

PLANNING

TO: Council
DATE: September 13, 2022
FILE: N/A
SUBJECT: Request for Decision: Planning Process and First Reading Options

DIVISIONS: All
APPLICATION: N/A

EXECUTIVE SUMMARY:

On June 28, 2022, Council passed the following motion:

“THAT Administration be directed to prepare a report with an analysis and options for the County’s planning application process and first reading process to be brought back to Council by the September 13, 2022 Council meeting.”

In responding to this motion, Administration examined three potential options for the first reading of redesignation and statutory plan bylaws requiring a public hearing. These are assessed within the ensuing report sections; process summaries are also contained within the attachments to the report. The three options reviewed are:

- The consideration of first reading at the Council meeting immediately prior to advertisement of the public hearing (see summary in Attachment ‘A’). This was the process directed by Procedure Bylaw C-6095-2005 prior to September 2013.
- The consideration of first reading following the related public hearing, which includes the potential to consider all three readings in a single Council meeting (see summary in Attachment ‘B’). This was the County’s process between September 2013 and July 2019, following adoption of Procedure Bylaw C-7295-2013.
- The consideration of first reading prior to application evaluation or statutory plan preparation process (see summary in Attachment ‘C’). As directed by Procedure Bylaw C-7907-2019 and its replacement C-8277-2022, this has been the County’s process since July 2019.

The potential for Council to debate first reading and provide Administration with direction on an application or statutory plan bylaw is also considered within this report.

In assessing the three options for passing of first reading, Administration took into account Council’s Strategic Objectives of creating a culture of customer service, and enhancing transparency and communication. As noted in Option #1 of this report, Administration has determined that these objectives, alongside efficient use of staff resources, would be best achieved through Council’s consideration of first reading following the related public hearing, and by providing the potential for all three readings to be given in a single meeting.

ADMINISTRATION RECOMMENDATION:

Administration recommends approval in accordance with Option #1.



BACKGROUND:

At the June 14, 2022, Council meeting, Administration provided an assessment of Council's authority to allow amendment and debate at first reading of a bylaw; legal advice was referenced indicating that it was possible to amend and debate first reading, but such an approach carries some risk based on considerations around procedural fairness. It was also considered possible, but potentially problematic, to deny first reading of a bylaw before public hearing.

Taking these matters into account, Administration recommended that Council continue with its current process in not debating or amending a bylaw at first reading and Procedure Bylaw C-8277-2022 approved by Council on June 28, 2022 reflected this direction. The adopted Procedure Bylaw also does not make reference to refusing first reading of a bylaw. In addition to the legal risk, this report now provides a Planning assessment in relation to debating, refusing, or amending a bylaw at first reading.

DISCUSSION:

The County has adopted varying approaches to the first reading of bylaws over the past 10 years; the merits of these approaches from a Planning process perspective are summarized below and within Attachments 'A', 'B', and 'C'.

1. First Reading 6 weeks prior to the Public Hearing (Attachment 'A')

Under the 2005 Procedure Bylaw, the County adopted the process of submitting a bylaw for first reading with no associated cover report, and first readings were automatically given as part of Council business without debate or amendment; this was undertaken immediately prior to Administration scheduling and advertising the public hearing related to the bylaw. Council moved away from this approach in 2013, with Administration at the time citing that moving to three readings in one Council meeting following a public hearing would create greater efficiency, increased transparency, and greater flexibility for Council in decision-making.

Returning to submission of a bylaw for first reading immediately prior to the public hearing process would increase the lead-in time for applicants and Administration to schedule a bylaw for Council's consideration, as it would be assumed that the submitted bylaw is the final bylaw to be considered by Council. This increased lead-in time would reduce flexibility for the applicant and Administration to make late amendments to the bylaw; such amendments are often necessary due to the repeated negotiations that often occur between applicants and Administration until immediately before the hearing date.

Giving first reading to a bylaw so close to the public hearing also has the potential to cause confusion amongst stakeholders and would appear to have limited value to Council or the public. Although a cover report or application assessment would not be required for submission of the bylaw, preparation of the bylaw itself would still constitute duplication of process with the public hearing and, therefore, would be an inefficient use of Administration resources. For these reasons, Administration does not recommend a return to this first reading process.

2. First Reading Following the Public Hearing (Attachment 'B')

Between 2013 and 2019, first reading was given following the public hearing and all three readings had the potential to be considered in one Council meeting, subject to a unanimous vote for consideration of third and final reading being secured. Although on a few occasions unanimity for consideration of third reading was not achieved (14% of bylaws in 2017 and 5% of bylaws in 2018), the process was considered simple for the public and other stakeholders to understand; the production of a single report and bylaw was also a more efficient use of Administrative resources.

This process created a clear separation between the administrative and Council processes, with the early draft application being circulated to the public at the start of the process and then the final bylaw being submitted to Council as part of the public hearing. The process also removed the



need to make amendments to bylaws, which currently creates a legal risk arising from errors, and creates additional bureaucracy for Administration and the applicant in recording any amendments. With respect to public communication and clarity of process, moving first reading away from the start of the application process would minimize the red-line amendments that currently occur on most complex bylaws, thereby allowing for better understanding of the bylaw and what is being proposed.

Due to the efficiency and transparency of this process, Administration recommends that the Procedure Bylaw should be amended to accommodate this approach in accordance with Option #1 of the report. This is especially the case, as separating first reading appears to offer limited value in encouraging public awareness or in improving decision-making.

3. First Reading Early in the Application Process (Attachment 'C')

The County's current process of considering first reading of a bylaw early on in the planning application process has been found to be problematic for several reasons. The first reading process can create a distraction from the 21-day landowner circulation on planning applications by appearing to provide another avenue for public input, when practically, Council's consideration of the bylaw is a procedural matter at first reading stage. In giving first reading to a bylaw that may change dramatically over the course of the application process, this can create unnecessary additional concern for adjacent landowners and residents that Council is making a decision on the proposal. This increased public interest then often requires Administration and the applicant to put resources into allaying these concerns prior to the applicant having the opportunity to improve their application following stakeholder feedback.

Significant changes to a bylaw following early first reading also creates an administrative burden of recording these amendments through a schedule and/or a red-line version of the bylaw to present for Council's consideration at second and third reading. There is the further potential for increased legal risk of approving an invalid bylaw if amendments are not recorded accurately. There is often a potential for errors when many amendments have been required over the course of lengthy application processes, which is common for complex applications.

Although this is not understood to be the intent of first reading, Administration has found in some cases that first reading may give applicants an expectation that their application has received some level of support from Council. This may influence the Applicant's decisions on undertaking technical studies or other required works relating to their application on the assumption that they have Council support.

The value of considering first reading at an early stage is currently unclear and there may be a benefit to all stakeholders involved in the process if the County can clarify any additional intended purpose of first reading, over above the need to fulfill the requirements of the Municipal Government Act (MGA). Council debate has previously referred to first reading being an opportunity to provide direction on, or to refuse, proposals that are considered to be entirely incompatible with the surrounding area due to their nature or scale. Further to the commentary on legal risk in the Background section above, it is recommended that all applicants should have the ability to demonstrate through their application and a public hearing that their proposal is supportable. There are also potential risks in refusing an application without the benefit of a full Administrative review.

Council may wish to consider whether early first reading might also provide an opportunity to give direction on items such as the requirement for a conceptual scheme or technical information to accompany a land use amendment application. However, this is likely to result in Administration providing a premature assessment of an application and the guiding policy framework. As many of the County's statutory plans have discretionary or outdated policies based on a local area, this makes it difficult to provide consistent recommendations to Council on application requirements without first undertaking a full review of a file and its context.



BUDGET IMPLICATIONS:

It would be challenging to provide a detailed assessment of the resource cost of all three first reading options. However, Administration suggests that notable resources could be saved by considering all three readings after public hearing at one Council meeting. These resources could then be diverted towards improving application timelines and enhancing customer service.

STRATEGIC OBJECTIVES:

Council may wish to consider how first reading processes may affect the strategic objective of creating a culture of customer service. Adopting an approach of considering all readings at the same meeting would simplify the land use application process for residents and applicants, and would allow the Planning department to focus more on improving processing time of applications and other initiatives. Simplifying the first reading process would assist Administration in efforts to clearly communicate how interested stakeholders can participate in an application process, thereby meeting Council’s strategic objective of enhancing transparency and communication.

Overall, removing the additional bureaucratic step of holding separate first reading of a bylaw, as proposed by Option #1 of this report, would support Council’s strategic objectives.

OPTIONS:

- Option #1: THAT Administration be directed to prepare amendments to Procedure Bylaw C-8277-2022 and any other County Bylaw, Policy, or Procedure to facilitate the consideration of first reading after the associated public hearing, and to facilitate the consideration of three readings at the same Council meeting, on bylaws requiring a public hearing.
- Option #2: THAT the report on the Planning process and first reading options be received for information.
- Option #3: THAT alternate direction be provided.

Respectfully submitted,

Concurrence,

“Brock Beach”

“Dorian Wandzura”

Acting Executive Director
Community Services

Chief Administrative Officer

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ATTACHMENTS

- ATTACHMENT ‘A’: Summary of first reading process 6 weeks prior to the public hearing.
- ATTACHMENT ‘B’: Summary of first reading process following the public hearing.
- ATTACHMENT ‘C’: Summary of first reading process early in the application timeline.