

SUNSET CLAUSES IN DC2 ZONES

Best Practices and Policy Opportunity Information

RECOMMENDATION

That the June 14, 2022, Urban Planning and Economy report UPE00904, be received for information.

Report Purpose

Information only.

To outline information on the use and best practices for sunset clauses in DC2 (Direct Control) zones.

Previous Council/Committee Action

At the December 7, 2021 City Council Public Hearing, the following motion was passed:

That Administration provide a report to Committee, outlining information on best practices and opportunities for policies related to sunset clauses in DC2 zones.

Executive Summary

- Direct Control zones (i.e. (DC1) Direct Development Control Provision or (DC2) Site Specific Development Control Provision) are used to provide for direct control over a specific proposed development where any other Zone would be inappropriate or inadequate or where detailed, specific siting and design of the building is necessary.
- The intent of a sunset clause regulation is to reduce development rights after a period of time (e.g. 10 years).
- The implementation of a sunset clause regulation within a Charter Bylaw for Direct Control zones became an Administrative practice. The Council Report was approved by City Council on February 23, 2016, responding to a motion as a measure to reduce speculation and incentivize timely construction after granting additional development rights through a rezoning.
- The majority of sunset clauses have a ten year duration period which has yet to lapse making it difficult to evaluate their effectiveness.

Sunset Clauses in DC2 Zones

- Other municipalities analyzed through a jurisdictional scan do not incorporate sunset clauses into non-standardized zones within their respective bylaws.
- Affected developers indicate there are more important triggers than the sunset clause, such as market factors, that will determine when to commence construction.
- The impacts of sunset clauses on development processes will be better understood in 2026, when the majority of current sunset clauses begin to lapse.

REPORT

Sunset Clauses in Edmonton

Sunset clauses were introduced as a tool to limit real estate speculation and to incentivize timely development by granting additional development rights through rezoning which expire if development is not commenced within a given period of time. On February 23, 2016, Administration presented Council with CR_3100 (Downtown Plan Development Rights Policy) which outlined the process of including sunset clauses in Direct Control zones.

Between February 2016 and December 2021, the scope of this report, a total of 43 Direct Control zones contained a sunset clause regulation that would limit development typically through the reduction of height or Floor Area Ratio (FAR) once the duration period has lapsed. The duration period of sunset clauses span between three to ten years and to-date, none of these sunset clauses have lapsed.

Jurisdictional Scan

After completing a jurisdictional scan of six other municipalities across Canada (Calgary, Toronto, Ottawa, Vancouver, Saskatoon, and Hamilton), it is evident that while other jurisdictions use non standard zones similar to Edmonton's Direct Control zones to grant additional development rights over and above standard zones, sunset clauses or other tools were not used to regulate and reduce those additional rights over time.

In general, other planning authorities have not found the need to implement sunset clauses or other mechanisms to regulate development rights. Similar, although less explicit, sentiments were seen throughout the jurisdictional scan as granting development rights is considered something done in perpetuity. Based on the jurisdictional review, the concept of granting interim development rights is not consistent with how development rights are regulated in other jurisdictions across Canada.

Developer Responses

Administration conducted informal discussions with affected developers to better understand the impacts of sunset clauses on the development process.

Feedback indicated that sunset clauses have no impact on development decisions and do not influence decisions to advance a project. When asked to identify any challenges associated with adopting sunset clauses, developers explained that in comparison to other factors, sunset clauses did little to influence a decision to begin construction. Even with a sunset clause in place, construction would not begin until there was sufficient market demand for the proposed

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development. Responses indicate that the primary motivator to advance development are market forces, as opposed to the time constraints placed on additional development rights.

Limiting Speculation and Incenting Timely Construction

The need and effectiveness of a sunset clause is uncertain. Direct Control zones are designed to encourage developers to begin construction in a timely manner. The zones are highly prescriptive, representing the proponents vision for the site, and the specific market conditions at that time. Those who do not develop in a timely manner, risk their development rights becoming less competitive as market conditions change. Due to the nature of Direct Control zoning, in general, if a project is not developed within 10 years, a major redesign and rezoning is typically required.

In regards to speculation, Direct Control zoning once again acts as a natural barrier to upzoning and selling the site due to its specificity and tailored design to the proponents vision (i.e. site plan, detailed regulations and building elevations, etc.). Since 2016, Administration has modified and increased its application fees which presents an additional financial barrier and deterrent to using the Direct Control rezoning process as a tool for speculation.

Next Steps

The effectiveness of sunset clauses on limiting speculation and the progression of development remains unclear, as the majority of sites that are zoned Direct Control with a sunset clause have yet to expire. However, the interim evidence suggests that as a tool, it does little to address speculation or create conditions for more timely redevelopment of sites. Administration will continue to monitor the effectiveness of using sunset clauses in Direct Control zones.

Planning policies must create and maintain clear regulations for communities, developers, and other stakeholders. Development rights should continue to be determined by what is appropriate for the site and should therefore remain consistent over time. The practice of granting additional development rights, beyond what is appropriate for the site, should be avoided, if possible. If the aim is to reduce additional granted development rights over time, the current tool is best suited for that purpose.

GBA+

As this report is primarily concerned with providing information, the opportunity to mitigate and/or remove pre-existing barriers and ensure an equitable outcome are extremely limited. It is recognized that the implementation of sunset clauses will most likely not be equally advantageous for all Edmontonians. At this stage, the data remains inconclusive and the impacts of removing or continuing the implementation of sunset clauses remains unclear. Potential actions and strategies to promote an equitable outcome would therefore be based on speculation.