

## COUNCIL MEMBER'S MOTION

### 13. Discriminatory Covenants, Language and Encumbrances on Vancouver Land Titles

Submitted by: Councillor Kirby-Yung

#### WHEREAS

1. The *Canadian Charter of Rights and Freedoms* Section 15 (1) states that “*Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability*”;
2. Land titles in the City of Vancouver are known to contain historical covenants, language, and encumbrances that are now void, which previously restricted the sale, ownership, occupation or use of land on the basis of sex, race, creed, colour, nationality, ancestry or place of origin of a person;
3. Section 222 of *British Columbia’s Land Title Act* specifies that covenants that restrict the sale, ownership, occupation or use of land on account of sex, race, creed, colour, nationality, ancestry or place of origin of a person are void and of no effect. Section 222 was enacted in 1978 and operates against any registered covenant that directly or indirectly has a discriminating effect, whenever registered and in whatever form created;
4. Although discriminatory clauses and covenants in land titles are void and of no effect, documents obtained during land title searches (e.g. as part of a property sale) often include discriminatory clauses and/or covenants registered prior to 1978; especially for properties that have not changed hands for several decades and consequently haven’t been updated by the land title office;
5. The following examples of discriminatory covenants and clauses from various British Columbia land titles are illustrative of the historical language and text that remains on many land titles:
  - “*That no Oriental shall be allowed to purchase the within described property.*” (Kitchener Street, Vancouver East Side: placed on the land in 1931);
  - “*AND WHEREAS the Grantor and Grantee have agreed that as a term of such sale, no Asiatic, Negro or Indian shall have the right or be allowed to own, become tenant of or occupy any part of [the property].*” (South Vancouver, in close proximity to Point Grey Golf and Country Club);
  - “*that the Grantee or his heirs, administrators, executor, successors or assigns will not sell to, agree to sell to, rent to, lease to, or permit or allow to occupy, the said lands and premises, or any part thereof, any person of the Chinese, Japanese or other Asiatic race or to any Indian or Negro.*” (Vancouver, B.C.);

6. Property owners can submit requests to the Land Title and Survey Authority (LTSA) registrar in New Westminster to have discriminatory covenants removed. The registrar is authorized to take action with respect to Section 222 of the *Land Title Act* and will amend the register and records to reflect that the covenants are not valid. The registrar will indicate on the original document that the covenant has been cancelled as per the *Land Title Act*, s. 222. There is no customer fee for cancellation of a discriminating covenant;
7. Although covenants that restrict the sale, ownership, occupation or use of land on account of sex, race, creed, colour, nationality, ancestry or place of origin of a person are void and of no effect, these restrictive covenants are not and have not been, automatically, routinely, or systematically removed from land titles. Typically, these discriminatory covenants are only removed from a land title record when they are brought to the attention of the land title office by a property owner;
  - a. note: Removal of a racist covenant does not rewrite history. For example, three students from the Alberni School District recently worked with the Land Title and Survey Authority of British Columbia to remove a discriminatory covenant on a local property dating from 1909 (pursuant to S.222 of the *Land Title Act*). On the original document, lines were drawn by the registrar through the racial covenant and a statement was added stating that the covenant has been removed, along with the date of its removal, to advise future owners;
8. In recent decades, all orders of government in Canada (federal, provincial, and municipal) have taken steps to formally apologize for past discrimination against various groups and have embarked upon a number of processes and actions in support of reconciliation. The following are illustrative examples:
  - a. In 2006, Prime Minister Stephen Harper on behalf of the Government of Canada, issued a formal apology to Chinese Canadians for the race-based Chinese Head Tax and for the exclusion of Chinese immigrants to Canada from 1923 to 1947.
  - b. In 2008, Prime Minister Harper apologized to former students of Indian residential schools for Canada's role in the system, which separated over 150,000 Aboriginal children from their families and communities.
  - c. In 2010, the City of New Westminster was the first municipality in Canada to formally acknowledge and apologize to the Chinese community for past practices which resulted in discrimination and exclusion. This acknowledgement and apology was part of ten steps and actions in support of reconciliation, which were based on a process of comprehensive research and consultation.
  - d. On May 15, 2014, Premier Christy Clark issued a formal apology to Chinese Canadians on behalf the entire B.C. Legislature for the historical wrongs imposed on them by past provincial governments.
  - e. On May 18, 2016, Prime Minister Justin Trudeau formally apologized in the House of Commons for the Komagata Maru incident in 1914 in which

hundreds of Sikh, Muslim, and Hindu passengers were denied entry to Canada and forced to return to an uncertain and ultimately violent fate in India.

9. On November 1, 2017, Vancouver City Council received a report summarizing historical discrimination against Chinese people in Vancouver and unanimously supported the recommendations contained therein. The report noted that *“The key learning from the initiative is to ensure that this history will not repeat and we remain vigilant in upholding the values of equity, justice and well-being for all”*;
  - a. note: in 1941, when a young Chinese Canadian couple tried to buy property in West Point Grey, various white community leaders and associations reportedly mobilized and canvassed hard to prohibit the sale. Aldermen Halford Wilson and Henry DeGreaves are said to have headed a proposal that “Council appoint a special committee to draft a by-law that would prevent ‘Orientals’ from being either tenants or owners in areas other than ‘their own localities’”;
10. As noted in the November 2017, Council Report, the preliminary research summarizing historical discrimination against Chinese people in Vancouver identified four thematic areas, one of which was “segregation in housing and public space”;
11. In April 2018, the City of Vancouver formally apologized to Chinese Canadians for historical discriminatory legislation, regulations, and policies that discriminated against residents of Chinese descent, and noted that *“Through the process of reconciliation we consolidate and embrace our firm beliefs and values of being an inclusive community; one that embraces our collective human rights and prepares us to be proactive in preventing discrimination”*; and
12. Vancouver City Council and the City of Vancouver continue to embrace collective human rights and the values of an inclusive community and are committed to remaining vigilant in upholding the values of equity, justice, and well-being for all to ensure that we learn from the past, and that we remain proactive in preventing discrimination.

THEREFORE BE IT RESOLVED

- A. THAT Council affirms that covenants, or portion of covenants, language, clauses, and other encumbrances that historically restricted the sale, ownership, occupation, or use of land based on the sex, race, creed, colour, nationality, ancestry, or place of origin of a person are void and of no effect in the City of Vancouver;

FURTHER THAT Council affirms the City’s commitment to collective human rights and the values of an inclusive community that supports the values of equity, justice, and well-being for all, and to ensuring we learn from the past and remain proactive in preventing incidents of discrimination.

- B. THAT Council direct staff to report back on past and current actions the City of Vancouver has taken to address the question of discriminatory covenants and

language recorded in land titles for properties within the boundaries of the City of Vancouver, and to identify and bring forward recommendations for any additional work that should be taken including working with the Land Title and Survey Authority of BC to explore options to systematically and proactively identify and strike discriminatory covenants and language from Vancouver land titles (including appropriate indications on original / historical documents that a discriminatory covenant or encumbrance has been cancelled as per Section 222 of the *Land Title Act*).

- C. THAT Vancouver City Council endorse the recent motion passed by West Vancouver Council to address the issue of discriminatory covenants and language in land titles, including their call for senior orders of government to examine the history of discriminatory covenants in the Province with the cooperation of academics and non-profit organizations active in this area;

FURTHER THAT the Mayor convey Council's endorsement of West Vancouver's recent action to the Mayor and Council of West Vancouver by letter, with copies to be sent to the Mayors and Councils of all 21 municipalities, one Electoral Area, and one Treaty First Nation that make up Metro Vancouver and a further copy to the Union of BC Municipalities.

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