



REQUEST FOR DECISION

MEETING DATE: April 11, 2023

TITLE: C-1238-23 - Community Standards Appeal Committee Bylaw - First and Second Reading

DIVISION: Corporate Services

SUMMARY:

Municipal Government Act Orders issued under the *Municipal Government Act* (MGA) may be appealed by affected parties. Under the MGA, appeals can be heard by Council or can be delegated by Council to a Council Committee comprised of all public members. Upon review of best practices, it is recommended that a Council Committee comprised of all public members be established to mitigate potential conflict between Council's legislative duties and the adjudicative duties required when sitting as a quasi-judicial body. Under the MGA, a Council Committee must be established by bylaw.

The proposed bylaw was presented at the March 20, 2023 Committee of the Whole meeting and based on questions and feedback from Committee further information regarding the legal recourse of unsuccessful appellants and reporting of Notices of Decision to Council is noted below.

PROPOSED MOTION:

THAT first reading be given to C-1238-23 - Community Standards Appeal Committee Bylaw.

THAT second reading be given to C-1238-23 - Community Standards Appeal Committee Bylaw.

BACKGROUND / ANALYSIS:

Municipal Government Act Orders

A Municipal Government Act Order (“Order”) is a written Order issued under sections 545 and 546 of the MGA, which requires a person responsible for the contravention of a bylaw or a provincial enactment that the municipality is authorized to enforce, to remedy the contravention if the circumstances so require.

Section 545 outlines the use of an order to remedy a contravention under any bylaw or a provincial enactment that the municipality is authorized to enforce; whereas section 546 outlines the use of an order to specifically remedy a dangerous or unsightly property regardless of whether there is a bylaw or other enactment in place regulating such property. In the event of non-compliance, the municipality is authorized to pursue an action or measure to rectify the contravention at the expense of the person who is non-compliant.

Right to Appeal

Pursuant to section 547 of the MGA, a person who received a written Order under sections 545 or 546 may by written notice request Council to review the Order. In the case of an Order under section 545, the written notice and appeal fee must be received by the City within 14 days after the Order is issued. In the case of an Order under section 546, the written notice and appeal fee must be received by the City within seven days after the Order is issued. After reviewing the Order, Council or a Council Committee may confirm, vary, substitute, or cancel the Order.

Quasi-Judicial Hearing Principles

The review by Council of an Order decision is completed by way of a quasi-judicial hearing. Quasi-judicial hearings are overseen by a quasi-judicial body (also known as administrative tribunals) and are governed by administrative law and the principles of natural justice. The most basic concept of administrative law is that the processes used to reach decisions must be, and be seen to be, fair in order to be valid. The principles of natural justice hold that during a hearing an individual has the right to be heard, the right to an unbiased decision-maker, and a decision must be from the person(s) who heard the appeal.

At the foundation of quasi-judicial hearings is the appeal process; there is an appellant and a respondent, and the role of the quasi-judicial body is to adjudicate in favour of one party or the other based on the evidence provided.

Council vs. Council Committee

Although section 547 of the MGA refers to Council reviewing an Order, under section 145 of the MGA, Council may establish a Council Committee to carry out functions of Council on Council's behalf. The Council Committee could be comprised entirely of Councillors, a combination of Councillors and public members, or entirely of public members.

The main advantage to having an all-public member quasi-judicial Council Committee is to avoid the potential conflict between Councillor's legislative role as Council and an adjudicative role as a quasi-judicial body. Since Council passes the regulations outlined in the bylaws upon which Orders are issued, it poses a conflict if they are then the body adjudicating on any appeals. By having the Committee be an all-public member Committee, it also conforms with the practice implemented for the Subdivision and Development Appeal Board (SDAB), the other City quasi-judicial body.

The main disadvantage to having an all-public member quasi-judicial Council Committee is that in the City of Spruce Grove context, historically, appeals of Orders have been infrequent and sporadic. The recruitment of public members for a Council Committee is time-consuming, and it is possible a full term of such a Council Committee could expire without ever having to sit. In order to mitigate this issue, it will be recommended to Council that SDAB members also be appointed to this Committee. In the event of an appeal, we will have members trained in administrative law principles who have experience with quasi-judicial hearings sitting in the wings.

Although the City is currently in the process of reviewing our bylaws that deal with community standards and looking to amalgamate these into one Community Standards Bylaw, the proposed Community Standards Appeal Committee Bylaw can be established in advance of the passage of the Community Standards Bylaw. The Committee would review Orders based on the current bylaws until the Community Standards Bylaw is passed.

Further Information Stemming from Questions and Feedback at the March 20, 2023 Committee of the Whole Meeting

Based on questions and feedback received at the March 20, 2023 Committee of the Whole meeting, Administration can advise the following:

- If an appellant appealing an MGA Order was unsuccessful in their appeal, under s. 548 of the MGA the appellant may further appeal to the Court of King's Bench if:
 - the procedure required to be followed by the MGA is not followed; or
 - the decision is patently unreasonable.

It is important to note the ability to appeal would apply whether Council was the adjudicating body or a Council Committee. If appealed to the Court of King's Bench, the Court may:

- confirm the decision; or
 - declare the decision invalid and send the matter back to council (or a council committee if the duties were delegated to one) with directions.
- Administration will commit to notifying Council when a Notice of Decision is issued for a City quasi-judicial body (i.e., Subdivision and Development Appeal Board and Community Standards Appeal Committee, if established). The link on the City webpage to the publicly accessible Notice of Decision will also be provided.

OPTIONS / ALTERNATIVES:

Appeals of Orders can continue to be adjudicated by Council, but this would continue the conflict between Council's legislative duties and the adjudicative duties required when sitting as a quasi-judicial body.

CONSULTATION / ENGAGEMENT:

The City Clerk's Office researched how many other municipalities have established public-only Council Committees to adjudicate on appeals. Based on this research, at least five other municipalities have such a committee - Edmonton, Calgary, Strathcona County, Red Deer, and Regional Municipality of Wood Buffalo, and many others have all public member committees for other quasi-judicial bodies (i.e., SDAB). Removing Council from quasi-judicial bodies is an ongoing trend.

Legal counsel reviewed the bylaw and had no concerns.

IMPLEMENTATION / COMMUNICATION:

The SDAB members were consulted at the SDAB November 2, 2022 Organizational Meeting to see if they were agreeable to let their names stand for appointment to the Community Standards Appeal Committee. All agreed to let their names stand at that time, and Administration will further confirm they wish to continue letting their names stand. The Committee members can be appointed at a meeting shortly following the meeting in which the bylaw is passed.

IMPACTS:

The bylaw will formally establish the Community Standards Appeal Committee, allowing for public members to be appointed to mitigate the potential conflict that exists between Council's legislative role and the adjudicative role required of members of the Committee.

FINANCIAL IMPLICATIONS:

Currently, under C-909-15 - Nuisances, Unsightly and Untidy Property Bylaw an appeal fee of an Order under this bylaw is \$100 for residential property and \$200 for business property. An appeal fee is used for quasi-judicial bodies to account for the administrative time and resources required to facilitate the hearing and to discourage frivolous appeals. Upon review and drafting of an amalgamated Community Standards Bylaw, the appeal fee will be reviewed to confirm it conforms with appeal fees of other City quasi-judicial bodies and of other municipalities' quasi-judicial bodies.