

DATE OF MEETING JANUARY 16, 2023

AUTHORED BY DAVID LABERGE, MANAGER, BYLAW SERVICES

SUBJECT 264 NICOL STREET – NUISANCE PROPERTY ABATEMENT

OVERVIEW

Purpose of Report

To inform Council of ongoing activities at 264 Nicol Street which substantially and unreasonably interfere with other persons' use and enjoyment of property, and require repeated calls for City and police services to abate nuisances.

Recommendation

That Council declare 264 Nicol Street a "Nuisance" pursuant to the "Nuisance Abatement and Cost Recovery Bylaw 2019 No. 7250", and authorize Staff to record and charge for municipal services including police required to abate nuisance activity.

BACKGROUND

Council have directed staff to pursue compliance with municipal bylaws and to bring forward for consideration of designating the property at 264 Nicol Street a nuisance under the "Nuisance Abatement and Cost Recovery Bylaw 2019 No. 7250".

If the property is designated a nuisance, the property owner will be charged for future attendance at the site by City Services as per the rates established in Schedule 'A' of the "Nuisance Abatement and Cost Recovery Bylaw 2019 No. 7250".

DISCUSSION

The property at 264 Nicol Street is a DT12 zoned lot owned by a Vancouver-based company which has been vacant for many years. The site was previously operated as a used vehicle sales business, with a small accessory building that served as a sales office.

Since April 2022, the Property has been used as an 'Overdose Prevention Site (OPS) operated by the Nanaimo Area Network of Drug Users (NANDU). Council will be familiar with the services being provided at the site, having heard from NANDU representative Ms. Ann Livingston at the 2022-NOV-21 meeting. She described NANDU as a 'user group' and 'self help' organization operated by volunteers who offer 'peer supports' for drug users at the property. Ms. Livingston confirmed that the leasing of the property and delivery of these services have been funded by the Provincial Ministry of Mental Health and Addictions and Island Health.

The City and Nanaimo RCMP have received complaints from local residents and businesses that the activities at the Property have negatively impacted the peace, quiet, and enjoyment of the community. The City has taken a measured response to enforcement since NANDU commenced services at the Property to provide the Health Authority with reasonable time to take formal steps to designate the Property as an OPS pursuant to Ministerial Order M488 and to organize appropriate management, oversight and supports to safely and responsibly provide OPS services.

The Board of Directors of Island Health informed the City in late October 2022 that they have not sanctioned or approved the Property as an OPS, nor do they believe such approval is a legal requirement. They confirm that Island Health does not oversee, manage, or have any ongoing involvement in the operations of the site.

Management and Organization of the Site

City staff have attended to the Property on several occasions and spoke to individuals who identified as volunteers. They explained that governance of the OPS is provided by a small volunteer group. The entire operation is staffed by volunteers who receive a monetary stipend, and consist of a site supervisor, observers in the consumption area (tent), and a roving team that patrol in and around the Property. Given that these roles are all volunteer based, it was understood that there are ongoing capacity issues and turnover of personnel. Some of these volunteer functions including neighbourhood patrols developed over time to try to mitigate negative impacts in the areas around the Property.

The Property is approximately 8,300 ft² with a paved surface and enclosed with a perimeter chain link fence. The lot backs onto a rear lane which also services adjacent residences on Old Victoria Road, and connects to a lane which exits onto Nicol Street. Entrances to the site are off this second lane. There are restaurants on either side of the Property to the north and south, and residences and an apartment building facing the property on the other side of Nicol Street.

The perimeter fences were shrouded in plastic tarps when the OPS opened in April 2022 to afford privacy, and two large canvas tents were installed in the following months. The small accessory building is utilized as an office administration space, and one of the large tents in the supervised consumption area is equipped with heaters, tables, and chairs. The second tent (removed in December 2022) was used for storage and provided a bed space. A shed structure was erected behind the accessory building for storage of supplies and personal items.

Nighttime Disturbances and use of Recreational Vehicle for Accommodation

A recreational vehicle (RV) was parked in the lot of one of the adjacent restaurants in early April 2022, but was quickly moved into the Property and parked near the rear laneway. This RV is being used as a living accommodation which is contrary to Zoning regulations. The accessory use of tent structures is not permitted, as there is no primary structure on the Property.

The presence and use of the RV for accommodation are cause for numerous complaints from the neighbourhood. Residents report disturbances during nighttime hours which include congregations of people, yelling, arguments, fights, discharging of fireworks, and operation of noisy generators. These incidents occur outside of the hours of OPS service.

Bylaw Services informed Ms. Livingston of these late night disturbances on the Property in an email sent 2022-JUN-03, and in particular of the concerns of an elderly neighbour who was

undergoing cancer treatments and reported having her sleep disrupted four to five times a week. It was requested that the RV not be used for accommodation as it was not a permitted use, and to speak to their membership and volunteers to cease activities which disturbed the neighbourhood during nighttime hours.

The RV has remained on the property and continues to be used for occupation, and area residents report that noise and disturbances during nighttime hours is a regular occurrence. The City's Community Safety Officers have checked the Property during late evening hours through December 2022 and January 2023 and have confirmed that noise and congregations of people inside and in the adjacent laneway are occurring.

Neighbourhood Impacts

Council will recall in the 2022-NOV-21 presentation, Ms. Livingston estimated that two hundred (200) people use the OPS services at the Property daily, and described that "It may well be one of the busiest Overdose Prevention Sites in the world."

In the same meeting, a neighbourhood resident described the site as being "dangerously irresponsibly operated" in a manner that "greatly negatively affecting (their) home life." Further, she described that activities around the site "exceed the safety threshold for any residential or commercial neighbourhood", describing an incident where an agitated individual threatened her family member while repeatedly smashing their fence gate.

Other residents and businesses in the neighbourhood have expressed similar concerns. Residents describe a constant flow of vehicle and pedestrian traffic into the site, with drug dealing and use occurring in open both inside and outside the Property. They find unconscious people passed out in the laneways, in their yards, and in the parking lots of the neighbouring restaurants.

They see people exhibiting loud emotional outbursts who appear to be experiencing personal or mental health crisis. There are arguments, fights, and assaults, including reports from OPS site users that a violent individual was coming to the site to target specific persons. They observe intoxicated persons who wander into traffic on the highway, people who are in various states of undress who yell, fight, and act erratically.

Ms. Livingston correctly observed that there has always been a presence of unsheltered people and people with addictions in this neighbourhood. What did not previously exist, was a substantially unmanaged service that draws up to two hundred people to a location to consume drugs in a congregate setting.

The operators of nearby restaurants have made numerous complaints of negative impacts to their business. They have reported that many of their employees are teenaged students who are afraid to come to work. They describe incidents where their staff and customers are intimidated, of a dog attack on an employee, overdoses in their washroom, damage to their property, garbage, needles and vomit in their parking lot and congregations of people that come to their property after NANDU closes for the day. In a December 2022 incident, a large grease container unit stored in a restaurant lot was tipped over leaking gallons of used oil into the adjacent laneways.

The neighborhood has expressed concerns about unsightly conditions at the Property, which culminated during the summer months of 2022 with reports of accumulations of stripped down bicycles, garbage and carts filled with materials stored inside the site. Volunteers at the Property

cleared much of the accumulated materials when contacted by Bylaw Services, and several disposal bins have subsequently been installed, but accumulations of garbage in and around the site continue to occur. The tarps on the perimeter fences are covered with graffiti.

Neighbours have reported that efforts to manage the Property appear to have diminished through late December 2022 and January 2023. There is no ostensible indication of volunteers at the entrance to sign in guests, or of anyone managing the site. Checks of the property by City staff have confirmed these observations.

The Nanaimo RCMP have received fourteen (14) complaints regarding the Property since April 2022 which could be considered to be of a nuisance nature. These include reports of drug dealing, drug use in the alleyway, noise complaints (people yelling, loud crashes, vehicle engines revving, assaults, intimidation, harassment and property damage).

It is recognized that the purpose of Overdose Prevention Sites is to prevent drug overdoses and overdose deaths, and reduce the adverse health, social and economic consequences associated with substance use. The delivery of OPS services include onsite monitoring of people who are at risk of overdose and provide rapid response where necessary. It includes the distribution of harm reduction supplies, disposal options, overdose prevention education and referrals to mental health and substance use services. OPSs mitigate harms of overdose, but do not address the problem of an unsafe drug supply.

The OPS operated at this property continues to cause negative impacts to the community in part because of the sheer number of people it serves every day. In comparison, the designated OPS operated at 250 Albert Street has space to accommodate three patrons in the indoor facility and eight patrons in the outdoor area at one time, and is managed by a full-time, trained staff.

The OPS at the Property is operated by volunteers with minimal management, oversight and supports, servicing up to 200 people daily. It is inconceivable that a professional operated OPS in an institutional setting could support these numbers. The residents and businesses who live and operate in the neighborhood report that the negative impacts have been ongoing and significant. Many of the incidents which disturb the community occur during nighttime hours when the OPS is closed, which in part is caused by the fact that persons are living in an RV and the Property is open and accessible at all hours.

OPTIONS

1. That Council That Council declare 264 Nicol Street a “Nuisance” pursuant to the “Nuisance Abatement and Cost Recovery Bylaw 2019 No. 7250”, and authorize Staff to record and charge for municipal services including police required to abate nuisance activity.
2. That Council provide staff with alternative direction.

SUMMARY POINTS

- The Nanaimo Area Network of Drug Users has operated an Overdose Prevention Site at the Property since April 2022.
- The site is funded and supported by the Provincial Government and Island Health, but has not been approved by the Island Health Board as an OPS pursuant to Ministerial Order M488.
- Up to 200 people use the OPS daily, with negative impacts to residents and businesses in the neighbourhood. The Health Authority does not oversee, manage or have any involvement in operation of the site.
- The City and RCMP have received numerous complaints from the community of nuisance activities in and around the property including noise disturbances, arguments, fights, intoxicated persons, vehicle engines revving, unsightly conditions, littering, graffiti and accumulations of garbage.
- It is recommended that Council declare the Property a nuisance pursuant to Nuisance Abatement and Cost Recovery Bylaw 2019 No. 7250.

ATTACHMENTS:

ATTACHMENT A: Location Plan – 264 Nicol Street
ATTACHMENT B: RCMP Letter dated 2022-DEC-28

Submitted by:

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Concurrence by:

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Deputy CAO