
Right-of-Way Residential Boulevard Leases - Update

Recommendation

That the Standing Policy Committee on Transportation recommend to City Council:

1. That the City Solicitor's office register an interest on the title of the following properties: 102 Braemar Crescent; 201 – 6th Street E; 383 Pezer Cove; 401 – 113th Street W; 1304 – Avenue D North; and 427 – 10th Street W advising future owners of the current encroachment and the need to move the fence to the property line at the time of property sale;
2. That Administration pursue the lowering of the first six metres of fence to a maximum height of one metre, measured from the southwest corner, at 1304 – Avenue D North; and
3. That Council Policy C07-016, Lease of City Boulevards be updated to indicate residential leases are no longer offered.

Topic and Purpose

The purpose of this report is to provide information on the feasibility assessment of selling public right-of-way at specific locations; to provide recommendations to address existing residential boulevard leases; and to update Council Policy 07-016, Lease of City Boulevards.

Report Highlights

1. A summary of how other western Canadian cities approach private use of the public right-of-way is provided.
2. The feasibility assessment of offering the one-time lease holders the option to purchase the leased land identified several issues.
3. A solution to allow the property owners with existing leases to maintain their fences until a property ownership change has been identified.
4. A strategy on how to approach illegal encroachments is provided.

Strategic Goals

This report supports the Strategic Goals of Quality of Life and Moving Around by returning public right-of-way to public use.

Background

The Standing Policy Committee on Transportation at its meeting on November 6, 2018 resolved:

“That the Administration report back on best practices in other municipalities on the private use of public right-of-way.”

City Council, at its Regular Business Meeting held on November 19, 2018, considered the Right-of-Way Boulevard Leases – Policy Update report and resolved, in part:

- “2. That Administration report back on the feasibility of offering the six residential ROW lease holders the option of purchasing their leased land. This would be with the understanding that these sales are intended to wrap up the lease program without setting up a new policy of selling ROW going forward.”

Further background information is provided in Attachment 1.

Report

Best Practices of other Municipalities

A summary of how other western Canadian cities approach private use of the public right-of-way is provided in Attachment 2. Common themes include:

- No other City has a residential lease of public right-of-way program, bylaw, or policy.
- The ability to erect a fence on public right-of-way is prohibited through a bylaw.
- Two cities permit a slight infringement into the public right-of-way of private fences to account for construction errors or conflicts with other infrastructure and/or trees.

Feasibility Assessment of Purchasing Public Right-of-Way

A feasibility assessment of offering the existing lease holders the option to purchase the leased land was completed. The assessment included discussions with the Planning and Development, Urban Forestry, and Real Estate Services divisions. Issues considered in the assessment include:

1. Costs in terms of the value of the property and the value of any City-owned trees.
2. Bylaw compliance.
3. Are precedents being set?
4. Is future city-building restricted?

The complete feasibility assessment is provided in Attachment 3.

The results of the assessment indicate that it is not feasible to sell the public right-of-way in consideration of the following factors:

1. Costs range from \$2,660 to \$237,089 depending on the property.
2. Bylaws are contravened for five of the six properties.
3. Precedents would be set on two fronts: the sale of public right-of-way because a property owner has fenced it, and approving subdivision applications that include irregular property lines.
4. The potential for future city-building is restricted.

The Administration does not recommend selling these parcels due to the cost, contravention of bylaws, precedents setting, and the restriction of potential for city-building.

Registering an Interest on the Title

A viable option is to have the Solicitor's Office register an interest on the title of the following properties: 102 Braemar Crescent; 201 – 6th Street E; 383 Pezer Cove; 401 – 113th Street W; 1304 – Avenue D North; and 427 – 10th Street W advising future owners of the current encroachment and the need to move the fence to the property line at the time of property sale.

This approach minimizes the short-term impact on property owners while also achieving the City objectives of not setting a precedent or creating a new policy, maintaining public right-of-way for future city-building, and improving bylaw compliance.

At 1304 – Avenue D North, the fence at the southwest corner of the property extends into the sight visibility triangle. In order to meet zoning bylaw requirements, it is recommended that the fence is lowered within the triangle to a maximum of one metre to provide adequate sight visibility for drivers, pedestrians and cyclists. Lowering the fence would improve the level of safety.

Illegal Encroachments Strategy

Several types of encroachments are present throughout the city including landscaping, retaining walls, small buildings and fences, most of which do not pose any safety or policy concerns.

A significant number of residential property owners throughout the City have installed and maintained soft landscaping (small non-woody shrubs, grass, trees, irrigation systems, etc.) in the public right-of-way immediately adjacent to their property. These situations are not an issue.

The Administration is also aware of small retaining walls that are within the public right-of-way to either help provide usable space on private property, or either help with flood protection or site drainage. These situations are typically not an issue and are addressed on a case-by-case basis. The Administration is actively working with property owners where flooding has occurred on a long-term mitigation plan, which includes using fences and sand bags as a short-term strategy. The recommendations in this report will have no impact on this ongoing work.

Fences and/or sheds that encroach into the public right-of-way and that may pose safety concerns, impede mobility, or impact civic operations, will continue to be addressed on a case-by-case basis.

Options to the Recommendation

Each recommendation in this report can be considered individually. If the sale of the public right-of-way was to proceed, the process would need to be in accordance with the Cities Act and would follow the right-of-way road closure process, including issuing Public Notice and holding a Public Hearing.

Communication Plan

The six property owners with residential leases have been notified of the approach to address the existing leases. Further discussions will be held to address questions following direction from City Council.

Policy Implications

Council Policy C07-016, Lease of City Boulevards and Bylaw No. 7200, The Traffic Bylaw would need to be updated if the recommendations are approved to provide clarity to property owners that leasing of boulevards for residential purposes is not permitted.

Financial Implications

Revenue from the existing six residential property leases will result in a reduction of \$2,890.43 annually.

Other Considerations/Implications

There are no public and/or stakeholder involvement, environmental, privacy or CPTED implications or considerations.

Due Date for Follow-up and/or Project Completion

If approved, the Administration will update the policy and work with the City Solicitor's Office to register interests on the title of the six properties.

Public Notice

Public Notice pursuant to Section 3 of Policy No. C01-021, Public Notice Policy, is not required.

Attachments

1. Background
2. Best Practices of other Municipalities
3. Feasibility Assessment of Purchasing Public Right-of-Way

Report Approval

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