



February 3, 2020

Councillor Druh Farrell
-and- City of Calgary Members of Council
The City of Calgary
PO Box 2100, Station M
Calgary, AB
T2P 2M5

Dear Councillor Farrell and other Members of Council:

Re: PFC2020-0106 Notice of Motion on Bylaw Setback Reform

Thank you for the opportunity to seek comment from NAIOP Calgary on your Notice of Motion of Bylaw Setback reform. We are supportive of this initiative, and feel that its time is long overdue, so thank you for working on this important city building motion. We do have some comments we wish to share with yourself and your fellow Council members that will hopefully provide some insight for the Administration to work with industry on.

We agree that the Road Rights-of-Way Property Line Setbacks (bylaw setbacks) have been on our radar as a strong issue of concern for many years now. We note that while the motion speaks to helping achieve the objectives of the MDP, CTP, Complete Streets Guide and Main Streets program, the bylaw setbacks all generally existed long before the current MDP, CTP, Complete Streets Guide, Main Streets and in most case even before the Municipal Government Act. They were really put in place for road expansion for additional vehicle traffic, with examples being that 14th Street W would someday be 6 lanes, or that 6 Street NE would have a crossing of the Bow River. Clearly, significant amounts of the original intended use when the bylaw setback was imposed has not occurred, nor will it likely occur for the original intended use. We note even the Motion acknowledged this by Resolution 3 for Q3 2020 with the direction to "re-name" the table and adding a new purpose statement. We reserve opinion on whether this Resolution is within the realm of the current Municipal Government Act with respect to the taking of land for municipal purposes, and would suggest that this be looked at carefully with industry.

Our members are generally supportive of this motion, but with the reservation noted above, and the comments noted below:

1) We request that the motion be amended to remove the reference to increasing the setback. This would probably wouldn't be enforceable unless by agreement or undertaking the appropriate expropriation process in the preliminary opinion of some of our legal community members. We also find that given the depth of lots common in Calgary's legal property fabric, increasing the setback would likely sterilize more Established Area redevelopment from occurring rather than supporting such redevelopment as we believe is intended.

2) Our members will also be looking to see that the City will commit to not attempting to shift on-going maintenance, repair, and replacement obligations onto the developer/owner, as well as liability. It should be true public realm and not private space that just looks public. We would request that any bylaw setback re-purposing for public realm should be fully owned and operated and maintained by the City or be subject to the terms of the maintenance easement being satisfactory to industry.

NAIOP recognizes that the Notice of Motion does not contemplate or direct a different approach to maintenance or liability regarding public realm improvements. That said, our members note that experiences with Perpetual Maintenance Agreements within the downtown area are problematic as-is. Downtown building owners, home owners, tenants, and renters are not looking to pay additional costs through condo fees, rental fees, or gross rent cost over and above non-residential tax rates to repair City owned property. As such, it is not uncommon to see significant privately owned surface improvements well cared for stopping at the property line, where 30+ year old, pitted, broken, and cheap asphalt repair sidewalks on public property take over. Fifth Avenue Place is one location this can easily and readily be seen.

NAIOP Calgary supports our members in providing public realm improvements at the time of development, but also believes it is important that maintenance costs for public infrastructure not be downloaded to building owners, home owners, tenants, or renters. It is generally cheaper to fund ongoing care of public realm through tax revenue consistently throughout the city, and not attempt to create 100's if not 1000's of "one-off" agreements attempting to download small pieces of public realm maintenance costs to small groups of private owners.

Accordingly, we request that that Council support this Notice of Motion, with an amendment that considers our concerns as Council may see fit. We also request that Administration be directed to work collaboratively with NAIOP Calgary on the work to undertake the resolutions to ensure our concerns are collaboratively addressed.

Yours truly,
NAIOP Calgary



Chris Ollenberger, P. Eng.
Chair, Government Affairs Committee

c.c. BOMA Calgary