



To: Planning Committee

Date: September 18, 2009

From: Cathryn Volkering Carlile
General Manager – Community Services

File: 06-2270-01/2009-Vol
01

Re: **Affordable Housing Agreement - Proposal to Remove the Option to Purchase Clause**

Staff Recommendation

That removal of the Option to Purchase clause in the City’s Housing Agreement used to secure affordable housing units, as outlined in the Staff Report dated September 18, 2009 from the General Manager of Community Services, be approved as general direction for Housing Agreements and that Council receive for information BC Housing’s comments on Richmond’s affordable rents.

Cathryn Volkering Carlile
General Manager – Community Services
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Att. 1

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ROUTED TO:		CONCURRENCE		CONCURRENCE OF GENERAL MANAGER	
Development Applications	Y	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
Social Planning	Y	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
Law	Y	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
Budgets	Y	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
REVIEWED BY TAG	YES	<input checked="" type="checkbox"/>	NO	REVIEWED BY CAO	YES
		<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>
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Staff Report

Origin

In June, 2009, Council approved a number of amendments to the Affordable Housing Strategy (the Strategy) and related Housing Agreement. Since that time, it has come to staff's attention that a further amendment is required, specifically to remove the Option to Purchase clause from the Housing Agreement, in order to address implementation challenges and to respond to Council's adopted term goal:

Improve the effectiveness of the delivery of social services in the City through the development and implementation of a Social and Community Services Strategy that includes increased social housing, implementation of the campus of care concept and an emergency shelter for women.

The purpose of this report is to seek Council's approval of the proposed amendment to the Housing Agreement for future Housing Agreements and to advise Council of comments received from BC Housing on Richmond's affordable rents.

Analysis

Option to Purchase

The amended Option to Purchase clause in the Housing Agreement, as approved by Council in June 2009, provides the City with the ability to purchase an affordable rental unit for \$10 in the event of specific breaches which are not remedied within designated cure periods.

Since that time, local developers and BC Housing Management Commission (BC Housing) have brought their concerns with the \$10 Option to Purchase clause to staff's attention. Developers have indicated that despite the amendments made to the Option in June, the clause is impeding the successful delivery of affordable rental units by limiting the availability of financing on the units and thereby limiting the marketability of same.

Additionally, BC Housing brought their concerns with the \$10 Option to Purchase to the City's attention as well and have indicated that they would be unwilling to purchase units with an Option to Purchase restriction on title and unwilling to provide financing to a non-profit society looking to purchase the units.

Staff took this feedback and initiated further discussions with BC Housing as well as with other financing institutions, including those who are experienced in the provision of financing to non-profit societies, in order to confirm the financing difficulties.

This consultation has verified that lending institutions consider the \$10 Option to Purchase as the lowest possible value of the unit. As such, lending institutions continue to be unwilling to finance affordable rental units. This is a concern not only in the initial construction financing stage, but also in the eventual take-out financing stage and for any potential refinancing that may be required on these units by future owners, including non profit societies.

The table below provides a summary of the feedback we have received.

Table 1: Feedback on Option to Purchase Clause

Financial Institution	Comments on Option to Purchase Clause
BC Housing	Unwilling to finance or purchase a unit with the Option to Purchase clause in the Housing Agreement.
Development Community	Multiple members of the Urban Development Institute have indicated their difficulties in obtaining financing for affordable housing units in their specific developments.
Coast Capital Savings Credit Union	In general, not willing to mortgage a unit with the Option to Purchase on title.
Scotiabank	The unit would not qualify for mortgage financing on a stand alone basis due to the Option clause.
VanCity Credit Union	In general, not inclined to mortgage a unit as the loan would be unsecured/unpaid if the City exercised its Option to Purchase.

The \$10 Option to Purchase also results in an inability to sell the affordable housing units at fair market value.

Staff have also researched the practices in other lower mainland communities' Housing Agreements in order to determine whether the \$10 Option to Purchase is an industry standard. Staff conducted a review of Housing Agreements being used in seven other municipalities. It should be noted that the review was not exhaustive and that the Housing Agreements reviewed, with the exception of Whistler, were for individual projects and were not indicative of an overall model used in the municipality. In the review, with the exception of Burnaby, no other municipality is using a nominal Option to Purchase. Details on the municipal comparison are outlined in Attachment 1.

With regards to the Burnaby example, the Burnaby Option to Purchase was only used in one occasion when a density bonus was provided and is only exercisable in a twenty year window (after sixty years has passed but before eighty years have passed). In addition, the Burnaby agreement was enacted several years ago, outside the context of an Affordable Housing Strategy, and addressed a unique set of circumstances.

For the Burnaby development in question, the four affordable units did not require financing and would therefore not have experienced the financing difficulties some are facing in Richmond. The Burnaby Housing Agreement with a nominal Option to Purchase should thus be regarded as a one-off example and not as a model that would apply in the Richmond context.

The goal of the Richmond Affordable Housing Strategy is to provide viable and successful affordable rental housing for the community. Working effectively with our partners in the

development community as well as in other levels of government is key to the success of the Strategy. Through our consultations, we have concluded that the Housing Agreement could be amended to ensure that financing is available for the units; that ownership of the units is achievable by multiple entities; and that the units are viable over the long term.

Council has two options to consider:

1. Status Quo – maintain the \$10 Option to Purchase clause.
2. Eliminate the \$10 Option to Purchase clause. **(Recommended)**

Option 1. Status Quo – maintain the \$10 Option to Purchase clause.

Maintaining the \$10 Option to Purchase clause provides the City with the greatest security over the long term operation of the affordable housing unit, not only because the power of this remedy may result in owners being more compliant with Housing Agreement terms, but also because the City would be in the position to purchase and take over administration of the affordable units when the owner/operator is in fundamental breach of the agreement.

In addition, in the event of an un-cured breach, the City would be obtaining a valuable asset for a nominal amount.

On the other hand, leaving the \$10 Option to Purchase clause in Housing Agreements limits the ownership opportunities for the affordable housing units, as financing is at best difficult, and at worst impossible to obtain, with this clause. Financing availability will vary according to the terms, credit history, and equity of each specific application; however, feedback from lending institutions clearly indicates that the \$10 Option to Purchase clause is an impediment to financing.

Furthermore, BC Housing, one of limited institutions which provide financing to non-profit societies, has indicated that they will not finance a unit with the Option to Purchase clause in the Housing Agreement. This will severely limit the financing options available to a non-profit society.

In addition, the local development community, along with BC Housing, has indicated their collective dismay with the \$10 Option to Purchase clause. Maintaining the status quo carries the risk of alienating the City's partners in affordable housing.

The City's administration policy with regards to affordable units is a complaint-based compliance system, similar to some Bylaw Enforcement programs in the City. This will be administered in the Affordable Housing Office of the City and may require additional resources, depending on the volume of complaints received. In addition, the Housing Agreement grants the City the ability to request statutory declarations from the owner annually, and without limit when a breach is suspected.

Should the City find it necessary to exercise the \$10 Option to Purchase for multiple affordable units due to owner/operator non-compliance, the City would be obligated to then devote the resources required to maintain and operate the affordable units, or to sell the units. Additionally, through the exercise of the Option to Purchase, the City would be required to correct the breach

that was incurred and which had not been corrected by the owner/operator. This could potentially include terminating the tenancy of a non-eligible tenant (ie. a tenant who earns more than the maximum income threshold) and exposes the City to certain responsibilities which may not be desirable.

Option 2. Eliminate the \$10 Option to Purchase clause (Recommended)

Eliminating the \$10 Option to Purchase clause would alleviate the financing concerns presented by the City's partners in affordable housing – the local development community, BC Housing, and non-profit Societies. Removal of the Option allows the development community to market the units and will assist in widening the ownership opportunities for the affordable housing units beyond the developers themselves. It will also improve the availability of BC Housing's financing for the units.

On the other hand, eliminating the \$10 Option to Purchase clause eliminates the City's ability to purchase units for \$10 in the event of fundamental breach of the Housing Agreement and decreases the City's security over the affordable units.

The clause was intended as a means to ensure compliance with the Housing Agreement. The removal of the clause does reduce this security, however, this was only envisioned as security that would be exercised as a last resort and in rare circumstances. Evidence from other municipalities and housing organizations indicates that activation of any remedy is rarely used. Furthermore, additional safeguards are in place in the Housing Agreement that will mitigate the risks involved with removing the \$10 Option to Purchase clause.

For example, the Housing Agreement provides the City with the ability to accumulate a \$100/day financial penalty for any breach of the Housing Agreement. This financial penalty is a rent charge that is binding on the Owner and the Owner's successors in title and therefore is a charge that runs with the land. Any amount secured by the rent charge would likely become payable when a transaction affecting the lands occurs. Typical transactions would be a sale or a mortgage in which case the purchaser or the mortgagee would require the monies secured by the rent charge to be paid as a closing condition.

Staff have analyzed the amount of the financial penalty and feel that as a deterrent, a \$100/day penalty is sufficient at this time, as the charge would quickly outweigh any rental surcharge imposed by an owner above the allowable rent thresholds (eg. \$3,000/30 days). In addition, many of the municipal Housing Agreements reviewed in Attachment 1 do not utilize a financial penalty at all.

Having said this, there is a financial cost to pursuing legal actions in order to collect the financial penalty. If the goal of the financial penalty is to help offset the legal fees required to pursue payment of the penalty, \$100/day is insufficient. However, in order to offset potential legal fees the penalty would need to be increased significantly, and lenders have already indicated that this may pose a new financing impediment. As such, staff recommend keeping the current \$100/day financial penalty in the Housing Agreement at this time and further recommend that the Affordable Housing Operating Reserve fund be used to offset legal costs incurred to remedy breaches of affordable Housing Agreements.

Additionally, in the event of breach of the Housing Agreement, the City would have additional remedies that exist at law generally. These are litigation/Court based remedies. One particular remedy, called specific performance, is a remedy which causes the defendant to take a particular action (ie. to reduce rents). The Richmond Housing Agreement includes specific wording in order for the City to be in as good a position as possible to obtain this remedy in the Courts.

Utilizing such other measures to ensure compliance, rather than using the \$10 Option to Purchase, limits the risk to the City of having to own and maintain affordable housing stock.

The administrative role of the City would be similar to that with the \$10 Option to Purchase clause, as outlined above, with the exception that the removal of the Option to Purchase clause eliminates the possibility that the City would own a portfolio of affordable housing units. This therefore eliminates the associated City resources that would be required for administration of units owned directly by the City.

Given these factors, staff believe that the benefit of the extra security by way of Option to Purchase is outweighed by the resulting financing impediment. Staff are hereby seeking Council's support of the general policy direction to eliminate the \$10 Option to Purchase clause from Housing Agreements. Council will continue to receive individual Housing Agreement Bylaws for review and approval on a case by case basis. Staff will monitor the effectiveness of Housing Agreements without the Option to Purchase and will recommend changes as required.

Rents and BC Housing

In addition to their concerns with the Option to Purchase clause, BC Housing has provided feedback on other terms contained in the City's Housing Agreement, including the rent levels. BC Housing is of the opinion that Richmond's affordable rents may be too low to make the low end market rental units economically viable without subsidies. Staff have examined this comment and do not feel supportive of a change in our rents/rental methodology at this time.

Staff have analyzed our rental methodology twice since adoption of the Affordable Housing Strategy in May, 2007, and presented recommended changes to Council which Council has adopted (February 2008 and June 2009). We have again re-examined the methodology in light of BC Housing's comments. Our rents are based on what would be affordable to a household earning 80% of Metro Vancouver Core Need Income Thresholds. These thresholds represent the income required to pay the average market rent for an appropriate sized unit in the private market and it is therefore appropriate to decrease the income threshold to 80% in order to target those in higher need. We then work from these incomes to determine affordable rents, based on the industry standard definition of housing affordability being equal to 30% of household income.

We consulted with our community stakeholders, including non-profit societies and developers, last Spring when we proposed this rental methodology and did not hear concerns expressed on our rents.

While at this time staff do not recommend adjusting the affordable rents, an external implementation review is currently underway by Dale McClanaghan, the original consultant on the City's Affordable Housing Strategy. This study includes a review of the long term operating

potential of the affordable low end market rental units using our established rents and may result in a recommended change in rents/rental methodology. While staff are open to examining the results of the review, staff do not feel that sufficient information is currently available to recommend a change at this time.

Financial Impact

Removing the \$10 Option to Purchase results in the City not being able to acquire affordable housing units for \$10 resulting from a breach.

In the event of breach of the Housing Agreement, if the Owner fails to remedy the breach, then a legal action would need to be commenced and legal fees would need to be incurred. While difficult to predict in advance, the usual fees involved to remedy a breach would be approximately \$20,000 to \$30,000. Staff note that even with the Option to Purchase, legal fees may need to be incurred in order to effect the Option.

Conclusion

The Housing Agreement used to secure affordable rental housing units in the City includes an Option to Purchase clause that impedes the successful development and long term viability of affordable housing in the City. In order to improve effective delivery of affordable housing, staff recommend that the Option to Purchase clause be removed from all Housing Agreements. No further material changes to the Housing Agreement are recommended at this time.



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Municipal Comparison of Housing Agreements (Individual and Program)

Attachment 1

Individual Project Based Housing Agreements

City	Year	Number of Units	Owner	Density Bonus	Term	Option to Purchase	If yes, what value	Financial Penalty for non compliance	Notes
New West	2009	129	Port Royal Village Developments Inc.	No	10 years	No	N/A	No	Market rental
Port Coquitlam	2007	135	Astoria Retirement Inc.	No	Perpetuity	No	N/A	Yes - \$200/day	Supportive & assisted living
Port Coquitlam	2009	10 beds	New View Society	No	Perpetuity	No	N/A	No	10 bed group home
District of North Van	2006	32	Polygon Development 174 Ltd.	No	Perpetuity	No	N/A	No	Market rental
Vancouver	2007	12 seniors and 18 market	Pacific Crown Investment Corporation	No (received parking relaxation)	15 years	No	N/A	No	Market units and low income seniors units via BC Housing subsidy program
Squamish	2009	84	Squamish Riverstones Development Ltd.	No (received DCC & servicing costs waiver)	40 years	No	N/A	Yes - \$500/day plus payment of DCC waiver	Affordable rental but not based on core need; BC Housing involved
Burnaby*	2004	4	Sharing Our Future Foundation	Yes	Perpetuity	Yes	\$10	No	Special needs tenants

* The Table above is not an exhaustive review of Housing Agreements used in the local area, but does provide a comparison of some Housing Agreements that have recently been used locally. Circumstances of each Housing Agreement vary and therefore direct comparison is difficult.

** The Burnaby Option to Purchase was only used in one Housing Agreement when a density bonus was provided and is only exercisable in a twenty year window. The Burnaby Housing Agreement in question was enacted several years ago, outside the context of an Affordable Housing Strategy, and addressed a unique set of circumstances. The units in question did not require financing and would therefore not have faced the same difficulties some are facing in Richmond.

Affordable Housing Program Based Housing Agreement

City	Density Bonus	Term	Option to Purchase	If yes, what value?	Financial Penalty for Non-compliance	Notes
Whistler	No (units are achieved in commercial rezonings & are for employee, not low-income, housing)	Perpetuity	Yes	Capped slightly below market	Yes - \$500/day	All rental units achieved in commercial rezonings are owned by the Whistler Housing Authority, a subsidiary of the Resort Municipality of Whistler. The Option to Purchase is therefore redundant but is included because Whistler uses the same Housing Agreement for affordable ownership units, which have a below market capped resale value.