

No authority

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Norbert Schlenker,

Proposed Bylaw 448 goes to public hearing this evening (Wednesday).

Section 4 of the bylaw attempts to control a variety of nuisances that may be experienced by neighbours of home-based businesses. Though the public might approve of such regulation and the LTC may wish to protect neighbours from nuisances, the LTC has no statutory authority to regulate nuisances of the kinds listed. This provision of the proposed bylaw is ultra vires and cannot be enforced.

In B.C., local authorities have some power to regulate nuisances. The province grants regional districts authority to regulate “nuisances and disturbances” in Section 725 of the Local Government Act. The province grants municipalities authority to regulate “nuisances, disturbances, and other objectionable situations” in Section 64 of the Community Charter.

However, the LTC is neither a regional district nor a municipality. Its authority over land use comes from Section 29 of the Islands Trust Act. The act and its regulations do not convey nuisance regulation powers from the province, either directly or by reference to the Local Government Act and the Community Charter.

The LTC should remove Section 4 of the proposed bylaw to avoid needless litigation and expense in the future or, if they consider Section 4 an inseparable part of the package, reconsider the bylaw altogether.

Norbert Schlenker,

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