



ADMINISTRATIVE REPORT

Report Date: December 15, 2010
Contact: Will Johnston
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RTS No.: 09008
VanRIMS No.: 08-2000-20
Meeting Date: February 17, 2011

TO: Standing Committee on City Services and Budgets
FROM: Chief Building Official and Director, Licences and Inspections
SUBJECT: 606 North Kootenay Street - Parking in Required Front Yard

RECOMMENDATION

THAT the Director of Legal Services is hereby authorized, in her discretion, to commence a legal action or proceeding to discontinue the unauthorized use of the required front yard of the property at 606 North Kootenay Street, Lot 16, Block F, Plan 4537, District Lot HT, New Westminster, PID 011-513-659, for the parking of motor vehicles in contravention of City by-laws.

GENERAL MANAGER'S COMMENTS

The General Manager of Community Services RECOMMENDS approval of the foregoing.

COUNCIL POLICY

Section 334 of the Vancouver Charter allows the City to seek a court order requiring a person to comply with any of the City's by-laws.

PURPOSE

The purpose of this report is to request Council approval to seek a court order requiring the unauthorized use of the front yard at 606 North Kootenay Street for the parking of motor vehicles to be discontinued.

BACKGROUND

The property in question is situated at the southeast corner of North Kootenay Street and Yale Street, and backs onto a City lane. It contains a one family dwelling and is located in an RS-1 (One Family Dwelling) District. In accordance with Section 10.5 of the Zoning and Development By-law, the yard facing Yale Street is the front yard of this property.

In October of 1989 the property owners obtained a building permit for a detached garage, previously built without permit, in the rear yard with vehicular access from North Kootenay Street. In April of 2009 Engineering Services sent the owners a letter informing them of the upcoming installation of a curb along Yale Street as part of local street improvements and that parking on the Yale Street boulevard is not permitted.

In July of 2009 a property use inspection of 606 North Kootenay Street was carried out at the request of Engineering Services. The Property Use Inspector observed two wooden ramps on the Yale Street side of the curb and tire tracks crossing the boulevard leading to a driveway in the front yard of 606 North Kootenay Street, which contained a motor vehicle. The property owners were subsequently sent an order to cease using the front yard for the parking of motor vehicles, in contravention of City by-laws. The owners failed to comply with the order. This matter was referred to the City Prosecutor for charges. Despite a successful prosecution in Provincial Court in November 2009, wherein the property owners were found guilty of failing to comply with the order and fined \$1500.00 each, the front yard continues to be used for the parking of motor vehicles.

DISCUSSION

An inspection on November 8th, 2010 showed the property owners continue to park in the front yard in contravention of the Zoning and Development, Parking, and Street and Traffic Bylaws, with negative impact on the recent street improvements along Yale Street.

An injunction can be obtained quickly and focuses on compliance with the law.

A second prosecution will take another year or longer to get to trial. The focus of sentence is punishment. A Judicial Justice of the Peace (JJP) can issue a compliance order pursuant to 333C *Vancouver Charter*, however, may refuse if the defendants again state they will not obey a compliance order.

If a 333C compliance order were made and breached a third investigation and prosecution would be required. Breach of 333C order carries a maximum \$10,000 fine. The resulting punishment would likely be a higher fine and another compliance order.

At no time would police or our inspectors have authority to arrest anyone or to remove the car.

An injunction restraining the owners from parking in the front yard could be obtained two to four months from the date of the council resolution.

The focus of an injunction is obtaining compliance with the law. The court would likely warn the respondent about the consequence of not obeying the injunction. Generally, this is sufficient to obtain compliance.

If the injunction were breached there are two remedies:

- (a) a direction that the City or some other person carry out the injunction at the expense of the property owners

The City might be permitted to remove any vehicles parked in the front yard along with the lumber and stones creating the ramp and driveway.

(b) contempt proceedings

A contempt application can be heard on notice of seven clear days, generally about a month after the breach of the order is observed. High fines or other remedy in the discretion of the court may be imposed to ensure the court order is complied with.

Either or both may be ordered.

An injunction will quickly ensure compliance with the Zoning and Development, Parking, and Street and Traffic Bylaws.

CONCLUSION

The continued unauthorized use of the front yard for the parking of motor vehicles is in contravention of the Zoning and Development By-law and Parking By-law. Furthermore, the driving of vehicles over curbs and boulevards is in contravention of the Street and Traffic By-law. Therefore, subject to council approval, I will refer this matter to the Director of Legal Services to request that she commence a legal action or proceeding seeking to enforce the by-laws and discontinue the unauthorized use of the front yard of 606 North Kootenay Street for the parking of motor vehicles.

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