

## Appendix A

### Extracts From the Vancouver Charter Concerning Planning Powers

#### Part IX Buildings

##### Interpretation

304. In this Part, unless the context otherwise requires, “**building**” includes structures of every kind, excavations in respect of any structure, and everything so attached to a structure as to constitute it real property;

“**construction**” includes erection, repair, alteration, enlargement, addition, demolition, removal, and excavation.

306. The Council may make by-laws

##### **Off-street parking for other buildings**

(r) for requiring that in the construction or change of use of any building or portion thereof suitable provision shall be made off the street to accommodate such number of motor-vehicles and bicycles as the Council may by by-law prescribe, and for defining and classifying such buildings, and for differentiating and discriminating according to such classification in respect of the accommodation to be provided as aforesaid;

##### **Off-street loading and parking for commercial buildings**

(s) for requiring that in the construction or change of use of any building or portion thereof used for commercial or industrial purposes, or where by the nature of its proposed use quantities of articles, materials, or merchandise will be delivered to or taken from such building, suitable provision shall be made off the street for accommodating such number of vehicles as the Council may prescribe and for off-street loading and unloading of articles, materials, or merchandise delivered to or taken from such building, and for defining and classifying such buildings, and for differentiating and discriminating according to such classification in respect of such provision, and, in the discretion of the Council, for designating the areas where such provision shall be required;

(s.1) waiving the requirement for some or all of the off-street parking spaces to be provided under

- (i) a by-law under paragraph (r), if the parking is in relation to residential, cultural or recreational uses of a building that is designated as a heritage site under the Heritage Conservation Act, or
- (ii) a by-law under paragraph (s),

and instead requiring the payment to the city of an amount of money as specified in the by-law, which money must be paid into a reserve fund for the provision of new and existing off-street parking spaces and used only for that purpose.

### Regulation by by-law

- 308A. The Council may by by-law regulate
- (a) the removal of soil, sand, gravel, rock or other substance of which land is composed from any land in the city or in any area in the city, and different regulations and prohibitions may be made for different areas, and
  - (b) the deposit of soil, sand, gravel, rock or other material on land in the municipality or in any area in the municipality, and require the holding of a permit for the purpose and fix a fee for the permit, and different regulations and prohibitions may be made for different areas.

### Part XXIV-A Development Cost Levies

- 523D. (1) For the purpose of this section, “**capital project**” means
- (a) constructing, altering, expanding or replacing sewage, water, drainage and highway facilities;
  - (b) providing and improving park land; and
  - (c) establishing daycare facilities in premises leased or owned, and acquiring property for such facilities.
- (2) Where, in approving a subdivision, the City requires that the mains of the systems referred to in Section 292(1)(e) be of a diameter in excess of that required to service the subdivision, the cost of providing such excess capacity shall be deemed to be a capital project in respect of which a development cost levy may be imposed subject to the provisions of this section.
- (2.1) In addition to the capital projects referred to in subsections (1) and (2), Council may impose a development cost levy for the purpose of assisting in providing Replacement Housing in such a manner as it deems appropriate and assisting in providing such housing shall be deemed to be a capital project.
- (2.2) For the purposes of this section, “**Replacement Housing**” means housing which Council reasonably anticipates will, as a result of development in the area in which a development cost levy is imposed, be necessary to house persons displaced and unable to afford comparable accommodation in that area and, in anticipating the housing required, Council may look to development anticipated during a 20 year period commencing on the date the by-law imposing the development cost levy is imposed.
- (3) The Council may, by by-law, impose a development cost levy in accordance with this section,
- (a) in the case of capital projects other than Replacement Housing, where the Council determines that development anticipated to take place in an area designated by it will contribute to the need to provide one or more capital projects in all or part of the area; and
  - (b) in the case of Replacement Housing, where the Council determines that development anticipated to take place in an area designated by it will contribute to the need to provide Replacement Housing inside or outside the area.
- (4) Subject to subsections (10) and (11), the development cost levy shall be imposed on every person entitled to the delivery of a building permit authorizing the construction, alteration or extension of a building or structure or part thereof situate within the area designated by Council.

- (5) The cost of a capital project may include
  - (a) all planning, architectural, engineering and legal costs related to the project; and
  - (b) the principal and interest on debt incurred to finance the capital project.
- (6) The Council may undertake any of the capital projects referred to in subsections (1), (2) and (2.1).
- (7) The Council may, from time to time, by by-law, amend the amount of a development cost levy to reflect the changed costs of a proposed capital project or to provide for the effects of inflation.
- (8) Subject to subsection (9), a development cost levy imposed by this section shall be a condition of the issuance of a building permit and shall be paid at the time or times a building permit or permits are issued for the development or redevelopment of property in an area to which a by-law applies. For the purposes of this subsection, the Council may define what constitutes development or redevelopment of property, and may provide that, where a development takes place in stages, each stage shall be deemed to be part of the development.
- (9) The Council may, in respect of all or different classes of developments, authorize the payment of development cost levies in instalments, prescribe conditions under which the instalments may be paid and provide that, where not paid, the instalment shall be inserted in the real property tax roll as a charge imposed with respect to the parcel or parcels in relation to which the building permit was issued.
- (10) No levy is payable under a by-law made under this section
  - (a) where a parcel of land is, or will be after construction, alteration or extension, exempt from taxation under Section 396(c)(iv),
  - (b) where a building permit authorizes the construction, alteration or extension of a building that will, after the construction, alteration or extension,
    - (i) contain less than 4 self-contained dwelling units; and
    - (ii) be put to no other use other than the residential use in those dwelling units,
  - (c) where a by-law imposing a development cost levy on the cost of development exempts repair or renovation work as defined, to such repair or renovation work, or
  - (d) where a parcel of land, owned by the Federal or Provincial government, the City of Vancouver or a non-profit organization, is or will be, after construction, alteration or extension, used for social housing and, for the purposes of this paragraph, Council may define what constitutes social housing.
- (11) No development cost levy shall be imposed to pay for any capital project, or portion thereof, provided to the City pursuant to a by-law passed pursuant to Section 292 or in respect of which an assessment has been imposed pursuant to Part XXIV.
- (11.1) If an amount has been paid under Section 193D(5)(d) in relation to development of a property, that amount must be deducted from the development cost levy in relation to the development of the property otherwise payable under this section for Replacement Housing.
- (12) The by-law that imposes the development cost levy shall set out the basis of the levy and the levy may vary with respect to
  - (a) different zones or different defined or specified areas; and

- (b) different uses or occupancies and, for the purpose of this subsection, Council may define what constitutes a use, occupancy or unit on such basis as it determines to be appropriate.
- (13) The development cost levy may be based on a rate per foot on the length of the longest boundary of the parcel with respect to which the levy is imposed, the number of units, or the number of square feet permitted by the building permit in the development with respect to which the levy is imposed, or on such other basis as Council deems appropriate having regard to anticipated development rights and their contribution to the need for capital projects. The basis of development cost levies may vary for different capital projects. A development cost levy under this Part shall not be based on a percentage of the cost of a development. A development cost levy for any development as shown on an application for a development permit shall not exceed 10% of the value of the development as determined pursuant to the building by-law from time to time in force.
- (14) The development cost levy shall be calculated with reference to the information contained on the application for a development permit or to records contained in the Land Title Office. Where development takes place in stages, the total development cost levy shall be apportioned and paid as each building permit is issued. Subject to the limitation contained in subsection (13), the portion of the levy to be paid on the issuance of each building permit shall, until the total levy is paid, be 10% of the value of the work authorized by the permit as determined pursuant to the building by-law.
- (15) The Council shall, on written request, make available to any person subject to the levy the considerations, information and calculations used to determine the basis of a development cost levy, but any information respecting the contemplated acquisition costs of specific properties need not be provided.
- (16) A development cost levy shall be deposited in a separate development cost levy reserve fund established for the purposes for which it was levied.
- (17) Except for money raised for purposes set forth in subsection (2.1), money in development cost levy reserve funds, together with interest, shall be used only to pay the costs of capital projects that relate directly or indirectly to the development or parcel in respect of which the levy was collected. Payments out of a development cost levy reserve fund shall be authorized by a resolution of Council, and one resolution may authorize a series of payments in respect of any capital project.
- (17.1) In relation to a capital project of providing and improving park land, money in a development cost levy reserve fund shall only be used for
- (a) acquiring park land or reclaiming land as park land, or
  - (b) providing fencing, landscaping, drainage and irrigation, trails, restrooms, changing rooms and playground and playing field equipment on park land.
- (18) Notwithstanding subsection (17), if money raised pursuant to a development cost levy exceeds what is necessary to provide the capital projects for which it was raised, the excess shall be set aside and spent on projects to benefit, directly or indirectly, the areas or zones in which the properties with respect to which the levy is imposed are located.
- (19) Nothing in this section restricts or affects any other power contained in this Act, provided however that the cost of any capital project shall be recovered only once.

## Part XXVII Planning and Development

### Interpretation

559. In this Part, or in any by-law made thereunder, unless the context otherwise requires,
- “**building**” and “**construction**” mean “building” and “construction” as defined in section 304;
  - “**certificate of use and occupancy**” means a certificate issued by the Director of Planning or such other persons as are authorized by Council, designating the authorized use of occupancy of any land or building;
  - “**conditional approval use**” means a use of land or a building which is permitted in a district or zone at the discretion of Council or an official or board to whom the discretion is delegated;
  - “**development**” means a change in the use of any land or building or the carrying-out of any construction, engineering or other operations in, on, over, or under land or land covered by water;
  - “**development plan**” means a plan or plans for the future physical development of the city or any part thereof, whether expressed on drawings, reports or otherwise, and whether complete or partial;
  - “**non-conforming**” as applied to a development means that such development was lawful when it took place but, by reason of a zoning by-law subsequently passed, does not conform to the uses permitted or regulations prescribed by such by-law. “**Non-conformity**” shall have a corresponding meaning;
  - “**official development plan**” means any development plan, whether complete or partial, which has been adopted under this Part;
  - “**owner**” shall include the agent or representative of a person owning or in possession of real property or in receipt of the rents or profits therefrom whether on his own account or as agent or trustee for any other person;
  - “**structural alteration**” includes any work or construction which involves any change, modification, replacement or repair of any supporting member of a building including the bearing walls, columns, beams, or girders thereof;
  - “**zoning by-law**” shall include a zoning and development by-law.

### Appointment of Director of Planning

560. The Council may appoint a Director of Planning who shall have such duties and powers as the Council may from time to time prescribe.

### Power of entry to inspect

- 560A. The Director of Planning or anyone authorized by him shall have power to enter on to any land or into any building at any reasonable time for the purpose of inspecting such land or building in order to ascertain if the provisions of a zoning by-law are being or have been carried out.

## Development Plans

561. (1) The Council may have development plans prepared or revised from time to time.
- (2) A development plan under this section may
- (a) relate to the whole city, or to any particular area of the city, or to a specific project or projects within the city;
  - (b) be altered, added to, or extended;
  - (c) designate
    - (i) land for streets, lanes and other public thoroughfares, and for the widening of streets, lanes, and other public thoroughfares,
    - (ii) sites for parks, schools, and public buildings, and
    - (iii) areas for special projects, including projects that require development or redevelopment as a whole.
- (3) A development plan under this section must include housing policies of the Council respecting affordable housing, rental housing and special needs housing.
- (4) A development plan under this section may include the following:
- (a) policies of the Council relating to social needs, social well-being and social development;
  - (b) policies of the Council relating to the preservation, protection, restoration and enhancement of the natural environment, its ecosystems and biological diversity;
  - (c) a regional context statement, consistent with the rest of the development plan, of how matters referred to in section 850 (2) (a) to (c) of the Municipal Act, and other matters dealt with in the development plan, apply in a regional context.
- (5) To the extent that a development plan under this section deals with these matters, it should work towards the purpose and goals referred to in Section 849 of the Municipal Act.

## Council powers respecting official development plan

562. (1) The Council may, by by-law,
- (a) adopt as the official development plan, or as a part thereof, any development plan prepared under section 561, or
  - (b) revise or amend the official development plan or any part thereof.
- (2) If a by-law under subsection (1) adopts or amends a regional context statement under section 561 (4) (b), before adoption of the by-law the Council must refer the by-law for comment to the board of the Greater Vancouver Regional District.

## Planning of school facilities

- 562.1 The Council, if it has adopted or proposed to adopt, revise or amend an official development plan for all or any part of the city, shall, at the time of preparing, revising or amending the official development plan and, in any event, not less frequently than once in each calendar year, consult with the school boards for the school districts that are wholly or partially included in the area to which the official development plan applies and seek their input as to
- (a) the actual and anticipated needs for school facilities and support services in the school districts,

- (b) the size, number and location of the sites anticipated to be required for the school facilities referred to in paragraph (a),
- (c) the type of school anticipated to be required on the sites referred to in paragraph (b),
- (d) when the school facilities and support services referred to in paragraph (a) are anticipated to be required, and
- (e) how the existing and proposed school facilities relate to existing or proposed community facilities in the area.

**Undertakings, official development plan**

563. (1) The adoption by Council of a development plan shall not commit the Council to undertake any of the developments shown on the plan.
- (2) The Council shall not authorize, permit or undertake any development contrary to or at variance with the official development plan.
- (3) It shall be unlawful for any person to commence or undertake any development contrary to or at variance with the official development plan.

**Power to acquire lands in addition to those essential to project**

564. (1) Where a project is shown upon an official development plan, the Council may acquire any real property it considers essential to the carrying-out of the project, and in addition acquire other adjacent or neighbouring real property. Such additional real property may include
- (a) the remnants of parcels, portions of which are essential to carrying out the project;
  - (b) any lands which may be injuriously affected by the project;
  - (c) any lands which, if allowed to be built upon without restriction, might become the site of buildings or structures which would prejudicially affect the full enjoyment of any building forming part of the project or the architectural effect thereof;
  - (d) any lands which the Council is of the opinion could be conveniently and profitably resubdivided or rearranged and developed as part of the project.

**Power to purchase or expropriate**

- (2) The Council shall have the same right to purchase or expropriate the additional lands as it has to purchase or expropriate the lands immediately necessary for the carrying-out of the project under this Act.

**Expenses**

- (3) Any expenses incurred in acquiring additional lands shall be met as part of the project, and the proceeds of any sale or other disposition of the lands so acquired shall be applied, in so far as they are required, in reduction of the cost of carrying out the project.

**Zoning**

**Zoning by-law**

565. (1) The Council may make by-laws
- (a) dividing the city or any portion thereof into districts or zones of such number, shape or size as Council may deem fit;
  - (b) regulating, within any designated district or zone, the use or occupancy of land and land covered by water for or except for such purposes as may be set out in the by-law;
  - (c) regulating, within any designated district or zone, the construction, use, or occupancy of buildings for or except for such purposes as may be set out in the by-law;

- (d) regulating the height, bulk, location, size, floor area, spacing, and external design of buildings to be erected within the city or within designated districts or zones;
  - (e) establishing, in any district or zone, building lines and the area of yards, courts and open spaces to be maintained and the maximum percentage of the area of land that can be covered by impermeable material;
  - (e.1) regulating, in any district or zone, the maximum density of population or the maximum floor-space ratio permissible;
  - (f) designating districts or zones in which there shall be no uniform regulations and in which any person wishing to carry out development must submit such plans and specifications as may be required by the Director of Planning and obtain the approval of Council to the form of development, or in which any person wishing to carry out development must comply with regulations and guidelines set out in a development plan or official development plan;
  - (f.1) requiring, where it creates a zone pursuant to this section, that as a condition of approving a form of development a person provide public amenities, facilities or utilities or provide land for such purposes or require that the person retain and enhance natural physical features of a parcel being developed;
  - (g) delegating to the Director of Planning or such other persons as are authorized by Council the authority to certify the authorized use or occupancy of any land or building;
  - (h) providing for certificates of use or occupancy and providing that the use or occupancy of any land or building other than in accordance with the certificate of use or occupancy applicable to such land or building shall constitute a violation of the by-law and shall render the owner of the land or building liable to the penalties provided in the by-law;
  - (i) authorizing the collection of a fee for a certificate of use or occupancy, which fee may vary according to the type of use or occupancy or the value of the land or building used or occupied;
  - (j) describing the zones or districts by the use of maps or plans, and the information shown on such maps or plans shall form part of the by-law to the same extent as if included therein.
- (2) A by-law regulating the use or occupancy of land, land covered by water or buildings may
    - (a) permit uses or occupancies existing at a date specified in the by-law as outright uses, and
    - (b) make uses or occupancies existing at a date specified in the by-law conditional approval uses as of that date.
  - (3) The regulations under subsection (1) may be different for different protected heritage property, as specified in the by-law.

### **Zoning for amenities and affordable housing**

- 565.1 (1) A zoning by-law may
- (a) establish different density regulations for a district or zone, one generally applicable for the district or zone and the other or others to apply if the applicable conditions under paragraph (b) are met, and
  - (b) establish conditions in accordance with subsection (2) that will entitle an owner to a higher density under paragraph (a).

- (2) The following are conditions that may be included under subsection (1)(b):
  - (a) conditions relating to the conservation or provision of amenities, including the number, kind and extent of amenities;
  - (b) conditions relating to the provision of affordable and special needs housing, as such housing is defined in the by-law, including the number, kind and extent of the housing;
  - (c) a condition that the owner enter into a housing agreement under section 565.2 before a building permit is issued in relation to property to which the condition applies.
- (3) A zoning by-law under section 565(1)(f) may designate an area within a zone for affordable or special needs housing, as such housing is defined in the by-law, if the owners of the property covered by the designation consent to the designation.

**Housing Agreements for affordable and special needs housing**

- 565.2
- (1) Council may, by by-law, enter into a housing agreement under this section.
  - (2) A housing agreement may include terms and conditions agreed to by Council and the owner regarding the occupancy of the housing units identified in the agreement, including but not limited to terms and conditions respecting one or more of the following:
    - (a) the form of tenure of the housing units;
    - (b) the availability of the housing units to classes of persons identified in the agreement or the by-law under subsection (1) for the agreement;
    - (c) the administration and management of the housing units, including the manner in which the housing units will be made available to persons within a class referred to in paragraph (b);
    - (d) rents that may be charged and the rates at which rents may be increased over time, as specified in the agreement or as determined in accordance with a formula specified in the agreement.
  - (3) A housing agreement may not vary the use or density from that permitted in the applicable by-law.
  - (4) A housing agreement may only be amended by by-law adopted with the consent of the owner.
  - (5) If a housing agreement is entered into or amended, the City must file in the land title office a notice that the land described in the notice is subject to the housing agreement, as amended if applicable.
  - (6) Once a notice is filed under subsection (5), the housing agreement or the amendment to it is binding on all persons who acquire an interest in the land affected by the agreement.
  - (7) On filing under subsection (5), the registrar must make a note of the filing against the title to the land affected but, in the event of any omission, mistake or misfeasance by the registrar or the staff of the registrar in relation to the making of a note of the filing,
    - (a) the registrar is not liable nor is the Crown liable vicariously, and
    - (b) the assurance fund or the Attorney General as a nominal defendant is not liable under Part 20 of the Land Title Act.
  - (8) The Lieutenant Governor in Council may prescribe fees for the filing of notices under subsection (5), and section 315 of the Land Title Act applies in respect of those fees.

**By-laws**

## 565A. Council may make by-laws

- (a) prohibiting any person from undertaking any development without having first obtained a permit therefor. Such permit shall hereinafter be referred to as a “development permit”;
- (b) providing that a development permit may be limited in time and subject to conditions, and making it an offence for any person to fail to comply with such conditions;
- (c) providing that no building permit shall be issued for the construction of any building until a development permit has first been obtained;
- (d) delegating to any official of the city or to any board composed of such officials such powers of discretion relating to zoning matters which to Council seem appropriate;
- (d.1) subject to sections 578 (2) and 579 (2), delegating to the Director of Planning, or to any board composed of officials of the city, the power to refuse to issue a development permit if, in the opinion of the delegate, the proposed action would detract from the heritage value or heritage character of protected heritage property;
- (d.2) providing that the failure to obtain a permit required under Section 193D in relation to the same property is a basis for refusing to issue a development permit.
- (e) providing for relaxation of the provisions of a zoning by-law or a by-law prescribing requirements for buildings where
  - (i) enforcement would result in unnecessary hardship,
  - (ii) Council determines that the proposed development would make a contribution to conserving a building of heritage significance,
  - (iii) Council determines that the proposed development makes provision for public space or activities, or
  - (iv) Council determines that the proposed development make provision for low cost housing for persons receiving assistance.

Such relaxation may be limited in time and may be subject to conditions. The by-law may authorize such relaxation by the Director of Planning or by any board constituted pursuant to subsection (d). The power to relax the provisions of a zoning by-law shall not be used to permit construction to provide for multiple occupancy in a one family dwelling district nor to permit the use or occupancy of a dwelling as a multiple dwelling in such district unless it was so used or occupied as at April 1, 1977; provided however, that the occupancy of a suite authorized by a by-law passed pursuant to section 565C shall not constitute a multiple occupancy.

- (f) providing for the payment of a fee upon application for a development permit, which fee may vary accordingly to the value or type of development for which the permit is sought;
- (g) providing that the use or occupancy of any land or building in contravention of the provisions of a zoning by-law or the conditions of a development permit shall constitute a violation of the zoning by-law and shall render the owner of the land or building liable to the penalties provided in the by-law;
- (h) prohibiting the use or occupancy of any land or buildings on or in which a development has taken place since the eighteenth day of June, 1956, without a development permit;
- (i) prohibiting the erection, use or occupancy of any building or the use or occupancy of any land unless due provision is made for public safety and amenity, sanitary facilities, water supply, and drainage.

### Occupancy of suite defined

- 565B. The Council may in the exercise of its powers under this Part
- (a) define what constitutes a family and what constitutes a household support person and may, for the purpose of regulating the occupancy of suites, adopt different definitions of family and household support persons from those adopted to regulate the occupancy of the principal dwelling unit, and law
  - (b) define what constitutes a principal dwelling unit and what constitutes a suite.

### Conditional approval use of suite

- 565C. (1) The Council may in the exercise of its powers under this Part permit, as a conditional approval use, the occupancy of a suite or suites by members of the family of, or household support persons employed by, the owner or occupant of the principal dwelling unit.
- (2) The Council may as a condition of permitting the use of suites as authorized under subsection (1), require
- (a) that a development permit, limited in time, be obtained authorizing such use, and such permit may limit use to occupancy by persons named in the permit, and
  - (b) that security, in a form, amount and for a period of time set out in the by-law, be posted to ensure that the suite is not occupied other than by persons authorized as occupants by the development permit.
- (3) A development permit authorizing any use of a suite shall expire and become void on a change of ownership or occupancy of the principal dwelling unit or a sale of the premises in which the suite is situate.
- (4) The granting of the specific powers this section shall not be taken in any way to diminish the general power to regulate the use or occupancy of land conferred by section 565.

### Occupancy of phase out suite

- 565D. (1) In this section, “**phase out suite**” means a suite which was in existence on October 22, 1986 and which suite or the use or occupancy thereof was on that date not permitted by by-law.
- (2) Council may, by by-law, permit the retention of one or more phase out suites for a limited period of time and on such conditions as may be prescribed in the by-law.

### Expiry of development permit which is limited in time

- 565E. When a development permit which is limited in time expires, then notwithstanding section 568, any use permitted by such permit becomes unlawful.

### Landscaping Requirements

- 565F. The Council may, by by-law, provide that
- (a) a permit for a conditional approval use, or
  - (b) a zone or district designated under section 565 (1)(f)

may include requirements respecting the provision, maintenance and retention of landscaping, including the submission of plans showing the landscaping to be provided, maintained and retained.

**Amendment or repeal of zoning by-law**

566. (1) The Council shall not make, amend or repeal a zoning by-law until it has held a public hearing thereon, and an application for rezoning shall be treated as an application to amend a zoning by-law.
- (2) Council may by by-law require every person applying for an amendment to the zoning by-law to accompany the application with a fee to be prescribed by by-law.
- (2.1) A fee under subsection (2) may vary depending on the size of the area covered by the proposed rezoning, and the by-law establishing the fee may provide for a reduction of the fee depending upon the complexity or scope of the proposed amendment.
- (2.2) A fee under subsection (2) must not exceed the average costs of processing, inspection, advertising and administration that are usually related to a zoning by-law amendment of the kind to which the fee relates.
- (3) Notice of the hearing, stating
- (a) the time and place of the hearing, and
  - (b) the place where and the times when a copy of the proposed by-law may be inspected,
- shall be published in at least 2 consecutive issues of a daily newspaper circulating in the city, with the last publication appearing at least 7 days and not more than 14 days before the date of the hearing.
- (4) At the hearing all persons who deem themselves affected by the proposed by-law shall be afforded an opportunity to be heard in matters contained in the proposed by-law, and the hearing may be adjourned from time to time.
- (5) After the conclusion of the public hearing, the Council may pass the proposed by-law in its original form or as altered to give effect to such representations made at the hearing as the Council deems fit.
- (6) Notwithstanding the provisions of this section, where any street or part thereof has been stopped up under the provisions of any Act and the ownership thereof is transferred to the owner of an adjoining parcel of land, then the land formerly comprising the street or part thereof so stopped up shall be deemed to be zoned for the same purpose for which the parcel of which it has become a part is already zoned unless the Council by resolution shall otherwise direct.
- (7) Notwithstanding the provisions of this section, where any land zoned pursuant to this Part has been transferred to the city for street purposes, whether such street is established or opened up by the city or not, such land shall be deemed not to be zoned unless the Council by resolution shall otherwise direct.

**By-laws governing restrictions as to height of buildings, size of courts and yards**

567. Where the provisions of the zoning by-law impose requirements for a lower height of buildings, or a less percentage of a lot that may be occupied, or require wider or larger courts or deeper yards than are imposed or required by the provisions of the building by-law, the provision of the zoning by-law shall govern; but where the provisions of the building by-law impose requirements for a lower height of building, or a less percentage of lot that may be occupied, or require wider or larger courts or deeper yards than are required by the zoning by-law, the provisions of the building by-law shall govern.

### Non-conforming buildings

568. (1) Non-conformity shall be divided into two types:-
- (a) Non-conformity with respect to the use which is made of the premises;
  - (b) Non-conformity arising out of change in the regulations governing matters other than the use which may be made of the premises.
- (2) A building lawfully under construction at the time of coming into force of a zoning by-law shall for the purpose of that by-law be deemed to be a building existing at that time. For the purposes of this subsection, a building shall be deemed to be lawfully under construction if a development permit has been issued and such permit remains valid.
- (3) A lawful use of premises existing at the time of coming into force of a zoning by-law, although such use is not in accordance with the provisions of the by-law, may be continued; but, if such non-conforming use is discontinued for a period of ninety days, any future use of those premises shall be in conformity with the provisions of the by-law. The Board of Variance may extend the aforesaid period of 90 days to a maximum of 180 days.
- (4) No additions or structural alterations except those required by Statute or by-law shall be made to a non-conforming building without;
- (a) the approval of the Board of Variance if the non-conformity is in respect of use;
  - (b) the approval of the Director of Planning if the non-conformity is in respect of regulations only.

### Fire Damage to non-conforming building

- (5) Where a non-conforming building is damaged or destroyed by fire to the extent of sixty per centum (60%) or more of its value above its foundations as determined by the City Building Inspector, whose decision shall be subject to review by the Board of Variance, it shall not be repaired or reconstructed without the approval of
- (a) the Board of Variance if the non-conformity is in respect of use;
  - (b) the Director of Planning if the non-conformity is in respect of regulations only.
- (6) [Repealed 1985-89-8.]

### Heritage Property

- (7) Despite subsection (4), additions or structural alterations to a protected heritage property may be undertaken if they are permitted or authorized in accordance with the provisions governing the heritage protection of the property.
- (8) Subsection (5) does not apply to additions or structural alterations made to a protected heritage property if the additions or structural alterations are permitted or authorized in accordance with a heritage alteration permit under section 597.

**Property injuriously affected**

569. (1) Where a zoning by-law is or has been passed, amended, or repealed under this Part, or where Council or any inspector or official of the city or any board constituted under this Act exercises any of the powers contained in this Part, any property thereby affected shall be deemed as against the city not to have been taken or injuriously affected by reason of the exercise of any such powers or by reason of such zoning and no compensation shall be payable by the city or any inspector or official thereof.
- (2) Notwithstanding that the Board of Variance has relaxed the provisions of a by-law enacted under this Part, in determining the compensation payable by the city for the taking of lands for the widening of a street in respect of which a building line has been fixed, the city is not liable to pay compensation for or in respect of any building erected in contravention of the by-law fixing the building line.
- (3) Upon the acquisition of such lands by the city, the owner shall, upon demand by the city, remove such building or part thereof, as the case may be, and, in default thereof, the city may remove the same and the costs of such removal and any other costs incidental thereto shall be a debt due to the city payable by the owner of the property recoverable by action and shall be a charge on the balance of the land unless sooner paid to the city.
- (4) Where the use of land or the siting of existing buildings and structures on the land ceases, as a result of expropriation of land, to conform to a zoning by-law under this Part, the remainder of the property is deemed to conform, unless compensation was paid to the owner or occupant of the land in an amount that is directly attributable to the loss, if any, suffered by that owner or occupant as a result of the non-conformity.

**Withholding of permit pending passage of zoning by-law**

570. (1) Prior to the adoption of a zoning by-law, or of an official development plan, or of an amendment to a zoning by-law, or of an alteration, addition, or extension to an official development plan, the Council may cause to be withheld the issuance of any development or building permit for a period of thirty days from the date of application for such permit.
- (2) Where any permit is so withheld, the application therefor shall be considered by the Council within the said period of thirty days, and, if in the opinion of the Council, the development proposed in the application would be at variance or in conflict with a development plan in the course of preparation, or with an alteration, addition or extension to an official development plan in course of preparation, or with a zoning by-law in course of preparation, or with an amendment to a zoning by-law in course of preparation, the Council may withhold the permit for a further sixty days from the expiration of the thirty day period hereinbefore referred to, or the Council may impose such conditions on the granting of the development permit as may appear to the Council to be in the public interest.
- (3) In the event that the Council does not within the said period of sixty days adopt any such plan, alteration, addition, extension, or by-law, the owners of the land in respect of which a development permit was withheld or conditions were imposed pursuant to this section shall be entitled to compensation for damages arising from the withholding of such development permit, or the imposition of such conditions. Such compensation shall be determined by arbitration pursuant to the Commercial Arbitration Act.

- (4) Despite subsection (1), an owner of property for which a permit has been withheld before the adoption of a by-law designating a heritage property may agree that a permit may be withheld for a period longer than the 30 days referred to in subsection (1) and, in that case, subsection (1) continues to apply during that longer period and subsection (2) is deemed to read as if the longer period applies.

**Enforcement of by-law**

- 571. (1) Any by-law passed hereunder may be enforced and the contravention of any regulation therein restrained by the Supreme Court upon action brought by the city, whether or not any penalty has been imposed for such contravention, and it shall be unnecessary for the Crown or the Attorney-General or any other officer of the Crown to be party to such action.
- (2) Any zoning by-law passed hereunder may be enforced and the contravention of any regulation therein restrained by the Supreme Court upon action brought by the city or any registered owner of real property or any incorporated society representing registered owners of real property in the City of Vancouver and affected by such by-law or regulation, whether or not any penalty has been imposed for such contravention, and it shall be unnecessary for the Crown or the Attorney-General or any other officer of the Crown to be a party to such action.

**Sign By-laws**

- 571A. (1) The Council may make by-laws for regulating the number, size, type, form, appearance and location of signs, whether projecting into a street or not, and the by-law may contain different provisions for different zones and for different uses within a zone.
  - (1.1) The Council may, by by-law, establish fees payable to the city for an application to initiate a change to a by-law under subsection (1).
  - (2) The Council may, by resolution passed by not less than two-thirds of all its members, order the removal of any sign, whether located on private or on public property which has been non-conforming for not less than five years, provided, however, that where a sign which became non-conforming prior to March 1, 1973, had, before such date, been granted a permit to make substantial modifications to such sign, the said period of five years shall be calculated from the date of such permit.
  - (3) The provisions of subsections (1) and (2) of section 324A shall, mutatis mutandis, apply with respect to the enforcement of any order made herein. No compensation shall be payable in connection with the exercise of the authority herein.
- 571AA. (1) The Council may, by by-law, provide for the relaxation of a sign by-law under section 571A in one or more of the following circumstances:
  - (a) enforcement of the sign by-law would result in unnecessary hardship;
  - (b) the sign is
    - (i) on heritage property, or
    - (ii) on property in an area identified as a historic area in an official development plan or a zoning by-law;
  - (c) the sign uses technology not contemplated by the sign by-law;
  - (d) the sign is in relation to a special event, as designated by Council by by-law or resolution.
- (2) A by-law under subsection (1) may authorize such relaxations to be made by the Council, by any official of the city or by a board composed of such officials.

- (3) A relaxation under this section, whether made by the Council, an official or a board, may be limited in time and may be made subject to conditions.
- (4) A person whose request for a relaxation is dealt with by an official or a board is entitled to have the Council reconsider the matter.

### **Waste Management Act**

571B. Notwithstanding anything in this Act,

- (a) the Council or its delegate shall not approve an application for
  - (i) zoning,
  - (ii) development permits,
  - (iii) removal of soil,
  - (iv) demolition permits respecting structures that have been used for commercial or industrial purposes, or
  - (v) activities prescribed by regulation under the *Waste Management Act*, if the Council or its delegate
- (b) has not received a site profile where required under section 20.11 of the *Waste Management Act*,
- (c) has received a site profile but has not sent it to the manager under section 20.11(5) of the *Waste Management Act*,
- (d) has sent a site profile to the manager under section 20.11(5) of the *Waste Management Act* but the Council or its delegate has not received notice that a site investigation under section 20.2 of that Act will not be required, or
- (e) has not received a valid and subsisting approval in principle, conditional certificate of compliance or certificate of compliance under section 20.71 of the *Waste Management Act* from the person making an application described in paragraph (a)(i) to (v).

### **Agreements for regulating contaminated sites**

571C. The Council may by by-law enter into and implement an agreement referred to in sections 20.81 and 20.91 of the *Waste Management Act*.

### **Approval of by-law**

571D. A provision in a by-law that prohibits the deposit of soil or other material and that makes reference to quality of the soil or material or to contamination, has no effect until the provision is approved by the minister with the concurrence of the Minister of Environment, Lands and Parks.

### **Board of Variance**

#### **Establishment and membership of Board of Variance**

572. In this and the following section “**Board**” means “Board of Variance”.

- (1) The Council shall establish by by-law a Board of five members, two to be appointed by the Council, two to be appointed by the Lieutenant-Governor in Council, and a Chairman who shall be appointed by a majority of the other appointees. The Board shall appoint a secretary and such other officials as may be required by the Board.
- (2) Each member of the Board shall hold office for a term of three years or until his successor shall be appointed, but a person may be reappointed for a further term or terms.

- (3) The Council may provide, by by-law or resolution, for the remuneration of members of the Board, in such amounts as the Council thinks fit, and may also provide for the payment of a fee for the hearing of an appeal before the Board.
- (4) No person who is a member of the Advisory Planning Commission or who holds any municipal office whether appointed or elected, is eligible to be appointed or to sit as a member of the Board.
- (5) Three members of the Board shall constitute a quorum.
- (6) The Chairman may from time to time appoint a member of the Board as Acting-Chairman to preside in the absence of the Chairman.
- (7) In the event of the death, resignation, or removal from office of any member of the Board, his successor shall be appointed in the same manner as such member was appointed, and until the appointment of his successor the remaining members shall constitute the Board.
- (8) The Chairman may be removed at any time by the Lieutenant-Governor in Council on the recommendation of the Council.
- (9) The by-law establishing the Board shall set out the procedure to be followed by the Board, including the manner in which appeals are to be lodged and the method of giving notices required under section 573.

### Appeals to Board of Variance

573. (1) The Board shall hear and determine appeals
- (a) by any person aggrieved by a decision on a question of zoning by any official charged with the enforcement of a zoning by-law;
  - (b) by any person who alleges that the enforcement of a zoning by-law with regard to siting, size, shape, or design of a building would cause him undue or unnecessary hardship arising out of peculiarities in the site or special circumstances connected with the development. In any such case the Board may, to the extent necessary to give effect to its determination, exempt the applicant from the applicable provisions of the zoning by-law;
  - (c) by any person who alleges that due to special circumstances or conditions the provisions of subsection (3) of section 568 will result in undue or unnecessary hardship to him;
  - (d) with respect to matters arising under subsections (4) and (5) of section 568;
  - (e) by any person aggrieved by a decision by any board or tribunal to whom Council has delegated power to relax the provisions of a zoning by-law;
  - (f) by any person who, by reason of the application of Division 2 of Part 22 of the *Local Government Act* to the city, is
    - (i) unable to obtain a permit authorizing tree cutting or removal, or
    - (ii) unable to comply with the requirements of a by-law or permit under that Division.
- (2) The Board shall not allow any appeal solely on the ground that if allowed the land or buildings in question can be put to a more profitable use nor unless the following conditions exist:
- (a) The undue or unnecessary hardship arises from circumstances applying to the applicant's property only; and

- (b) The strict application of the provisions of the by-law would impose an unreasonable restraint or unnecessary hardship on the use of the property inconsistent with the general purpose and intent of the zoning by-law; and
  - (c) The allowance of the appeal will not disrupt the official development plan.
- (2.1) The Board shall not allow an appeal that would apply to a property for which an authorization for alterations is required under Part XXVIII.
  - (3) The Board shall give notice to such owners of real property as the Board may deem to be affected by the appeal, and public notice of the hearing shall be given, if the matter is deemed by the Board to be of sufficient importance. For the purpose of determining the names of the owners deemed to be affected, reference shall be made to the records kept by the Assessor.
  - (4) The Board shall conduct its hearings of appeals under this section in public.
  - (5) The decision of a majority of the members of the Board present at a hearing shall constitute the decision of the Board, which shall be rendered in open meeting and shall be recorded in writing by the secretary. In the event of the members of the Board being equally divided, the appeal shall be disallowed.
  - (6) No appeal shall lie from a decision of the Board.
  - (7) In allowing an appeal, the Board may impose such restrictions, limitations or conditions as may seem to it to be desirable and proper in the circumstances.
  - (8) Council may by by-law provide that failure to comply with any restrictions, limitations, or conditions imposed by the Board pursuant to subsection (7) shall constitute an offence against the by-law.