



LEGISLATIVE AND INTERGOVERNMENTAL SERVICES

TO: Council
DATE: June 14, 2022
FILE: N/A
SUBJECT: *Procedure Bylaw C-8277-2022*

DIVISION: All
APPLICATION: N/A

POLICY DIRECTION:

Council passed the following resolutions at the March 22, 2022 Council meeting:

MOVED by Councillor Wright that Administration be directed to seek a legal opinion on considering first reading before public hearings and whether Council can refuse, amend, or debate at first readings.

Carried

MOVED by Councillor Wright that Procedure Bylaw C-8277-2022 be referred to Administration and be brought back at the May 31, 2022 Council meeting.

Carried

Council passed the following resolution at the May 31, 2022 Council meeting:

MOVED by Deputy Mayor Kissel that Administration be granted a time extension until the June 14, 2022 Council meeting to return to Council for further consideration of Procedure Bylaw C-8277-2022.

Carried

EXECUTIVE SUMMARY:

Administration has prepared and updated *Procedure Bylaw C-8277-2022* for Council's consideration. The proposed bylaw would replace *Procedure Bylaw C-7907-2019*, which was passed on July 23, 2019 and has been amended a number of times since.

Procedure Bylaw C-8277-2022 would ensure that Rocky View County's *Procedure Bylaw* reflects the current procedures of Council and the County's boards and committees, as well as the internal procedures of Administration when coordinating meetings.

Revisions have been made to the proposed bylaw to address recurring matters that arise during meetings, as well as to address new matters that have arisen since the adoption of the current bylaw in 2019. Several changes are in response to recent amendments to the *Municipal Government Act* made through the *Red Tape Reduction Statutes Amendment Act, 2022*. These changes are discussed later in this report.

At the March 22, 2022 Council meeting, Council directing Administration to obtain a legal opinion on the first reading and public hearing process provided in the current and proposed bylaw. The conclusions of the legal opinion are discussed in this report.

Councillors also submitted proposed amendments to the bylaw which have been compiled in Attachment 'B' of this report. Administration has analysed the amendments and recommends including them as they would improve the clarity and consistency of the proposed bylaw.

Administration Resources

Tyler Andreasen, Legislative and Intergovernmental Services



ADMINISTRATION RECOMMENDATION:

Administration recommends approval in accordance with Option #1.

BACKGROUND:

Procedure bylaws are not a requirement under the *Municipal Government Act*. They are, however, encouraged as they ensure meetings are held in an orderly manner and decisions are made in compliance with legislation and the principles of procedural fairness.

- Procedure bylaws provide for orderly meetings by using parliamentary procedure, which governs items like motions, debate on motions, and points of order. The most common guide to parliamentary procedure used by municipalities in Alberta is Robert's Rules of Order. The County's current and proposed bylaw use Robert's Rules of Order as their foundation, particularly the sections governing debate and motions.
- Meetings must be held in compliance with legislation, mainly the *Municipal Government Act*. Many sections of the proposed bylaw address legislative requirements, such as public hearings being held prior to second reading of a bylaw or bylaws requiring unanimous permission for third reading if all three readings are to be considered at the same meeting.
- Procedure bylaws also ensure that decisions are made in a procedurally fair way. Procedural fairness, also known as natural justice, is a fundamental part of administrative law, which is the body of law governing how decisions are made by public and regulatory bodies. The sections of the proposed bylaw governing public hearings, for example, are drafted to ensure that they are held in a procedurally fair way.

Procedural fairness should be ensured when councils and appeal boards, for example, make decisions that affect people's rights and interests. It should also be ensured to better protect the decisions made by Rocky View County from legal challenges on procedural grounds. Procedural fairness includes items like the opportunity to be heard, having an unbiased decision-maker, and providing proper notice of a hearing to those affected by it.

- Procedure bylaws also address the administrative processes behind items like scheduling meetings, preparing meeting agendas and minutes, and the powers and responsibilities of chairs and vice chairs.

Administration reviewed procedure bylaws from eight different municipalities when preparing the proposed bylaw, including Strathcona County, the Regional Municipality of Wood Buffalo, and the City of Calgary. Overall, the proposed bylaw is aligned with the best practises of other municipalities both in terms of the structure and content of the bylaw.

DISCUSSION:

Bylaw First Reading Process and Legal Opinion

Administration was directed at the March 22, 2022 Council meeting to receive a legal opinion on the first reading and public hearing process provided in both the current and proposed *Procedure Bylaw*. Administration has since received the legal opinion, which was provided by Reynolds Mirth Richards & Farmer LLP.

The County's current process is to give first reading to a bylaw, without amendments or debate, before a public hearing. Second and third readings of the bylaw are considered after the public hearing with amendments and debate. This process applies only to bylaws that require a public hearing under the *Municipal Government Act*. Bylaws that do not require a statutory public hearing, may be amended and debated at first reading.



The legal opinion confirmed that Council has the authority to prohibit amendments and debate at first reading, which is a common practice with municipalities across Alberta. It also stated that Council has the authority to refuse first reading of a bylaw before a public hearing, which is not a common practice among municipalities in Alberta.

The legal opinion also stated that Council has the authority to allow amendments and debate at first reading, which is a practice that some municipalities in Alberta allow. The opinion, however, suggested that this approach may come with some risk. Although Council has the authority to allow amendments and debate at first reading, as well as to refuse first reading of a bylaw, there is always a danger of breaching procedural fairness and the perception of bias by doing so.

Aside from these concerns, there are also reasons related to governance and the decision-making process for not allowing amendments and debate at first reading. It may be premature for Council to amend or debate a bylaw before hearing from an applicant who is exercising their statutory ability to make an application, or before hearing from the public who are exercising their statutory ability to participate in the decision-making process at a public hearing.

Public hearings are one of the few instances where the public can participate in the decision-making process before decisions are made instead of appealing decisions after they are made, such as with subdivision and development decisions. Public hearings provide the opportunity for the applicant to explain their application and respond to concerns, for the public to explain whether they support an application or how they would be affected by one, and for Council to consider what they have heard before making decisions on the matter being considered at the public hearing.

The major concern with debating and amending bylaws at first reading is that it may prejudice or unfairly change the perception of the matter, either in favour or in opposition, before the public hearing. Even if a councillor is not truly biased one way or the other, a perception of bias is enough for there to be a risk of legal challenge on the grounds of procedural fairness or for the County's processes to be questioned.

For these reasons, even if Council has the authority to do otherwise, Administration is recommending that Council continue to consider first reading of bylaws without amendments or debate. *Procedure Bylaw C-8277-2022* does not allow for amendment or debate at first reading and is silent on refusing to give a bylaw first reading.

Administration's March 22, 2022 report for *Procedure Bylaw C-8277-2022* outlined an alternate process for Council's consideration where all three readings of a bylaw are considered after a public hearing. The advantages and benefits of both considering first reading before a public hearing and considering all three readings after a public hearing are outlined in that report.

Should Council wish to consider the legal opinion or other options in more detail, Administration recommends moving into a closed session in accordance with section 24 (advice from officials) and section 27 (privileged information) of the *Freedom of Information and Protection of Privacy Act*.

Amendments to the *Municipal Government Act*

The provincial government recently passed the *Red Tape Reduction Statutes Amendment Act, 2022* which amended the *Municipal Government Act* along with several other pieces of provincial legislation. Several amendments impact the proposed procedure bylaw.

Road Closure Bylaws

Section 207 of the proposed bylaw was added to address changes to the road closure process in the *Municipal Government Act*. It is now a requirement to hold a statutory public hearing for road closure bylaws, which then triggers the first reading process in the proposed bylaw.



Before these changes to the *Municipal Government Act*, public hearings for road closures were non-statutory. The first reading process set out in the current and proposed bylaw only applies to statutory public hearings, so first reading of road closure bylaws have been considered immediately following the public hearing.

Administration has drafted an exception in section 208 of the proposed bylaw to streamline the road closure process in the proposed bylaw to allow first reading of a road closure bylaw to be considered after a public hearing instead of before. Because of the need for ministerial approval, second and third reading of a road closure bylaw cannot occur immediately after first reading and must be brought back for consideration at a future meeting.

Electronic Meetings

The legislative amendments most relevant to *Procedure Bylaw C-8277-2022*, however, are regarding holding electronic Council and committee meetings, which have always been available to municipalities under section 199 of the *Municipal Government Act*. The recent amendments, however, have greatly expanded and clarified the ability for municipalities to hold meetings and hearings electronically.

Administration has updated the proposed bylaw to authorize Council and committees to hold meetings electronically if desirable and if the need should arise. However, Administration believes that there is an opportunity for board and committee meetings to be held electronically for reasons other than the COVID-19 pandemic that should be explored in the future. For example, there is a desire among some board and committee members to have an electronic meeting option available.

Sections 33 through 37 of the proposed bylaw outline the requirements for holding electronic meetings and hearings, which are based off of the County's experience during the COVID-19 pandemic. The proposed bylaw would provide a similar process as that provided for under the *Meeting Procedures (COVID-19 Suppression) Regulation* with the possibility for more participation methods in the future.

Administration supports continuing with in-person meetings and hearings but has also provided an electronic meeting and hearing option in the proposed bylaw.

CONCLUSION:

Administration prepared *Procedure Bylaw C-8277-2022* in accordance with the best practices of municipalities around the province. The proposed bylaw would ensure that the County continues to hold meetings that are compliant with legislation, parliamentary procedures, and procedural fairness.

The stylistic changes throughout the proposed bylaw are intended to improve readability, making it an easier document to understand and apply. The significant changes in the proposed bylaw (outlined in Attachment 'A') would, in Administration's opinion, address many of the recurring matters that arise during meetings.

Administration is also supportive of the amendments submitted by councillors (outlined in Attachment 'B') and believes that they would improve the clarity and consistency of the proposed bylaw. Administration recommends adopting the bylaw with the amendments proposed by councillors. Administration further recommends continuing with the current process for first reading as it represents the least amount of risk for the County and respects the principles of procedural fairness.

BUDGET IMPLICATIONS:

There are no budget implications with the adoption of *Procedure Bylaw C-8277-2022*.

COMMUNICATIONS PLAN:

If passed by Council, *Procedure Bylaw C-8277-2022* would come into force on August 1, 2022. Administration would use that time to communicate any significant changes to the public.



STRATEGIC OBJECTIVES:

There are no strategic considerations with the adoption of *Procedure Bylaw C-8277-2022*.

OPTIONS:

Option #1: THAT Bylaw C-8277-2022 be amended as follows:

[Proposed Councillor amendments are provided in Attachment 'B']

THAT Bylaw C-8277-2022 be given first reading, as amended.

THAT Bylaw C-8277-2022 be given second reading, as amended.

THAT Bylaw C-8277-2022 be considered for third reading, as amended.

THAT Bylaw C-8277-2022 be given third and final reading, as amended.

Option #2: THAT alternative direction be provided.

Respectfully submitted,

Concurrence,

"Amy Zaluski"

"Dorian Wandzura"

Director,
Legislative and Intergovernmental Services

Chief Administrative Officer

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ATTACHMENTS:

ATTACHMENT 'A': List of Significant Changes with *Procedure Bylaw C-8277-2022*

ATTACHMENT 'B': Proposed Councillor Amendments to *Procedure Bylaw C-8277-2022*

ATTACHMENT 'C': Proposed *Procedure Bylaw C-8277-2022*

ATTACHMENT 'D': Consolidated *Procedure Bylaw C-7907-2019*