

# Public Consultation Provision in Seven Overlays

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**Recommendation:**

That Administration prepare amendments to Zoning Bylaw 12800 as generally outlined in Attachment 3 of the April 5, 2017, Sustainable Development report CR\_4280, and return to a future City Council Public Hearing.

**Report Summary**

**This report proposes draft amendments to Zoning Bylaw 12800 to update the process for notification of variances to regulations in seven Overlays.**

**Previous Council/Committee Action**

At the April 5, 2017, Urban Planning Committee meeting, the April 5, 2017, Sustainable Development report CR\_4280 was postponed to the April 19, 2017, Urban Planning Committee meeting, at a time specific to be determined by Agenda Review Committee.

**Report**Background

Seven Overlays in Zoning Bylaw 12800 require that applicants solicit input on proposed variances. In March 2016, the Court of Appeal of Alberta determined that this requirement, as currently written, is a condition precedent to issuance of a valid development permit, and must be completed in accordance with the applicable regulation in Zoning Bylaw 12800. This report proposes amendments to these Overlay requirements to address the Court's decision and to make improvements to the current process.

Class B Development Permits

A development application for a discretionary use or development that requires a variance to any regulations of Zoning Bylaw 12800 is considered a Class B development. The issuance of a Class B development permit is at the discretion of the Development Authority. A development that requires a variance may be refused if, in the opinion of the Development Authority, it would unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment, or value of neighbouring properties.

Section 11.3 of Zoning Bylaw 12800 further limits the Development Authority's ability to grant variances to cases of unnecessary hardship or practical difficulties peculiar to the use, character, or situation of land or a building, which are not generally common to other land in the same Zone. It also restricts the Development Authority's ability to grant variances to maximum height, floor area ratio, and density. These limits to the Development Authority's variance power do not apply to the Subdivision and Development Appeal Board. Applications for discretionary uses may be refused if the Development Authority determines that the use would have land use impacts that are incompatible with, or detrimental to, the site specific context and surroundings.

Seven Overlays in Zoning Bylaw 12800 require that applicants contact neighbouring property owners to solicit their feedback on any proposed variances to the regulations of the Overlay, or in the case of one Overlay, a particular use, prior to issuance of a development permit. The purpose of this process is to facilitate communication between applicants and neighbours, Community Leagues, and in some cases, Business Improvement Area Associations. The relevant information that is gathered is used by the Development Authority to assist in making a decision on a variance in accordance with Section 11 of Zoning Bylaw 12800, or determining whether a discretionary use is appropriate.

During the public engagement program for the Mature Neighbourhood Overlay Review, stakeholders and the public were provided opportunity to review the revised regulations. The proposed approach for the Mature Neighbourhood Overlay was presented to Urban Planning Committee on February 1, 2017 as part of Sustainable Development report CR\_4234. Administration was directed to prepare amendments to Zoning Bylaw 12800 as outlined in the report, with a minor change to the notified parties, and return to a future City Council Public Hearing. The amendments to the Mature Neighbourhood Overlay are scheduled to be presented at the May 29, 2017, City Council Public Hearing. This report presents the revised process for the six other Overlays that contain similar consultation regulations. Administration recommends that these proposed amendments come into effect on the same date as the amendments to the Mature Neighbourhood Overlay, in order to ensure process alignment.

### Current Process

#### *Consultation in Overlays*

In addition to Class B notification, seven Overlays in Zoning Bylaw 12800 require that applicants notify Community Leagues and owners of property within 60 metres of any development that does not comply with the regulations of the Overlay, to solicit input on the potential impacts of variances, prior to the Development Authority making a decision on a development permit application. Business Improvement Area Associations are also notified in the case of Commercial Overlays.

To solicit this input, the applicant usually goes door-to-door with feedback forms outlining the proposed variances. The contacted property owners will typically sign the form or provide feedback if they wish. For some Overlays, the completed forms are

then submitted to the Development Authority, who must wait 21 days from the notification of neighbours before rendering a decision. Some Overlays require that this process occur prior to submission of an application, while others require that it happen after the Development Authority's preliminary review. The consultation process was introduced into Zoning Bylaw 12800 in 2001, and is not required by the *Municipal Government Act*.

### *Class B Notification*

Should the Development Authority approve the development permit following the consultation process, notice is sent by ordinary mail within seven days, again to each assessed owner of land, and the President of each Community League and Business Improvement Area Association within 60 metres of the site. The notice informs recipients of their right to appeal the Development Authority's decision at the Subdivision and Development Appeal Board within 14 days. Within 10 days of the decision, notice is published in the Edmonton Journal.

### *Processes in Other Jurisdictions*

Administration has found that very few other major Canadian municipalities require consultation with neighbours prior to decisions on development permit applications. Some require consultation only for large developments. Several cities follow a similar approach to the Class B Notification process used by the City of Edmonton, notifying neighbours of variances or an upcoming public hearing at which a decision on proposed variances will be made. See Attachment 1 - Processes in Other Municipalities for further details.

### Current Challenges

#### *Past Practice*

The consultation regulations in the Overlays have occasionally been relaxed by Development Authorities. In these situations, the number of parties required to be contacted was reduced or the requirement was waived. This occurred in limited situations where the variance or development was determined to have very minor or no impacts, the variance was triggered by the existing location of a legal non-conforming building, or the development had existed for several years without a valid development permit.

The recent decision by the Court of Appeal of Alberta determined that the consultation process must be completed in accordance with the applicable regulation, as written in Zoning Bylaw 12800. This change has led to an increased level of consultation for minor developments, and increased processing times for development permit applications by an average of nineteen days.

#### *Transparency*

A number of stakeholders and members of the public expressed concerns that the

current process lacks transparency, as contacting property owners and relaying their feedback to Administration is the responsibility of the applicant. Administration heard a lack of confidence that feedback is being accurately conveyed to Development Authorities. Administration has heard from some citizens that they do not feel comfortable providing feedback directly to the applicant face-to-face, and applicants have expressed discomfort with directly soliciting feedback on a doorstep.

### *Solicitation of Feedback*

A technical analysis revealed that the amount of feedback the Development Authority receives is typically quite low, particularly for smaller developments such as alterations to existing buildings or new accessory buildings. Administration reviewed 223 signed consultation responses for new residential units, and 347 for smaller developments, submitted from November 2015 to May 2016. Administration found that for new residential units, 34 people (15 percent) contacted through the process provided input beyond a brief statement of neutrality or support. Only 13 respondents (six percent) commented on the impact of the variance.

For smaller developments, 11 respondents (three percent) provided input beyond a brief statement of neutrality or support. Of those, none of the responses reviewed contained comments about the impact of the variance, instead comments unrelated to the variance were submitted. Response rates for applications in commercial Overlays were found to be quite low. This is likely the result of difficulty in contacting owners of commercial properties who frequently are not on the premises when an applicant attempts to contact them. This suggests that this process does not have value for certain types of applications, and does not justify the delay in approval times created by this process.

### *Clarity and Consistency*

The current consultation requirements provide little direction to the applicant or the Development Authority, and can be difficult to apply consistently, mainly because the process is in the hands of the applicant. Applicants are required to “contact” various affected parties, but there is ambiguity as to what “contact” means, and when the requirement has been satisfied. The applicant is also required to submit feedback to the Development Authority, but the requirements do not specify how that feedback is to be used by the Development Authority. This means that the purpose of the requirement is unclear, and neighbouring property owners are unsure as to how their feedback will be used. Additionally, some Overlays require that the consultation process be completed prior to submission of an application. This is problematic, as applicants are often unaware of what variances their application requires, or the magnitude of the variances. Upon review by the Development Authority, there may be additional variances identified.

### Proposed Approach

#### *Consultation Requirement in Zoning Bylaw 12800*

To address the challenges created by the current regulations and process, Administration proposes to revise the consultation process requirements through amendments to Zoning Bylaw 12800. The proposed process will transfer responsibility for the solicitation and collection of feedback from the applicant to the Development Authority, with the intent to ensure a greater level of transparency and consistency in the process. This would require the Development Authority to send notice to a specified number of neighbouring property owners to solicit their feedback on the specific variances. The proposed process would take place following the Development Authority's preliminary review, to ensure the information being sent is accurate and reflects all applicable variances. See Attachment 2 - Summary of Draft Amendments, for the full details on the consultation approach for each Overlay.

The purpose of the proposed approach, which is stated in the new regulations, is to solicit relevant information for the Development Authority to consider in determining whether the development would unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring properties or, in the case of the Secondhand Stores and Pawn Stores Overlay, in exercising their discretion in regards to the proposed use. The focus will no longer be on requiring door-to-door interaction between applicants and neighbours. Should applicants choose to meet with neighbours in person, they will still have the opportunity to do so, and notices will provide the contact information of the applicant should property owners wish to make contact with applicants. Draft amendments to Zoning Bylaw 12800 are outlined in Attachment 3 - Mark-up of Proposed Text Amendment.

### *Continue to Encourage Communication*

Recognizing the importance of good communication between applicants and neighbours, a number of new initiatives aimed at educating applicants about the benefits of good communication and facilitating positive interactions have been undertaken through the implementation of Edmonton's Infill Roadmap, including:

- Development Permit Notification Signs
- Pre-application meetings for small-scale infill development
- Residential Infill Construction Guide
- Residential Infill website
- Infill Liaison Team
- Infill Action Conversation Toolkit
- Neighbourhood postcard for builders
- Notices can include a link to the How to Respond to a Development Application booklet on the Residential Infill website

These are voluntary measures through which Administration encourages applicants to communicate with neighbours, rather than requiring it.

### **Policy**

This report supports *The Way We Grow*, Edmonton's Municipal Development Plan:

- 3.2.1.4 - Provide an open planning process which involves residents in policy development and planning for growth and change.

This report supports Edmonton's Infill Roadmap:

- Action 22 - Pursue changes to processes to help reduce costs, expedite approvals, and support affordability.
- Action 23 - Re-examine infill-related notification and consultation processes and approaches in order to inform potential changes that can improve their effectiveness and transparency.

### Corporate Outcomes

This report contributes to the corporate outcome “Edmontonians are connected to the city in which they live, work and play” as it will facilitate involvement in the development process.

### Risk Assessment

Risk Element	Risk Description	Likelihood	Impact	Risk Score	Current Mitigations	Potential Future Mitigations
Maintaining existing regulations	Increased level of consultation for minor developments and increased processing times for some development permit applications; lack of transparency; low amounts of feedback received related to variances; lack of consistency between Overlays	4 - Likely	4 - Severe	16 - High	Develop an updated approach that will increase transparency and reduce processing times for some development permit applications.	Revision of proposed procedure.  Educational campaigns.
Public Acceptance	There is a range of perspectives on what level of input solicitation is appropriate for different types of development.	3 - Possible	2 - Moderate	6 - Low	Engaging Edmontonians to gauge the level of acceptance for the proposed approach.	Public consultation and educational campaigns.
Inadequate regulations	Revised regulations do not appropriately address the needs of community, applicants and the City.	2 - Unlikely	2 - Moderate	6 - Low	Engaging Edmontonians to understand values and priorities around shortcomings of current process.	Monitoring of outcomes and ongoing investment in refining Overlay consultation process.

**Public Consultation**

- Two meetings with Business Improvement Area Association Executive Directors (September 2016)
- Mature Neighbourhood Overlay Review Public Engagements
  - Public Workshop (May 2016)
  - Drop in Engagement Session (May 2016)
  - Insight Survey (June 2016)
  - Multi-stakeholder workshop (August 2016)
  - Drop In Engagement Sessions (Sept/Oct 2016)
  - Insight Survey (October 2016)
  - Community League Workshop (October 2016)
  - Industry Workshop (November 2016)
- Community Infill Panel (July 2016)
- A draft of this report was circulated to the Canadian Home Builders' Association - Edmonton Region, Infill Development in Edmonton Association, Urban Development Institute - Edmonton Region, Edmonton Federation of Community Leagues, and all Community Leagues within the Mature Neighbourhood Overlay on December 14, 2016.

There was general consensus that there is value in some form of consultation for proposed variances, scaling the scope of consultation to the impact of variance, and finding a way to complete the consultation process in a timely manner. There was some divergence in opinions regarding the appropriate scale of consultation.

**Metrics, Targets and Outcomes**

Metrics	Targets	Outcomes
<ul style="list-style-type: none"> <li>● From November 2015 to May 2016, 34 of 223 people (15%) consulted on variances for new residential units in Overlays provided input beyond a brief statement of neutrality or support                             <ul style="list-style-type: none"> <li>○ 13 (6%) commented on the impact of the variance</li> </ul> </li> <li>● 11 of 347 people (3%) consulted on variances for smaller developments provided input beyond a brief statement of neutrality or support                             <ul style="list-style-type: none"> <li>○ None commented on</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>● Increased proportion of feedback related to proposed variances</li> </ul>	<ul style="list-style-type: none"> <li>● Certainty for community and applicants is increased</li> <li>● Information sharing with neighbours of infill</li> <li>● Clarity around who is consulted when a variance is requested to an Overlay</li> </ul>



the impact of the variance		
<ul style="list-style-type: none"> <li>• 23 variances granted to the consultation requirement in 2015</li> </ul>	<ul style="list-style-type: none"> <li>• No variances to consultation requirement</li> </ul>	<ul style="list-style-type: none"> <li>• Process is aligned with decision of the Court of Appeal of Alberta</li> </ul>
<ul style="list-style-type: none"> <li>• In 2016, 57% of Single Detached housing development permits were issued within 85 business days within the Mature Neighbourhood Overlay</li> <li>• In 2016, 73% of Semi-detached and Duplex housing development permits were issued within 55 business days within the Mature Neighbourhood Overlay</li> </ul>	<ul style="list-style-type: none"> <li>• 75% of Single Detached housing development permits issued within 85 business days within the Mature Neighbourhood Overlay</li> <li>• 75% of Semi-detached and Duplex housing development permits issued within 55 business days within the Mature Neighbourhood Overlay</li> </ul>	<ul style="list-style-type: none"> <li>• Improved approvals timelines due to streamlined consultation requirements</li> <li>• Barriers to infill development are reduced</li> <li>• More housing options are provided in Edmonton's mature neighbourhoods</li> </ul>
<ul style="list-style-type: none"> <li>• Average of 116 business days to issue a Class B development permit within the Mature Neighbourhood Overlay in 2015</li> <li>• Average of 135 business days to issue a Class B development permit within the Mature Neighbourhood Overlay in 2016</li> </ul>	<ul style="list-style-type: none"> <li>• 10 business day reduction in average time to issue a Class B development permit within the Mature Neighbourhood Overlay</li> </ul>	

**Justification of Recommendation:**  
 The proposed amendments will ensure a more effective, streamlined, transparent, and consistent approach to consultation in Overlays, and align the process with the decision of the Court of Appeal of Alberta.

**Attachments**

1. Processes in Other Municipalities
2. Summary of Draft Amendments
3. Mark-up of Proposed Text Amendment

**Others Reviewing this Report**

- T. Burge, Chief Financial Officer and Deputy City Manager, Financial and Corporate Services
- C. Campbell, Deputy City Manager, Communications and Engagement