

# Corporate Report

NO: R004

COUNCIL DATE: JANUARY 15, 2007

## **REGULAR COUNCIL**

TO: Mayor & Council DATE: January 2, 2007

FROM: General Manager, Engineering FILE: 0340-05

SUBJECT: Road, Lane, and Walkway Closure Policy

## RECOMMENDATION

The Engineering Department recommends that Council approve the revisions to Section 2 of the City's Corporate Policy No. P-4, "Road, Lane, and Walkway Closure Policy" as attached in Appendix I.

# **BACKGROUND**

Policy No. P-4 (Appendix II), the current Road, Lane, and Walkway Closure Policy was first established in 1978 and was most recently amended on November 15, 2004. The last amendment was the result of the January 2004 enactment of the Community Charter and the accompanying new regulations that govern the City's actions with respect to redundant roads. It is customary that City guidelines are based on provincial practices and policies be updated periodically legislation and have been updated periodically over the years to reflect a better understanding of and/or changes to the provincial legislation.

The proposed policy revision resulted from Realty and Legal Services staff Realty staff experiences and interpretations in gained while administering the road closure as well provisions of the Community Charter.

#### DISCUSSION

This report and the recommended policy change deals with road closure applications where the original dedicator of the road to be closed has retained ownership of the lands from which the road was dedicated. As a result of a recent this legal interpretation of the provisions under Section 40 of the Community Charter, City staff are now proposing to revise Section 2 of the current City policy.

Section 40(6) (a) & (b) of the Community Charter states, "Council may not remove the dedication of a highway that was dedicated by the deposit of a subdivision plan if the owner of the land at the time the plan was deposited is the owner of all of the parcels created by the plan, unless the owner of the parcels consents."

While Section 40 of the Community Charter requires the consent of the original owner to close a portion of road (unlike the Local Government Act, the previous governing legislation for road closures), it does not say the original owner is entitled to reversionary rights to the dedicated, but redundant road, without paying compensation.

Legal Services has since advised that the transfer of a closed road to any applicant, without compensation, including the original owner, would constitute a form of assistance contrary to Section 181 of the Local Government Act. Consequently, staff are recommending that Section 2 of the policy be revised to reflect both road closure application situations that would occur if the original dedicator retained ownership of the parent parcel.

# 1. Applicant is the Original Owner

The owner would be entitled to apply for the road to be closed, but would be subject to the conditions of Policy P-4, including compensation for the land in accordance with Section 1 of the policy. However, staff are recommending that the applicant not be responsible for the appropriate application fee (currently \$2,400). If there was a competing application, provided the original subdivider met all other requirements of the Policy, the original subdivider would be given preference.

# 2. Applicant is not the Original Owner

In this scenario the applicant will be solely responsible for obtaining the consent of the original owner in compliance with Section 40 of the Community Charter. If consent is provided, the application will proceed in accordance with the Policy; otherwise the road closure application will not proceed until the consent is provided.

## **CONCLUSION**

The current proposed revisions to Corporate Policy P-4 reflect recommended refinements to the Policy as a result of staff becoming more familiar with the Community Charter and its implications. The Policy revisions are fair, equitable, are and provide staff with consistent guidelines regarding the closure and consolidation of roads, lanes, and walkways throughout the Cityeoncerning road closures.

The Engineering Department recommends that the revisions to Section 2 of City Policy P-4 as noted in Appendix I be approved and that to replace the existing Policy P-4 dated November 15, 2004 (Appendix II)—————.

Paul Ham, P.Eng. General Manager, Engineering

# WP/GT/mpr

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#### Appendices

- I. Revised Road, Lane & Walkway Closure City Policy\_P-4 dated December\_18, 2006
- II. Current Road, Lane, and Walkway Closure City Policy P-4

dated November 15, 2004