

City of Kelowna

Regular Council Meeting

AGENDA



Monday, March 21, 2016

9:00 am

Knox Mountain Meeting Room (#4A)

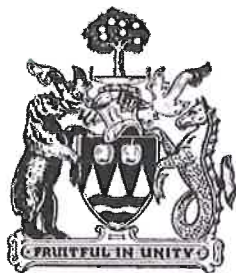
City Hall, 1435 Water Street

Pages

1. Call to Order
2. Confirmation of Minutes 2 - 3
AM Meeting - March 14, 2016
3. Reports
 - 3.1 Arab/Appaloosa Land Use and Bylaw Enforcement Strategy 60 m 4 - 11

The purpose of this report is to provide Council with the results of the public interest survey for a Local Area Service (LAS) and recommend a land use strategy and bylaw enforcement strategy.
4. Resolution Closing the Meeting to the Public

THAT this meeting be closed to the public pursuant to Section 90(1) (c), (e) and (k) of the *Community Charter* for Council to deal with matters relating to the following:
 - Labour Relations/Employee Relations;
 - Acquisition, Disposition, or Expropriation, of Land or Improvements; and
 - Provision of a Municipal Service.
5. Adjourn to Closed Session
6. Reconvene to Open Session
7. Issues Arising from Correspondence & Community Concerns
 - 7.1 Councillor Hodge, re: Local Government 2016 Current Issues Conference 5 m 12 - 15
 - 7.2 Mayor Basran, re: Issues Arising from Correspondence 30 m
8. Termination



City of Kelowna Regular Council Meeting Minutes

Date: Monday, March 14, 2016
 Location: Knox Mountain Meeting Room (#4A)
 City Hall, 1435 Water Street

Council Members Present: Mayor Colin Basran and Councillors Maxine DeHart, Ryan Donn, Charlie Hodge, Brad Sieben, Mohini Singh and Luke Stack

Council Members Absent: Councillors Gail Given and Tracy Gray

Staff Present: City Manager, Ron Mattiussi; and City Clerk, Stephen Fleming

(*denotes partial attendance)

1. Call to Order

Mayor Basran called the meeting to order at 9:52 a.m.

2. Confirmation of Minutes

Moved By Councillor DeHart/Seconded By Councillor Donn

R195/16/03/14 THAT the Minutes of the AM Meeting of March 7, 2016 be confirmed as circulated.

Carried

3. Resolution Closing the Meeting to the Public

Moved By Councillor Donn/Seconded By Councillor Hodge

R196/16/03/14 THAT this meeting be closed to the public pursuant to Section 90(1) (k) of the *Community Charter* for Council to deal with matters relating to the following:

- Provision of a Municipal Service.

Carried

4. Adjourn to Closed Session

The meeting adjourned to a closed session at 9:53 a.m.

5. Reconvene to Open Session

The meeting reconvened to an open session at 11:47 a.m.

6. Issues Arising from Correspondence & Community Concerns

6.1 Mayor Basran, re: Civic Block

Mayor Basran:

- Made a comment regarding the recent correspondence from the Kelowna Chamber of Commerce.

City Manager:

- Spoke to the nature of the Civic Block Plan and the timing contemplated by the Plan.

6.2 Councillor Hodge, re: Local Government 2016 Current Issues Conference

Councillor Hodge:

- Expressed an interest in attending the Conference.

Mayor Basran:

- Recommended that the matter be deferred to next Monday to see if other Councillors want to attend.

6.3 Councillor Singh, re: BC Fire Fighters Burn Unit Opening at Canucks Place

Councillor Singh:

- Advised that she plans to attend.

7. Termination

The meeting was declared terminated at 12:04 p.m.

Mayor

/slh/scf

City Clerk

Report to Council



Date: March 21, 2016
File: 1250-04
To: City Manager
From: Community Planning Department Manager
Utilities Planning Manager
Subject: Arab/Appaloosa Land Use and Bylaw Enforcement Strategy

Recommendation:

THAT Council receives, for information, the report from the Community Planning Department Manager dated March 21, 2016 regarding the Arab/Appaloosa Land Use and Bylaw Enforcement Strategy;

AND THAT Council directs staff to follow bylaw enforcement strategy as identified in the Community Planning Department Manager's report, dated March 21, 2016 regarding the Arab/Appaloosa Land Use and By Enforcement Strategy;

AND THAT Council direct staff to prepare Official Community Plan amendments as identified in the Community Planning Department Manager report, dated March 21, 2016 regarding the Arab/Appaloosa Land Use and Bylaw Enforcement Strategy;

AND THAT Council direct staff to lift the moratorium on accepting re-zoning applications in the Arab/Appaloosa area as noted in the the report from the Community Planning Manager, dated March 21, 2016 regarding the Arab/Appaloosa Land Use and Bylaw Enforcement Strategy;

Purpose:

The purpose of this report is to provide Council with the results of the public interest survey for a Local Area Service (LAS) and recommend a land use strategy and bylaw enforcement strategy.

Background:

The area in question is designated for potential I6 - Low Impact Transitional Industrial zoning and is limited to properties off of Arab and Appaloosa Roads, near Sexsmith and Highway 97. Just over 40 properties totaling approximately 35 ha are effected. The properties are

predominantly used as large lot residential properties, however a dozen have historical illegal, non-conforming light industrial uses.

The Sexsmith Industrial area is south and east of the area in question, and has been zoned and used for General Industrial purposes for many years. Properties to the north have been zoned and developed for single family residential housing. To the west of Arab and Appaloosa roads, lands are agriculturally zoned and in the Agricultural Land Reserve.

Land Use History

- In 2011, Council adopted the City of Kelowna Official Community Plan (OCP).
- The OCP designated the properties along Arab and Appaloosa Roads as being for future Industrial - Limited use.
- The neighbourhood is made up of agriculturally zoned lots averaging 0.8 ha in area.
- Many of the properties were being used for light industrial and storage uses, not conforming to zoning restrictions of the day.
- The intent of the Industrial - Limited designation was to recognize the character of the neighborhood and give owners a path to conformity by allowing properties to be re-zoned for transitional industrial use.
- Properties designated Industrial - Limited are permitted to apply to re-zone to the I6 - Low Impact Transitional Industrial.

2012

- Since the adoption of the OCP, one property in the area has been re-zoned to I6 - Limited Impact Transitional Industrial.
- In November of 2012, a moratorium was placed on development applications in the area, pending a resolution to servicing (water, sewer, roads and drainage improvements) and land use concerns.
- No applications have been taken in since then November 2012.
- In 2012, Council resolved:
*“THAT Council direct staff to report back with proposed amendments to the I6 - Low-Impact Transitional Industrial Zone to ensure consistency of intent and purpose with the Kelowna 2030 - Official Community Plan;
AND THAT Council direct staff to accept no further Rezoning applications to the I6 - Low-Impact Transitional Industrial Zone, pending completion of the proposed amendments to the I6 Zone.”*

2013

In late 2013, staff and Council revisited the issue and Council reaffirmed its direction in a closed meeting.

The proposed amendments are consistent with Council's 2013 direction, allowing outdoor storage, requiring development permits, and clarifying the purpose of the zone and land use. Several properties continue to have non-complying uses, unable to apply for Zoning relief.

At the February 23, 2015 Council meeting, Council directed staff to pursue Bylaw amendments to the Official Community Plan and affirmed its desire to pursue a local service area to build the infrastructure required to rezone lots along Arab and Appaloosa Roads to the new I6 zoning designation.

The OCP amendments were completed in September 2015 and the policies were redesigned to accommodate a change in the Clydesdale road design.

Local Area Service Survey Process and Results

Personalized letters were sent out to each home owner in the identified area. These letters outlined the share of the costs for infrastructure improvements (to the specific property) and a description of the opportunity for rezoning of the property should a local service area be successful. Specific costs for improvements were identified for each type of improvement (roads, drainage, and sewer costs), and a self-addressed, self-stamped response form was provided in order to receive feedback from the residents. Also, an invitation to a public open house was provided. Residents had the choice of either submitting their survey at the open house or by mail. The Open House took place on January 27, 2016 and survey results were finalized on February 19, 2016. The results from the public interest survey are as follows.

Of the 48 properties that were asked to vote, only 29 responded:

59 % for NO for a LAS (roads, drainage, sewer)
41 % for YES

In order for a Local Area Service to be successful, the city must receive petitions from at least 50% of the parcel owners in the proposed service area that are in favor of the project. Further, the value of parcels whose owners are in favor of the proposed LAS must exceed 50% of the total assessed value.

The City only received 12 votes in support of the LAS for roads, drainage and community sewer. The proposed Service Area has 48 lots within the subject area which requires the City to receive at least 25 votes in favour of a LAS in order to meet the 50% Provincial requirement. Given the results of the public survey, a Local Service Area process would be unsuccessful.

While sewer alone would not provide the necessary infrastructure needed to enable rezoning, the City asked residents if they would be interested in an option to build sanitary sewer as a standalone project, and the following results were received:

Of the 48 properties that were asked to vote, only 29 responded:

75.86% for NO for a Sewer LAS only
24.14% for YES

The lack of neighbourhood support for the LAS process means that no urban style re-development will be able to occur on lands in this area which do not have access to services.

Planning Comments:

Based on the lack of support for the Local Area Service plan for the neighbourhood, Community Planning is proposing to bring an OCP amendment to Council in order to better align the land use regulation with the servicing limitations.

From a big picture planning perspective, the Community Planning Department would like to ensure that a proper transition exists between the heavier industrial uses in the I2-General Industrial zone on the south side of Sexsmith and the east side of the future Hollywood Road.

Staff have long had concerns about the transition between the proposed transitional industrial land use designation and the Sol Terra residential development to the north.

The Community Planning Department recommends that the OCP be amended to allow future Industrial-Limited Use for those properties that front Sexsmith Road, but restrict development along the north and south side of Appaloosa to large lot rural residential. Properties along the industrial (and serviced) Sexsmith Road will have the opportunity to apply for industrial re-zonings, while the rural residential parcels will continue to act as a transition between the general industrial Sexsmith and the higher density residential land uses to the north. The proposed land use plan is shown graphically in Attachment "B".

Community Planning also recommends that the I6 - Transitional Industrial zone continue to be deployed in the Industrial-Limited areas. The I6 zone supports transitional industrial development with sensitive buffering to act as a transition between heavier industrial development south of Sexsmith and residential land uses further north.

Given the outcomes of the Local Area Service survey results, this provides this section of the City with certainty regarding servicing and corresponding land uses, and reduces speculation about possible future amendments. Therefore, staff recommend that the moratorium on accepting re-zoning applications in the area be lifted as the corresponding OCP land use designations will reflect the supportable land uses that Staff will forward for Council's consideration. This will allow applications which have been held pending resolution to the servicing questions in the area to proceed to Council for consideration.

These amendments will give land use clarity to residents of the area and potential investors and clarify future Bylaw enforcement actions. In order for the updated land use strategy to be successful, a bylaw enforcement strategy must be implemented concurrently. This strategy is detailed in the following section.

Proposed Bylaw Enforcement Strategy:

Staff are recommending the following enforcement strategy for the Areas shown in Attachment A, Subject Area:

- Provide notification to the affected residents of the City's intent to enforce its bylaws. The notification will provide information regarding permitted uses and requirements under the existing A1 Zone, permitted uses and requirements under the I6 Zone (should an application for rezoning be successful), current infractions, the rezoning process, and Bylaw Enforcement Notice. The intent of this information package is to assist residents to become compliant with the City's bylaws. Residents will have one month to indicate whether or not they wish to pursue rezoning or pursue the relocation of their business.
- A six month grace period, on progressive enforcement action, will be granted for those who do not reply or indicate that they wish to pursue either rezoning or relocation. Many of these residents are providing seasonal storage of vehicles.
- A one year grace period will be granted to those residents who do respond to the notification letter and indicate that they wish to relocate their business or rezone their property.

Once the grace period has expired, or should residents indicate that they do not wish to pursue rezoning or relocation of their business, the City will follow its standard progressive enforcement procedures, starting at fines and moving to court injunctions.

The Recommended Land Use and Bylaw Enforcement Strategy:

1. Discontinue any further action to pursue a local service area to enable rezoning of the Appaloosa subject area.
2. Pursue further changes to the OCP Future Land Use Designation as described above.
3. Start enforcement in the manner described above immediate over the areas shown in appendix A and over the entire Appaloosa subject area 6 months after the proposed OCP changes are complete.

Communications:

A letter will be sent back to the residents of the Appaloosa identifying the results of the public survey and any land use and bylaw enforcement strategy that Council adopts.

Internal Circulation:

Urban Planning Manager
Policy & Planning Manager
Building & Permitting Manager
Bylaw Services Manager
City Clerk

Considerations not applicable to this report:

Legal/Statutory Authority:

Legal/Statutory Procedural Requirements:

Existing Policy:

Personnel Implications:

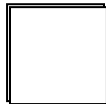
External Agency/Public Comments:

Alternate Recommendation:

Submitted by:

R.Smith, Community Planning Manager

Approved for inclusion:



D.Gilchrist,
Divisional Director Community Planning and Real Estate

Attachment A, Subject Area,

Attachment B, OCP Changes

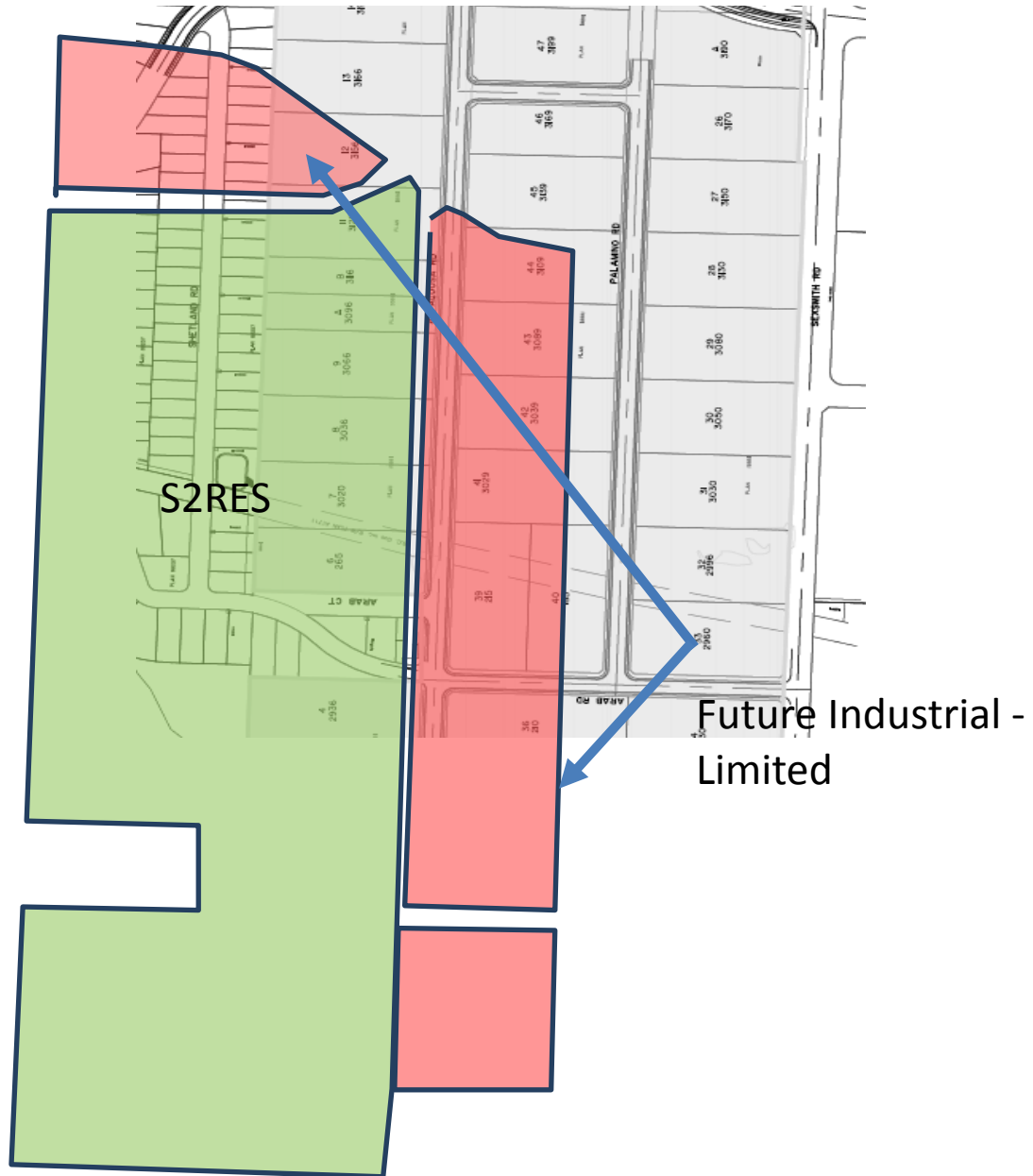
Attachment C, Summary Table of Permitted I6 Uses

cc: Divisional Director, Communications & Information Svcs
Divisional Director, Community Planning & Real Estate
Divisional Director, Infrastructure
Manager of Utilities Planning
Policy & Planning Department Manager

Attachment A -Subject Area



Attachment B - OCP Changes



Attachment C - I6 Zone Permitted Uses

15.6 I6 – Low-Impact Transitional Industrial

I6lp – Low-Impact Transitional Industrial (Liquor Primary)

15.6.1 Purpose

The purpose is to provide a **zone** for a range of low-impact transitional industrial land uses which are appropriate as a transition between established industrial land uses and residential, rural, and agricultural land uses. Uses should be primarily indoors, with limited outdoor storage behind extensive buffering or screening. This **zone** is only available for land that is designated in the City of Kelowna Official Community Plan for Industrial – Limited.

15.6.2 Principal Uses

The **principal uses** in this **zone** are:

- a) animal clinics, major
- b) animal clinics, minor
- c) automotive and equipment repair shops
- d) business support services
- e) commercial storage
- f) contractor services, general
- g) contractor services, limited
- h) custom indoor manufacturing
- i) emergency and protective services
- j) equipment rentals
- k) general industrial use, limited
- l) household repair services
- m) outdoor storage
- n) participant recreation services, indoor
- o) private clubs
- p) recycling depots
- q) single dwelling housing
- r) utility services, minor impact
- s) vehicle and equipment services, limited

15.6.3 Secondary Uses

The **secondary uses** in this **zone** are:

- a) home based businesses, major
- b) home based businesses, minor
- c) residential security/operator unit
- d) secondary suite within single dwelling housing

15.6.4 Subdivision Regulations

- a) The minimum **lot width** is 40.0 m.
- b) The minimum **lot depth** is 50.0 m.
- c) The minimum **lot area** is 1.0 ha unless a connection to the community sanitary sewer system, in accordance with the requirements of the City of Kelowna's Subdivision, Development & Servicing Bylaw has been installed. If a connection to a community sanitary sewer system is available the minimum **lot area** is 3500 m².



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LOCAL GOVERNMENT 2016: CURRENT ISSUES

Chaired by

Don Lidstone, Q.C.
Lidstone & Company

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CHAIR



Don Lidstone, Q.C., Lidstone & Company, Vancouver, BC. Mr. Lidstone has practised generally in the area of municipal law since 1980, and worked at several esteemed law firms before moving to Lidstone & Company in 2009. His municipal law focus is in the areas of constitutional, administrative, and environmental law, particularly in respect of governance, land use/sustainable development, bylaws and resolutions, Aboriginal law, bylaw enforcement and bylaw attacks. Invited to speak regularly at conferences, symposia and universities, he has chaired the Sustainable Region Initiative (Governance and Finance), Liquid Waste Expert Review Panel, Fire Services Review Panel, Whistler Waste Blue Ribbon Panel, and the Municipal Law Section of the BC Branch of the Canadian Bar Association. Mr. Lidstone has published numerous papers and manuals and consulted on the development of the British Columbia Community Charter and other municipal statutes. He was designated Queen's Counsel in 2008.

FACULTY



Sandra Carter, Partner, Valkyrie Law Group LLP, North Vancouver, BC. Ms. Carter is an experienced municipal solicitor and frequent speaker on both municipal and Aboriginal law issues. She articulated and practised for 15 years with a major Vancouver law firm, providing advice to local governments on issues across the spectrum of municipal law. She has advised on many new local government initiatives, including economic development incentives, tax revitalization programs, the creation and operation of municipal business corporations, post-treaty relationships and agreements with First Nations, and other innovative uses of local government authority. Ms. Carter has authored numerous articles and papers, and has frequently been invited to speak to various local government organizations on relevant topics.



Sara Dubinsky, Associate, Lidstone & Company, Vancouver, BC. Ms. Dubinsky has practised local government law at Lidstone & Company since being called to the bar. She is a litigation lawyer and also provides legal opinions on a wide variety of issues, with a particular emphasis on bylaw enforcement, medical marijuana, conflicts of interest and freedom of information. Ms. Dubinsky is a graduate of the University of Victoria Faculty of Law. She summered with Arvay Finlay and appeared at the Braidwood Commissions of Inquiry on behalf of the British Columbia Civil Liberties Association, where she articulated.



Gregory J. McDade, Q.C., Managing Partner, Ratcliff & Company, North Vancouver, BC. As senior litigation partner, Mr. McDade conducts major First Nations litigation. A large part of his practice is negotiation of impact benefit agreements, and Aboriginal consultation and accommodation litigation in respect of major resource projects in BC, the North and Ontario. He has extensive experience before all levels of court, including the Federal Courts and Supreme Court of Canada. Mr. McDade was counsel in the recent Court of Appeal decision in *Thomas et al. v. Rio Tinto Alcan*, and counsel for one of the Intervenor groups before the SCC in *Tsilhqot'in*. Greg was called to the Bar and has practised in BC since 1979. He was appointed Queen's Counsel in 1996.



Thomas White, Manager, Climate Risk Management, Climate Action Secretariat, B.C. Ministry of the Environment, Victoria, BC. Mr. White and his team research, analyze, develop, coordinate and implement programs, policies and legislation relating to climate change adaptation in theme areas that include coastal zones, agriculture and natural resources, infrastructure and communities, and public health. They work collaboratively across government and the wider public sector, and with research institutions, non-governmental organizations, and professional and industry associations, with the goal of ensuring that British Columbia is prepared for and resilient to the impacts of climate change. Thomas holds a Masters in Forest Conservation from the University of Toronto and a Bachelor of Arts from McGill.



James G. Yardley, Partner, Murdy & McAllister, Vancouver, BC. Mr. Yardley has spent his career practising law involving local governments. He has a law degree from the University of Toronto, and a Masters degree in Community and Regional Planning from UBC. While Mr. Yardley provides general advice on a broad variety of local government matters, his practice is largely devoted to litigation and conflict resolution. He has appeared in numerous trials, appeals, petitions, mediations and arbitrations on matters that include construction disputes, administrative law matters, expropriation and injurious affection claims, bylaw challenges, bylaw enforcement proceedings, claims alleging misfeasance in public office and bad faith, environmental law disputes and prosecutions, contract claims, election challenges, property taxation disputes, and claims involving police forces. Mr. Yardley has appeared before tribunals that include the B.C. Utilities Commission, the National Energy Board, the Expropriation Compensation Board, the Environmental Appeal Board of British Columbia, and the Comptroller of Water Rights.

LOCAL GOVERNMENT 2016: CURRENT ISSUES

The issues facing local governments continue to multiply and change. Those working with or advising municipalities need the latest information on emerging trends and best practices for facing new challenges and taking advantage of opportunities. This forum assembles leading experts with extensive experience advising local governments in order to provide insights on many of the most important issues in local government today.

Attendees will come away with new strategies for solving difficult problems and maximizing important opportunities available in exciting new areas such as green development and working with First Nations. With an emphasis on practical advice and real-world examples, this program should not be missed.

ISSUES TO BE ADDRESSED:

- Demonstrators occupying municipal property
- Municipalities and First Nations
- Conflicts of interest
- Municipal regulation of marijuana businesses
- Green development
- Adapting infrastructure and planning in the face of climate change

WHO SHOULD ATTEND?

- Mayors and city councillors
- Municipal directors and legal counsel
- Lawyers practising municipal, insurance or civil law
- Risk managers
- Consultants to local government
- Municipal insurance professionals



Tom Zworski, City Solicitor, City of Victoria, Victoria, BC. Mr. Zworski provides advice on all aspects of municipal law and legal issues involving the City of Victoria, including administrative, constitutional, construction, general litigation, and zoning and development law matters. He has appeared before all levels of BC courts and the Supreme Court of Canada, as well as various administrative boards and tribunals. Mr. Zworski has taught municipal law at University of Victoria law school and has spoken at local and national legal conferences and continuing legal education programs in BC and Ontario.

LOCAL GOVERNMENT 2016: CURRENT ISSUES

FRIDAY, APRIL 29TH, 2016

9:00 Welcome and Introduction by PBLI

9:05 Chair's Welcome and Introduction

Don Lidstone, Q.C.
Lidstone & Company

9:10 Case Law & Legislative Update

James G. Yardley
Murdy & McAllister

- New case law impacting local governments
- Survey of recent legislation and regulations

9:50 Questions and Discussion

10:00 Dealing with the Homeless and Demonstrators Occupying Municipal Property

Tom Zworski
City Solicitor, City of Victoria

- Recent decisions of the courts
- Tent cities in parks, road allowances and other property
- Freedom of expression
- What local governments can and cannot do

10:45 Questions and Discussion

10:55 Refreshment Adjournment

11:10 Negotiations with First Nations

Gregory J. McDade, Q.C.
Ratcliff & Company

- Consultation and accommodation
- Advice on effective negotiations
- Servicing agreements
- Sharing taxes from reserve

11:50 Questions and Discussion

12:00 Networking Lunch

1:00 Conflicts of Interest

Sandra Carter
Valkyrie Law Group LLP

- Common conflicts of interests
- Defences and exceptions
- Penalties
- The latest case law

1:45 Questions and Discussion

1:55 Marijuana and Municipalities

Sara Dubinsky
Lidstone & Company

- Municipal bylaws relating to marijuana businesses
- The Federal government's role
- Regulatory and enforcement issues

2:40 Questions and Discussion

2:50 Refreshment Adjournment

3:05 Green Development

Don Lidstone, Q.C.
Lidstone & Company

- Smart growth legal toolkit
- New *Building Act*: challenges and opportunities
- Neighbourhood development
- Green infrastructure and energy

3:50 Questions and Discussion

4:00 Climate Adaptation

Thomas White
B.C. Ministry of the Environment

- Dealing with the effects of climate change
- Proactive steps to reduce short and long term damage
- Dyking and other flood protection
- Forest fire interface

4:45 Questions and Discussion

4:55 Closing Remarks from the Chair

5:00 Program Concludes

INFORMATION

Four Ways to Register:

1. Telephone us: 604-730-2500 or toll free 877-730-2555
2. Fax us: 604-730-5085 or toll free 866-730-5085
3. Mail your registration form with payment
4. Register at www.pbli.com/1267

Registration: The registration fee is \$770.00 plus GST of \$38.50 totalling **\$808.50** covering your attendance at the program (in person or by live webinar), written materials, a light breakfast, a networking lunch and refreshments throughout the day.

Early Bird Discount: Register by March 29th, 2016 and receive a \$100 discount on the registration fee (\$670.00 plus GST).

Group Discount: Register four persons from the same organization at the same time and you are entitled to a complimentary fifth registration. Early Bird and Group Discount cannot be combined.

Payment: You may pay by VISA, MasterCard or cheque. Cheques should be made payable to the Pacific Business & Law Institute. Registration fees must be paid prior to the program.

When and Where: Check-in begins at 8:30 a.m. The program starts at **9:00 a.m.** UBC Robson Square is located at the basement level of **800 Robson Street** in Vancouver, BC. Please visit <http://robsonsquare.ubc.ca/find-us/> for directions.

Materials: The faculty will prepare papers and/or other materials explaining many of the points raised during this program. Materials will be available for pick-up at the program. Please contact us at registrations@pbli.com if you are unable to attend the program and wish to purchase a set of materials.

Your Privacy: We will keep all information that you provide to us in strict confidence, other than to prepare a delegate list containing your name, title, firm and city for our faculty and the program delegates. We do not share our mailing lists with any non-affiliated organization.

Cancellations: Full refunds will be given for cancellations (less a \$60.00 administration fee) if notice is received in writing five full business days prior to the program (**April 22nd, 2016**). After that time we are unable to refund registration fees. Substitutions will be permitted. We reserve the right to cancel, change or revise the date, faculty, content, venue, or the availability of webinar for this event.

Course Accreditation: Attendance at this course can be listed for up to **6.5 hours** of continuing professional development with the Law Society of BC.

Registration Form

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LOCAL GOVERNMENT 2016: CURRENT ISSUES

April 29th, 2016

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☐ In person ☐ Live webinar

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