



CITY OF VANCOUVER
ADMINISTRATIVE REPORT

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Date: January 18, 2006
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TO: Vancouver City Council
FROM: Director of Legal Services in consultation with the City Manager
SUBJECT: Proposed Amendments to the Vancouver Charter

RECOMMENDATION

THAT Council approve requests to the Province for amendments to the Vancouver Charter substantially as follows:

- (a) allow the city to enforce or restrain by-law breaches by proceeding rather than action;
- (b) allow the Police to hold the proceeds from sale of property held by the Police for six months rather than one year, and to sell property being held by the Police within three months rather than six months;
- (c) allow Firefighters to direct traffic at or near non-fire emergencies if they arrive before the Police; and
- (d) give Council authority to relax the Sign By-law in relation to unnecessary hardship, heritage and historic properties, technical innovations, and special events, and to delegate such authority to the Director of Planning, and also to allow a person aggrieved by a decision on a relaxation by the Director of Planning to ask Council to re-consider.

CITY MANAGER'S COMMENTS

The City Manager RECOMMENDS approval of the foregoing.

COUNCIL POLICY

Not applicable.

PURPOSE

This report recommends that Council approve certain proposed amendments to the Vancouver Charter in relation to legal enforcement procedures, holding periods for abandoned property and proceeds from sale of abandoned property, direction of traffic by Firefighters at non-fire emergencies prior to arrival of Police, and relaxation of the Sign By-law in certain circumstances.

BACKGROUND

The Vancouver Charter sets out all powers of the city. Occasionally, Council requests the Province to amend or add to those powers.

DISCUSSION

The Director of Legal Services, along with staff members of the Police, Fire, and Planning Departments, have been discussing the following four amendments to the Vancouver Charter with Provincial Officials, and have reached the stage where approval is necessary from Council and from the Province's Legislative Review Committee before presentation to the Provincial Legislature:

Restraint of by-law breaches

Other municipalities have power to restrain by-law breaches by proceeding rather than action. It is a simpler and quicker procedure.

The advantages of proceeding by petition (a "proceeding") rather than by action in an injunction application include the fact that in a petition, unlike an action, there is no exchange of pleadings in the traditional sense. Elimination of the writ, appearance, statement of claim and statement of defence, all procedural steps in an action, results in efficiencies for both parties who can proceed to court in a more timely and less expensive manner. The proceeding is commenced by petition and the affidavits are served at the same time as the petition, the response is much simpler as it consists of an appearance and any affidavits the respondent wishes to rely on. The matter is then set for hearing after exchange of these materials. Thus, there is a decided advantage for persons against whom the City might take enforcement steps as less time and money is expended on preliminary paperwork and the parties proceed to the real matter at issue in a more direct way. If there is a serious question between the parties which is not conducive to a summary process, the Supreme Court Rules provide that the matter is essentially converted to an action and referred to the trial list.

We understand that the Province is very concerned with reducing cost to litigants, and reducing cost and simplifying litigation. Being obliged to proceed by way of action results in complicated and extensive paperwork and more lengthy hearings.

This would give Vancouver the same power that all other BC municipalities have to obtain injunctive relief in a timely and cost effective manner, and would result in the reduction of cost to litigants and reduction of cost and streamlining of litigation. These factors, in turn, will result ultimately in a cost savings to the Province. These changes would be consistent with the efforts the Province has introduced already, such as the Expedited Litigation Project, Self-Help Litigation offices and the raising of the small claims limit.

Property held by Police

This amendment would allow the Police to shorten the time during which they must hold the proceeds from the sale of seized property, and to shorten the time during which they must hold seized property. The Police would then be subject to the same time periods as other municipalities.

The Vancouver Police Property Office is currently storing property and evidence, except for vehicles, in five separate locations. A significant amount of property, varying in size from items such as watches to washing machines, must be held for a six month time frame prior to disposal as required by section 483 of the Vancouver Charter. At the present time, the Police are storing in excess of 450 bicycles, and seize approximately 1500 bicycles each year. The Property Office facilities are full, and a reduction of the holding time will create storage space within our existing facilities not presently available.

As a result of space demands, the VPD is required to rent off site space for property storage. In addition to renting warehouse space, the VPD rents a large number of containers to store property, being held off site, prior to the property being sent to auction.

Direction of traffic

The Vancouver Charter presently allows Firefighters to direct traffic at or near fire emergencies if they arrive before the Police. This amendment would simply extend that authority to non-fire emergencies.

There are many situations including hazardous materials spills where the fire fighters arrive at the scene before the police, and need to secure traffic immediately.

Relaxation of Sign By-law requirements

This amendment would allow Council or, at its discretion, the Director of Planning to relax Sign By-law requirements in situations involving unnecessary hardship, heritage and historic properties, technical innovations, and special events, and would also allow a person aggrieved by a decision on a relaxation by the Director of Planning to ask Council to re-consider. This amendment would allow relaxation for signs meeting the intent of the Sign By-law and is particularly important in light of the coming Olympics. Major policy issues including any new sign types, would continue to be reported to Council for direction. Should the Province approve the proposed amendment to the Vancouver Charter, a staff report would be required

to refer changes to the Sign by-law to public hearing in order to bring the amendment into force.

The Sign By-law provides only for “outright” approvals. If an applicant complies with the by-law requirements, the City must issue a permit. Signs that the By-law does not regulate are not permissible. The benefits of an outright by-law include certainty for applicants, and time savings for staff since they do not have to negotiate adjustments to the regulations. However, the lack of any power to relax the provisions of the By-law has curtailed flexibility for applicants to achieve innovative or unusual proposals, and has also made administration of the By-law difficult for staff. The Board of Variance hears 75 to 100 sign appeals each year. Staff support the majority, and would have issued a permit were it not for the inability to relax the By-law. The inability to relax the By-law also results in the creation of site specific schedules for large projects (for example, GM Place and Tinseltown) that require a public hearing involving considerable staff resources. Appeals to the Board of Variance also involve considerable time and expense on the part of the City and applicants.

The City has the power to relax zoning and building by-law provisions in certain circumstances, and is asking for similar authority regarding signs. The authority to relax the provisions of the Sign By-law, and to delegate such authority to an official, would allow more flexibility in approving creative or innovative signage approaches, such as three-dimensional signs, consistent with the intent of the By-law.

Further, the lack of power to relax the provisions of the Sign By-law means that the review of development proposals during the development permit process cannot deal with signage issues. This inability is frustrating for applicants and staff as signage forms an integral part of building and landscape design.

Signs evolve quickly. New forms, shapes, or types may come along quickly. There may be new technologies and media that emerge which are consistent with the spirit of, but are not presently included in, the By-law and therefore would require appeal to the Board of Variance or a public hearing to amend the By-law.

The ability to impose a time limit on signs would give us a significant way to control special event and other temporary signs. The ability to impose conditions on sign relaxations would be extremely useful, particularly in connection with Olympic signs. In some instances, other by-laws, such as the Private Property Tree By-law or the Zoning and Development By-law, may regulate the issue. However, often, the conditions we would like to impose are site-specific, and other by-laws of more general application do not address the matter. For example, on a corner site, the applicant may request permission for a larger than normal sign at the corner, and city staff might approve such a relaxation on condition that the owner does not install any other signs on the property, which the Sign By-law may permit the applicant otherwise to do. Instances have also occurred where someone has removed landscaping or trees to ensure visibility of a sign, or where the illumination from a sign may impact nearby residents. Other by-laws may well not deal with these site specific issues and the ability to attach conditions to a permit to require the retention of landscaping features or to control the illumination level of a sign would be beneficial.

FINANCIAL IMPLICATIONS

There are no financial implications.

PERSONNEL IMPLICATIONS

There are no personnel implications.

CONCLUSION

The Director of Legal Services has found the Province receptive to the proposed Vancouver Charter amendments regarding proceedings rather than actions, shortened time limits for disposal of property and proceeds by Police, direction of traffic at non-fire emergencies by Firefighters, and relaxation of Sign By-law requirements in relation to unnecessary hardship, heritage or historic properties, technical innovations, or special events, and recommends Council's approval of those proposed amendments.

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