



Investigation and Enforcement of Building Bylaws and Codes

Sara Dubinsky & Matt Voell


LIDSTONE & COMPANY

BOABC

May 26, 2026

AGENDA

- Best practices in gathering evidence; obtaining entry warrants
- Staff correspondence; demand letters; orders to comply
- Notices on title
- Remedial action requirements
- Challenge of building official decisions



Gathering Evidence

Best practices in gathering evidence

- Consider objective:
 - Report to Council / Board seeking direction; staff correspondence seeking compliance; NOT; MTI trial; RAR
- Personal observations
 - Neighbour complaint versus BEO versus attendance of Building Official
- Document document and document
 - Convey information; objective data; describe observations not conclusions; pictures are worth 1000 words; videos can be difficult to tender in evidence
- Efficiency
 - One Building Official who can speak to progress/ changes over time, code issues, plan checking

Authority to enter to gather evidence

- Section 16 contains broad direction about authority to enter onto property to perform inspections
 - Authority to enter onto property without consent, at reasonable times, in a reasonable manner, **and after taking reasonable steps to advise the owner or occupier in advance**
- However, limits on entering places occupied as private dwelling (s. 16(5))
- Section 284 of LGA provides that 16(1)-(5) of Community Charter applies to RDs

Authority to enter: Regional Districts

- Broad grant of authority in 16(6) does not apply to Regional Districts
- Accordingly, authority to enter must be found in RD bylaws
- Example:

Section 4.1.2 of the TNRD Building Regulations Bylaw No. 2066 provides that the Building Official:

...may enter any land, building, structure, or premises at any reasonable time for the purpose of ascertaining that the terms of this or any other Regional District bylaw are being observed;

Authority to enter to gather evidence

Some local government bylaw or policies provide steps for entering onto property or into private residences:

5.0 Inspection

5.1 Bylaw Enforcement Officers are authorized under the ** Bylaws to enter any lot at any reasonable time to determine if regulations are being observed.

5.2 At the start of any investigation, Bylaw Enforcement Officers will determine if entry is necessary to investigate the alleged contravention or if the investigation can be conducted from a public road or other lands.

5.3 Bylaw Enforcement Officers are encouraged to request mutually agreeable times to arrange site inspections.

5.4 If a Respondent has indicated that they will work towards compliance, and have agreed on a time to comply, a site inspection is only required to confirm compliance.

5.5 If a Respondent provides photographic evidence, a survey, or a professional report that confirms compliance, a site inspection is not required.

Unique context of permit applicants/holders

- Ability to include terms and conditions in permit application/issued permit

- Building Bylaw:


“An owner or occupier of a building or premises with an issued or active building permit is deemed to consent to entry by a building official, at reasonable times and in a reasonable manner, to ascertain whether the requirements of this bylaw are being met.”

Building bylaws

- Building bylaws will define “building official” or “building inspector”
- Examples of different definitions
 - *Building official* means the person designated in or appointed to that position by the Bowen Island Municipality, and includes a building inspector, plan checker, plumbing inspector gas inspector, or electrical inspector designated or appointed by the Bowen Island Municipality, and for certainty the building official is the “building inspector” referred to in the Community Charter and Local Government Act;

Building official defined

- *Building Inspector* means the persons employed by the Regional District for administering and enforcing the Building Bylaw and includes Plan Checkers, Building Inspectors, and the Chief Building Inspector.
- *Building official* means a person who is qualified as a building official under s. 11 of the Building Act or is an exempt building professional under s. 10 of the Building Act, and who has been appointed to perform the duties of a building official under this Bylaw.



Why does definition of building
official matter?

Obtaining entry warrants

- May not enter a private dwelling under s. 16 unless one of the following applies (16(5)):
 - (a) the occupier consents;
 - (b) the municipality has given the occupier at least 24 hours' written notice of the entry and the reasons for it;
 - (c) the entry is made under the authority of a warrant under this or another Act;
 - (d) the person exercising the authority has reasonable grounds for believing that failure to enter may result in a significant risk to the health or safety of the occupier or other persons;
 - (e) the entry is for a purpose referred to in subsection (6) (a) in relation to regulations, prohibitions or requirements applicable to the place that is being entered.

Obtaining entry warrants (2)

Entry warrants

275 If satisfied by evidence on oath or affirmation that access to property is necessary

- (a) for the purposes of this Act or the *Local Government Act*, or
- (b) for the purposes of a municipal power, duty or function under another Act,

a justice may issue a warrant authorizing a person named in the warrant to enter on or into property and conduct an inspection or take other action as authorized by the warrant.

****** *s. 275 applies to RDs by operation of s. 424 of LGA*

Obtaining entry warrants (3): Procedure

- Prepare an Information to Obtain a Warrant
- Information should contain
 - Who you are and that you have personal knowledge of the facts set out in the Information
 - Owner/occupier of the property
 - History of the bylaw breaches
 - The steps you took and communication with the owners/occupiers, e.g. attempts to obtain compliance
 - The date and time of entry, specifics on who will be entering, and what you are looking for

Obtaining entry warrants (4) Procedure

- Justice of the Peace will commission tele-information
- File will be opened and telewarrant granted or rejected

Example ITO

Information to Obtain an Entry Warrant
The *Community Charter*, SBC 2003, Chapter 26 (the "Act")

Canada
Province of British Columbia

This is the information of BO 2, Building Official for the City of Nanaimo, 1234 Fake Street, Nanaimo, British Columbia, (the "Informant") taken before me.

The Informant says that the Informant has reasonable grounds to believe that access to the interior of the Coast Bastion Hotel, situated at 11 Bastion Street, Nanaimo, British Columbia (the "Property") is necessary for the purposes of an inspection to determine compliance with:

- (a) City of Nanaimo Building Bylaw No. 7224, as amended (the "Building Bylaw"); and
- (b) City of Nanaimo Zoning Bylaw No. 4500, as amended (the "Zoning Bylaw")

(together, the "Bylaws")

GROUND FOR BELIEF ARE:

1. I am a Building Official for the City of Nanaimo, British Columbia, and as such have personal knowledge of the facts set forth in this information and belief and where stated, I verily believe those facts to be true.
2. The Property is located within the City, is subject to the Bylaws, and is owned by Mr. and Mrs. Coast Bastion (the "Owners").
3. On May 23, 2024, the City received written notification alleging a hotel had been constructed on the Property without first obtaining building permits (the "Building"), and that the Owners were renting out rooms in the Building.
4. I reviewed the website www.coasthotels.com and observed that it advertises hotel rooms for rent. The website includes a "how to find us" location page listing Nanaimo, BC as the site address and has an embedded Google Map showing a pinpoint location which corresponds to the Property in the City's mapping system.
5. The Building Bylaw requires that the Owners obtain a building permit before constructing any buildings or structures on the Property.
6. I reviewed the City's building permit records and found no records authorizing the construction of the Building.
7. The Property is zoned Residential 1 by the Zoning Bylaw which does not permit tourist accommodation use or hotel use of the Property.
8. On May 28, 2024, I attended the Property. We proceeded to the front door of the Building and were greeted by one of the Owners. After explaining that

Example ITO

our site visit was to confirm whether a hotel was built on the Property without permits, we were denied access to the Property to inspect the Building.

9. The Building on the Property continues to be advertised for rent on various online platforms.
10. On July 30, 2025, I sent a letter to the owners of the Property advising of an inspection of the Property scheduled for August 19, 2025.
11. On August 4, 2025 the owners of the Property replied to me by email, stating that a site inspection is "not authorized" and that "City staff and affiliated personnel are not authorized to enter our property on August 19th or any other date".

The Informant asks that a warrant be issued authorizing BO1, Building Official for the City of Nanaimo, BEO1, Bylaw Enforcement Officer for the City of Nanaimo, accompanied by an RCMP officer(s) and a locksmith (if necessary) to enter the Property to inspect the Property and the interior of the Building on the Property, situated at 11 Bastion Street, Nanaimo, British Columbia, on September 16, 2025 to determine whether the owners of the Property are complying with the Bylaws.


AFFIRMED BEFORE ME at the City of
Nanaimo, British Columbia, this ____ day of
August, 2025

Justice of the Peace

(insert)
Building Official

Dated the _____ of August, 2025 at Nanaimo, British Columbia.

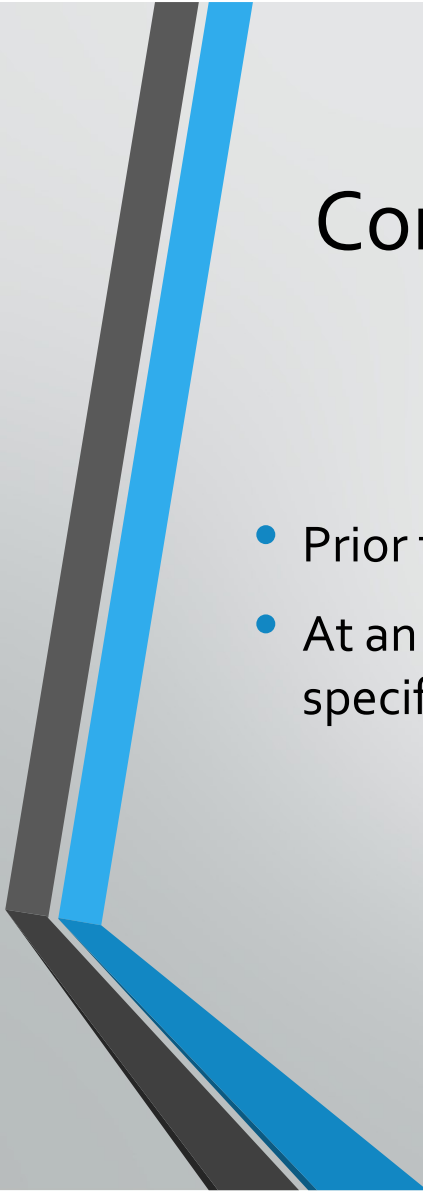
[Provisions of the *Community Charter*, SBC 2003, c. 26 relevant to this document are section 16 and 275]



Correspondence and Orders

Communication with Owners/Occupiers

- All communication should be in writing, if possible
- When communication is in person, ensure you take notes
- If communication is over the phone, send email or letter confirming details of conversation
- People remember interactions in ways that are beneficial to themselves
- Existing case example: allowing limited additional work during NARU application, with strict conditions



Communication with Owners/Occupiers (2): Demand Letters

- Prior to any enforcement, best practice is to attempt voluntary compliance
- At an early stage, important to send a demand letter, setting out clear and specific requirements for compliance

Communication with Owners/Occupiers (3): Demand Letters

Demand letters should include the following:

1. reference to the property in question (civic address and/or full legal)
2. reference to bylaws and provisions that are being breached
3. facts/circumstances of breach
4. steps required to bring property into compliance
5. deadline for compliance
6. statement that unless compliance by deadline, enforcement steps
7. provide contact information

Communication with Owners/Occupiers (4): Demand Letter example

The Building Bylaw requires that an owner of a property obtain a building permit before any construction of any building or structure is commenced or continued. Despite this requirement, it appears that you have commenced construction of a structure on your property with first obtaining a permit, which amounts to a breach of the Building Bylaw.

The LG has brought this contravention to your attention following inspections of your property on April 14, 2025 and November 14, 2025, however it appears that you have not remedied the contravention. Accordingly, the LG orders that you:

1. Immediately cease and desist from any further unpermitted construction on the property; and
2. Within 30 days of the date of this letter, apply for a building permit for the structure on your property. Should you not wish to apply for a BP the local government requires that the structure be demolished. (sometimes demolition requires a BP too)

Should you fail to comply with this order the LG may, without further notice to you, commence enforcement proceedings against you.

Communication with Owners/Occupiers (5): Common mistakes

- Reference to “complaints” – no need for this, a breach is a breach
- Lack of specificity about bylaw breaches – do the legwork
- Failure to give a clear deadline for compliance
- Imposing a deadline to “contact the BO/BI”

Communication with Owners/Occupiers (6): Orders to comply

- Often bylaws authorize an “order” to comply
- Building context:
 - Stop Work Order
 - No Occupancy Order

Communication with Owners/Occupiers (7): Orders to comply

- Failure to comply with an “order” is often another bylaw breach
- If granted such authority, use language of “order” in a demand letter
 - “pursuant to section x of the Bylaw, you are hereby ordered to....”
- Some statutes reference such orders, e.g. s. 47(1)(k) of *Residential Tenancy Act*; s. 40(1)(j) of *Manufactured Home Park Tenancy Act*



Notices on Title

Notices on Title

- Purpose of notice on title is to provide information to potential owners of a breach of bylaws and regulations respecting safety
- Usually used when possibility or likelihood that an owner will be selling a property
- Tool for building officials ONLY
- Often used as an initial enforcement step and tool to limit LG liability

Notices on Title (2)

- Building Inspector may recommend a board resolution directing the corporate officer to file a notice on title, if BI:

Observes a condition, with respect to land or a building or other structure, that the inspector considers

(i) results from the contravention of, or is in contravention of,

(a) a municipal bylaw,

(b) a Provincial building regulation, or

(c) any other enactment

that relates to the construction or safety of buildings or other structures, **and**

(ii) that, as a result of the condition, a building or other structure is unsafe or is unlikely to be usable for its expected purpose during its normal lifetime, **or**

Notices on Title (3)

discovers that

- (i) something was done with respect to a building or other structure, or the construction of a building or other structure, that required a permit or an inspection under a bylaw, regulation or enactment referred to in paragraph (a) (i), and
- (ii) the permit was not obtained or the inspection not satisfactorily completed.

- BI recommendation must be in writing in Corporate Officer
- Corporate Officer must give notice to owner and provide owner and BI an opportunity to be heard before Council **before** Council resolves to direct filing on title

Notices on Title (4)

Consider – exercise of statutory interpretation:

Observes a condition, with respect to land or a building or other structure, that the inspector considers

(i) results from the contravention of, or is in contravention of,

(a) a municipal bylaw,

(b) a Provincial building regulation, or

(c) any other enactment

that relates to the construction or safety of buildings or other structures, and

Notices on Title (5)

- Evidentiary burdens, strengths, and limits of notices on title:
- Simple, fairly quick, can be effective if financing or sale, can mitigate LG liability
 - But
- Does not compel compliance



Remedial Action Requirements

Remedial Action Requirements

- Standalone process under ss. 72 to 80 of the Community Charter to create, by resolution, a custom-made requirement to address specific circumstances of a property
- It is not a tool to directly enforce a specific bylaw provision, such as a section of a property maintenance bylaw or zoning bylaw (although in substance may overlap with a bylaw req.)

Remedial Action Requirements (2)

- Community Charter sets out three circumstances in which a municipality may impose RARs:
 - Hazardous conditions (s. 73)
 - Declared nuisances (s. 74)
 - Harm to drainage or dyke (s. 75)
- Regional districts may only impose RARs with respect to hazardous conditions or harm to drainage/dykes

Remedial Action Requirements (3)

- Pro: deference to council/board if litigation
- Pro: things go sideways, board buy in
- Pro: more flexible than bylaw
- Pro: procedural fairness of owner seeking reconsideration before board
- Con: takes more time than tickets, direct action, etc.
- Pro: if default, LG can act at owner's cost
- Con: strict requirements, mistake may=invalid

RARs versus Injunction

- Derelict shed, fence, patio, staircase – easy to demolish

Versus

- Occupied home, RV, - extra “authority” from court order

Challenging Code Decisions

- Building Code Appeal Board
 - Independent administrative tribunal, Part 4 Building Act
 - Appeal of local authority decision regarding whether a matter conforms to provincial building regulation
 - Can confirm, vary, or reverse decision
 - Issues written decisions, database searchable by terms or year
- Does not address permit matters or bylaw requirements



Questions?

LIDSTONE & COMPANY

Sara Dubinsky

dubinsky@lidstone.ca

Matt Voell

voell@lidstone.ca