



CITY OF VANCOUVER

ADMINISTRATIVE REPORT

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TO: Vancouver City Council

FROM: Subdivision Approving Officer, in consultation with the Director of Legal Services and General Manager of Engineering Services

SUBJECT: Subdivision By-law Amendment re: Options to Purchase

RECOMMENDATION

THAT Council approve an amendment to the Subdivision By-law to clarify the practice regarding options to purchase portions of parcels for streets, generally as outlined in this report;

AND THAT the Director of Legal Services be instructed to prepare for enactment an amendment to the Subdivision By-law, generally as outlined in this report.

GENERAL MANAGER'S COMMENTS

The General Manager RECOMMENDS approval of the foregoing.

COUNCIL POLICY

There is no applicable Council Policy.

PURPOSE

This report recommends that Council amend the Subdivision By-law to clarify the City's use of registered options to purchase portions of property in circumstances where the dedication of the property for street or lane purposes is not, in the opinion of the City, necessary or practical at present.

BACKGROUND

In real estate, an “option” is a legal agreement between a property owner and another party, setting out the terms and conditions upon which the other party may, at his/her option, exercise a right to acquire the property (usually purchase of the property). In order to secure priority of enforcement as against other charge holders an option must be registered, against the title of the optioned property, in the Land Title Office.

An option pertaining to only a portion of a legal parcel must be approved by the Approving Officer because the option presupposes that the existing parcel may be subdivided to permit future conveyance of the option area if/when it is exercised. The Approving Officer must determine whether the option area can independently exist as a legal parcel, and whether the remainder of the parcel from which it comes can also survive independently. The option may also contain future obligations to be satisfied, such as soil remediation, when the option is exercised.

The City enters into options most frequently as a means of deferring acquisition of portions of parcels of land for street or lane purposes, where that land would otherwise have to be dedicated to the City by the owner as a condition of obtaining subdivision, rezoning enactment or issuance of a conditional approval development permit. Dedication is the preferred City approach in these situations as it is the most straightforward and the most secure means of acquiring the needed street/lane area. However, circumstances do arise where dedication would pose an unreasonable risk and/or hardship to the owner and deferred conveyance to the City would be to their advantage. The City accepts the use of options only in unusual circumstances, since: the drafting, execution and registration of option agreements take more City resources; the administration of options incurs more resources and risks; and options are not as secure as dedication.

DISCUSSION

Recently, the Land Title Office delayed registration of an option dealing with a portion of a legal parcel to be acquired by the City for street purposes. At issue was the legal authority of the City to enter into such options.

The City has a long history of using options and had not previously experienced difficulty with their registration. However, other municipalities have no such history and are not empowered to do so by their governing legislation; hence the Land Title Office query.

While the City was able to justify the option and obtain registration, no by-law of the City expressly authorizes acquiring an option to purchase a portion of a parcel as authorized by the Vancouver Charter. The appropriate by-law in which to clarify and support the use of options is the Subdivision By-law.

The amendment recommended would insert as Section 10.10 in the Subdivision By-law, a provision generally as follows:

- 10.10 Despite anything to the contrary in this By-law, the Approving Officer may approve a subdivision by way of a grant from the owner of real property to the city of an option to purchase a portion of such real property that the city may need for street in the future on such terms and conditions satisfactory to the City Engineer and Director of Legal Services.

FINANCIAL IMPLICATIONS

There are no financial implications.

CONCLUSION

In order to expressly authorize the use of options to purchase portions of parcels of land for future street use as permitted under the Vancouver Charter, it would be advantageous to incorporate into the Subdivision By-law a new provision as set out in this report.

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