

Charter Bylaw 24000 District Policy

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- The letter dated May 23, 2024 (p. 69-72 Council Correspondence) from counsel to the OGCA identified a number of concerns with the District Policy and the Central District Plan.

Among those issues:

- inconsistency with City Plan
- lack of consideration for historical significance
- position of the City Plan as a statutory plan
- the problem with District Plans that trespass on the Zoning Bylaw
- the potential illegality of s. 635.1, which is the legislative basis for the passing of the District Policy and specific District Plans.

- The potential illegality of s. 635.1 is what I wanted to highlight for you today.

Other speakers will address other points raised in that letter.

Potential Illegality of s. 635.1

As noted in the Council Report – Charter Bylaw 2400 District Policy, the passing of the District Plans and District Policy are “additional statutory plans” as described under s. 635.1 of the MGA as amended by the City of Edmonton Charter 2018 Regulation, and have been prepared in accordance with Section 636 of the *Municipal Government Act*.

This means, essentially, Cabinet through a regulation has amended the MGA (see s. 4(33) of the City of Edmonton Charter 2018 Regulation). This is problematic.

Firstly, the conventional legal view is that the legislature cannot abdicate its power to legislate. Essentially, the Legislature cannot authorize the executive to pass or amend statutes or ignore the role of the Lieutenant Governor and it cannot authorize sub delegation by the Cabinet of powers to municipalities which the Cabinet does not and cannot possess

Here, the City of Edmonton Charter Regulation purports to amend the MGA, an Act of the Legislature, through a regulation.

It is unclear what statutory authority is relied upon to do so.

Section 141.5 of the MGA provides:

Elements of charter

141.5(1) Subject to this Part, a charter governs all matters related to the administration and governance of the charter city, including, without limitation, the powers, duties and functions of the charter city and any other matter that the Lieutenant Governor in Council considers desirable.

(2) In subsection (3), a reference to “this Act” does not include this Part or Part 15.1 or 17.1.

(3) A charter may do one or more of the following:

(a) provide that a provision of this Act or any other enactment does not apply to the charter city or applies to the charter city with the modifications set out in the charter;

(b) specify or set out provisions that apply in respect of the charter city in addition to, or instead of, a provision of this Act or any other enactment;

(c) authorize the charter city to modify or replace, by bylaw, a provision of this Act or any other enactment, with respect to the charter city, to the extent set out in the charter.

(4) Before giving second reading to a proposed bylaw referred to in subsection (3)(c), the council of the charter city must hold a public hearing with respect to the proposed bylaw in accordance with section 216.4 after giving notice of it in accordance with section 606.

(5) A charter may include provisions respecting its interpretation.

(6) A charter may generally provide for any other matter necessary for the purposes of giving effect to this Part.

(7) Except to the extent that a charter or a bylaw made pursuant to subsection (3)(c) provides otherwise, this Act and any other enactment apply to the charter city.

- Where such sub-delegation power is included in legislation, these are called “Henry VIII Clauses” because they purport to allow a minister or Cabinet (or in this case, Edmonton as a Charter City) to amend legislation without going through the proper legislative process. Their legality is questionable and may be open to challenge.

Secondly, in this case, there is an argument that s. 141.5 does not expressly provide the Lieutenant Governor in Council with authority to amend the MGA, which s. 4(33) of the City of Edmonton Charter Regulation purports to do by adding this provision to the MGA:

- 635.1(1) The City may by bylaw adopt one or more additional statutory plans.
- (2) An additional statutory plan referred to in subsection (1) must
- (a) indicate the name of the statutory plan,
 - (b) describe the contents of the statutory plan, and
 - (c) indicate how the statutory plan is consistent with the City’s other statutory plans.
- (3) *An additional statutory plan referred to in subsection (1) must be consistent with*
- (a) *any intermunicipal development plan in respect of land that is identified in both the* *statutory*
 - plan and the intermunicipal development plan,*
 - (b) *any municipal development plan,*
 - (c) *any area structure plan in respect of land that is identified in both the statutory plan* *and the*
 - area structure plan, and*
 - (d) *any area redevelopment plan in respect of land that is identified in both the statutory* *plan and*
 - the area redevelopment plan.*

Therefore, there are two potential legal challenges that could be initiated against the passing of the District Policy.