

Zoning Bylaw Amendments - Delegation of Discretionary Use Authority to Development Officer

Date	June 2, 2021
To	Regina Planning Commission
From	City Planning & Community Development
Service Area	Planning & Development Services
Item No.	RPC21-40

RECOMMENDATION

Regina Planning Commission recommends that City Council:

1. Amend *Zoning Bylaw, 2019* to delegate approving authority of Discretionary Use applications to the Development Officer.
2. Consequential to Recommendation 1, amend the *Public Notice Policy Bylaw, 2020* to reflect circumstances in which a discretionary use may be approved by the Development Officer.
3. Direct the Administration to amend *The Development Application Fee Bylaw* to reflect the reduced Administrative processing time for discretionary use applications that are approved by the Development Officer, and to bring back the rationale with a proposed bylaw amendment.
4. Approve the proposed amendments to take effect on September 1, 2021 after passage of the required bylaw amendments to allow time for internal Administrative process information to be updated and communication to development stakeholders.
5. Instruct the City Solicitor to prepare the necessary bylaws as described in Appendix A, to give effect to the recommendations, to be brought forward to a meeting of City Council following approval of the recommendations and the required public notice.
6. Approve these recommendations at its meeting on June 9, 2021.

ISSUE

The Regina Zoning Bylaw, 2019 (Zoning Bylaw) was drafted with the intention that approval authority respecting discretionary use applications would be delegated to the Development Officer as authorized pursuant to provisions of section 15 of *The Planning and Development Act, 2007*.

During consideration of *Zoning Bylaw, 2019*, on June 18, 2019 City Council resolved that:

“The delegation of authority to the Development Officer for discretionary use approval be removed from the proposed Zoning Bylaw at this time and be brought back to City Council as a separate report within six months of the approval of the Zoning Bylaw.”

Delegating authority of certain discretionary use decisions, which do not have strong community impact, means that discretionary use applications would no longer require Council’s approval but could be approved or rejected administratively by the Development Officer (i.e. the Executive Director of City Planning and Community Development Division). The benefit to this approach is that the approval timeframe for approval of discretionary use would be shortened and streamlined, freeing Administrative time to focus on other business priorities, and reducing the number of reports and agendas of the Regina Planning Commission and City Council. In addition, would result in a quicker process for customers and the development and building industry.

However, a key concern when Council initially considered the Zoning Bylaw was to ensure that Council continued to be involved in types of discretionary use applications where the public has raised a certain level of concern during the review or for major application reviews. To this end, Administration has analyzed the application types that are highly probable to raise concerns by the public. Based on this analysis this report recommends criteria to be applied for identifying those application types where authority for discretionary use applications would be delegated to the Development Officer and those that Council would continue to consider and exercise approving authority over.

IMPACTS

Financial

The recommendation will reduce administrative resources necessary to prepare Regina Planning Commission and City Council reports to make an informed decision, Generally, this includes a process of report preparation, preparation for Regina Planning Commission and City Council, and attending hearings, which may result in overtime pay for staff in attendance. This would help to free capacity and to focus resources towards policy and regulatory improvements and other business priorities. Furthermore, straight-forward discretionary use applications will be removed from Council’s agenda.

Policy/Strategic

The following are the main *Design Regina: Official Community Plan Bylaw No. 2013-48* (OCP) policies that support the delegating discretionary use authority to the Development Officer:

- Section D 10: Economic Development, Goal 1 - Economic Vitality and Competitiveness: Foster an environment conducive to economic vitality and competitiveness which supports the standard of living of residents in Regina and the surrounding region.
 - 12.2 Minimize regulatory barriers to economic growth to the greatest possible extent while balancing the needs and aspirations of all Regina residents, fee and tax-payers, and the sustainability of the city

- Section E: Realizing the Plan, Goal 1 – Plan Ownership: Foster Plan ownership and execution by City staff and Council.
 - 14.3 Review existing City policies, practices, standards, and other guiding documents predating approval of this Plan, and representing barriers to the successful achievement of this Plan in accordance with the following considerations:
 - 14.3.1 Where such existing approaches provide flexibility, discretion, interpretation or the weighing of choices, or where there is no governing or guiding direction, the City shall be flexible in a manner that supports this Plan’s Community Priorities and goals.
 - 14.3.2 The City will seek to overcome all barriers and obstacles to Plan implementation, and previous Council directions will be brought into alignment with this Plan over time.
 - 14.7 Support creative solutions that may challenge conventional practices to achieve the goals and policies of this Plan.

The OCP directs that administrative actions in planning for the future are carried out to ensure that Regina residents are engaged in the activities in the city, and lead and support initiatives that enhance an inclusive city-building process that offers residents transparency in decision-making and builds ownership through participation. The discretionary use process will continue to involve the public regardless of how approval authority is exercised. Concerns raised during the review of applications would be managed by ensuring the key concerns are addressed or mitigated through conditions of approval or negotiating changes to proposed plans. In applications where significant concerns are identified through the circulation and public notice process the public will have the opportunity to participate further in the process through Regina Planning Commission and City Council. The outcomes of the review process and reasons for decision of each application will be documented and publicly accessible.

The initiative is focused on efficiency and process improvement while at the same time ensuring that our regulatory responsibility is maintained in accordance with OCP Policy.

OTHER OPTIONS

The recommended option is to delegate authority of discretionary use to the Development Officer with some exceptions. Other options for City Council to consider are as follows:

1. Direct the Administration to specifically identify different criteria in the Zoning Bylaw to determine which applications may require City Council's consideration. This may include identification of specific land uses in each zone that would require City Council's consideration. This approach may improve clarity and remove discretion from the process, but ultimately some applications with little public concern may still be considered by Council.
2. Maintain the status quo with City Council retaining all authorities for approval of discretionary uses.

COMMUNICATIONS

Administration has discussed with multiple stakeholders the concept of delegation of discretionary use authority to the Development Officer. The proposed amendment has broad support, based on consultation through the Zone Forward Project and recent consultation with industry stakeholders, as it would reduce approval timeframes for approval for most applications. If the recommendations are approved, public notice of the required hearing when Council will consider the proposed bylaw amendment(s) will be given in accordance with *The Public Notice Policy Bylaw, 2020*.

DISCUSSION

What is a Discretionary Use

A Discretionary Use is a land use planning tool provided by *The Planning and Development Act, 2007* (Act). The Act allows a zoning bylaw to identify a use of land, buildings or form of development within a zone as discretionary, and are thereby currently subject to approval of Council. In contrast, a zoning bylaw also identifies uses within a zone that are permitted and prohibited. A permitted use is one that must be approved as-of-right if it complies with all other aspects of the zoning bylaw. A prohibited use is one that is not allowed in a zone and cannot be approved. In practice, a permitted use represents the common character of a neighbourhood or district, such as a single detached dwelling in a low-density zone. Discretionary uses are usually higher impact land use types, uses that may have off site impacts that warrant consideration of surrounding context, or uses which may require further policy analysis. For example, a commercial shopping centre of a higher scale may be discretionary because it requires consideration of traffic and circulation patterns, and land use compatibility.

The Act also requires a zoning bylaw to prescribe specific evaluation criteria which the approving authority must apply and consider in evaluating the suitability of any proposed discretionary use application. The City's Zoning Bylaw establishes that all discretionary use applications are to be evaluated based on the following criteria:

- (a) consistency with the vision, goals and policies of the Official Community Plan;
- (b) consistency with the objectives and policies of any applicable special study or policy document for the site, area or neighbourhood, with emphasis on:
 - (i) land use;
 - (ii) intensity of the development; and

- (iii) impact on public facilities, infrastructure or services;
- (c) potential adverse impacts or nuisances affecting:
 - (i) nearby land, development, land uses, or properties;
 - (ii) neighbourhood character;
 - (iii) the environment;
 - (iv) traffic;
 - (v) a public right-of-way; and
 - (vi) any other matter(s) affecting public health and safety.

Decisions by Council

In addition to the evaluation criteria, the decision process with respect to discretionary use applications is strictly set out in the Act. After following the prescribed review procedure, including consideration of the evaluation criteria, and providing public notice, the approving authority may approve with or without conditions, or reject a discretionary use application. Every decision respecting a discretionary use application must be provided to the applicant in writing. An application may be approved if, as submitted, the development proposal establishes that the application conforms to provisions of the zoning bylaw, and that the use will be compatible with development in the immediate area, and be consistent with provincial land use policies. Conversely, if in applying the evaluation criteria the proposed development is determined to be unsuitable, an application may be rejected. In the case of a rejection, the written notice of decision must include the specific reasons for the rejection based on the criteria in the zoning bylaw. In other words, discretionary use decisions cannot be arbitrary and must relate to the evaluation criteria that Council has established as set out in the zoning bylaw.

A discretionary use may also be approved subject to conditions or additional development standards that are consistent with the standards applicable to discretionary uses in the zoning bylaw and which, in the approving authority's opinion, are necessary to secure the objectives of the zoning bylaw. Since a discretionary use may be of a higher impact and land use compatibility is a key consideration, conditions may be applied to mitigate impacts and ensure the proposed use follows the intent of the zoning bylaw. The Act limits the scope of conditions that may be applied to:

- (i) the nature of the proposed site, including its size and shape, and the arrangement of buildings
- (ii) accessibility and traffic patterns for persons and vehicles, considering the volume of vehicles and the adequacy of parking facilities;
- (iii) mitigation of noxious or offensive emissions, noise, glare, dust, or odour; or
- (iv) other aspects of the site such as landscape, screening, open spaces, loading, but excluding material architectural treatment and detail.

For example, a discretionary use approval for an apartment building in a neighbourhood may be approved subject to requiring additional parking facilities to limit off-site impacts, additional landscaping to limit privacy concerns of an adjacent property, or even to require additional setback perhaps to address a sun-shadow impact. Conversely, the Act does not allow for a discretionary use approval to require an architectural treatment or character, such as brick rather than vinyl siding or a specific window pattern.

If an application for discretionary use is approved subject to conditions, and the applicant is of the opinion that the conditions exceed those necessary to secure the objectives of the zoning bylaw, the applicant may appeal the conditions of approval to the Development Appeals Board. The appeal is limited only to the conditions of approval; a decision to approve or deny an applicant of discretionary use cannot be appealed.

Current review process

The current review process is described in Appendix B-1. It follows a standard review process involving these steps:

1. Application intake and initial review (approximately two weeks)
2. Technical and Public Circulation (four weeks)
3. Report Drafting and Internal Circulation (five weeks)
4. Regina Planning Commission and City Council (approximately two weeks)
5. Follow-up (timing is variable)

The current process requires that each discretionary use application follow a standard review procedure that typically takes at least 12-14 weeks from application intake until final Council decision. While it may be possible to adjust administrative processes to reduce application timing, those gains would be limited because it is still necessary to comprehensively review discretionary uses applications to ensure compliance with requirements and to meet public notice expectations in addition to report writing and internal review process prior to being placed on the public agenda for Regina Planning Commission.

Delegation of Discretionary Use Authority

The greatest potential saving of time and resources for Administration and the applicant, without compromise to the integrity of the discretionary use process, is to remove the processes related to preparing Regina Planning Commission and City Council to make an informed decision. This would require that Council approves an amendment to the Zoning Bylaw to delegate authority to the Administration to approve discretionary use applications within certain parameters.

Discretionary Use in Other Jurisdictions

Administration reviewed discretionary use processes in other jurisdictions and recently met with staff from the cities of Edmonton and Saskatoon. As it relates to delegation of authority, these two jurisdictions contrast two different approaches that demonstrate the range of possibilities and their outcomes.

The City of Edmonton's zoning bylaw fully delegates all discretionary use applications to the Development Officer. Council is not involved in this application type as their role focuses on bylaw amendments and policy development rather than site-specific development applications. Public notice is required only for designated areas and is therefore not integral to the decision-making process in most cases. Application evaluation by planning staff focuses on development standards, policy, and assessment of physical context. The Development Officer applies conditions to the development permit to mitigate any potential concerns that the development may create. Processing times may vary depending on the complexity of the application, from only a few weeks in the case of a use change of an existing building to several months for a major new development. Decisions of the Development Officer are required to be circulated to the community in a radius of 60 metres

or greater. Any person aggrieved by the development decision may appeal the application approval to an appeal board. Unlike legislation in Saskatchewan, the appeal board has jurisdiction to review the decision to approve the use. This is a key difference in Alberta legislation that ensures a different manner of public oversight in the decision-making process. The City of Edmonton's process has the benefit of more expeditious processing times and the ability to address technical concerns. An appeal process required by legislation allows public participation in the process, which is key in consideration of this option. Differing legislation in Saskatchewan would not allow Regina to replicate the discretionary use process of the City of Edmonton.

The City of Saskatoon provides for limited delegation of authority for discretionary use approvals. Saskatoon's zoning bylaw specifies the discretionary uses that may be approved by the Development Officer, whereas all others, which may have a "political" review follow a process like that of Regina with Council exercising ultimate decision-making authority. The uses that are delegated to the Development Officer in Saskatoon include uses that are more "technical" in nature, including boarding houses, child-care centres, special needs housing, garage and garden suites, and micro-breweries. Generally, these developments are smaller in scale, supported by policy, but may require application of additional conditions to ensure land use compatibility. Public notice generally follows the same requirements as Regina, and therefore property owners within the identified vicinity of the subject property are notified and invited to provide comment during the review period. A discretionary use application that is delegated to the Development Officer typically takes about 10 weeks before a decision is issued, whereas an application requiring Council's approval takes 14 - 18 weeks before a decision is issued.

Evaluation of Discretionary Uses in Regina

Management of public concerns with development proposals was a key concern raised by Council regarding the delegation of discretionary use approval authority to the Development Officer. To arrive at an approach to manage these concerns the Administration analyzed past discretionary uses applications, identifying the application types that are highly likely to generate public concerns. Key findings are as follows:

- Between 2000 and 2016, City Council considered 390 discretionary use applications. City Council concurred with Administration's recommendations in 98.5 per cent of the applications.
- Between January 1, 2018 and March 3, 2021:
 - there were 55 applications for discretionary use. Two discretionary use applications were denied by Council:
 - An apartment greater than 11m at 3700 Green Diamond Road (2021), which Administration recommended approval; and
 - A Day Care Centre 6339 Leger Bay (2018), which Administration recommended denial.
 - 11 applications (20 per cent) generated more than five comments in opposition to the proposal, the remainder generated none or a single comment in opposition. Two of those applications were also associated with a site-specific rezoning, and

thus required Council's consideration through that parallel process.

- Applications that generated greater amounts of concern (i.e. typically five or more) are almost entirely correlated with these common characteristics:
 - The location is within or directly adjacent to an existing and established residential neighbourhood; and
 - The proposed development increases the intensity of use in relation to the surrounding neighbourhood.
- Nine of these eleven applications for discretionary use follow this pattern and are noted in Appendix C.

Proposed Delegation of Discretionary Use Approval Criteria

Using the rationale that the Development Officer would be responsible for consideration of discretionary uses that may have greater technical considerations and minimal public concerns, Administration recommends the following proposed change to the City's current review process and delegated authority:

That the Development Officer be authorized to exercise and carry out any or all of the powers and duties of council with respect to discretionary use applications, except for discretionary use applications meeting the following criteria:

- (1) The Application:
 - (a) Relates to a location within 30 metres of an established residential neighbourhood, or residential zoned property excluding vacant or undeveloped land; and
 - (b) Proposes to increase in intensity, or is likely to generate impacts beyond the site boundaries that are inconsistent with the existing or planned character of the neighbourhood; or
- (2) The development proposed by the application has raised significant degree of concern by the public as determined by the Development Officer; or
- (3) The application relates to a land use requiring City Council's discretionary consideration as otherwise specifically noted in the Zoning Bylaw or the Official Community Plan or any other application as determined by the Development Officer due to potential community impact.

Examples of Discretionary Use Applications that would be considered by the Administration or Council, respectively, are provided in Appendix D.

Criteria (1)(a) and (b) intend to correlate with the Administrations research findings that applications that are in close proximity to residential and propose to increase the intensity or may have off-site impacts tend to generate public concerns. Since these criteria can be pre-assessed before the formal review, most of these applications would be identified to proceed to Council during the initial stages of the review rather than before. For example, an application for an infill apartment building would be pre-determined to require City Council's approval since it is within an established residential neighbourhood and increases the existing intensity of the site.

Criteria (2) intends to capture any other situation that falls outside criteria (1), but still generates significant public concerns. For example, if an “Assembly, Adult” land use (i.e. “strip club”) is proposed within an industrial area, and still receives several comments in opposition during the review of the circulation, the Development Officer would determine that the application should proceed to Council for a decision.

Lastly, criteria (3) establishes that there may be some application types that require City Council’s discretion, as specified in the OCP or the Zoning Bylaw regardless of how it relates to criteria (1) and (2). For example, the OCP specifies that industrial office greater than 1000 square meters may be permitted *at the discretion of Council*. These applications would always require City Council’s decision. Currently there are no specific uses identified in the Zoning Bylaw that require City Council’s approval, but those may be added for clarity, or as determined by Council.

Proposed Process for Applications Delegated to the Administration

For those applications that are determined to be delegated to the Development Officer for decision, the approval process would generally follow the current review course, and which is outlined in Appendix B-2. The difference would be, rather than preparing a public report to Regina Planning Commission and City Council, an internal report would be created by Planning staff and considered by the Development Officer (i.e. Director, Planning & Development Services and Executive Director, City Planning & Community Development Division). The report would be concise and technical in nature, summarizing all aspects of the proposal and review to ensure the Development Officer is able make an informed decision. Follow up would consist of sending a copy of the decision to the applicant. Ultimately this change in authority and the related process would be expected to reduce the processing time in which to arrive at a decision from 12-14 weeks to approximately seven weeks. It is expected that approximately 80 per cent of the current volume of discretionary uses can be managed Administratively without Commission and Council’s consideration.

The Act also provides the right of appeal to the applicant who wishes for Council to review the decision of the Development Officer within 30 days of the written decision to review, confirm, or alter the decision of the development officer, development standards, or conditions of approval. The applicant may also appeal the conditions of approval or development standards to the Development Appeals Board. These options are only available to the applicant, not the general public.

Future Zoning Bylaw Amendments

The Administration continues to collaborate with the public and stakeholders to implement the Zoning Bylaw. As experience and insight is gained, further amendments will be brought to Commission and Council. Administration will report on suggested land use types that may be transferred from a discretionary to permitted land use class to overall reduce the amount of discretionary use applications with the overall intent to find efficiencies while aligning with the OCP.

DECISION HISTORY

On August 26, 2019, City Council gave third and final reading to *The Regina Zoning Bylaw, 2019 (No. 2019-19)* and it came into force, following ministerial approval, on December 21, 2019.

City Council's approval is required pursuant to Part V of *The Planning and Development Act, 2007*.

Respectfully Submitted,



Fred Scarlop, Director, Planning & Development Services

Respectfully Submitted,



5/21/2021

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ATTACHMENTS

Appendix A
Appendix B-1
Appendix B-2
Appendix C
Appendix D