



Governance and Priorities Committee Report

For the Meeting of January 7, 2016

To: Governance and Priorities Committee **Date:** December 22, 2015
From: Chris Coates, City Clerk
Subject: 748 Johnson Street – Consent to Sub-let

RECOMMENDATION

That Council authorizes the Mayor and Corporate Administrator to execute an agreement consenting to the sub-letting of the premises at 748 Johnson Street to Fun Kun Lei, in a form satisfactory to staff.

EXECUTIVE SUMMARY

The City's tenant at 748 Johnson Street – Kim's Vietnamese Restaurant – has agreed to sell the business and requested that the City assign the remaining term of the lease to the purchaser Fun Kun Lei. Staff have been unable to carry out normal due diligence (credit checks, bank reference and landlord's reference) as the purchaser is newly immigrated to Canada. Therefore, staff informed Kim's it has to remain as the tenant but that Council may consider allowing it to sub-let the premises to Fun Kun Lei.

PURPOSE

The purpose of this report is to seek Council approval to allow 550269 BC Ltd., doing business as Kim's Vietnamese Restaurant, to sub-let its premises at 748 Johnson Street to Fun Kun Lei.

BACKGROUND

Kim's Vietnamese Restaurant has been a tenant of the City at 748 Johnson Street since 1997. A location plan and photograph are at Appendices A and B, respectively. Kim's has now agreed to sell the business to Fun Kun Lei and has requested that the City assign the remaining term of the lease to the purchaser. The lease expires November 30, 2017.

Because the purchaser is newly immigrated to Canada, staff have been unable to carry out normal due diligence on Fun Kun Lei as a prospective tenant. If Kim's were to remain as the tenant and sub-let the premises to Fun Kun Lei, however, then Kim's would still be responsible for paying the rent to the City even though Fun Kun Lei was in occupation of the premises. Fun Kun Lei would pay rent to Kim's as required by a sub-lease between those two parties.

Under the terms of the head lease, Kim's is required to obtain the City's consent before it can enter into a sub-lease with Fun Kun Lei.

ISSUES AND ANALYSIS

Retaining Kim's as the tenant continues an existing relationship and minimises the risk to the City. Because the numbered company, 550269 BC Ltd., could be wound up at any time, however, staff have insisted that the owners of the company be added to the head lease as personal guarantors.

In addition, 550269 BC Ltd. will provide the City with a deposit equivalent to 6 months' rent (\$8,760.00) to be held as security against remaining rents payable under the lease. Provided there is no default before May 31, 2017, then the City will apply the deposit towards the rents due in the final six months.

The City's requirements have been acknowledged by the other two parties in an amendment to their Contract of Purchase and Sale, a copy of which is attached at Appendix C. Their contract is conditional on Council consenting to the proposed sub-lease.

After November 2017, when the head lease expires, the City could consider entering into a new lease direct with Fun Kun Lei.

OPTIONS AND IMPACTS

Option 1 – Consent To The Proposed Sub-lease (Recommended)

This option allows a long-standing tenant of the City to sell its business whilst protecting the City as far as reasonably possible.

Option 2 – Allow Kim's To Assign Its Lease to Fun Kun Lei

This option is not recommended as Fun Kun Lei is newly immigrated to Canada so staff have been unable to conduct normal due diligence as a prospective tenant.

Option 3 – Decline The Proposal

The City has the option of not consenting to the proposed sub-lease as it has absolute discretion under the terms of the head lease. This would effectively prevent Kim's from selling the restaurant business.

Alignment With City Objectives

2015 – 2018 Strategic Plan

The proposal is consistent with Objective #5 of the Strategic Plan to create prosperity through economic development.

Impacts to 2015 – 2018 Financial Plan

The proposal will help protect the rental revenue predicted in the Financial Plan.

Official Community Plan Consistency Statement

The proposed use is consistent with the OCP Area Plan as commercial uses are authorized in this zone.

CONCLUSIONS

If Kim's remains as the City's tenant and sub-lets the premises to Fun Kun Lei, then Kim's would still be responsible for paying the rent to the City even though Fun Kun Lei was in occupation of

the premises. This arrangement protects the City to a large degree whilst allowing a long-standing tenant of the City to sell its restaurant business and pursue other ventures.

Respectfully submitted,



Neil Turner
Property Manager



Chris Coates
City Clerk



Jocelyn Jenkins
Deputy City Manager

Report accepted and recommended by the City Manager:



Date:

January 4, 2016

List of Attachments

- A. Location Plan.
- B. Photograph of Premises.
- C. Amendment to Contract of Purchase and Sale.

Appendix A
Location Plan



Appendix B
748 Johnson Street



Appendix C
Amendment to Contract of Purchase and Sale



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AMENDMENT

PAGE _____ OF _____ PAGES

This form is to be used to change or remove clauses and conditions from the Contract of Purchase and Sale.

MLS* NUMBER 351812 DATE December 2, 2015
(MONTH/DAY/YEAR)

ATTACHED TO AND FORMING PART OF A CONTRACT OF PURCHASE AND SALE DATED November 24, 2015
(MONTH/DAY/YEAR)
TO PURCHASE THE PROPERTY KNOWN AS: 748 Johnson Street, Victoria, BC, V8W 1N1
Victoria

LEGAL DESCRIPTION: _____

BETWEEN 550269 BC Ltd. AS SELLER(S)

AND Fun Kun Lei AS BUYER(S),

THE UNDERSIGNED HEREBY AGREES AS FOLLOWS:

TO REMOVE THE FOLLOWING CONDITION FROM THE CONTRACT.

8. Subject to buyer's partner, Wai Chi Lei, viewing the business and approving the purchase, on or before December 2, 2015.
9. Seller will provide 2015 Financial Statements for Kim's Restaurant, as soon as possible, but no later than December 2, 2015. This condition is for the sole benefit of the buyer.

To amend the contract as follows:

1. "Subject to the landlord consenting, in its sole discretion, at its Council meeting of January 14, 2016 that the Seller may sublet the premises to the Buyer for the remainder of the lease, expiring November 30, 2017, on conditions required by the landlord, which may include, but are not limited to:

(a) that Roxanne Tiffany Phan, Tuan Anh Phan and Hanh Ngoc Phan be added to the lease as guarantors; and

(b) that the Seller provide the landlord with a deposit equivalent 6 months' rent as security against remaining rents payable under the lease, and, if there is no default for the remainder of the lease, the landlord will apply the deposit towards the rents in respect of the last six months of the lease term".

To amend the completion and adjustment dates, and possession date of January 4, 2016 at 5:00 p.m. to completion, adjustment and possession date of January 18, 2016 at 5:00 p.m.