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<i>COUNCIL AGENDA</i>	
Date: <u>May 30, 2022</u>	Item: <u>10.</u>



DISTRICT OF WEST VANCOUVER
750 17TH STREET, WEST VANCOUVER BC V7V 3T3

10.

COUNCIL REPORT

Date:	March 21, 2022
From:	Mark Panneton, Director, Legislative Services/Corporate Officer
Subject:	Addressing Discriminatory Covenants Registered on Title
File:	1000-01

RECOMMENDATION

THAT the following resolution be submitted for consideration at the 2022 Union of British Columbia Municipalities (UBCM) Annual Convention, subject to any changes that may be required by the UBCM:

WHEREAS the issue of outdated covenants that contain discriminatory language is one that affects municipalities across the Province; and

WHEREAS it is cost-prohibitive for municipalities to individually and proactively identify and report covenants containing discriminatory language to the Land Title and Survey Authority (LTSA);

THEREFORE BE IT RESOLVED THAT the Province be requested to:

- 1) direct the Registrar of the LTSA to proactively search for and identify discriminatory language contained in registered covenants; and
- 2) provide the Registrar of the LTSA with the ability to delete any occurrences of discriminatory language identified.

1.0 Purpose

To provide Council with an update and potential next steps regarding discriminatory covenants in West Vancouver.

2.0 Legislation/Bylaw/Policy

Legislation: The *Land Title Act*, section 222 (“Discriminating covenants are void”) applies.

Bylaw: There are no applicable District bylaws.

Policy: There are no applicable District policies.

3.0 Official Community Plan

The Official Community Plan does not apply.

4.0 Financial Implications

Staff estimate that the cost to locate and cross out discriminatory language contained in covenants registered to parcels in West Vancouver would be substantial. In an effort to mitigate costs staff approached the Land Title and Survey Authority (LTSA) to request that they waive their portion of the search and retrieval fees; the LTSA declined to grant this request. Staff therefore recommend that the District of West Vancouver take a collaborative approach to resolving the provincial issue of discriminatory covenants through the Union of British Columbia Municipalities (UBCM). This approach could be done without significant cost to BC municipalities.

5.0 Background

5.1 Previous Decisions

Council, at its January 27, 2020 regular meeting, passed the following resolution:

WHEREAS the Canadian Charter of Rights and Freedoms (“the Charter”) guarantees 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;

AND WHEREAS the District of West Vancouver has an obligation to uphold the values of the Charter;

AND WHEREAS Section 222 of the British Columbia Land Title Act specifies that covenants that restrict 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 are void and of no effect;

AND WHEREAS land titles in the British Properties of West Vancouver (historically) include covenants which have 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;

AND WHEREAS it is 2020;

THEREFORE BE IT RESOLVED THAT:

- a) Council affirms that covenants or portion of covenants that restrict the sale, ownership, occupation or use of land on account of the sex, race, creed, colour, nationality, ancestry or place of origin of a person, however created, whether past, present or future, are deemed void and of no effect by the District of West Vancouver;*
- b) Staff be directed to work with legal advisors and the Land Title and Survey Authority of BC to determine the process, resources and time required to achieve the cancellation and striking of discriminating*

covenants relating to lands in West Vancouver and report back to Council within 60 days for further direction; and

- c) *Council direct the Mayor to contact, on behalf of the District, the relevant federal, provincial and regional authorities to request that they initiate and support a comprehensive, multi-agency initiative to document and examine the history of restrictive covenants in the region with the cooperation of academics and non-profit organizations active in this area.*

5.2 History

The *Land Title Act* was amended in 1978 to specify 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. However, discriminatory language can still be found in covenants registered prior to 1978. The LTSA has informed that, when discriminatory language in a covenant is identified and brought to their attention, LTSA staff will strikethrough, but not delete, the discriminatory language in question. This process is reactive, and requires that a third party expend resources to identify occurrences of discriminatory language and bring those occurrences to the LTSA's attention.

6.0 Analysis

6.1 Discussion

Staff have prepared two options in response to Council's resolution of January 27, 2020. The first option, which is not recommended, would see the District proceed independently of other BC municipalities to locate and review discriminatory covenants, and then forward information regarding any discriminatory covenants located to the LTSA so that the discriminatory content could be struck through. The second option, which is recommended, acknowledges that discriminatory covenants are a provincial issue and proposes an intergovernmental approach that would empower the LTSA to proactively identify and delete discriminatory content from covenants.

Option 1: Locate and Cancel/Strike Discriminatory Covenants

Council's January 27, 2020 resolution directed staff to determine the process, resources, and time required to achieve the cancellation and striking of discriminating covenants relating to lands in West Vancouver.

To that end, staff have consulted with the LTSA, as well as companies that specialize in conducting title searches and pulling documents registered on title. These conversations, combined with staff's own research, indicate that under the *Land Title Act* the following process would be required in order to locate and identify any discriminatory covenants that may be registered on the title of West Vancouver properties, should the District wish to proceed alone:

- (1) Identify the total number of parcels within West Vancouver that may be subject to this process (there are approximately 17,327 parcels in West Vancouver, as per tax roll information provided by BC Assessment in January 2022);
- (2) For each identified parcel, pull the title for the parcel (the cost to pull title for a parcel is \$10.07 as of April 1, 2022, as per the LTSA's fee schedule);
- (3) For each title pulled, review that title for any covenants registered prior to 1978;
- (4) For each covenant identified, pull that covenant (the cost to pull each covenant is \$16.19 as of April 1, 2022, as per the LTSA's fee schedule);
- (5) For each covenant pulled, review that covenant and determine whether it contains discriminatory language;
- (6) For each covenant containing discriminatory language, record the covenant registration number and the location of the discriminatory language within the covenant;
- (7) Provide the information determined in Step 6 to the LTSA; and
- (8) The LTSA would review the information provided and strikethrough the discriminatory language contained in the covenant.

Based on the process outlined above, staff estimate that an expenditure of approximately \$735,531.15 would be required in LTSA fees alone, as follows:

- \$174,482.89 to conduct required title searches (estimated at one title search per parcel); and
- \$561,048.26 to retrieve relevant covenants (estimated at two covenant retrievals per parcel)

In an effort to mitigate these costs staff have approached the LTSA to request that they waive their portion of the search and retrieval fees. However, the LTSA has declined to grant this request.

The estimate of \$735,531.15 does not include costs associated with staff time. District staff do not have the specialized training and experience required for this task and there is no capacity within current staff resources to conduct a project of this magnitude. In addition, many older covenants (such as the discriminatory covenants that the District is seeking to locate and identify) are not available digitally, and would have to be retrieved from the LTSA office in New Westminster in person. A company that specializes in pulling title and covenant documents from the LTSA would be required to accomplish this task. The cost to undertake such an extensive review (searching over 17,000 titles) would be prohibitive, and would likely total in excess of \$1,000,000.

Given that: this matter is a Provincial responsibility; substantial costs are anticipated; the discriminatory language is legally void and of no effect; and LTSA staff cannot delete (only strikethrough) discriminatory language where identified, staff do not recommend proceeding independently with a project to identify and report discriminatory covenants to the LTSA.

Option 2: Intergovernmental Approach

The issue of discriminatory covenants is not unique to West Vancouver, but is rather a province-wide issue. By working together, BC municipalities have a unique opportunity to collectively lobby the province for the changes necessary to empower the LTSA to proactively search for, and delete, discriminatory content. Staff therefore recommend that the District sponsor a resolution for consideration at the 2022 UBCM Annual Convention. This proposed resolution would request that the Province:

- 1) direct the Registrar of the LTSA to proactively search for and identify discriminatory language contained in registered covenants, rather than waiting for and putting the onus on third parties to identify such occurrences; and
- 2) provide the Registrar of the LTSA with the ability to delete, rather than merely strikethrough, any occurrences of discriminatory language identified.

This proposed intergovernmental approach represents an opportunity for BC municipalities to confront the issue of discriminatory land title covenants collectively and in a systematic manner. The decision to address (at a substantial cost) or ignore these discriminatory covenants should not be left to the discretion of individual municipalities or title holders. Rather, the onus for righting these historical wrongs rests with the Province of British Columbia – the Province permitted the registration of discriminatory covenants prior to 1978, and the covenants in question are held by the LTSA.

Staff therefore recommend that the motion be passed and forwarded to the UBCM so that it may be considered by municipal representatives from across the Province at their 2022 Annual Convention.

6.2 Sustainability

This initiative would contribute to social sustainability through the coordination of an intergovernmental effort to remove discriminatory language from documents registered with the LTSA.

6.3 Public Engagement and Outreach

Council directed staff to determine the process, resources, and time required to achieve the cancellation and striking of discriminating covenants relating to lands in West Vancouver. No public consultation on this initiative has been conducted.

6.4 Other Communication, Consultation, and Research

Staff have spoken with senior LTSA staff, companies that specialize in conducting title searches and retrieving related documents, including covenants, and have conducted their own independent research. Staff have also consulted with other Metro Vancouver municipalities.

7.0 Options

7.1 Recommended Option

Staff recommend that a resolution be submitted to the UBCM for consideration at its 2022 Annual Convention.

7.2 Considered Options

Council can modify the resolution that has been recommended for submission to the UBCM, or could pass an alternate motion directing staff to take a different course of action.

Should Council decide to proceed with Option 1 (Locate and Cancel/Strike Discriminatory Covenants) as outlined in Section 6.1 – Discussion, staff recommend that a company that specializes in pulling titles and other relevant documents from the LTSA be retained to locate and identify discriminatory covenants. If so directed, staff would obtain quotes and bring forward a budget request in 2023 for the full cost of the work.

8.0 Conclusion

In 1978, the Province of British Columbia amended the *Land Title Act* to specify 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. However, the amendment did not empower the LTSA to proactively search for, identify, and delete discriminatory language from covenants that had been registered prior to 1978, or to delete occurrences of discriminatory language found. As a result, many of these covenants, which are deeply upsetting and a reminder of the country's racist past, remain.

Municipalities do not have the resources or the expertise to individually and independently locate and bring forward occurrences of discriminatory language to the LTSA. Staff therefore recommend that a motion be submitted for consideration at the 2022 UBCM Annual Convention to request that the Province empower the LTSA to address this matter in a proactive manner.

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