



## ADMINISTRATIVE REPORT

Report Date: May 29, 2013  
Contact: Vicki Potter  
Contact No.: 604.871.6033  
RTS No.: 10167  
VanRIMS No.: 08-2000-20  
Meeting Date: July 9, 2013

TO: Vancouver City Council  
FROM: Subdivision Approving Officer  
SUBJECT: Amendments to Subdivision By-law No. 5208 - Air Space Subdivision Fees

### **RECOMMENDATION**

- A. THAT the Subdivision By-law be amended by adding additional criteria for consideration of the smaller air space subdivision fee provided for in Schedule F of the Subdivision By-law, to apply to a broader range of small scale developments and for applications that are solely for the purpose of creating air space parcels to secure separate tenure for public benefits such as for-profit affordable rental housing, social housing, daycare or cultural amenities, generally in accordance with Appendix A.
- B. FURTHER THAT the Director of Legal Services be instructed to prepare the necessary amending by-law, generally in accordance with Appendix A, for enactment to implement these changes.

### **REPORT SUMMARY**

This report recommends Subdivision By-law amendments to enable the Approving Officer to apply the smaller air space subdivision fee provided for in Schedule F of the Subdivision By-law, for small scale developments and for applications that are solely for the purpose of creating air space parcels to secure separate tenure for public benefits such as libraries, theatres and other cultural amenities, for-profit affordable rental housing, social housing and daycares.

### **COUNCIL AUTHORITY/PREVIOUS DECISIONS**

- Mayor's Task Force on Housing Affordability
- Vancouver's Housing and Homelessness Strategy
- Culture Plan for Vancouver (ongoing)
- Vancouver Public Library Strategic Plan (ongoing)

- Public Benefits Strategies (various neighbourhood plans)

## CITY MANAGER'S/GENERAL MANAGER'S COMMENTS

The General Manager of Planning and Development Services RECOMMENDS approval of the recommendations of this report, as they support Council priorities aimed at expanding housing options and affordability, as well as provision of public benefits.

## REPORT

### Background/Context

Air space subdivision is a volumetric subdivision with both horizontal and vertical dimensions, commonly used to separate ownership in mixed use buildings, such as commercial/residential developments, or mixed tenure buildings with market and non-market components. An air space parcel constitutes land and may be transferred, leased, mortgaged or otherwise dealt with as any other land, which allows different components to be financed and owned independently of the other. Air Space parcels cannot be further subdivided, other than by way of a strata plan. Legislation for air space subdivision is contained in Part 9 of the *Land Title Act*.

In larger developments, the City often secures ownership of amenities such as social housing, daycares, and various cultural amenities such as library or theatre space through the conveyance of air space parcels. For most applications, air space parcels are created for market housing and/or commercial components as well.

Processing air space subdivision applications is generally more complex than processing standard subdivision and/or strata applications, as it requires additional building code review and preparation of complex legal agreements to address items such as building code compliance, access, egress, operation and maintenance of the building services and structure, cost sharing arrangements and various indemnities to the City.

As part of a comprehensive fee review undertaken in late 2004, Council approved increases to specific subdivision applications, including air space applications, to reflect the real City costs incurred in providing these services. Council also introduced a second fee category for smaller air space proposals, acknowledging that proposals under 2 Floor Space Ratio (FSR) were generally less complex and required less staff effort than larger air space parcel applications. The larger air space application fee is \$66,400 and the smaller application fee is \$33,200.

### Strategic Analysis

The Mayor's Task Force on Affordable Housing offered a number of solutions to create more affordable housing in Vancouver. These include creating new affordable housing options for students, young families, and seniors through the new Interim Rezoning Policy, and creating new affordable market rental housing units in target rental areas along the Cambie Corridor.

The City's preferred ownership arrangement for non-market and rental housing or other amenities is by way of air space parcels, as it is a fee-simple form of ownership. In a mixed use or mixed tenure building, air space subdivision allows the market components to be strata titled without requiring that the non-market or rental units or other amenities be included in the strata plan or be part of the strata corporation. Any shared maintenance responsibilities, costs and required access are addressed through legal agreements as part of the air space approval process. Lease agreements with strata corporations are not required, which is an added benefit to the City.

Since the introduction of the second air space subdivision fee category in 2004, only a small percentage of air space applications have qualified for the reduced fee. In smaller mixed use buildings, many developers simply choose to strata title the entire development and establish strata sections for the residential and commercial components. Strata plans for new developments do not require City applications or approvals and can be filed directly with the Land Title Office.

Given the City's focus on housing and affordability, sites that are the subjects of rezonings or redevelopment can be expected to incorporate various forms of affordable housing that may necessitate the need for air space parceling. For smaller sites where the number of affordable units may be relatively small, it would be appropriate for a lower air space application fee to be applied. Staff recommend increasing the FSR threshold to 3.0 for consideration of the smaller air space application fee. In addition, for larger developments where air space parcels are proposed solely to accommodate social housing, for-profit affordable rental housing or other civic amenities, the smaller fee would also apply.

The proposed amendments are detailed in Appendix A.

## **FINANCIAL IMPLICATIONS**

In 2004, Council approved increases to specific subdivision applications, including air space applications, to reflect the real City costs incurred in providing these services. Council also introduced a second fee category for smaller air space proposals, acknowledging that proposals under 2 FSR are generally less complex and required less staff effort than larger air space parcel applications. The larger air space application fee is \$66,400 and the smaller application fee is \$33,200.

This recommendation seeks to apply the smaller application fee (\$33,200) to a broader range of small scale developments, and to applications that are solely for the purpose of creating air space parcels to secure separate tenure for public benefits such as for-profit affordable rental housing, social housing, daycare or other cultural amenities. This smaller fee is expected to be sufficient to cover staff time required for contemplated building code review and preparation of legal agreements for the projects described above.

It is anticipated that this By-law change will be revenue neutral to the City. While there may be a small reduction in the number of projects for which we used to receive the higher fee, it is expected that these will be offset by an increase in the number of projects that will fall into this new category, with an overall increase in the number of smaller air space applications.

***CONCLUSION***

This report recommends Subdivision By-law amendments to enable the Approving Officer to apply the smaller air space subdivision fee provided for in Schedule F of the Subdivision By-law, for a broader range of small scale developments and for applications that are solely for the purpose of creating air space parcels to secure separate tenure for public benefits such as for-profit affordable rental housing, social housing, daycare or cultural amenities. Staff recommend approval of all amendments contained in Appendix A.

\* \* \* \* \*

Proposed Amendments to the Subdivision By-law

1. In section 2.1, by adding the following definitions, in the appropriate alphabetical order:

“day care” means the use of premises operated as a community care facility by one or more persons licensed under the Community Care and Assisted Living Act of British Columbia, on a not for profit basis, for “group day care”, “preschool”, “special needs day care”, “emergency care”, “child minding”, or “out of school care”, in accordance with Child Care Licensing Regulation B.C. Reg. No. 319/89, and may include the use of flexible space operated for child services as determined by the Director of Social Planning but does not include premises operated for “family child care” .”;

“for-profit affordable rental housing” means three or more new dwelling units in the same building or project, determined by the City Manager to be affordable, but does not include alterations of such units.” ; and

“social housing” means:

- (a) housing in which households with incomes below core-need income thresholds occupy at least 30% of the dwelling units,
- (b) rental housing owned by or on behalf of the city, Province of British Columbia, or Canada,
- (c) rental housing owned by a non-profit corporation, or
- (d) housing owned by a non-profit co-operative association,

and where, in respect of subsections (b), (c), and (d), the registered owner or ground lessee of the freehold or leasehold title to the land upon which the housing is situate has granted to the city a section 219 covenant, housing agreement, or other security securing the housing commitments required by the city, on terms and conditions satisfactory to the city, and registered against the freehold or leasehold title with such priority of registration over other liens, charges, and encumbrances as the city may require.”

2. In Schedule F - “Fees”, by striking out section 5 and substituting

5. CLASS V (Air Space) - For an application to subdivide made pursuant to Part 9 (Air Space Titles) of the Land Title Act

(a) for developments having a Floor Space Ratio (FSR) greater than 3.0 .....  
\$66,400.00

(b) for developments having a Floor Space Ratio (FSR) of 3.0 or smaller, or where the application is solely for the purpose of creating air space parcels to secure separate tenure for public benefits such as: libraries, theatres and other cultural amenities; for-profit affordable rental housing; social housing; and daycare  
..... \$33,200.00