

DATE OF MEETING November 20, 2023

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**SUBJECT EMERGENCY SHELTER AND WARMING/COOLING CENTRE
REGULATION ENFORCEMENT**

OVERVIEW

Purpose of Report

To present to Council a proposed policy resolution to address the City's liability related to buildings used for emergency shelters and warming/cooling centres that do not meet the requirements in the BC Building Code and BC Fire Code.

Recommendation

That Council:

- a) endorse the "Emergency Shelter and Warming/Cooling Centre Regulation Enforcement Policy Resolution" as attached to the 2023-NOV-20 Staff report titled "Emergency Shelter and Warming/Cooling Centre Regulation Enforcement"; and,
- b) send correspondence to the Minister of Housing and Minister of Social Development and Poverty Reduction regarding the need to protect emergency shelters and warming/cooling centres in Nanaimo that do not meet the requirements of the BC Building Code and BC Fire Code.

BACKGROUND

Nanaimo is experiencing a crisis-level of unhoused persons, some with mental health and/or addiction issues. Overnight emergency shelters and daytime warming/cooling centres are critical to addressing the homelessness emergency in Nanaimo. Emergency shelters and warming/cooling centres are located in buildings, or portions of buildings, to provide free temporary accommodation and/or relief from the elements for people who require immediate and basic needs for shelter.

There is a shortage of appropriate buildings in Nanaimo to provide emergency shelter and warming/cooling services to unhoused people, and Staff are finding that one or more of the buildings being used for emergency shelters and warming/cooling centres do not meet the BC Building Code or BC Fire Code.

The City of Nanaimo has a role in enforcing building occupancy and life safety requirements, which flow from the following regulations:

BC Building Code 2018

The BC Building Code 2018 (BCBC) is a provincial regulation that governs how new construction, building alterations, repairs, and demolitions are completed. This code establishes minimum

requirements for safety, health, accessibility, fire and structural protection of buildings, and energy and water efficiency. The City's Building Inspections section oversees compliance with the BCBC through the City of Nanaimo's "Building Bylaw 2016 No. 7224".

City of Nanaimo "Building Bylaw 2016 No. 7224"

The City of Nanaimo's "Building Bylaw 2016 No. 7224" provides the regulatory and administrative framework for ensuring compliance with the BCBC for the construction of buildings and other structures in the City.

BC Fire Code 2018

The BC Fire Code (BCFC) is a provincial regulation containing technical requirements for the construction, use, or demolition of buildings and facilities and the design, construction, and use of specific elements of facilities related to certain fire hazards, and protection measures for the current or intended use of buildings. The City's Fire Department oversees the enforcement of the BCFC through the "Fire Protection and Life Safety Regulation Bylaw 2011 No. 7108".

"Fire Protection and Life Safety Regulation Bylaw 2011 No. 7108"

"Fire Protection and Life Safety Regulation Bylaw 2011 No. 7108" provides regulatory guidance for enforcement of the BCFC, and includes matters such as incident response and operations, fire prevention, inspections, burning permits, hydrants and fire connections, street addressing, and penalties.

Zoning Bylaw

In addition to the above regulations pertaining to building safety, the City of Nanaimo "Zoning Bylaw 2011 NO. 4500" regulates how land, buildings, and other structures may be used through regulatory powers provided for in the *Local Government Act*.

DISCUSSION

Typically, shelter and warming/cooling centre operators are non-profit organizations that do not have the financial means to lease or purchase buildings at market rates, and thus tend to utilize buildings at reduced rates that may be older buildings not designed and constructed to meet the requirements of the BCBC and BCFC for the use. There is a lack of suitable buildings available for emergency shelter and warming/cooling centres in Nanaimo and non-profit organizations often do not have the means to complete the necessary building upgrades to meet code requirements. Given the increasing need for shelter spaces and the requirement for rapid emergency responses, shelter operators can also lack the time to complete building upgrades to meet the BCBC and BCFC requirements. This set of circumstances leads to buildings being used for emergency shelters and warming/cooling centres that do not fully meet BCBC and BCFC requirements for the use.

There may arise a liability risk if the City has corporate knowledge of dangers related to buildings and life safety but takes no enforcement action. Enforcement actions can range from a shut-down injunction, to a Council policy resolution to not enforce the BCBC and BCFC. Due to the shortage of shelter spaces and warming/cooling spaces for unhoused people in the city, a shut-down

injunction for these spaces could be inhumane. To enable the community to have the benefit of these emergency facilities and help address potential City liability in these situations it is recommended that Council pass the proposed policy resolution in Attachment A.

The following is a summary of the City's rationale for passing the policy resolution in Attachment A, to protect the ongoing existence of shelters and warming/cooling centres in Nanaimo:

- Without a Council policy resolution, City Staff are compelled to enforce the BCBC and BCFC.
- There is a lack of funding available for non-profit organizations that provide shelter and extreme weather services to at-risk and unhoused people, as a result these organizations do not have the financial means to address the BCBC and BCFC requirements of the buildings available and that are used for these services.
- Shelters are a basic human need that can greatly alleviate human suffering, and during extreme weather, shelter spaces can be crucial for human survival. In addition, many unhoused persons in Nanaimo suffer from mental health and/or addiction issues which can exacerbate their ability to survive unsheltered for extended periods.
- The City itself does not have financial or staff resources to construct and operate such facilities or to upgrade any facilities. The revenue sources of the City are exhausted, yet there is a serious need for these facilities that fall under provincial jurisdiction.
- The risk of a human living outdoors for extended periods is that it can cause significant suffering and health impacts, particularly during extreme weather events. In particular, cold temperatures can impact the health of at-risk community members (e.g. frostbite or hypothermia).

Given the situation described above, it is in the public interest for the City to temporarily suspend full enforcement of its building regulatory standards and zoning bylaw requirements for emergency shelters and warming/cooling centres through adoption of the proposed policy resolution in Attachment A.

Building owners are ultimately responsible for ensuring that construction work proceeds and buildings are occupied in compliance with the requirements of the BCBC and BCFC. Should Council adopt the proposed policy resolution, Staff will continue to communicate the life safety requirements of the BCBC and BCFC to the property owners and operators of shelters and warming/cooling centres such that they are aware of the risks and can make plans to address BCBC and BCFC requirements.

Finally, it is recommended that the City send correspondence to the Minister of Housing and Minister of Social Development and Poverty Reduction regarding the need to protect the ongoing existence of year-round emergency shelters and warming/cooling centres in Nanaimo. Also, that the City continue to advocate to the Province on an ongoing basis regarding the lack of funding available for non-profit organizations to address the life safety matters of buildings used for shelters and warming/cooling centres.]

OPTIONS

1. That Council:

- a) endorse the “Emergency Shelter and Warming/Cooling Centre Regulation Enforcement Policy Resolution” as attached to the 2023-NOV-20 Staff report titled “Emergency Shelter and Warming/Cooling Centre Regulation Enforcement”; and,
- b) send correspondence to the Minister of Housing and Minister of Social Development and Poverty Reduction regarding the need to protect emergency shelters and warming/cooling centres in Nanaimo that do not meet the BC Building Code and BC Fire Code.
 - The advantages of this option: Passing the proposed policy resolution demonstrates that the City is aware of the financial limitations of non-profit organizations, and that it is in the public interest to ensure emergency shelters and warming/cooling centres remain open to protect the homeless from suffering and harm through exposure to the elements, despite knowledge that some of the buildings used for these purposes do not fully meet the requirements of the BCBC and BCFC. This approach recognizes that the City itself does not have financial or staff resources to construct and operate such facilities or to upgrade these facilities that are critically needed to address the homelessness emergency and fall under provincial jurisdiction.
 - The disadvantages of this option: Emergency shelters and warming/cooling centres may operate in buildings that do not fully meet the requirements of the BCBC and BCFC.
 - Financial Implications: In cases where the City has corporate knowledge of emergency shelters and warming/cooling centres operating in non-compliance with the BCBC and BCFC, a policy resolution considering these circumstances should serve to protect the City from liability.

2. That Council not pass the policy resolution titled “Emergency Shelter and Warming/Cooling Centre Regulation Enforcement Policy Resolution” as attached to the 2023-NOV-20 Staff Report titled “Emergency Shelter and Warming/Cooling Centre Regulation Enforcement”; and direct Staff to proceed with enforcing the BC Building Code and BC Fire Code.

- The advantages of this option: If Council chooses to not support the proposed Shelter Policy Resolution, Staff will have clear direction to proceed with enforcing the BCBC and BCFC.
- The disadvantages of this option: Due to the shortage of emergency shelter spaces and warming/cooling spaces for unhoused people in the city, BCBC and BCFC enforcement actions that would typically be applied, such as a shut-down injunction, for these spaces could be inhumane.

- Financial Implications: If the City proceeds with enforcing the BCBC and BCFC for emergency shelter spaces there are no liability risks.

3. That Council provide alternate direction to Staff.

SUMMARY POINTS

- Emergency shelters and warming/cooling centres are critical to addressing the homelessness emergency in Nanaimo.
- There is a lack of funding available for non-profit organizations that provide shelter and extreme weather services to at-risk and homeless people, as a result these organizations do not have the financial means to address the BCBC and BCFC requirements of the buildings available and that are used for these services.
- The City itself does not have financial or Staff resources to construct and operate such facilities or to upgrade any facilities. The revenue sources of the City are exhausted, yet there is a serious need for these facilities that fall under provincial jurisdiction.
- The risk of a human living outdoors for extended periods is that it can cause significant suffering and health impacts, particularly during extreme weather events.
- It is in the public interest for the City to temporarily suspend full enforcement of its building regulatory standards and zoning bylaw requirements for emergency shelters and warming/cooling centres through adoption of the proposed policy resolution.
- A policy resolution is proposed to address the City's potential liability related to buildings used for emergency shelters and warming/cooling centres that may not fully meet the requirements in the BCBC and BCFC.
- It is recommended that the City send correspondence to the Minister of Housing and Minister of Social Development and Poverty Reduction regarding the need to protect the ongoing existence of year-round emergency shelters and warming/cooling centres in Nanaimo.

ATTACHMENTS:

ATTACHMENT A: Emergency Shelter and Warming/Cooling Centre Regulation Enforcement Policy Resolution |

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