

REPORT TO COUNCIL



Date: September 12th, 2016
RIM No. 1250-40
To: City Manager
From: Urban Planning Department (JR)
Subject: Land Use Contract Termination Strategy

1.0 Recommendation

THAT Council receives, for information, the report from the Urban Planning Department dated September 12th, 2016, with respect to the Land Use Contract Termination Strategy;

AND THAT Council endorse the strategy outlined in the Land Use Contract Termination Strategy report dated September 12th, 2016 which states:

1. Land Use Contracts will be terminated and associated rezonings (where necessary) performed over time between 2017 and 2022.
2. Staff will bring forward the Land Use Contracts for termination based upon development potential (any with remaining development potential) and their age (oldest to youngest).
3. Staff will bring forward a Land Use Contract termination whenever an applicant applies to discharge a Land Use Contract on their property.

AND THAT Council direct Staff to rescind the 1997 Council Policy #282 regarding the Strategy for Elimination of Remaining Land Use Contracts.

2.0 Purpose

To consider a strategy to terminate all existing Land Use Contracts in Kelowna.

3.0 Urban Planning

3.1 Background

Land Use Contracts were a tool regularly used in the 1970's before they were eliminated on November 15th 1978. The purpose of the tool was to allow local governments to arrive at agreements with specific developers to grant development rights over and above what was allowed under current zoning. This was typically done in exchange for commitments by developers to help finance the infrastructure costs of development.

Generally, Land Use Contracts 'locked' in the zoning unless the language within the contract stated "zoning regulations as amended and replaced from time to time." This has the effect of continuing the zoning regulations that were in place in the 1970s. Kelowna had three zoning bylaws over the Land Use Contract era (See Table No. 1):

Table 1

| <u>City of Kelowna Zoning Bylaw Chronology</u> | | | |
|--|-------------------------------|----------------|-----------------|
| <u>Bylaw #</u> | <u>Title</u> | <u>Adopted</u> | <u>Repealed</u> |
| 2293 | Zoning Bylaw 1961 | 1961-10-30 | 1973-02-05 |
| 3500 | Zoning Bylaw pre-amalgamation | 1973-02-05 | 1976-08-10 |
| 4500 | Zoning Bylaw | 1976-08-10 | 1998-10-19 |
| 8000 | Zoning Bylaw | 1998-10-19 | Current |

Issues have arisen, specifically with the continued application of land use contracts as they supersede any subsequent bylaw dealing with land use and development including: Zoning Bylaws, Development Cost Charge Bylaws, Subdivision, Development and Servicing Bylaw No. 7900, and Development Permits. From 1978 to 2014, municipalities or the owners of the land could not unilaterally discharge, cancel, or modify the land use contract without the other party's consent. This was the situation when Council Policy #282 "Strategy for Elimination of Remaining Land Use Contracts" was established (See attachments for policy). The summary of policy #282 states:

- That LUC's are never amended and that any change requires a discharge of the LUC.
- That the City initiate the discharge of any LUC that had a cancellation cause.
- That the City try to work with property owners to eliminate their LUC.
- That priority be given to eliminate LUCs that have the greatest financial impact upon the City and LUCs that enable development contrary to the fulfillment of community objectives.

Since, 1997, there have been a limited number of LUCs that have been discharged. Most notably the Dilworth Mountain Land Use Contract. However, Staff had largely been unsuccessful with discharging any LUC that required the owner's consent unless the owner was seeking new land uses not authorized within the LUC.

The Local Government Act was amended in 2014 to address the LUC issue. Municipalities were provided a second method of rescinding LUC's through termination. LUC terminations provide the ability for municipalities to rescind LUC's unilaterally, without owner(s) consent, as stated in Section 548 of the Local Government Act. Discharging and terminating both have the same process except that Land Use Contract terminations (unlike LUC discharges) do not apply when Council adopts the bylaw. Terminations require a one-year grace period as outlined by the Local Government Act. Further, the municipality must send additional letters after the one-year grace period is complete informing the property owners of which land use regulations apply to their properties.

With LUC terminations the owner, during this grace year, will be allowed to appeal the termination in order to extend the length of time the LUC is in force (greater than a year). The owner would approach the Board of Variance and explain that there is a hardship by terminating the LUC in a year after the termination was adopted by Council. The Board of Variance will

decide whether or not to grant the extension. If the extension is granted the LUC will be terminated after the extended period with no opportunity to extend again.

According to the Local Government Act, as of June 30th 2024 all land use contracts will be terminated. Therefore, land use contracts will remain in force until that date unless terminated early by the municipality. However, by June 20th 2022, local governments must have appropriate zoning regulations to replace land use contracts upon their termination (termination enactment cannot occur after June 30th 2022) as not all properties have the appropriate underlying zoning.

Bylaws authorizing a land use contract termination must have a public hearing and standard notification requirements. Additionally, a bylaw terminating a land use contract cannot be "in force" earlier than one year following the date of its adoption or no later than June 30th 2024. Further, appropriate zoning regulations for the land must be in place by the time the land use contract termination is adopted or may be enacted concurrently. Appropriate zoning regulations means land must be zoned according to the existing zoning bylaw (Bylaw #8000).

Within the City of Kelowna, there were originally 140 Land Use Contracts however, only 73 are still in force. Occasionally, a land use contract may apply to a single parcel but more commonly, a Land Use Contract applies to an area and includes multiple land owners.

3.2 Notification

According to Council Notification Policy #367 and to the Development Application Procedures Bylaw #10540, when a LUC termination, that does not require a rezoning is processed, notices, such as mail outs, will only be sent to affected properties. However, when a rezoning is required properties within 50m of the LUC termination and rezoning will receive notices. In addition, all LUC terminations will require notification signage as per Section 9.14 Notice of Termination in the Local Government Act:

Local governments must provide notice to each owner that the termination of land use contract is occurring and must provide notice of what the new zoning regulations apply to the land. The notice must state the bylaw becomes "in force" one year following the date of the bylaw adoption and inform the owner of their right to apply to the Board of Variance for an extension of the "in force" date.

Notification will impact advertising costs. See 6.0 Financial Implication Section on the report.

3.3 Strategy for Eliminating Land Use Contracts

Staff are recommending terminating as many land use contracts as possible before 2022 because performing all the public hearings related to zoning changes and notifications at once would be overwhelming. Further, land use contracts have had special privileges which they have enjoyed for many decades. These special privileges include: not contributing to DCCs, guaranteed land uses, and being exempt from Development Permits which guide form and character. The earlier the land use contracts can be terminated the better for infrastructure financing related to DCCs and better site planning through Development Permits. Further, the existing Council Policy #282 supports this idea by prioritizing LUC terminations that have the most significant financial impact on the community and the LUC terminations that would most benefit from a Development Permit being processed.

Staff are proposing to bring a package of Land Use Contract terminations approximately every quarter to Council between 2017 and 2022. It is more cost effective from a notification

perspective, if a few Land Use Contracts are bundled together. There are currently 73 Land Use Contracts still active that effect 702 properties (See Table No. 2). Therefore, Staff are proposing to bring a bundle of approximately 4 Land Use Contracts to Council each quarter starting in 2017. By 2022, Staff should have completed termination of all remaining Land Use Contracts.

Table 2

| CATEGORY | # OF LAND USE CONTRACTS | # OF PROPERTIES EFFECTED |
|---------------------------|-------------------------|--------------------------|
| Commercial / Industrial | 25 | 87 |
| Multi-Family / Two-Family | 21 | 43 |
| Single Family | 23 | 568 |
| Public / Institutional | 3 | 3 |
| Mixed Use | 1 | 1 |
| TOTAL | 73 | 702 |

Staff have sorted the Land Use Contracts into categories based on types of zoning. The order of these categories were determined upon the degree of development potential of the properties in each category. Staff have provided a priority list (See attached) of all 73 LUC's, however, the list may change if a property wants to discharge earlier. This will be handled on a case by case basis. Staff are proposing that the priority of which land use contracts should be brought forth for termination be based upon these categories:

1. Commercial / Industrial
2. Multi-Family / Two - Family
3. Single Family
4. Public / Institutional
5. Mixed Use

Within each category the properties with the most development potential will be terminated first and then the remaining will be eliminated oldest to youngest. The oldest land use contracts have enjoyed the longest benefits and by bringing forth terminations based upon age there will be no preferential treatment for any property owner. This termination process will be completed in each category. If no development potential was found in any of the LUC's in a category, order was based strictly on age. Two of the above categories, Multi-Family / Two Family and Single Family are examples of this. In addition, the Mixed Use category only obtains one LUC and therefore, order within that category is exempt.

4.0 Eliminating Land Use Contract Process

Each LUC will participate in the following process in order to be rescinded:

Termination (for both LUC's requiring rezoning and LUC's not requiring zoning):

1. Staff Report
2. 1st Reading
3. Newspaper, Direct Mail Notification, and Onsite Development Notification Signage
4. Public Hearing - 2nd and 3rd Reading

5. 4th Reading - Adopted
6. Direct Mail Letter - Sent 1 year after termination of LUC
7. In Force - LUC Termination

Discharge (for both LUC's requiring rezoning and LUC's not requiring rezoning):

1. Staff Report
2. 1st Reading
3. Newspaper, Direct Mail Notification, and Onsite Development Notification Signage
4. Public Hearing - 2nd and 3rd Reading
5. 4th Reading - Adopted and "In Force"

5.0 Current Development Policies

5.1 Council Policy No. 282: *"Strategy for Elimination of Remaining Land Use Contracts"*

"...That the City of Kelowna initiate proceedings to discharge Land Use Contracts that have provisions enabling the City to unilaterally discharge the contracts subject to consultation with affected owners of the land and subject to prior approval by Council with regard to affected contracts..."

6.0 Financial Implications

If Council approves the recommended approach, cost implications will need to be considered and budgeted as a City initiated project. Total costs will include notification costs such as mail outs, newspaper ads and notification signage. In addition, there will be staff resources required to coordinate the initiative. Staff will include these costs in work plans and operating budget requests over the next 5 years.

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&

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Approved for Inclusion by:

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Attachments:

Policy 282 Strategy for Elimination of Remaining Land Use Contracts

Appendix 'A' - Maps

Priority List