by the SRD, including administrative costs, labour and equipment costs, and costs of clean-up and storage and disposal of any items;
  - k. advise that any costs incurred by the SRD associated with bringing about that compliance will be invoiced to the person in default, and to the owners of the Real Property, and will be due to the SRD 30 days after the delivery of an invoice from the SRD; and
  - l. that the SRD may recover any unpaid portion of the invoiced expenses by:
    - i. treating that unpaid amount as a debt owed to the SRD by the that person, and
    - ii. directing that this amount be added to the property tax roll of the Real Property on which the compliance work was undertaken and treated as a charge imposed in respect of the work or service provided to the Real Property and collected in the same manner as property taxes.
10. If the action required by an order under section 9 of this bylaw is not completed in the manner and by the date specified in the order, the SRD or its agents may enter onto the property at all reasonable times and fulfill the requirement in the notice at the expense of the person in default, and any owner of the Real Property, including by engaging agents to undertake the work necessary.
11. If the SRD undertakes work under section 10 of this bylaw, the SRD may invoice the person in default, and any owner of the Real Property, for all costs associated with performing that work actually incurred by the SRD, including administrative costs, labour and equipment costs, and costs of clean-up and storage and disposal of any items.
12. An invoice under section 11 of this bylaw may be served in the same manner as an order under section 9 of this bylaw.
13. If any cost invoiced under section 11 of this bylaw remains unpaid more than 30 days after the invoice is served on the defaulting party or owner, the SRD may recover the unpaid amount from that person:
- a. as a debt due and owing by that person to the SRD; and
  - b. by directing that the unpaid amount be added to the property tax roll of the Real Property on which the compliance work was undertaken and treated as a charge imposed in

respect of the work or service provided to the Real Property and collected in the same manner as property taxes.

**Penalty**

- 14. Any person who contravenes a provision of this bylaw, or who allows 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 in this bylaw is guilty of an offence and:
  - a. on conviction under an Information in accordance with the *Offence Act*, is liable to a fine of not less than \$500 and not more than \$10,000, a period of imprisonment of not more than 6 months, plus the costs of prosecution and any other penalty or order imposed pursuant to the *Local Government Act*, or the *Offence Act*; or
  - b. on conviction of a ticket offence, is liable to the fine set out in the SRD Bylaw No. 119, being *Bylaw Contravention Ticket Information System Bylaw, 2012*.
- 15. If an offence is a continuing offence, each day that the offence is continued constitutes a separate and distinct offence.

**Severability**

- 16. If any provision of this bylaw is held to be invalid by a court, that provision may be severed from this bylaw and such invalidity shall not affect the validity of the remaining portions of this bylaw.

**READ A FIRST TIME ON THE            DAY OF            , 2019**

**READ A SECOND TIME ON THE            DAY OF            , 2019**

**READ A THIRD TIME ON THE            DAY OF            , 2019**

**APPROVED BY THE INSPECTOR OF MUNICIPALITIES ON THE            DAY OF            , 2019**

**APPROVED BY THE ELECTORS ON THE            DAY OF            , 2019**

**RECONSIDERED, FINALLY PASSED AND ADOPTED ON THE            DAY OF            , 2019**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Corporate Officer