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# CITY OF KELOWNA

## MEMORANDUM

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**Date:** January 30, 2002  
**File No.:** 3360-20

**To:** City Manager

**From:** Planning and Development Services Department

**Subject:** Discussion on Second Kitchens in Single Detached Housing

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### 1.0 RECOMMENDATION

THAT Municipal Council receive the report from the Planning and Development Services Department dated January 30, 2002, for discussion purposes;

AND THAT Municipal Council direct staff to prepare amendments to City of Kelowna Zoning Bylaw 8000 as outlined in the report from the Planning and Development Services Department dated January 30, 2002.

### 2.0 BACKGROUND

The Planning and Development Service Department successfully developed an approach through the rezoning process to make it easier for land owners to create legal secondary suites which Council approved in 1996. At the same time, the ability to have a second kitchen within single detached housing was eliminated as part of the overall zoning bylaw review.

Since then, Council has, on several occasions, wrestled with the notion of "in law suites" where a second kitchen and other living quarters could be provided without requiring these facilities to be recognised as a legal secondary suite. The use of the secondary living quarters would be occupied by members of the same family or household but would still function as a secondary suite. The main difficulty in regulating the use of a secondary suite by family members is that a local government cannot discriminate who resides in a dwelling unit. This position has been determined by case law and has therefore not been a recommended approach to investigate.

At the same time, Inspection Services staff has received many building permit applications where a second kitchen has been requested. In some of these instances, it is clear that the second kitchen facilities would never be used to accommodate or create an illegal secondary suite. Unfortunately, staff has not been able to identify a clear set of conditions that would allow a second kitchen to be installed with a high degree of certainty that it would not be used as an illegal suite.

The approach staff are now requesting Council to consider would address two areas of concern. Permitting Second Kitchens in single detached housing units would allow families to provide living quarters for family members or others who wish to have a semi-independent lifestyle yet still seek support from family members who live in the main dwelling. Second Kitchens are also popular with many homeowners simply as a form of convenience for informal cooking. Neither of these situations would constitute a secondary suite under the proposed approach.

Staff are also suggesting that a third parking stall be required in situations where a Second Kitchen is permitted. The rationale for this requirement is that if a Second Kitchen is being used to provide semi-independent living quarters, there is a likelihood that the inhabitants may have their own vehicle. The most common complaint regarding potential secondary suites usually involves parking. The requirement for the additional parking stall would be to try and alleviate this potential impact.

### **3.0 PROPOSAL**

Existing policies in the current Official Community Plan support densification of residential uses in existing neighbourhoods where such densification does not significantly affect the existing character of the neighbourhood. Secondary suites are one way to achieve that objective and the existing approach should be continued with respect to promoting legal secondary suites through appropriate zoning measures. Densification can also be supported by increasing household sizes. Average household size has been decreasing from an average of 2.9 in 1979 to a projected average of 2.37 for the period between 2000 and 2004. The current zoning bylaw permits up to 5 unrelated people to live together as one household. In central areas of the City, average household size is even lower, less than 2 in the Rutland and Downtown areas.

Planning and Development Services staff are requesting that Council consider a different approach to second kitchens that would focus on the limitation of household size to one family or five unrelated people (current case law indicates that the size of a family cannot be regulated where relations can be demonstrated).

#### 3.1 The Concept

The fundamental concepts of the approach are as follows:

- Define Second Kitchen in the current Zoning Bylaw.
- Conditions of use for a second kitchen would include that it could only be used by the occupant of a single detached housing unit to accommodate one Household as defined by the Zoning Bylaw.
- Require a form of notification on title expressly indicating that the second kitchen does not constitute a legal secondary suite and an affidavit from the owners acknowledging same.
- Require an additional parking stall for a Second Kitchen.
- Only allow Second Kitchens for zones where single detached housing is permitted and where lot sizes are larger (i.e. A1, RR1, RR2, RR3, and RU1 zones).

#### 3.2 Supporting Policies

Should Council wish to pursue this approach, staff will develop a Text Amendment report that, if successful, would be adopted as an amending bylaw to Zoning Bylaw No. 8000. A public hearing would be required. Furthermore, staff would seek Council direction through Council Policy or the appropriate procedural amendment, to clarify how Bylaw Enforcement Staff would investigate potential illegal suites with the Second Kitchen provision in place. There are two specific areas where staff would seek direction from Council:

- **When to Pursue Enforcement:** In zones where a second kitchen is permitted, the portion of the single detached home where the second kitchen exists could be occupied by family members or boarders and lodgers. In all cases where there are unrelated people occupying all or a portion of the single detached housing, the total occupancy of the dwelling unit cannot exceed five people. The portion of the dwelling unit where the second kitchen exists can not be physically separated from the rest of the dwelling unit nor can a second kitchen be permitted in an accessory building.

Where any of these basic regulations are exceeded, Bylaw Enforcement staff would consider that there is either an illegal secondary suite, the second kitchen definition has been violated or the occupancy of the dwelling exceeds the maximum capacity based on the definition of Household. Appropriate action to seek compliance with the provisions of the bylaw would follow.

- **Penalty for Breach of Bylaw Provisions:** Staff encourages Council to consider that a Second Kitchen is a privilege and that where there is an existing charge registered on title and an affidavit on file for a second kitchen, the only remedy for compliance is removal of those facilities. Staff suggest Council consider a strict policy that would apply in cases where the bylaw provisions have been breached and there is a registered charge on title such that immediate measure are taken with respect to applicable fines and compliance with the bylaw. Staff would also suggest that a similar approach be taken for illegal secondary suites.

#### 4.0 CONCLUSION

The Planning and Development Services Department fully supports the continuing practice of rezoning to the appropriate “s” zone to create legal secondary suites. However, staff also can appreciate that there may be situations where a secondary suite may not be practical. There are many special circumstances where the second kitchen alternative would enable a family or a household to address a particular need without undue hardship. In such cases, the family may have no desire for a secondary suite. Examples include the ability to assist members of the family who have disabilities, especially as adults, the ability to accommodate senior family members, or some additional space for young adults, unable to afford their own dwellings. The Second Kitchen option provides that alternative while maintaining the existing intent of single detached housing and the definition of one Household.

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Andrew Bruce  
Current Planning Manager

Approved for inclusion

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