

Deputy City Manager's Office Report to
SPC on Utilities and Corporate Services
2021 March 24

ISC: UNRESTRICTED
UCS2021-0439
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Proposed Restrictive Covenant (Inglewood) – Ward 09 (6 New ST SE)

EXECUTIVE SUMMARY

The report is in response to PFC2021-0117 Notice of Motion - Restrictive Covenant at 6 New Street SE - No More Blank Walls on Public Spaces, whereby Council directed Administration to undertake any necessary advertisements regarding a proposed disposition of a restrictive covenant at below market on a public park and report back to Council.

The purpose of this report is to provide Council with the feedback received by Administration in response to the advertisements and to request approval for the terms and conditions for the proposed disposition of a restrictive covenant on a portion of 6 New Street SE.

ADMINISTRATION RECOMMENDATION:

Review By Date: 2021 April 12, except for Attachment 4 which shall remain confidential.

The Standing Policy Committee on Utilities and Corporate Services recommends that Council:

1. Authorize the Recommendations as outlined in Attachment 2;
2. Direct the Report, Recommendations, and Attachments 1a, 1b, 2, and 3, remain confidential under Sections 23 (Local public body confidences), 24 (Advice from officials), and 25 (Disclosure harmful to economic and other interests of a public body) of the *Freedom of Information and Protection of Privacy Act* until the report is published in the Council Agenda; and
3. Direct that Attachment 4 remain confidential pursuant Sections 23 (Local public body confidences), 24 (Advice from officials), and 25 (Disclosure harmful to economic and other interests of a public body) of the *Freedom of Information and Protection of Privacy Act*.

RECOMMENDATION OF THE STANDING POLICY COMMITTEE ON UTILITIES AND CORPORATE SERVICES, 2021 MARCH 24:

That Council:

1. Authorize the Recommendations as outlined in Attachment 2; and
2. Direct that Attachment 4 remain confidential pursuant to Sections 23 (Local public body confidences), 24 (Advice from officials), and 25 (Disclosure harmful to economic and other interests of a public body) of the *Freedom of Information and Protection of Privacy Act*, to be reviewed by 2021 April 12.

PREVIOUS COUNCIL DIRECTION / POLICY

On 2020 January 18, Council adopted Notice of Motion PFC2021-0117 - Restrictive Covenant at 6 New Street SE - No More Blank Walls on Public Spaces directing Administration to undertake any necessary advertisements regarding a proposed disposition of a restrictive covenant at nominal consideration on a public park and report back to Council through the Standing Policy Committee on Utilities and Corporate Services.

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BACKGROUND

The National Building Code – Alberta Edition (the “Code”) requires that unprotected openings be restricted in size and number within a limiting distance setback from the property line of a parcel, with the aim of reducing the probability of fire spreading from one building to another adjacent building. The property owners of 4 New Street SE have submitted a development permit application DP2020-3048 which proposes a single family dwelling with more unprotected openings in number and/or size than is otherwise permitted under the Code given the distance between the proposed building and the property line. The adjacent property at 6 New Street SE is owned by The City of Calgary (“The City”) and currently functions as non-reserve open space, specifically as an off-leash dog park and a portion of the Bow River Pathway System.

In order to meet the Code’s requirement for limiting distance setback, rather than try to resolve the issue on the property owner’s own land by installing fire shutters or a sprinkler system, or setting their proposed development back from the property line, the owners of 4 New Street SE have requested the purchase of a restrictive covenant to be registered against 6 New Street SE, in favour of 4 New Street SE, which would create a no build area by prohibiting development on a specific portion of 6 New Street SE. Administration then followed its standard process to circulate the request for a restrictive covenant, determine the market value for disposing of this interest in the City-owned land, and has attempted to negotiate the transaction with the property owners. Ultimately, the parties were unable to agree on the consideration for the proposed restrictive covenant. Following this, Notice of Motion PFC2021-0117, was introduced and subsequently adopted by Council directing Administration to undertake any necessary advertisements regarding a proposed disposition of a restrictive covenant at below market value (nominal consideration) and to report back to Council through the Standing Policy Committee on Utilities and Corporate Services.

INVESTIGATION: ALTERNATIVES AND ANALYSIS

Section 70 of the *Municipal Government Act* (Alberta) requires that a municipality must advertise any proposal to dispose of an estate or interest in land for less than the market value or any disposition of public park, recreation or exhibition grounds even where the disposition is at market value. In this case, Administration has been directed to undertake the necessary advertising as the proposed restrictive covenant is both below market value and is a disposition of interest in a public park. Following the requirements outlined in Section 606 of the *Municipal Government Act* (Alberta), Administration has published a public notice once a week for two consecutive weeks in the Calgary Herald. Four inquiries seeking additional information were received from members of the Inglewood community. The inquiries were responded to by Administration and did not indicate any opposition to the proposed restrictive covenant.

The proposed restrictive covenant will create an approximately 108.144 sq. m. (1,164.05 sq. ft.) no build area along a portion of 6 New Street SE’s south property line. If the recommendations are approved a legal agreement will be entered into and registered against both the property owner’s and The City’s lands.

Valuation

Consideration is nominal; however, an internal valuation which has been endorsed by Administration’s Valuation Review Committee was completed to determine the market value of the interest in land for the proposed restrictive covenant. The comparable sales analyzed are included in Attachment 4.

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Stakeholder Engagement, Research and Communication

A public notice indicating the proposed disposition of a restrictive covenant interest in the public park located at 6 New Street SE for nominal consideration was advertised in the Calgary Herald on 2021 February 01 and 2021 February 08. Four inquiries were received by Administration from members of the Inglewood community seeking further details of the restrictive covenant. Administration responded to each of the requests for information and did not receive any further communication from these parties.

Strategic Alignment

The proposed restrictive covenant supports public policy objectives outlined in the Municipal Development Plan, including promoting community densification, promoting place-making through urban design, and increasing public safety.

Social, Environmental, Economic (External)

Social

Having public parks, open spaces and amenities that promote public safety is an important principle in the overall scheme of open space planning.

Environmental

The Property has been reviewed in accordance with The City of Calgary's Sales, Acquisitions and Leases Environmental (S.A.L.E.) Policy effective 2020 January 14. Pursuant to the Sales, Acquisitions and Leases Environmental (S.A.L.E.) Procedure, an Environmental Review or Environmental Assessment is not required for the disposition of a restrictive covenant.

Economic

Parks and open space add character and contribute to vibrant communities that attract and retain residents, visitors and business. Granting restrictive covenants in favour of adjacent land owners helps to encourage high quality investment on adjacent lands and promotes eyes on the park.

Financial Capacity

Current and Future Operating Budget:

Currently, Administration's minimum fee for real estate transactions is \$7,000 and would be either paid from the market value charged on these transactions or charged separately as an administrative fee if the consideration were nominal. This fee is used to cover Administration's costs associated with staff resources in regard to due diligence, negotiation, approval and finalization of the transaction, preparation of legal agreements, and registration costs at the Land Titles Office. However, as directed from Notice of Motion PFC2021-0117, the service fee for Administration's services will not be charged to the adjacent property owner. Accordingly, the additional cost of advertising the proposed restrictive covenant, in the amount of \$1,037.95, will also not be charged to the adjacent property owner. All costs incurred on this transaction will be funded from the approved budgets in Real Estate & Development Services Program 488.

Notice of Motion PFC2021-0117 also directed Administration to potentially draw the service fee from the tax uplift on the application until it is paid off. Administration recommends that any tax

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uplift on the application continue to be submitted to general revenue. For future restrictive covenant disposition transactions of this nature, Administration will explore options for service fee and other cost recoveries and make policy recommendations as part of the report back to Council through the SPC on Utilities and Corporate Services due no later than 2022 March 30.

Current and Future Capital Budget:

Not applicable.

Risk Assessment

There is a financial risk to the sustainment of the Revolving Fund reserve from this transaction and a continued strategy of the disposition of real property below market value. The specific assessment of the impact of this risk to the reserve from this transaction is low since the market value of the proposed restrictive covenant is estimated at \$58,000 and the current reserve balance is healthy enough to sustain this below market value disposition, if approved.

If the proposed recommendations are approved there is an operational risk that this portion of the City-owned property will be unable to be developed in the future. The likelihood of this risk occurring is low, as there are no current plans for municipal development in the area to be encumbered by the restrictive covenant. In addition, there are overhead Enmax distribution lines within the restrictive covenant area which makes it even more unlikely that The City would develop this area in the future. The impact of this risk cannot be assessed at this time.

REASON(S) FOR RECOMMENDATION(S):

In response to Notice of Motion PFC2021-0117, Administration has prepared this report providing information on the feedback received from the requirement to advertise the disposition of an interest in park land at below market value. Administration is also recommending Council's approval on the terms and conditions for the proposed disposition of a restrictive covenant at nominal consideration, in accordance with this previous Council direction.

ATTACHMENT(S)

1. Attachment 1a – Site Map
Attachment 1b – Context Map
2. Attachment 2 – Recommendations
3. Attachment 3 – Summary of Additional Property Information
4. Attachment 4 – Comparable Data Chart Land Sales
5. Attachment 5 – Notice of Motion PFC2021-0117