


COUNCIL AGENDA/INFORMATION		
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DISTRICT OF WEST VANCOUVER
750 – 17TH STREET, WEST VANCOUVER, BC V7V 3T3

COUNCIL REPORT

Date: October 22, 2008 File: 1145-06-A5
 From: Kevin Pike, Director of Parks and Community Services
 Subject: **SPCA Licence and Operating Agreement - Alternative Approval Process**

RECOMMENDED THAT:

1. WHEREAS the District, subject to the outcome of the alternative approval process referred to below, intends to enter into an agreement with the Society for the Prevention of Cruelty to Animals (SPCA) to provide use of a shelter premise and adjacent outdoor facilities on District owned land known as Ambleside Park and legally described as PID: 015-995-411, and "those portions of District Lot 237 in Explanatory Plan 4012, Group 1, New Westminster District, to permit the Society to provide animal control services for and on behalf of the District for a term of 10 years;
2. AND WHEREAS under the proposed Licence and Operating Agreement the District agrees to pay to the SPCA in the event of termination the depreciated value of the shelter premise in an amount equal to:
 - a. The Initial Compensation Value (\$491,000) reduced by \$24,550 per year after 1997
 - b. And agree that after January 1, 2017, the value of the Shelter shall be \$0.00
3. AND WHEREAS, pursuant to section 175 of the Community Charter, Council may incur liability under an agreement for more than five years only with approval of the electors by elector assent or by alternative approval process under Section 86 of the Community Charter.

4. AND WHEREAS the Municipal Clerk will make available to the public during regular business hours copies of the Licence and Operating Agreement and records relating to it as of the date of the first notice of Alternate Approval Process published pursuant to Section 88 of the Community Charter.
5. NOW THEREFORE Council resolves as follows:
 - a. An Alternative Approval Process will be provided in relation to the liability to compensate the Society that would be incurred under the Licence and Operating Agreement.
 - b. Elector responses shall be in the form before Council this day.
 - c. The deadline for elector response forms shall be December 12, 2008.
 - d. The Municipal Clerk is authorized to prepare and publish a Notice of Alternative Approval Process.
 - e. A fair determination of the total number of eligible electors of the District of West Vancouver is 34,357. (Appendix B)

Purpose

This report provides background and detail on the Alternative Approval Process (AAP) which is required under the Community Charter as a result of provisions within the newly re-negotiated Licence and Operating Agreement with the Society for Prevention of Cruelty to Animals (SPCA) for the shelter premises in Ambleside Park.

1.0 Background

- 1.1 Prior Resolutions – Council has dealt with this issue on a number of occasions and in mid-2007 gave approval for a similar process relative to the Capilano Rugby Club.
- 1.2 History – The District (with the aid of Municipal Solicitors) and the Society have been working on this new agreement for almost 18 months and have settled on all outstanding issues. The former agreement was in the form of two separate documents. This instrument is a single combined agreement.

2.0 Policy

- 2.1 Policy – The community charter requires that the municipal assumption of liability under an agreement for more than five years requires assent of the electors or by Alternative Approval Process.


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3.0 Analysis

- 3.1 Discussion – The Alternative Approval Process procedure is outlined in detail in Appendix A attached. The process is required because Clause 38 of the Licence and Agreement provides for compensation to the Society for building value if the District terminates the lease within the term. This stems from an arrangement made a decade ago with the Society, which altered the previous agreement for the District to compensate the Society for termination on an *appreciating* value for the building, and changed it to an elimination of liability by depreciating the building to zero over 20 years. At that time (and at the end of this current ten year term) there will be no provision for compensation by the District.
- 3.2 Financial Implications – The Animal Shelter value was set at \$491,000 in 1997 and has been depreciating by \$24,550 per year since 1997. The building value reaches zero at the end of the Agreement term, or 2017.

Author:



Concurrence
(optional)

Appendices:

Appendix A – Alternative Approval Process

Appendix B – Memo from Municipal Clerk – Determination of Total Number of Eligible Electors in 2008

THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER

ELECTOR RESPONSE FORM

- This form may be signed by one or more electors of the District of West Vancouver.
- For the purposes of signing this elector response form, the term "elector" means a person who, at the time of signing this form, meets the qualifications of the *Local Government Act* for registration as a resident elector or as a non-resident property elector of the District of West Vancouver.
- Accurate copies of this elector response form may be made and used for signing.
- A person may not sign an elector response form more than once.
- A person may not withdraw his or her name from an elector response form after 4:00 p.m. on December 12, 2008.
- The full name and residential address of each person signing must be included on this elector response form and, if applicable, also the address of the property in relation to which the person is entitled to register as a non-resident property elector.
- Signed elector response forms must be delivered to the District of West Vancouver Municipal Hall, 750 - 17th Street, West Vancouver, BC, V7V 3T3, by **4:00 p.m. on December 12, 2008.**

This form may be signed by one or more electors of the District of West Vancouver.

I am an elector of the District of West Vancouver. By my signature below, I hereby indicate that Council should not proceed with the approval of the SPCA Licence and Operating Agreement unless it is approved by assent of the electors.

Full Name: _____

Residential Address: _____

IF APPLICABLE: Address of the property in relation to which you are entitled to register as a non-resident property elector. _____

Signature: _____

Date: _____

This form may be signed by one or more electors of the District of West Vancouver.

I am an elector of the District of West Vancouver. By my signature below, I hereby indicate that Council should not proceed with the approval of the SPCA Licence and Operating Agreement unless it is approved by assent of the electors.

Full Name: _____

Residential Address: _____

IF APPLICABLE: Address of the property in relation to which you are entitled to register as a non-resident property elector. _____

Signature: _____

Date: _____

ALTERNATE APPROVAL PROCEDURE

The sections referred to in this document are sections of the *Community Charter* as of April 2004, unless indicated otherwise.

1. Determine whether the proposed matter will affect the entire municipality or only a particular area.
2. Make a fair estimate of the number of electors in the affected area or in the entire municipality, as the case may be.

Suggested method:

- Refer to most recent federal census of residents;
- Adjust using credible statistics of annual increase or decrease in residents;
- Establish number of persons over 18 years of age resident in the municipality.

Note that “elector” by definition includes both resident electors and non-resident property electors. Sections 50 and 51 of the *Local Government Act* describe the qualifications for these categories. Section 52 of the *Local Government Act* sets out the rules for determining residence. There is no requirement that the electors be registered for the purposes of counter petition [section 86(5)]. Section 86(4) requires that Council must make available to the public, on request, a report respecting the basis upon which the estimate of the number of electors was made.

3. Calculate 10% percent of the estimated number of electors in the affected area or in the entire municipality, as the case may be.
4. Check for new regulations that may prescribe additional content to be included in the public notice (none currently) [s. 86(2)(g)].
5. Establish a deadline by which elector response must be signed and received by Council. The deadline must be at least 30 days after the second publication of the notice of the alternate approval process in a newspaper (see below) [s. 86(3)(a)].
6. Prepare and pass the following resolutions:
 - resolving that a alternate approval process will be provided in relation to the proposed matter;
 - establishing the deadline for the submission of elector responses and the form to be used for elector responses;
 - authorizing the Municipal Clerk to prepare a notice of the alternate approval process and publish the same; and
 - specifying the fair estimate of the total number of electors of the municipality or area affected, as the case may be.

7. Where the alternate approval process is in relation to a proposed agreement, review the proposed agreement, and any amendments, records and other information with respect to public disclosure and the *Freedom of Information and Protection of Privacy Act*.
8. Prepare a public notice containing the following information [s. 86(2)]:
- general description of the proposed bylaw, action or other matter to which the alternate approval process relates matter;
 - additional description that may be required by a relevant provision, e.g., for s. 175(2) [incurring liability for more than five years]: nature, term and amount of liability incurred under agreement;
 - a statement that the municipality may proceed with the matter unless by the deadline at least 10% of the electors of the area to which the alternate approval process applies indicate that Council must obtain the assent of the electors before proceeding;
 - a statement that an elector response must be in the form established by the municipality and that forms are available from the municipality on request;
 - a statement that the only persons entitled to elector response forms are the electors of the area to which the alternate approval process applies;
 - a description of the area to which the alternate approval process applies (the entire municipality in the case of s. 175(2));
 - the deadline for submitting signed elector response forms to the municipality;
 - the number of elector response required to prevent Council from proceeding without the assent of the electors;
 - where the counter petition is in relation to an agreement, a statement that the agreement and the records relating to it are available for public inspection in the City's offices during regular office hours [s. 96];
 - other information prescribed under s. 86(2)(g) [regulations] (none currently prescribed).
9. Post the notice in the public notice posting places and publish the notice in at least 2 issues of a newspaper that is distributed at least weekly in the area affected by the proposed matter, with the second publication being at least 30 days before the deadline established [ss. 86(30(a) and 94].
- Publish the first notice in the newspaper;
 - On the same day that the first notice is published in the newspaper, post the notice on the notice board or usual place for publishing notices at the municipal hall;
 - Publish the second notice at least 30 clear days before the established deadline.

10. Have elector response forms ready for distribution at the time of first publication of the notice. Distribute an elector response form to each person who requests one. Only the full name and residential address of the signatory are required to be included on the elector response form and, if applicable, the address of the property in relation to which the person is entitled to register as a non-resident property elector [s. 86(7)]. We recommend that the following information also be included in the form:
- a general description of the proposed bylaw, action or other matter to which the alternate approval process relates;
 - a statement that for the purposes of signing the counter petition, the term “elector” means a person who, at the time of signing this elector response, meets the qualifications of the *Local Government Act* for registration as a resident elector or as a non-resident property elector of the municipality or the affected area, as the case may be;
 - a statement that accurate copies of the elector response form may be made and used for signing [s. 86(6)];
 - a statement that a person may not sign more than one elector response form [s. 86(10)];
 - a statement that a person may not withdraw his or her name from an elector response form after the deadline;
 - the deadline for returning signed elector response forms and the location where they must be delivered;
11. Where the counter petition is in relation to an agreement, to the extent that they can be disclosed under the *Freedom of Information and Protection of Privacy Act*, the agreement and all records relating to the agreement that are in the custody or under the control of the Council must be made available for public inspection at the municipal hall for at least the period from the time of the first notice of the alternate approval process until the deadline for submitting signed elector response forms [s. 95].
12. Accept elector response forms for presentation to Council through the office of the Corporate Officer [s. 148 appointee], who must determine and certify, on the basis of elector response forms received before the deadline, whether elector approval has been obtained [s. 86(8)].
13. If the Corporate Officer certifies that the number of elector responses received before the deadline is at least 10% of the electors, Council must not proceed with the proposed bylaw, action or other matter unless it receives the assent of the electors [s. 84].
14. If the Corporate Officer certifies that the number of elector responses received before the deadline is less than 10% of the electors, Council *may* proceed with the proposed bylaw, action, or other matter [s. 84].

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Date: October 8, 2008
To: K. Pike, Director of Parks and Community Services
From: S. Scholes, Municipal Clerk
Re:

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Determination of Total Number of Eligible Electors in 2008 – SPCA Licence and Operating Agreement – Alternative Approval Process

- Reduce 42,535 by the share of those who were not residents of BC for the last 6 months: 2006 Census indicated that 3.4% of the West Vancouver population moved to West Vancouver from outside BC or outside Canada in the previous year. For a 6 month period, take $\frac{1}{2}$ this rate, i.e. 1.7% and assume this is typical from year to year (as best estimate). 41,812 is 2008 population less 11% of estimated population who are not Canadian citizens, and less those who were not BC residents in the previous 6 month period. (Note: some persons may be subtracted twice as some of the non-Canadian citizens could be the same people who were not living in BC in the previous 6 months.)
 - Reduce 41,812 by the share who were not residents of West Vancouver for the last 30 days: 2006 Census indicated that 12% of the West Vancouver population moved to West Vancouver within the previous year. This was divided by 12 to calculate an estimate of the rate for a 30 day period (i.e. $12\% / 12 \text{ months} = 1\%$) Assume this is typical month to month (as best estimate). 41,394 is 2008 population less 11% of estimated population who are not Canadian citizens, and less those who were not BC residents in the previous 6 month period, and less those who were not West Vancouver residents in the last 30 days.
 - Proportion of the 41,394 who are age 18 and over: 2006 Census indicated that approximately 81% of West Vancouver's population were age 18+. Adjust for West Vancouver's aging population trend as projected by BC Stats for the West Vancouver Local Health Area. Assume 2 percentage points increase in population over 18 (i.e from 81% to 83% as per 2007 alternative approval process calculation). 34,357 is the 2008 estimate of population age 18+ eligible to vote.
 - Take into account ineligible voters who are disqualified (a person in custody or a person confined to a psychiatric institution). The number of ineligible voters could not be accurately estimated as related data is unavailable. (There are approximately 571 persons who live in collective dwellings in West Vancouver; some may be a person in custody or confined to a psychiatric institution.)
2. The above calculations were used in determining the estimated total number of eligible electors in 2008: 34,357.

Date: October 8, 2008

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To: K. Pike, Director of Parks and Community Services

From: S. Scholes, Municipal Clerk

Re: **Determination of Total Number of Eligible Electors in 2008 – SPCA Licence and Operating Agreement – Alternative Approval Process**

4. Section 86(1) of the *Community Charter* (copy attached) states "Approval of the electors by alternative approval process under this section is obtained if:
- (b) through elector response forms established under subsection (3) electors are provided with an opportunity to indicate that council may not proceed with the bylaw, agreement or other matter unless it is approved by the assent of the electors, and
 - (c) at the end of the time for receiving elector responses, as established under subsection (3), the number of elector responses received is less than 10% of the number of electors of the area to which the approval process applies".

3435 is 10% of the estimated number of electors of the area (34,357) to which the approval process applies.

Given the difficulty in obtaining a detailed estimate for a particular month and for the period of residency, assumptions were made to conduct the calculations. For example the most difficult assumptions which may vary from the actual result would be the number of Canadian citizens and the calculations around period of residency. The calculations were based on historical data from the Census which may differ from actual amounts in 2008.

Attachment

- Section 86, Community Charter

S. Scholes

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Council may seek community opinion

83. (1) A council may seek community opinion on a question that the council believes affects the municipality, by voting or any other process the council considers appropriate.

(2) The results of a process under this section are not binding on the council.

2003-26-83.

Division 2 – Approval of the Electors**Approval of the electors**

84. (1) If approval of the electors is required by or under this Act or the *Local Government Act* in relation to a proposed bylaw, agreement or other matter, that approval may be obtained either by

(a) assent of the electors in accordance with section 85, or

(b) approval of the electors by alternative approval process in accordance with section 86.

2003-26-84.

Assent of the electors

85. (1) If assent of the electors is required or authorized by or under this Act or the *Local Government Act* in relation to a proposed bylaw, agreement or other matter, that assent is obtained only if a majority of the votes counted as valid are in favour of the bylaw or question.

(2) Part 4 [Other Voting] of the *Local Government Act* applies to obtaining the assent of the electors.

2003-26-85.

Alternative approval process

86. (1) Approval of the electors by alternative approval process under this section is obtained if

(a) notice of the approval process is published in accordance with subsection (2),

(b) through elector response forms established under subsection (3), electors are provided with an opportunity to indicate that council may not proceed with the bylaw, agreement or other matter unless it is approved by assent of the electors, and

(c) at the end of the time for receiving elector responses, as established under subsection (3), the number of elector responses received is less than 10% of the number of electors of the area to which the approval process applies.

(2) Notice of an alternative approval process must be published in accordance with section 94 [public notice] and must include the following:

(a) a general description of the proposed bylaw, agreement or other matter to which the approval process relates;

(b) a description of the area to which the approval process applies;

(c) the deadline for elector responses in relation to the approval process;

(d) a statement that the council may proceed with the matter unless, by the deadline, at least 10% of the electors of the area indicate that the council must obtain the assent of the electors before proceeding;

(e) a statement that

(i) elector responses must be given in the form established by the council,

(ii) elector response forms are available at the municipal hall, and

(iii) the only persons entitled to sign the forms are the electors of the area to which the approval process applies;

(f) the number of elector responses required to prevent the council from proceeding without the assent of the electors, determined in accordance with subsection (3);

(g) other information required by regulation to be included.

(3) For each alternative approval process, the council must

(a) establish the deadline for receiving elector responses, which must be at least 30 days after the second publication of the notice under subsection (2),

- (b) establish elector response forms, which
 - (i) may be designed to allow for only a single elector response on each form or for multiple elector responses, and
 - (ii) must be available to the public at the municipal hall from the time of first publication until the deadline, and
- (c) make a fair determination of the total number of electors of the area to which the approval process applies.
- (4) The council must make available to the public, on request, a report respecting the basis on which the determination under subsection (3) (c) was made.
- (5) For the purposes of this section, the electors of the area to which an alternative approval process applies are the persons who would meet the qualifications referred to in section 161 (1) (a) [who may vote at other voting] of the *Local Government Act* if assent of the electors were sought in respect of the matter.
- (6) Elector responses may be made on an elector response form obtained under subsection (3) or on an accurate copy of the form.
- (7) For an elector's response to be considered for the purposes of this section, the elector must
 - (a) sign an elector response form that includes
 - (i) the person's full name and residential address, and
 - (ii) if applicable, the address of the property in relation to which the person is entitled to register as a non-resident property elector, and
 - (b) submit the elector response form to the corporate officer before the deadline established for the alternative approval process.
- (8) After the deadline for an alternative approval process has passed, the corporate officer must determine and certify, on the basis of the elector response forms received before that deadline, whether elector approval in accordance with this section has been obtained.
- (9) A determination under subsection (8) is final and conclusive.
- (10) A person must not sign more than one elector response form in relation to the same alternative approval process, and a person who is not an elector for the area of the approval process must not sign an elector response form.

2003-26-86.

Matters requiring approval or assent may be combined

- 87. (1) If two or more related matters require approval of the electors or assent of the electors, instead of seeking that approval or assent in relation to each matter, the council may seek the approval or assent in relation to the related matters as if they were a single matter.
- (2) As a restriction, if any of the related matters referred to in subsection (1) requires the assent of the electors, approval of the electors under that subsection may only be obtained by assent of the electors.

2003-26-87.

Agreements requiring approval or assent

- 88. (1) If an agreement is in relation to a matter that requires approval of the electors or assent of the electors, the requirement also applies to an amendment to the agreement in relation to that matter.
- (2) As an exception, subsection (1) does not apply if the amendment is authorized by regulation or is made with the approval of the minister.

2003-26-88.

Division 3 – Open Meetings

General rule that meetings must be open to the public

- 89. (1) A meeting of a council must be open to the public, except as provided in this Division.
- (2) A council must not vote on the reading or adoption of a bylaw when its meeting is closed to the public.

2003-26-89.